Ballard Spahr LLP

taxtruths

A PUBLICATION OF THE BALLARD SPAHR TAX GROUP | VOLUME 1, ISSUE 2 – DECEMBER 2016

This publication highlights developments in areas of tax law of interest to our clients.

AN ANALYSIS OF TAX LAW PROPOSALS OF THE PRESIDENT-ELECT AND THE HOUSE

By Saba Ashraf, Wendi L. Kotzen, and Wayne R. Strasbaugh

President-elect Donald J. Trump made tax reform a highlight of his campaign. The President-elect's written plan is set forth on his campaign's website (the Trump Plan).[1] Portions of the Trump Plan are similar to the House Republican Blueprint for Tax Reform released in June 2016 by House Speaker Paul Ryan (R-WI) and House Ways and Means Committee Chair Kevin Brady (R-TX) (the House Plan).[2]

Over the course of the last year, the Trump Plan has evolved to become more similar to the House Plan. The House Plan contains more details, and some provisions of the Trump Plan are easier to understand when read in conjunction with comparable provisions in the House Plan. For these reasons, and because many believe that President-elect Trump will be agreeable to using the House Plan as the starting point for a bill—and even President-elect Trump himself has indicated he would be willing to defer to tax-writers in Congress on the particulars of tax reform legislation—it is useful to examine key features of both plans.

This article will examine:

- Individuals
  - Tax Rates and Brackets
  - Standard Deductions
  - Itemized Deductions
  - Childcare
  - Capital Gains Tax Rate and Other Investment Income
  - Payroll and Other Affordable Care Act Taxes
  - Individual Alternative Minimum Tax
  - Estate and Generation Skipping Transfer Taxes

IN THIS ISSUE:

WRITTEN AND EDITED BY:

Saba Ashraf
Wayne R. Strasbaugh
Wendi L. Kotzen
Joanna (Ying) Jiang
Christopher A. Jones

1. The Trump Tax Plan is available at: https://www.donaldjtrump.com/policies/tax-plan (visited Nov. 20, 2016).

2. A Better Way: Our Vision for a Confident America, Tax, June 24, 2016, is available at: https://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf

- Businesses
  - C Corporation Tax Rate
  - Income of Pass-Through Entities/Sole-Proprietorships
  - Taxation of Carried Interests
  - Immediate Deductions/Write-Offs of Investments
  - Interest Deduction
  - Other Business Deductions
  - Corporate Alternative Minimum Tax
  - International Tax
  - Infrastructure
- Internal Revenue Service
- What Happens Next?
- Future of Recently Issued Regulations and Soon-to-be-Issued Regulations
- Other Ballard Observations:
  - Effect on States
  - Accelerating Deductions/Deferring Income

Individuals

Tax Rates and Brackets

Currently, there are seven tax brackets for individuals ranging from 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%.[3]

House Plan: The House Plan would consolidate the rates into three brackets of 12%, 25%, and 33%. The levels of income at which these rates would apply do not appear in the House Plan.

Trump Plan: Like the House Plan, the Trump Plan will consolidate the seven brackets into three brackets at the same rates. While the House Plan does not provide the breakpoints as to what level of income the rates would apply, the Trump Plan includes such detail, which is set out in the attendant footnote.[4]

Ballard Spahr Observations: *While the tax rates under the Trump Plan are lower than the current rates, the levels of income to which the rates would apply would be lower for some brackets, so that in certain cases, a higher rate will apply to lower levels of income. Additionally, the taxable income base to which the Trump Plan rates will apply will differ markedly from the base that is subject to the current rates. Accordingly, the lower tax rate does not necessarily translate into lesser taxes under the Trump Plan.*

We note that other commentators have made the observation that the middle-income households have very little favoring them in the Trump Plan, and will get little by way of tax savings—in part because there is not much more cutting that can be done to their income taxes.

3. The 2016 brackets and income levels at which the rates apply are set forth below:

Single

Taxable Income	*Tax Rate*
\$0—\$9,275	10%
\$9,276—\$37,650	\$927.50 plus 15% of amount over \$9,275
\$37,651—\$91,150	\$5,183.75 plus 25% of amount over \$37,650
\$91,151—\$190,150	\$18,558.75 plus 28% of amount over \$91,150
\$190,151—\$ 413,350	\$46,278.75 plus 33% of amount over \$190,150
\$413,351—\$415,050	\$119,934.75 plus 35% of amount over \$413,350
\$415,051 or more	\$120,529.75 plus 39.6% of amount over \$415,050

Married Filing Jointly

Taxable Income	*Tax Rate*
\$0—\$18,550	10%
\$18,551—\$75,300	\$1,855 plus 15% of amount over \$18,550
\$75,301—\$151,900	\$10,367.50 plus 25% of amount over \$75,300
\$151,901—\$231,450	\$29,517.50 plus 28% of amount over \$151,900
\$231,451—\$413,350	\$51,791.50 plus 33% of amount over \$231,450
\$413,351—\$466,950	\$111,818.50 plus 35% of amount over \$413,350
\$466,951 or more	\$130,578.50 plus 39.6% of amount over \$466,950

4. Brackets and income levels at which rates would apply under the Trump Plan:

Single

Taxable Income	*Tax Rate*
Less than \$37,500	12%
More than \$37,500 but less than \$112,500	25%
More than \$112,500	33%

Married Filing Jointly

Taxable Income	*Tax Rate*
Less than \$75,000	12%
More than \$75,000 but less than \$225,000	25%
More than \$225,000	33%

Payroll taxes are largely unaffected by the Trump Plan and the House Plan.[5]

Standard Deductions

Under current law, an individual can take the following deductions:

1. The basic standard deduction (in 2016, $6,300 for single individuals, or $12,600 for married individuals filing jointly).
2. The additional standard deduction for individuals over 65 or blind (in 2016, $1,050).
3. The personal exemption for the taxpayer and spouse, and for children and dependents (in 2016, $4,050 for each person).

Under current law, an individual determines his or her taxable income by reducing adjusted gross income by any personal exemptions and by either the standard deductions, or his or her itemized deductions. An individual may claim a $1,000 tax credit for each qualifying child under the age of 17, which credit starts phasing out for single filers earning over $75,000 and for joint filers earnings over $110,000.

