Beyond the Numbers

FINEMAN WEST & COMPANY

The Tax Cuts and Jobs Act for Privately Held Business Owners

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Special 29.6% Tax Rate for Pass-Thru Businesses

The clients we serve are mainly privately held businesses and investors. To avoid double taxation, businesses are usually structured as flow-through entities such as LLCs and S Corporations. LLCs, S Corporations, and sole proprietors get a huge tax break under the new tax act. Many will be allowed to exclude 20% of their business income. The 20% deduction will drop the effective tax rate on business income to only 29.6%. This is a 10% drop from the 39.6% tax rate before the tax act. Even with the loss of the California state tax deduction, many business owners may pay up to 5% less tax. The trick will be to fully qualify all income for the new 20% Qualified Business Income (QBI) deduction and that will be the goal of a lot of tax planning. This tax break is illustrated as follows:

	Qualified Business Income	
	If QBI	**If Not QBI**
Total Income	1,000,000	1,000,000
20% Deduction	(200,000)	
Taxable Income	800,000	1,000,000
37% Federal Tax	296,000	370,000
Income Received	**1,000,000**	**1,000,000**
Owner Tax	296,000	370,000
Effective Tax Rate	**29.6%**	**37.0%**

Switch from Employee to Independent Contractor for 29.6% Rate

Wages will now have a top tax rate of 37%. This is a lot more than the 29.6% tax rate on business income. Beginning in 2018 employees may want to switch to independent contractors so they can save up to 7% in federal income tax. At one time the conference committee considered a proposal to require that a qualified trade or business receive no more than 20 percent of its income from any customer or client. This would have limited the ability of salaried workers to convert their status to that of an independent contractor, but this rule was not included in the final bill. Another benefit of switching to an independent contractor is the ability to deduct auto expenses, a home office, and other business expenses that they will not be able to deduct as an employee in the new tax act. This is sure to be a major concern to the IRS and careful research and groundwork must be done to determine if someone qualifies and they use the right structure to do this.

S Corporation Wages

One problem for S corporation owners is that they must receive reasonable compensation as wages. Before the tax act, the income tax rate was the same whether owners received salaries or income distributions. The tax act changed all that. Salaries are now taxed at 37% and profit distributions may qualify as QBI for a top tax rate of 29.6%. So a lot of thought will go into justifying low wages for S Corporation owners so they can receive most of their income as business income. Or S Corporations may be able to make structural changes to minimize the profits taxed as salaries at 37%. In the past salaries were used to reward the more active and productive owners. Now that QBI flow through income can be taxed 7% lower than salaries, owners will probably prefer higher ownership in the entity over salaries and bonuses. S corporations may want to change their ownership so that active owners receive higher profit allocations instead of salaries.

LLC Compensation

It appears LLCs do not have this same problem. The way the law is written, only guaranteed payments to LLC owners are excluded from QBI. In most LLC agreements, the owners receive profits based on ownership and do not receive guaranteed payments. LLC owners can easily choose not to take salaries or receive guaranteed payments. So for many LLC owners, 100% of LLC profits could qualify for the 29.6% QBI tax rate. In the past a lot of LLC owners would take salaries so they could deposit taxes through payroll withholding and not have to fool with estimated tax deposits. For 2018 and forward, many owners can save 7% income tax by depositing taxes through estimates instead of through salaries. It is possible that over time the IRS will consider this a loophole and seek to create reasonable compensation standards for LLC owners.

Special Rules That Eliminate the 20% QBI Deduction

As illustrated earlier, if a taxpayer qualifies for the full 20% QBI deduction the top federal tax rate drops from 37% to 29.6%. If the taxable income on a married return is less than $315,000 (or $157,500 for other returns) the taxpayer will automatically get the maximum 20% QBI deduction. Once a taxpayer exceeds these taxable income levels, there are many special rules that can limit or take away the 20% QBI deduction. The QBI requirements are discussed below.

Haircut That Can Wipe-Out the 20% QBI Deduction

In order to avoid a haircut on the 20% QBI deduction, the business must have either "W-2 wages" **or** own "qualified property".

- The QBI Deduction is limited to 50% of "W-2 wages" paid by the business, **or**

		W-2 Wages Limitation		
		No Haircut		**With Haircut**
Total Wages		**700,000**		**180,000**
50% Limitation	*	350,000	*	90,000
Income		**1,000,000**		**1,000,000**
20% of Income		200,000		200,000
Wage Limitation	*	350,000	*	90,000
Haircut		**0**		**110,000**
20% of Income		200,000		200,000
Haircut		0		(110,000)
QBI Deduction		**200,000**		**90,000**

- 25% of your allocable share of the "W-2 pages" paid by the business PLUS 2.5% of your allocable share of "qualified property."

