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The year 2025 is a big year in federal income tax circles as a number of tax provisions, mainly added as part of 2017's Tax Cuts and Jobs Act, are scheduled to expire. While back in 2017 the plan was to have these items extended by a later Congress, the path to such an extension has become significantly less clear in the years since Congress enacted the TCJA

What's on the Table?

The following summarizes the key items that are scheduled to expire in 2025, mainly from the Tax Cuts & Jobs Act.

Items Ending in 2025 (TCJA and Others)

The following provisions (among others) are schedule to be removed from the law for 2026 unless Congress acts and a bill is signed into law.

- Individual income tax rates will return to the 2017 rate levels (maximum tax 39.6%)
- The standard deduction will also be reduced to the levels found back in 2017 (adjusted for inflation)
- The child tax credit will be reduced
- The estate tax exemption will be reduced by just under 1/2 , going to its 2017 levels but using a different base for the inflation adjustment

- The QBI deduction will no longer exist
- There will be no cap on the deduction for state and local taxes
- Miscellaneous itemized deductions would again become deductible to the extent they exceed 2% of an individual's adjusted gross income
- Individuals would again be able to claim a personal casualty loss on their individual return
- The more generous premium tax credit with no cliff cut-off will be replaced with the previous version (not TCJA but has the same end date)
- Bonus depreciation will be at 20% and go away for 2027

Changes Many in Congress Want to See Made

While the following items are not expiring at the end of 2025, they are nevertheless expected to be part of the discussions taking place around actions to deal with the expiration of many provisions at the end of 2025.

- Restoring full expensing for Section 174 expenditures
- Remove depreciation, amortization and depletion from the computation of adjusted taxable income (ATI) under IRC §163(j)
- Restoring the ARPA version of the child tax credit

The Deficit Problem

Increased concerns over the federal deficit have made it more difficult in recent years to pass large tax bills, even when one party has control of the House, Senate and the Presidency (control of the government for purposes of this discussion). Modifications had to be made to win support in such situations for the Tax Cuts and Jobs Act in 2017 when Republicans controlled the government, resulting in the enactment of the amortization rules under IRC §174, the limit on the deduction of business losses and the phase-out of bonus depreciation. Similarly, when the Democrats had full control in 2022 the Build Back Better Act was paired down dramatically to reduce its costs--and, ironically, one of the items removed as the BBBA morphed into the IRA was the restoration of Section 174 expensing.

It is possible the deficit concerns will be reduced in 2025. As a practical matter, parties obtaining control of the government have traditionally been far less concerned with deficit matters in the first year of such control (the TCJA concerns were relatively limited and met to a certain extent with provisions expected to be repealed, the same tactic used for the Affordable Care Act back in 2010), as it is a rare opportunity for the party in control to enact its agenda. However, even in those cases, without control of 60 seats in the Senate, the budget rules that apply to reconciliation bills impose various limits and restrictions (the big one being that the bill can't net "spend" money outside the 10 year budget window).

Inflation may prove to have the biggest impact on the extent to which Congressional concern about deficits impacts policy, especially if one party obtains full control following the 2024 elections. If inflation cools, then deficit concerns may be lessened. But should inflation heat up again, Congress may have a harder time passing a bill that is not revenue neutral.

Mechanics of Congress

Any tax bill will need to pass both chambers of Congress and, most likely, need to be signed into law by the President as it appears unlikely a bill could be passed with enough votes to allow Congress to override a veto. Getting bills out of Congress is not necessarily simple. In 2022 the House failed to pass the four tax bills that were intended to be used to negotiate some sort of tax deal with the Senate as Republican Congressmen presenting high tax states refused to vote for any tax bills that did not have some sort of relief for the state and local income tax deduction cap.

The House has also been hampered by the general position of the Republican majority that they prefer to pass bills with enough Republican votes to assure passage even if no Democrat votes with them. With a very narrow majority that has proven very difficult to accomplish.

And the House is the simpler chamber to move a bill through. In the Senate, unless the bill can be moved under the reconciliation provisions, 60 yes votes are necessary to pass the motion to bring the bill up for a final vote. Thus, if 41 Senators oppose a bill they can (and quite often do) prevent the bill from coming up for a vote. So while "only" 51 Senators (or 50 plus the Vice President) are necessary technically to pass a bill in the Senate, a minority of Senators can simply prevent the vote from taking place.

The results of the 2024 election will be very important in establishing the dynamic that will exist for tax bills during 2025 and 2026. If we continue, as we have for a number of years, to have the chambers closely divided between the two parties, I would expect it to be much challenging to pass any tax bills. And, as was true with the §174 amortization provision, we see the default action (expiring provisions allowed to expire) take place even for provisions where both parties believe those expirations should not take place (such as would be likely for the repeal of the increased standard deduction).

