

Business Tax Update: OBBBA and Recent Developments




BUSINESS TAX UPDATE: OBBBA AND RECENT DEVELOPMENTS

SPRING 2026

Materials developed and presented by:
Steven C. Dilley, CPA, JD, PhD
President, Federal Tax Workshops, Inc. and
Professor of Accounting (Emeritus),
Michigan State University, East Lansing



1





INTRODUCTION

Steven C. Dilley CPA, JD, PhD - President of Federal Tax Workshops, where for over 40 years – he has been dedicated to providing the most recent tax and accounting education for accounting professionals.

Steve is nationally known for his knowledge of the financial, accounting and tax problems of the closely held business and individual taxpayers. He has published numerous articles on these topics.

In addition, Steve is a retired Professor of Accounting at Michigan State University, where he taught tax accounting and received numerous teaching awards.



www.dilleyftw.com
Email: dilley8733@yahoo.com

Business Tax Update: OBBBA and Recent Developments

COPYRIGHT © 2026 FEDERAL TAX WORKSHOPS, INC.

2

2

COURSE DEVELOPMENT RESOURCES

- ❖ RIA Checkpoint
- ❖ IRS
- ❖ The opinions expressed within are solely the responsibility of the author



Circular 230 Disclaimer: These materials are educational in nature and users of these materials should do their own independent research before advising clients.

3

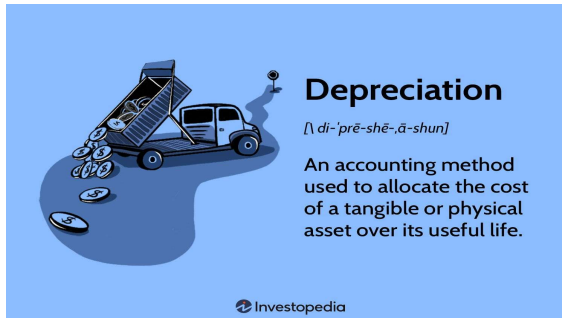
COURSE CONTENT



- ✓ OBBBA business provisions
- ✓ Developments (Notices, regulations, tax forms) related to OBBBA
- ✓ Other business-related tax developments

4

OBBA OF 2025 DEPRECIATION PROVISIONS



- ❖ New Nonresidential building depreciation
- ❖ Bonus depreciation
- ❖ Section 179
- ❖ AND OTHERS

5

REAL PROPERTY 100% DEDUCTION

The Act adds Section 168(n)

A taxpayer can elect a 100% depreciation deduction for **qualified production property (QPP)**....with an accompanying basis reduction.

- To be eligible, generally, QPP *construction must start* between January 20, 2025, and December 31, 2029.
- The property must be placed in service in the U.S. (or a U.S. possession) before January 1, 2031.



6

REAL PROPERTY 100% DEDUCTION

- ❖ **Qualified Production Property defined.** QPP is *nonresidential* real property used as an integral part of a **qualified production activity (QPA)**.
- ❖ **Ineligible Property.** QPP does not include property used for a variety of functions unrelated to QPA. The term 'qualified production property' shall not include that portion of any nonresidential real property which is used for:
 - ✓ Offices
 - ✓ Administrative services
 - ✓ Lodging
 - ✓ Parking
 - ✓ Sales activities
 - ✓ Research activities
 - ✓ Software development
 - ✓ Engineering activities
 - ✓ Other functions unrelated to the manufacturing, production, or refining of tangible personal property

**COST SEGREGATION
NEEDED!**

7

REAL PROPERTY 100% DEDUCTION

- ❖ **New Property.** QPP is subject to an original use requirement.
- ❖ Exception -- if the property:
 - i. Was not previously used by the taxpayer,
 - ii. Was not previously used in a QPA by another person, and
 - iii. Was not acquired from a related party or in certain non-recognition transactions.
- ❖ Consequently, the building could be constructed for the taxpayer or purchased by the taxpayer.
- ❖ Also, an existing warehouse, for instance, could be converted to a qualified production property.
- ❖ Additionally, QPP does not include Alternative Depreciation System (ADS) property, or property the taxpayer leases to another person.