		Qualified Property Limitation		
		No Haircut		With Haircut
Building/Fix-Up Costs		**10,000,000**		**3,000,000**
Limitation - 2.5% of Cost	*	250,000	*	75,000
Income		**1,000,000**		**1,000,000**
20% of Income		200,000		200,000
Qualified Property Limitation	*	250,000	*	75,000
Haircut		0		125,000
20% of Income		200,000		200,000
Haircut		0		(125,000)
QBI Deduction		**200,000**		**75,000**

W-2 wages include wages paid to employees including any elective deferrals into a Section 401(k)-type vehicle or other deferred compensation. The wages must appear on payroll tax returns and W-2 forms. W-2 wages do not include payments to independent contractors or management fees.

Qualified property is any tangible property subject to depreciation (meaning inventory doesn't count). It must be owned by the business at the end of the year and used during the year in the production of QBI. The property basis used is the original purchase price <u>not</u> reduced by any depreciation deductions. But there's a catch, the depreciation period of the property must not have ended during the tax year. There is one exception, for fixed assets with a life of less than 10 years a company may keep the property on the books for 10 years and consider it qualified property, even if the depreciation period has ended. Although land is not tangible property, buildings, structures, vehicles, machinery, and equipment are tangible property.

There are some quick rules of thumb where you will be safe from the haircut:

- If wages are double the QBI deduction, or if
- The building and improvements on your commercial property are 40 times the QBI deduction.

The Specified Service Income Blacklist

The tax act creates a list of specified service businesses that will lose the 20 percent QBI deduction and be taxed at 37% once certain income levels are hit. This blacklist includes law firms, accounting firms, medical practices, and any other firms involved in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services. Even if you are not on the black list, you may be drawn into the definition through the catch-all language included in the tax act. <u>Any trade or business that does not have a substantial investment in fixed assets and the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners are at-risk of being included.</u> It makes you wonder how wide of a net the IRS will cast and if manufacturers could be included if they make custom guitars, custom motorcycles, or other custom items based on the owners reputation or likeness. We are researching whether owners may be able to move trademarks, intellectual property, and non-blacklisted business functions into other LLCs away from the blacklisted activities. So that income from these items may still qualify for the 20 percent QBI deduction and the 29.6% rate. There will be many special rules that have to be satisfied to successfully do this. Non-listed businesses may want to rely less on owner names and likenesses for advertising and websites, and more on trademarks and other ways to make businesses unique.

Non-Qualified Income

Some types of income are specifically excluded from QBI. Short-term capital gain or loss, long-term capital gain or loss, dividend income, and interest income are not QBI. QBI also doesn't include any income that's not "effectively connected with the conduct of a U.S. trade or business". This language can be a minefield for businesses with foreign operations. Entities must be a trade or business to be eligible for QBI treatment. This is not as clear as you may think; there are conflicting definitions and court cases that need to be reconciled when figuring this out. A company may need a detailed analysis of their operations and contracts to confirm that they are considered a trade or business under the code. This may be especially complicated in the real estate area.

Avoiding the 3.8% Net-Investment Income Tax and the 2.9% Self-Employment Tax

The new rules are the same for 'active' and 'passive' investors and contain no changes to the rules governing net investment income taxes or self-employment taxes. Accordingly, many investors will want to be 'active' in order to avoid the 3.8 percent net investment income tax on their annual income or when they eventually sell their business or property. In addition to avoiding the 3.8% net investment income tax, owners may also be able to avoid the 2.9 percent self-employment tax by holding two classes of securities. There would be an 'investor' class of LLC securities not subject to self-employment tax, where profit is based purely on ownership. This would be separate from profits allocated to the 'manager' class of LLC securities; where the LLC Managers pay self-employment tax on their income.

100% Write-Off When Purchasing Business Assets

The new law extends and modifies the additional first-year depreciation deduction ("bonus depreciation"). Under the new law the bonus depreciation percentage is increased from 50% to 100%. This is retroactive to property placed in service on or after September 28, 2017. It also changes the definition of qualified property by including used property acquired by purchase so long as the acquiring taxpayer had not previously used the acquired property and so long as the property is not acquired from a related party. As later discussed in this article, some real estate businesses will not be allowed to deduct 100% of property and improvements.

