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House Ways and Means Committee Says, "Never Mind" to Repeal and Replace of Code Section 409A

By: Todd Castleton

One week ago the Republicans' Tax Bill H.R. 1, the "Tax Relief and Jobs Act," was released. Section 3801 of that bill proposed to significantly curtail deferred compensation arrangements by replacing Internal Revenue Code section 409A with section 409B for all services performed on or after January 1, 2018. It would have also required all deferred compensation deferred before 2018 under current section 409A to be included in income no later than 2025.

On November 9, 2017, House Ways and Means Committee Chairman Kevin Brady released an amendment striking these proposed changes. According to the summary released with the Chairman's amendment, the "amendment strikes Section 3801 so that the current-law tax treatment of nonqualified deferred compensation is preserved."

This does not appear to be the end of matter, however. Later in the day, the Joint Committee on Taxation released a summary entitled "Description of the Chairman's Mark of the 'Tax Cuts and Jobs Act'" scheduled for mark up by the Senate Finance Committee on November 13, 2017. The summary does not contain the text of the bill, but suggests that the repeal and replacement of 409A will appear in the Senate version.

We will continue to monitor updates to the tax reform proposals.