That is, the President (whomever that may be) may simply never see a bill arrive to sign by the end of 2026 that would resolve the 2025 expiring provision problems.

Tax Planning in an Era of Uncertainty

As tax professionals, it's important not to let our own biases and views about policies we like or dislike, or our not likely to be correct expectations of how the political scene will play out impact our planning. We must first admit we do not know and cannot know what laws will eventually apply in 2026 and later years--because, frankly, no one in Congress or running for President has a clue either, nor likely will until an actual bill is passed and signed into law.

The big thing to consider is to be flexible and not commit to a program that only makes sense if a certain specific tax provision is or isn't in place for 2026 and later years. We have to work with the law that exists currently but must also take into account the possibility it may (and like to at least to some extent) will change.

Warning Clients of the Possible Impact on Their Situation

As we approach 2026, we should consider discussing with clients the impact on their tax situation of the expiration of certain tax provisions or any proposed revisions that seem to have some support. The key issue here is to make sure that clients understand how these possible changes would impact their situation.

As most of us know, while TCJA was generally a tax cut for individual taxes, about 20% of individual taxpayers saw a net income tax increase due to the impact of the specific provisions on their personal return. We would expect a similar impact as many of those provisions are reversed--a majority of individuals would see a tax increase, but some would see a tax decrease. And, just as was true for when TCJA came into the law, in some cases the impact will be surprising.

Some planning issues for specific items are discussed below.

Individual Income Tax Rate Increase

Individual income tax rates are scheduled to increase in 2026 absent Congressional action. The big planning point should it appear that may happen as we approach the end of 2025 will be taking into consideration the differential in tax rates and if it is appropriate in the taxpayer's case to accelerate income into 2025 or delay deductions into 2026.

In those cases, the time value of money needs to be taken into account--is it worth it to pay a lower rate on income today rather than pay a somewhat higher rate, but one year later? Many clients have a difficult time understanding the concept of the time value of money, so it may take time to educate them regarding the issue. Similarly, there is the professional cost involved in doing detailed planning on the optimal income acceleration/deduction delay that also must be factored into the equation along with time value of money matter.

Note that we may face uncertainty right up until (or even past) the end of 2026 regarding the extension of the TCJA provisions. To the extent that is the case, clients will need to be reminded that any plans discussed in year end meetings in early or mid-December may need to be changed at the last minute--and that, should Congress decide to retroactively change the law in 2027, the decisions discussed to accelerate income or delay deductions may end up being counterproductive.

Ultimately the client bears responsibility for deciding what direction Congress will end up taking when implementing actions to deal with potential rate changes.

Items that Become Deductible in 2026 With No Law Change

Another key item to be aware of at the end of 2025 will involve deductions that simply aren't allowed as deduction in 2025, but would be allowed in 2026. Thus, actions such as delaying payment of state income taxes and/or property taxes to the extent allowed until 2026 need to be discussed with clients, especially as many clients have been trained over the years that there is a tax benefit in paying such expenses before the end of December--something generally don't want them to do in 2025.

Similarly, if possible payments of investment related expenses, tax planning fees, etc. should be delayed until early 2026, assuming they will exceed 2% of the taxpayer's adjusted gross income in total.

Unlike the prior set, in this case there's less risk of taking these actions and then having Congress extend the TCJA rules retroactively. After all, they would not have been deductible in 2025 in any event, so there's likely little damage in having paid them in 2026.

Longer Term Issues - Passthrough Entity Tax Planning

The vast majority of states with an income tax now have a passthrough entity tax regime in place to work around the limitation on the deduction of state and local taxes. While many of these regimes expire at the end of 2025 (presumably with many being extended if Congress extends the cap on the deduction of state and local taxes on Schedule A), the Arizona regime does not leave the law at the end of 2025.

But if a taxpayer's major benefit from the passthrough entity tax is the ability to deduct state and local taxes in excess of $10,000, there may be a real question of whether the expense and bother is worth it, especially if that benefit will go away to a large extent after just two years. After all, there expenses involved in setting up a corporation or partnership (operating agreements, corporate documents and the like), as well costs involved with the operation of the same (an additional set of income tax returns, BOI filings with FinCEN, state level reports such as that to the Arizona Corporation Commission).

Given that Arizona now has a flat 2.5% rate on income, it's also important to note that the lower Arizona rate also means that the benefit of PTET election is also significantly lower in Arizona than it would be for a taxpayer living and operating an entity that could be subject to the PTET in California.