The change in the definition of qualified property could have a huge impact on sales and purchases of businesses. It increases the incentive for buyers to structure taxable acquisitions as actual or deemed asset purchases, rather than stock acquisitions. The 100% write-off enables the purchasing entity in an asset acquisition to immediately deduct a significant part of the purchase price. If all of the write-off can't be used in the year of purchase, a net operating loss is generated that can be carried forward.

Section 179 Expensing

Under the new law, the section 179 expensing election is modified to increase the maximum amount that may be deducted to $1 million. The allowed expense is reduced dollar-for-dollar to the extent the total cost of section 179 property placed in service during the tax year exceeds $2.5. Section 179 expense can't reduce the income below zero and create a net operating loss.

In addition, the new law expands the availability of the expensing election to depreciable tangible personal property used in connection with furnishing lodging – e.g., beds and other furniture for use in hotels and apartment buildings. The election also may include, at the taxpayer's election, roofs, HVAC property, fire protection and alarm systems, and security systems, so long as these improvements are made to nonresidential real property and placed in service after the date the realty was first placed in service. These expansions to the definition of property eligible for the section 179 expensing election will be effective for property placed in service in tax years beginning after 2017.

Simplified Accounting Rules for Businesses with Sales of Less than $25 Million
For businesses with receipts of less than $25 million, a lot of complicated tax rules designed to increase income taxes will disappear:

1. C Corporations will now be allowed to use the cash method of accounting in the same circumstances as other business entities.
2. Operating costs will not have to be capitalized into inventory and other assets (UNICAP).
3. Taxpayers can treat merchandise as non-incidental materials and supplies instead of using more complicated inventory tax rules.
4. Businesses will not be subject to the new 30% limitation on business interest expense.
5. Long term construction contracts will be simplified. Instead of recognizing profits throughout the job, taxpayers will be able to wait until job items are completed.

Entertainment, Amusement, and Recreation Expenses
In the past sports tickets and other entertainment items that were business related could be both deductible to the company and be a fun tax-free fringe benefit to employees, but that is no longer the case. Taxpayers are prohibited from deducting any expenses related to entertainment, amusement, or recreation. <u>Business meals and travel meals will still be 50% deductible, but only if they have no entertainment element.</u>

Sports teams, movie sets, Silicon Valley businesses, and many other industries have cafeterias where employees get free meals and some employers are deducting the full cost. The act now imposes a 50% limit on deducting food or beverage expenses to employees at an employer-operated eating facility. These expenses are made fully nondeductible after Dec. 31, 2025. Holiday parties, picnics and other entertainment activity expenses for employees generally will be non-deductible in the future. There will still be an exception for de minimis food and beverages provided on the premises of the employer.

30% Limitation on Business Interest Expense
Interest expense in excess of 30% of a business's adjusted taxable income will be disallowed. Adjusted taxable income for the interest limitation has a definition similar to EBITDA. You start with income before tax, and then you add back interest, depreciation, and amortization. Any business interest disallowed can be carried forward indefinitely. The limitation is determined at the filer level and not at the owner level. In the following example, <u>a heavily indebted business with a loss could pay more tax than a profitable one with less debt.</u>

		30% Interest Limitation			
		Net Income		**Net Loss**	
Net Income (Loss)	*	**1,000,000**	*	**(1,000,000)**	
30% Interest Limitation		300,000		0	
Interest Expense		300,000		3,000,000	
Add-Back Interest Disallowed	*	0	*	2,400,000	(Some interest allowed once income positive)
Taxable Income with Add-Back	*	1,000,000	*	1,400,000	
37% Tax		**370,000**		**518,000**	
Actual Net Income (Loss)		**1,000,000**		**(1,000,000)**	

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The interest exclusion does not apply to taxpayers with average annual gross receipts of less than $25 million for the prior three years. In addition, real estate taxpayers may elect out of the interest expense limitation and to lose other tax breaks. This is discussed later in the Real Estate Business Section.

New Limits on Net Operating Losses (NOLs)

In a blow to certain distressed companies, the act eliminates the ability of taxpayers to carry back net operating losses and use tax refunds to help fund a turnaround. Once tax is paid for a year it is gone and can't be refunded to taxpayers who later have a bad year. While taxpayers will still be able to carry NOLs forward, the future use of net operating losses is limited to 80 percent of taxable income. So when taxpayers carry an NOL forward to a profitable year, they will have a minimum tax of 20% of income and not be able to completely zero out tax. Losses that are unused can be carried forward indefinitely.

