2025 UND TAX PRACTITIONERS' INSTITUTE DAY 2 NOVEMBER 20, 2025

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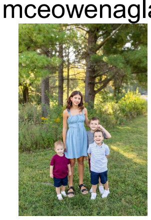


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- **Chapter 2: The One Big Beautiful Bill Act**

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Capital Gains

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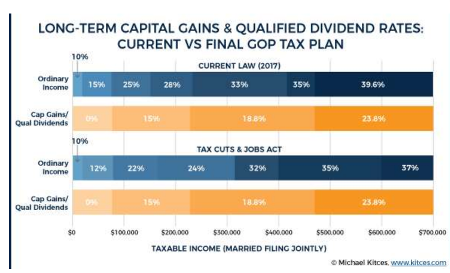

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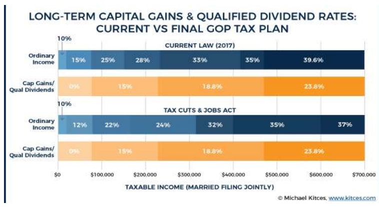
Capital Gains



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OBBBA

p.74

Signed Jul. 4, 2025

Guidance is ongoing

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OBBBA – Individual Provisions

p. 75

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Extension of Individual Income Tax Rates §70101

p. 75

- The 10% and 12% brackets will now be indexed from 2016.
- The 22%, 24%, 32%, 35%, and 37% brackets continue to be indexed from 2017.

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Increase Standard Deduction §70102

p. 75

The standard deduction amounts for 2025 vs. 2024.

Filing Status	2024 Amount	2025 Amount
Married filing jointly (MFJ) and qualifying surviving spouse (QSS)	$29,200	$31,500
Single	14,600	15,750
Head of household (HoH)	21,900	23,625
Married filing separately (MFS)	14,600	15,750

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Termination of Personal

p. 76

OBBBA permanently sets the exemption amount to $0 after December 31, 2017.

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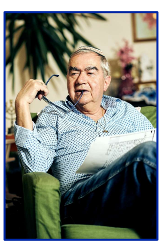
Temporary Deduction for

pp. 76 - 77

- Beginning in 2025, a temporary additional standard deduction $6K per eligible person 65+ through 2028
- Can be combined with additional deduction for age or blindness under §63(f)



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Combining Provisions

p. 76

Total available deductions depend on filing status and age eligibility.

Single filer (age 65 or older):	
Standard deduction	$15,750
Age-based additional deduction	2,000
Potential blindness additional deduction	2,000
OBBBA senior deduction	6,000
Total potential deductions	$25,750
MFJ (both spouses age 65 or older):	
Standard deduction	$31,500
Age-based additional deduction	3,200
Potential blindness additional deduction	3,200
OBBBA senior deduction	12,000
Total potential deductions	$49,900
MFS (both spouses age 65 or older):	
Standard deduction	$15,750
Age-based additional deduction	1,600
Potential blindness additional deduction	1,600
OBBBA senior deduction	0
Total potential deductions	$18,950

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Phase-Out

p. 76

Single filers: Phase-out begins $75,000 and is fully phased out at $175,000.

MFJ: Phase-out begins at $150,000 and is fully phased out at $250,000.

MFS: Not eligible for the deduction.

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Caution

p. 77

CAUTION

There are several misconceptions about how the OBBBA impacts seniors. Some people believe that social security is not taxable or have drawn the conclusion that seniors are getting a $6,000 credit. The additional senior credit is a **deduction subject to income limitations.**

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Child Tax Credit §70104

p. 78

- Increase the nonrefundable CTC to a maximum of $2,200 starting in 2025.
- Annually Indexes starting in 2026.

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Requirements

p. 78

- Be under the age of 17
- Be a U.S. citizen, national, or resident alien
- Have a valid SSN issued before the tax return's due date

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Example 2

p. 79

Two children, the entire family has valid SSNs.

Feature	2024 (Pre-OBBBA)	2025 (OBBBA via §70104)
Credit per child	$ 2,000	$ 2,200
Refundable portion per child	1,700	1,700
Phase-out threshold (MFJ)	400,000	400,000
Total CTC (2 children)	4,000	4,400
Refundable amount (if no tax)	Up to 3,400	Up to 3,400

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Other Dependent Credit §70104

p. 79

- OBBBA makes the nonrefundable other dependent credit of $500 permanent
- Not indexed for inflation

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Estate and Gift Tax

p. 79

Beginning in 2026:

- Basic exclusion is set a $15 million per individual
- A married couple's exclusion is $30 million
- Indexed for inflation beginning in 2027

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Lifetime Exclusions

p. 79

The exclusion amounts are applicable to both lifetime gifts and estate transfers.

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AMT Thresholds §70107

p. 80

- $1M for MFJ or QSS
- $500K for single filers and MFS
- Phase-out rate is increased from 25% to 50%
- OBBBA doesn't change AMT exemption amounts

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Mortgage Interest Deduction

p. 80

- The $750K ($375K for MFS) acquisition debt cap for mortgage loans remains the same for post-December 15, 2017, mortgages.
- Private mortgage insurance is deductible as mortgage interest for tax years beginning after December 31, 2025.

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Causality Loss Deduction §70109

p. 81

- In 2025, taxpayers may deduct if attributable to a federally declared disaster area
- Starting in 2026, state-declared disasters are now included.

23

Limitations of Itemized Deductions §70111

p 81

Instead of the old Pease limitation, the OBBBA introduces a **new overall limitation on itemized deductions** for **high-income taxpayers** in the top federal income tax bracket (currently **37%**).

The new provision is designed to cap the tax benefit from itemized deductions for the highest earners to **35 cents per $1 of deduction**, rather than the full 37 cents

The reduction is 2/37 of the lesser of: (1) total Itemized deductions; or (2) the amount taxable income exceeds the threshold for the 37% bracket

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Wagering Loss §70114

p. 82

Starting in tax year 2026
- Wagering losses limited to up to 90% of total loses or;
- If wagering winnings are less then the loss, the deduction is allowed up to the amount of the winnings then the losses are reduced to 90%.

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Example 5

p. 82

John wins $4k at casino but has $5k in gambling losses.

Since John's winnings are less then his gambling losses, John applies 90% rule, and he can deduct $3,600 in gambling losses.

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OBBBA - ABLE Accounts

83-84

- Effective for tax years beginning after December 31, 2025, the age of disability onset will increase from before age 26 to before age 46
- Previously, the "ABLE-to-Work" provision allowed eligible working ABLE account beneficiaries to contribute additional funds beyond the standard annual contribution limit, up to their gross earned income or the federal poverty line for a one-person household (whichever is less). This provision was set to expire
  - The OBBBA makes this permanent.
    - This allows individuals with disabilities who are working to save more money in their ABLE accounts without jeopardizing their eligibility for crucial means-tested benefits like Medicaid and Supplemental Security Income (SSI).

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OBBBA - ABLE Accounts

- Permanent 529 Plan Rollovers
  - The OBBBA makes permanent the ability to roll over funds from a 529 education savings plan into an ABLE account without incurring taxes or penalties
    - This provides greater flexibility for families who may have initially saved for a child's education in a 529 plan, only to find that the child later qualifies for an ABLE account due to a disability.
    - The rollover is permitted as long as the ABLE account beneficiary is the same as, or a qualifying family member of, the 529 plan beneficiary. The rollover amount is subject to the annual ABLE account contribution limits

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OBBBA – ABLE Accounts

- Saver's Credit Extended to ABLE Contributions (with Enhancements)
  - The OBBBA permanently allows eligible designated beneficiaries to claim the Saver's Credit (Retirement Savings Contributions Credit) for contributions made to their ABLE account. This credit was also previously set to expire.
  - Beginning in 2027, the annual amount eligible for the Saver's Credit will increase to $2,100, with a potential maximum credit of $1,050 (depending on the taxpayer's Adjusted Gross Income).
    - This provides an additional incentive for individuals with disabilities to save.

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OBBBA – ABLE Accounts

- After 2026, only ABLE account contributions will be eligible for the Saver's Credit, meaning other retirement contributions (e.g., to IRAs or 401(k)s) will no longer qualify for this specific credit.

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OBBBA – ABLE Accounts

- The OBBBA includes a provision that allows for future adjustments to the ABLE account annual contribution limits based on updated calculations.
  - This is intended to ensure that the limits remain relevant and beneficial for savers over time, potentially increasing the amount that can be contributed annually in the future.
    - As of 2025, the standard annual contribution limit for ABLE accounts is $19,000 WASHBURN LAW

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Student Loan Discharge

p. 84

Beginning in 2026, on returns where taxpayer SSN appears, the death or disability exclusion is permanent and extends to both federal and private education loans.

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Increased SALT Deduction §70120

pp. 84 - 85

Beginning in 2025 though 2030, the SALT cap is increased to:

- All filers except MFS $40,000.
- MFS, the cap is $20,000.

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Salt Phase-Out

p. 85

- All filers except MFS phase out beings at $500,000 MAGI.
- For MFS, phase-out begins at $250,000.

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Qualified Tips Deduction

pp. 85 - 86

Beginning in 2025 through 2028, qualified tips deduction is:

- Employees and SE taxpayers receiving tips can receive an income tax deduction of up to $25K.
- Cannot exceed total income
- Must be engaged in a trade or business where tips are earned.
- Phase-out $150Kfor individuals, $300K for MFJ.

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Example 8

p. 86

Amount of tip income		$15,000
Amount of MAGI exceeding $300,000	$10,000	
	÷ 1,000	
Number of $1,000 increments over threshold	10	
$100 reduction per $1,000 of overage	× 100	
Total reduction in tips deduction	$ 1,000	(1,000)
Deduction claimed		$14,000

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Note

p. 86

Minny's deduction is also limited to her net business income. Because her business income is $32,000, she can claim the full $14,000 deduction.

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Planning Tip

p. 86

Reach out to your self-employed clients in industries where tips are typically received to recommend their bookkeeping allocate tincome between tips and other income.

*Service industries that typically involve tips include food and beverage, hospitality, beauty salons, ride share, and food delivery.

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Tips, Cont.

pp. 85 - 86

- The qualified tips provision does **not** affect a taxpayer's withholdings, including social security and Medicare.
- This provision only potentially reduces the federal tax on Form 1040, *U.S. Individual Income*

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Caution

p. 86

CAUTION

If the taxpayer is self-employed and qualifies for QBI, §199A(c)(4) is amended to disallow amounts used towards the qualified tips deduction. Any amount over the maximum deduction of $25K that is not used towards the qualified tips deduction can be used towards QBI.

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Qualified Overtime Deduction

87-88

Beginning in 2025 thru 2028, the qualified overtime deduction:

- Applies only to the overtime amount exceeding the regular rate of pay.
- Maximum deduction is $12,500 for individuals and $25K for MFJ.
- Phase-out begins at $150K for individuals and $300K for MFJ.

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Qualified Overtime Deduction

- Overtime paid because of a state law or a company's more generous policy (e.g., paying double-time for holiday work) is not deductible unless it also meets the FLSA's requirement.
  - This also means that employees who are classified as "exempt" under the FLSA are not eligible for the deduction, even if their employer voluntarily pays them for working extra hours.

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Qualified Overtime Deduction

- The deduction is not available to high-income earners. It begins to phase out based on modified adjusted gross income (MAGI):
  - Starts at **$150,000** for single filers
  - Starts at **$300,000** for married couples filing jointly.
  - The deduction is reduced by $100 for every $1,000 of MAGI above these thresholds

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Example 9

p. 87

- Josh earn $50/hr.
- Works 750 hrs OT
- MAGI is $160,250

Amount of overtime worked		$18,750
Maximum no-tax-on-overtime deduction for Single status		$12,500
Amount of MAGI exceeding $150,000 threshold	$10,250	
	÷ 1,000	
Number of $1,000 increments over threshold (rounded down)	10	
$100 reduction per $1,000 of overage	× 100	
Total reduction in overtime deduction	$ 1,000	(1,000)
Deduction claimed		$11,500

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Note

p. 87

The IRS has announced that it is planning on further clarification for determining how to distinguish FLSA overtime versus other overtime.

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Transition Rule

- For 2025, employers are allowed to "approximate a separate accounting of amounts designated as qualified overtime compensation by any **reasonable method** specified by the Secretary [of Treasury]" while waiting for final guidance.
  - Fact Sheet 2025-03

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OBBBA – Passenger Vehicle Loan Interest

88

- Above-the-line deduction capped at $10,000 for interest on loans used to buy qualified passenger vehicles for personal use
  - For 2025-2028

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OBBBA – Passenger Vehicle Loan Interest

- Subject to phase-out
  - MAGI $100,000-$149,000 (s); $200,000-$249,000 (MFJ)
- An eligible vehicle must:
  - Be a passenger vehicle or motorcycle designed primarily for public road use
    - Cars, minivans, SUVs, pickup trucks, vans or motorcycles
  - Be treated as a motor vehicle under Title II of the Clean Air Act,
    - Horse-drawn buggy not eligible
      - Lacks qualified emissions equipment
  - Have at least two wheels and weigh under 14,000 lbs,
  - Have final assembly in the U.S.
- 2025-2028

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OBBBA – Passenger Vehicle Loan Interest

- Other details
  - Must be a first-lien loan originating after 12/31/2024.
  - Refinanced loans qualify only up to the original principal amount.
  - Excludes leases, related-party loans, salvage-title vehicles, or commercial-use vehicles

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OBBBA – Passenger Vehicle Loan Interest

- Notice 2025-57
  - Lenders need not file any type of official form to IRS or taxpayer for loans originated in 2025
    - Reporting requirements satisfied by reporting the interest paid:
      - On an online portal that the buyer can easily access
      - In a regular monthly statement
      - On an annual statement provided to the buyer
      - By other similar means designed to provide accurate information to the buyer regarding interest received

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Passenger Loan Vehicle Interest

- Note for farmers:
  - If using the 75% business use safe harbor when buying a pick-up for the farm in 2025 with a loan…
    - Allocate interest 75% to Schedule F
    - 25% allowed as a deduction on Schedule 1-A

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OBBBA – Passenger Vehicle Loan Interest

- Other details
  - What does final assembly in U.S. mean?
    - The last substantial step in the vehicle manufacturing process must occur within the United States.
    - Even if many parts are made elsewhere, the vehicle must be finished and built into its drivable form at a U.S.-based plant.
      - Example – only a 2025 Chevy Silverado built at the Ft. Wayne, IN, plant qualifies

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Trump Accounts §70204

pp. 89-91

- Tax advantaged IRS for children > 18
- Contributions cannot begin prior to July 4, 2026
- Must have SSN issued before electing to start the Trump account.
- Must not have made a prior election
- One time government deposit of $1K for qualifying children born Dec. 31, 2024 - Jan. 1, 2029

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Trump Accounts, Cont.

p. 90

- Contributions up to $5K per year
- Contributions are not deductible
- New classification of IRA but not traditional or Roth
- Portable between financial institutions

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Tax Free Withdrawals

p. 90

- First-time home purchases, with a lifetime withdrawal limit of $50K.
- Education expenses, such as tuition, fees, and related costs.
- Retirement, beginning at age 60 or older.
- Adoption or childbirth expenses, up to $5K per qualifying event.
- Qualified emergency expenses, up to $2,500 per year.
- Withdrawals that do not meet these criteria may be subject to income tax and penalties like other IRA structures

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Example 14

pp. 91

- Jeremy - 22 years old
- Has Trump account
- Withdraws $4K to take a vacation
- Since his withdraw was not for a qualified purpose, the withdraw is taxable income and could be subject to penalties.

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Adoption Credit §70402

pp. 91 - 92

- Partially refundable up to $5K, even if no tax is owed
- Credit increase to $17,280 for 2025
- Increases indexed starting in 2026
- Only the nonrefundable portion can be carried forward
- MAGI based phase-out thresholds apply to both the refundable and nonrefundable portions.
- Federally recognized Indian tribal governments are now authorized to determine if a child has special needs.

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Example 15

p. 92

Trina & Max finalize adoption in 2025

MAGI: $120,000

Qualified adoption expenses: $17,280

Pre-credit tax liability: $2,000

Receives: $5,000 refundable portion as refund.

Uses: $2,000 of the nonrefundable portions towards tax liability

Carried forward through 2030: $10,280

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Dependent Care Assistance §70404

p. 92

Beginning in 2026 increases from $5,000 per household ($2,500 MFS) to $7,500 per household ($3,750 for MFS)

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Child & Dependent Care Credit §70405

pp. 92 - 93

Beginning in 2026, the CDCC will undergo the following permanent changes

- Increases the max applicable percentage from 35% to 50%
- Creates a two-tier phase out structure

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Two Tier Phase-Out Structure

p. 93

- **Tier 1.** 50% up to $15K AGI. Reduced by 1 point for every $2K over that amount but not below 35%
- **Tier 2.** AGI over $75K ($150K MFJ) the percentage is reduced further by on percentage point for each $2K ($4K MFJ) over the threshold but not below 20%.

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SGO Tax Credit §70411

pp. 93 - 94

Beginning in 2027, the K-12 scholarship exclusion allows for the following:

- Nonrefundable credit up to $1,700 per year
- Eligible student are those enrolled in a public elementary or secondary school and reside in a household with income at or below the 300% of the area's median income
- Credit can be carried forward up to 5 years
- Credit cannot be used towards organization that restrict scholarships based on donor's direction or benefit
- Must be reduced by state credit

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Qualified expense

p. 93

- Tuition
- Fees
- Academic tutoring
- Books
- Supplies
- Equipment required for enrollment of attendance
- Must be a qualified K-12 school including public, private, and religious institutions.

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Example 17

p. 94

Madelyn donates $2,000 to a qualifying SGO

State allows a 5% credit against state income tax

Federal credit is limited to $1,600 ($1,700 maximum credit – 5% x $2,000)

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§529 Plans

pp. 94 - 95

Beginning July 4, 2025, §529 plans are expanded to up to $20,000 per year per beneficiary and now includes K-12 and additional postsecondary expenses.

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K-12 Eligible Expenses

pp. 94 - 95

- Tuition at public, private or religious schools
- Books, curriculum, and instructional material
- Online education content
- Tutoring or supplemental classes
- Testing fees and dual enrollment costs
- Education therapies for students with disabilities

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Postsecondary Expenses

pp. 94-95

Now expanded to include:

- Tuition, fees, and materials for approved training programs
- Testing fees for credential or licensed exams
  - Industry-recognized certificates or licenses
  - Apprenticeship completion certificates
  - Occupational or professional licenses
  - Credentials recognized under WIOA

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Charitable Contributions

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- Deduction of up to $1,000 (single), $2,000 (married) for those that don't itemize
  - Generally, applies to cash contributions made to public charities, but excludes contributions to supporting organizations and donor-advised funds

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Charitable Contributions

- 0.5% Adjusted Gross Income (AGI) Floor for Itemizers
  - Charitable contributions are only deductible to the extent that they exceed 0.5% of the taxpayer's AGI.

