Promissory Note

期票

LLC promises to pay $$$$

有限责任公司承诺付

Recourse Classification
three methods
可追索

1. Co-debtor,
XXX as manager
XXX Individually
xxx作为经理
Xxx作为个人

2. member
guarantees, or
或者成员作为担保人

3. General partner

Nonrecourse
Classification
two methods

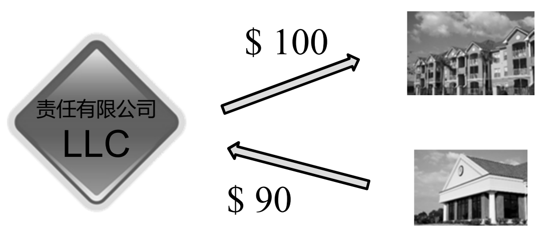
1. Nonrecourse
Note
不可追索

Note says will
look only to
property or

2. Note says nothing
XXX as manager
xxx作为经理

Example 1: Recourse Note

案例一：可追索债务



Loan

Individual
Guarantees

Debt allocated
Loss sharing ratio

40%

X

60%

Y

	X	Y
Basis Allocation	$ 36	$ 54
Y separate guarantee with X		$ 10

Loss during
the year

Example 2: General Partner

合伙企业
Limited
Partnership

XXX as general partner

General Partner	Limited Partner
40%	60%
X	Y
$90 Recourse Basis	Y makes a guarantee to X

No provision to look only to the secured property

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§ 179 & Qualified Real Property

New or Used Property

½ Million Expense

Qualified Real Property § 179(f)

Qualified Leasehold Improvement Property

Interior improvement by Lessor or Lessee, pursuant to a lease; Building 3 year in service

3 Year Requirement

Qualified Retail Improvement Property

Interior improvement for property used in the retail trade or selling tangible property to general public

Qualified Restaurant Property

A **building** or an improvement to a building

>50% area preparation and consumption of food

See pages 1-35 to 1-36

59A

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Options

Example: $ 80,000 Q Leasehold Imp Property

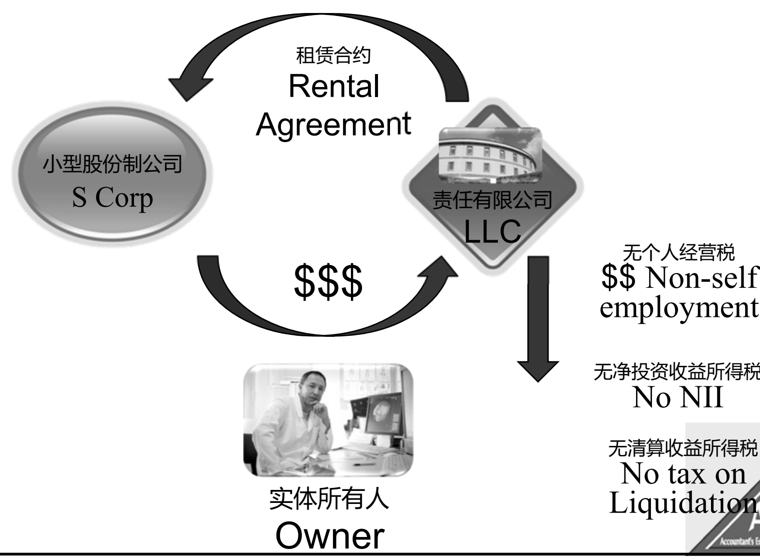
1. § 179 $80,000
2. Bonus Deprec. $40,000; Balance 15 Years
3. $ 80,000 15 Years

See pages 1-35 to 1-36

55B

Go to slide 64

房产租赁
Leasing Real Estate



房产租赁

Leasing Real Estate

AES Accountant's Education Services

The Tax Cuts and Jobs Act New Slides

A. Tax Reform for Individuals.

1. Reduce the current seven rate brackets to four:

   a. **12%:** Zero to $45,000 for single filers; zero to $**90,000 for joint filers.**

   b. **25%:** $45,000 to $200,000 for single filers; **$90,000 to $260,000 for joint filers.** Remember this when we talk about purported small business benefits

   c. **35%**: $200,000 to $500,000 for single filers; **$260,000 to $1,000,000 for joint filers.**

   d. **39.6%:** above $500,000 for single filers; above **$1,000,000 for joint filers.**

   e. Effective: for tax years beginning after 2017.

   f. Senate Bill is seven brackets

133-1

AES Accountant's Education Services

The Tax Cuts and Jobs Act
Summary

B. Key provisions of the Act are as follows:

2. The maximum rate of tax on pass-thru business income will be \$25%, with a 30/70% safe harbor and an optional "return on capital" formula, and with limits for service providers.

   For many, closely held businesses this will be a detriment not an improvement.

3. The child tax credit is increased to \$1,600, phase-out thresholds are raised significantly, and a new \$300 family credit is added, as is a \$300 credit for non-child dependents.

133-2

The Tax Cuts and Jobs Act
Summary

B. Key provisions of the Act are as follows:

4. Standard deduction increased to \$24,000 for joint filers and \$12,000 for single filers. Personal exemptions are repealed.

5. Education credits are consolidated into the AOTC.

6. Mortgage interest deduction limited to acquisition debt up to \$500,000; home equity debt rules repealed.

7. Can deduct up to \$10,000 in property tax; deductions for state and local income and sales taxes repealed.

8. Charitable deductions remain the same. Medical expense deduction repealed.

133-3

The Tax Cuts and Jobs Act
Summary

B. Key provisions of the Act are as follows:

9. No deduction for alimony and no income inclusion for payee of alimony.
10. No moving expense deduction.
11. Limited exclusion for housing provided by employer.
12. Section 121 principal residence exclusion: must use and own five out of eight years, not two out of five years.
13. No change to funding §401(k) retirement plans with pre-tax dollars. No “Rothification.”

133-4

The Tax Cuts and Jobs Act
Summary

B. Key provisions of the Act are as follows:

14. Repeal estate and GST tax in six years, but double the basic exemption amount in 2018. Reduce gift tax rate to 35%.
15. Repeal alternative minimum tax for both individuals and corporations.
16. Reduce C corporate tax rate to 20% in 2018, permanently.
17. For 2018 through 2022, allow 100% expensing of qualified property under bonus depreciation rules.
18. Increase §179 deduction limit to $5 million with phase-out starting at $20 million until 2023.

133-5

The Tax Cuts and Jobs Act Summary

B. Key provisions of the Act are as follows:

19. Allow taxpayers with $25 million of average annual gross receipts or less to use the cash method of accounting, even if they keep inventories; also exempt from the UNICAP rules.
20. Unless business has more that $25 million of average annual gross receipts, may not deduct net interest expense in an amount greater than 30% of adjusted taxable income. Limit does not apply to a real property trade or business.
21. Keeps like-kind exchanges for real property only.
22. Limits or repeals many business credits.

133-6

The Tax Cuts and Jobs Act Summary

B. Key provisions of the Act are as follows:

23. Repeals entertainment expense deductions.
24. International changes:
    a. Foreign source dividends will be exempt from U.S. tax,
    b. Provisions added to prevent U.S. tax base erosion.
    c. Provides for deemed repatriation of earnings and profits held abroad. Tax rate will be 12% on cash and cash equivalents, 5% on other amounts; and tax may be paid over eight years.
25. Cost: Overall cost is $1.5 trillion of revenue loss over 10 years.
26. Provisions are effective for years beginning after 2017.

133-7

The Tax Cuts and Jobs Act
Details

A. Tax Reform for Individuals.

1. Reduce the current seven rate brackets to four:

Single Filers Range of TI	Joint Filers Range of TI	Head/Household Range of TI	Tax Rate
$ 0 to $45,000	$ 0 to $90,000	$ 0 to $67,500	12%
$45,000 - $200,000	$90,000 - $260,000	$67,500 - $230,000	25%
$200,000 - $500,000	$260,000 - $1,000,000	$230,000 - $500,000	35%
Over- $500,000	Over- $1,000,000	Over- $500,000	39.6%

133-8

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

1. Reduce the current seven rate brackets to four:
   a. Rate bracket thresholds for married filing separately would be half the thresholds for joint returns.
   b. Rates for long-term capital gains and qualified dividends remain the same with the same approximate breakpoints for the 0%, 15% and 20% rates.
   c. The bracket thresholds would be indexed for **"chained CPI" instead of CPI,** a different measure of inflation that generally results in smaller inflation adjustments under the Code.

133-9

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

1. Reduce the current seven rate brackets to four:

   d. **For high-income taxpayers, the tax benefit of the 12% bracket would be phased out.** That benefit is measured as the difference between what the taxpayer pays with the 12% bracket and what he or she would have paid had the income subject to the 12% bracket instead been subject to the 39.6% bracket. This "tax benefit" is $12,420 for single filers and $24,840 for joint filers.

   e. **This tax benefit is recaptured at a rate of $6 of tax for every $100 of AGI in excess of $1,000,000 (single filers) or $1,200,000 (joint filers).** These thresholds are adjusted for chained CPI after 2017. Phase-out complete at AGI of $1,207,000 for singles and $1,614,000 for joint filers.

