

TaxNewsFlash

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Ways and Means begins consideration of H.R. 1; adopts amendment

The U.S. House Ways and Means today began markup of the “Chairman’s mark” of H.R. 1, the “Tax Cut and Jobs Act.” This evening, Chairman Brady unveiled an updated document (a “Chairman’s modified mark”) that includes changes to the Chairman’s mark. The Committee approved the amendment by a party line vote of 24 to 16.

Read text of the [**Chairman’s modified mark**](#) [PDF 139 KB], officially known as the “Chairman’s Amendment to the Amendment in the Nature of a Substitute to H.R. 1, Tax Cuts and Jobs Act.” Read a [**summary of the amendment**](#) [PDF 28 KB] posted on the Ways and Means website.

Summary of changes

According to the summary, the provisions in the Chairman’s modified mark include the following amendments:

- **Section 1005 - Conforming amendments**
- **Section 1004, 1005 - Earned income tax credit program integrity:** The amendment includes new rules with respect to the earned income tax credit that would (1) require claims for the credit to properly reflect any net earnings from self-employment, (2) require employers to provide additional information on payroll tax returns, and (3) provide the IRS with additional authority regarding substantiation of earned income amounts.
- **Section 1404 - Exclusion for dependent care assistance programs:** The amendment would continue through December 31, 2022, the exclusion from income for up to \$5,000 of employer-provided dependent-care assistance, to help pay for work-related expenses of caring for a child under the age of 13 or

spouses or other dependents who are physically or mentally unable to care for themselves.

- **Section 3311 - Self-created musical works:** The amendment would preserve the treatment of self-created musical compositions and copyrights in musical works as capital assets.
- **Section 3314 - Partnership interest held in connection with the performance of services:** The amendment would impose a three-year holding period requirement for qualification as long-term capital gain with respect to certain partnership interests received in connection with the performance of services.
- **Section 3804 - Stock options:** The amendment would provide that certain employees who receive stock options or restricted stock units as compensation for the performance of services and later exercises such options or units may elect to defer recognition of income for up to five years, if the corporation's stock is not publicly traded.
- **Sections 4004, 4301, 4303 - International base-erosion rules:** The amendment would modify the bill's international base erosion rules in several respects. First, the provision taxing affiliated payments would be revised to provide for a foreign tax credit, to exempt foreign affiliates' routine returns, to exclude acquisitions of property priced on a public exchange, to compute a foreign affiliate's profits based on foreign profit margins instead of global profit margins, and to coordinate with existing withholding tax rules. Second, the amendment would modify the provision taxing foreign high returns to clarify the scope of existing exceptions for certain local active financing and extraction activities. The amendment also would clarify the computation of the deemed repatriation tax on grossed-up foreign taxes deemed paid.
- **Section 5103 - Excise tax based on investment income of private colleges and universities:** The amendment would provide that the 1.4% excise tax on the net investment income of certain educational institutions applies only if the fair market value of the institution's assets (other than those assets used directly in carrying out its exempt purpose) is at least \$250,000 per student.

What's next

Other amendments may be approved by the Committee as the markup continues this week. For more information about what's next, the legislative process, and H.R. 1 (including preliminary observations and analysis of the Chairman's mark), read [**KPMG's Initial Observations on Chairman Brady's Mark**](#) [PDF 1.7 MB]

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