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## TAX UPDATES YOU NEED TO KNOW NOW

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## AGENDA

- 1 HIGHLIGHTS OF TAX CUTS & JOBS ACT**
- 2 DISCUSS STATE COMPLIANCE WITH TAX CUTS & JOBS ACT**

## OBJECTIVES

- Understand what the Tax Cuts & Job Act means to your bank
- Discuss planning ideas and ramifications of new tax law to business and investment decisions
- Review and understand state compliance with Tax Cuts & Jobs Act of 2017

## DIVIDEND RECEIVED DEDUCTION

Deduction is based on percentage ownership and holding period

### THRESHOLDS

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<20% ownership	Before 2018 deduction was 70%; after 2017 deduction is 50%
>19.99% - <80% ownership	Before 2018 deduction was 80%; after 2017 deduction is 65%
>79.999%	Before 2018 deduction was 100%; after 2017 deduction is 100%

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**This effectively means there was not a tax reduction/cut on dividend income**

Holding period is 46 days for common stock and 91 days for preferred stock

## EXPANSION OF BONUS DEPRECIATION PROVISIONS

Extends additional first year depreciation deduction through 2026

### BONUS DEPRECIATION

For qualified property acquired and placed in service:

100%	After 9/27/17 and before 1/1/23
80%	Before 1/1/24
60%	1/1/25
40%	1/1/26
20%	1/1/27

### QUALIFIED PROPERTY

Includes property if it's the taxpayer's first use of such property (provided that such "used" property is not acquired from a related party or in a carryover basis transaction)

- **M&A impact** – increased incentive for asset purchases due to immediate expensing of PP&E
- **Prior law** – only on "new" assets

Excludes any property used in a trade or business with floor plan financing indebtedness rules under section 163(j)

## EXPANSION OF SECTION 179 EXPENSING

A taxpayer may, subject to limitations, elect under section 179 to deduct (or expense) the cost of qualifying property rather than to recover such costs through depreciation deductions

Increases the expensing limitation under section 179 from \$510,000 to \$1m with the phase-out increasing from \$2,030,000 to \$2.5m for tax years beginning after 2017

The provision reduces the \$1m amount (but not below zero) by the amount by which the cost of the qualifying property placed in service during the tax year exceeds \$2.5m

### MODIFIES DEFINITION OF QUALIFIED REAL PROPERTY TO:

- Eliminate references to qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property, replacing such references with a reference to qualified improvement property; and
- At the election of the taxpayer, qualified property may include improvements to nonresidential real property placed in service after date property was first placed in service:
  - Roofs
  - Heating, ventilation, and air-conditioning property
  - Fire protection and alarm systems
  - Security systems

## NET OPERATING LOSSES

**OLD LAW** can be used to reduce taxable income to zero

- 2 NOL computations – regular tax and AMT
- AMT NOLs limited to 90% of your AMTI
- If taxable income exceeded \$550,000 there may have still been an AMT payment

**NEW LAW** is limited to 80% of taxable income

**Example:** Assume \$100,000 of taxable income, the maximum NOL deduction would be \$80,000 and tax would still be paid even if total NOLs exceeded \$100,000

- NO AMT – therefore, no AMT NOL computations are necessary
- NOLs cannot be carried back to a prior year under the new law. There is an indefinite carryover period.

**Pre/Post law change:** NOLs computations must be maintained as the NOLs generated before the law change are not subject to the same limitations

**Capital impact:** No longer look back 2 years to determine if any of the NOL could be used

## EXPENSES

**Section 274** disallows an otherwise available deduction for expenses relating to entertainment, amusement, or recreation activities and facilities unless the item is directly related to or associated with business

Expense not disallowed if there was a substantial and bona fide business discussion right before or after the entertainment, amusement, or recreation

**The disallowance is subject to a number of exceptions, including:**

- Food and beverages for employees furnished on the business premises;
- Expenses treated as compensation
- Reimbursed expense
- Nondiscriminatory recreation for employees
- Business meetings for employees, stockholders, agent, or directors
- Business league meetings
- Entertainment sold to customers

## EXPENSES

If an entertainment expense is exempt from disallowance by virtue of one of the exceptions or because the expense was directly related to or associated with business, section 274(n) generally permits deduction of only 50% of the expense

An entertainment or meal expense is exempt from the 50% disallowance under one of a number of exceptions, including if the expense is:

- Treated as compensation,
- Reimbursed, or
- The cost of the meal is excludable from the employee's income under section 132(e)(2)

**Section 132(e)(2)** excludes the value of a meal provided at an employer operated eating facility if the facility is on or near the employer's business premises and its revenue at least equals its direct operating costs