133-10

Comparison of Tax on Same TI 2018 Current Law Versus New Act

Taxable Income Joint Filers	2018 Current Law Tax	New Act Tax (Difference)
$19,050	$1,905	$2,286 (+$381)
$77,400	$10,658	$9,288 (-$1,370)
$156,150	$30,345	$27,338 (-$3,007)
$237,950	$53,249	$47,788 (-$5,461)
$424,950	$114,959	$111,033 (-$3,926)
$480,050	$134,244	$130,318 (-$3,926)
$750,000	$241,144	$224,800 (-$16,344)
$1,000,000	$340,144	$312,300 (-$27,844)
$2,000,000	$736,144	$733,140 (-$3,004)
$5,000,000	$1,924,144	$1,921,140 (-$3,004)

133-12

2018 Current Income Tax Brackets
Joint Filers and Bracket End-Points

Income Range	Tax Rate	Tax At Top of Range
$ 0 - $19,050	10%	$1,905 (10%)
$19,050 - $77,400	15%	$10,658 (13.7%)
$77,400 - $156,150	25%	$30,345 (19.4%)
$156,150 - $237,950	28%	$53,249 (22.4%)
$237,950 - $424,950	33%	$114,959 (27%)
$424,950 - $480,050	35%	$134,244 (28%)
Over $480,050	39.6%	$134,244 + 39.6% on excess over $480,050 (would be 34% on $1,000,000)

133-11

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

2. Increase Standard Deduction but Repeal Personal Exemptions:

a. Increase standard deduction to:

$24,000 for joint filers and surviving spouses;

$12,000 for single filers; and

$18,000 for single filers with at least one qualifying child.

Amounts would be adjusted for inflation based on chained CPI.

b. This would reduce the number of itemizers **from about 33%** under current law **to less than 10%.**

c. Deduction for **personal exemptions is repealed**.

d. Effective: for tax years beginning after 2017 (as all are provisions in the new Act, unless otherwise noted below).

133-13

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on “business income” will be 25%.

   a. A portion of net income earned by an active trade or business may be treated as “business income” subject to a maximum 25% rate, and the remaining portion will be treated as ordinary income subject to regular rates.

   b. Each owner or shareholder of entities would separately determine his or her proportion of business income.

   c. House Ways and Means Committee yesterday will provide some unknown rate reduction to smaller companies and startups

133-14

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on “business income” will be 25%.

   d. Business income from an active business activity will be determined by reference to the recipient’s “capital percentage” of net income from the activity.

   e. May elect to apply a capital percentage of 30% to net business income, with the remaining 70% treated as ordinary income subject to the regular rates.

   f. Or: May elect to apply a formula based on the “facts and circumstances.” Measure the capital percentage based on a rate of return (Federal short-term rate plus 7%) multiplied by the capital investments of the business.

133-15

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on "business income" will be 25%.

   g. If elect alternative formula method, must use for five years.

   h. Special rule: An owner's capital percentage would be limited if actual wages or income treated as received in exchange for services (e.g., a guaranteed payment) exceeds the owner's otherwise applicable non-capital percentage amount.

   i. Income subject to preferential rates, such as net capital gains and qualified dividend income, would be excluded from determination of an owner's capital percentage, and retain its character. Other investment income subject to ordinary rates such as short-term capital gain also would retain its character.

133-16

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on "business income" will be 25%.

   j. <u>A "default" capital percentage for certain personal services businesses would be **zero percent**</u>. Includes businesses involving performance of services in the fields of:

      i. Personal Service Firms – such as Health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletic, financial services, brokerage services, or any other T/B where the principal assets is the reputation or skill of one or more employees (§1202(e)(3)(A) definition incorporated).

      ii. Also includes personal services businesses that invest, trade, or deal in securities, partnership interests, or commodities.

133-17

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on "business income" will be 25%.

   k. To the extent, however, that such a specified services business has significant tangible assets, such that the deemed return on the assets is at least 10%, it can elect to have business income treatment for those assets.

      i. In short, such businesses can elect to use the optional capital percentage formula based on a percentage of capital investment.

   l. The 25% rate applies to certain REIT and coop patronage dividends.

   m. Passive real estate under IRC § 469 has a 100% capital percentage

   n. REP would be an active trade or business

133-18

Choice of Entity

Corporate Tax 20%

$100

(20)

$ 80

Also, lose capital gain rate on sale of assets

Qualified Dividend

20%

$ 16

Net Investment Income Tax 3.8%	25%	35%	39.6%
		$ 3	$ 3
	--------	--------	--------
	36%	39%	39%

133-18

Choice of Entity

P/S

S Corp

	$100
Tax 0%	(0)

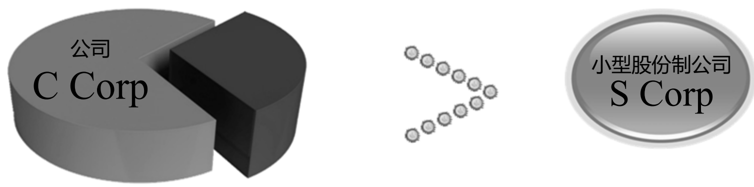
	$ 100

	30/70		30/70		30/70	
Individual Rate	25%	25%	25%	35%	25%	39.6%
	$ 7.5	$17.5	$ 7.5	$24.5	$ 7.5	$27.7
Self Employment Tax		$10.7		2		2
		--------		--------		--------
Effective Tax Rate		35.7%		34%		37.2%

Major Differences Between S Corp & P/S Taxation

S Corp	P/S
− Basis limited To amount contributed directly by the shareholder	+ No Hotel California
	+ Much better Basis rule
	− Quarterly tax payments

- S corporation taxed as a C corporation, except to extent modified by



§ 1366- §1379

- Flow Through
- Basis

Distribution of Property

FMV	$1,000,000
Inside Basis	100,000

Gain	$ 900,000

Allocation of Gain
Reported by S Corp

	Sales Price	Inventory	Goodwill
Sale	$1,000,000	100,000	900,000
Basis	100,000	100,000	
	-----------	-----------	-----------
Gain	$ 900,000	$ 0	$ 900,000

If Related Party, § 1239
Converts Ordinary Income

Gain	$ 900,000	
Ordinary Income Rate	40%	(35+5)

Tax Due	$ 360,000	

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

3. Maximum tax rate on "business income" will be 25%.

m. Due to the new 25% maximum rate, §1402(a) rules on self-employment ("SE) income and taxes are modified. To the extent of the "labor percentage" of income from a trade or business, SE tax applies (modified for income that is wages).

i. The labor percentage is the inverse of capital percentage.

ii. This means that S corporation profits to the extent of the labor percentage are subject to SE tax.

iii. General partners benefit from the new rule.

iv. Exceptions from SE income for rental income and the distributive share of limited partners are repealed.

133-19

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

4. Reform of Child Tax Credit (CTC).

a. Current $1,000 CTC is increased to $1,600, and a non-refundable credit of $300 would be allowed for non-child dependents.

Senate Bill $1,650

b. An additional non-refundable "family flexibility credit" of $300 would be allowed to the taxpayer (each spouse if a joint return) and others in the household who are neither a child nor a non-child dependent, effective for tax years ending before 2023.

c. Refundable portion of CTC limited to $1,000, but that amount would be indexed for inflation based on chained CPI (but cannot exceed $1,600 in the future).

133-20

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

4. Reform of Child Tax Credit (CTC).

   d. The phase-out threshold for these credits is increased from $110,000 for joint filers to $230,000, and from $75,000 for single filers to $115,000. This eliminates the marriage penalty as to the credits.

   e. Credits are reduced by $50 for each $1,000 of AGI over the thresholds.

   f. The allowable refundable amount of the CTC is an amount equal to 15% of earned income in excess of $3,000, up to the limit.

   g. Taxpayer must provide a SSN (not merely an ITIN) to claim the refundable portion of the CTC.

133-21

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Accountant's Education Services

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

5. The following credits are repealed:

   a. Credit for certain persons over age 65 or who retired on disability.

   b. The adoption credit. House now keeps the adoption credit

      Senate keeps the adoption credit

   c. The tax credit associated with mortgage credit certificates.

   d. The credit for plug-in electric drive motor vehicles.

   e. Effective: for tax years beginning after 2017 (and as to plug-in electric drive vehicles, for vehicles placed in service for tax years beginning after 2017).

133-22

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Accountant's Education Services

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

6. To claim the following, the taxpayer must provide a "work-eligible" social security number (SSN) (i.e., not just an ITIN or a SSN issued to foreign legal residents that may not be used for employment purposes):
   a. The refundable portion of the CTC.
   b. The refundable portion of the American Opportunity Tax Credit.
   c. The refundable Earned Income Tax Credit.
7. The IRS will have math error authority to adjust the returns of taxpayers not meeting the requirements.