8

NOTICE 2026-16

In February, 2026, the IRS issued Notice 2026-16 to explain the Sec. 168(n) provisions and as a precursor to issuing regulations. See <https://www.irs.gov/pub/irs-drop/n-26-16.pdf>

- ❖ There are several “taxpayer favorable” interpretations in this Notice.
- ❖ Among them is an interpretation that allows self-rental property to be eligible property if the lessor “controls” the lessee-operator of the eligible activity, such as owning 50% or more directly or indirectly of the lessee.
- ❖ A “consolidated group” of corporations also allows one member of the group to be the lessor and another is the lessee-operator of the eligible activity.
- ❖ **De minimis rule.** If 95% or more of the physical space of a property satisfies the “integral part requirement” the taxpayer may elect to treat the entire property as eligible.
 - Such election is made by including a declaration in the taxpayer’s election statement.
- ❖ Consequently, in the following slides these expansions of Sec. 168(n) by the Notice are incorporated.

9

REAL PROPERTY 100% DEDUCTION

Qualified Production Activity defined.

A QPA is the manufacturing, production, or refining of a qualified product.



The **qualified product** must be the result of an agricultural or chemical process.

- ❖ A qualified product is tangible personal property other than food or beverages prepared in the same building as a retail outlet that sells those products.
 - *For instance, a commercial bakery with no on-site retail operation is eligible, but a retail bakery that bakes on-site is not eligible.*
- ❖ **Substantial Transformation.** Activities do not constitute manufacturing, production, or refining of a qualified product unless the activities result in a substantial transformation of the property comprising the product.
- ❖ Airplane production, for instance, does not seem to qualify for the deduction because it is not an agricultural or chemical process, although it is “manufacturing.”

10

AGRICULTURAL OR CHEMICAL PROCESS

- ❖ The Notice details what is an agricultural process in section 5.02(7) and includes all the activities that would normally be associated with farming such as growing crops and raising livestock.
- ❖ The Notice details what is a chemical process in section 5.02(8) and includes all the activities normally associated with a chemical transformation.
 - Such as a product formulated from organic and inorganic raw materials,
 - Including preparing raw materials for reaction,
 - Combining materials in a reactor to form a new substance,
 - Isolating the final product from byproducts, intermediates, and other substances, and
 - Purifying the final product.

Examples of chemical production include:

- a) Basic inorganic chemical manufacturing, such as petrochemical manufacturing, industrial gas manufacturing, and synthetic dye and pigment manufacturing;
- b) Basic organic chemical manufacturing.



11

INTEGRAL PART REQUIREMENT

Property, or a portion thereof, is used as an integral part of a QPA and satisfies the integral part requirement if a QPA is conducted in, or takes place within, the physical space of such property or within a portion of the physical space thereof.



- ❖ If a QPA is conducted in, or takes place within, only a portion of the physical space of a property, only such portion satisfies the integral part requirement.
- ❖ Each unit of property must satisfy the integral part requirement on its own; however, there is a special rule for “integrated facilities.”
 - Such as the raw materials storage area of a bakery, but not the finished goods storage area.

12

ELECTING SECTION 168(n)

❖ Section 168(n)(6)(A) provides that an election under § 168(n)(6) for any taxable year.

- 1) Must specify the nonresidential real property subject to the election and the portion of such property designated as qualified production property under §168(n)(2)(A)(vi), and
- 2) Is made on the taxpayer's Federal income tax return for the taxable year.

❖ The election must very specifically designate the property for which the election is being made.

The **STATEMENT PURSUANT TO SECTION 7 OF NOTICE 2026-16***, must include the following information:

- 1) The name and taxpayer identification number of the taxpayer making the election;
- 2) For each property placed in service in the taxable year for which an election is being made:
 - a) The street address, city, state, zip code, and a description of the property;
 - b) The total unadjusted depreciable basis of the property;
 - c) If the eligible property is less than the entire property, the dollar amount of unadjusted depreciable basis allocable to the eligible property, and a description that identifies the eligible property; and
 - d) The dollar amount of the unadjusted depreciable basis of eligible property the taxpayer is designating as QPP (or a statement that the taxpayer is designating the entire unadjusted depreciable basis of the eligible property as QPP);
- 3) If the taxpayer is applying the de minimis rule, a declaration that the taxpayer is applying the de minimis rule and identification of each eligible property to which the de minimis rule is applied.

