IceMiller
LEGAL COUNSEL

TAX CUTS AND JOBS ACT
SUMMARY OF IMPACT ON GOVERNMENTAL PLANS

CURRENT LAW	HOUSE BILL • **Amendment in the Nature of a Substitute to H.R. 1 (11/3/2017)** • **Second Amendment in the Nature of a Substitute to H.R. 1 (11/9/17)** • **Committee on Ways and Means H.R. 1 Section by Section Summary (11/2/2017)**	SENATE BILL • **Amendment to H.R. 1 (12/2/17)** **NOTE: This summary includes those items which are in the current Senate Bill. It <u>does not</u> include those earlier items (e.g. aggregation of plan limits, catch-up contribution restrictions, etc.) that were proposed but not adopted.**	ICE MILLER SUMMARY AND COMMENTS
RETIREMENT PLAN PROVISIONS			
Defined contribution plans may generally permit in-service distributions beginning at age 59½. Distributions from qualified retirement plans, 403(b) plans, governmental 457(b) plans, and IRAs before age 59½ are subject to a 10-percent tax on early distributions under Section 72(t), and are ordinarily included in the recipient's income in the year of distribution. 457(b) plans cannot permit in-service distributions until the year the participant attains age 70½. Moreover, defined benefit and money purchase pension plans generally cannot permit in-service distributions before age 62.	**<u>Section 1502</u> – <u>Reduction in minimum age for allowable in-service distribution</u>** Defined benefit plans and state and local government defined contribution plans could make in-service distributions beginning at age 59½. **The provision would be effective for plan years beginning after 2017.**	**<u>Nothing comparable</u>**.	**CHANGE:** *All defined contribution plans and defined benefit plans would be able to permit (but would not be required to permit) in-service distributions beginning at age 59½.* **COMMENT:** *If enacted, retirement systems may consider whether certain plans should be amended to provide for in-service distributions at age 59½.*

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Treas. Reg. § 1.401(k)-1(d)(3)(iv)(E)(2) provides that an employee cannot make elective contributions and employee contributions to a 401(k) plan and all other plans maintained by the employer for at least 6 months after receipt of a hardship distribution. Treas. Reg. § 1.403(b)-6(d)(2), which applies to 403(b) plans, incorporates this rule by reference.	**<u>Section 1503</u> – <u>Modification of rules governing hardship distributions</u>** The IRS would be required within one year of the date of enactment to eliminate the six month prohibition on contributions. **The revised regulations under this provision would be effective for plan years beginning after 2017.**	**<u>Nothing comparable</u>**.	**CHANGE:** *The six month suspension period would no longer apply. This would be a required change.* **COMMENT:** *If enacted, retirement systems may need to amend plan language (or policy/rule/brochure language) to remove any reference to the six month prohibition.*

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A hardship distribution from a 401(k) or 403(b) plan is limited to the employee's elective deferrals, not including earnings on elective contributions made prior to Dec. 31, 1988. A hardship distribution may not include employer contributions. A hardship distribution must be necessary to satisfy an immediate and heavy financial need of the employee and the need cannot be relieved by other resources that are reasonably available to the employee, including nontaxable loans from any plan maintained by an employer.	**<u>Section 1504</u> – <u>Modifications of rules relating to hardship withdrawals from cash or deferred arrangements</u>** Hardship distributions could include account earnings and employer contributions. Employees would not be required to take available loans before receiving a hardship distribution. **The provision would be effective for plan years beginning after 2017.**	**<u>Section 11033(c)</u> – <u>Modifications of rules relating to hardship withdrawals from cash or deferred arrangements</u>** Hardship distributions could include account earnings and employer contributions. Employees would not be required to take available loans before receiving a hardship distribution. **The provision would be effective for plan years beginning after 2017.**	**CHANGE:** *Hardship distributions from a 401(k) plan or profit sharing plan could be made from employee and employer contributions and earnings thereon.* **COMMENT:** *If enacted and a retirement system wants to allow hardship distributions to include employer contributions and earnings, the retirement system may need to amend plan language (or policy/rule/brochure language) to so provide.* **CHANGE:** *An employee is not required to take a loan under a 401(k) or 401(a) profit sharing plan before receiving a hardship distribution.* **COMMENT:** *If enacted, retirement systems may need to amend plan language (or policy/rule/brochure language) to remove any reference to a requirement that a participant take a plan loan before receiving a hardship distribution.*

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Contributions to traditional IRAs may be transferred to Roth IRAs during the taxable year in which they were made and treated as having been originally made to the Roth IRA. Conversely, contributions to Roth IRAs may be transferred to traditional IRAs during the taxable year in which they were made and treated as having been originally made to the traditional IRA.	**<u>Section 1501</u> – <u>Repeal of special rule permitting recharacterization of Roth IRA contributions as traditional IRA contributions</u>** Taxpayers would no longer have the ability to convert contributions to a Roth IRA into contributions to a traditional IRA, nor the ability to convert contributions to a traditional IRA into contributions to a Roth IRA. **The provision would be effective for plan years beginning after 2017.**	**<u>Section 13611</u> – <u>Repeal of special rule permitting recharacterization of Roth IRA contributions as traditional IRA contributions</u>** Taxpayers would no longer have the ability to convert contributions to a Roth IRA into contributions to a traditional IRA, nor the ability to convert contributions to a traditional IRA into contributions to a Roth IRA. **The provision would be effective for plan years beginning after 2017.**	**CHANGE:** *Taxpayers would not be allowed to recharacterize Roth IRA contributions to traditional IRA contributions nor could taxpayers recharacterize traditional IRA contributions to Roth IRA contributions.* **COMMENT:** *If enacted, IRA providers which allow recharacterization will need to amend plan language (or policy/rule/brochure language).*

