

Summary of Chairman's Amendment #2 to the Amendment in the Nature of a Substitute
H.R. 1, *Tax Cuts and Jobs Act*

Section 1004 – Maximum rate on business income of individuals (reduced rate for small businesses with net active business income)

The amendment provides a 9-percent tax rate, in lieu of the ordinary 12-percent tax rate, for the first \$75,000 in net business taxable income of an active owner or shareholder earning less than \$150,000 in taxable income through a pass-through business. As taxable income exceeds \$150,000, the benefit of the 9-percent rate relative to the 12-percent rate is reduced, and it is fully phased out at \$225,000. Businesses of all types are eligible for the preferential 9-percent rate, and such rate applies to all business income up to the \$75,000 level. The 9-percent rate is phased in over five taxable years, such that the rate for 2018 and 2019 is 11 percent, the rate for 2020 and 2021 is 10 percent, and the rate for 2022 and thereafter is 9 percent. For unmarried individuals, the \$75,000 and \$150,000 amounts are \$37,500 and \$75,000, and for heads of household, those amounts are \$56,250 and \$112,500.

Section 1004 – Maximum rate on business income of individuals (eliminate provisions related to Self-Employment Contributions Act)

The amendment preserves the current-law rules on the application of payroll taxes to amounts received through a pass-through entity.

Section 1102 – Repeal of nonrefundable credits

The amendment preserves the current law non-refundable credit for qualified adoption expenses.

Section 1103 – Refundable credit program integrity

The amendment requires a taxpayer to provide an SSN for the child in order to claim the entire amount of the enhanced child tax credit.

Section 1205 – Rollovers between qualified tuition programs and qualified able programs

The amendment would allow rollovers from section 529 plans to ABLE programs.

Section 1405 – Repeal of exclusion for qualified moving expense reimbursement

The amendment preserves the current law tax treatment for moving expenses in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order.

Section 3001 – Reduction in corporate tax rate

The amendment lowers the 80-percent dividends received deduction to 65 percent and the 70-percent dividends received deduction to 50 percent, preserving the current law effective tax rates on income from such dividends.

Section 3101, 3301 – Interest

The amendment provides an exclusion from the limitation on deductibility of net business interest for taxpayers that paid or accrued interest on “floor plan financing indebtedness.” Full expensing would no longer be allowed for any trade or business that has floor plan financing indebtedness.

Section 3204 – Modify treatment of S corporation conversions into C corporations

The amendment provides that distributions from an eligible terminated S corporation would be treated as paid from its accumulated adjustments account and from its earnings and profits on a pro-rata basis. The amendment provides that any section 481(a) adjustment would be taken into account ratably over a 6-year period. For this purpose, an eligible terminated S corporation means any C corporation which (i) was an S corporation on the date before the enactment date, (ii) revoked its S corporation election during the 2-year period beginning on the enactment date, and (iii) had the same owners on the enactment date and on the revocation date.

Section 3315 – Amortization of Research and Experimentation Expenditures

The amendment provides that certain research or experimental expenditures are required to be capitalized and amortized over a 5-year period (15 years in the case of expenditures attributable to research conducted outside the United States). The amendment provides that this rule applies to research or experimental expenditures paid or incurred during taxable years beginning after 2023.

Section 3316 – Uniform treatment of expenses in contingent fee cases

The amendment disallows an immediate deduction for litigation costs advanced by an attorney to a client in contingent-fee litigation until the contingency is resolved, thus creating parity throughout the United States as to when, if ever, such expenses are deductible in such litigation. Under current law, certain attorneys within the Ninth Circuit who work on a contingency basis can immediately deduct expenses that ordinarily would be considered fees paid on behalf of clients, in the form of loans to those clients, and therefore not deductible when paid or incurred. This provision creates parity on this issue throughout the United States by essentially repealing the Ninth Circuit case, *Boccardo v. Commissioner*, 56 F.3d 1016 (9th Cir. 1995), which created a circuit split on this issue.

Section 3703 – Surtax on life insurance company taxable income

The amendment generally preserves current law tax treatment of insurance company deferred acquisition costs, life insurance company reserves, and pro-rata, and imposes an 8% surtax on life insurance income. This provision is intended as a placeholder.

Section 3801 – Nonqualified deferred compensation

The amendment strikes Section 3801 so that the current-law tax treatment of nonqualified deferred compensation is preserved.

Section 3805 – Modification of treatment of qualified equity grants

The amendment clarifies that restricted stock units (RSU) are not eligible for section 83(b) elections. Other than new section 83(i), section 83 does not apply to RSUs.

Section 4004 – Treatment of deferred foreign income upon transition to participation exemption system of taxation

The amendment provides for effective tax rates on deemed repatriated earnings of 7% on earnings held in illiquid assets and 14% on earnings held in liquid assets.

Section 4303 – Excise tax on certain payments from domestic corporations to related foreign corporations; election to treat such payments as effectively connected income.

The amendment modifies the bill's international base erosion rules in two respects. First, the provision eliminates the mark-up on deemed expenses. Second, the amendment expands the foreign tax credit to apply to 80% of foreign taxes and refines the measurement of foreign taxes paid by reference to section 906 of current law rather than a formula based on financial accounting information.

Section 4969 – Excise taxed based on investment income of private colleges and universities

The amendment ensures that endowment assets of a private university that are formally held by organizations related to the university, and not merely those that are directly held by the university, are subject to the 1.4-percent excise tax on net investment income.

Section 5201 – Churches permitted to make statements relating to political campaign in ordinary course of religious services and activities

This amendment ensures that all 501(c)(3) organizations will not fail to be treated as organized and operated exclusively for their respective non-profit purposes because of engagement in certain political speech, as long as the speech is in the ordinary course of the organization's business and the organization's expenses related to such speech are de minimis. This provision is effective for tax years beginning after December 31, 2018 and is sunset for tax years beginning after December 31, 2023.