REAL PROPERTY 100% DEDUCTION

- ❖ The Sec 168(n) depreciation is not an alternative minimum tax preference.
- ❖ **Sec. 1245 Recapture.** QPP depreciation is subject to Sec. 1245 depreciation rather than Sec. 1250 depreciation recapture. See 1245(a)(3)(G).
- ❖ There is also a special 10-year recapture period beginning on the date the property is placed in service.
 - If QPP ceases to be used for a QPA, then Sec. 1245 is applied as though the property was never eligible for Sec. 168(n) depreciation.
 - Sale of the Sec. 168(n) portion of the property also triggers Sec. 1245 depreciation recapture rather than Sec. 1250 recapture.
 - Apparently, the portion of the building not eligible for the Sec. 168(n) deduction remains 39-year property and is not subject to Sec. 1245 depreciation recapture.
- ❖ **Effective Date.** The property has to be placed in service after July 4, 2025 (date of enactment), but the *construction must start* between January 20, 2025, and December 31, 2029 and the property must be *placed in service* in the U.S. (or a U.S. possession) before January 1, 2031.

REAL PROPERTY 100% DEDUCTION

EXAMPLE

- ❖ Yummy Treats, Inc. is an S corporation with one shareholder.
- ❖ From raw materials, YT produces various salty snacks that it sells to distributors.
- ❖ Because YT has a new large customer, it began planning an addition to its plant on December 20, 2024.
- ❖ Construction began on April 10, 2025.
- ❖ The plant is completed and placed in service on August 27, 2026.
- ❖ The cost of construction (not including any equipment) is \$4,000,000.
- ❖ None of the addition is used for office space, R&E, or any other ineligible purpose.

REAL PROPERTY 100% DEDUCTION

EXAMPLE

- ❖ Yummy Treats has met the requirements of Sec. 168(n).
- ❖ YT could deduct \$4,000,000 in 2026 for the entire cost of the addition.
- ❖ For financial accounting purposes, the building addition is capitalized and depreciated over 40 years using straight-line.
- ❖ YT's income is reduced by \$4,000,000 so its qualified business income for Sec. 199A is also reduced by \$4MM.
- ❖ Assuming YT's owner is in the 37% bracket, the net tax savings are \$1,184,000 ($\$4,000,000 \times .37$) - ($\$4,000,000 \times .20 \times .37$).
- ❖ If this large deduction generates a loss for YT, its owner may be subject to the excess business loss provision.

REAL PROPERTY 100% DEDUCTION

EXAMPLE (continued)

- ❖ Yummy Treats, Inc. loses a major customer in 2028 and shuts the addition on November 10, 2028 - the decision is made without considering the tax implications.
- ❖ YT has now run afoul of the 10-year recapture period.
- ❖ Unless YT is just making the building temporarily idle (maintenance or refurbishing) YT has to treat the *entire* \$4 million of depreciation taken in 2026 as Sec. 1245 depreciation recapture ordinary income, even though the addition and the rest of the building have not been sold.
- ❖ The \$4MM is added back to the basis of the addition and 39-year depreciation can be taken from November 10, 2028 (the shuttering date) forward.
- ❖ However, since the addition is no longer in use, continuing to depreciate it may be questionable.

REAL PROPERTY 100% DEDUCTION

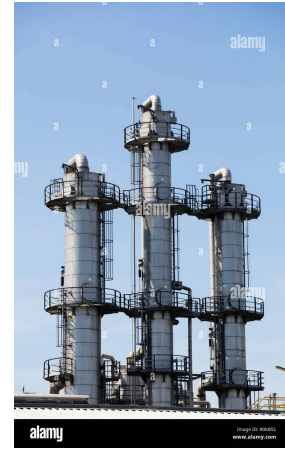
EXAMPLE (revised)

- ❖ Yummy Treats, Inc. is acquired on November 10, 2028 in an asset sale.
- ❖ YT has now run afoul of the Sec. 1245 recapture rule.
- ❖ YT has to treat the *entire* \$4 million of depreciation taken in 2026 as Sec. 1245 depreciation recapture ordinary income, limited by the gain from disposition of the QPP portion of the building.
- ❖ Assume the selling price for the QPP portion of the building is \$6 million and the basis is zero.
- ❖ The Sec. 1245 gain is \$4MM and the remaining \$2 MM gain is Sec. 1231 gain.
- ❖ If the FMV of the addition is less than \$4MM, there is a Sec. 1245 gain, but only to the extent of gain.