If a discussion takes place regarding restructuring a taxpayer's business or financial to create a partnership or S corporation eligible to participate in Arizonas's PTE, that discussion should include a discussion of the possibility that the benefits could be reduced substantially beginning in 2026--but the entity may continue to have to be taken care of following that date, especially if an S corporation is used to qualify for the PTET. That option might be used in the case of a single individual who was running a business previously as a sole proprietor.

However, you should also remember that the PTET could still be useful if the taxpayer otherwise will be using the standard deduction the federal return, since then the PTET serves not to get around the $10,000 cap, but rather to allow a tax deduction and still claim the full standard deduction. Whether this "makes sense" given the low Arizona tax rates and likelihood this individual faces a relatively low federal marginal tax rate is a somewhat different question.

Longer Term Issues - Estate Planning

In one sense the estate planning side of this is the toughest issue--but, in another sense, the long term impact of estate planning is always a problematic issue. Regardless of what Congress does about the TCJA exclusion issue, over the next few decades it's virtually certain that Congress will continue to make other changes to the estate and gift taxes.

If a taxpayer is a surviving spouse, you may wish to consider making a late portability election under Rev. Proc. 2022-32 if it appears Congress will allow the exclusion to be reduced as scheduled in 2026. Rev. Proc. 2022-32 liberalized the rules to allow for late portability elections to be filed up to the date that is five years after the date of death of the first spouse to die. The IRS in regulations has clarified that even if the exclusion drops in 2026 and later years, any deceased spouse unused exclusion (DSUE) from years prior to 2026 remains at the higher level.

If no election was made and the spouse died in the past five years, an election may still be made to preserve that higher exclusion to add to the now much lower exclusion the surviving spouse would be entitled to based on the date he/she eventually dies.

The risk of taking this step is that it proves unnecessary as the surviving spouse at the date of his/her death ends up with their own exclusion well in excess of their taxable estate, either because Congress retroactively extends/restores the TCJA rule, Congress later enacts another adjustment or the taxpayer depletes his/her estate before death. So the cost of filing is the downside.

Another option that comes with a potentially much higher upside and (perceived) downside is having a taxpayer make gifts to use up his/her higher exclusion before the end of 2025. Again, the IRS in the anti-clawback regulations provide that this technique will work to obtain the benefit of the higher exclusion by "locking it in" if the gift is made by the end of 2025.

However, the downside is that if Congress does extend the higher exclusion, then the gift was not necessary. In that case the taxpayer had parted with assets that otherwise he/she could have held and used until his/her death.

Note that this is likely a much more theoretical planning option than one most clients will use. While a Warren Buffet or Bill Gates might be willing to give $13,000,000 or so with little impact on their perceived security, most clients without such high net worth will likely balk at parting with large gifts of that sort.

Edward K. Zollars, CPA

Ed Zollars joined the firm in May 1982, following graduation from Arizona State University earlier that month. Ed received the Moeur Award from ASU for graduating at the top of his undergraduate class. He passed the CPA exam that same month, and received his CPA certificate in 1984 after fulfilling Arizona's two year experience requirement.

Ed is a native of the Valley of the Sun, born at the former Williams Air Force Base. His father was in the U.S. Air Force until Ed was four years old, with assignments at Williams Air Force Base and near San Antonio, Texas during that time. After his father left the Air Force, the family moved back to Phoenix as his father took an assignment with the Arizona Air National Guard. Ed grew up and attended school in Phoenix, graduating from Carl Hayden High School in 1978.

Ed was previously a member of the American Institute of Certified Public Accountants (AICPA) Tax Section Tax Technology Committee. He currently a member of the Arizona Society of Certified Public Accountants Information Technology Committee. Ed has spoken at a number of meetings of the AICPA Tax Section, as well as making presentations at the 1999 AICPA National Conference on Federal Taxes. Ed has also made presentations for the Arizona Society of CPAs, the Florida Institute of CPAs, the Oklahoma Society of CPAs and the Virgina Society of CPAs.

In the past year, Ed spoke at the Virginia Accounting and Auditing Conferences in Roanoke, VA and Virginia Beach, VA sponsored by the Virginia Society of CPAs and Virginia Tech University, at the Arizona Federal Tax Conference, the Oklahoma Tax Conference and the Ohio State and Federal Tax Conference.

Many of Ed's more recent presentations to CPAs are archived at the CPEMaterials web site that he maintains. Ed also publishes a weekly podcast on tax matters at his Podcast website.

He was the author of an article on the final regulations on the sale of a principal residence that appeared in the March 2003 edition of *Practical Tax Strategies*, and a number of articles in the Tax Technology column of *The Tax Adviser*. He has been quoted in tax planning articles published in the *Investors Business Daily*, *Your Company, Forbes* and other magazines. He has participated in the AICPA's 1998, 1999, 2000 and 2001 Top Ten Technology Issues roundtables sponsored by the AICPA that are used to select the ten most important technology issues facing businesses today.

