Article from

Taxing Times

June 2018

Volume 14, Issue 2

Repealed: Corporate AMT and Three Insurance Tax Provisions

By Jean Baxley and Catherine Moore

The so-called Tax Cuts and Jobs Act ("TCJA")[1] fully repealed the corporate alternative minimum tax ("AMT"), which affects insurance companies as well as regular corporations. The TCJA also repealed three insurance-related Internal Revenue Code ("Code") sections including: (i) section 806 (small life insurance company deduction); (ii) section 815 (distributions from policyholders surplus accounts); and (iii) section 847 (special estimated tax payments). A brief summary of these repealed provisions and associated transition rules follows.

Repeal of corporate AMT. The TCJA (section 12001) repealed the corporate alternative minimum tax ("AMT") for tax years beginning after Dec. 31, 2017, *i.e.*, generally for tax year 2018 and thereafter for calendar year taxpayers. Corporations, including life and nonlife insurance companies, which had been subject to the minimum income tax are no longer required to compute a tentative minimum tax and pay an "add-on" income tax to the extent that the corporation's tentative minimum tax exceeds its regular tax liability for the current year. At an estimated negative $40.3 billion,[2] AMT repeal is the most impactful, revenue-wise, of the four provisions discussed in this article.

Taxpayers that have accumulated alternative minimum tax credits ("AMT Credits") can receive refunds of these credits beginning in tax year 2018 in an amount equal to 50 percent of their excess AMT credits as defined in the TCJA for each year through 2020. As an example, if a taxpayer has AMT Credits of $101 as of Dec. 31, 2017 and taxable income of $100 for the 2018 tax year and uses $21 of the credits to eliminate tax on the $100 income (at the 2018 tax rate of 21 percent), this leaves $80 of unused AMT Credits for 2018, which are considered "excess" AMT Credits under the TCJA. For 2018, 50 percent of these "excess" AMT Credits, *i.e.*, $40, is refunded to the taxpayer—leaving $40 in AMT Credits to be applied in 2019 through 2021.

As of the 2021 tax year, any remaining AMT Credits will be refunded in full. Thus, the full amount of a taxpayer's AMT Credits as of Dec. 31, 2017 will be allowed as refunds in taxable years from and including 2018 through 2021.

The AMT credit's status as a refundable credit may give rise to some unexpected, or even unintended, consequences. A taxpayer's ability to obtain a full refund of its AMT Credits, for example, may be limited in situations where there has been an ownership change such that certain limitations under section 383 apply. Additionally, there is a question whether refunds of excess AMT Credits would be subject to a "sequestration" haircut (typically between 6 and 7 percent) under federal budget rules.

INSURANCE COMPANY PROVISIONS

Repeal of small insurance company deduction. Section 806 previously provided a deduction for life insurance companies with assets of less than $500 million after application of certain controlled group rules ("small" companies). The deduction for any taxable year was 60 percent of so much of the tentative small life insurance company's taxable income ("LICTI") for such year as did not exceed $3 million, reduced by 15 percent of the excess of LICTI over $3 million. The maximum deduction permitted was $1.8 million. With the phase-out, any life insurance company with a tentative LICTI of $15 million or greater was not entitled to this special deduction.

The TCJA (section 13512) repealed the small life company deduction effective for tax years beginning after Dec. 31, 2017, *i.e.*, generally for tax year 2018 and thereafter for calendar year taxpayers. No transition rule was provided. The TCJA did not reform the preferential treatment afforded to small nonlife insurance companies under section 831(b).

Many life insurance companies failed to qualify for this deduction prior to its repeal; accordingly, the revenue estimate associated with this repeal is relatively minimal, *i.e.*, $200 million from 2018 to 2027.[3]

Repeal of special rule for distributions to shareholder from pre-1984 policyholders surplus account. Section 815 is a holdover from the pre-1984 Act "phased" tax system. Section 815(a) imposed a tax on any distribution determined to be from the life insurance company's pre-1984 Act policyholders surplus account ("PSA"). Section 815(b) provided a three-tiered ordering rule for characterization of distributions from a stock life insurance company with a PSA balance: a distribution was treated first out of the shareholders surplus account ("SSA"), second out of the policyholders surplus account ("PSA"), and third out of other accounts.

> Corporations … are no longer required to compute a tentative minimum tax and pay an "add-on" income tax to the extent that the … minimum tax exceeds its regular tax liability for the current year.

The TCJA (section 13514) repealed section 815 effective for tax years beginning after Dec. 31, 2017, *i.e.*, generally for 2018 and thereafter for calendar year taxpayers. A transition rule provides that any life insurance company with an existing PSA balance as of Dec. 31, 2017, is required to take 1/8 of this balance into taxable income for each of the eight years starting with the first tax year beginning after Dec. 31, 2017 (*i.e.*, 2018–2025 for calendar year taxpayers). For purposes of this statutory transition rule, a life insurance company's taxable income prior to this inclusion shall not be treated as less than zero, *i.e.*, the PSA inclusion attracts income tax even if the life insurance company otherwise incurs a loss for the tax year.

Repeal of section 815 is expected to have minimal revenue impact, *i.e.*, less than $50 million per year from and including 2018–2027.[4] This minimal impact is due to the fact that few stock life insurance companies had a PSA balance as of 2017.

Repeal of elective deduction and related special estimated tax payment rules for property and casualty (P&C) insurance companies. Section 847 previously allowed an insurance company that was required to discount its reserves under section 846 an additional, optional deduction that did not exceed the excess of (i) the amount of undiscounted unpaid losses over (ii) the amount of the related discounted unpaid losses, to the extent the amount was not deducted in a preceding taxable year. In order to take this additional deduction, a special loss discount account had to be established and maintained for the taxpayer, and the taxpayer was required to make special estimated tax payments ("SETP") to cover the tax benefit of this additional deduction. Any unused SETP amounts were treated as section 6655 estimated tax payments for the 16th year after the year for which the SETP was made.

The TCJA (section 13516) repealed section 847 effective for tax years beginning after Dec. 31, 2017. Under the transition rule provided in the conference report for the TCJA,[5] a taxpayer that has an existing section 847 special loss discount account should include the balance of such account in income for the first taxable year beginning after Dec. 31, 2017, *i.e.*, generally for tax year 2018 and thereafter for calendar year taxpayers. The entire amount of existing (pre-repeal) SETPs is applied against the amount of additional tax attributable to the income inclusion from the release of the special loss discount account. Any excess estimated tax payments after the SETPs are used to offset this income inclusion are treated as regular estimated tax payments.

Repeal of section 847 is expected to have minimal revenue impact, *i.e.*, less than $50 million per year from and including 2018–2027.[6] ■

Jean Baxley is a managing director in the Washington National Tax office of Deloitte Tax LLP and may be reached at *jebaxley@deloitte.com*.

Catherine Moore is a senior consultant in the Washington National Tax office of Deloitte Tax LLP and may be reached at *catmoore@deloitte.com*.

ENDNOTES

1 Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

2 Joint Committee on Taxation, Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts and Jobs Act" (Dec. 18, 2017) ("JCT Estimate").

3 JCT Estimate.

4 JCT Estimate.

5 H. R. Conf. Rep. No. 115-446, 115th Cong., 1st Sess. (Dec. 15, 2017).

6 JCT Estimate.