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# Tax Planning For The Tax Cuts and Jobs Act (TCJA) Sunset

The law known as the Tax Cuts and Jobs Act (TCJA) of 2017, P.L. 115-97, included some major changes to the Code, but not all of them are here to stay. A number of significant provisions are set to expire after 2025. Although Congress may act to extend some or all of them, it is important to know which provisions are expiring so taxpayers can be prepared to maximize their tax savings in case the provisions sunset as currently scheduled.

## Individual tax provisions to sunset after 2025

***Individual tax rates:*** The TCJA lowered tax rates to 10%, 12%, 22%, 24%, 32%, 35%, and 37%. The top rate decreased to 37% from 39.6%. These tax rates are set to sunset Dec. 31, 2025. The top tax rate beginning Jan. 1, 2026, reverts to 39.6%.

***Standard deduction:*** The standard deduction was nearly doubled for all filing statuses ($12,000 for single filers and $24,000 for married filing jointly) by the TCJA. As a result, many taxpayers have not itemized deductions. Starting in 2026, the standard deduction will be about half of what it is currently, adjusted for inflation.

***Itemized deductions:*** The following items were temporarily modified or suspended by the TCJA:

- *SALT:* The state and local tax (SALT) deduction was capped at $10,000, which had a significant impact on taxpayers in high-tax states. After 2025, this limitation will expire, allowing greater benefit from deducting taxes paid during the calendar year, including real estate taxes, state or local income taxes, and personal property taxes.
- *Mortgage interest deduction:* The TCJA generally suspended the home equity loan interest deduction. It limited the home mortgage interest deduction to the first $750,000 of debt (if married filing jointly) for any loan originating on or after Dec. 16, 2017. Beginning in 2026, the mortgage interest deduction will revert to pre-TCJA levels, allowing interest to be deducted on the first $1 million in home mortgage debt and $100,000 in a home equity loan.
- *Miscellaneous itemized deductions:* The TCJA temporarily eliminated most miscellaneous itemized deductions, such as investment/ advisory fees, legal fees, and unreimbursed employee expenses. These deductions will once again be allowed, starting Jan. 1, 2026, under the previous rules, to the extent they exceed 2% of the taxpayer's adjusted gross income.

***Other individual tax items:***

The TCJA's sunset also implicates several credits and other pertinent amounts and thresholds, including the following:

- *Child tax credit:* The child tax credit was increased from $1,000 to $2,000 per qualifying child. This higher tax credit will revert to pre-TCJA levels in 2026 of $1,000 per qualifying child.
- *Personal exemptions:* The TCJA temporarily suspended personal exemptions. The personal-exemption rules will return in 2026 once the provision sunsets. The personal exemption will be $2,000 per taxpayer and qualified dependents, adjusted for inflation (for 2023, the deemed amount, used in calculating other tax amounts that reference it, is $4,700). The personal exemption phases out at higher income levels.
- *Alternative minimum tax (AMT) exemption and phaseout:* The TCJA increased exemption amounts as well as the exemption phaseout threshold, lessening the AMT burden on taxpayers. At sunset, the AMT exemption will revert to pre-TCJA levels.

## Business tax provisions

***Corporate tax rate:*** The TCJA permanently changed the corporate tax rate structure, which previously had a top rate of 35%, to a flat 21% tax rate regardless of the amount of corporate taxable income. *This provision is one of the few that will not expire at the end of 2025.*

***Qualified business income (QBI) 20% deduction (Sec. 199A):*** Owners of passthrough businesses, such as partnerships and S corporations, as well as sole proprietorships, may currently claim a deduction of up to 20% of QBI. Beginning in 2026, the Sec. 199A QBI deduction no longer will be available.

***Bonus depreciation on qualified property:*** Sec. 168(k) allows an additional first-year depreciation deduction equal to an applicable percentage of the cost basis of qualified property placed in service during the year. The TCJA changed the applicable percentages and qualifying property. Used property currently qualifies for bonus depreciation, except for property purchased from related parties.

This was a major change for businesses, because, prior to the TCJA, only new property qualified for the additional first-year depreciation deduction. Starting with property purchased after Sept. 27, 2017, through 2022, taxpayers were allowed to take a 100% bonus depreciation deduction on qualified property (e.g., equipment, autos, furniture, and fixtures). In tax years starting in 2023 through 2026 the allowable percentage scales down until the provision sunsets. Applicable percentages are as follows:

- 100% for property placed in service after Sept. 27, 2017, and before Jan. 1, 2023;
- 80% for property placed in service after Dec. 31, 2022, and before Jan. 1, 2024;
- 60% for property placed in service after Dec. 31, 2023, and before Jan. 1, 2025;
- 40% for property placed in service after Dec. 31, 2024, and before Jan. 1, 2026;
- 20% for property placed in service after Dec. 31, 2025, and before Jan. 1, 2027; and

- 0% (bonus expires) for property placed in service after Dec. 31, 2026.

## Estate and gift taxation

The TCJA effectively doubled the estate and gift tax basic exclusion amount from $5,490,000 in 2017 to $11,180,000, adjusted each subsequent year for inflation, beginning with decedents dying and gifts made in 2018. The 2023 exclusion amount is $12.92 million per person ($25.84 million for married couples).

Taxpayers who die through 2025 with a taxable estate greater than the exclusion amount can be subject to a federal tax rate of up to 40%. Remember, some states have estate tax as well, so estates can end up with less than 60% of the net estate assets after paying the estate tax.