House Plan: The House Plan would replace all of 1) the basic standard deduction, 2) the additional standard deduction, and 3) the personal exemptions with a new larger standard deduction of $12,000 for single individuals with no children, $18,000 for single individuals with a child in the household, and $24,000 for married individuals filing jointly. In addition, the child credit and the personal exemptions for dependents will be rolled into and replaced by a credit of $1,500 per child.

Trump Plan: The Trump Plan will increase the standard deduction for joint filers to $30,000 from $12,600, and to $15,000 from $6,300 for single filers. The personal exemptions will be eliminated.

Ballard Spahr Observations: *It has been noted that the reasons the Trump Plan would increase many families' taxes include not only that the new consolidated tax brackets would mean that taxable income was sometimes subject to a higher tax rate, but also that the increase in the standard deduction would be less than the loss of personal exemptions for many families, as well as the fact that the Trump Plan would repeal the head of household filing status, which applies to unmarried taxpayers with dependents.*[6] *In response to such assertions, Steven Mnuchin, President-elect Trump's pick to head the Treasury Department, recently stated that "[w]hen we work with Congress and go through this, it will be very clear. This is a middle-income tax cut. And the child-care credit is a big aspect of this."*[7]

Itemized Deductions

House Plan: All itemized deductions will be eliminated except for the mortgage interest deduction and the charitable contribution deduction.

Trump Plan: Itemized deductions will be capped at $200,000 for married-joint filers or $100,000 for single filers.

Ballard Spahr Observations: *One of the most notable tax deductions eliminated under the House Plan and impacted by the Trump Plan would be the deduction for state and local taxes paid, which is the single-largest itemized deduction.*

Child Care

House Plan: As noted above under "Standard Deduction," the child credit and the personal exemptions for dependents will be rolled into and replaced by a child credit of $1,500.

5. See Who Benefits From Trump's Tax Plan, Nov. 13, 2016, available at http://www.npr.org/2016/11/13/501739277/who-benefits-from-donald-trumps-tax-plan (visited Nov. 21, 2016); Lee Sheppard, Trump's Tax Plan, Nov. 13, 2015, available at http://www.forbes.com/sites/leesheppard/2016/11/13/trumps-tax-plan/#68e5053b1110 (visited Nov. 21, 2016).

6. Lily, L. Batchelder, Families Facing Tax Increases Under Trump's Tax Plan, Oct. 28, 2016, available at http://www.taxpolicycenter.org/publications/families-facing-tax-increases-under-trumps-tax-plan-0 (modified republished at TaxNotes.com on Nov. 22, 2016).

7. Tom Anderson, Trump's Plan to Help Middle Class Using Child-Care Tax Breaks, Dec. 1, 2016, available at http://www.cnbc.com/2016/12/01/trumps-plan-to-help-middle-class-using-child-care-tax-breaks.html (visited Dec. 1, 2016).

Trump Plan: The Trump Plan would add a new deduction for child and dependent care expenses, and increase the earned income tax credit for working parents who would not benefit from the deduction. The plan would also provide a new savings account related to child and dependent care.

Capital Gains Tax Rate and Other Investment Income

House Plan: Individuals would be able to deduct 50% of their net capital gains, dividends, and interest income, leading to marginal tax rates on such income in each taxpayer bracket of 6%, 12.5%, and 16.5% (reduced from 20%). In addition, the House Plan would repeal the 3.8% NIIT imposed under the Affordable Care Act.

Trump Plan: The Trump Plan would retain the exiting capital gains rate structure (maximum rate of 20%). However, like the House Plan, it would repeal the 3.8% NIIT.

Ballard Observations: *Currently, while favorable tax rates apply to the taxation of capital gains and dividends, there is not a preferential rate for interest income.*

Payroll and Other Affordable Care Act Taxes

House Plan: Payroll taxes are generally unaffected by the House and the Trump Plan. What about the 0.9% payroll tax that was enacted as part of Affordable Care Act, also known as "Obamacare"?[8] The House Plan states that the taxes enacted as part of the Affordable Care Act will be repealed as part of the proposal to repeal the entire law (specifically referencing the repeal of the 0.9% additional Medicare payroll tax, the medical device tax, and the 3.8% NIIT). In other words, while the House Plan assumes a repeal of these taxes, it does not make the repeal part of the House Plan dealing with taxes. Rather, it assumes they will be repealed as a separate action.

Trump Plan: The Trump Plan is more cryptic. It specifically states that the 3.8% NIIT will be repealed. However, it makes no mention of repealing the other taxes enacted by the Affordable Care Act.

Individual Alternative Minimum Tax

House Plan: This would be repealed.

Trump Plan: This would be repealed.

Estate and Generation Skipping Transfer Taxes

House Plan: The estate and generation skipping transfer taxes would be repealed. There is no mention of the gift tax in the House Plan.

Trump Plan: The Trump Plan will repeal the estate tax, but capital gains held until death will be subject to tax. The first $5 million of capital gains (or $10 million in the case of a married couple) will be excluded, "to exempt small businesses and family farms." The Trump Plan is silent as to gift and generation skipping taxes.

Businesses

Tax Rate on C Corporations

House Plan: The corporate tax rate would be reduced to a flat rate of 20% (compared to a current maximum rate of 35%).

Trump Plan: The Trump Plan would lower the "business tax rate" (presumably meaning the tax rate applicable to C corporations) from 35% to 15%. "This rate is available to all businesses, both small and large, that want to retain the profits within the business."

8. Under the Affordable Care Act, an individual becomes liable for an additional 0.9% Additional Medicare Tax if the individual's wages, compensation, or self-employment income (together with that of his or her spouse if filing a joint return) exceed the threshold amount for the individual's filing status:

Filing Status	*Threshold Amount*
Married filing jointly	$250,000
Married filing separately	$125,000
Single	$200,000
Head of household (with qualifying person)	$200,000
Qualifying widow(er) with dependent child	$200,000

Ballard Spahr Observations: *It is unclear what the quoted language under the Trump Plan means. See discussion below under "Income of Pass-Through Entities/ Sole-Proprietorships."*

Income of Pass-Through Entities/Sole-Proprietorships

S corporations, and entities treated as partnerships for tax purposes (which includes most state-law LLCs and state-law partnerships) do not pay an entity level federal income tax, similar to the one C corporations pay. Instead, income of the pass-through entities flows or passes through to the owners of the entities, so that the owners are required to pay taxes on the income at the tax rates otherwise applicable to their income, regardless of whether the pass-through entity distributes the income or not. A corollary to the pass-through of income is that there is no further tax to the owner of a pass-through entity when the income that has already "passed-through" is distributed. Therefore, for owners of the entities who are individuals, the income that passes through is subject to the tax rates for income of individuals. Under current law, the highest rate on the income of C corporations is 35%, and on the ordinary income of individuals is 39.6%.