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Charitable Contributions

- The OBBBA makes permanent the ability for individuals to deduct cash contributions to public charities up to 60% of their AGI.
  - This limit was set to expire but is now a permanent feature.

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Charitable Contributions

- Limitation on Value of Itemized Deductions (for high-income earners)
  - For individuals with taxable income exceeding the 37% tax bracket threshold, the OBBBA introduces a new limitation on itemized deductions.
    - This effectively caps the maximum tax benefit from charitable deductions to an offset against income taxed at a 35% marginal rate, even if the individual's actual top marginal rate is 37%.
      - This can result in a de facto "tax" on charitable deductions for high-income earners.

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Charitable Contributions

- For corporations…
  - **1% Taxable Income Floor**
    - Similar to individuals, corporations now face a floor on their charitable contribution deductions. Contributions are only deductible to the extent they exceed 1% of the corporation's taxable income.
    - The existing 10% of taxable income cap on corporate charitable contributions remains in place.
    - Excess contributions that exceed the 10% limit can still be carried forward for five years. However, contributions disallowed *solely* due to the 1% floor are generally not carried forward unless the corporation's total contributions also exceed the 10% limit.

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Charitable Contributions

- Other Notable Charitable Contribution-Related Provisions
  - **Tax Credit for Scholarship-Granting Organizations (SGOs)**
    - The OBBBA creates a new federal tax credit, up to $1,700, for individuals who contribute to public charities designated as "Scholarship Granting Organizations."
      - These SGOs must provide scholarships to qualifying K-12 students from low-income households. This credit can be reduced if a similar state tax credit is claimed for the same donation. This provision is effective for tax years ending after December 31, 2026.

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Charitable Contributions

- Changes to College Endowment Excise Tax
  - The OBBBA revises the excise tax on the investment income of certain private colleges and universities with large endowments.
    - It modifies the student-adjusted endowment thresholds and introduces a tiered excise tax rate structure (1.4%, 4%, and 8%) depending on the endowment size.

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Charitable Contributions - Impacts

- Potential Shift in Giving Behavior
  - The new non-itemizer deduction may encourage more small and mid-level donations, as non-itemizers now have a direct tax incentive to give.
  - Conversely, the floors for itemizers and corporations, and the capped benefit for high-income individual donors, could potentially dampen large-scale giving or encourage "bunching" of donations into fewer, larger contributions in certain years to exceed the floors.

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Charitable Contributions - Impacts

- Potential Shift in Giving Behavior
  - **Strategic Planning**
    - Both individual and corporate donors, as well as tax-exempt organizations, will need to review their charitable giving strategies and fundraising approaches to adapt to these new provisions.
    - This includes evaluating the timing of contributions and understanding the new deductibility limits.

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Charitable Contributions - Impacts

- Potential Shift in Giving Behavior
  - **Impact on Nonprofits**
    - Nonprofits should update their communications to donors to reflect the new rules and be prepared for potential shifts in donor behavior. They may also need to refine their corporate giving strategies.

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Sunsetting of Energy Credits §§7050-70515

pp. 96 - 97

Beginning in late 2025, OBBBA will sunset green energy credits.

After Sept. 30, 2025
- Clean vehicle credit
- Previously owned clean vehicle credit
- Qualified commercial clean vehicles credit

After Dec. 31, 2025
- Energy-efficient home improvement credit
- Residential clean energy credit (e.g., solar panels, geothermal, battery storage)

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Energy Credits, cont.

p. 97

After June 30, 2026
- Alternative fuel vehicle refueling property credit
- Energy-efficient commercial building deduction
- New energy-efficient home credit

Leased property provisions
- The clean electricity credit for leased residential property is repealed for taxable years beginning after 2025.

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SSN Requirement for Education Credits §70606

pp. 97 - 98

Beginning in **2026**, the SSN requirement for AOTC and lifetime learning credits is as follows.
- The student must have a valid SSN issued by the return due date.
- Students with only an individual taxpayer identification number (ITIN), adoption taxpayer identification number, or other temporary identification **do not** qualify.
- For the AOTC, the taxpayer **must** also include the employer identification number (EIN) of the educational institution.
- If the student receives an SSN after the return due date, the taxpayer **cannot** amend the return to claim the credit retroactively.

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Planning Tip

p. 98

Advise clients to apply for SSNs as early as possible to preserve eligibility.

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HSA: Bronze & Catastrophic Plans §71307

pp. 98 - 99

Effective for months beginning on or after January 1, 2026,

- Bronze-level health insurance plans will qualify for HSAs
- Catastrophic health insurance plans also qualify for HSAs.

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Note

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Individuals enrolled in Bronze plans can now open HSAs, even if the plan did not previously meet the IRS's HDHP criteria.

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AGRICULTURAL ISSUES AND RURAL INVESTMENTS
Chapter 11

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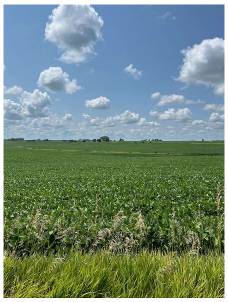
Year-End Tax Planning



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Making Use of Cash Accounting

- Income deferral
  - Pre-paid expenses

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Pre-Purchased or Prepaid Inputs

- **To be deductible, three tests must be satisfied (Rev. Rul. 79-229)**
  - **The pre-purchase must be a binding contract rather than merely a deposit**
  - **A business purpose must be present**
    - **Locking in a price**
    - **Assuring a feed supply**
  - **Transaction must not materially distort income**
    - **Pre-purchases must not move in tandem with income**

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Pre-Purchased or Prepaid Inputs – Binding Contract Test

- ***Schenk v. Commissioner, 686 F.2d 315 (5th Cir. 1982)***
  - **Facts: Schenk went to the local co-op near year's end, wrote a check for $25,000, and told the local operator that he would be back sometime next year to pick up $25,000 worth of supplies. The co-op credited the amount to Schenk's "fertilizer" and "general supply" accounts.**
  - **Issue: Was the amount of the prepurchase deductible in the year paid?**

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Pre-Purchased or Prepaid Inputs – Binding

- ***Schenk v. Commissioner, 686 F.2d 315 (5th Cir. 1982)***
  - **Conclusion:** No. The check was merely a deposit. An absence of specific quantities or a right to a refund of any unapplied credit are indicative of a deposit. Schenk retained the power to substitute nondeductible items for deductible items.

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Pre-Purchased or Prepaid Inputs

- Business purpose test
  - Few challenges here
  - Legitimate business purposes include:
    - Locking in price
    - Assuring a feed supply

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Pre-Purchased or Prepaid Inputs

- No material distortion of income
  - No bright line
  - Watch tandem movements of pre-purchases with income
  - Watch size of purchase and time of year payment is made

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Pre-Purchased or Prepaid Inputs

- 1976 Farming Syndicate Rule - bars deducting pre-purchases for:
  - Farm partnerships where the ownership interests have been offered for sale in any offering required to be registered with any federal or state securities agency, or
  - Farm partnerships where more than 35% of the losses during any period are allocable to limited partners

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Farming Syndicate Rule

- Active participation exception
  - At least five years actively participating in management
    - Any partnership interest attributable to that active participation is deemed to not be held by a limited partner or limited entrepreneur – interest doesn't count toward 35% test
      - IRS says exception only applies to an "individual"
      - 5th Cir. disagreed and said it applies to an S corporation that held the taxpayer's limited partnership interest
        - » *Burnett Ranches, Limited v. United States*

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Pre-Purchased or Prepaid Inputs

- Beginning in 1986, taxpayers are limited to a maximum of 50% of the total deductible farming expenses, not counting the prepaids
  - Account for all expenses, and can pre-pay and deduct up to 50%

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Pre-purchased or Prepaid Inputs

- Exceptions to 50% limitation:
  - A change in business operations caused by extraordinary circumstances
    - Major change in farm programs
    - Large casualty losses
    - Livestock disease
  - A "qualified farm-related taxpayer" may meet the 50% test over the last three years rather than the last one year
    - Principal residence is on farm or principal occupation is farming, or is member of such family
    - Corporations conducting farming operations are eligible. ***Golden Rod Farms, Inc. v. United States, 115 F.3d 897 (11th Cir. 1997)***

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Agro-Jal Farming Enterprises (Tax Court 2015)

- Expenses for pre-purchased field-packing materials were deductible in year purchased rather then in year when consumed
  - Farm not subject to farming syndicate rules
  - Remember, farmers can deduct all amounts actually expended in the carrying on of the business of farming

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Optimizing Depreciation

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Deduction	Primary Function	Key Advantage	The Catch
1. Section 179	To zero out your farm's taxable income.	Highly flexible; you can pick and choose which assets to expense.	Cannot create a tax loss (deduction is limited to your business income).
2. Bonus Depreciation	To deduct any remaining cost after 179 is maxed out.	No income limit; it *can* create or increase a tax loss (Net Operating Loss).	Less flexible; you must elect *out* of it for an entire asset class.

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The Optimization Playbook

- Use Sec. 179 First (The Income Cap)
  - Apply Sec. 179 to your qualified equipment purchases (new or used) up to the allowed limit
  - Only use enough Sec. 179 to bring taxable income down to zero.
    - You don't want to waste the deduction when Bonus Depreciation can do the same job.
- Use Bonus Depreciation Second (The Loss Creator)
  - Apply Bonus Depreciation to the remaining basis of that equipment.
    - This is what allows you to deduct the rest of the cost and potentially create a Net Operating Loss (NOL), which can be carried over to other tax years.

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Farm Income Averaging

515

- Effective 1/1/98, persons engaged in farming can elect to apply prior three years' rates to part or all of eligible farm income

99

Income Averaging

- Only applies to "farm income"
  - Gain from sale or disposition of property regularly used in farming business for a "substantial period"
    - Gains from sale of breeding stock and machinery count
    - Gains from sale or disposition of land ineligible (but, income from structures on land count)
    - "Substantial period" undefined
    - Uncertainty if those reporting income on Form 4835 are eligible
  - Gains and losses from farm property after business ceases count if property sold within reasonable time after business ceases

100

Definitions

- Farming business
- Farm income
  - Eligible income

101

Farm Income Averaging

- Handling losses in the base years
  - Guidance is in the instructions to Schedule J

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Managing Self-Employment Tax

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- Strategies
  - Maximizing deductions
  - Retirement contributions
  - Entity structure
- Handling NOLs
  - Example

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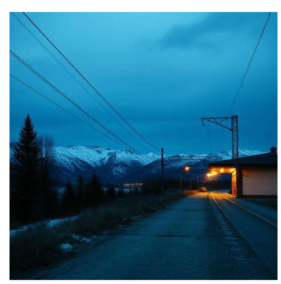
Involuntary Conversions



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What is an Involuntary Conversion?

- A disposition of property due to:
  - Destruction, theft, or seizure
  - Condemnation or threat thereof
  - Sale under threat of condemnation
- Triggered without the taxpayer's volition

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IRC §1033

- Allows deferral of gain if:
  - Timely replacement of the property occurs, and
  - The replacement property is similar or related in service or use

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Replacement Period

- Begins at time of conversion
- Generally two years, but is three years for condemnation of real property used in a trade or business
- No gain recognition if full proceeds reinvested
  - If replacement cost is less than proceeds, gain is recognized to the extent of the difference

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Replacement Property

- Must be similar or related in service or use
  - The replacement property must serve substantially the same function as the converted property
    - Barn for barn not a commercial warehouse

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Election

- Election to defer made on tax return for the year gain realized
  - Form 4797
  - Form 8949 (capital assets not held for use in t/b)
  - Attach statement to return for year in which replacement property purchased if after year for which election made
- What about impact of death?

109

Impact on Basis

- Generally same as converted property if gain not recognized, less any amount received that was not reinvested, increased by and gain recognized

110

Special Rule for Livestock

- Two years, but can be extended
- Applies to excess over what would have normally been sold
- Weather-related condition
- Livestock of same purpose

111

Taxation of Option Payments

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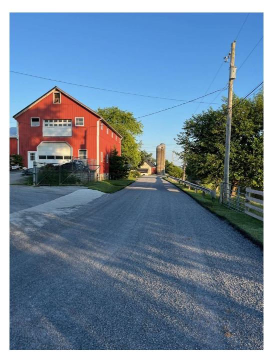

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The Open Transaction Doctrine

- Based on *Burnet v. Logan, 283 U.S. 404 (1931)*
  - Allows a taxpayer to defer recognizing income when the total value of what they receive in a transaction is uncertain or unascertainable at the time of the exchange.
    - Sale of land or mineral rights in exchange for uncertain future payments
    - Oil or gas royalties
    - Payments based on future timber harvests.

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The Open Transaction Doctrine

- Application of the doctrine
  - If the landowner cannot reasonably estimate the total payments they will receive, they may treat the transaction as "open."
    - No gain reported until tax year in which taxpayer receives enough payments to recover their basis in the property.
      - After the basis is fully recovered, subsequent payments would be reported as income.

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Taxation of Option Payments

- Open transaction doctrine
  - Applies to sales involving contingent consideration
    - Ex: Sales price depends on future events
  - Allows deferring of gain until amount becomes fixed or determinable
    - Same applies when farmland owner sells an option for an easement over land that represents a potential future interest

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Caution

- IRS and courts narrowly apply the doctrine.
  - It typically requires a clear showing that the total value of payments is speculative and cannot be reasonably estimated.
  - If future payments can be valued (even approximately), the IRS may require immediate gain recognition under installment sale rules or other methods.

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Definition and Tax Character

- A payment for the right, but not the obligation, to purchase property in the future
- Not a sale until option is exercised
- Upfront payments:
  - Often treated as ordinary income unless part of a completed sale
- Common in agricultural context for land development, easements, mineral rights

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The Doctrine and Easement Payments

- Example:
  - A utility company negotiates a perpetual easement across a farmer's land for the right to install and maintain underground cables. Instead of a lump-sum payment, the company agrees to make ongoing, uncertain payments (e.g., annual fees tied to usage or inflation, or additional payments based on future expansions)
    - How is the transaction reported?

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The Doctrine and Easement Payments

- If the total payments under the easement agreement are indefinite or speculative, the transaction remains "open"
  - No immediate gain recognition
    - Each payment received would first be applied to recover the basis in the portion of the land affected by the easement.
  - Only after the full basis is recovered would additional payments be reported as capital gain (or ordinary income, depending on context)
  - But…

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The Doctrine and Easement Payments

- The IRS and courts are skeptical of applying the open transaction doctrine.
  - They generally prefer methods like:
    - Installment sale treatment (if payments are fixed or can be reasonably estimated)
    - Basis allocation to the affected portion of land (recognizing gain immediately if the easement is paid up front)
    - Ordinary income treatment for certain temporary easements.

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Remember…

- To use the open transaction doctrine, the taxpayer must prove that the fair market value of the total easement payments cannot reasonably be determined at the time of agreement

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Hedging vs. Speculation

- Difference in tax treatment
  - Is it truly a hedge?
  - What is speculation?
  - What about the purchase of an option?
  - What about the purchase of a call option
- Are commodity transactions "open" transactions? Options
  - Forward grain contracts
  - HTA contracts

122

Comparing Doctrines: IRC § 453 vs. Option Rules

Feature	Option Doctrine	IRC § 453 Installment Sale
Timing of Income	Year of receipt (if option expires)	As payments are received
Sale required?	No	Yes
Payment Character	Ordinary income (usually)	Capital gain (generally)
Election available?	No special election	Election to opt out of § 453

123

Grant of an Option for an Easement

- Is it an option to acquire a perpetual or term easement?
- IRS position
  - Option payments taxable as ordinary income when received
  - If easement later exercised
    - Allocate basis to land affected
    - Remaining payment likely capital gain
- Easement is a sale only upon exercise

124

IRS Authority

- Rev. Rul. 68-606
  - Easement payments treated as sale
  - But option payment received before exercise is not a sale
    - Taxed upon receipt

125

Friedman v. Comm'r., T.C. Memo. 2015-177

- Does the open transaction doctrine apply to defer interest income?
  - Facts
    - Taxpayer sold real estate and received option payments over time
    - Claimed that the interest was deferred because the transaction remained open and that basis could not be recovered due to uncertain value of future payments
  - Court
    - No deferral. Transaction was closed because the right to receive future payments was determinable
    - Interest income recognized annually either under accrual or cash method

126

Implication for Farmers with Option Payments:

- Farmers cannot defer recognition of interest or premium-like payments under the open transaction doctrine unless the FMV of payments is truly speculative.
- Important to evaluate the substance of contracts and structure of payments

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Application to Private Annuities

- *Estate of McKelvey v. Commissioner, 148 T.C. No. 13 (2017)*
  - Does a private annuity transaction remove the transferred assets from the decedent's gross estate?

128

Application to Private Annuities

- *Estate of McKelvey v. Commissioner, 148 T.C. No. 13 (2017)*
  - Facts:
    - McKelvey transferred significant assets to a trust in exchange for a private annuity—a promise from the trust to make periodic payments to him for the rest of his life.
    - McKelvey died unexpectedly just six months later, having received only a small portion of the annuity's total value. His estate claimed the transferred assets were excluded from his gross estate because he had exchanged them for a fair-market-value annuity.

129

Application to Private Annuities

- *Estate of McKelvey v. Commissioner, 148 T.C. No. 13 (2017)*
  - Issue:
    - IRS argued that the annuity should be disregarded for estate tax purposes under Treasury regulations, particularly Treas. Reg. § 1.7520-3(b)(3), which disregards standard valuation tables when an individual is terminally ill and unlikely to live for more than 18 months.

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Application to Private Annuities

- *Estate of McKelvey v. Commissioner, 148 T.C. No. 13 (2017)*
  - The Tax Court held that because McKelvey was terminally ill when the annuity was executed, the standard life expectancy tables used to value the annuity were inapplicable.
    - Consequently, the annuity had little to no value, and the full value of the transferred assets was included in McKelvey's gross estate under IRC §2036(a), since he retained an interest in the income from those assets during life.
  - But…

131

Tax Court Was Reversed on Appeal

- While the Tax Court agreed with IRS that the extension of the Variable Prepaid Forward Contracts (VPFCs) did not trigger gain under § 1001—i.e. not a disposition of property—the Second Circuit determined that the extensions terminated the taxpayer's obligations under the original VPFCs.
  - That termination constituted a taxable exchange of contracts under IRC §1234A, giving rise to short-term capital gain liability.
    - Thus, the extension created new contracts and ended the obligations under the old contracts, triggering immediate tax consequences .

132

Tax Court Was Reversed on Appeal

- The Second Circuit also held that the extended contracts effectively became forward contracts, because the amount of shares that would be delivered at settlement was essentially substantially fixed given the low probability that share prices would exceed floor prices.
  - The court accepted probability analysis (e.g. Black-Scholes) to determine that a constructive sale occurred during the extensions, triggering long-term capital gain on the pledged shares under IRC §1259.