133-23

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

8. Education Credits.
   a. The three existing higher education tax credits [the American Opportunity Tax Credit (AOTC), the Hope Scholarship Credit (HSC) and the Lifetime Learning Credit (LLC)] will be consolidated into the AOTC after 2017.
   b. AOTC: 100% credit for first $2,000 of qualified expenses, and a 25% credit for the next $2,000 of expenses (same as current law, = $2,500 maximum credit). Generally the same expenses would be covered. Repeal HSC and LLC.
   c. AOTC available for a fifth year of post-secondary education at half the amount, with up to $500 being refundable.

133-24

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

9. Consolidation of Education Savings.

   a. New contributions to Coverdell education savings accounts after 2017 (except rollover contributions) would be prohibited, but **tax-free rollovers from Coverdell accounts into §529** plans would be allowed. Effective for contributions/distributions after 2017.

   b. Elementary and high school expenses of up to $10,000 per year would be qualified expenses for §529 plans. Qualified expenses expanded to cover apprenticeship programs.

   c. A "child in utero" may be a designated beneficiary under a §529 plan. That means a member of the species homo sapiens carried in the womb.

133-25

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

10. Discharge of Student Loan Indebtedness.

    a. Any income resulting from the discharge of student debt on account of death or total disability of the student will be excluded from taxable income.

    b. Exclude from income repayment of a taxpayer's loans pursuant to the Indian Health Service Loan Repayment Program.

    c. Effective: for discharges of debt received after 2017 and amounts received in taxable years beginning after 2017.

133-26

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

11. The following education related provisions in the Code are repealed:

    a. Deduction for interest on education loans.

    b. Deduction for qualified tuition and related expenses.

    c. Exclusion from income of interest on U.S. savings bonds used to pay qualified higher education expenses.

    d. Exclusion from income for qualified tuition reduction programs.

    e. Exclusion from income for employer-provided education assistance programs.

133-27

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

    a. Overall limit on itemized deductions is repealed for tax years beginning after 2017.

    b. Mortgage interest: For acquisition indebtedness incurred after November 2, 2017, the current $1 million limit is reduced to **$500,000**, and only debt on a principal residence is covered.

       Senate keeps the $1 million

       i. No deduction for home equity debt.

       ii. For refinanced debt incurred prior to 11/2/2017, the refinanced debt is treated as incurred on the same date that the original debt was incurred for purposes of the limitations amount applicable to the refinanced debt.

133-28

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

b. Mortgage interest: For acquisition indebtedness incurred after November 2, 2017, the current $1 million limit is reduced to $500,000, and only debt on a principal residence is covered.

iii. How many taxpayers are affected?

iv. Home sales by price:

8% with price from $500-,000 to $750,000,

2% with price from $750,000 to $1 million; and

2% with price over $1 million.

v. Percentage of households when a home is owned and some debt is paid: 42%. Amount of such households where debt exceeds $500,000 is 2.5%, give or take.

133-29

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

c. Deduction for **State and local income or sales taxes is repealed** for individuals. Deduction for State and local income or sales taxes paid or accrued in carrying on a trade or business, or producing income, would be retained.

d. Individuals would continue to be allowed to claim an itemized deduction for **real property taxes paid up to $10,000**.

Senate repeals the real property tax deduction

e. Deduction for personal casualty losses would generally be repealed, but deduction for such losses associated with special disaster relief legislation would be retained.

133-30

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

f. All deductions for expenses incurred in carrying out wagering transactions (not just gambling losses) would be limited to the extent of wagering winnings.

g. Charitable contributions:

(i) The 50% contribution base limit for cash contributions to public charities and certain private foundations is increased to **60%**. Five-year carryover rules retained.

(ii) Repeal **80% deduction** of amount paid for the right to **purchase tickets for athletic events**.

133-31

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

g. Charitable contributions:

(iii) Mileage rate for charitable purposes will be indexed for inflation.

(iv) Repeal provision that providing a contemporaneous written acknowledgment by donee for gifts of $250 or more is not required if the donee files a return with the required information in accordance with regulations.

133-32

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

h. Repeal deduction for **tax preparation** expenses.

i. Repeal deduction for **medical expenses**.

Senate bill keeps the medical deduction

j. Repeal deduction for **alimony** and provision that alimony is included in the income of the payee. Effective for any divorce decree or separation agreement executed after 2017, and to any modification after 2017 of any such instrument executed before such date if expressly provided for by such modification.

k. Repeal deduction for **moving expenses**.

133-33

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

l. Eliminate deductions for contributions to an Archer Medical Savings Account (MSA) and exclusion from income of employer contributions to an Archer MSA. Existing **Archer MSA balances can be rolled tax-free to a Health Savings Account (HSA).** This is simply to consolidate MSAs into HSAs.

m. Exclusion for housing provided for the convenience of the employer and for employees of educational institutions would be limited to $50,000 ($25,000 for married person filing a joint return), with a phase-out if income is above $120,000 (reduce by $1 for every $2 of AGI above the threshold).

133-34

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

12. Itemized Deductions and Exclusions.

n. The exclusion under **§121** for gain on the sale of a principal residence would apply only if the taxpayer owns and uses a home as a principal residence for **five out of the previous eight years** (presently two out of the previous five years).

Exclusion could be used only once every five years,

and would be phased out by one dollar for every dollar by which **AGI exceeds $500,000 for joint filers and $250,000 for single** filers. Effective for sales and exchanges after 2017.

o. Repeal the exclusion from income of employee achievement awards, and the restrictions on employer deductions for such awards.

133-35

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

13. Miscellaneous Exclusions.

a. Repeal exclusion from income of the value of **employer-provided dependent care assistance programs.**

b. Repeal exclusion from income of amounts received under an **employer adoption assistance program**.

14. Pension and Retirement Reforms.

a. Rules allowing recharacterization of IRA contributions and conversions (traditional to Roth and vice versa) repealed.

133-36

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

14. Pension and Retirement Reforms.

    b. All defined benefit plans, including those of State and local governments, could make "in-service" distributions beginning at age 59½ rather than age 62.

    c. Treasury will be required within one year to change rules so as to allow employees taking hardship distributions to continue making contributions to a plan.

    d. Employers could choose to allow hardship distributions for not only employee contributions (the current rule), but also for account earnings or employer contributions in the plan.

133-37

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

14. Pension and Retirement Reforms.

    e. Employees whose plan terminates or who separate from employment while they have a plan loan outstanding would have until the due date for filing their return for that year to contribute the loan balance to an IRA in order to avoid the loan being taxed as a distribution. (Currently there is a 60-day rule.)

    f. Cross-testing between an employer's defined benefit and defined contributions would be allowed under nondiscrimination rules.

    g. Note: The Act does not adopt changes to the deductible amount that applies to contributions to §401(k) plans, and thus does not adopt the "Rothification" concept to front-load income.

133-38

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

15. Transfer Taxes.

    a. **The basic exclusion amount is doubled from $5 million (as of 2011) to $10 million,** which is indexed for inflation.

       After 2023, the estate and GST taxes are repealed and beneficiaries of an estate continue to receive a stepped-up basis.

       Senate bill keeps the $10 million, does not repeal the estate tax

    b. **The gift tax top rate is reduced from 40% to 35%,** with a basic exclusion amount of $10 million and an annual exclusion of $14,000 (as of 2017), both indexed for inflation.

133-39

AES Accountant's Education Services

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

16. Alternative Minimum Tax (AMT).

    a. The AMT for individuals (as well as corporations) is repealed effective for tax years beginning after 2017.

    b. If a taxpayer has AMT credit carryforwards, the taxpayer would be able to claim **a refund of 50% of the remaining credits** (to the extent the credits exceed regular tax for the year) in tax years beginning in 2019, 2020, and 2021.

    c. Taxpayers could claim a refund of all remaining credits in the tax year beginning in 2022.

133-40

AES Accountant's Education Services

The Tax Cuts and Jobs Act

A. Tax Reform for Individuals.

17. Interim look at costs of the Act:

18. **To this point, the costs of the Act as compared to increased revenue provisions approximately net.**

    a. Significant costs for rate reductions, the increased standard deduction, **the increased CTC, and repeal of the individual AMT** are largely offset by increased revenue due to repeal of personal exemptions, the reduction of the mortgage interest and property tax deductions, and elimination of many itemized deduction.

    b. Meaning: the Act's $1.5 trillion of revenue loss overall is due to the following corporate and international provisions.

133-41

The Tax Cuts and Jobs Act

B. Business Tax Reform.

1. Corporate Tax Rate.

    a. Beginning in 2018 the corporate tax rate would be **a flat 20%.**

    b. Personal service corporations would be subject to a flat 25% corporate tax rate.

    c. Revenue loss: $1.462 trillion over 10 years.

    d. Note that the Act does not phase in the corporate rate reduction over several years to lower the cost of the legislation

133-42

The Tax Cuts and Jobs Act

B. Business Tax Reform.

2. Expensing.

a. Taxpayers could fully and immediately expense 100% of the cost of qualified property – New Property

(as now defined for bonus depreciation purposes) acquired and placed in service after 9/27/2017 and before 1/1/2023 (certain property with a longer production period would receive an additional year).

b. "Qualified property" means depreciable property which:

i. Has a recovery period of 20 years or less;

ii. Is certain computer software or water utility property; or

iii. Is qualified improvement property.