> *One of the most notable tax deductions eliminated under the House Plan would be the deduction for state and local taxes paid, which is the single largest itemized deduction.*

House Plan: A new special tax rate would apply to the income of individuals from their sole proprietorships or pass-through entities they own. This income would be taxed at a maximum rate of 25% (and not 33%). The House Plan suggests that this approach to the tax treatment of "business income" will build on concepts developed by Rep. Vern Buchanan (R-FL) in his Main Street Fairness Act (H.R. 5076).

Ballard Spahr Observations: *Rep Buchanan's Main Street Fairness Act provides that the active business income that passes through to individual owners of sole-proprietorships and pass-through entities would not be subject to a higher rate of tax than the rate of tax that corporate income is subject to. Thus, if the Main Street Fairness Act is to serve as the basis of interpretation of the House Plan, then it would simply mean that the income that flows or passes through from pass-through entities and sole proprietorships to an individual could not be subject to a higher tax rate than that applicable to C corporation income, and per the House Plan would be subject to a cap of 25%. However, it is unclear that the House Plan's proposal is this simple. The House Plan goes on to say that under its approach for taxing small businesses, "sole proprietorships and pass-through businesses will pay or be treated as having paid reasonable compensation to their owner-operators. Such compensation will be deductible by the business and will be subject to tax at the graduated rates for families and individuals." Accordingly, an amount equal to the "reasonable compensation" that is paid or would be payable to owners that also perform services for the pass-through entity would be subject to the regular rates for ordinary income, but the remainder of the income would be subject to a rate no greater than 25%. Determinations of what is "reasonable compensation" can be highly subjective. It is unclear what would be considered reasonable compensation. The language of the House Proposal also leaves ambiguity as to whether the special rate applies only to "active business income" (and what that would include), and whether the special rate would be available only to "small businesses" (and what that would include).*

Trump Plan. The provisions of the Trump Plan relating to the taxation of income of pass-through entities are capable of several different interpretations. The current version of the Trump Plan contains only the following statements on this point: "The Trump Plan will lower the business tax rate from 35% to 15% . . . This rate is available to *all businesses, both small and large, that want to retain the profits within the business*." (Italics added.) There is considerable uncertainty as to whether under the Trump Plan the income of pass-through entities that use the 15% tax rate would be subject to double taxation (like income of C corporations) when distributed. Based on statements made or published by President-elect Trump or his campaign, some believe that under the Trump Plan, the availability of the 15% rate would be based on an election. Where such an election is made with respect to a "small business," there would be no double taxation of income. However, where the election is made with respect to a "large business," there would be a second-level tax on "dividends" by the large business.

Ballard Spahr Observations. *There seem to be several different interpretations of the proposal, including that (1) it provides that all the income of pass-through entities will be subject to a lower 15% rate, and (2) the 15% rate is available only if an election is made, and where the election is made by a large business, a second level tax is imposed on any income distributed by the pass-through. If such an election is in fact proposed, it is unclear whether the election would be made at the entity level or by each taxpayer-owner separately with respect to its allocable share. It is also unclear whether the 15% rate would apply to all income or only to income in excess of "reasonable compensation."*

We note that the conflicting interpretations and confusion are based not only on the language in the written plan, but also on the often contradictory statements made by the Trump campaign, or on the Trump website. For example, the Trump Policy on Business Taxes, which was released on September 19, 2016, and provided details as to the election, was reportedly removed from the website hours after it was posted.[9]

At this point, there appears to be no clear consensus as to what the Trump Plan is suggesting as to taxation of income of pass-through entities.

9. September 19, 2016 statement published and later withdrawn available at: http://src.bna.com/iGR ; see also Howard Gleckman, The Long, Strange Journey of Donald Trump and Partnership Taxes, Sept. 20, 2016, available at: http://www.forbes.com/sites/beltway/2016/09/20/the-long-strange-journey-of-donald-trump-and-partnership-taxes/#3419d7e56fa0 (visited Nov. 28, 2016); Lynneley Browning, Trump Confusion on Tax Plan Leads to Wider Estimates on Cost, Sept. 19, 2016, available at http://www.bloomberg.com/politics/articles/2016-09-19/trump-confusion-on-tax-plan-leads-analyst-to-widen-range-of-cost (visited Nov. 27, 2016).

Taxation of Carried Interests

A carried interest is an interest in a pass-through entity (specifically an entity treated as a partnership for tax purposes) that entitles its owner to a share of the pass-through's profits that is disproportionately higher than the amount of capital that its holder has contributed to the pass-through. Where a pass-through entity's income consists largely of capital gains, this means that an owner of a carried interest in the pass-through entity will have income relating to its carried interest that is taxed at the favorable capital gains tax rate–even where the holder of the carried interest was granted such interest to compensate or incentivize him. Although a carried interest can be in a pass-through entity engaged in a wide variety of businesses and industries (for example, real estate development), their ownership by managers of investment funds has been widely publicized and is often characterized as a "loophole" that allows fund managers to be taxed at low capital gains tax rates even though the managers are granted the carried interests to compensate them for their services.

House Plan: Does not cover this.

Trump Plan. The Trump Plan states that the carried interest will be taxed as ordinary income.

Ballard Spahr Observations: *A carried interest is essentially an interest in a pass-through entity. Thus, if the Trump Plan is interpreted to mean that the income that flows through to owners of pass-through entities is subject to a preferential tax rate of 15%, then this would mean that even though the Trump Plan states that the carried interest would be taxed as ordinary income, it could still be subject to a tax rate of only 15%. As noted above, it is quite unclear what the Trump Plan suggests as to taxation of income of pass-through entities. Accordingly, it also is unclear what the Trump Plan proposes as to the taxation of carried interests, and whether the proposed taxation extends to carried interests held in pass-through entities engaged in businesses in a variety of industries (ex. real estate) or only to investment funds.*

Immediate Deductions/Write-Offs of Investments

House Plan: Currently, businesses may depreciate property they purchase over a certain period of years. Under the House Plan, businesses may immediately deduct or "write-off" all of the cost of business investments. This immediate deduction would apply to investments in tangible property (such as equipment and buildings) and intangible assets (such as intellectual property). It will not apply to land.