REAL PROPERTY 100% DEDUCTION

Planning Implications

- ❖ The provision changes the economics of certain manufacturing plant acquisitions, as well as their timing.
- ❖ As illustrated by the example, the provision has some significant “minefields.”
- ❖ It is not clear why some industries are eligible (agricultural and chemical) while others are questionable (auto manufacturing).



REAL PROPERTY 100% DEDUCTION

Planning Implications

- ❖ The taxpayer taking the deduction must have an eligible building used in an eligible activity.
- ❖ Therefore, a lessor of the building is not eligible for the deduction because the property is not “used by the taxpayer” for the qualified use.
- ❖ The lessee is not eligible for the deduction because it is not the owner.

Self-rental property

- Often, real property is held in an LLC and leased to an operating business.
- Such “self-rental real estate” is potentially eligible for the deduction under Sec. 168(n) if the related party test is met.
- The IRS has been very generous with its interpretation of the statute in the Notice.

BONUS DEPRECIATION – SECTION 168(k)

Bonus Depreciation Made Permanent at 100%

- ❖ Sec. 168(k) provides additional first-year ("bonus") depreciation for qualified property.
- ❖ Before the Act, the applicable rate for bonus depreciation was being phased down to zero over multiple years...40% for property placed in service in 2025.
- ❖ The Act permanently sets bonus depreciation at 100%.
- ❖ Other than adjusting certain date criteria, the Act did not alter the types of property eligible for the Sec. 168(k) deduction.
- ❖ If for some reason the lower depreciation rate is desired, a limited transitional election is available to apply the pre-Act phase-down rates instead of 100%.



Effective Date. Property acquired after January 19, 2025.

ACQUISITION DATE DETERMINATION – property shall not be treated as acquired after the date on which a written binding contract is entered into for such acquisition.

BONUS DEPRECIATION – SEC. 168(k)

Planning Implications

- ❖ Curiously, the statute uses the acquisition date rather than the placed in-service date as the triggering event.
- ❖ **Example.** A binding contract was entered into on December 19, 2024 for a 7-year MACRS machine.
 - The machine was delivered on January 30, 2025.
 - Installation was complete and the machine began running on March 10, 2025.
 - Since there was a binding contract before January 20, 2025, the machine is apparently only eligible for 40% bonus depreciation rather than 100% bonus depreciation.

BONUS DEPRECIATION – SEC. 168(k)

Planning Implications

- ❖ MACRS depreciation does not use the actual placed in service date.
- ❖ Instead, a “convention” (half-year or mid-quarter for equipment and mid-month for buildings) is used.
- ❖ Consequently, the machine in the prior example would get the other 60% of the depreciation using the regular MACRS rules.
- ❖ Also, notice that the acquisition date is used rather than “taxable years after” language.
- ❖ Fiscal year businesses, therefore, may have different sets of rules in the same year.
- ❖ The rules for qualified improvement property and all other aspects of Sec. 168(k) were also made permanent.

BONUS DEPRECIATION – SECTION 168(k)

Certain plants bearing fruit or nuts (specified plants)

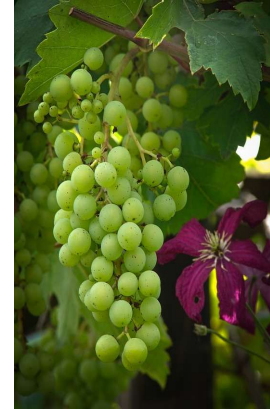
- ❖ A taxpayer can elect, on a tax year by tax year basis, to apply §168(k)(5) for any specified plant if:
 - 1) The plant is planted or grafted to a plant that has already been planted, and
 - 2) The planting or grafting takes place in the ordinary course of the taxpayer's farming business.
- ❖ Rev Proc 2017-33 confirms that the election for specified plants **accelerates** the placed-in-service date for bonus depreciation purposes, **but not** for purposes of the regular depreciation deductions for the specified plants.

DEPRECIATION – SECTION 168(k)

A specified plant is a plant, planted or grafted in the U.S., that is:



- ❖ Any tree or vine that bears fruits or nuts, or
- ❖ Any other plant that will have more than one crop or yield of fruits or nuts and generally has a pre-productive period of more than two years from the time of planting or grafting to the time at which the plant begins bearing a marketable crop or yield of fruit or nuts.
- ❖ Pre-productive period for purposes of the definition of specified plants is consistent with pre-productive period under §263A(e)(3) (uniform capitalization rules).