133-43

The Tax Cuts and Jobs Act

B. Business Tax Reform.

2. Expensing.

c. The requirement that the original use of the property begin with the taxpayer would be repealed. Property would be eligible if it is the taxpayer's first use.

d. Qualified property would not include any property used by a regulated public utility company or any property used in a real property trade or business.

133-44

The Tax Cuts and Jobs Act

B. Business Tax Reform.

3. Small Business Reforms.

a. New and Used

The deduction limitation under §179 would be increased to $5 million and the phase-out threshold would be increased to $20 million, indexed for inflation.

i. Section 179 property would include qualified energy efficient heating and air-conditioning property permanently (for such property acquired and placed in service after 11/2/2017).

ii. Deduction limit effective for tax years beginning after 2017 and <u>ending before 2023</u>.

133-45

The Tax Cuts and Jobs Act

B. Business Tax Reform.

3. Small Business Reforms.

a. Modifications to §179.

iii. Qualified energy efficient heating and air-conditioning property means any §1250 property where depreciation is allowed **if installed as part of a building's heating, cooling, ventilation or hot water system; and**

iv. Where the property meets **specified efficiency standards.**

133-46

The Tax Cuts and Jobs Act

B. Business Tax Reform.

3. Small Business Reforms.

   b. The **$5 million annual average gross receipts** threshold that allows corporations and partnerships with a corporate partner to use the cash method of accounting would be increased to **$25 million**. The requirement that such businesses satisfy the requirement for all prior years would be repealed. New amount would apply to farming entities, and be indexed to inflation.

   c. Businesses with average **annual gross receipts of $25 million or less could use the cash method of accounting even if the business is required to maintain inventories**. Could account for inventories using method used on financial statements or books and records.

133-47

The Tax Cuts and Jobs Act

B. Business Tax Reform.

3. Small Business Reforms.

   d. Businesses with average annual gross receipts of $25 million or less would be fully exempt from the UNICAP rules. This would apply to real and personal property acquired or manufactured by the business.

   e. For **long-term contracts, the $10 million average gross receipts exception to the percentage-of-completion method would be increased to $25 million**, allowing more businesses to use the completed-contract method.

133-48

The Tax Cuts and Jobs Act

B. Business Tax Reform.

4. Interest Deductions.

a. Except for businesses with average annual gross receipts of **$25 million or less,** every business, regardless of its form, would be subject to **<u>a disallowance of a deduction for net interest expense in excess of 30% of the business's adjusted taxable income</u>**.

b. The disallowance would be determined at the tax filer level (e.g., at the partnership level instead of the partner level).

c. Adjusted taxable income (ATI) is the business's taxable income computed without regard to interest expense, interest income, NOLs, and depreciation/amortization/depletion. Similar to EBIDA (earnings before interest, depreciation and amortization).

133-49

The Tax Cuts and Jobs Act

B. Business Tax Reform.

4. Interest Deductions.

d. Disallowed deductions could be carried forward for five years and would be an attribute of the business as opposed to its owners.

e. Special rules apply to allow a pass-through entity's unused interest limitation for the taxable year to be used by the pass-through entity's owners and to ensure that net income from pass-through entities would not be double counted at the partner level.

f. <u>Provision does not apply to real property trades or businesses</u>.

133-50

The Tax Cuts and Jobs Act

B. Business Tax Reform.

5. Modification of NOL Deduction.

    a. Taxpayers could deduct an NOL carryover or carryback only to the **extent of 90% of taxable income**, determined without regard to the NOL deduction. This conforms to the current AMT rule.

    b. **Generally repeal all NOL carrybacks**, but provide a special one-year carryback for small businesses and farms in the case of certain casualty and disaster losses. Allow carrybacks for a tax year beginning in 2017 as long as the NOL is not due to the increased expensing rules in the Act.

    c. For NOLs arising in years beginning after 2017 and being carried forward, increase by an interest factor to preserve the value.

133-51

The Tax Cuts and Jobs Act

B. Business Tax Reform.

6. Like-Kind Exchanges of Real Property.

    a. Deferral of gain under §1031 would be allowed only for like-kind exchanges of **real property**, effective for transfers after 2017.

        Trade in your car

        Rental car companies

        Cattle

    b. A transition rule would allow a like-kind exchange of personal property to be completed if the taxpayer has either disposed of the relinquished property or acquired the replacement property on or before 12/31/2017.

133-52

The Tax Cuts and Jobs Act

B. Business Tax Reform.

7. Contributions to Capital.

   a. Gross income of a corporation would include contributions to its capital to the extent the amount of money and FMV of the property contributed exceeds the FMV of any stock that is issued in exchange for such money or property.

   b. Similar rules would apply to contributions to the capital of any non-corporate entity such as a partnership.

   c. This removes a "Federal tax subsidy" for State and local governments to offer incentives and concessions to businesses that locate operations within their jurisdiction.

133-53

The Tax Cuts and Jobs Act

B. Business Tax Reform.

8. The deduction for lobbying expenses with respect to legislation before local government bodies is repealed.

9. **Section 199 regarding a deduction** for qualified production activities income is repealed.

10. Entertainment and Meal Expenses.

    a. **No deduction would be allowed for entertainment**, amusement, or recreation activities, facilities, or membership dues relating to such activities or other social purposes. Woe is golf.

    b. **No deduction for transportation fringe benefits**.

133-54

The Tax Cuts and Jobs Act

B. Business Tax Reform.

10. Entertainment and Meal Expenses.

    c. **No deductions for employer provided gyms** or for amenities provided to an employee that are primarily personal in nature and involve property or services not directly related to the employer's trade or business, except to the extent such benefits are treated as taxable compensation to the employee.

133-55

The Tax Cuts and Jobs Act

B. Business Tax Reform.

11. Repeal the rule permitting gains on the sale of publicly traded securities to be deferred if rolled over to investment in a specialized small business investment company.

12. **Gain or loss from the disposition of a self-created patent**, invention, model, or design, or secret formula or process would be ordinary in character rather than a capital gain or loss.

    a. Also: **Rule treating the transfer of a patent prior to its commercial exploitation as long-term capital gain would be repealed.**

13. The technical termination of partnership rules would be repealed.

133-56

The Tax Cuts and Jobs Act

B. Business Tax Reform.

14. Reform of Business Credits.

a. Repeal credit for qualified clinical testing expenses of drug manufacturers.

b. Repeal credit for qualified expenses for employee child care and for child-care resource and referral services.

c. Repeal the credit for expenses incurred to rehabilitate old and/or historic buildings.

d. Repeal work opportunity tax credit.

e. Repeal deduction for unused business credits due to death or an entity ceasing to exist.

133-57

The Tax Cuts and Jobs Act

B. Business Tax Reform.

14. Reform of Business Credits.

f. No additional new markets tax credits would be allocated after 2017, but credits already allocated may be used for up to seven years.

g. Repeal the credit for expenses to provide access to disabled individuals.

h. Reduce credit for electricity produced from renewable resources.

i. Harmonize expiration dates and phase-out schedules for various energy tax credits.

133-58

The Tax Cuts and Jobs Act

B. Business Tax Reform.

14. Reform of Business Credits.

    j. **Credit for residential energy efficient property would be extended** for qualified property placed in service prior to 2022, subject to a reduced rate of 26% for 2020 and 22% for 2021.

    k. Repeal the enhanced oil recovery credit.

    l. Repeal the credit for producing oil and gas from marginal wells.

    m. Modify credit for production from advanced nuclear power facilities.

15. Three year holding period for carried interests

133-59

The Tax Cuts and Jobs Act

C. Other Reforms.

1. Bond Reforms.

    a. <u>Repeal exclusion from income of interest on private activity bonds issued after 2017</u>.

    b. Repeal exclusion from income or credits for State and local government tax credit bonds.

    c. Repeal exclusion from income of interest on State and local bonds issued to finance the construction of a professional sports stadium.

133-60

The Tax Cuts and Jobs Act

C. Other Reforms.

2. Changes to Deferred Compensation.

   a. An employee would be taxed on compensation as soon as there is no substantial risk of forfeiture with regard to that compensation (e.g., receipt of the compensation is not subject to future performance of substantial services).

   b. A condition shall not be treated as constituting a substantial risk of forfeiture solely because it consists of a covenant not to compete or because the condition relates to a purpose of the compensation other than the future performance of services.

   c. Current rules would continue to apply to existing non-qualified deferred compensation arrangements only until 2026.

133-61

The Tax Cuts and Jobs Act

C. Other Reforms.

3. Limitations on Deductions of Excessive Compensation.

   a. The exceptions to the current $1 million compensation deduction limitation under §162(m) for commissions and performance-based compensation would be repealed.

   b. Definition of "covered employee" would be revised to include specified persons to realign the definition with current SEC disclosure rules.

   c. Once an employee is a covered person, he or she will remain so as long as her or she is paid remuneration by the corporation.

   d. Rules for tax-exempt organizations also revised with new limits.