133

REAP Grants

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Details

* A U.S. Department of Agriculture (**USDA**) initiative.

* Provides **financial assistance** to agricultural producers and rural small businesses.

* Goal: Increase renewable energy adoption and implement energy efficiency improvements.

* Is a key federal program to drive sustainable practices in rural areas.

* "Financial assistance" comes as both grants and guaranteed loans.

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Eligible Applicants

Agricultural Producers: Must derive at least **50%** of gross income from farming.

* **Rural Small Businesses:** Defined by Small Business Administration (SBA) size standards.

* **Location Requirement:** Project must be in a **rural area** (generally, less than 50,000 in population).

* The location requirement applies to the project site, not necessarily the applicant's headquarters.

* Advise applicants to use the USDA's eligibility mapping tool to confirm their location.

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Eligible Projects

- Systems for self-consumption of energy: power the business or farm itself — Common Examples: **Solar**, **Wind**, Geothermal, Small Hydropower, Biomass.
- Renewable fuel production and blending (e.g., biodiesel) are also eligible.
- Not eligible: Projects that produce heat or power for distribution or sale, generally.

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Eligible Projects: Energy Efficiency Improvements

Any measure that demonstrably reduces energy consumption

- **High-efficiency HVAC** (heating, ventilation, and air conditioning) and insulation.
- "Upgrades" to **lighting** (e.g., transition to LED).
- Replacement of inefficient equipment (e.g., grain dryers, refrigeration).

Requires a Professional Energy Audit or assessment before application.

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Funding Levels

- Grants: Typically cover 25% to 50% of the total eligible project costs.
- Guaranteed Loans: Available for up to 75% of the total project costs
- Combined Assistance: Can receive a Grant + Loan guarantee, covering up to 75% of costs.
- Grant Cap: Varies annually, often up to $500,000 for Renewable Energy and $250,000 for Efficiency.

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Tax Implications

- Grant is Taxable Income: REAP grant funds are generally considered gross income for federal tax purposes.
- Form 1099-G: The USDA will issue this form to the recipient reporting the grant amount.
- Interaction with Tax Credits: The eligible basis for the Federal Investment Tax Credit (ITC) may be reduced by the amount of the REAP grant.

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Corporate Provided Meals and Lodging

- **539**

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C Corporations Only for Owners

p. 539

- To have tax-free fringe benefits for owners
  - Must be C corporation
  - S corporations specifically not a corporation
    - Value of meals and lodging provided to owners will be included in compensation [Sec. 1372]
    - Applies to more than 2% owners
    - Treated as a partnership

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Sec. 119

Meals
- Must be furnished on business premises
- Must be for employer's convenience

Lodging
- Must be on business premises
- For the employer's convenience
- Must be condition of employment

- p. 540

143

Substantial Business Reasons

- Employee must be on call during meal period
- Employee only has short time for meals
- Employee can't obtain proper meals within a reasonable meal period — Very applicable to Ag in many areas
- Employee is food service worker and is required to eat on the premises

- p. 540

144

Lodging Exclusion

p.542

Business premises
- Where employee performs a significant portion of their duties

IRS Publications
- Publication 15-B
  - Provides the guidance for the deduction
- Publication 525
  - Provides similar guidance plus examples

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Common Ag Scenarios

Remote or Isolated Farm
- No nearby restaurants
- No DoorDash

Short Meal Periods
- Harvest or Planting time
- Other minimal time

On-Call for Emergencies
- Livestock
- Grain Dryer

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Multiple Court Cases

pp. 543-544

Material provides a full review of court cases dealing with Meals and Lodging

Most of the cases deal with Ag related issues

Most in favor of taxpayers

Ones not in favor had bad fact patterns

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Documentation

Should Maintain

Written policies

Board of Directors minutes

Employment Agreement

IRS Emphasis

Documentation is likely most important

Dot the I's and Cross the t's

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Key Takeaways from IRS Guidance

- **Written policies not strictly required but highly recommended**
- **Must be able to prove the need**
- **May consider ability of meal delivery services**
- **Providing meals for morale or perk not sufficient**

149

Deduction Limits

Employer's deduction
- 50% from 2018-2025
- Zero after 2025

Full Deduction For
- Meals treated as compensation
- Recreational, social or similar
- Items made available to general public
- Goods or services sold to public
- Sec. 274(e)(2),(3),(4),(7),(8), and (9)

150

S Corporation Shareholders

- pp. 545-547

Meals and Lodging
- Deductible by S corporation
- FMV of Meals and Lodging included as compensation to shareholder

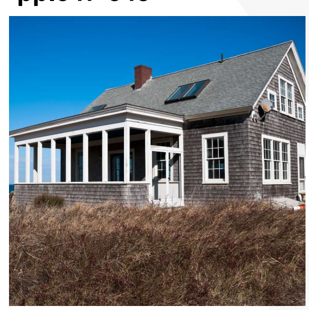
Net cost is the payroll taxes

151

Lodging Rented to Corporation

pp.547-548

- Lodging rented to corporation
  - Is allowed
  - However, Sec. 280A limits deductions to
    - Interest
    - Taxes
  - No Section 121 exclusion available upon sale for that portion
  - See examples 13-15



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Optimum Lodging Scenario

Farmer land to C corporation

20-year lease
Lease calls for all improvements to be landlord's at end of lease
Normal lease requirements

C corporation builds a new home

100% bonus depreciation
Corporation member of farm GP
Corporation gets full value of home over 20 years
Normal depreciable life of farm building

At end of lease

House reverts to owners
No basis in home
No dividend
Section 121 exclusion available after two years

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Hobby Losses
Schwarz v. Comr., T.C. Memo. 2024-55

- Facts:
  - The petitioners had a history of conducting real estate-related activities involving ranchland. Through their controlled entities, the petitioners bought 15,070 acres in 2005 with the intent to improve it and sell it. However, they later decided to establish an ecotourism activity on a portion of the land involving fee-based fishing and hunting and other outdoor events. That activity was conducted by a partnership that they owned which leased the land from their other controlled entities. The partnership also conducted farming and construction operations on the land and other properties that they owned. The partnership filed a Schedule F for every year from 2005 to 2020, reporting income from both the ecotourism activity and the farming/construction operations. The Schedule F income reported for those years exceeded $14 million, but a resulting loss every year. The losses flowed through to the petitioners which offset significant taxable income.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Facts:
  - The IRS issued a notice of deficiency for tax years 2015-2017, determining that the partnership's activity was not engaged in with the requisite profit intent under IRC §183. The IRS also applied a 20 percent accuracy-related penalty for each year. The petitioners claimed that they were engaged in the Schedule F activity with a profit intent and that the real estate and the partnership's (and related entities) were engaged in a single activity.
  - Three issues:
    - Is the farming activity the same activity as the construction/real estate activity?
    - Was the farming activity engaged in with a profit intent?
    - Doe the 20% accuracy-related penalty apply?

155

Schwarz v. Comr., T.C. Memo. 2024-55

- Single Activity?
  - The Tax Court determined that the Schedule F activity and the real estate activities were separate.
  - On whether the activities were separate or should be combined, the Tax Court noted that the factors of Treas. Reg. §1.183-1(d)(1) (which establishes a test for treating farming and the holding of land on which farming occurs as one activity) were relevant and that neither party "came even remotely close to adequately addressing the issue."
    - The Tax Court rejected the petitioners' argument that the Regulation was inapplicable because the petitioners' farming expenses contributed to the appreciation of the real estate. The Tax Court determined that no such exception applied and that the factors set forth in the Regulation and caselaw favored the IRS.

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One Activity or Two?

- When client has multiple activities are they one or separate?
  - Treas. Reg. §1.183-1(d)(1)
    - Degree of organizational and economic interrelationships of the undertaking
    - The business purpose served by carrying on the undertakings separately or together
    - The similarity of the undertakings

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One Activity or Two?

- When client has multiple activities are they one or separate?
  - Treas. Reg. §1.183-1(d)(1)
    - "Where land is purchased or held primarily with the intent to profit from increase in its value, and the taxpayer also engages in farming on such land, the farming and holding of the land will ordinarily be considered a single activity only if the farming activity reduces the net cost of carrying the land for its appreciation in value."
      - What does this mean?

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One Activity or Two?

- The meaning of the test:
  - Farming and holding of land will be considered a single activity only if the income derived from farming exceeds the deductions attributable to the farming activity which are not directly attributable to the holding of the land
    - I.E. – Deductions other than those directly attributable to the holding of the land such as interest on a mortgage secured by the land, annual property taxes attributable to the land and improvements, and depreciation of improvements to the land

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Schwarz v. Comr., T.C. Memo. 2024-55

- Profit Intent
  - On the profit intent issue, the Tax Court went through the factors of Treas. Reg. §1.183-2(b) and concluded that most of the factors favored the IRS, particularly noting the long history of losses and lack of profit only permissible by the petitioners' high-non-farm income, particularly when the real estate market was strong. Accordingly, the Tax Court determined that the petitioners were not engaged in the farming activity with the intent to make a profit.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Accuracy-related penalty?
  - As for the accuracy-related penalties, the Tax Court noted that the petitioners' CPA did advise them during the tax years in issue and the petitioners relied in good faith on him as an experienced CPA. As such, the Tax Court held that the accuracy-related penalties did not apply for the tax years at issue.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Comments:
  - This case involved large-scale revenues and losses associated with activities that involved the petitioners' personal interests who also had high income derived from other sources. The petitioners' books and records were inadequate, and their business plans were not well developed. The lawyering in the case was also deficient.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Court's comment:
  - "Many facts stipulated, alleged, argued, testified about, and otherwise presented to the Court in this case are, or appear to be, incorrect or misleading. The parties' work occasionally reflected an uninspired attitude toward developing, trying, and briefing this case. As a result, many potentially relevant facts and arguments were undeveloped, ignored, misrepresented, and/or missed."
    - The Tax Court was also critical of the credibility of expert witness reports offered in the case, as well of the credibility of the petitioners.
    - The case is a poignant illustration that legal counsel must provide an honest assessment to the client of the client's credibility as well as the credibility of experts that the client will utilize.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Update:
  - On August 7, 2024, the IRS entered its computation for entry of decision to which the Tax Court ordered the petitioners to file a response by September 11, 2024.
  - Instead, on September 11, the petitioners filed an objection to the computation for entry of decision to which the Tax Court ordered the IRS to respond by September 26.
  - On September 16, the petitioners filed a motion for reconsideration of the Tax Court's findings which the Tax Court granted on September 17 and ordered the IRS to respond by October 1, which was later changed to November 1.
  - On September 26 the IRS filed its response to the petitioner's objection to the computation for entry of decision.

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Schwarz v. Comr., T.C. Memo. 2024-55

- Update:
  - In an order entered on Nov. 5 in the *Schwarz* case the Tax Court granted the taxpayers' motion for reconsideration of the factual findings in the case.
    - The Tax Court has ordered the parties to file responses the order arguing whether Treasury Regulations §§ 1.183-1(d)(1) and 1.183-2(b) are valid or not in light of the Supreme Court's opinion in *Loper Bright Enterprises, et al. v. Raimondo* which repealed the *Chevron* Doctrine.

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Another Hobby Loss Case

- *Young v. Comm'r., T.C. Memo. 2025-95*
  - 83-acre pecan farm purchased in 2008; horse arena built on the property in 2013; from 2008-2022 had about $16 million of pass-through income from another business; ranch never showed a profit and at time of audit had cumulative losses of about $3 million
  - Nine-factor test applied
    - IRS wins 6-1-2
    - 20% accuracy-related penalty applied

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Corporate Redemptions

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Overview

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A redemption occurs when

- A corporation
- Acquires its own stock
- From a shareholder

It can either be treated as

- A sale or exchange, or
- A dividend

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Advantage of C Corporation Redemptions

Sale or Exchange Treatment
Allows basis recovery and potential capital gain rates for noncorporate shareholders

Dividend Treatment for Corporations
May allow for a dividends received deduction, reducing the effective tax rate

Estate Planning
Redemptions can provide liquidity for estate taxes or facilitate business succession

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Disadvantages of C Corp. Redemptions

Sale or Exchange Treatment
C Corporate owners not allowed dividend received deduction under Sec. 243

Dividend Treatment for Individuals
No basis reduction, installment sale not allowed

Attribution Rules
Certain related party owners must terminate participation in company for at least 10 years

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Sale or Exchange Treatment

- Section 302(a)
  - Recognizes capital gain or loss
    - Amount realized over basis
    - Installment treatment available
  - Noncorporate owners
    - Advantage versus dividend treatment
  - C Corporation owners
    - Disadvantage versus dividend treatment

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Dividend Treatment

- Sections 301/302
  - Entire amount is treated as dividend
  - No reduction for cost basis
  - Installment treatment not allowed
  - Noncorporate owners
    - Disadvantage versus dividend treatment
  - C Corporation owners
    - Advantage versus dividend treatment

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Complete Termination (Sec. 302(b)(3)

p. 557

Example:
Shareholder A owns 100 shares of X Corp. X Corp redeems all 100 shares from A, and A has no further interest in the corporation (including as officer, director, or employee), and complies with the waiver and notification requirements of § 302(c)(2) (see Section B on § 302(c)(2) waiver requirements and documentation).

Tax Consequence:
The redemption qualifies as a complete termination under § 302(b)(3) and is treated as a sale or exchange under § 302(a). A recognizes capital gain or loss equal to the difference between the redemption proceeds and the adjusted basis of the shares. Attribution rules under § 318(a) are generally waived if the requirements of § 302(c)(2) are met.

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Substantially Disproportionate Sec. 302(b)(2)

p. 557

Example:
Shareholder B owns 40% of the voting stock of Y Corp. Y Corp redeems enough shares from B so that, immediately after the redemption, B owns less than 50% of the voting power and B's post-redemption percentage of voting stock is less than 80% of B's pre-redemption percentage.

Tax Consequence:
If the requirements of § 302(b)(2) are met (less than 50% voting power post-redemption, and post-redemption percentage is less than 80% of pre-redemption percentage for both voting and common stock), the redemption is treated as a sale or exchange under § 302(a). B recognizes capital gain or loss.

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Redemption in Partial Liquidation (Sec. 302(b)(4))

p. 557

Example:
A noncorporate shareholder receives a distribution in partial liquidation of the corporation, such as a distribution of assets attributable to the cessation of a qualified trade or business.

Tax Consequence:
If the requirements of § 302(b)(4) and § 302(e) are met, the redemption is treated as a sale or exchange under § 302(a).

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Family Attribution Rules (Sec. 318(a)(1))

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No Interest After Redemption

No Reacquisition for 10 Years

Notification Agreement

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No Interest After Redemption

p. 558

Immediately after and for 10 years, no interest as:

- Officer
- Director
- Employee
- Consultant (in many situations)

Creditor is allowed

Certain fringe benefits are allowed

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No Reacquisition for 10 Years

- **558**

Distributee does not acquire any interest in corporation for 10 years

Bequest or inheritance is allowed

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Notification

- p. 558

Distributee files a statement with the IRS to notify it of any such acquisition

Also outlines agreement to the Section 318 requirements, etc.

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Exceptions and Limitations

If stock was acquired within 10 years of redemption from related party

It is a dividend

If they can prove there was no avoidance of federal tax, then sale or exchange may result

Extremely difficult to prove

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Summary Table

Summary Table: Section 302(c)(2) Waiver Requirements

Requirement	Description
No post-redemption interest	No interest in the corporation after redemption, except as a creditor
10-year abstention	No reacquisition of interest (other than by bequest/inheritance) for 10 years
Notification agreement/statement	File statement with IRS return, agree to notify IRS of any reacquisition within 10 years
No recent related-party transfers	No stock acquired from or by related persons within 10 years, unless not for tax avoidance
Special rules for entities	Entity and related persons must meet requirements; joint/several liability for deficiencies

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Example

Suppose Edward sells 1,000 shares of Farm Corp to Farm Corp for a $1,000,000 promissory note, payable over 10 years. The redemption does not qualify for sale or exchange treatment under § 302(b) and is treated as a dividend under § 301.

Tax Consequence:

- The entire $1,000,000 is included in Edward's gross income as a dividend in the year of the transaction, to the extent of Farm Corp's E&P.
- Edward cannot defer recognition of income as payments are received; the installment method is not available.
- Any interest paid on the note is taxed as ordinary income when received.

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Shareholder Implications

Accelerated Tax Liability: The shareholder must pay tax on the full amount of the note in the year of the redemption. Even though the cash will be received over several years.

Potential Cash Flow Mismatch: The shareholder may owe tax before receiving the corresponding cash payments, creating a liquidity issue.

No Basis Recovery Until E&P Exhausted: Only after E&P is exhausted does the shareholder reduce the basis, and only after basis is reduced to zero does capital gain arise.

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Purchase Versus Sale of Farm Equipment

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Why Consider Leasing Farm Equipment

Lower Upfront Costs	Typically, no or little down payment
Access to Newer Technology	Leasing can allow "rolls" to newer equipment
Predictable Expenses	Lease payments are fixed

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Why Consider Leasing Farm Equipment (cont.)

Flexibility in lease termination	Can return the equipment Can lease a different model Purchase existing equipment
Reduced Maintenance Burden	Usually, all maintenance included in lease
Potential Tax Savings	In some cases, there may be savings

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Operating Lease

- Most common type
- Usually shorter than economic life
- Fixed payments
- Can return equipment at end of lease
- GAAP requires booking on balance sheet

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Capital Lease

- Like a purchase for tax purposes
- May have a bargain purchase option
- Unlike a purchase payments are fixed
- No early buy-out
- Less flexibility than a purchase

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Classification for Tax Purposes

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- **Transfer of ownership**
  - Does ownership transfer at end of lease?
- **Bargain Purchase Option**
  - Is there a option to purchase for less than FMV
- **Lease Term**
  - Is the term for more than 75% of the estimated economic life
- **Present Value**
  - Does the PV of the payments exceed 90% of FMV

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GAAP Classification – ASB Topic 842-10-25-2

Whether finance or operating, GAAP requires — To book both and asset and a liability on the balance sheet

Operating – S/L Expense

Finance – Similar to a Loan

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Operating Lease Tax Treatment

p. 564

- **Lease payments are deducted as paid**
  - Generally, but watch out for Section 467
- **No depreciation deduction**
  - Unless it should be a capital lease
- **No separately stated interest deduction**
  - Helpful if entity is subject to interest rules
- **Potential for higher deduction in early/later years**
  - If bonus is used on capital lease, then no deduction in later years
  - Deduction matches the payment

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Capital Lease Treatment

Depreciation
- 100% bonus / Section 179 / Remainder

Interest expense deduction
- Separately stated

No full lease payment deduction
- Deduction will never equal payment

Deduction does not equal payment
- No matching of payment available

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GAAP Treatment (ASC 842)

Book Asset and offsetting Liability	• Same values for operating or finance
Operating lease	• One expense item on S/L basis
Finance lease	• Book interest expense • Book amortization expense

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OBBBA Agricultural Issues

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New Statutory Reference Prices

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Commodity	Price
Wheat	$6.35 per bushel
Corn	$4.10 per bushel
Grain Sorghum	$4.40 per bushel
Barley	$5.45 per bushel
Oats	$2.65 per bushel
Long Grain Rice	$16.90 per hundredweight
Medium Grain Rice	$16.90 per hundredweight
Soybeans	$10.00 per bushel
Other Oilseeds	$23.75 per hundredweight
Peanuts	$630.00 per ton

*Based on the context provided

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Effective Reference Price Calculation Changes

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Minimum ERP Base Increased
Increases the minimum Effective Reference Price (ERP) base to 88% from the current 85%

Maximum Increase Maintained
Maintains the current maximum increase from 115% of statutory reference price

Automatic Reference Price Increase
Automatic .5% increase in statutory reference price beginning with 2031 crop year

Price Cap Retained
Can't exceed 113% of current statutory reference price

These changes aim to provide stability and predictability in the minimum price support for farmers while maintaining reasonable limits on the maximum reference price.