At the end of 2025, this tax provision will sunset, cutting the exclusion roughly in half. Individual taxpayers with significant estates that are above the amount that the exclusion will revert to should consult with their tax advisers and estate attorneys as soon as possible to take advantage of the TCJA's temporary increase in the exclusion by making gifts before the end of 2025. It is important that clients start planning now to be well prepared for when the estate tax and gifting exclusion decreases.

## Estate and gifting planning strategies

The following are a few planning opportunities clients should consider to minimize their income taxes as well as to prepare for when the TCJA estate and gift tax provisions expire. Some of these strategies deserve taxpayers' consideration regardless of whether the basic exclusion amount reverts to pre-TCJA levels.

***Transfers to family members:*** Transfer assets that are income-producing property to family members who might be in lower tax brackets.

***Utilize one spouse's lifetime exemption:*** A strategic approach to planning includes a spouse's utilizing their complete lifetime exemption by gifting assets while preserving the other spouse's exemption. This ensures that even after the anticipated reduction in the exemption, one spouse's exemption will still be accessible. As a result, a married couple can currently transfer as much as $12.92 million while retaining the availability of one spouse's lifetime exemption for use in 2026 if the exemption regulations change.

***Spousal lifetime access trust (SLAT):*** Using a SLAT, married couples can harness the benefits of the current gift tax exclusion while also receiving income distributions. This strategy involves the transfer of assets into an irrevocable trust, effectively eliminating these assets from the grantor's estate, thereby exempting them from estate taxes. Simultaneously, the grantor retains an indirect stake in the trust assets by way of their ability to access income distributions.

***Grantor retained annuity trust (GRAT):*** GRATs are irrevocable trusts that serve the purpose of transferring assets away from the estate of the individual establishing the trust (the grantor), while guaranteeing a steady stream of income to the grantor. In such instances, the grantor, having moved assets into the trust, becomes eligible to receive a series of annuity payments for a designated duration of years. Once the term of the trust ends, the assets remaining are distributed to the remainder beneficiary; usually, these are the grantor's children or grandchildren.

**Income tax planning strategies** Possible moves for individuals and business owners include perennial considerations that are part of year-end tax planning for any contingency but may be even more valuable if an applicable TCJA provision sunsets.

***Reconsider timing of deductions:*** If taxpayers anticipate that their tax rate will be higher in future years when the TCJA provisions expire, where incurring a deductible expenditure can be deferred, they should consider delaying paying or incurring it until the higher rates come into play, because these deductions would be more valuable against higher income tax rates. This strategy applies to various deductions such as business expenses, charitable donations, and SALT payments for 2025 (additionally, because the latter will no longer be limited by the $10,000 ceiling beginning in 2026). In addition, the scheduled reduction of standard deduction amounts may make itemized deductions more beneficial than they were previously.

***Maximize retirement contributions:*** Contributing to retirement accounts such as Sec. 401(k) plans, individual retirement accounts (IRAs), or simplified employee pension plans (SEP-IRAs) can reduce taxable income and lower tax liability. Those age 70½ or older can donate to charities from an IRA using a tax-free qualified charitable distribution.

***Consider Roth conversions:*** Explore the option of gradually converting a portion of traditional retirement savings into Roth accounts over time. This can enhance the diversity of individuals' tax strategies for retirement. Individuals holding a blend of pretax and Roth savings could gain improved control over their future tax obligations. For instance, during times of lower tax brackets, it might be prudent to withdraw from pretax sources and later, when facing higher tax brackets, tap into Roth sources.

***Utilize capital gains tax rates:*** Long-term capital gains tax rates are typically lower than ordinary income tax rates. If taxpayers have investments with significant gains, they can consider strategically realizing those gains before overall individual tax rates increase.

***Rethink business structure:*** The corporate tax rate of 21% available to C corporations is not expiring, so owners of entities taxed as partnerships or S corporations may want to consider converting to a C corporation if that is a more tax-effective entity structure.

***QBI deduction (Sec. 199A):*** Taxpayers can consult with their tax advisers to evaluate ways to structure their business to maximize this deduction before it expires.

***Education savings accounts:*** Contribute to Sec. 529 plans or other education savings accounts to take advantage of tax-free growth and withdrawals for qualified education expenses.

***Harvest capital losses:*** Consider tax-loss harvesting to offset capital gains with capital losses and reduce overall tax liability. Depending on an individual's facts and circumstances, it could make sense to hold off on harvesting losses until 2026, when the income thresholds for capital gains taxes will readjust, because capital gains at that time could be taxed at a higher marginal rate, making the losses more valuable in 2026 (see Fleming, "The Economics of Tax-Loss Harvesting," 54-9 The Tax Adviser 42 (September 2023)).

***Charitable giving:*** Charitable contributions not only can be deducted from taxable income, reducing income taxes, but can also be used as a vehicle for estate tax planning. Consider donating appreciated assets to charity to avoid capital gains taxes and to receive a tax deduction. Taxpayers can discuss with their tax advisers such charitable giving strategies as donor-advised funds, charitable gift annuities, charitable remainder trusts, or private foundations. If an individual is thinking of making donations in 2025 rather than 2026, they should evaluate whether 2026 offers a more favorable scenario for deductions due to an anticipated increase in their tax rates. People will need to meticulously assess their income tax circumstances for both years to ascertain which option holds greater advantages.

***Health savings account (HSA) contributions:*** If eligible, taxpayers can contribute to an HSA to reduce their taxable income and have tax-free withdrawals for qualified medical expenses.

Amid an evolving tax landscape and an ongoing debate over the future of these tax provisions, it becomes crucial to take a proactive approach and begin planning ahead. Both individuals and businesses should prepare for the potential expiration of TCJA provisions. Although it remains uncertain whether Congress will extend these provisions or allow them to expire, the wisest course of action is to start planning now.

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