Trump Plan: "Firms" engaged in manufacturing in the United States may elect to expense capital investment and lose the deductibility of corporate interest expense or to deduct net corporate interest expense.

Ballard Observations: *First, while the House Plan refers to "businesses," the Trump plan refers to "firms." We assume that the term "firms" includes C corporations and other forms in which businesses are conducted. Second, while the Trump Plan proposes to allow immediate expensing of "capital investment" for firms engaged in manufacturing it is unclear whether this means assets such as buildings, equipment, and intellectual property (like in the House Plan), or whether the term "capital investment" includes even the purchase of capital assets, such as stock of a corporation or notes purchased for investment. Third, while the Trump Plan provides an election for the immediate and full deduction to of capital investment to firms "engaged in manufacturing," it is unclear exactly what that means, and whether that is intended to cover businesses engaged in real estate development. Finally, we note (as the House Plan states) that immediate expensing essentially moves to taxation on a cash-flow basis rather than an on an income basis.*

Interest Deduction

House Plan: Interest would be deductible by "job creators" (presumably meaning all businesses) only against interest income (and interest expenses carried forward indefinitely). Other than that, the deduction for interest would be eliminated.

Trump Plan: The Trump Plan "eliminates most corporate tax expenditures except for the Research and Development credit." But, as discussed above under "Immediate Deductions/Write-Offs of Investments," the Trump Plan allows firms to deduct interest under certain circumstances.

[W]e note (as the House Plan states) that immediate expensing essentially moves to a taxation on a cash-flow basis rather than on an income basis.

Other Business Deductions

House Plan:

- Net Operating Losses (NOLs) would be allowed to be carried forward indefinitely and would be increased by an interest factor that compensates for inflation and "a real return on capital to maintain the value of amounts that are carried forward." The carryback of NOLs would not be permitted. But there would be a limit on the use of NOLs—they would be deducted against a limit of 90% of the net taxable income for a tax year.
- Section 199 deduction for domestic production. Other business deductions, such as this one, would be eliminated.
- The R&D tax credit and LIFO would be retained.

Trump Plan: The Trump Plan would eliminate most corporate tax expenditures except for the R&D credit.

Corporate Alternative Minimum Tax

House Plan: The House Plan would repeal the corporate alternative minimum tax.

Trump Plan: The Trump Plan would repeal the corporate alternative minimum tax.

International Tax

The United States has a worldwide tax system, which means that business income is taxed, regardless of whether it is earned in the U.S. or abroad. However, companies can defer paying U.S. tax on active foreign income (rather than passive or investment income) earned by its corporate subsidiaries, until such time as it is brought back to the U.S. by way of dividends.

House Plan: The worldwide tax system would be replaced with a 100% exemption for dividends from foreign subsidiaries. While not explicitly stated in the House Plan, this appears to be for dividends from active business income. The House Plan generally would repeal the Subpart F rules, but the foreign personal holding company rules that focus on passive foreign income–such as dividends, interest and royalties–would be retained. There would be a one-time lower tax on accumulated earnings held in cash or cash equivalents to be brought back to the United States. "[F]oreign earnings" that have accumulated overseas under the old system [may] be brought home. Accumulated foreign earnings will be subject to tax at a 8.75% rate to the extent held in cash or cash equivalents and otherwise will be subject to tax at a 3.5% rate (with companies able to pay the resulting tax liability over an eight-year period).

Trump Plan: The Trump Plan "provides a deemed repatriation of corporate profits held offshore at a one-time tax rate" of 10%. The Trump Plan does not offer as much detail as the House Plan, but its expectation appears to be that significant future profits will not be accumulated offshore because of the more favorable U.S. business tax rates that will be available.

Ballard Observations: *Immediately prior to the publication of this article, President-elect Trump suggested, in a series of tweets, that he'd impose a 35% import tariff on goods sold by U.S. companies that have moved jobs overseas. (It is unclear how a tariff only on specific companies would be imposed.) House Majority Leader Kevin MCarthy (R-CA) has indicated since that the Republicans' preferred path for addressing the problem of companies sending jobs overseas is to have major corporate tax reform rather than impose tariffs.*

Infrastructure

House Plan: Does not cover this.

Trump Plan: The Trump Plan itself does not cover this. However, on October 27, 2016, two senior policy advisors to the Trump campaign released a paper stating that the "government would provide a tax credit equal to 82% of the equity amount [put in by investors in infrastructure projects]." The details of this tax credit remain to be revealed. Some commentators have, however, noted that such a generous tax credit would have an incredibly high cost.[10]

Internal Revenue Service

House Plan: The IRS would be rebuilt, with the restructured IRS centering on three major units: families and individuals, businesses, and an independent "small claims court" unit.

Trump Plan: The Trump Plan does not address this.

What Happens Next?

While many seem quite certain that major tax law changes will be coming in the next year, the exact form of such tax law changes is quite uncertain. One of the biggest questions is whether there will be one large tax reform bill to incorporate all or virtually all of the proposals, or whether there will be several bills that address the proposals separately.

While it is impossible to predict anything with certainty in the existing political climate, current indications seem to be that the proposals will be taken up by separate bills, rather than all rolled into one proposal. (Certainly, the House Plan contemplates that the elimination of the 0.9% payroll tax, the medical device tax, and the 3.8% NIIT tax will be done via a bill other than a tax bill.) An economist who helped write the President-elect's tax proposals recently floated a plan for Congress to tackle

10. See Brad Plumer, Donald Trump's Infrastructure Plan Wouldn't Actually Fix America's Infrastructure Problems, Nov. 18, 2016, available at http://www.vox.com/policy-and-politics/2016/11/16/13628382/donald-trump-infrastructure-plan (visited Dec. 1, 2016).

business taxes—including a rate cut on companies' overseas earnings—quickly next year, while postponing consideration of individual income taxes.[11] It is unclear whether any strings will be attached to the lower tax rate on repatriated earnings. In the early 2000s, a similar program was enacted with rules nominally requiring using the repatriated money for investment in the repatriating companies' businesses in the U.S.

Most states generally conform to the U.S. Internal Revenue Code for purposes of determining taxable income for businesses. If the House Plan or the Trump Plan are adopted, it would mean significant changes to the way in which income subject to income tax is determined for businesses, and likely a significant reduction of "taxable income" that is subject to tax by the states.