133-62

The Tax Cuts and Jobs Act

D. International Reforms.

1. Current system of taxing U.S. corporation on the foreign earnings of their foreign subsidiaries when **the earnings are distributed would be replaced with a dividend-exemption system.**
   a. All of the foreign-source portion of dividends paid by a foreign corporation to a U.S. corporate shareholder that owns 10% or more of the foreign corporation would be exempt from U.S. taxation.
   b. No foreign tax credit or deduction would be allowed for any foreign taxes paid or accrued with respect to any exempt dividend; no deduction for expenses allocable to exempt dividends.

133-63

The Tax Cuts and Jobs Act

D. International Reforms.

2. The imposition of current U.S. tax on U.S. corporate shareholders with respect to untaxed foreign subsidiary earnings reinvested in U.S. property would be repealed.
3. Losses would be limited when a U.S. parent corporation sells stock in a foreign subsidiary that previously distributed exempt dividends to the U.S. parent. For loss purposes, the basis in such stock would be reduced by the amount of such dividends.

133-64

The Tax Cuts and Jobs Act

D. International Reforms.

4. Taxation of foreign subsidiaries' earnings and profits (E&P) that have not previously been subject to U.S. tax (i.e., never have been repatriated):

   a. Include such E&P in income for the foreign subsidiary's last tax year beginning before 2018. Is deemed repatriation, period.

   b. Classify as either E&P that has been retained in the form of cash or cash equivalents, or E&P that has been reinvested in the foreign subsidiary's business.

   c. Tax at rate of 12% for cash or cash equivalents, and at 5% for the balance. Can elect to pay the tax over a period of up to eight years in equal annual installments.

133-65

The Tax Cuts and Jobs Act

D. International Reforms.

4. Taxation of foreign subsidiaries' earnings and profits (E&P) that have not previously been subject to U.S. tax (i.e., never repatriated):

   d. If the U.S. shareholder is an S corporation, do not apply the above rules until it ceases to be an S corporation, substantially all of its assets are sold or liquidated, it ceases to exist or conduct business, or its stock is transferred.

   e. The deemed repatriation provision would increase revenues by $223.1 billion over ten years.

133-66

The Tax Cuts and Jobs Act

D. International Reforms.

5. Other reforms include:

   a. Modification of foreign tax credit rules to conform to new rules on exempt foreign dividends.

   b. Income from the sale of inventory property produced within and sold outside the U.S. (or vice versa) would be allocated and apportioned between sources within and outside the U.S. solely on the basis of the production activities with respect to the inventory.

   c. Repeal of rule imposing current U.S. tax on certain foreign shipping income if there is a net decrease in qualified shipping investments.

133-67

The Tax Cuts and Jobs Act

D. International Reforms.

5. Other reforms include:

   d. Repeal of treatment of foreign base company oil related income as subpart F income.

   e. Allow inflation adjustment for $1 million *de minimis* exception for foreign base company income.

   f. Look-thru rule for related controlled foreign corporations is made permanent.

   g. Modification of stock attribution rules for determining status as a controlled foreign corporation.

   h. Repeal rule that corporation must be controlled for 30 days before subpart F inclusions apply.

   i. Senate added a 12.5% tax on patents and intellectual property held overseas

133-68

The Tax Cuts and Jobs Act

D. International Reforms.

6. Prevention of Base Erosion.

   a. Impose a current-year tax on 50% of a U.S. parent's "foreign high returns." That is the excess of a U.S. parent's foreign subsidiaries' aggregate net income over routine return (7% plus the Federal short-term rate) on the foreign subsidiaries' aggregate bases in depreciable tangible property, adjusted downward for interest expense.

      After the high tech firms complained, House ways and means committee gave another $200 billion away to them from this revenue raiser

   b. Point: Under current law the allocation of income by U.S. companies to intangible property and risks that are located in low-tax or no-tax jurisdictions is an acute source of erosion of the U.S. tax base.

133-69

The Tax Cuts and Jobs Act

D. International Reforms.

7. Other reforms relevant to base erosion include:

   a. **Limitations on interest deductions by domestic corporations that are members of an international financial reporting group.**

   b. **Payments other than interest made by a U.S. corporation to a related foreign corporation that are deductible or includible in costs of goods sold would be subject to a 20% excise tax** unless the related foreign corporation elected to treat the payments as income effectively connected with the conduct of a U.S. trade or business. This prevents multinational companies from eroding the U.S. tax base through deductible related-party payments.

133-70

The Tax Cuts and Jobs Act

E. Miscellaneous Provisions.

1. Provision for U.S. possessions are provided in response to recent hurricanes.
2. Various changes are made for tax-exempt organizations, including provisions that all entities exempt from tax under §501(a) would be subject to the unrelated business income tax (UBIT) rules. Includes public universities.
3. **Modification of the Johnson amendment limiting political activity of tax-exempt religious organizations,** allowing political speech if it is in the ordinary course of business and if expenses are *de minimis.*

133-71

Winners and Losers

A. Winners if Tax Cuts and Jobs Act adopted:

1. Taxpayers with significant taxable ordinary income between $480,050 and $1,000,000 where a 35% rather than 39.6% rate will apply.
2. Taxpayers who do not itemize.
3. Taxpayers who pay significant AMT.
4. Corporations with effective tax rates of more than 20%.
5. Corporations that wish to repatriate foreign earnings at a relatively low tax rate, and their shareholders. Not S corps
6. Those who will benefit from maximum 25% business rate.?

   Active business P/S currently classifying all income as SE

133-72

Winners and Losers

A. Winners:

7. About 0.3% of estates that now pay estate taxes. 172 billion
8. Taxpayers with significant employer benefits such as medical insurance, pension plan contributions, and ISOs, as tax benefits in those areas apparently will not be reduced.
9. Larger businesses that would be able to expense costs more rapidly than they can under current rules.
10. Taxpayers with large families

133-73

Winners and Losers

B. Losers:

1. Itemizers in general.
2. Couples with $260,000 to $425,000 income who will receive minimal or no reduced tax, and will pay more tax depending on what itemized deductions they have.
3. Taxpayers losing the interest expense deduction.
4. Vacation and second home owners.
5. S Corporations with dividend/salary split
6. Real Estate Professionals

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Winners and Losers

C. Winners and losers:

1. Some lower income taxpayers get no reduction. Assume in 2018 H and W are married, have no children, and do not itemize; AGI is $40,350 reported on a joint return.
   a. TI is $19,050 ($40,350 - $13,000 standard deduction - $8,300 personal exemptions). Tax now is $1,905 (10% rate).
   b. Under Framework: TI is $16,350 ($40,350 - $24,000 standard deduction). Tax is $1,962 (12% rate), a $57 increase.
   c. If same facts but AGI were $54,000 (about the median U.S household income), H and W would pay $3,953 under current rules for 2018 and would owe $3,600 under the new Act, a $353 decrease. Is this a "massive" tax cut for the middle-class?

133-75

Winners and Losers

C. Winners and losers:

2. For middle-income taxpayers (and higher), who wins and who loses will be determined based on itemized deductions.
3. For example, a married couple with AGI of $70,000 and no children, and who do not itemize, fare as follows:
   a. Current 2018 law: Tax is $6,352.
   b. New Act: Tax is $5,520 ($832 decrease).
4. If same couple has $19,000 of itemized deductions for mortgage interest, property tax, state income tax and charitable gifts, tax under current law is $5,453 (new Act: $67 decrease).

133-76

Comparison
Joint Return, No Children, All Ordinary Income

	2018 Current Rules; Do Not Itemize	Tax Cuts Act; $24,000 St. Ded. Do Not Itemize	2018 Current Rules; Itemize Deductions
AGI	$100,000	$100,000	$100,000
> Itemized Ded. or Standard Ded.	$13,000	$24,000	* $26,000
Personal Exmpt.	$8,300	$0	$8,300
Taxable Income	$78,700	$76,000	$65,700
Tax	$10,983	**$9,120**	$8,903

* Assume mortgage interest $18,000, property tax $3,000, State income tax $4,000, charitable deductions $1,000. Would itemize under current law but not itemize under Act as it allows only mortgage interest, property tax, and charitable contribution deductions (total < $24,000 new standard deduction).

133-77

Comparison
Joint Return, Two Children, All Ordinary Income

	2018 Current Rules; Do Not Itemize	Tax Cuts Act; $24,000 St. Ded. Do Not Itemize	2018 Current Rules; Itemize Deductions
AGI	$100,000	$100,000	$100,000
> Itemized Ded. or Standard Ded.	$13,000	$24,000	* $26,000
Personal Exmpt.	$16,600	$0	$16,600
Taxable Income	$70,400	$76,000	$57,400
Tax	$9,608	$9,120	$7,658
Child Tax Credit	$2,000	$3,200	$2,000
Tax Due	$7,608	**$5,920**	$5,658

* Mortgage interest $18,000, property tax $3,000, State income tax $4,000, and charitable deductions $1,000. Under new Act, CTC is $1,600.