## **EXPENSES – POST TCJA**

### **AMENDED TO DISALLOW ENTERTAINMENT EXPENSES EVEN IF DIRECTLY RELATED TO OR ASSOCIATED WITH BUSINESS**

As a result, for expenses paid or incurred after December 31, 2017, business entertainment is now entirely nondeductible unless eligible for one of the exceptions, which have NOT been modified

### **100% OF ENTERTAINMENT EXPENSES ARE NONDEDUCTIBLE**

- Significantly affect business deductions to the extent those deductions include a leisure element
- All forms of business entertainment, including golf outings, fishing, sailing, sporting events, theater, and resort events are likely nondeductible going forward even if substantial and bona fide business discussions were associated with the activity

Meals provided at employer-provided eating facilities no longer exempted from 50% disallowance

## EXPENSES - PARKING

**Code Section 274(a)(4) – NEW LAW:** provides that no deduction shall be allowed for qualified transportation fringe benefits.

This limitation includes parking provided to an employee on or near the business premises. The expense could be direct or indirect.

### Examples:

- Amounts paid to operator of parking garage – monthly fees;
- Leased parking garage;
- Parking garage or lot owned by taxpayer – carrying costs

**Additional clarity is needed from the IRS on this matter.**

**Example:** If one leases a building that includes a parking garage, parking spaces or parking lot how should one allocate the lease expense between the building and parking area? How should one allocate to employees versus customers?

**This law also applies to tax exempt entities including credit unions.** As they do not need a deductions, the parking costs are considered taxable income and tax will be paid to the IRS.

## REHABILITATION CREDITS

Historic Preservation Tax Incentive programs revitalize urban and rural communities by encouraging private sector investment in the rehabilitation and re-use of historic and older buildings.

### PRE-TCJA

The federal credit is a two-tier credit for buildings subject to tax depreciation:

20% tax credit for the certified rehabilitation of certified historic buildings

OR\*

10% tax credit for the rehabilitation of non-historic, non-residential buildings originally constructed before 1936

### POST-TCJA

- Credit remains at 20% for certified historic structures. Credit is allowed evenly over a five-year period
- No credit allowed on non-certified structures

# EMPLOYER CREDIT FOR PAID FAMILY & MEDICAL LEAVE

## THE BASICS

### FOR TAX YEARS BEGINNING 1/1/18 – 12/31/19

Eligible employers can claim a general business credit equal to a percentage of wages paid to qualifying employees on leave under the Family and Medical Leave Act (FMLA).

### HOW TO RECEIVE THE CREDIT

Employers must have a written policy that:

- Provides at least two weeks of leave
- Compensates workers at a minimum of 50% of their regular earnings

### CREDIT WILL RANGE FROM 12.5 – 25% OF THE COST OF EACH HOUR OF PAID LEAVE

Credit is dependent on how much of a worker's regular earnings the benefit replaces. The government will cover 12.5% of the benefit's costs if workers receive half of their regular earnings, rising incrementally up to 25% if workers receive their entire regular earnings.

### CREDIT MAY ONLY BE APPLIED TOWARD WORKERS MEETING REQUIREMENTS

Workers who:

- Have been employed at the organization for at least a year
- Were paid no more than \$72,000 for 2017. (This wage ceiling will be adjusted for inflation going forward.)

## EMPLOYER CREDIT FOR PAID FAMILY & MEDICAL LEAVE

### THE BASICS

- Both full-time and part-time workers, if employed at the organization for at least a year, must be offered paid leave for an employer to be able to claim the tax credit
- Employers must allow part-time employees to take a commensurate amount of paid leave, determined on a prorated basis
- Family and medical leave is defined as leave -
  - Because of the birth of a child;
  - Because of the adoption or fostering of a child;
  - To care for a spouse or other family member with a serious health condition; or
  - Because of the employee's own serious health condition.

## NEW MARKET TAX CREDITS

### THE BASICS

- Provides a tax credit of 39% of invested dollars against federal income taxes. The credit is claimed over a 7 year period – 5% in years 1 – 3 and 6% in each of the remaining 4 years.
- The credit is permitted through calendar year 2019; with a carryover period for unallocated credits through 2024.
- The credit is a general business credit which means
  - Each dollar of credit reduces basis of investment;
  - Was formerly limited by AMT
  - There are still some limits – tax cannot be brought to \$0
- Accounting does not typically follow ASU 2014-1 because the credit is not a LIHTC
- Investment opportunities will still be available for unallocated credits
- Tax rate reduction may impact pricing on this and other credit investments

## TAX CREDIT/DIRECT PAY BONDS – NO NEW ISSUANCES

These were often known as tax-credit bonds in which the holder received a tax credit in lieu of interest.