Future of Recently Issued Regulations and Soon-to-be-Issued Regulations

While the U.S. Treasury Department has recently stated that it will continue its work on high-priority guidance projects, including the finalization of the temporary passive foreign investment company rules, that sunset at the end of 2016, and the inversion regulations that sunset in January, 2017, House Majority Leader Kevin McCarthy (R-CA) reportedly sent a letter recently cautioning federal agencies against "finalizing pending rules or regulations in the Administration's last days." The letter warns agencies of the possibility that Congress might overturn any rules that are finalized through the use of the Congressional Review Act (CRA). The CRA allows Congress to prevent a rule from taking effect. Pursuant to the CRA, if an agency submits a final rule to Congress within a period that is less than 60 session days of the Senate or 60 legislatively days of the House before the end of the session, the regulations may be eliminated and Treasury may be prevented from issuing similar regulations in the future. The recently finalized Section 385 regulations (relating to debt/equity) may be considered pursuant to the CRA, as are the recent regulations under Sections 707 and 752. This could impact regulations finalized since the spring of 2016.

11. See Aaron Lorenzo, Trump Adviser Seeks Quick, Separate Bill on Business Taxes, Nov. 17, 2016, available at http://www.bloomberg.com/news/articles/2016-11-17/trump-adviser-seeks-quick-separate-bill-on-business-taxes, (visited Nov. 21, 2016).

Other Ballard Observations

Pressure on States

Most states generally conform to the U.S. Internal Revenue Code for purposes of determining taxable income for businesses. If the House Plan or the Trump Plan are adopted, it would mean significant changes to the way in which income subject to income tax is determined for businesses, and likely a significant reduction of "taxable income" that is subject to tax by the states. For example, in the case of corporations, the current expensing of the purchase price of property would mean a significantly smaller tax base.

States conform to federal tax law for several reasons, including administrative ease as well as reduced litigation costs. However, the reduction in the tax base, combined with the possible reduction in funding of the IRS (and therefore audits by the IRS, which often lead to similar state tax adjustments), and even further combined with the reduction in federal funding of many programs will mean that states may be likely to consider decoupling from the Internal Revenue Code (as revised by the House or Trump Plans). States also may be considerably more aggressive in enforcement of their tax laws, and may enact new laws providing for additional or higher state taxes to ensure sufficient revenues.

Accelerating Deductions/Deferring Income

While specific details of legislation that will be enacted are currently unknown, there is certain tax planning that taxpayers may wish to consider further, including:

- **Acceleration of tax deductions:** Under both the House and Trump Plans, many tax deductions will become limited or eliminated. Taxpayers may wish to engage in planning to accelerate these deductions (for example, interest for businesses, and itemized deductions for individuals).

- **Deferral of income:** Individuals and corporations may wish to engage in planning to defer income so that it will be subject to likely lower tax rates. We note that in the case of an installment sale, historically the tax rate that a payment is subject to is the rate applicable to the seller's income in the year of the receipt of the installment payment, and not the year of the sale. The 1981 tax act (commonly called ERTA), however, limited the benefit of a rate reduction for capital gains to sales and exchanges after the date of legislative committee action.
- **Negotiating for tax benefits in business transactions:** In negotiating a purchase price during mergers and acquisitions and other business transactions, buyers and sellers often consider the tax benefit to either side from the structure of the transaction. Particular attention should be paid to this in negotiating business transactions while legislation is pending and after new legislation is enacted, as the resulting tax benefits may be significantly higher than they are currently. For example, if an immediate tax deduction is allowed for the actual or deemed purchase of assets, but not for stock, then there would be considerable tax savings to a buyer from an actual or deemed asset purchase (including the purchase of an interest in a pass-through entity or of stock with a Section 338(h)(10) election). The agreement by a seller to an acquisition structure that is favorable to the buyer should take into account the savings the structure allowed the buyer to achieve.

The coming days should make the specific tax law priorities of President-elect Trump and Congress more clear. The Ballard Spahr Tax Group will continue to monitor the situation and will keep you informed of any developments.

IRS ISSUES PROPOSED REGULATIONS PROVIDING GUIDANCE ON THE TAX QUALIFICATION OF MUTUAL FUNDS

By Joanna (Ying) Jiang and Wayne R. Strasbaugh

On September 27, 2016, the Internal Revenue Service (IRS) issued proposed regulations (Proposed Regulations) that provide guidance relating to the gross income and asset diversification tests used to determine whether a mutual fund qualifies as a regulated investment company (RIC) for federal income tax purposes.[12] The IRS simultaneously announced that it no longer will issue rulings on whether a financial instrument constitutes a security for certain purposes applicable to RICs.[13] The Proposed Regulations, if adopted in their current form, would have a significant effect on RICs that hold investments in controlled foreign corporations[14] (CFCs) or passive foreign investment companies[15] (PFICs). Because of their situs outside the United States, CFCs and PFICs are subject to special Internal Revenue Code provisions designed to prevent deferral of federal income tax.

The Proposed Regulations address two issues that have caused ambiguity and confusion in the last decade: (1) what constitutes a "security" for purposes of determining RIC qualification under Section 851[16]; and (2) whether the

12. REG-123600-16, *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-09-28/pdf/2016-23408.pdf.

13. Rev. Proc. 2016-50, *available at* https://www.irs.gov/pub/irs-drop/rp-16-50.pdf.

14. Code § 957(a). The term "controlled foreign corporation" means any foreign corporation if more than 50% of : (1) the total combined voting power of all classes of stock of such corporation entitled to vote, or (2) the total value of the stock of such corporation, is owned (within the meaning of Code Section 958(a)), or is considered as owned by applying the rules of ownership of Code Section 958(b), by "United States shareholders" on any day during the taxable year of such foreign corporation. A "United States shareholder" is a United States person that owns 10% or more of the voting power of all classes of stock entitled to vote. Code § 951(b).

15. Code § 1297. A PFIC is defined as a foreign corporation that meets at least one of the two tests: (1) 75% or more of its income is derived from passive sources, or (2) 50% or more of the average fair market value of the assets it held during the year are passive income-producing assets. The U.S. taxpayer-investor in a PFIC is taxed according to an onerous excess-distribution regime under Code § 1291 unless the taxpayer makes either of two elections: the mark-to-market election under Section 1296 or the election to be treated as a qualified electing fund (QEF) under Code § 1295.