133-78

Comparison
Single Return, No Children, All Ordinary Income

	2018 Current Rules; Do Not Itemize	Tax Cuts Act; $12,000 St. Ded. Do Not Itemize	2018 Current Rules; Itemize Deductions
AGI	$93,700	$93,700	$93,700
> Itemized Ded. or Standard Ded.	$6,500	$12,000	* $23,500
Personal Exmpt.	$4,150	$0	$4,150
Taxable Income	$83,050	$81,700	$66,050
Tax	$16,417	**$14,575**	** $12,167
* Mortgage interest $16,000, property tax $3,000, State income tax $4,000, and charitable deductions $500.			
** Tax under new Act would be $12,700. Taxpayer would itemize, as mortgage interest, property tax, and charitable deductions are greater than $12,000 standard deduction under the Act.			

133-79

Comparison
Joint Return, No Children, All Ordinary Income

	Tax Cuts Act; Itemized Deductions	2018 Current Rules; Itemized Deductions
AGI	$504,072	$504,072
> Itemized or Standard Ded.	* $37,000	** $79,298
Personal Exemptions	$0	(phased out) $0
Taxable Income	$467,072	$424,774
Tax	**$125,775**	$114,901
* Half of mortgage interest ($21,000) (limited to debt of $500,000), property tax of $10,000 (limit), and charitable deduction of $6,000.		
Mortgage interest $42,000 on $1 million loan, property tax $15,000, State income tax deduction $20,000, charitable deductions $6,000, and other itemized deductions $2,000 equals $85,000 of itemized deductions before 3% haircut under current law. Note: Under current law AMT probably would apply to these taxpayers.		

133-80

Is the "Zero Bracket" Really Bigger?

A. <u>Amount of AGI required before any income tax is due</u>, taking into account the child tax credit (CTC).

Joint Return Family Size	Current Law 2018 Numbers	Tax Cuts Act
2	$21,300	$24,000
3	$35,450	$37,333
4	$49,284	$50,666
5	$60,100	$63,999
6	$70,916	$77,332

Current law in 2018: standard deduction $13,000, personal exemption $4,150, CTC $1,000 per child.
Tax Cuts Act: standard deduction $24,000, no personal exemption, CTC $1,600.

133-81

What Is "Middle Class"?
Return Filing by AGI: Individual Returns in 2016

AGI Category	% of Returns Filed
$0 to $50,000	62.36%
$0 to $75,000	75.56%
$0 to $100,000	**84.08%**
$0 to $200,000	95.80%
--	--------------------------------------
$100,000 to $200,000	11.72%
$200,000 to $500,000	3.38%
$200,000 to $1,000,000	3.92%
$200,000 to > $10 million	**4.19%**
$500,000 to > $10 million	0.81%

Source: 2016 IRS Data Book

133-82

Cost of Tax Cuts and Jobs Act

A. Overall: Act would result in net reduced revenue of $1.49 trillion from 2018 to 2027 according to the Joint Committee on Taxation (JCT) on November 2, 2017.

B. High cost items:

1. New individual tax brackets: $1.09 trillion ($1,090 billion).
2. Higher standard deduction: $913.4 billion.
3. Repeal of AMT: $695.5 billion.
4. New 25% tax rate for business income: $448 billion.
5. Changes for child tax credit and related matters: $429.6 billion.

133-83

Cost of Tax Cuts and Jobs Act

B. High cost items:

6. Increase of phase-out threshold of CTC: $210.3 billion.
7. Changes to and repeal of transfer taxes: $171.5 billion.
8. Reducing corporate tax rate to 20%: $1.46 trillion ($1,460 billion).
9. Deduction for foreign-source dividends: $205.1 billion.

133-84

Cost of Tax Cuts and Jobs Act

C. High revenue-increasing items:

1. Repeal of deduction for personal exemptions: $1.57 trillion ($1,570 billion).
2. Repeal of itemized deductions: $1.25 trillion ($1,250 billion).
3. Tax on deemed repatriated foreign earnings: $233.1 billion.
4. Excise tax on outbound related party payments: $154.5 billion.

D. Note: The JTC projects that the Act would increase the deficit by $166.8 billion in year 10, and to meet the Byrd Rule in the Senate, Congress will need to reduce that amount to zero for the next year or have a sunset provision at the end of 10 years.

133-85

Group Reimbursement Plans
团体偿付计划

- Reimbursement plan > one employee = group plan

  医疗偿付计划 — 超过一个员工，则为团体计划

- ACA requires no annual limits on reimbursement

  奥巴马政府的平价医疗法案要求对每年的偿付不设置上限

- DOL $100 a day penalty to $36,500 per employee

  劳工部征收每日罚款100美元，最高至每个员工每年36500美元

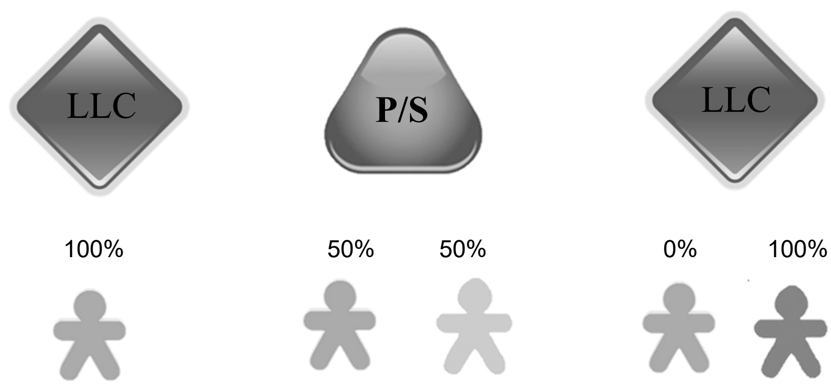
- Notice 2015-17 – 50 Employees, salary increase

  税法通告2015-17-50

Husband and Wife only employees
夫妻为公司仅有的员工

- Both work for firm
  夫妻两人都为公司工作
- Is this a group plan?
  医疗偿付计划是否属于团体计划
- S corp. has a provision?
  小型股份制公司的特别制度
- Uncertain (probably not) for a C corporation
  是否适用于普通股份制公司有待确定