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Updates to Effective Reference Prices and ARC Benchmark Prices

		Effective Reference Prices				ARC Benchmark Prices			
		Current	One Big Beautiful Bill			Current	One Big Beautiful Bill		
				Change				Change	
Commodity	Units	2025	2025	Percent	Level	2025	2025	Percent	Level
Wheat	Bushel	$5.56	$6.35	14%	$0.79	$5.78	$6.28	9%	$0.50
Barley	Bushel	$4.95	$5.45	10%	$0.50	$5.06	$5.49	9%	$0.43
Oats	Bushel	$2.76	$2.99	8%	$0.23	$3.23	$3.44	6%	$0.21
Peanuts	Pound	$0.2675	$0.3150	18%	$0.0475	$0.2302	$0.2835	23%	$0.0533
Corn	Bushel	$4.26	$4.42	4%	$0.16	$4.33	$4.52	5%	$0.20
Grain Sorghum	Bushel	$4.51	$4.67	3%	$0.16	$4.56	$4.77	5%	$0.21
Soybeans	Bushel	$9.66	$10.71	11%	$1.05	$10.47	$10.95	5%	$0.48
Dry Peas	Pound	$0.1163	$0.1310	13%	$0.0147	$0.1228	$0.1329	8%	$0.0101
Lentils	Pound	$0.2297	$0.2587	13%	$0.0290	$0.2665	$0.2876	8%	$0.0211
Canola	Pound	$0.2054	$0.2375	16%	$0.0321	$0.2140	$0.2336	9%	$0.0196
Large Chickpeas	Pound	$0.2477	$0.2798	13%	$0.0321	$0.2777	$0.3003	8%	$0.0226
Small Chickpeas	Pound	$0.2190	$0.2529	15%	$0.0339	$0.2520	$0.2739	9%	$0.0219
Sunflower Seed	Pound	$0.2015	$0.2375	18%	$0.0360	$0.2015	$0.2259	12%	$0.0244
Flaxseed	Bushel	$11.53	$13.30	15%	$1.77	$11.79	$13.23	12%	$1.44
Mustard Seed	Pound	$0.2317	$0.2684	16%	$0.0367	$0.2864	$0.3001	5%	$0.0137
Rapeseed	Pound	$0.2015	$0.2375	18%	$0.0360	$0.1776	$0.2138	20%	$0.0362
Safflower	Pound	$0.2275	$0.2375	4%	$0.0100	$0.2337	$0.2477	6%	$0.0139
Crambe	Pound	$0.2100	$0.2375	13%	$0.0275	$0.2124	$0.2223	5%	$0.0099
Sesame Seed	Pound	$0.2317	$0.2684	16%	$0.0367	$0.3326	$0.3480	5%	$0.0154
Seed Cotton	Pound	$0.3670	$0.4200	14%	$0.0530	$0.3484	$0.3880	11%	$0.0396
Rice, Long Grain	Pound	$0.1400	$0.1690	21%	$0.0290	$0.1258	$0.1521	21%	$0.0263
Rice Med/Short Grain	Pound	$0.1400	$0.1690	21%	$0.0290	$0.1296	$0.1530	18%	$0.0234
Rice, Temp. Japonica	Pound	$0.1990	$0.2434	22%	$0.0444	$0.2202	$0.2417	10%	$0.0216

Terrain

Sources: USDA FSA, One Big Beautiful Bill Act, Terrain

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Enrolled Acres in PLC and ARC

Covered Commodity	Price Loss Coverage (PLC)	Agriculture Risk Coverage - County (ARC-CO)	Coverage - Individual (ARC-IC)	Total Enrolled Base Acres	National Average PLC Yield From USDA
	Enrolled Base Acres	Total	Enrolled Base Acres		
Barley	3,013,886	2,260,417	25,775	5,300,078	54.73
Canola	456,609	991,141	1,570	1,449,320	1,656.00
Chickpeas, Large	17,401	55,415	100	72,916	1,394.00
Chickpeas, Small	4,633	16,467	222	21,322	1,424.00
Corn	15,302,675	75,556,669	718,184	91,577,528	140.76
Crambe	549	2,228	0	2,777	1,184.00
Dry Peas	145,058	278,192	5,327	428,577	1,821.00
Flaxseed	54,648	172,593	615	227,857	1,929.00
Grain Sorghum	4,257,103	4,050,919	13,084	8,321,106	61.90
Lentils	97,263	178,001	4,229	279,493	1,208.00
Mustard Seed	8,987	15,734	234	24,955	705.00
Oats	681,168	1,351,724	5,916	2,038,809	51.94
Peanuts	2,325,496	32,801	69	2,358,366	3,526.00
Rapeseed	987	1,442	0	2,429	1,466.00
Rice-Long Grain	3,740,349	21,946	50	3,762,345	6,292.00
Rice-Med Grain	161,451	1,681	0	163,132	6,292.00
Rice-Temp Japonica	231,966	121,325	289	353,580	6,292.00
Safflower	44,044	29,198	306	73,547	1,085.00
Seed Cotton	10,003,153	1,183,263	2,239	11,188,655	1,755.59
Sesame Seed	2,603	2,764	0	5,367	317.00
Soybeans	3,001,530	48,884,947	329,418	52,215,894	40.44
Sunflower Seed	366,226	1,226,631	8,039	1,600,896	1,440.00
Wheat	26,372,851	34,275,552	395,868	61,044,271	41.48
Grand Total	70,290,637	170,711,049	1,511,534	242,513,220	

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Analysis of National Extra 2025 "PLC" Payments

Covered Commodity	Total Enrolled Base Acres	National Average PLC Yield From USDA	Old Effective Reference Price	New Effective Reference Price	Estimated August 2025 MYA Price for 2025 Crop	Projected PLC Payments Based on Old EFR	Projected PLC Payments on New EFR	Total Gross Per Acre Payment	Extra Gross Per Acre on Average
Barley	5,300,078	54.73	$4.95	$5.45	$5.30	$0	$43,510,990	$8.21	$8.21
Canola	1,449,320	1,656.00	$0.2054	$0.2375	$0.2100	$0	$66,002,042	$45.54	$45.54
Chickpeas, Large	72,916	1,394.00	$0.2477	$0.2798	$0.2950	$0	$0	$0.00	$0.00
Chickpeas, Small	21,322	1,424.00	$0.2190	$0.2529	$0.3170	$0	$0	$0.00	$0.00
Corn	91,577,528	140.76	$4.26	$4.42	$3.90	$4,640,563,023	$6,703,035,477	$73.20	$22.52
Crambe	2,777	1,184.00	$0.2100	$0.2375	$0.3600	$0	$0	$0.00	$0.00
Dry Peas	428,577	1,821.00	$0.1163	$0.1310	$0.1510	$0	$0	$0.00	$0.00
Flaxseed	227,857	1,929.00	$0.2059	$0.2375	$0.2133	$0	$10,622,110	$46.62	$46.62
Grain Sorghum	8,321,106	61.90	$4.51	$4.67	$3.70	$417,211,924	$499,624,156	$60.04	$9.90
Lentils	279,493	1,208.00	$0.2297	$0.2587	$0.4060	$0	$0	$0.00	$0.00
Mustard Seed	24,955	705.00	$0.2317	$0.2684	$0.4100	$0	$0	$0.00	$0.00
Oats	2,038,809	51.94	$2.76	$2.99	$3.10	$0	$0	$0.00	$0.00
Peanuts	2,358,366	3,526.00	$0.2675	$0.3150	$0.2500	$145,522,962	$540,513,858	$229.19	$167.48
Rapeseed	2,429	1,466.00	$0.2015	$0.2375	$0.3000	$0	$0	$0.00	$0.00
Rice-Long Grain	3,762,345	6,292.00	$0.1400	$0.1690	$0.1300	$236,726,760	$923,234,364	$245.39	$182.47
Rice-Med Grain	163,132	6,292.00	$0.1400	$0.1690	$0.1350	$5,132,130	$34,898,483	$213.93	$182.47
Rice-Temp Japonica	353,580	6,292.00	$0.1990	$0.2434	$0.2100	$0	$74,305,859	$210.15	$210.15
Safflower	73,547	1,085.00	$0.2275	$0.2375	$0.2200	$598,492	$1,396,482	$18.99	$10.85
Seed Cotton	11,188,655	1,755.59	$0.3670	$0.4200	$0.3419	$493,031,540	$1,534,094,154	$137.11	$93.05
Sesame Seed	5,367	317.00	$0.2317	$0.2684	$0.3300	$0	$0	$0.00	$0.00
Soybeans	52,215,894	40.44	$9.66	$10.71	$10.10	$0	$1,288,082,560	$24.67	$24.67
Sunflower Seed	1,600,896	1,440.00	$0.2015	$0.2375	$0.2260	$0	$26,510,836	$16.56	$16.56
Wheat	61,044,271	41.48	$5.56	$6.35	$5.30	$658,350,254	$2,658,722,179	$43.55	$32.77
Grand Total	242,513,220					$6,597,137,085	$14,404,553,550	$59.40	$32.19

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Adding Base Acres to the Farm

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- 1-Time Opportunity
  Farmers can add base acres for the first time in this program
- Non-Covered Commodities
  Farmers can include up to 15% non-covered commodities such as fruits and vegetables in their base acre additions
- National Acreage Cap
  The total national acreage addition is capped at 30 million acres
- Pro-Rata Allocation
  If the national cap is exceeded, acreage additions will be pro-rated
- Historical Plantings
  Base acre additions will be based on 2019-2023 average plantings
- Underserved Farmers
  There are no restrictions based on underserved farmer status
- Prevent Plant Acres
  Prevent plant acres will be counted as planted acres for the program
- Cotton Base Incorporation
  Old cotton base will be incorporated into the calculation

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Estimated Allocation of Base Acres

Pre-OBBBA Base						
Commodity	2019-23 Average Planted Acres	2019-23 Average Enrolled Base	Ratio Base to Planted Acres	New Base	Final Post OBBBA Base Acres	Ratio Base to Planted Acres
Corn	94.05	91.31	97.1%	10.43	101.74	108.2%
Wheat	49.80	62.30	125.1%	6.94	69.24	139.0%
Soybeans	84.10	51.68	61.5%	7.68	59.36	70.6%
Seed Cotton	12.17	10.72	88.1%	1.52	12.24	100.6%
Sorghum	6.13	8.56	139.6%	0.85	9.41	153.5%
Barley	2.76	5.32	192.8%	0.67	5.99	217.0%
Rice	3.13	4.55	145.4%	0.16	4.71	150.5%
Peanuts	1.56	2.44	156.4%	0.17	2.61	167.3%
Other Crops	8.83	6.27	71.0%	1.58	7.85	88.9%

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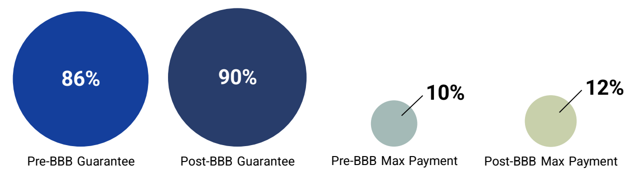
Changes to Agricultural Risk Coverage (ARC) 570

Comparison of ARC program guarantee and maximum payment before and after the changes



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Example of New Rules

- Benchmark Revenue
  The benchmark revenue remains the same at $1,200 under both the old and new rules.
- Maximum Payment
  The maximum payment has increased from $120 under the old rules to $144 under the new rules.
- Guarantee
  The guarantee has increased from $1,032 under the old rules to $1,080 under the new rules.
- Harvest Revenue
  The harvest revenue remains the same at $950 under both the old and new rules.
- Calculated Payment
  The calculated payment has increased from $82 under the old rules to $130 under the new rules.
- Payment Allowed
  The payment allowed has increased from $82 under the old rules to $130 under the new rules.

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Equitable Treatment of Pass-through Entities 571

Partnerships
Partnerships, including general partnerships and joint ventures, are not subject to payment limits.

LLCs without corporate election
Limited Liability Companies (LLCs) that do not elect corporate status are not subject to payment limits.

S Corporations
S Corporations are not subject to payment limits.

Payment Limit Exemption
The payment limit exemption is based on the number of "full" active owners in the farm operation

FSA will need to issue transition guidance on when and how this will be implemented

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Equitable Treatment of Pass-through Entities

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No Payment Limit for Qualified Pass-Through Entities
Any entity taxed as a partnership, LLC not electing corporate status, S corporation, general partnership, or joint venture will not be subject to a payment limit. It will be based on number of "full" owners.

C Corporations Subject to One Payment Limit
C corporations will be subject to a single payment limit, unlike pass-through entities.

General Partnerships Subject to AGI Limits
General partnerships will be subject to the Adjusted Gross Income (AGI) limits, like other pass-through entities.

Changes to AGI Definition
The definition of Adjusted Gross Income (AGI) is likely to undergo major changes, which could impact the eligibility for benefits.

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C Corporation Payment Limits

One Payment Limit
C corporations remain subject to one payment limit even with multiple owners

Consider S Corporation
May want to consider switching to an S corporation if possible payments exceed multiple current payment limits of $155,000 per year

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Payment Limit Increase Details

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Payment Limit Increase
Bump to $155,000 from current $125,000

Effective Year
Effective for 2025 crop year

Payment Timeline
To be paid October 2026 or later

Inflation Indexing
Indexed to inflation starting with 2026 crop year

The increased subsidy will provide more support for farmers, helping them navigate market challenges and uncertainties.

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Broadening the Definition of Farming

p. 572

Gains on sale or trade of farm equipment
Profits from selling or trading in farm equipment now count towards farm income.

Agri Tourism
Income from offering farm-based experiences and attractions to visitors is now included.

Direct-to-consumer marketing of farm products
Earnings from selling farm goods directly to consumers, such as at farmers markets, are now considered farm income.

These changes make it much easier for a wider range of agricultural operations to qualify as a 'farmer' for farm program payment purposes.

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Loan Rates Updated for 2026 and Later

Commodity	Units	Current 2025	One Big Beautiful Bill 2026–31	Change Percent	Change Level
Wheat	Bushel	$3.38	$3.72	10%	$0.34
Barley	Bushel	$2.50	$2.75	10%	$0.25
Oats	Bushel	$2.00	$2.20	10%	$0.20
Peanuts	Pound	$0.1775	$0.1950	10%	$0.0175
Corn	Bushel	$2.20	$2.42	10%	$0.22
Grain Sorghum	Bushel	$2.20	$2.42	10%	$0.22
Soybeans	Bushel	$6.20	$6.82	10%	$0.62
Dry Peas	Pound	$0.0615	$0.0687	12%	$0.0072
Lentils	Pound	$0.1300	$0.1430	10%	$0.0130
Canola	Pound	$0.1009	$0.1110	10%	$0.0101
Large Chickpeas	Pound	$0.1400	$0.1540	10%	$0.0140
Small Chickpeas	Pound	$0.1000	$0.1100	10%	$0.0100
Sunflower Seed	Pound	$0.1009	$0.1110	10%	$0.0101
Flaxseed	Bushel	$5.6504	$6.2160	10%	$0.57
Mustard Seed	Pound	$0.1009	$0.1110	10%	$0.0101
Rapeseed	Pound	$0.1009	$0.1110	10%	$0.0101
Safflower	Pound	$0.1009	$0.1110	10%	$0.0101
Crambe	Pound	$0.1009	$0.1110	10%	$0.0101
Sesame Seed	Pound	$0.1009	$0.1110	10%	$0.0101
Upland Cotton	Pound	$0.5200	$0.5500	6%	$0.0300
ELS Cotton	Pound	$0.9500	$1.0000	5%	$0.0500
Rice, Long Grain	Pound	$0.0700	$0.0770	10%	$0.0070
Rice Med/Short Grain	Pound	$0.0700	$0.0770	10%	$0.0070
Rice, Temp. Japonica	Pound	$0.0700	$0.0770	10%	$0.0070

Terrain

Sources: USDA FSA, One Big Beautiful Bill Act, Terrain

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Increasing Support For Beginning Farmers & Ranchers

- Year 1-2: Crop Insurance Premium subsidies increased by 15%
- Year 3: Premium subsidies increased by 13%
- Year 4: Premium subsidies increased by 11%
- Year 5-10: Premium subsidies stabilized at 10% increase
- All Years: Premium support expanded from 5 to 10 years

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Increased Crop Insurance Coverage

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4

- **90% or 95% coverage** – Aggregated across multiple commodities – 90% or based on area revenue/yield – 95%
- **Increases SCO coverage to 90%** – Up from 86% in previous years
- **Increases SCO premium subsidy to 80%** – Up from 65% in previous years
- **Now Allows SCO for farmers who elected ARC** – Expands program eligibility

The increased coverage, higher subsidy, and expanded eligibility provide enhanced risk management options for farmers.

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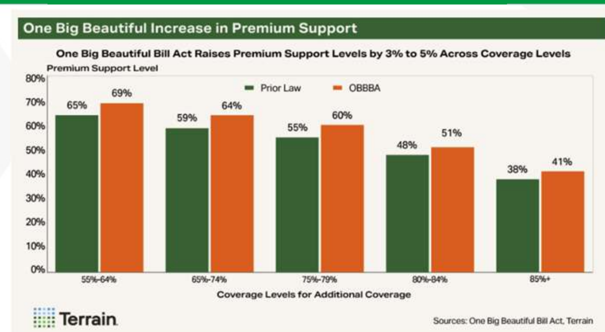
Crop Insurance – Premium Support



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New IRC §139L

- Section 70435 of OBBBA
  - Excludes from income 25% of the interest a "qualified lender" receives on a "qualified real estate loan"

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New IRC §139L

- Qualified Lender
  - FDIC-insured banks or savings associations
  - State- or federally-regulated insurance companies
  - Entities wholly owned by a U.S. bank holding company, or entities wholly owned by a U.S. state insurance holding company
  - Federal Agricultural Mortgage Corporation (Farmer Mac)

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New IRC §139L

- Qualified loan
  - Newly originates on or after July 4, 2025
  - Secured by real property located in the U.S. (determination made at the time the interest income accrues)
    - Agricultural real estate
      - Substantially used for the production of at least one ag product (crops, livestock, timber, farm residences)
      - Substantially used in the t/b of fishing or seafood processing (includes aquaculture facility)
  - Borrower must not be a "specified foreign entity"

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New IRC §139L

- No double tax benefit
  - IRC §139L(f) includes a provision that denies deductions to the extent they're allocable to the excluded interest income
    - Mirrors the principles in IRC §265

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New IRC §139L

- Basis adjustment
  - The lender's basis in the qualified loan must be reduced by the portion of expenses disallowed under the double benefit rule (i.e., the portion allocable to the excluded interest income)
    - Reflects the net tax benefit

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New IRC §139L

- Basis adjustment
  - Example
    - Bank originates a $1,000,000 qualified loan and receives $100,000 in annual interest with $25,000 of that amount excluded from income.
    - Bank incurs $20,000 in allocable costs with 25% ($5,000) disallowed
      - The $5,000 disallowed deduction causes a $5,000 downward basis adjustment to the loan.
      - The bank's basis in the loan becomes $995,000 instead of $1,000,000.