16. All "section" references are to the Internal Revenue Code of 1986 unless

income required to be included in taxable income (Deemed Income Inclusion) of a RIC from a CFC under Section 951(a)(1)(A)(i) or from a QEF under Section 1293(a)[17] will be counted for purposes of the gross income test and the asset diversification test under Section 851. This article will discuss the tax treatment of RICs and some key takeaways from the Proposed Regulations in detail below.

Definition of RICs

Section 851 sets forth the rules for a mutual fund to qualify as a RIC. To be treated as a RIC for the taxable year, a fund has to meet the gross income test and asset diversification test under Section 851(b). In addition, it generally must be registered under the Investment Company Act of 1940 (1940 Act).[18] The gross income test requires that a RIC must derive at least 90% of its gross income for each taxable year from specific sources, including (i) dividends and interest, (ii) gains from the sale or other disposition of stocks, securities, or foreign currencies, and (iii) other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stocks, securities, or currencies (Other Income).[19] The asset diversification test requires that at the end of each quarter, at least 50% of a RIC's total assets must be invested in cash and certain other qualifying securities.[20] For purposes of these two tests, the term "security" has the same meaning as when used in the 1940 Act.[21]

The Proposed Regulations, if adopted in their current form, would have a significant effect on RICs that hold investments in controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs). Because of their situs outside the United States, CFCs and PFICs are subject to special Code provisions designed to prevent deferral of federal income tax.

Benefits of Electing as a RIC

Subchapter C corporations are subject to income tax on their net taxable income at the corporate level without deducting the dividends distributed to the shareholders. At the same time, the shareholders of Subchapter C corporations are subject to individual income tax on receipt of dividend distributions. By contrast, RICs are taxed generally on a pass-through basis to the extent that they make dividend distributions of the income and gain that they realize, provided that they distribute at least 90% of their taxable income (exclusive of net capital gain).[22] Therefore, to the extent RICs make dividend distributions, only their shareholders are subject to income tax.

IRS's Historical Position

Definitions of Security and Qualifying Income

During the past decade, the IRS issued a number of private-letter rulings and other informal guidance to define "security" where specific guidance was lacking under the 1940 Act. Demand for additional IRS guidance increased as new derivative instruments were created for trading on the securities and commodities exchanges. At

otherwise stated.

17. If a RIC elects to treat a PFIC in which it is a shareholder as a QEF under Section 1295, it must include in its income its share of the QEF's income and gains, whether or not such income is distributed form the QEF to the RIC. *See* Code § 1293(a).

18. Code § 851(a)(1).

19. Code § 851(b)(2).

20. Code § 851(b)(3).

21. Code § 851(c)(6). According to Section 2(a)(36) of the 40 Act, "'[s]ecurity' means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

22. Code §§ 852(a)(1), 852(b)(2).

the beginning of 2006, the IRS issued Rev. Rul. 2006-1[23] which concludes that a derivative contract with respect to a commodity index is not a security for purposes of Section 851(b)(2). The ruling also holds that income from such a contract does not qualify as Other Income for purposes of Section 851(b)(2) because it is not derived with respect to the RIC's business of investing in stocks, securities, or currencies. As a result, such investments would not be useful for purposes of satisfying the gross income test and the asset diversification test under Section 851.

Rev. Rul. 2006-1 was modified and clarified by Rev. Rul. 2006-31[24], which states that Rev. Rul. 2006-1 was not intended to preclude a conclusion that income received from certain derivative instruments (such as certain structured notes) that create commodity exposure could qualify as Other Income under Section 851(b)(2) where the income was derived with respect to a fund's business of investing in stocks, securities, or currencies. After the issuance of Rev. Rul. 2006-31, the IRS issued a number of private-letter rulings concerning whether income and gain from certain instruments that provide RICs with commodity exposure constituted qualifying income for purposes of the gross income test. Somewhat abruptly, however, in July 2011, the IRS notified taxpayers that it would not issue further private-letter rulings addressing specific proposed RIC commodity-related investments while the IRS reviewed the issues and considered guidance of broader applicability.

Deemed Income Inclusions

Section 951(a)(1) requires a U.S. shareholder of a CFC to include in taxable income the shareholder's *pro rata* share of the CFC's "Subpart F" income[25] for the taxable year, regardless of whether the CFC actually distributes cash to the shareholder. Similarly, Section 1293(a) requires a U.S. person who holds shares in a PFIC that has elected to be treated as a QEF to include currently its *pro rata* share of the QEF's ordinary income and net capital gain in taxable income. Under the current Section 851(b)(flush language), Deemed Income Inclusions would constitute dividend income for purposes of the gross income test provided that the Deemed Income Inclusion amounts were distributed by the CFC or the PFIC to the RIC in the current taxable year out of current year earnings and profits.[26] Although Deemed Income Inclusions are included in the taxable income of a RIC, the Code does not address the treatment of these inclusions for purposes of the gross income test to the extent that any portion of the Deemed Income Inclusion is not actually distributed in the current taxable year. However, in numerous private-letter rulings issued prior to its 2011 guidance shutdown, the IRS ruled that Deemed Income Inclusions would constitute Other Income for purposes of the gross income test even if not distributed in the current year. Because of this consistency in administrative interpretation, taxpayers reasonably believed that Deemed Income Inclusions would be counted for purposes of the gross income test no matter if they were distributed or not.

Proposed Regulations

The preamble to the Proposed Regulations states that "[S]ection 38 of the 1940 Act, however, grants exclusive rulemaking authority under the 1940 Act to the U.S. Securities and Exchange Commission (SEC), including 'defining accounting, technical, and trade terms' used in the 1940 Act. Any future guidance regarding whether particular financial instruments, including investments that provide RICs with commodity exposure, are securities for purposes of the 1940 Act is therefore within the jurisdiction of the SEC." In line with the Proposed Regulations, the Proc. 2016-50 provides that the IRS ordinarily will not issue rulings or determination letters on any issue relating to the treatment of a corporation as a RIC that requires a determination of whether a financial instrument or position is a security under the 1940 Act. Therefore, the IRS likely will concede to the SEC exclusive authority in providing guidance whenever these determinations have to be addressed in the future.

23. *See* https://www.irs.gov/irb/2006-02_IRB/ar06.html.

24. *See* https://www.irs.gov/irb/2006-25_IRB/ar07.html.