Partnership or LLC



Unrelated

H & W

Treated as self employed – not subject to ACA

Partner treated as self employed – not subject ACA

Treated as self employed – not subject to ACA

P/S or LLC

P/S

30% 40% 30%

Partner treated as
self employed – not
subject ACA

P/S

50% 50% 0%

Unrelated

Penalty if > $4,950/
$10,000

AES
Accountant's Education Services

S Corporation

小型股份制公司
S Corp

100%

Single Owner

2% Exception

小型股份制公司
S Corp

50% 50%

Unrelated

2% Exception

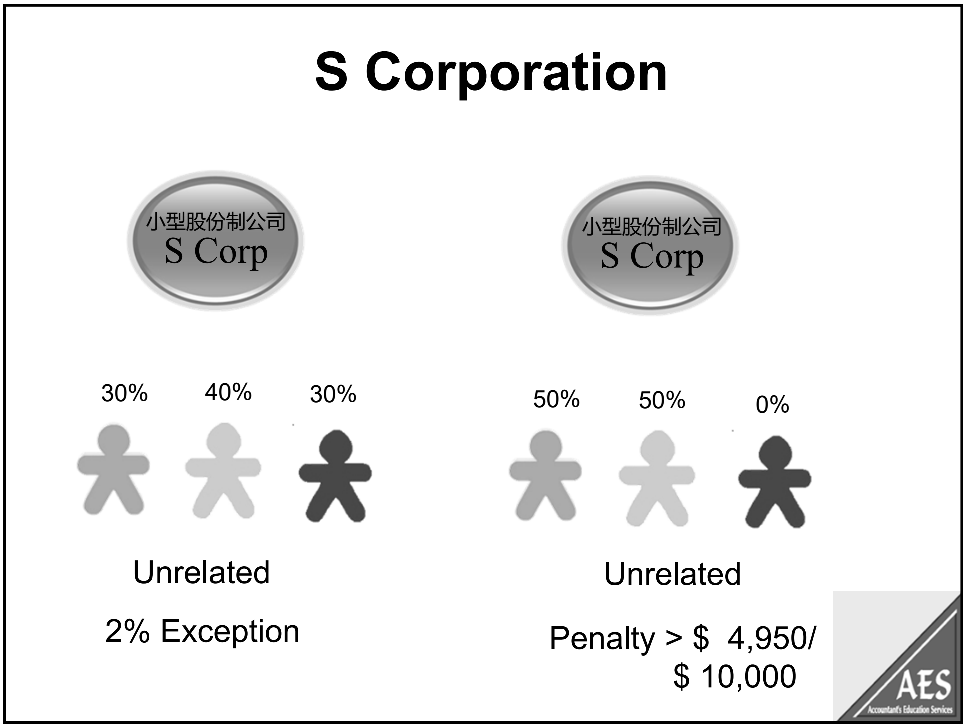
小型股份制公司
S Corp

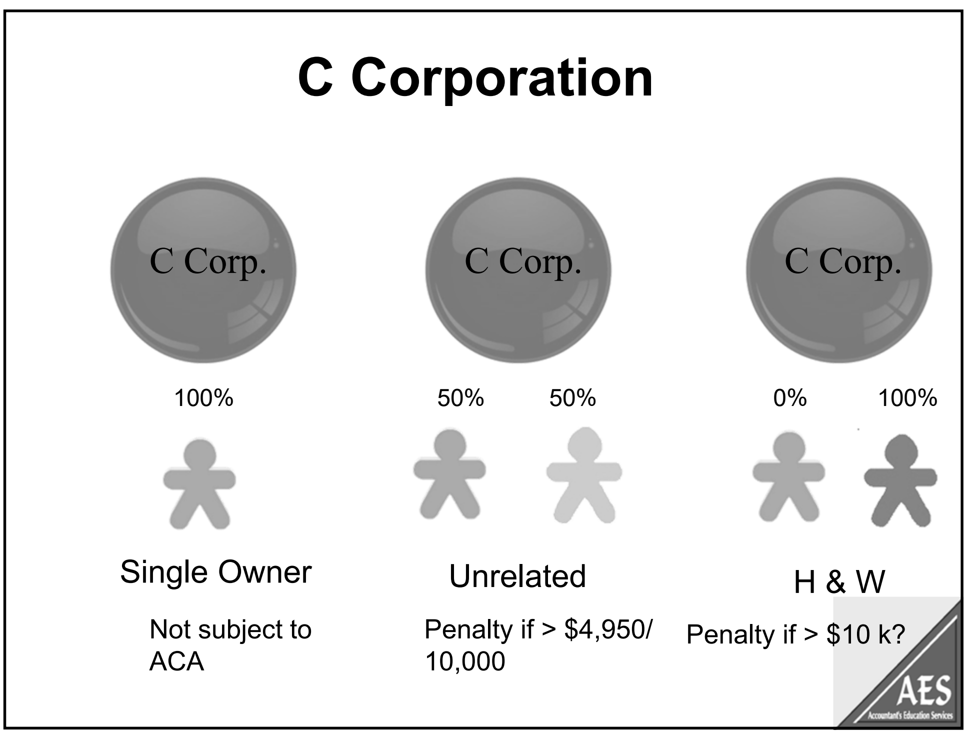
0% 100%

H & W

2% or
2% & $4,950

AES
Accountant's Education Services


S Corporation
小型股份制公司
S Corp
30%
40%
30%
Unrelated
2% Exception
小型股份制公司
S Corp
50%
50%
0%
Unrelated
Penalty > $ 4,950/
$ 10,000
AES

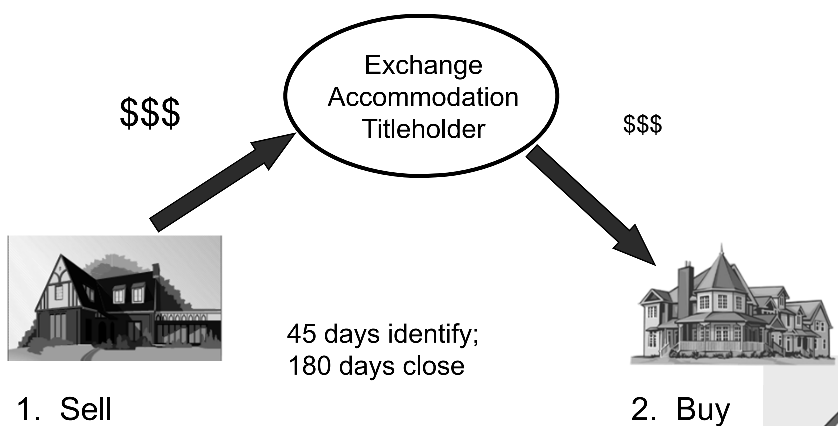

C Corporation
C Corp.
100%
Single Owner
Not subject to
ACA
C Corp.
50%
50%
Unrelated
Penalty if > $4,950/
10,000
C Corp.
0%
100%
H & W
Penalty if > $10 k?
AES

Extra Slide
Section 1031

- Three Requirements.
  - Must be an exchange
    - Starker Exchange – identified in 45 days; acquired in 180 days
  - Properties must be like kind
  - Property given and taken must be held for business use or investment

Extra Slide - Section 1031

- Three Requirements Must be an exchange
  - Starker Exchange – identified in 45 days; acquired in 180 days



Planning Technique

- Sell Last Year 2016 (last half of year) - Starker
- Fail to identify in 45 Days or close w/in 180 Days
- Gain reported in 2016
  - Forced to be on the installment sale
  - Cash received in 2017?
    - Elect out if want in 2016

See page 2-33

Extra Slide - Section 1031

BD $1.9 million

August 2000

$$$

Assigns rights

July 2000

Exchange Accommodation Titleholder EPC

Property from L

May 1999

2. Sell

1. Contract to Buy

Extra Slide - Section 1031

BD $1.9 million

August 2000

Assigns rights

July 2000

Construction

Until June 2001

Exchange Accommodation Titleholder EPC

Contract to Sell to E

Sept 2001

Property from L $$$

May 1999

Closing $$$

Dec 2001

2. Sell

1. Contract to Buy

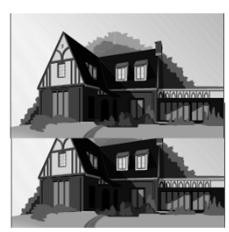
IRS Cannot Regroup Doctor's Interests

P P/S

Small %

R P/S

Outpatient Surgeries



Invests in P

Owns X & Y at different times and works there

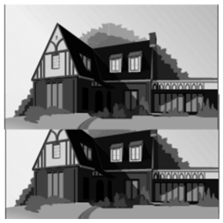
Income ⟺ (Loss)

See page 3-51

306

IRS Cannot Regroup Doctor's Interests

Ind. Manager



P
P/S

X Ray -
Catscan

Invests in P

(Loss) ⟺ Income

See page 3-51

264

Go to slide 313

Per Diem Allowances

A. Purpose – Do not have to substantiate with a receipt:

Lodging

Meals

Incidentals

Three options of reimbursement:

1. L, M & I Expenses
2. No Lodging Only Rate Sec. 1 — M & I Expenses
3. Incidentals

384A

Added Slide

Who May Use What Per Diems?

Lodging | Meals | Incidentals

1. Employees Only

2. Everyone

1. No 10% Corp. Owners
Rev. proc. 2006-41; § 6.07

2. No self-employed § 4.03
Starr, T.C. Memo 2000-35
Duncan, T.C. Memo 2000-269

3. Everyone

384B

How Much (Per Diem Rate)

Added Slide

Lodging Meals & Incidentals

1. Daily rate based on Location
2. High-Low Method

High rate $284 - 68 M&I = 216
Low rate $191 - 57 M&I = 134

Notice 2012-63 same as last yr.

However, cannot be used by
(1) self-employed;
(2) 10% corp. owners

Meals & Incidentals

1. Daily rate
2. High Low Method or Specific City
§ 5.01
3. Trans. Industry
$ 63 - CONUS
$ 68 - OCNUS

30% v. 50% for § 274(n) limit

384C

How Much (Per Diem Rate)

Added Slide

http://loopholelewy.com/loopholelewy/02-business-deductions/travel-expenses-15-irs-meal-allowance.htm

Trade or Business

Active T or B

Dividends, Interest

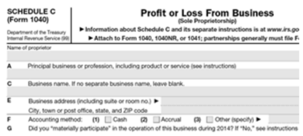
Rental RE

Capital Gains

Generally SE Income

Non SE Income

Passive Investor



股份制公司
C. Corp

小型股份制公司
S Corp

Dividends

Capital Gains

SE Income

Non SE Income

有限合伙企业
Limited Partner as an Investor

1%

99%

Limited Partnership

General Partner
1. Individually Liable

Limited Partners
Not Individually Liable

2. Management
3. Legally contract

GP Always subject to SE

IRC § 1402(a)(13)

"there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;"

- No definition of limited partnership

1997 Proposed Regs.

- Not subject to self-employment taxes unless:
  - Under state law, the partner
    1. personally liable for the debts of the partnership;
    2. partner has contractual authority; or
  3. Partner participates in the partnership business for greater than 500 hours.

Proposed Approaches

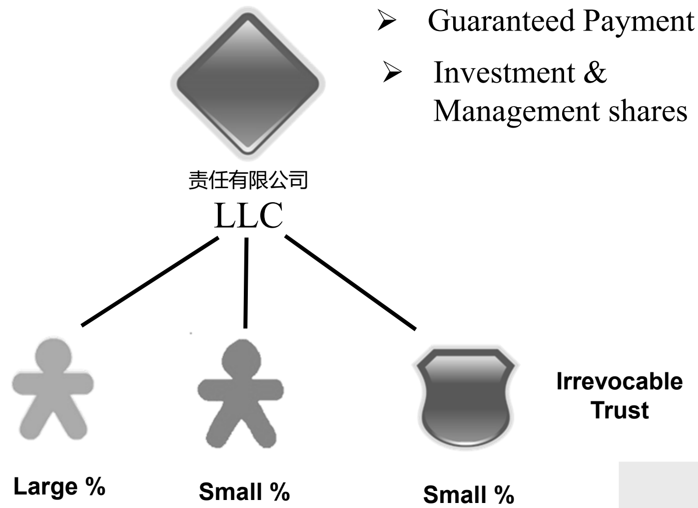
1. Passive Investor
2. Investment v. Management Shares
3. Management Corp.
4. Guaranteed Payment
5. W-2 to the Partners

W-2 Approach

- Rev. Rul. 69-184
- Riether (District NM)
  - Cites Renkemeyer
- ILM 20146049

CCA 201640014

- Guaranteed Payment
- Investment & Management shares



No analysis of Limited Partner

Proposed Approaches

1. Passive Investor ⇦
2. Investment v. Management Shares
3. Management Corp.
4. Guaranteed Payment
5. W-2 to the Partners

Hardy v. Commr.