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New IRC §1062

- Allows for income tax resulting from the sale of farmland to a qualified farmer to be paid in four annual installments.

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New IRC §1062

- Net income tax from sale of farmland can be paid over four years
  - Gain must derive from sale or exchange of "qualified farmland property" to a "qualified farmer"
  - Seller can elect to pay the "net tax liability in four equal installments
    - If election made, first installment to be paid on due date for return (without regard to extensions) for return of tax year in which sale or exchange occurred

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New IRC §1062

- Handling underpayments
- Election timeline
  - What about entities?
- What is “net tax liability”?
- What is qualified property?
  - Subject to a restrictive covenant
- What is a “farm” and “farming purposes”?
- What is a “qualified farmer”?

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LLCs and S.E. Tax (Background)

584

- Federal Insurance Contribution Act (FICA)
  - Imposes 12.4% social security tax on applicable earnings
- Self Employment Contributions Act (SECA) imposes the 12.4% social security tax on self-employed taxpayers
- Sec. 1402(a)(13) enacted in 1977
  - Disallows SE tax on limited partners
  - LPs wanted SE tax to get retirement benefits

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Proposed Regulations

- 20 years later in 1997, IRS issued Prop. Reg. 1.1402(a)-2(h) *et al.*
- Did not depend on state-law characterization
- Would impose SE tax on many LLC, LP, etc. owners
- Congress placed six-month moratorium on Regs.
- SE Tax applied if owner fails any one of three tests

11/19/2025

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Liability Test

- Does the owner have personal liability for the entity's liabilities under state or the partnership agreement
- Contractual guarantees or personal conduct does not create this liability
- Simply signing a personal guarantee is not sufficient to create company liability

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Management

Does the owner have the authority to legally bind the entity

Most "vanilla" LLCs provide all members with this authority

Most state statutes allow control agreements to specify managers

225

Participation

- Does the owner provide more than 500 hours of service to the entity

226

Multiple Class Interest Exception

- Proposed regulations allow LLC owners to have both manager and non-manager's interest
- The non-manager's interest must be equal to all other non-manager's interests
- The other non-manager's interest must be substantial
  - At least 20% ownership
  - Not working more than 500 hours
- GP do not qualify as second class of interest

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NIIT

- Limited Partners are passive
- One exception is if LP works more than 500 hours
- Work done in any capacity for an activity counts
  - S corporation wages attributed to LLC
- Spouse material participation is attributed to other spouse

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Soroban Capital Partners LP v. Comr. 161 T.C. 310 (2023)

- Soroban is an investment management company
- Originally an LLC but switched to LP
- Had six partners, but two were SMLLC of other partners, therefore technically three LPs
- 2016 and 2017 reported about $2 million of SE income
  - From guaranteed payments
  - GP income
- Non-SE income in excess of $10 million per year

11/19/2025

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Taxpayer Arguments

- Soroban argued that since it was organized as an LP under Delaware law, LP's exempt from SE tax
- The Code specifically states LP are exempt from SE tax
- Indicated Form 1065 instructions claimed they were LP

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Tax Court Analysis

- Applied functional analysis from Renkemeyer case
  - But that was not an LP
- First time Court ruled on LP case
- Noted the following words in the Code "the distributive share of any item of income or loss of a limited partner, as such"
- Court concluded the words "as such" indicated there is no blanket exception to SE taxation for LP

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Tax Court Analysis (continued)

- If a LP is anything more than merely an investor, then SE tax applies to its distributive share
- It "involves factual determination that are necessary to determine Soroban's aggregate amount of net earnings from self-employment."
- Essentially all personal service entities taxed as a partnership are subject to SE taxation

  This was really the only ruling of the Tax Court

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Denham Capital Management, L.P., et al. v. Comm'r., 2024-114

- Applied the functional analysis test
  - Currently on appeal at 1st Circuit
    - Disagrees with functional analysis test
    - Claims T.C. inappropriately allowed this partner-level determination to occur in a partner-level proceeding under the TEFRA regime
- Another case is pending at the Tax Court
  - *Point72 Asset Management LP*

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Soroban Capital Partners, LP v. Comm'r., T.C. Memo. 2025-52

- Win for IRS – only federal tax law controls classification of "partners" and "partnerships" for federal tax purposes.
- Functional analysis test applied
  - Alleged LPs managed both the investments and the operations
  - Managed risk
  - Served on committees that oversaw operations
  - Exercised control over daily business operations
  - Treated as full time job
  - Advertising highlighted the LPs expertise
  - Shares of ordinary income bore no relationship to capital contributed or capital accounts

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Qualified Conservation Contributions

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Statutory Framework

A "qualified conservation contribution" is defined in Sec. 170(h)(1) as:

Qualified Real Property Interests
Donor's entire interest, remainder interest, or perpetual use restriction

Qualified Organizations
Government entities, public charities, or supporting organizations

Conservation Purposes
Outdoor recreation, habitat protection, open space preservation, historic preservation

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Requirements for Deductibility

- **Perpetuity and Enforceability**
- **Baseline Documentation**
- **Restrictions on Transfer & Extinguishment**
- **Substantiation and Appraisal**

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Perpetuity and Enforceability

Must be protected in perpetuity

Legally enforceable restrictions

If mortgaged, must subordinate the lien

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Baseline Documentation

If donor reserves rights,

- Must provided donee documentation
- Sufficient to establish condition of property

Baseline Report

- Maps
- Photographs
- Description of natural features
- Other

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Restrictions on Transfer & Extinguishment

Deed must prohibit donee from transferring

- Unless for conservation purposes
- Subsequent donee must be qualified organization

Judicial extinguishment

- Donee must receive proportionate share of proceeds

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Substantiation and Appraisal

Deduction over $5,000 require
- Qualified appraisal

Deduction over $500,000
- Must be attached to tax return

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Valuation Methodology

Comparable sales of conservation easements	If any
Otherwise, Before and After FMV	Compare FMV of highest best value To FMV with easement
Difference is the contribution deduction	

242

Restrictions and Basis

If donor imposes additional restrictions
- FMV is adjusted

Basis
- Must be allocated between easement and remaining property

243

Income Limitations

Individuals
- 50% of AGI

Qualified Farmers
- 100% of AGI [Sec. 170(b)(1)(E)(iv)(I)]
- More than 50% of income from farming [Sec. 170(b)(1)(E)(v)
- Farmland sales don’t qualify

Corporations
- 10% of taxable income

Carryovers
- Up to 15 years

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Qualified Farmer Case

- Mark Rutkoske et al v. Commissioner [149 T.C. No. 6, 2017]
- Attempted to deduct 100% of AGI
- IRS argued gain from easement was not farm income
- Tax Court agreed that under Sec. 2032A(e)(5)
  - Gains from disposition of property including farmland is not farm income
  - Sec. 170 specifically refers to Sec. 2032A

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Disallowance of "Abusive" Contributions

- Contributions made after Dec. 29, 2022
- Can't exceed 2.5 times sum of total basis of partners or S corporation shareholders
- Exceptions
  - Property held for more than three years
  - Family partnerships
  - Certified Historic Structures

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Family Partnership Exception

- At least 90% of partnership is held by family members
- Property has been owned for at least one year

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Syndicated Conservation Cases

Multiple cases decided in favor of IRS

However, original Green Valley Investors, LLC case in 2022

Invalidated IRS Notice 2017-10	Was a legislative rule	Imposed new reporting and recordkeeping	Did not meet APA requirements	Result – No Sec. 6662A penalties

See Material for recaps of other cases

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Passive Losses

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- *Foradis v. Commissioner, T.C. Sum. Op. 2024-13*
  - Petitioner tried to qualify as a real estate professional to deduct $22,000 losses against W-2 income
    - Well, no…
      - Worked a 40-hour/week job, so not plausible that he spent more time on the rental activity than the W-2 job
      - Failed "plausibility" test
      - Logs not convincing
  - What about short-term rental exception???
    - The property was used as a short-term rental. The taxpayer missed the opportunity to argue for material participation under the short-term rental exception (which bypasses the "More Than Half" test if the average stay is 7 days or less).

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Passive Losses

- *Warren v. Comr., T.C. Sum. Op. 2024-20*
  - Same trap at *Foradis*
    - He worked almost 2,000 hours at his W-2 job and 1,600 hours on real estate activities.
      - Failed the 50% test
    - Fallback test of active participation failed because AGI >$150,000

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Passive Losses

- *Gossain v. Comm'r., T.C. Memo. 2024-97*
  - Can't meet both tests to be a real estate professional
    - Taxpayer had a full-time job (do you see a pattern here)
    - **Note:** 750-hour test can only be attributed to one spouse of a married couple

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Business Deductions - Recordkeeping

- *Thompson v. Comm'r., T.C. Memo. 2024-14*
  - Raising poultry and vegetables and a tax prep business. What could be better? Especially when you report income from both bus
    - *Cohan* rule is not a substitute f recordkeeping

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Tax Implications of Long-Term Care

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Types of Long-Term Care

•Home Based Care

- Home Health Care
- Homemaker and Personal Care Services
- Friendly Visitor and Senior
- Companion Services
- Senior Transportation Services
- Emergency Medical Alert Systems

LTC Facilities

- Independent Living Apartments
- Adult Homes
- Family-Type Home
- Assisted Living Program
- Continuing Care Retirement Communities
- Nursing Home

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Annual Long-Term Care Costs (2024)

Seniorsite.org.; seniorliving.org and others

Home Health Aide (44 hr/wk)	61,776	42,240	56,448	46,848	52,800	56,352
Assisted Living	70,800	45,084	49,260	51,036	50,604	63,528
Nursing Home, Semi-Private	112,800	105,276	106,968	86,472	73,308	103,392
Nursing Home, Private Room	123,913	108,276	111,324	97,740	80,832	117,672

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Long Term Care Costs in Kansas

- **2021 Annual Costs Kansas Average**
- Home Health Aide [44 hours/week] $54,912 - $67,496
- Assisted Living [Private Room] $53,940 - $65,100
- Nursing Home [Semi-Private Room] $68,817 - $90,338
- Nursing Home [Private Room] $75,296 - $102,930

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Long-Term Care Statistics

69% for 65

Someone turning age 65 today has a 69% chance of needing some type of long-term care services in their remaining years

Women Have Longer Lifespans

Women will need an average of 3.7 years of care and men will need 2.2 years

Some Need None, Some Need More

One-third of 65-year-olds may never need LTC, but **20% will need LTC for longer than 5 years**

Source: Administration for Community Living (acl.gov/ltc/)

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Why Women Tend to Live Longer Than Men

258

In 20 years, costs are expected to DOUBLE (a recent report says likely even more than double)

- **SUPPLY & DEMAND**
- **Every day until 2030, 10,000 Baby Boomers will turn 65**
- 7 out of 10 will need LTC services at some point
- High turn-over rate and insufficient supply of professionals
- Public is demanding higher levels of care
- Need for competitive salaries

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Saving for Long-Term Care

- Saving for LTC over a long time is best
- **Health savings accounts**
  - Contributions through a HDHP
  - Once-in-a-lifetime distribution from IRA to fund HSA

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Saving for Long-Term Care

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Example 8. Ron has an HSA
- Single, 58, HDHP
- Transfers $5,300 on 1/4/2025
- Makes no further HSA contributions for 2025
- Maintains HDHP and HSA for another year

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Saving for Long-Term Care

p. 285

Example 9. Maria has an HSA:
- Age 58
- Owns 25% of S corp
- Company contributes $5,300 to HSA in 2025
- Includes on Form W-2
- HSA has grown to $60K

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Saving for Long-Term Care

p. 287

- LTC Insurance
  - Premiums would increase
  - May be cheaper to start policy at younger age
  - Limited deduction

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Saving for Long-Term Care

p. 287

- Life insurance options for LTC
  - Whole life
  - Universal life
  - Term life typically not eligible
  - LTC rider to access death benefit early

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Saving for Long-Term Care

p. 288

- Tax treatment
  - LTC insurance premiums may be deductible
  - Deduction is limited, based on age
  - Life insurance premiums are not deductible, even with an LTC rider

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Saving for Long-Term Care

p. 288

Example 10. John
- Owns life insurance policy with LTC rider
- Provides for reduced surrender value with payment of LTC claim

In the event of the claim under section 14.5 of this policy, the surrender value of this policy shall be reduced by the value of the claim once the claim is paid.

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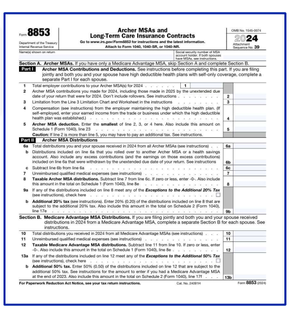
Saving for Long-Term Care


Form 8853 Archer MSAs and Long-Term Care Insurance Contracts 2024

p. 289

LTC Insurance Reporting

- Use Form 8853, part III, for LTC insurance
- Per diem benefits paid — subject to daily limit of $420 in 2025
- Reimbursement benefits paid

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Saving for Long-Term Care

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Example 11. Jackson:
- Loses the ability to perform 2 of 6 activities of daily living
- Certified as chronically ill on 12/2/2023
- 30-day elimination period satisfied on 1/1/2024

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Saving for Long-Term Care

pp. 290 – 291

Example 11, con't. Jackson
- Has LTC policy that reimburses 50% of LTC expenses
- Incurs costs of $150 per day, $54,900 for 2024
- Receives $75 per day reimbursement

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Saving for Long-Term Care

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Example 11, con't. Two components of Jackson's 2024 insurance recovery:
- Component 1: $24,000 ($2K per month × 12 months)
- Component 2: qualified LTC services on line 2

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Saving for Long-Term Care

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For Example 11

Form 8853 (2024) Attachment Sequence No. 39 Page 2

Name of policyholder (as shown on return): Jackson Buck — Social security number of policyholder: ***-**-4622

Section C. Long-Term Care (LTC) Insurance Contracts. See ***Filing Requirements for Section C*** in the instructions before completing this section.

If more than one Section C is attached, check here ☐

14a Name of insured: Jackson Buck b Social security number of insured: ***-**-4622

15 In 2024, did anyone other than you receive payments on a per diem or other periodic basis under a qualified LTC insurance contract covering the insured or receive accelerated death benefits under a life insurance policy covering the insured? ☐ Yes ☒ No

16 Was the insured a terminally ill individual? ☐ Yes ☒ No

Note: If "Yes" and the **only** payments you received in 2024 were accelerated death benefits that were paid to you because the insured was terminally ill, skip lines 17 through 25 and enter -0- on line 26.

17 Gross LTC payments received on a per diem or other periodic basis. Enter the total of the amounts from box 1 of all Forms 1099-LTC you received with respect to the insured on which the "Per diem" box in box 3 is checked — 17: 24,000

Caution: Don't use lines 18 through 26 to figure the taxable amount of benefits paid under an LTC insurance contract that isn't a **qualified** LTC insurance contract. Instead, if the benefits aren't excludable from your income (for example, if the benefits aren't paid for personal injuries or sickness through accident or health insurance), report the amount not excludable as income on Schedule 1 (Form 1040), line 8e, or, for taxpayers filing Form 1040-NR, on Schedule NEC (Form 1040-NR), line 12.

18 Enter the part of the amount on line 17 that is from **qualified** LTC insurance contracts — 18: 24,000

19 Accelerated death benefits received on a per diem or other periodic basis. Don't include any amounts you received because the insured was terminally ill. See instructions — 19:

20 Add lines 18 and 19 — 20: 24,000

Note: If you checked "Yes" on line 15 above, see ***Multiple Payees*** in the instructions before completing lines 21 through 25.

21 Multiply $410 by the number of days in the LTC period — 21: 150,060

22 Costs incurred for qualified LTC services provided for the insured during the LTC period (see instructions) — 22: 54,900

23 Enter the **larger** of line 21 or line 22 — 23: 150,060

24 Reimbursements for qualified LTC services provided for the insured during the LTC period — 24: 27,450

Caution: If you received any reimbursements from LTC contracts issued before August 1, 1996, see instructions.

25 Per diem limitation. Subtract line 24 from line 23 — 25: 122,610

26 **Taxable payments.** Subtract line 25 from line 20. If zero or less, enter -0-. Also include this amount in the total on Schedule 1 (Form 1040), line 8e, or, for taxpayers filing Form 1040-NR, on Form 1040-NR, Schedule NEC, line 12. For taxpayers filing Form 1040-NR, on Schedule NEC (Form 1040-NR), line 12, enter "LTC" and the amount — 26: 0

Form 8853 (2024)

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Planning Tip

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Ensure clients who receive LTC benefits
- Track **actual** medical expenses
- Understand per diem limits and tax effects
- Retain documentation

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Paying Long-Term Care

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- Possible tax-free sources of funds for LTC Expenses
  - HSA distributions
  - Disability insurance recoveries

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Paying Long-Term Care

p. 293

- Taxable income benefits received from a policy may be excluded from tax in these situations
  - Benefits based on actual expenses
  - Benefits paid on behalf of a terminally ill person
  - Benefits based on annual per diem amount ($420 per day in 2025)

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Home Modifications for Medical Needs

p. 294

- Sometimes, residences must be modified to accommodate taxpayers
- Deductible to the extent they do not increase value of home

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Home Modifications for Medical Needs

p. 294

Example 12. In 2024, Ethan needs wider doors for his wheelchair

- Pays contractor $15K
- Before, home valued at $150K
- After, home valued at $160K

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Home Modifications for Medical Needs

p. 295

Worksheet A. **Capital Expense Worksheet**
Keep for Your Records

Instructions: Use this worksheet to figure the amount, if any, of your medical expenses due to a home improvement.