25. Code § 952. Of principal concern to RICs is the component of Subpart F income that constitutes "foreign personal holding company income" (as defined in Code § 954(c)) – the type of income that would typically be recognized by an offshore investment fund.

26. Code § 316(a) and the Treasury regulations thereunder provide that corporate distributions are made first out of the earning and profits for current taxable year to the extent thereof before prior year's earnings and profits will be deemed distributed.

Regarding Deemed Income Inclusions from CFCs and QEFs, the Proposed Regulations specify that a Deemed Income Inclusion is treated as a dividend for purposes of Section 851(b)(2) *only* to the extent that the current distribution requirement in Section 851(b) is met. The proposed regulations further provide that, for purposes of Section 851(b)(2), a Deemed Income Inclusion from a CFC or from a PFIC also does not qualify as other income derived with respect to a RIC's business of investing in stock, securities, or currencies. This represents a reversal of the IRS's historical position discussed in the preceding Section III of this article.

Implications of the Proposed Regulations

Going forward, the IRS will defer to the SEC's determination on what constitutes a "security" for purposes of establishing RIC status under Section 851. Taxpayers cannot, however, be certain whether and when the SEC will issue guidance on the many derivative instruments that now are being actively traded and they may need to take a more cautious approach to investment in derivative securities.

Because the treatment of Deemed Income Inclusions provided in the proposed regulations represents a reversal of the IRS's prior rulings, RICs holding interests in CFCs or QEFs should ensure (to the extent that they can) that Deemed Income Inclusions are distributed in a timely manner and in sufficient amounts to maintain RIC status and should invest in foreign investment funds that have distribution policies that are consistent with the new IRS qualification requirements. RICs may have to time their sales of CFC and QEF shares to assure that they receive sufficient current distributions to permit Deemed Income Inclusions to be qualifying income. Investment in offshore funds with annual or quarterly dividend payment policies may be less desirable since RICs may not be able to collect the requisite amount of distributions before selling off their shares. In some cases, it may be desirable for RICs to reduce or limit their investments in CFCs to less than 10% of the voting power in order to escape mandatory Deemed Income Inclusions under the CFC provisions and fall under the elective Deemed Income Inclusion regime applicable to PFICs.

Under Treas. Reg. § 1.1295-1(i)(3), a RIC may automatically terminate an existing QEF election by making a mark-to-market election for the same PFIC interest. RICs should therefore consider the feasibility of making the mark-to-market election (in lieu of the QEF election) with respect to present and future PFIC investments.

RICs that previously have received favorable private-letter rulings from the IRS in connection with their investments in commodity-linked notes, CFCs, and PFIC should seek legal advice as to the extent such prior guidance may be relied upon.

Besides affecting RICs that hold interests in CFCs or PFICs, the proposed regulations also may have an impact on publicly traded partnerships (PTPs) that are not registered under the 1940 Act. PTPs are taxable as partnerships only as long as they satisfy a 90% gross income test under Section 7704(d) that is modeled on the RIC gross income test. Specifically, under Section 7704(d)(4), any income that qualifies under the RIC test will be treated as qualifying income for Section 7704 purposes. Therefore, disqualification of income that PTPs realize from commodity-linked notes and CFC and PFIC investments could result in their taxability as Subchapter C corporations and liability for corporate income tax.

The Proposed Regulations apply to taxable years that begin on or after the date that is 90 days after the date of publication in the *Federal Register* of a Treasury decision adopting the proposed regulations as final regulations. However, the IRS policy of not ruling on the status of a financial instrument as a "security" takes effect regardless of whether the Proposed Regulations are ever adopted. The IRS has requested comments as to whether Rev. Rul. 2006-1, Rev. Rul. 2006-31 or its other written determinations on issues covered by the Proposed Regulations should be withdrawn as of the date the final regulations are adopted, which may indicate that it is considering offering a longer transitional period to taxpayers who have relied on prior IRS guidance. In the case of IRS determinations made by private-letter ruling, however, such reliance would be justified only to the taxpayer to whom the rulings were issued.

SALT CORNER

PENNSYLVANIA COURTS STRIKE DOWN TAX PROVISIONS. BUT WILL TAXPAYERS BENEFIT?

By Christopher A. Jones and Wendi L. Kotzen

In three recent taxpayer-favorable decisions, Pennsylvania courts struck down important parts of Pennsylvania tax statutes, relying on the Uniformity Clause of the Pennsylvania Constitution.

Pennsylvania Uniformity Clause

The Uniformity Clause of the Pennsylvania Constitution requires that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws" (Pa. Const. art. VIII, §1) and the Pennsylvania Supreme Court has interpreted this clause to require every Pennsylvania state or local tax to "operate alike on the classes of things or property subject to it." *Commonwealth v. Overholt & Co.*, 200 A. 849, 853 (Pa. 1938). Under the Uniformity Clause, any disparity must be based upon some legitimate distinction between the classes that provides a "non-arbitrary, reasonable, and just basis for the disparate treatment." *Aldine Apartments v. Commonwealth*, 426 A.2d 1118, 1121 (Pa. 1981).

In 1971, the Pennsylvania Supreme Court held that Pennsylvania could not adopt the Internal Revenue Code (IRC) in its entirety for personal income tax purposes because the various personal exemptions and deductions created impermissible effective tax rate differences among Pennsylvania residents. *Amidon v. Kane*, 279 A.2d 53 (Pa. 1971). The Uniformity Clause would prohibit Pennsylvania from enacting a law imposing graduated tax rates and prevents localities from taxing different property tax classes at different rates.

The Good News – Net Operating Loss Cap Struck Down in Nextel and R.B. Alden

After relatively little major litigation around the Uniformity Clause for several years, the first of three recent cases addressing the Uniformity Clause was *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth*, 98 F.R. 2012 (Pa. Commw. 2015), in which the Commonwealth Court unanimously held that the corporate net income tax (CNIT) NOL cap is unconstitutional.

The CNIT law permits a taxpayer to carry forward NOLs to offset current CNIT income subject to a statutory cap. For 2007, the year at issue in *Nextel*, the cap was the greater of 12.5% of a taxpayer's CNIT income or $3 million. Nextel had more than $150 million of NOL carryforwards and $45 million of CNIT income. As a result, its NOL carryforward deduction for 2007 was limited by statute to $5.6 million (12.5% of its taxable income). The NOL cap prevented Nextel from using its NOL carryforwards to offset all of its CNIT income and Nextel owed CNIT.