- Plastic Surgeon
  - Has an interest in surgery center;
  - Occasionally, performs surgeries there
  - No management functions
  - No day to day functions
  - 12.5% not tied to any services performed
  - Allowed to offset against passive losses
- TC Memo 2017-16

What type of LLC Analogy to *Garnett 132 TC 368 (2009); Thompson* 104 AFTR 2d 2009-5381 (Fed. Cl. Ct. 2009)

AES Accountant's Education Services

Investment v. Management Shares

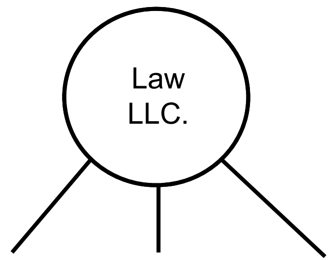
- Theory is to split the income based on two components:
  - Return as an investor
    - Need capital if this has a chance of working
  - Earnings from self-employment

AES Accountant's Education Services

Investment/ Self-Employment Issue

Renkemeyer

Restated 2005 LP Agreement

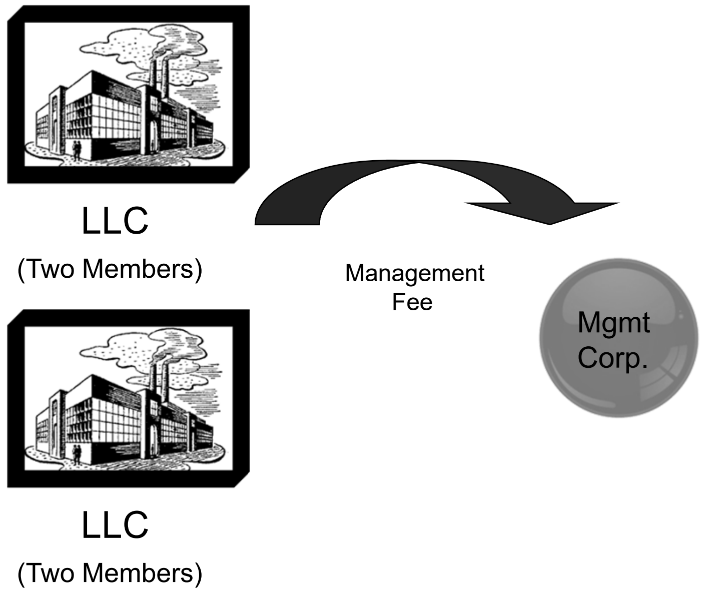


	A1	A2	A3
Managing Interest	1%	1%	1%
Investing Interest	32.3%	32.3%	32.3%

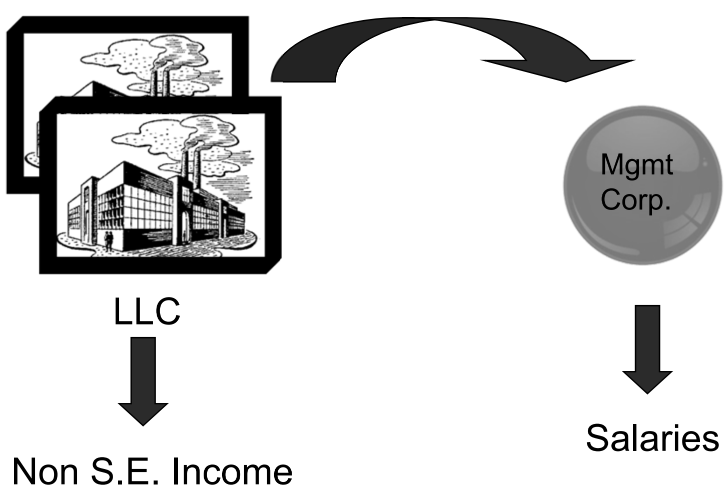
Proposed Approaches

1. Passive Investor
2. Investment v. Management Shares
3. Management Corp.
4. Guaranteed Payment
5. W-2 to the Partners

Management Corporation



LLC Combined w/ Corporate Management Company

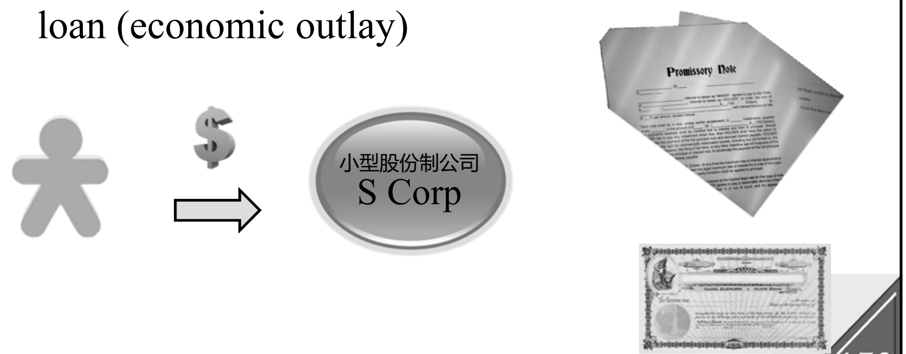


小型股份制公司股东的股权成本
Basis for S-Corporation Shareholder

- 和合伙企业制度不同

  Rules are not the same as P/S
- 股东必须以现金贷款给公司（对股东有实际经济效益的支出）

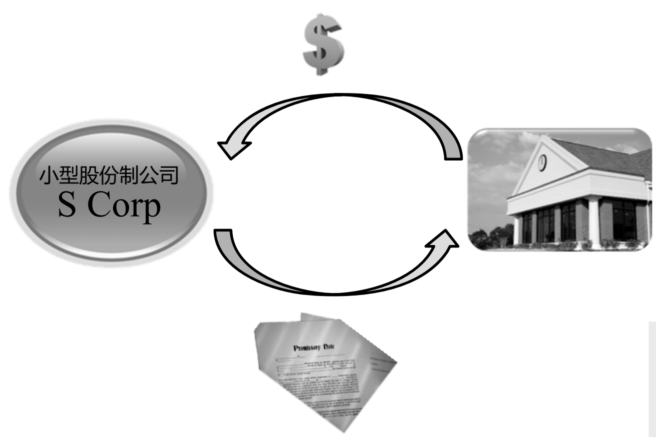
  Shareholder must have put cash into the S corp as a loan (economic outlay)



错误的方法-不增加股东计税成本
Incorrect Method – No Basis

- 银行直接贷款给公司，股东的计税成本不增加

  A bank loan directly to the corporation does not create S corp. shareholder basis



无论是否共同贷款
Does Not Matter if Co-Debtor

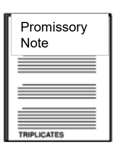
- 案例 *Maloof v. Comm'r,* (6th Cir. 2006)
  - 小型股份制公司公司为期票上的贷款人
    Promissory note states S Corp is the payor
  - 签字人 Signature line:
    - 小型股份制公司和
      S Corp. and
    - 股东
      Shareholder as co-debtors

小型股份制公司 承诺还款
S Corp. promises to pay $$$$

公司主席
XXX as President
XXX Individually

传统的增加股东计税成本的方法
Traditional Method to Create Basis

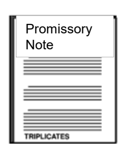
- 银行贷款给股东
  Bank loans to shareholder (payor or obligor)
- 股东贷款给公司
  Shareholder loans proceeds to the corp.



小型股份制公司
S Corp

$$$

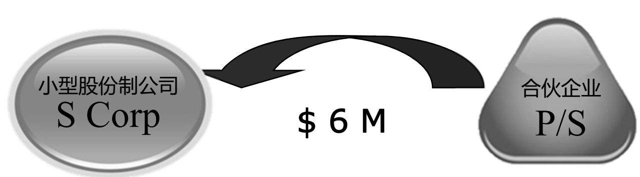
股东Shareholder



繁琐的行政手续
Administratively Inconvenient

- 出具期票 Payments on Note
  - 公司还款给股东
    S Corp. pays the shareholder
  - 股东还款给银行
    Shareholder pays the Bank

没有遵守正确的贷款形式
Loan Formalities not Followed



Al	SID	Al	SID
50%	50%	50%	50%

- 直接转移资金
  Funds transferred directly
- 2年后，签署期票，更正税表，执行会议记录
  2 Years later, back to back notes issued, correcting tax returns, documenting minutes of intent