The maximum business loss that married taxpayers can use to reduce other income on their tax returns is $500,000 for married taxpayers and $250,000 if single. The excess business loss becomes a net operating loss (NOL) carryforward, which a taxpayer may use to reduce up to 80% of income in future years. It may make sense for taxpayers to extend their business returns, to be sure profits are real and write-offs are not being pushed to a later year where they will not have tax benefit. Also, if an owner has a business loss for the year, it may be possible to make adjustments so that all owners get maximum tax benefits from losses, without the $500,000 and 80% limitations reducing tax benefits.

Real Estate Businesses

Large real estate businesses that are using the 30% interest limit and real estate businesses that have less than $25 million in sales receive the same tax benefits that all businesses do. The tax breaks include:

1. 100% expensing of:
    a. New and used tangible personal property with a recovery period of 20 years or less,
    b. Leasehold improvements on nonresidential property qualify
    c. The 100% expensing is retroactive to property placed in service after 9/27/2017
2. Up to $1 million of the following tangible property can be expensed under Section 179:
    a. Leasehold improvements on nonresidential property qualify
    b. Including roofs, heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems
    c. Equipment used in the living quarters of a lodging facility such as beds and other furniture, refrigerators, and ranges are now allowed under Section 179
    d. A phase-out of Section 179 expense starts when costs hit $2.5 million in the tax year
    e. Taxpayers should try and avoid the $2.5 million phase-out by spreading out improvement costs over multiple tax years
    f. Also, Section 179 expense is limited to profits and can't create a loss to offset other income the way 100% expensing can
3. To get the highest possible 20% QBI deduction:
    a. Owners may want to use employees instead of independent contractors to maximize wages.
    b. Under common paymaster rules, owners may be able to pay wages out of a single entity to save payroll taxes and then allocate wages to other entities to maximize the QBI deduction.
    c. The original cost of improvements count as qualified property, even if immediately deducted using 100% expensing or Section 179
        1. Instead of writing off remodeling costs as repairs on nonresidential properties, owners may want to capitalize the costs to improvements for a double tax benefit
        2. Owners not only get a deduction in the current year, their qualified property and QBI deduction can increase

4. Stand-alone items up to $2,500 each can be written off instead of deducted
    a. Even if the invoice is $1 million, you can deduct the whole invoice if made up of stand-alone items of $2,500 or less.
    b. If an audited financial statement is required by a lender or other party, the amount increases to $5,000 per item.
5. If less than 40% of a property type is replaced, you can expense the entire repair or remodel cost.
    a. If only 35% of building roofs or windows is replaced in a year, you can expense all costs.
    b. Owners may be able to deduct all remodels and repairs if they spread them across multiple years and replace less than 40% per year in each property class.
6. Solar Energy Systems can often increase profits on real estate.
    a. Building owners not only save on utility expenses
    b. They also receive tax credits and utility rebates
7. Grouping Elections and Real Estate Professional Elections can save large amounts of tax
    a. In a loss year owners can offset non-real estate income
        i. Even if the losses are from non-cash expenses such as depreciation
    b. Owners can also save 3.8% net investment tax on income during profitable years and on gains when they sell properties
8. Twelve-month rule
    a. Contracts for services of 12 months or less can be immediately expensed when paid
9. Three and a half month rule
    a. Items for the following year can be expensed if performed within 3 ½ months of check date.
    b. If an item is paid for on December 30 and completed by March 30th of the following year, it can be expensed in the prior year on the original check date.
        i. This allows owners to deduct next year's expenses in the current year.
10. For administrative convenience, any items costing $200 or less can be expensed as purchased.

Large real estate businesses with $25 million or more in sales are subject to the 30 percent interest limitation, but they may elect out of it. If they do, this allows real estate businesses to be highly leveraged and deduct interest that other businesses can't. However, if they do elect out of the interest limitation, they lose the following tax benefits:

1. 100% Expensing is not allowed if they elect out of the interest limitation
    a. However, real estate owners may be able to set-up a management company to get 100% expensing on certain vehicles and other items.
    b. In addition, real estate owners may be able to use tax breaks they still have to mimic 100% expensing.
    b. Such as Section 179 expensing, replacing less than 40% of a property type per year, deducting stand-alone items up to $2,500, and using the three and a half month rule.
2. Depreciation periods are lengthened if they elect out of the interest limitation
    a. Residential real property must be depreciated over 30 years instead of the 27.5-year recovery period otherwise available
    b. Nonresidential real property must be depreciated over 40 years instead of the 39-year recovery period otherwise available
    c. Qualified improvement property (e.g., leasehold improvements) is depreciated over 20 years instead of the 15-year recovery period otherwise available

The new limitation on "excess business losses" will prevent married real estate investors from using operating losses from their real estate businesses to shelter more than $500,000 in non-real estate income ($250,000 for other taxpayers). In addition, real estate losses may be limited by at-risk rules, passive activity rules, and basis rules.