### **Examples:**

- Build American Bonds
- CREBS – renewable energy
- QZABS – academy bonds
- QSCBs – school construction

**Rules continue to apply to previously issued bonds.** These bonds are more valuable under the new tax law.

## QUALIFIED OPPORTUNITY ZONE

The Tax Cuts and Jobs Act of 2017 provides for a deferral of gross income from gains reinvested in a Qualified Opportunity Zone.

The statute permitted the governor of each state to designate no more than 25% of the number of low-income communities in a state, but not less than 25 in total.

### Requirements:

- Must be invested in a fund;
- Investment must be within 180 days of gain transaction
- No other election can be made with regard to the gain transaction
- Certain assets qualify for reinvestment – stock/partnership/business asset
- 90% of Investment Fund's assets must be qualifying



## ALTERNATIVE MINIMUM TAX

### C-CORPORATIONS

- For tax years beginning after 12/31/17, the corporate alternative minimum tax is repealed
- Taxpayers may continue to use carry forward AMT credits to offset regular tax liability and all credits will be utilized / refunded by 2022
  - For tax years beginning after 2017 and before 2021, taxpayers are able to claim a refund of 50% of the excess of the minimum tax credit for the tax year over the amount of the credit allowable for the year against its regular tax liability
  - Any remaining AMT credit will be refunded for any tax years beginning in 2021

### IMPACT

- Eliminates some of the complexity inherent in federal tax law
- Due to 80% of taxable income limit on NOL utilization going forward, some level of “AMT” concept remains in the code

## **\$1 MILLION DEDUCTION LIMIT**

An employer generally may deduct reasonable compensation for personal services as an ordinary and necessary business expense. A publicly held corporation can't deduct applicable employee remuneration in excess of \$1 million per year paid to a covered employee.

### **UNDER PRE-TAX CUTS AND JOBS ACT LAW**

Performance-based compensation was exempt from the \$1 million deduction limit, i.e., it wasn't applicable employee remuneration.

#### **Compensation qualified for this exception if:**

- It was payable solely on account of performance goals having been reached;
- The performance goals were pre-established and objective;
- The performance goals stated the method of computing compensation in an objective formula;
- The objective compensation formula precluded discretion to increase the amount payable upon reaching the goal;
- The performance goals were set by a compensation committee consisting solely of two or more outside directors;
- The performance goals were approved by shareholders; and
- Before any remuneration was paid, the company's compensation committee certified that the performance goals had been reached.



## **\$1 MILLION DEDUCTION LIMIT**

### **NEW LAW**

The Tax Cuts and Jobs Act eliminates the exceptions for performance-based compensation and commissions from the definition of “applicable employee remuneration” that is subject to the \$1 million deduction limit.

As a result, performance-based compensation and commissions are taken into account in determining the amount of compensation with respect to a covered employee for a tax year that exceeds \$1 million and so isn't deductible as a business expense.

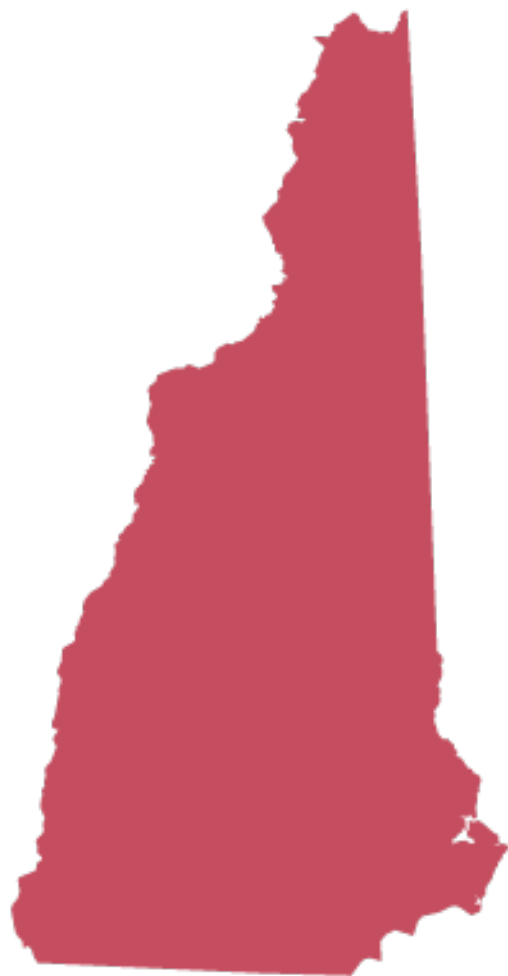


**AS A STATIC CONFORMITY STATE**, meaning a state that adopts the IRC up to a specific date, rather than automatically adopting the IRC as it is amended (rolling conformity), Maine has decided to synchronize to the IRC as amended by the TCJA.