According to the Commonwealth Court, Nextel was able to demonstrate that the cap violated the Uniformity Clause as applied to Nextel because taxpayers with more than $3 million of CNIT income (like Nextel) are subject to a different effective rate than taxpayers with less than $3 million of taxable income. The court noted that 98.3% of taxpayers with NOL carryforwards were able to reduce their CNIT taxable income to zero, whereas Nextel had to pay tax on almost $40 million of CNIT income even though its NOL carryforwards far exceeded that amount. The court also found that sound budgetary reasons for imposing the NOL cap do not amount to a sufficient reason for creating this classification.

While the court's decision that the NOL cap violates the Pennsylvania Constitution was unanimous, the court's decision on the remedy was not. The majority concluded that the only proper remedy was to put Nextel in the same position as those taxpayers who were able to use their NOL carryforwards to reduce their CNIT taxable income to zero. Thus, the court struck the NOL cap as applied to Nextel for its 2007 tax year, permitted Nextel to reduce its CNIT income for 2007 to zero, and ordered the Department of Revenue to refund to Nextel almost $4 million of CNIT it paid for its 2007 tax year. The two judges who disagreed with the majority's remedy argued that the court could strike only the $3 million cap, with the result being that only the percentage-based cap would apply to all CNIT taxpayers. The Commonwealth argued that the appropriate remedy would be to eliminate the NOL deduction in its entirety.

In the next case, *RB Alden Corp. v. Commonwealth*, 142 A.3d 169 (Pa. Commw. 2016), the Commonwealth Court expanded on *Nextel* and found that the NOL cap did not just violate the Uniformity Clause as applied to *Nextel* but is unconstitutional on its face. Consequently, the court allowed the taxpayer to use its NOL carryforwards, in full, to offset all of its CNIT income.

The Pennsylvania Supreme Court granted allocatur in both *Nextel* and *R.B. Alden* and will review the Commonwealth Court's holdings regarding the constitutionality of the NOL cap and the appropriate remedy if the NOL cap is unconstitutional.

Mt. Airy and the Remedy – Will Taxpayers Get Refunds?

The most recent case interpreting the Uniformity Clause is the Pennsylvania Supreme Court's opinion in *Mt. Airy #1, LLC v. Department of Revenue***,** 34 EM 2015 (Pa. Sept. 28, 2016). Although *Mt. Airy* involved a local gaming tax that is imposed on relatively few taxpayers, this decision portends for the ultimate results in *Nextel* and *R.B. Alden*.

In *Mt. Airy*, the Supreme Court held that a particular local gaming tax violated the Uniformity Clause, but struck down the tax only prospectively. The offending tax is imposed on non-Philadelphia casinos at the greater of 2% of the casino's gross terminal revenue (GTR) or $10 million. Therefore, a casino subject to this local tax that has GTR at or below $500 million always pays a $10 million municipal local share assessment, while a casino with GTR of more than $500 million always pays more than $10 million.

In a 4-2 decision, the court held that the "greater of" tax rates "created a variable-rate tax, fashioning one rate for non-Philadelphia casinos with GTR below $500 million, and another for non-Philadelphia casinos with GTR greater than $500 million." Because the Commonwealth could not justify the two rate classes, the court held that the tax violated the Uniformity Clause of the Pennsylvania Constitution.

Turning to the remedy, the court held that it could strike down the tax only prospectively and stayed its decision for 120 days to allow the General Assembly time to correct the constitutional infirmity. The court cited several earlier cases similarly denying refund claims when statutes were struck down including, most recently *Oz Gas, Ltd. v. Warren Area Sch. Dist.*, 938 A.2d 274, 285 (Pa. 2007), in which the court stated "a decision of this Court invalidating a tax statute takes effect as of the date of the decision and is not to be applied retroactively" relying, in part, on the fact that the taxing authority already had spent the money.

Interestingly, although the court cited *Oz Gas* and other cases holding that refund claims are not required when a taxing statute is struck down, it did not fully discuss the U.S. Supreme Court case law addressing the issue. The U.S. Supreme Court has held that the answer is based on: (1) whether the decision established a new principle of law; (2) a balancing of the merits by looking at the history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) an evaluation of the equities involved. *See Chevron v. Huson,* 404 U.S. 97, 106 (1971).

Where Do the NOL Cap Cases Go from Here?

In contrast to the *Mt. Airy* decision that affected only a few Pennsylvania taxpayers, the NOL cap cases have an extremely wide reach and could potentially cost the Commonwealth more than $1 billion. If the *Nextel* and *R.B Alden* decisions striking down the NOL cap are upheld and if the court requires refunds to be paid, numerous CNIT taxpayers could have very large refund claims. However, even if the court agrees that the NOL cap violates the Uniformity Clause, it could determine that only limited refund or even no refunds are available to affected taxpayers.

CONTACTS

The above articles address the relevant tax issues and structuring at a high level only. Please consult members of the Ballard Spahr Tax Group for further discussion.

Saba Ashraf
Partner, Philadelphia
215.864.8858
ashrafs@ballardspahr.com

Kimberly C. Betterton
Partner, Baltimore
410.528.5551
bettertonk@ballardspahr.com

Molly R. Bryson
Partner, Washington, D.C.
202.661.7638
brysonm@ballardspahr.com

Peter D. Hardy
Partner, Philadelphia
215.864.8838
hardyp@ballardspahr.com

Charles S. Henck
Partner, Washington, D.C.
202.661.2209
henck@ballardspahr.com

Wendi L. Kotzen
Partner, Philadelphia
215.864.8305
kotzenw@ballardspahr.com

Kendis Key Muscheid
Partner, Phoenix
602.798.5410
muscheidk@ballardspahr.com

Linda B. Schakel
Partner, Washington, D.C.
202.661.2228
schakel@ballardspahr.com

Wayne R. Strasbaugh
Partner, Philadelphia
215.864.8328
strasbaugh@ballardspahr.com

Jeffrey R. Davine
Senior Counsel, Denver
303.299.7312
davine@ballardspahr.com

Shawn L. McIntire
Of Counsel, Denver
303.299.7321
mcintires@ballardspahr.com

Joanna (Ying) Jiang
Associate, Washington, D.C.
202.661.7644
jiangj@ballardspahr.com

Alicia M. Went
Associate, Philadelphia
215.864.8154
wenta@ballardspahr.com