

“Technical Corrections” to Tax Reform

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For some in Congress, “technical corrections” to the 2017 tax revision (commonly known as the “Tax Cuts and Jobs Act,” or TCJA; P.L. 115-97) have been a legislative priority. It is not always clear, however, what is strictly a “technical correction.” This Insight highlights provisions that have been widely discussed as “technical corrections” to the 2017 tax revision, starting with provisions in former Ways and Means Committee Chairman Kevin Brady’s 2019 “technical corrections” discussion draft. It then highlights other “fixes” to the 2017 tax revision that might be considered, even if those fixes might fall outside the scope of what would be considered by most to be a “technical correction.” Since this Insight was first published on October 9, 2019, five of the provisions discussed have been addressed in recently enacted legislation. These changes are noted below.

For some, there is an understanding that technical corrections are [provisions that are generally noncontroversial changes](#) to the text of already enacted tax legislation to ensure that the law as enacted is consistent with Congress’s original intent. What some might consider a true “technical correction” would also not affect revenue. However, there is no formal definition of a technical correction.

The Technical Corrections Discussion Draft

On January 2, 2019, Representative Brady released the [Tax Technical and Clerical Corrections Act Discussion Draft](#). The preamble of the draft notes that technical corrections are needed to “properly reflect the original Congressional intent” of provisions that were included in P.L. 115-97 (as well as other legislation). The discussion draft includes technical corrections that had been developed as of the January 2, 2019, release date, but acknowledges additional technical corrections may be identified in the future. The Joint Committee on Taxation (JCT) also released a [technical explanation](#) of the discussion draft.

Representative Brady’s discussion draft would address some of the technical corrections that have garnered [widespread media attention](#). Lawmakers in the 116th Congress have introduced stand-alone bills to address some of the technical corrections that were included in the discussion draft. Representative Brady’s discussion draft also includes a number of “technical corrections” not included in stand-alone legislation in the 116th Congress.

The discussion draft would have made technical changes to the “kiddie tax” that would address concerns regarding how certain military survivors’ benefits have been taxed post-P.L. 115-97. This issue was

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addressed in the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted as Division O of P.L. 116-94, [which reversed the treatment](#) in P.L. 115-97.

Representative Brady's discussion draft also would have made a technical correction to the applicable recovery period for certain real property (the so-called "retail glitch"). Without a technical correction, qualified improvement property (QIP) is generally subject to a [39-year cost recovery period](#), instead of the intended 15 years. The 39-year recovery period makes QIP ineligible for bonus depreciation. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 111-136) retroactively restored the 15-year life and eligibility for bonus depreciation.

A technical correction related to the Net Operating Loss (NOL) changes would ensure that the new NOL carryforward and carryback modifications (which eliminated the pre-existing two-year carryback and restricted the loss offset to 80% of taxable income) would be effective for NOLs arising in tax years beginning after December 31, 2017 (and not tax years ending after December 31, 2017). This rule would have allowed firms with tax years spanning 2017-2018 to use the prior law rules allowing a two-year carryback and full offset against taxable income. The CARES Act made this [correction](#).

Another technical correction in Representative Brady's discussion draft would limit the scope of [downward attribution rules](#), which can cause a foreign subsidiary owned by the foreign parent of a U.S. subsidiary to be subject to current U.S. taxation of certain foreign source income, including the tax on certainly easily shifted income (Subpart F income) and the minimum tax on global intangible low-taxed income (GILTI). A change in these rules was originally aimed at corporate inversions (a corporation moving the headquarters from the United States to foreign countries), but the scope of the enacted provision was much broader. The technical correction would limit the scope of that provision to 50% ownership for corporations. This provision was included in an [earlier draft of the CARES Act considered by the Senate](#), but not in the final version.

Other Possible "Fixes" and Potential Technical Corrections

Additional possible "technical corrections" have been proposed. For example, one that was not included in Representative Brady's discussion draft is the Travel Trailer and Camper Tax Parity Act (S. 1543/H.R. 4349). This bill would modify the tax code to ensure that the floor plan financing exception to the limits on interest deductions includes the financing of specific trailers and campers that are not self-propelled.

Other issues [have been identified](#), for which legislation has not been introduced. For example, some have concerns with respect to how the Social Security Number (SSN) requirement for claiming the Child Tax Credit (CTC) affects populations like the Amish who do not have SSNs.

In some cases, legislation that might be more properly characterized as addressing an unintended or unanticipated consequence is cast as a technical correction. For example, the "church parking tax" is a term used to refer to the policy change that requires unrelated business taxable income (UBTI) to be increased by the amount of certain fringe benefit expenses paid by nonprofit employers. The requirement that UBIT be increased for certain fringe benefit expenses paid by nonprofit employers was repealed in the Taxpayer Certainty and Disaster Tax Relief Act, enacted as Division Q of P.L. 116-94.

Changes to the characterization of state tax incentives in P.L. 115-97 [threatened the tax-exempt status of some mutual or cooperative telephone or electric companies](#). A provision addressing this concern was also included in the Taxpayer Certainty and Disaster Tax Relief Act, enacted as Division Q of P.L. 116-94.

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