In addition to speaking at conferences, Ed has attended numerous national conferences on tax planning issues sponsored by the AICPA in recent years, including the 1997, 1998 and 1999 National Conferences on Federal Taxes (Washington, DC), 1997, 2000 and 2003 Advanced Estate Planning Conference (Phoenix, Boston and Scottsdale), 2001 AICPA Practitioner's Symposium (Orlando, FL), the 1998 and 1999 Employee Benefits Conference (Miami, FL and Phoenix, AZ) and the 2001 High Income Individuals Conference (Miami, FL). These conferences bring together CPAs from across the country with an interest in those areas to listen to presentations by nationally recognized experts in the fields involved.

Ed has been involved with online computer activities for many years, previously serving as a online forum sysop for discussion groups on the CompuServe information service, including the national Accountants' forum sponsored by the American Institute of CPA's and was part of a group that successfully formed a tax discussion group on the Internet (misc.taxes.moderated). He also has served as a member of a national users advisory committee that was formed by WordStar, International.

You can find a number of Ed's discussions on tax issues archived at the Google Groups web site, where you can browse the entire misc.taxes.moderated newsgroup archives. If clicking above didn't work (because you don't have a newsreader properly configured), you should be able to follow the group and read the various tax related discussions by using this link to the Google Groups misc.taxes.moderated page.

Ed current moderates the misc.invest.financial-plan newsgroup on usenet.

Ed is a sports fan. He is also a member of Prince of Peace Lutheran Church in Phoenix and has previously served as a member of the board for the endowment foundation of the church and is currently church Financial Secretary.

Yesenia Simmons
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Yesenia Simmons is a Certified Public Accountant and the founder of YB Company LLC and Phoenix Tax Studio LLC. Both firms are located in Central Phoenix and provide exceptional tax, accounting and consulting services to established businesses and successful professionals.

Mrs. Simmons has been recognized as a recipient of the “40 Hispanic Leaders Under 40 Award” by Arizona Hispanic Chamber of Commerce. She has also received the Student Hall of Fame Award from the WP Carey School of Business at Arizona State University, where she earned a Masters in Taxation.

Mrs. Simmons is Managing Director of Golden Seeds, a discerning group of investors, seeking and funding high-potential, women-led businesses. Yesenia is also a member of the Arizona Society of CPAs and a Chair Woman of the Arizona Association of CPA Firms. She serves on the board of the Girl Scouts Arizona Cactus Pine Council and previously served as the President of Dobson Ranch Toastmasters and as a member of the ASU National Alumni Council.

Mrs. Simmons is a frequent volunteer and speaker at various organizations. She has a passion for increasing financial knowledge in the community and loves to read, exercise, travel, and spend time with her wonderful husband and two sons.

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Thala practices public accounting from offices in Phoenix and Sun City, Arizona. Her practice concentrates on compliance and tax planning for individuals, trusts, estates, partnerships, and closely held small corporations.

She served on the Internal Revenue Service Electronic Tax Administration Advisory Committee (ETAAC) for three years where she was responsible for providing information used in the tax preparer section of the committee's 2002 – 2004 Congressional reports. She has testified at the House of Representative's Committee on Small Business about IRS audits and on the Estate Tax. Thala has participated in round tables at both the Senate Finance Committee and House of Representatives Committee on Small Business regarding small business tax issues. She has also presided over several roundtable discussions at the Small Business Administration, Office of Advocacy, Washington, DC as a regional Tax Advisory Chair.

Thala has spoken at Phoenix Tax Workshop where she a member of their Advisory Board. She is a past president of Valley Estate Planers and is secretary of The Arizona Forum for the Improvement of Taxation (AFIT) Board. She is Co-tax chair of the National Small Business Network.

She has previously served as the chairperson for the Arizona Society of CPAs Liaison Committees to both the Internal Revenue Service and Arizona Department of Revenue.

Thala has also spoken to the Arizona Bar Association on Elder Care issues. In addition, she has served as a panelist on the Internal Revenue Service webcast series, “TaxTalkToday.”

She taught continuing education to CPAs throughout the country for 4 years. During that time, she was responsible for updating the firms Individual and Business Staff Training, Advance Individual Tax Preparation, Alternative Minimum Tax and Estate, Gift and Trust manuals. In addition, she taught Financial and Estate Planning for Over 55 and Under 40 and Business Succession Planning.

Thala received her Bachelor of Accounting Degree, Cum Laude, from the State University of New York at Albany. She received her Masters of Taxation from Arizona State University.