1. Enter the amount you paid for the home improvement 1. **$15,000**
2. Enter the value of your home immediately after the improvement 2. **$160,000**
3. Enter the value of your home immediately before the improvement 3. **150,000**
4. Subtract line 3 from line 2. This is the increase in the value of your home due to the improvement 4. **10,000**
   - If line 4 is more than or equal to line 1, you have no medical expenses due to the home improvement; stop here.
   - If line 4 is less than line 1, go to line 5.
5. Subtract line 4 from line 1. These are your medical expenses due to the home improvement . . . . 5. **$ 5,000**

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Nursing Home and In-Home Care Expenses

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- Acute care may require substantial payments
  - Possibly insurance recovery
  - Possibly Medicare
- American have 70% chance of needing LTC
- Men expect needing LTC for 2.2 years
- Women 3.7 years

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Planning Tip

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Practitioners should check monthly **nursing facility invoices** for nondeductible items, which may include haircare and services that are not medically required.

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Nursing Home and In-Home Care Expenses

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- Retirement assets may be a source of funds
- Taxpayers under 59½ may not be liable for a portion of the expenses
  - Portion corresponding to the medical expenses that **exceed 7.5% of AGI**

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Nursing Home and In-Home Care Expenses

pp. 297 – 298

Example 14. Irwin has
- $60K in 2024 earnings
- $45K in medical, nursing home fees
- Withdraws $40,000 from IRA
- Results
  - AGI for 2024: $100K
  - 7.5% of AGI: $7,500
  - Medical expense that exceeds 7.5% threshold: $32,500
  - 10% additional tax on $7,500 or $750

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Nursing Home and In-Home Care Expenses

pp. 297 – 298

Example 14, con't. Irwin's results
- AGI for 2024: $100K
- 7.5% of AGI: $7,500
- Medical expense that exceeds 7.5% threshold: $32,500
- 10% additional tax on $7,500 or $750

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Nursing Home and In-Home Care Expenses

pp. 297 – 298

Form **5329** Department of the Treasury Internal Revenue Service

Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
Attach to Form 1040, 1040-SR, 1040-NR, or 1041.
Go to *www.irs.gov/Form5329* for instructions and the latest information.

OMB No. 1545-0074
2024
Attachment Sequence No. 29

Name of individual subject to additional tax. If married filing jointly, see instructions.
Irwin Krankenhaus

Your social security number
***-**-4444

Fill in Your Address Only if You Are Filing This Form by Itself and Not With Your Tax Return

Home address (number and street), or P.O. box if mail is not delivered to your home | Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below. See instructions. | If this is an amended return, check here ☐

Foreign country name | Foreign province/state/county | Foreign postal code

If you **only** owe the additional 10% tax on the full amount of the early distributions, you may be able to report this tax directly on Schedule 2 (Form 1040), line 8, without filing Form 5329. See instructions.

Part I **Additional Tax on Early Distributions.** Complete this part if you took a taxable distribution (other than a qualified disaster distribution) before you reached age 59½ from a qualified retirement plan (including an IRA) or modified endowment contract (unless you are reporting this tax directly on Schedule 2 (Form 1040)—see above). You may also have to complete this part to indicate that you qualify for an exception to the additional tax on early distributions or for certain Roth IRA distributions. See instructions.

1	Early distributions includible in income (see instructions). For Roth IRA distributions, see instructions	1	40,000
2	Early distributions included on line 1 that are not subject to the additional tax (see instructions). Enter the appropriate exception number from the instructions: 05	2	32,500
3	Amount subject to additional tax. Subtract line 2 from line 1	3	7,500
4	**Additional tax.** Enter 10% (0.10) of line 3. Include this amount on Schedule 2 (Form 1040), line 8	4	750
	Caution: If any part of the amount on line 3 was a distribution from a SIMPLE IRA, you may have to include 25% of that amount on line 4 instead of 10%. See instructions.		

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Nursing Home and In-Home Care Expenses

p. 299

- For **in-home care**, deduction for nursing services is available
  - A license is unneeded to deduct payments for nursing services
  - If a licensed nurse washes dishes or launders clothing, the associated expense is nondeductible

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Nursing Home and In-Home Care Expenses

p. 299

- Continuing care retirement community **entry fees**
  - A substantial portion of these fees have been **refundable**
  - They are not secured by real estate
  - Bankruptcy of the community may result in nonbusiness bad debt loss

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Difficulty of Care Payments p. 301

Possible income tax exclusion for adult child needing care

- IRS Notice 2014-7: a caregiver cannot exclude income if they are legally responsible for care recipient
- When a child attains majority, state Medicaid payments may be excludable under
  IRC §131(c)

286

Difficulty of Care Payments

p. 302

- Parent of adult child may receive Medicaid payments that are excluded from income tax
  - Depends on definition of "foster family home"
  - Parents may be required to certify that they are an individual care provider receiving Medicaid payments
  - There is a plan of care for the person

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Difficulty of Care Payments

They should receive a Medicaid payment from an agency and an annual Form W-2

p. 303


54-5424461
US CIL, Acting as Agent for Monica Patrick
1142 Washington Ave
Scranton PA 18509
21000.00
1302.00
21000.00
304.50
Monica
Patrick
145 Main St.
Maple Park IL 60151
Form W-2 Wage and Tax Statement 2024

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Comparison of Plans

p. 304

Funding Source	Contribution Deductibility	Tax-Free Growth	Tax-Free Withdrawals	Reporting Forms	Special Considerations
HSAs	Yes	Yes	Yes, for qualified medical expenses	Form 8889	Must have HDHP; Contribution limits apply
Archer MSAs	Yes	Yes	Yes, for qualified medical expenses	Form 8853	Limited availability; Contribution limits apply
LTC Insurance	Yes, up to age-based limits	No	Yes, for qualified LTC expenses	None	Premiums deductible up to age-based limits; Benefits may be taxable if they exceed actual expenses
Hybrid Life Insurance with LTC Riders	No	Yes	Yes, for qualified LTC expenses	None	Premiums not deductible; Benefits generally tax-free
Retirement Accounts (IRAs, §401(k)s)	Yes	Yes	No, although early withdrawal penalties avoided for qualified medical expenses exceeding 7.5% of AGI	Form 5329 (for early withdrawals)	Early withdrawal penalties may apply; Special rules for medical expenses
Medicaid Waiver Payments	N/A	N/A	Yes, if difficulty of care criteria are met	None	Must be certified Medicaid provider; Payments excluded from income if criteria met

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Oil, Gas, & Mineral

176 – 177

- Unless a working interest in the extraction operation of the oil, gas, or minerals, payments reported on part I of Sch. E on line 4
- Generally, not subject to SE tax
- Depletion

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income:	**Properties:**		**A**	**B**	**C**
3	Rents received	**3**			
4	Royalties received	**4**			

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Warning – S.E. Tax on "Passive" Income

NIM

- *Methvin v. Comm'r., 653 Fed. Appx. 616 (10th Cir. 2016)*
  - Passive working interest income is subject to S.E. tax if structured as a partnership/joint venture:
    - The core ruling is that income from an oil and gas working interest is subject to S.E. tax, even if the investor (Methvin) was a passive, minority owner with no involvement in the day-to-day operations or management
    - S.E. tax applies to the distributive share from a trade or business carried on by a partnership of which the taxpayer is a member
    - The most significant legal takeaway is that the parties' election to be excluded from the complex partnership tax rules of Subchapter K (IRC § 761(a)) does not negate the existence of a partnership for other purposes of the Code, including the S.E. tax rules

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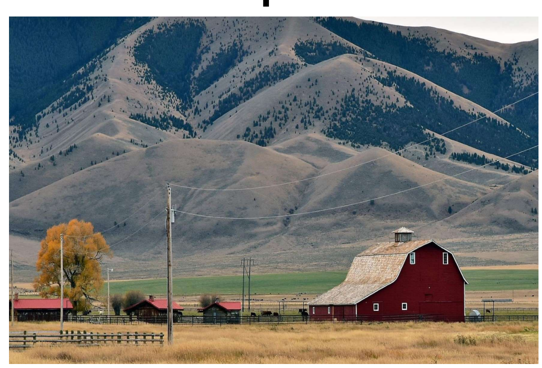
•Chapter 8: New Developments



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Social Security Fairness

pp. 356 – 369

- Signed into law 1/1/25
- Repeals WEP & GPO
- Affects about 3.2M taxpayers nationwide
- Concentrated impact: 60% of affected individuals in 9 states (CA, CO, FL, GA, IL, LA, MA, OH, TX)
- Implications span monthly benefits, retroactive payments, taxes, Medicare premiums, IRMAA, & retirement planning

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SSFA Implications

- Monthly benefits
- Retroactive payments
- Taxes
- Medicare premiums
- IRMAA
- Retirement planning

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WEP and GPO reduce benefits for people with noncovered pensions; these reductions are now repealed.

Pg 357

WEP (Windfall Elimination Provision) affects the claimant's own Social Security benefit; enacted 1983.

GPO (Government Pension Offset) affects spousal/survivor benefits when a spouse has a noncovered pension; enacted 1977.

WEP/GPO reductions precede the SSFA repeal; understanding them is essential to see the before/after.

Repeal removes these reductions, changing benefit calculations for many clients.

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The law aligns retirement equity between public- and private-sector workers and addresses perceived windfalls.

Pg 357

WEP tended to undervalue or overstate benefits for some with noncovered earnings; GPO reduced spousal/survivor benefits.

SSFA aims to restore equity and consistency in benefits for those with mixed work histories.

Projections: CBO estimates of impacts on monthly benefits (average increases across affected groups).

Broader planning implications: tax liability, Medicare premiums, IRMAA, retirement timing.

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How Benefits Change After the Repeal
Pg 357

WEP reduction removed for affected individuals; GPO reduction removed for spouses/survivors.

Projections (CBO): average monthly increase ≈ $360 for affected individuals; ≈ $700 for a spousal beneficiary; ≈ $1,190 for a widow(er).

Changes cascade into tax, Medicare premiums, and IRMAA calculations.

Actual changes depend on each person's earnings history and pension details.

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Example 1 — Survivor with GPO
Pg 358

Scenario: Ron worked entirely in covered employment; spouse Tricia has a $3,000 municipal pension; Ron's life event in retirement.

Pre-repeal (GPO applied): Surviving spouse benefit would be $4,200, but reduced by two-thirds of the pension ($2,000) to $2,200 from Social Security, plus $3,000 pension = $5,200 total.

Post-repeal (GPO removed): If Ron dies around repeal time, survivor benefit is the full $4,200 plus $3,000 pension = $7,200 total.

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WEP/GPO repeal retroactively to Jan 1, 2024; most changes manifested in 2025 with retroactive lump sums.

- Pg 358

Retroactive to 1/1/2024; law enacted in 2025.

SSA began adjustments on Feb 25, 2025.

Most affected beneficiaries received a one-time lump-sum payment for the retroactive period.

Lump sums deposited automatically; some cases accompanied by notices.

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Tax, Medicare, and IRMAA Implications: Planning Opportunities
Pg 359

Higher Social Security benefits can shift tax brackets or taxable income.

Possible changes to IRMAA due to higher modified adjusted gross income (MAGI) in some years.

Interactions with noncovered pensions and other retirement income streams.

Plan for potential annual fluctuations and the one-time nature of the 2024–2025 retroactive payments.

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AFFECTED TAXPAYERS

- Pg 359

- Retired Public School Teachers
- Other retired state and local employees
- Retired Clergy
- Retired Federal Employees

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Practical Planning Steps for Practitioners

Pg 367

Identify clients with noncovered pensions or spousal benefits; gather pension amounts and earnings history.

1

Run updated Social Security benefit projections and tax/IRMAA implications.

2

Revisit retirement timing, spousal/survivor planning, and estate considerations.

3

Communicate the lump-sum payments and potential 2026 adjustments clearly to clients.

4

Monitor SSA notices and update client records accordingly.

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OTHER CONSIDERATIONS

- Pg 369

- Affordable Care Act – Premium Tax Credit
- Other Credits - AOC – Lifetime Learning – Child Tax Credit
- State/Local Tax Savings Programs – Property Tax Freeze
- Possible Estate Planning

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DIGITAL ASSETS 1099-DA

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LEADERS IN ACTION

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2025 Developments in Digital Asset Tax Reporting

- What changed in the past year
- Form 1099-DA: overview and timelines
- Transitional guidance (Notice 2025-33)
- Backup withholding, TIN matching, exemptions
- TD 10021 nullification and DeFi
- DeFi taxable events

- Pg 370

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Form 1099-DA

- Pg 370

New information return for digital asset sales/exchanges by brokers

2025: brokers report gross proceeds only; no basis or withholding reported by brokers

Basis tracking remains the taxpayer's responsibility

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IRS Notice 2025-33: transitional guidance

Pg 370

Issued April 2025; provides transitional relief and clarifications

Delays certain enforcement provisions to ease the transition

Backup withholding relief and TIN-matching flexibility; foreign-person exemptions

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Backup withholding: 2025–2027 timeline

- Pg 370

2025	2026	2027
No backup withholding for 2025 transactions	No backup withholding if the payee's name and TIN are verified via IRS TIN Matching and the relationship existed before 1/1/2026	Backup withholding applies unless the payee provides a certified TIN (e.g., Form W-9)

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TIN certification flexibility
Pg 371

Through 2027, uncertified TINs can be relied upon if validated via the IRS TIN Matching Program and the account opened before 1/1/2026

Encourages timely updates to TIN information to minimize later withholding issues

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Exempt foreign persons

- Pg 371

Brokers are not required to file 1099-DA or withhold for exempt foreign persons through 2027 if: Customer has a non-U.S. address

Broker has not previously classified the customer as a U.S. person

Account opened before 1/1/2026

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TD 10021 nullification

- Pg 371

TD 10021 originally expanded "broker" scope to DeFi platforms, wallet providers, and other non-custodial actors

Congress passed H.J. Res. 25; signed April 10, 2025, nullifying TD 10021

In practice, DeFi platforms are not brokers under current law; taxable events still occur

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DeFi: what it is

- Pg 373

DeFi enables lending, borrowing, trading, earning interest without traditional intermediaries

Operates via smart contracts on public blockchains (most commonly Ethereum)

Key traits: non-custodial, permissionless, transparent, interoperable

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DeFi taxable events (despite nullification)

- Pg 374

Token swaps

Liquidity provision

Staking and yield farming

Airdrops and governance token distributions

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DE-FI PLATFORMS

Pg 374

Even though transactions conducted through DeFi protocols are not subject to 1099-DA reporting – they are still taxable events

Capital gains from Token Swaps

Interest Income from lending or staking

Income from airdrops or liquidity mining

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Qualifying stablecoins and optional reporting method

- Pg 375

Brokers may elect to use an optional reporting method for qualifying stablecoins

Aggregate designated sale transactions for each stablecoin type on one Form 1099-DA

Box 11b shows the number of transactions reported under this method

Benefits: streamlined reporting; reduced basis reporting requirements

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Non-fungible tokens (NFTs)

- NFTs are unique, blockchain-based digital assets that represent ownership of specific digital or physical items. Unlike cryptocurrencies, which are fungible (meaning each unit is interchangeable), each NFT has a distinct identifier and metadata that makes it one-of-a-kind and not mutually replaceable.

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Specified NFTs and optional reporting

- NFTs defined as unique digital identifiers recorded on a distributed ledger
- Specified NFTs are indivisible and do not provide certain excluded property interests
- Optional reporting method allows aggregation of specified NFT transactions on one Form 1099-DA
- No acquisition dates or basis required under this method; taxpayer bears basis burden

Pg 376

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1099-DA reporting details for 2025

Complete
Brokers must complete 1099-DA for each digital asset sale in 2025

Gross
2025 returns: gross proceeds only; no basis or withholding

Notice
History of delayed deadlines and penalties: 2024 delays; Notice 2025-33 adds relief

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Practitioner tips and next steps

- Treat 1099-DA as a starting point, not a complete record
- Review gross proceeds against client wallet histories and logs
- Check if basis is blank or zero; reconcile with client records
- If asset is a “noncovered security,” basis may not be reported
- Confirm that transactions labeled as sales are not nontaxable transfers

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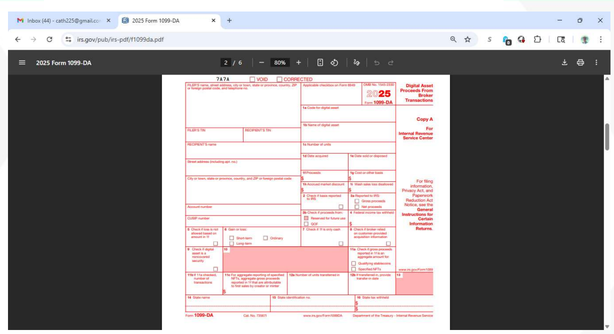
Form 1099-DA



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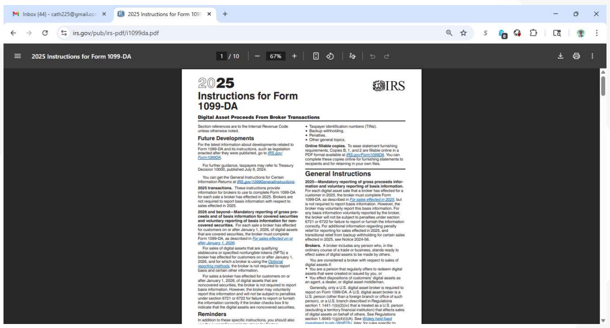
Instructions for 1099-DA



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AUTOMATIC ACCOUNTING METHOD CHANGES

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AUTOMATIC ACCOUNTING METHOD CHANGES
Pg 380

- Change in how income/expenses are treated for tax purposes (e.g., cash vs. accrual; inventory capitalization methods).
- Impacts timing of income recognition and deductions.
- Distinction: Automatic changes (no IRS consent, no user fee) vs. Non-automatic changes (IRS review, user fee).

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Why Rev. Proc. 2025-23 Matters for Practitioners
Pg 381

- Streamlined filing reduces compliance burden when eligible.
- New and revised DCNs affect which changes qualify automatically.
- Effective for Form 3115 filed on/after 6/9/2025; year of change ending on/after 10/31/2024.

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DCN Framework: New, Modified, and Retired

Pg 381

- DCN = designated change number; directs eligible automatic changes.
- Rev. Proc. 2025-23 introduces new DCNs, modifies existing ones, and retires others.
- New DCNs, Modified DCNs, Retired DCNs each carry specific guidance and eligibility imp

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New DCNs in Rev. Proc. 2025-23

- DCN 252 (§451) – timing of income recognition; all-events test and book conformity (accruals).
- DCN 265 (§174) – capitalization of Research & Experimental expenditures (TCJA rules apply here).
- DCN 270 (§168(k)) – mechanics of electing or revoking bonus depreciation as the phase-out continues.

