Compliance Alert

Tax Cuts and Jobs Act Passes Senate

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The Senate's version of the Tax Cuts and Jobs Act (TCJA) passed the Senate late Friday night (technically early Saturday morning) today by a vote of 51 to 49. Senator Corker (R-TN) was the only Republican to vote against the bill that otherwise held to strict party lines.

The bill passed just two weeks after the House passed its version of the bill, with a number of differences. The bill now heads to conference—where both chambers will seek to reconcile those differences to form a unified bill for passage.

Procedural Process

- **Step 1: Pass the House**
  Completed November 16, 2017.

- **Step 2: Pass the Senate**
  Completed December 2, 2017.

- **Step 3: Conference**
  The House and Senate leadership will need to negotiate a compromise bill via conferees from both chambers appointed by GOP leadership.

- **Step 4: Pass Post-Conference Bill**
  The negotiated post-conference bill must be approved by both vote of the House and Senate majority. Debate will be permitted, but no amendments are allowed to the bill that comes out of conference. It is a straight up or down vote.

- **Step 5: President Signs Bill into Law**
  If the House and Senate pass the post-conference bill, it finally reaches the president's desk. President Trump will have 10 days to sign or veto the bill after its passage. Needless to say, he will sign the bill.

Notable Employee Benefit Provisions in the Senate TCJA Bill

- **Section 11028: Medical Expense Deduction**
  The Senate bill not only preserves the individual medical expense deduction that was eliminated by the House, it also lowers the threshold from expenses exceeding 10% of AGI to expenses exceeding 7.5% of (AGI), the pre-ACA threshold, for 2017 and 2018. This one

is expected to be addressed again when Congress returns to the ACA repeal/replace debate next year (previous bills lowered this threshold even further).

- **Section 11048: Tax-Free Bicycle Reimbursement Elimination**
  The little tax break that could is on the chopping block. The $20 tax-free employer reimbursement provision for certain bicycle commuting expenses, just added in 2009, is eliminated in the bill. The provision sunsets at the end of 2025.

- **Section 11049: Tax-Free Moving Expense Reimbursement Elimination**
  The bill eliminates employer tax-free moving expenses reimbursement as of 2018. The provision sunsets at the end of 2025.

- **Section 11081: Individual Mandate Tax Penalty Elimination**
  In a shocking twist from the typically more conservative House, it's the Senate that has now passed the tax bill eliminating the individual mandate. Technically, it reduces the individual mandate penalty to zero rather than fully repeal the law (designed to comply with complex reconciliation rules needed to avoid the filibuster)—but this will have the same practical effect. The is effective as of 2019. It is estimated to save the government more than $300 billion dollars over the ten-year budget window, resulting from reduced subsidies caused by reduced enrollment on the exchange.

- **Section 13304: Employer Deductions Elimination or Reduced**
  Employers are no longer permitted to deduct certain entertainment expenses, meal expenses remain deductible at 50%, on-site or near business meal provision deductions are reduced to 50%, no deduction is permitted for tax-free employee meals provided at convenience of the employer, and employer-provided commuter benefits are no longer deductible.

- **Section 13311: Tax-Free Employee Achievement Award Modifications**
  Cash and cash equivalents (e.g., gift cards) will no longer qualify for tax-free treatment for employee achievement awards meeting certain conditions (generally up to $400 in value).

- **Section 13403: Tax Credit for Paid Family Leave**
  The bill provides an employer credit for providing paid family and medical leave to employees that is equal to a certain percentage of the amount of wages provided to the employee while on a qualifying leave (ranging from 12.5% to 25%). A crucially important provision for San Francisco employers is the credit is not available for any leave payment required by state or local law. This may put intense pressure on San Francisco to repeal the Paid Parental Leave Ordinance (and for other states/localities not to mirror the SF ordinance).

- **Section 13613: 401(k) Loan Repayment Period Extension**
  In both the House and Senate bills, 401(k) plans dodged all of the initial proposals that would have significantly reduced pre-tax saving limits and radically diminished retirement savings options for employers and employees. This relatively minor provision extends the loan repayment window upon termination of employment from the current 60-day window to a much longer deadline that extends until individual's tax filing deadline.

Notable Employee Benefit Provisions Only in the House TCJA Bill

The Senate did not retain these provisions from the House bill. The conference negotiation process will determine whether they survive to the final post-conference bill.

- **Dependent Care FSA Eliminated as of 2023**
  The original version of the bill would have eliminated the Dependent Care FSA as of 2018, so this five-year delay is a small victory.

- **Adoption Assistance Programs Eliminated**
  The bill eliminates the ability for employers to provide tax-free adoption assistance to employees (up to $13,570 in 2017).

- **Qualified Education Assistance Programs**
  The bill eliminates the ability for employers to provide up to $5,250 in annual tax-free education assistance to employees. The bill eliminates only the §127 qualified program that does not require the employee's educational expenses be work-related. Employers would still be able to offer the separate §132 working condition fringe tax-free educational benefit for work-related educational expenses.

Timeline
President Trump and the Republican Congress have repeatedly stated that they would like to complete the legislative process, and have President Trump sign the bill into law, by the end of 2017. Most expect the process to be completed by Christmas.

Stay tuned!