C Corporations

The maximum tax rate for C corporations will drop to 21%. Also, C corporations will be the only entity that can still deduct state income taxes. Per the illustration below, it may pay for many US companies that plow all their profits back into their businesses to convert to C Corporations. This is a complex area with a lot of special rules that have to be considered in order to take advantage of the changes.

Tax Percentage on	**C Corporation**		**Active Pass-Through**	
Original Income	**Fed Only**	**Fed and CA**	**Fed Only**	**Fed and CA**
Tax If Undistributed	**21.0%**	**28.0%**	**29.6%**	**42.9%**
Tax on Distribution	18.8%	26.7%		
Tax if Distributed	39.8%	54.7%	29.6%	42.9%

Research and Development

The credit for increasing research activities has been retained. However, after 2021 amounts spent for research will no longer be immediately deductible. Specified research or experimental expenditures will have to be capitalized and amortized over a five-year period. Specified research or experimental expenditures that are attributable to research conducted outside of the United States will have to be capitalized and amortized over a 15-year period.

Individual Tax Return Changes

Most itemized deductions were either eliminated or modified and taxpayers were given a much larger standard deduction instead. A large part of the population will pay less tax filing a simple one page return taking the standard deduction. For lower and middle income taxpayers their tax returns were simplified and they will pay less tax. But for everyone else and especially for business owners and investors, taxes are more complicated than ever. Some of the individual tax return changes are as follows:

Rates

The Act keeps seven income tax rates but reduces them, so that the new top rate is 37%. The current rates are: 10%, 15%, 25%, 28%, 33%, 35% and 39.6%. The new rates dropped to 10%, 12%, 22%, 24%, 32%, 35%, and 37%.

Personal Exemptions

The Act eliminates personal exemptions, or the current $4,050 exemption that eligible taxpayers can claim for each of themselves and their dependents (usually, their children). However, the benefit was phased out for higher income taxpayers and higher income taxpayers usually did not benefit from this.

Standard Deduction

The Act basically doubles this deduction, so that in 2018 it will be: $24,000 (married, filing jointly), $18,000 (heads of households) and $12,000 (single taxpayers). The 2017 standard deductions were $12,700 (married, filing jointly), $9,350 (heads of households) and $6,350 (single taxpayers and married, filing separately).

Medical and Dental Expenses
Under current law, medical and dental expenses must exceed 10% of a taxpayer's "adjusted gross income" (AGI) to be deductible. The Act maintains the 7.5% threshold for taxpayers who are at least 65 (this provision expired at the end of 2016), and from 2017 through 2018, applies the 7.5% threshold to all taxpayers. As of 2019, the 10% threshold will again apply to all taxpayers.

State and Local Tax
SALT allows taxpayers to deduct payments for state and local income taxes (or sales tax, if elected instead), real property taxes and various other local taxes – provided that that the taxpayer is not subject to the AMT, which disallows the deduction. The Act caps the SALT deduction for all state and local taxes at $10,000 for married couples filing jointly and single taxpayers, and at $5,000 for a married individual filing separately.

Home Mortgage Interest
The Act changes the rules regarding home mortgage interest. Mortgage interest paid on acquiring, building or substantially improving a principal residence and one other residence (e.g., a vacation home) is still deductible, although the total debt can only be up to $750,000 (rather than $1 million).

Mortgages incurred on or before December 15, 2017 are grandfathered, but if such a mortgage is refinanced after that date, the grandfathering will be affected if the proceeds from the refinancing exceed the actual refinanced amount, or the refinancing extends the length of the original mortgage. Also, as of 2018, a deduction is no longer allowed for interest on home equity indebtedness (the debt could be up to $100,000); existing home equity loans are not grandfathered.

Charitable Contributions
The rules for charitable contributions are complicated, and the amount of the potential deduction depends on the nature of the gift (e.g., cash? marketable securities?) and the type of charity to which the gift is given (e.g., public charity? (think: college or museum), private foundation?). Cash gifts to a public charity garner the largest potential deduction. The Act increases the deduction for such gifts from 50% to 60% of the taxpayer's "contribution base" (generally, AGI). (There is a five-year carryforward if the taxpayer can't fully use the deduction in the year the gift was made).