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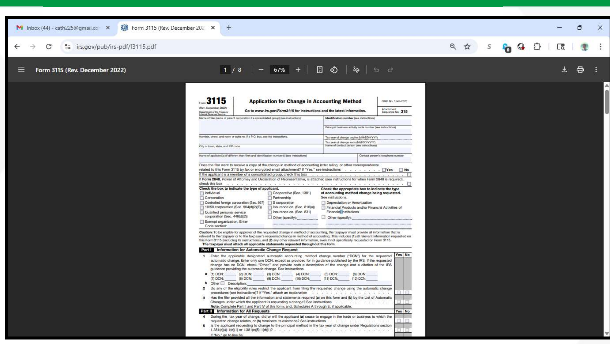
Form 3115



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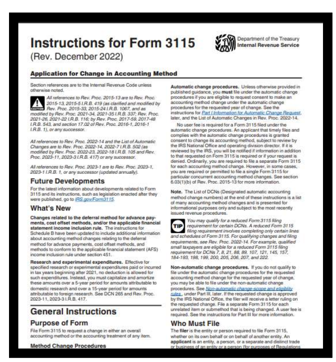
Instructions to Form 3115



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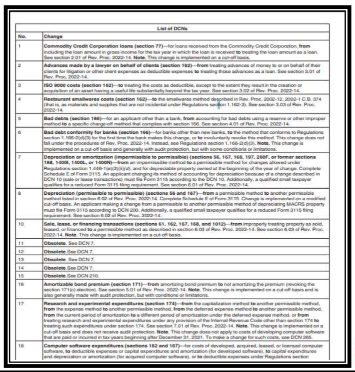
Instructions Page 15



List of DCNs	
No.	**Change**
1	**Commodity Credit Corporation loans (section 77)**—for loans received from the Commodity Credit Corporation, **from** including the loan amount in gross income for the tax year in which the loan is received **to** treating the loan amount as a loan. See section 2.01 of Rev. Proc. 2022-14. **Note.** This change is implemented on a cut-off basis.
2	**Advances made by a lawyer on behalf of clients (section 162)**—**from** treating advances of money to or on behalf of their clients for litigation or other client expenses as deductible expenses **to** treating those advances as a loan. See section 3.01 of Rev. Proc. 2022-14.
3	**ISO 9000 costs (section 162)**—**to** treating the costs as deductible, except to the extent they result in the creation or acquisition of an asset having a useful life substantially beyond the tax year. See section 3.02 of Rev. Proc. 2022-14.
4	**Restaurant smallwares costs (section 162)**—**to** the smallwares method described in Rev. Proc. 2002-12, 2002-1 C.B. 374 (that is, as materials and supplies that are not incidental under Regulations section 1.162-3). See section 3.03 of Rev. Proc. 2022-14.
5	**Bad debts (section 166)**—for an applicant other than a bank, **from** accounting for bad debts using a reserve or other improper method **to** a specific charge-off method that complies with section 166. See section 4.01 of Rev. Proc. 2022-14.
6	**Bad debt conformity for banks (section 166)**—for banks other than new banks, **to** the method that conforms to Regulations section 1.166-2(d)(3) for the first time the bank makes this change, or **to** involuntarily revoke this method. This change does not fall under the procedures of Rev. Proc. 2022-14. Instead, see Regulations section 1.166-2(d)(3). **Note.** This change is implemented on a cut-off basis and generally with audit protection, but with some conditions or limitations.
7	**Depreciation or amortization (impermissible to permissible) (sections 56, 167, 168, 197, 280F, or former sections 168, 1400I, 1400L, or 1400N)**—**from** an impermissible method **to** a permissible method for changes allowed under Regulations section 1.446-1(e)(2)(ii)(*d*), and for depreciable property owned at the beginning of the year of change. Complete Schedule E of Form 3115. An applicant changing its method of accounting for depreciation because of a change described in DCN 10 (sale or lease transactions) must file Form 3115 according to the DCN 10. Additionally, a qualified small taxpayer qualifies for a reduced Form 3115 filing requirement. See section 6.01 of Rev. Proc. 2022-14.
8	**Depreciation (permissible to permissible) (sections 56 and 167)**—**from** a permissible method **to** another permissible method listed in section 6.02 of Rev. Proc. 2022-14. Complete Schedule E of Form 3115. Change is implemented on a modified cut-off basis. An applicant making a change from a permissible to another permissible method of depreciating MACRS property must file Form 3115 according to DCN 200. Additionally, a qualified small taxpayer qualifies for a reduced Form 3115 filing requirement. See section 6.02 of Rev. Proc. 2022-14.
10	**Sale, lease, or financing transactions (sections 61, 162, 167, 168, and 1012)**—**from** improperly treating property as sold, leased, or financed **to** a permissible method as described in section 6.03 of Rev. Proc. 2022-14. See section 6.03 of Rev. Proc. 2022-14. **Note.** This change is implemented on a cut-off basis.
11	**Obsolete**. See DCN 7.
12	**Obsolete**.See DCN 7.
13	**Obsolete**. See DCN 7.
14	**Obsolete**.See DCN 7.
15	**Obsolete**.See DCN 210.
16	**Amortizable bond premium (section 171)**—**from** amortizing bond premium **to** not amortizing the premium (revoking the section 171(c) election). See section 5.01 of Rev. Proc. 2022-14. **Note.** This change is implemented on a cut-off basis and is also generally made with audit protection, but with conditions or limitations.
17	**Research and experimental expenditures (section 174)**—**from** the capitalization method **to** another permissible method, **from** the expense method **to** another permissible method, **from** the deferred expense method **to** another permissible method, **from** the current period of amortization **to** a different period of amortization under the deferred expense method, or **from** treating research and experimental expenditures under any provision of the Internal Revenue Code other than section 174 **to** treating such expenditures under section 174. See section 7.01 of Rev. Proc. 2022-14. **Note.** This change is implemented on a cut-off basis and does not receive audit protection. **Note.** This change does not apply to costs of developing computer software that are paid or incurred in tax years beginning after December 31, 2021. To make a change for such costs, see DCN 265.
18	**Computer software expenditures (sections 162 and 167)**—for costs of developed, acquired, leased, or licensed computer software, **to** deductible expenses or capital expenditures and amortization (for developed software), **to** capital expenditures and depreciation or amortization (for acquired computer software), or **to** deductible expenses under Regulations section

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Federal Disaster Relief
pp. 384 – 385

- Federal disaster declarations trigger relief options: extensions, penalty relief, automatic qualification for certain taxpayers
- Extensions typically apply to filing deadlines; extensions on payments may apply with penalties abated if paid timely

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New ERC FAQs

pp. 387 – 388

Stay informed about new questions continuing to emerge around claiming ERC & associated scams

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CAMT

pp. 388 – 390

15% minimum tax on AFSI of applicable corps. (avg. annual AFSI > $1B over 3-year period)

- Notice 2025-27 introduces **interim simplified method** for determining applicable corporation status
  - Streamlined approach to assess CAMT liability without engaging in the full complexity of AFSI adjustments
  - Reduces AFSI thresholds to $800M and disregards many financial statement adjustments
  - Provides relief from estimated tax penalties under §6655 for tax years beginning after 12/31/23 and 1/1/25
  - Corps. can bypass full Form 4626 filing if they meet simplified method criteria

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Withdrawal of Basis-Shifting Transaction Regulations

pp. 390 – 392

- IRS withdrew controversial disclosure rules under Notice 2024-54 via Notice 2025-23
- These rules previously classified certain related-party basis-shifting transactions as "transactions of interest"
- Relief from penalties under §§6707, 6707A, and 6708 for:
  - Participants in basis-shifting transactions
  - Material advisors (no Form 8918 filing req'd for these transactions)
- Economic substance doctrine (§7701(o)) still applies
- Ongoing audits and scrutiny of large p'ships and high net-worth taxpayers

333

Rulings and Cases
Chapter 10

334

Norwich Commercial Group, Inc.

pp. 451 – 453

IRS Interprets the Claim of Right Wrongly

- Norwich incorrectly reported interest income for 2007-2014
- Norwich on accrual method of accounting
- Corrected the error in 2012 and deducted under claim or right doctrine
- IRS audited return and disallowed deduction claiming it was repayment of a loan

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Norwich Commercial Group, Inc.

Issues

- Whether Norwich is entitled to deduction under claim of right doctrine
- If so, what year should the deduction be allowed

336

Norwich Commercial Group, Inc.

Decision

- Tax Court agreed with taxpayer that claim or right applied and allowed deduction in 2014
- Indicated IRS did apply the rules correctly

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AbbVie Inc.

pp. 453 – 454

Breaking up is Ordinary: AbbVie's $1.6B Fee Allowed as Ordinary Deduction

- AbbVie agreed to pay $1.6B breakup fee if they did not consummate merger with Shire PLC
- Due to IRS Notice 2014-52 on inversions, AbbVie elected to not proceed
- Paid $1.6B fee in 2015 and deducted its as ordinary deduction
- IRS audited and claimed it was a capital loss and disallowed the deduction

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AbbVie Inc.

It Would be Capital Loss if it Met Sec. 1234A

pp. 453 – 454

- There is a gain or loss.
- The gain or loss must be attributable to a cancelation, lapse, expiration, or other termination of a right or obligation.
- The terminated right must be "with respect to" property.
- The underlying property must be a capital asset in the hands of the taxpayer

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AbbVie Inc.

Tax Court Decision

pp. 453 – 454

- Tax Court ruled that it was not covered under Sec. 1234A
- Indicated that #3 was not met
  - It was not property
  - It was for services agreement
- Therefore, deductible as an ordinary deduction.

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Belagio Fine Jewelry

pp. 455 – 456

Attorney's Mailing Mistake Does Not Allow for Equitable Tolling

- Belagio Fine Jewelry, Inc did not file employment tax returns during 2016 and 2017.
- Belagio was issued a notice of employment determination and assessed employment tax deficiencies, additions for failure to timely file and pay, and deposit penalties.
- Belagio's attorney mailed a petition for redetermination to the court on November 18, 2021;
- The court received it one day after the 90-day filing period
- The IRS argued that the 90-day deadline is not subject to equitable tolling.

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Belagio Fine Jewelry

Issues **pp. 455 – 456**

- The court ruled that the 90-day deadline for filing a Tax Court petition can be equitably tolled in appropriate circumstances
- The court held that equitable tolling was not warranted because of the error made by the attorney's office.
- The court granted the IRS's motion to dismiss the case for failure to state a claim upon which relief can be granted.

Whether the 90-day deadline to file a petition for redetermination of an employment tax determination under

If yes, whether equitable tolling is warranted in this case.

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Estate of Anne Milner Fields

pp. 471 – 473

Estate Runs Dry on Illiquidity Discount

- Anne Milner Fields inherited oil business from husband
- Granted her nephew broad POA
- One month before her death, he created FLP
  - $17 million LP for most of her assets (99.9941%)
  - .0059% GP for his management

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Estate of Anne Milner Fields

pp. 471 – 473

After Her Death

- Obtained appraisal showing $10.8 FMV
- Lack of Control Discount– 15% discount
- Lack of Marketability Discount– 25% discount

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Estate of Anne Milner Fields

Issues

Should discounts be applied to transfer to FLP

If not, what is correct FMV

Is the estate liable for accuracy-related penalty

345

Estate of Anne Milner Fields

pp. 471 – 473

Tax Court Decision

- FMV of LP interest must be included
- Allowed 5.7% illiquidity discount
- However, this was higher than what the IRS argued
- Used IRS number
- Allowed the penalty

346

Jenner

No Collection Due Process Hearings for FBAR Penalties

pp. 474

- Stephen and Judy Jenner failed to timely file foreign bank account reports(FBAR) for 2005 to 2009
- In 2022, the IRS informed the Jenners that they were withholding funds from their social security benefits.
- The Jenners submitted forms to request collection due process hearings.
- In May 2023, the IRS notified the Jenners that they did not qualify for a hearing because the penalties were under the FBAR, title 31, and not title 26.

347

Jenner

Analysis:

pp. 474

- FBAR penalties are authorized under Title 31 of the United States Code, whereas the Internal Revenue Code is found in Title 26. Under Title 31
- The Secretary of the Treasury (Secretary) can impose a civil penalty on any person who fails to file Form 114.
- The Tax Court has limited jurisdiction allowed only to the extent authorized by Congress.

348

Jenner

Holding:

pp. 474

- The Tax Court held that because FBAR penalties are imposed under Title 31 — not the Internal Revenue Code — they are not “taxes” and thus not subject to the CDP procedures in §§6320 and 6330. The case was dismissed for lack of jurisdiction

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Hutcheson

Embezzled Funds - Retirement Plans and Renovation Scams

pp. 474

- Matthew Hutcheson was a fiduciary of two retirement plans
- He diverted over $5.3 million in plan assets for personal use.
- Notice of deficiency issued, asserting that the diverted funds constituted unreported income.
- Fraud and failure to file penalties
- 10% early distribution penalty

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Hutcheson

Issues

pp. 474

- Whether Mr. Hutcheson had unreported income of $5,307,688 from diverted retirement plan assets and $10,825 from other sources
- Whether he was liable for the 10% additional tax on an early IRA distribution under §72(t)
- Whether he was liable for an addition to tax for failure to file under §6651(a)(1)
- Whether Mr. Hutcheson was liable for the civil fraud penalty under §6663

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Hutcheson

Analysis:

pp. 476

- Finally, the court found clear and convincing evidence of fraud under §6663.
  - Mr. Hutcheson underreported income, provided false and inconsistent explanations, concealed assets, failed to cooperate with tax authorities, and engaged in illegal conduct.
  - He created and used falsified documents and forged signatures.
  - His conduct demonstrated a willful intent to evade tax, and the entire underpayment was deemed attributable to fraud.

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Hutcheson

Analysis:

pp. 476

- Gross income includes all income from whatever source derived, including embezzled funds.
- Failed to show any exception to the early withdraw penalty
- Failed to timely file his tax return

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Matthew Hutcheson

pp. 475-476

Tax Court Opinion

- The Tax Court found Mr Hutcheson guilty on all issues
- Although it will be difficult for the IRS to get much money from him since he spent it all

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Mohamad Aboul and Mahyar Mizani

pp. 477-479

Revving Up Tax Law

- Taxpayers had an S corporation HPPO Corp.
- Sold used cars to low-income buyers
- Had a history of losses and winded down the business
- Reported sales when sold but collected on installment notes

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Mohamad Aboul and Mahyar Mizani

pp. 477-479

IRS Audit

- IRS audited the return and reconstructed their income
- However, used cash method of accounting
- Taxpayer had already reported all sales as income on hybrid accrual method
- Taxpayers' CPA had passed away
- IRS assessed about $4 million of tax and $1 million of penalties

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Mohamad Aboul and Mahyar Mizani

pp. 477-479

Tax Court Opinion

- Essentially chewed out the IRS for using the wrong method of accounting
- Allowed almost all of the deductions for the S corporation
- Disallowed NOL carryovers
- Allowed real estate losses
  - IRS failed to bring up passive loss issues
- Did not assess any penalties

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Salvi and Vanover

pp. 479

Facts

- Joanne Salvi Vanover (Ms. Salvi)was married to Michael Vanover from 2015 until their divorce in 2023.
- During 2017 and 2018, the couple lived in a home solely owned by Ms. Salvi in Ohio, along with her two children from a prior relationship.
- The couple maintained separate finances but shared a joint account for household expenses. Ms. Salvi managed the household bills and tax filings, while Mr. Vanover contributed a portion of his income to shared expenses

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Salvi and Vanover

pp. 479

Facts

- Mr. Vanover had a long history of financial and tax problems, including unpaid federal and state taxes, delinquent child support, and failure to file tax returns from 2004 to 2014. Ms. Salvi became aware of these problems in 2017.
- Separated in 2020 due to a physical altercation.
- Divorced in 2023
- Ms. Slavi filed Form 8857, Innocent Spouse claiming she was unaware of Mr. Vanover's tax issues and financial problems.
- IRS granted partial relief

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Salvi and Vanover

pp. 480

Issue

- Whether Ms. Salvi was entitled to full or additional relief from joint and several liability under §6015(b), (c), or (f)

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Salvi and Vanover

pp. 479

Analysis

- While Ms. Salvi was divorced and did not significantly benefit from the unpaid taxes, several factors weighed against relief.
  - She had reason to know the tax would not be paid.
  - She failed to demonstrate economic hardship.
  - Her post-separation tax compliance was inconsistent.
  - Her claims of abuse and financial control were either unsupported or contradicted by the record.

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Salvi and Vanover

pp. 480

Holding.

- The court found her testimony lacking in credibility, particularly regarding her knowledge of the returns and her claims of abuse.
- In contrast, Mr. Vanover's testimony was found to be credible.
- The Tax Court granted partial relief under §6015(c) for the portion of the 2018 deficiency attributable to Mr. Vanover but denied all other relief under §§6015(b), (c), and (f).

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Franco

pp. 480

Facts

- Monique Franco and her husband, Charles Bolgiani, filed a joint federal income tax return for 2018.
- Failed to report $97,174 in income that was earned by both.
- Husband filed return and deposited refunds into his separate account.
- Ms. Franco signed returns without review. She alleged she had been threatened or abused when asking to review the returns
- Ms. Franco had a history of prior tax audits and denied innocent Spouse claims.

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Franco

pp. 480

Issues

- Is Ms Franco entitle to innocent spouse relief?

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Franco

pp. 480

Analysis

- To qualify, the spouse requesting relief must prove that they did not know or have reason to know of the understatement of tax.
- Ms. Franco did not significantly benefit from the understatement of income
- Part of the unreported income was gambling income she won.

365

Franco

pp. 481

Analysis

- 1. Threshold requirements
- 2. Streamlined relief
- 3. Facts and circumstances

366

Franco

pp. 481

Holding

- The Tax Court denied innocent spouse relief under §6015(f). Ms. Franco failed to demonstrate economic hardship and was found to have had reason to know of the understatement on the 2018 return.
- The court found no credible evidence of abuse sufficient to override her constructive knowledge

367

Vensure

pp. 482

IRS Waives Goodbye to a Power of Attorney Attachment Requirement

- Form 843 filed without attaching Form 2848, but signed by attorneys
- However, the attorneys had sent in three POAs for the years at issue.
- IRS denied their claim and sent a copy to the POAs.