However, this has very little impact on Maine financial institutions as the tax is a franchise tax.

**Highlights of conformity for others:**

- Standard deduction conforms to federal and exemption added
- Increase itemized deduction for taxes
- No QBI deduction and no bonus depreciation
- Expanded rate brackets for corporations – lowers taxes for income under \$3,500,000
- Non conformity with federal NOL
- No Maine AMT
- Permits a FML credit



**AS A STATIC CONFORMITY STATE**, meaning a state that adopts the IRC up to a specific date, rather than automatically adopting the IRC as it is amended (rolling conformity), New Hampshire can decide whether or not to synchronize to the IRC as amended by the TCJA.

For the BPT, New Hampshire has adopted the IRC as of 12/31/16 for taxable periods beginning on or after 1/1/18.

- Pursuant to RSA 77-A:2 and RSA 77-E:2, for taxable periods ending on or after December 31, 2018, the BPT rate is 7.9% and the BET rate is .675%
- For property placed in service:

**From 1/1/17 - 12/31/17:** Maximum IRC § 179 deduction is \$100,000.

**Prior to 1/1/2017:** Maximum IRC § 179 deduction is \$25,000

## HIGHLIGHTS ON 2018 BILLS

### PROTECTING FAMILY & SMALL BUSINESS TAX CUTS ACT

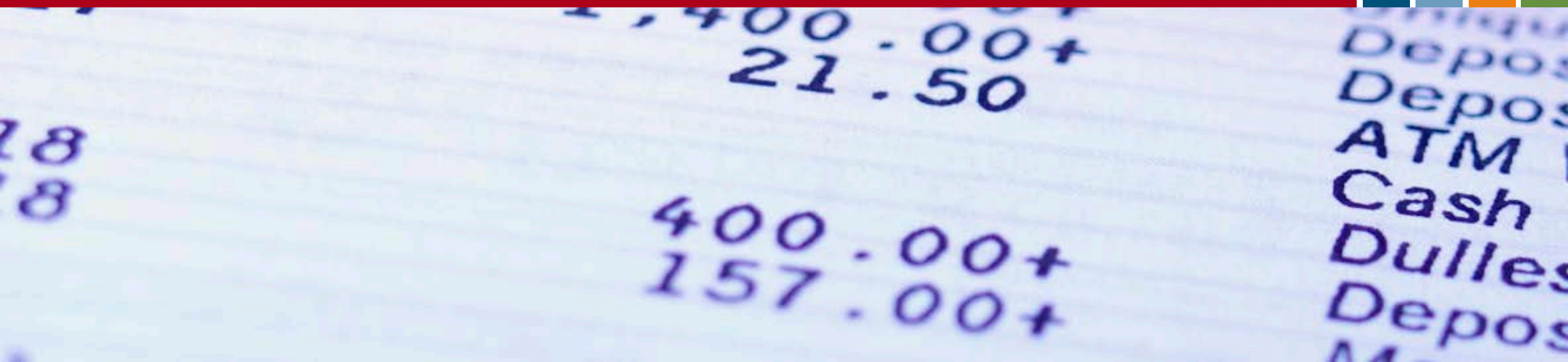
Many individual and small business tax cuts originally enacted temporarily through 2025 would become permanent:

- Lowered individual income tax rates
- 20% deduction of income for qualifying pass-through entities
- \$12,000 (individual) and \$24,000 (married filing jointly) standard deduction
- \$10,000 cap on state and local tax deduction

### FAMILY SAVINGS ACT

- Eliminate the age limit on IRA contributions
- Create a Universal Savings Account (USA)  
**TAXPAYERS COULD CONTRIBUTE UP TO \$2,500 EACH YEAR TO THEIR USA. EARNING AND DISTRIBUTIONS WOULD BE TAX-FREE.**
- Allow Section 529 Plans to be used for expenses related to trade schools, homeschooling, and up to \$10,000 in total distributions for repayment of student loans





## HIGHLIGHTS ON 2018 BILLS

### AMERICAN INNOVATION ACT

- Allow new businesses to write off up to \$20,000 of start-up and organization expenditures
- Allow changes in ownership without triggering a Section 382 limitation on corporate net operating losses incurred during a 3-year start-up period



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