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Plans that pay only length of service awards to volunteers who provide firefighting and prevention services, emergency medical services, or ambulance services are not treated as providing deferred compensation under Section 457 for annual awards of up to $3,000.	**Nothing comparable**.	**Section 13612 – Modification of Rules Applicable to Length of Service Awards Plans** The annual dollar limit on length of service awards is increased from $3,000 to $6,000, with an annual adjustment for the cost of living. **The provision would be effective for plan years beginning after 2017.**	**CHANGE:** *The annual dollar limit for length of service awards would increase from $3,000 to $6,000.* **COMMENT:** *If enacted, volunteer firefighter plans will need to be reviewed.*
When a plan is terminated or a participant terminates employment, outstanding loans must generally either be repaid to the plan or rolled to an IRA within 60 days to avoid immediate taxation.	**Section 1505 – Extended rollover period for the rollover of plan loan offset amounts in certain cases** Upon plan termination or separation from service, a loan would not be taxed as a distribution if repaid or rolled into an IRA by the due date for filing tax returns for that year (with extensions). **The provision would apply to tax years beginning after 2017.**	**Section 13613 – Extended rollover period for the rollover of plan loan offset amounts in certain cases** Upon plan termination or severance from service, a loan would not be taxed as a distribution if repaid or rolled into an IRA by the due date for filing tax returns for that year (with extensions). **The provision would apply to tax years beginning after 2017.**	**CHANGE:** *Participants who have an outstanding loan balance when a plan terminates or the participant terminates employment would have until their tax filing deadline to roll the loan balance to an IRA to avoid immediate taxation.* **COMMENT:** *If enacted, retirement systems that provide for loans will need to review their loan provisions to ensure compliance.*

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INVESTMENTS			
Gains from the sale or exchange of capital assets qualify for long-term capital gains treatment if the asset has been held for more than one year.	**<u>Section 3314 – Recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services</u>** In order to qualify for long-term capital gains treatment, interests in an investment or real estate business would have to be held for three years. **The provision would be effective for tax years beginning after 2017.**	**<u>Section 13309 – Recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services</u>** In order to qualify for long-term capital gains treatment, interests in an investment or real estate business would have to be held for three years. **The provision would be effective for tax years beginning after 2017.**	**CHANGE:** *Interests in an investment or real estate business would need to be held three years (instead of one) to qualify for long-term capital gains treatment.* **COMMENT:** *Although most interests in investment or real estate business are held for a longer period of time, if enacted, investors and investment officers should be aware of this change to avoid any unintended tax consequences.*

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Many governmental plans have relied upon statements by the Internal Revenue Service (IRS) that indicated that the IRS would not challenge the position that governmental plans were not subject to the UBIT rules.	**<u>Section 5001</u> – <u>Clarification of unrelated business income tax treatment of entities treated as exempt from taxation under section 501(a)</u>** All entities exempt from tax under section 501(a), notwithstanding the entity's exemption under any other provision of the Code, would be subject to the UBIT rules. **The provision would be effective for tax years beginning after 2017.**	**<u>Nothing Comparable</u>**	**CHANGE:** *Subjecting governmental plans to the UBIT could result in state departments of revenue requiring filing returns and paying state tax on UBIT. Given the number of jurisdictions where funds have activity, this will create significant compliance burdens.* **COMMENT:** *If enacted, this change could result in significant taxation of public plans.*

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DISASTER RELIEF – RETIREMENT PLANS			
<u>Nothing comparable</u>.	**<u>Nothing comparable</u>**.	**<u>Section 11029</u> – <u>Relief for 2016 Disaster Areas</u>** Individuals who, during 2016, lived in an area that experienced a major disaster declared by the President and who sustained an economic loss on account of the disaster are given tax relief for some retirement plan distributions. For such individuals, distributions from a qualified retirement plan, 403(b) plan, governmental 457(b) plan, or an IRA between Jan. 1, 2016 and Dec. 31, 2017 receive the following special tax treatment: (1) The 10-percent tax on early distributions under Section 72(t) does not apply; (2) The distribution may be repaid or contributed to a plan that would accept	**COMMENT:** *This provision would provide tax relief for some participants who lived in disaster areas in 2016 and took distributions for certain retirement plans. It would apply to distributions between Jan. 1, 2016 and Dec. 31, 2017. (This is similar to the relief provided to victims of Hurricanes Harvey, Irma, and Maria in 2017.)*

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		it as a rollover distribution, at any time during the three year period following distribution; (3) The distribution is included in the recipient's income ratably over the three taxable-year period beginning with the year of receipt, unless the recipient elects otherwise; and (4) The 20-percent withholding requirement applicable to eligible rollover distributions under Section 3405 does not apply. Qualified distributions are limited to $100,000 for the entire two-year period.	