368

Vensure

pp. 482

Issues

- Whether Treas. Reg. §301.6402-2(e) requires a POA to be physically attached to the refund claim
- Whether the requirement to attach a POA is a statutory non-waivable requirement or one that the IRS can waive
- Whether the IRS waived the requirement for the POA to accompany Form 843

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Vensure

pp. 483

Analysis

- Treas. Reg. §301.6402-2(e) provides that a POA must "accompany" the tax refund filing.
- There are no statutory provisions that provide the method of filing a POA with the IRS; thus, the "accompany" requirement is regulatory in nature and, therefore, waivable.
- The IRS accepts a POA recorded in the centralized authorization file (CAF) system for Form 1040

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Vensure

pp. 483

Holding

- The requirement for the POA to be attached is waived if the IRS decides to investigate the claim without the POA attached.
- The IRS did investigate – so case was remanded for a factual determination

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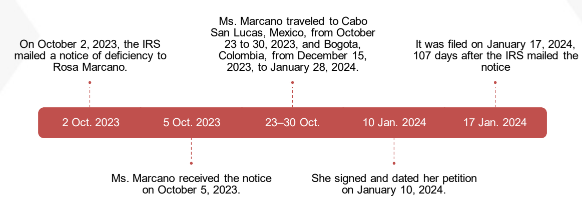
Marcano

Facts: an expensive vacation **pp. 485**



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Marcano

pp. 485

Issue:

- Whether Ms. Marcano was entitled to the extended 150-day period to file a Tax Court petition, rather than the standard 90 days, based on her international travel during the filing window

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Marcano

pp. 485

Analysis

- Ms Marcona said she was out of the country and should be entitled to the 150 day filing period
- The petitioner's absence must result in a delayed receipt of the notice.
- She received the notice before she left the country

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Marcano

pp. 485

Holding

- Neither trip entitled her to the 150 day period.
- She has to pay the amount but she can file a claim for refund.

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Zuch v. Comm'r. (U.S. Sup. Ct. Jun. 12, 2025)

488

- Facts:
  - The taxpayer filed untimely federal income tax returns for tax year 2010 in the fall of 2012. At the time these returns were filed, she was married and the couple filed returns as married filing separately. Her 2010 return did not show tax liability, but her husband's return showed a significant liability that resulted in him submitting an offer-in-compromise to the IRS.
  - The same tax year, the couple made two estimated tax payments totaling $50,000. That amount was applied to the husband's tax liability of $385,000, but the couple had intended for the $50,000 to be credited to her. However, the checks were in his name only despite having been drawn from their joint bank account, so the IRS did not allocate the amount as requested.

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Zuch v. Comm'r. (U.S. Sup. Ct. Jun. 12, 2025)

- Facts:
  - Several weeks after submitting her 2010 return, she filed an amended return reporting an additional $71,000 in retirement distribution income triggering a tax liability of $28,000. She again sought IRS to use the $50,000 to offset this liability for a net refund of approximately $22,000. The IRS subsequently moved to collect on her unpaid $28,000 balance by stating its intent to levy.
  - She sought a collection due process hearing in accordance with I.R.C. §6330 and informed the IRS appeals office or what she claimed to be a misallocated $50,000. The appeals office sustained the levy, and she then filed a Tax Court petition in accordance with I.R.C. §6330(d)(1).
  - During the pendency of the case, the taxpayer became entitled to tax refunds that were applied towards her outstanding liability until it was paid in full. The Tax Court then determined that it no longer had jurisdiction because the case involved a collection action under I.R.C. §6330, and that it was irrelevant that the IRS arguably misallocated the $50,000.

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Zuch v. Comm'r. (U.S. Sup. Ct. Jun. 12, 2025)

- Facts:
  - On appeal, the appellate court reversed, determining that the IRS erred in crediting the tax payments to the taxpayer's husband's account. The appellate court remanded the case to the Tax Court, but the IRS petitioned the U.S. Supreme Court for review.
  - The Court reversed the appellate court, concluding that CDP hearings only relate to levies. Since the levy was removed when the tax liability was fully paid, the Court concluded that "…it would be strange if a taxpayer could use a §6330 appeal to resolve tax disputes that no longer have any connection to an ongoing levy."

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Zuch v. Comm'r. (U.S. Sup. Ct. Jun. 12, 2025)

- Key point:
  - **File a protective refund claim.**
    - The most critical takeaway is the heightened need to file a protective refund claim, even while a CDP case is active. A taxpayer who believes they have overpaid, or who is having their disputed liability satisfied through IRS offsets, can no longer rely on the CDP process to resolve the underlying tax dispute.
    - The only remaining avenue to recover the funds is a separate refund suit in a U.S. District Court or the Court of Federal Claims. Failure to file a timely refund claim, generally within three years from the time the return was filed or two years from the time the tax was paid, whichever is later, could permanently bar the taxpayer from recovering the funds.

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Adams

pp. 489

Facts

- Blake Adams failed to file his income tax returns for 2007 and 2009-2015
- The IRS mailed Mr. Adams notices of deficiencies.
- Mr. Adams claimed he never received the notices.
- IRS accessed the deficiencies and proceeded with levies and liens.
- The IRS revoked Adams Passport, citing a serious delinquency.
- Adams filed a petition in the Tax Court for the 2020 Certificate, stating he had never received the notices.

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Adams

pp. 489

Issues

- The issue in this case is whether the IRS's certification of Mr. Adams's tax debt as seriously delinquent was erroneous.

381

Adams

pp. 489

Analysis

- The IRS can certify a taxpayer's debt as seriously delinquent if it exceeds a threshold amount ($53,000) and a notice of tax lien has been filed.
- He did receive the notices of lien and intent to levy.
- He never filed a CDP hearing where he could have challenged the missing notices.

382

Adams

pp. 489

Holding

- The court held for the IRS. They had met their requirements for certifying a seriously delinquent tax debt.
- Mr Adams did not timely challenge the tax assessments.

383

Effect of IRS Guidance

490-491

- *Stenson Tamaddon LLC v. IRS, et al., No. CV-24-01123-PHX-SPL, 2025 U.S. Dist. LEXIS 117356 (D. Ariz. Jun. 18, 2025)*
  - The petitioner is a tax advisory firm specializing in ERC claims
    - The petitioner challenged IRS Notice 2021-20, arguing it constituted a legislative rule—imposing binding requirements without notice-and-comment—and violated the APA, statutory authority, and was arbitrary and capricious.
      - It also sought mandamus/injunctive relief to force the IRS to resume processing ERC claims for its clients

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Effect of IRS Guidance

- *Stenson Tamaddon LLC v. IRS, et al., No. CV-24-01123-PHX-SPL, 2025 U.S. Dist. LEXIS 117356 (D. Ariz. Jun. 18, 2025)*
  - Holdings:
    - Petitioner had constitutional and prudential standing—its clients and contingency-based revenue were adversely impacted by IRS application of the Notice.
    - The suit wasn't barred by sovereign immunity because APA allows challenges to final agency action—even by third parties not filing refund suits.
    - But…

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Effect of IRS Guidance

- *Stenson Tamaddon LLC v. IRS, et al., No. CV-24-01123-PHX-SPL, 2025 U.S. Dist. LEXIS 117356 (D. Ariz. Jun. 18, 2025)*
  - Holdings:
    - The court treated Notice 2021-20 as an interpretive rule, not a legislative rule, because:
    - It interprets statutory terms—like "trade or business," "governmental order," and the "nominal portion" safe-harbor (10%-based threshold) for partial suspension—which is exempt from APA rulemaking requirements.
      - The IRS didn't invoke general legislative authority nor amend any prior legislative rule.
      - The Notice rested on existing statutes and regulations; the IRS acted within its discretion.
      - No arbitrary or capricious behavior found.

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Stenson Tamaddon LLC v. IRS

- Take-home points:
  - Courts continue to view FAQs as interpretive—subject to judicial review under APA—but not requiring formal rulemaking.
  - The 10 % "nominal portion" criterion is a rebuttable safe-harbor—not an absolute cutoff—but practitioners should use it as a compliance anchor.
  - The legal strategy may shift from rescinding IRS guidance to challenging specific denials or procedural errors.
  - Service providers adversely affected via client outcomes can challenge agency rules even without refund-suit standing.
  - This ruling solidifies the IRS's interpretive authority in tax credit administration, while clarifying boundaries for future APA-based challenges

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Beyonce Knowles-Carter

Facts

pp. 492

- The IRS issued a notice of deficiency stating she owed $2,698,316 in tax deficiencies and underpayment penalties for 2018 and 2019.
- 2018 –
  - Disallowed legal and professional fees
  - Other expenses on Schedule C
  - $869,000 for a charitable contribution carryover
  - Unreported royalty income

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Beyonce Knowles-Carter

Facts

- The IRS issued a notice of deficiency stating she owed $2,698,316 in tax deficiencies and underpayment penalties for 2018 and 2019.
- 2019 -
  - Schedule E expenses – Lack of substantiation
- Beyonce petitioned Tax Court

389

Beyonce Knowles-Carter

Issue

- Did Beyonce fail to report income and substantiate expenses

390

Beyonce Knowles-Carter

Analysis

- Beyonce submitted additional documentation
- Agreement reached

391

Beyonce Knowles-Carter

Holding

- Agreement reached that she owed $591.00 with a penalty of $118 for 2018 and
- No change to 2019

392

Dealers Auto Auction of Southwest LLC

pp. 493

Facts:

- Dealers Auto Auction of Southwest LLC, received cash payments exceeding $10,000 in the conduct of business,
- Triggered the requirement to file the Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business
- Was using Auction Master Software.
- Failed to file 2016 returns

393

Dealers Auto Auction of Southwest LLC

pp. 493

Facts:

- The IRS assessed penalties totaling $118,140 under IRC §§6721 and 6722 for the following infractions.
  - • 264 Forms 8300 filed more than 30 days late
  - • Two Forms 8300 filed less than 30 days late
  - • 63 delinquent dealer notifications
  - • 127 delinquent runner notifications

394

Dealers Auto Auction of Southwest LLC

pp. 493

Issues

- • Whether Dealers Auto had reasonable cause under IRC §6724 for failing to file and furnish Forms 8300 for 2016
- • Whether the reliance on software is a valid basis for a reasonable cause defense when it malfunctions

395

Dealers Auto Auction of Southwest LLC

pp. 493

Analysis

- Dealers Auto had the burden for production and persuasion regarding reasonable cause for the case.
- The court acknowledged that software malfunctions could constitute events beyond the taxpayer's control
- Dealers Auto failed to prove the following.
  - • The software malfunctioned
  - • They used the software correctly
  - • They had internal controls to help detect noncompliance

396

Dealers Auto Auction of Southwest LLC

pp. 493

Holding

- Dealer Autos failed to establish reasonable cause
- The court sustained the penalties.

397

Basis Determination - Partnership

494

- *Surk, LLC v. Comm'r, T.C. Memo. 2024-99*
  - Annual calculation *not* required for a partnership
  - It is required for an S corporation

398

Surk LLC v. Comm. TC Memo 2024-99

pp. 494-495

- The Tax Court's decision in Surk LLC v. Commissioner provides important guidance on the annual calculation of a partner's outside basis in a partnership under section 705(a) and the application of the section 704(d) loss limitation rules. The case clarifies that partners must decrease their outside basis by all previously allowed losses, including excess losses deducted in closed tax years, to prevent overstating basis and claiming improper loss deductions in future years.

399

Overview of Surk LLC's Tax Situation

- Excess Loss Deductions
  Surk deducted passthrough losses from Outerknown that exceeded its outside basis in 2014 and 2015, resulting in $3,308,767 of excess losses.
- IRS Inaction and Closed Years
  The IRS did not disallow these excess loss deductions at the time, and the years are now closed to assessment under section 6229.
- Outside Basis Calculation
  Section 705(a) requires partners to calculate outside basis annually, taking into account all prior and current year losses, but not reducing basis below zero.
- Reduction for Previously Allowed Losses
  The Tax Court held that Surk must decrease its 2017 outside basis by the $3,308,767 of excess losses previously deducted in 2014 and 2015, even though those years were closed.
- Preventing Basis Overstatement
  Failing to reduce outside basis by previously allowed excess losses would permit a partner to overstate basis and claim loss deductions in excess of their investment, contrary to the partnership basis and loss limitation rules.

400

Campana

p. 498

Unreported Retirement Income and a Misunderstood Withholding: No Relief for Taxpayer

- Charlie Campana withdrew $56,673 from a retirement account in 2021, under the age 59 ½.
- Failed to report the withdrawal and $99 interest income on his 2021 tax return
- He had a tax deficiency of $18,064 and an accuracy-related penalty of $3,238 issued in 2023
- Campana claims his 2017 refund should offset the 2021 liability but provided no documentation.

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Compana

p. 498

Issues

- Whether Mr. Campana failed to report $99 in interest income and $56,673 in retirement distributions
- • Whether Mr. Campana is liable for the 10% additional tax on early retirement distributions under §72(t)
- • Whether Mr. Campana is liable for the accuracy-related penalty under §6662(a)

Tax Court decided Mr. Campana failed to report taxable income and owed additional tax and penalties.

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Hubbard

p. 499

Forfeited IRA Not Taxable to Criminal

- Lonnie Hubbard was a pharmacist who was convicted of selling oxycodone to drug addicts and supplying pseudoephedrine to methamphetamine manufacturers.
- The IRS confiscated his IRA worth $427,518 in 2017 when he was in prison and didn't file a return.
- Mr. Hubbard argued the money was forfeited during his criminal case; however, the Tax Court ruled his IRA funds are taxable income.
- Mr. Hubbard appealed to the Sixth Circuit Court of Appeals.

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Hubbard

p. 499

Issue

Whether Mr. Hubbard owed tax on the involuntary forfeiture of his IRA.

The Sixth Circuit Court of Appeals decided that Mr. Hubbard did not owe tax on the amount the IRS withdrew from his IRA account.

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Clark

pp. 504 – 506

Schedule C Left on the Cutting Room Floor

- In 2019, James Clark earned $8,250 as a freelance movie review writer and $41,972 selling movie-related memorabilia, totaling $50,222.
- Mr. Clark reported the total on 1040-line 7a, not on a Schedule C which excluded the income from SE tax.
- In 2021, the IRS AUR program issued a CP2000 and a notice of deficiency asserting the income was subject to SE tax.
- In November 2021, the IRS issued a notice of deficiency.

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Clark

pp. 504 – 506

- Mr. Clark mailed his tax court petition on February 5, 2022, but the Tax Court did not receive the petition until July 19, 2022.
- Envelope postmark dated within 90 days of the notice, so his petition was considered timely filed.
- The IRS was unaware of Mr. Clark's petition and failed to place a litigation hold on his account.
- Before the trial, SSA informed Mr. Clark in March 2023 that it would reduce his 2019 SE earnings to zero, and the IRS refunded Mr. Clark the deficiency and penalties he paid.

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Clark

pp. 504 – 506

Issues

- Whether the $50,222 that Mr. Clark reported as 'other income' should have been recognized as SE income subject to SE tax.
- Whether Mr. Clark's reporting of income on Line 7a of Form 1040 instead of Schedule C led to a substantial understatement of tax, thereby subjecting him to an accuracy-related penalty.

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Clark

pp. 504 – 506

Tax Court found Mr. Clark's $50,222 income should be subject to SE tax. This error caused a substantial understatement of tax, subjecting him to the accuracy–related penalty.

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S Corp. Disproportionate Distributions
Maggard v. Comr., T.C. Memo. 2024-77

503

- Facts:
  - Maggard was one of the founders of an engineering consultant partnership that was incorporated into an S corporation. The bylaws provided for 10,000 shares of one class of common stock, which entitled each owner under the relevant state law to a pro-rata share of any dividends as well as any distribution of the corporation's assets on liquidation. Maggard maintained a 40% interest in the corporation and sold a 60% interest to two individuals (40% to one and 20% to the other).
  - The two individuals proceeded to misappropriate funds and make disproportionate distributions to themselves. In addition, they did not file Forms 1120S or send Maggard Schedules K-1 showing his share of distributions.

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Maggard v. Comr., T.C. Memo. 2024-77

- Facts:
  - Maggard accused the individuals of embezzling more than $1 million from 2012–2015. The individuals then cut Maggard off from the corporation's books and out of meetings, voted to increase their salaries and benefits, and authorized payouts to themselves based on retroactively increasing their paid time off.
  - The individuals then sued Maggard in California Superior Court alleging breach of contract and fraud and Maggard filed a countersuit in 2013.
  - The California Superior Court found that the corporation had overdistributed to one of the individuals and underdistributed to Maggard and ordered the company to make corrective distributions to Maggard, which the individuals refused to do.
    - Maggard then agreed to an offer from one of the individuals to buy Maggard's entire stake in the corporation for about $1.26 million.

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Maggard v. Comr., T.C. Memo. 2024-77

- Facts:
  - Maggard filed his taxes in 2018 for tax years 2011–2016. His attorney asked one of the individuals to give him Maggard's share of the corporation's income and expenses and the individual provided a napkin with the number $300,000 written on it, representing Maggard's pro rata portion of the corporation's losses for tax year 2014. The individual did the same for 2015 with a loss of $50,000. The corporation subsequently issued Schedules K-1 to Maggard for the 2011–2016 tax years showing his proportionate share of the earnings as profits, not losses.
  - The IRS audited Maggard and determined that he and his wife did not correctly report income from the corporation for the years 2014–2016.

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Maggard v. Comr., T.C. Memo. 2024-77

- Code and regs.:
  - Included among the various statutory requirements that must be satisfied for a taxpayer to be treated as an S corporation is Section 1361(b)(1)(D), which requires the corporation to have only a single class of stock. Treas. Reg. Section 1.1361-1(l)(1) treats a corporation as having only one class of stock if all outstanding shares of stock confer identical rights to distribution and liquidation proceeds. For these purposes, any differences in voting rights are disregarded.

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Maggard v. Comr., T.C. Memo. 2024-77

- **Code and Regs.:**
  - In turn, Treas. Reg. Section 1.1361-1(l)(2) bases the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds on the corporate charter, articles of incorporation, bylaws, applicable state law and binding agreements around distribution and liquidation proceeds (collectively, the "governing provisions").
  - It further states that a " … corporation is not treated as having more than one class of stock so long as the governing provisions provide for identical distribution and liquidation rights."
  - In applying these regulations, the IRS has said that it will not treat any disproportionate distributions made by a corporation as violating the single-class-of-stock requirement if the corporation's governing provisions provide for identical rights
  - Revenue Procedure 2022-19, Section 3.02, 2022-41

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Maggard v. Comr., T.C. Memo. 2024-77

- Arguments:
  - Because an S corporation is a pass-through entity, the IRS argued, Maggard must pay tax on his share of the corporation's income for the years at issue, regardless of whether the income was distributed to him.
  - Maggard, however, argued that the corporation's S election terminated before the years at issue by virtue of the repeated disproportionate distributions made by the corporation, which, Maggard maintained, violated IRC Section 1361(b)(1)(D)'s requirement for an S corporation to have only a single class of stock. As a result, Maggard asserted, the corporation was no longer a pass-through entity from 2014–2016, and Maggard should not be required to pay tax on his share of the corporation's income.

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Maggard v. Comr., T.C. Memo. 2024-77

- Court's decision:
  - In concluding that the disproportionate distributions made before the years at issue did not terminate the corporation's S election, the court cited the relevant regulations and emphasized that, despite the history of disproportionate distributions, the corporation did not formally change its governing documents or authorize or create a second class of shares. Thus, the governing provisions continued to provide for identical rights to distributions and liquidation proceeds.
  - Citing case law and the regulations, the court said that "[o]ne cannot help but sympathize with a taxpayer caught in this situation. But it is a situation that we've seen before.

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THANK YOU!

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