Personal Casualty and Theft Losses
A personal casualty loss typically arises from "fire, storm, shipwreck, or other casualty, or from theft." To be deductible, the total casualty and theft losses must exceed 10% of a taxpayer's AGI. The Act suspends such losses (from 2018 through 2025) unless they are attributable to a "Federally declared disaster."

Miscellaneous Itemized Deductions
The Act disallows miscellaneous itemized deductions that were previously allowed to the extent that they exceeded 2% of Adjusted Gross Income. Tax preparation fees, investment expenses, job expenses, and expenses related to the collection of income are no longer deductible.

Alimony Payments
Effective for divorce separation agreements entered into after December 31, 2018, the payor spouse will no longer be able to deduct maintenance payments to his or her ex-spouse, who will also no longer be taxable on this payment (child support payments continue to be non- deductible and not includible in the recipient's income). Existing agreements are unaffected by this change unless they are modified and expressly provide that this change applies.

Sale of Principal Residence
Current law allows a single taxpayer to exclude up to $250,000 of gain ($500,000 if married, filing jointly) on the sale of the taxpayer's residence, provided that for two of the five preceding years, the property was the taxpayer's principal residence. The benefit is only available for one sale (or exchange) every two years. This gain exclusion remains unchanged.

Child Tax Credit
Current law allows taxpayers a $1,000 credit for each "qualifying child" under age 17, and has a refundable portion. The credit has different requirements, and starts to phase out if the taxpayer has modified AGI over $75,000 for single taxpayers and $110,000 for married couples filing jointly.

The Act increases the credit (from 2018 through 2025) to $2,000 per qualifying child, and increases the level at which the credit starts to phase out ($400,000 for married couples filing jointly, and $200,000 for any other taxpayers). It increases the refundable portion to up to $1,400 per child, and permits an additional credit of $500 for dependents other than a qualifying child.

Alternative Minimum Tax (AMT)
The AMT is a parallel tax system that requires taxpayers to figure their taxes twice – the "regular" way and the AMT way: whichever amount is higher is the amount of tax owed. Originally targeted at a handful of wealthy taxpayers, the AMT now reaches deep into the middle class and makes many items nondeductible that are otherwise deductible for regular tax purposes, such as state and local taxes.

The Act increases the AMT exemption to $109,400 for married taxpayers filing jointly (from $84,500) and to $70,300 for single taxpayers (from $54,300) for single taxpayers; it also increases the threshold at which the AMT exemption begins to phase out to $1 million for married joint filers (from $160,900) and to $500,000 for single filers (from $120,700). Taxpayers often pre-pay deductible items at year-end or take actions to generate tax credits to reduce taxes. With AMT these year-end deductions and credits will sometimes not help the taxpayer in the year paid and the taxpayer will actually be worse off for making them. Taxpayers often need tax planning to help determine what year-end deductions and credits to have and whether they will be better off paying for items in the following year.

529 Accounts
These are tax-preferred accounts that allow parents, for example, to save for their children's higher education. As of 2018, the Act now permits distributions up to $10,000 per year for a beneficiary's tuition at "an elementary or secondary public, private, or religious school."

Gift and Estate Tax Exclusion
The Act doubles the exclusion as of 2018. The gift and estate tax exclusion for individuals will be $11.2 million, or $22.4 million per married couple. The Act retains the current basis adjustment rules, which effectively "mark to market" the basis of a decedent's appreciated (and depreciated) assets, effectively eliminating built-in capital gains (a "step-up" in basis) as well as built-in losses (a "step-down" in basis).

Affordable Care Act Individual Mandate
To help reduce its cost, the Act eliminates the "shared responsibility payment," or the penalty that applies if individuals do not maintain "minimum essential coverage" under the Affordable Care Act (a/k/a "Obamacare").

Additional Rules and Requirements
All items and ideas mentioned in this article have additional rules and requirements which must be followed to qualify and use them. Whenever ideas or items are used from this article they should be planned and discussed with Fineman West first.

Future Adjustments to the Tax Act
There is bound to be technical corrections, regulations written, rulings, and court cases to help interpret the tax act. The final interpretation and application of the act could be substantially different then what is thought at this time and as described in this article. To keep this article brief, changes in the tax act that happen in future years were not addressed.

If you have any questions or concerns regarding the information provided, please contact our office to speak with one of our tax professionals.

Sincerely,
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