25

DEPRECIATION – SECTION 168(k)

Specified Plant Example

Vineyard, LLC is a sole proprietorship growing grapes and producing wine.

- It purchases land and then plants \$400,000 worth of new grapevines during Fall 2025.
- The vines will not bear useable grapes for at least five years.
- Therefore, the vines are not “**placed in service**” until at least 2030 and would normally not be depreciable until that time.
- However, §168(k) depreciation of \$400,000 may be taken in 2025.



26

DEPRECIATION – SECTION 168(k)

The Act also made permanent certain **qualified film or television productions** and certain **qualified live theatrical productions** as “**qualified property**.”

A qualified film or television production is defined in §181(d) (generally a film or television production 75% of the total compensation of which is paid to actors, production personnel, directors and producers for services performed in the U.S.)



27

DEPRECIATION – SECTION 168(k)



- ❖ A qualified live theatrical production is defined in §181(e) (generally a live staged production 75% of the total compensation of which is paid to actors, production personnel, directors and producers for services performed in the U.S).
- ❖ Section 181 had expired after 2016, was revived for 2017-2025 and now applies permanently.

28

DEPRECIATION – SECTION 168(k)

Placed-in-Service Rule

For purposes of determining whether the production satisfies the placed-in-service requirement for qualified property:

- ❖ A qualified film or television production is considered to be placed in service at the time of initial release or broadcast, and
- ❖ A qualified live theatrical production is considered to be placed in service at the time of the initial live staged performance.



SOUND RECORDINGS

The Act added “**Qualified Sound Recordings**” to the theatrical category.

- ❖ Section 181(a)(1) and Sec. 168(k) were amended to now say “qualified film or television production, any qualified live theatrical production, and any qualified sound recording production.”
- ❖ The annual deduction limitation as an “immediate expense” under Sec. 181 for sound recordings is \$150,000, whereas it is \$15,000,000 for the theatrical productions.
- ❖ Taxpayers have to choose between the Sec. 181 deduction and the Sec. 168(k) deduction – they cannot use both in 2025.
- ❖ However, for productions commencing after 2025, Sec. 181 expires and all of its eligible property is subsumed within Sec. 168(k).

SOUND RECORDINGS

- ❖ Qualified Sound Recording Production...means a sound recording (as defined in section 101 of title 17, United States Code) produced and recorded in the United States.
- ❖ **Placed in Service.** A qualified sound recording production is placed in service at the time of initial release or broadcast



Effective Date. Taxable years ending after July 4, 2025.

DEPRECIATION – SECTION 168(k)

Property Excluded from §168(k)

Qualified property **does not include** any property:

- ❖ Used by a regulated public utility company (unless it is a water utility);
- ❖ If the alternative depreciation system (ADS) is required to be used for the property (i.e., tax exempt use property, property used predominately outside the U.S.); or
- ❖ If the ADS is elected to avoid the interest expense limitation provisions.



SECTION 179 IMMEDIATE EXPENSE DEDUCTION

The Section 179 expense has been enhanced

- ❖ The Act increased the 2025 statutory expensing limit to \$2,500,000 (from \$1,250,000) and increased the phase-down threshold to \$4,000,000 (from \$3,130,000).
- ❖ The 2026 numbers are \$2,560,000 and \$4,090,000.
- ❖ **Effective Date.** This provision is effective for property placed in service in tax years beginning after December 31, 2024.

Planning Implications

The choice between bonus depreciation and Sec. 179 again falls toward bonus depreciation because it is 100% again and covers basically the same property, except for qualified improvement property.



ENERGY PROPERTY AND MACRS

- ❖ Under pre-Act law, Sec. 168(e)(3)(B)(vi) classified certain energy property as 5-year property under MACRS).
- ❖ Energy property, under Sec. 48(a)(3)(A), includes:
 - Solar panels
 - Wind turbines
 - Geothermal systems
 - Fuel cells
 - Microturbines
 - Combined heat and power systems
 - Certain energy storage and hydrogen technologies



ENERGY PROPERTY AND MACRS

To qualify, the property must:

- a) Be constructed or first used by the taxpayer,
- b) Be eligible for depreciation or amortization, and
- c) Meet IRS and Department of Energy standards.



- ❖ The Act removes this 5-year classification, thereby eliminating accelerated cost recovery under MACRS for newly constructed energy property.
- ❖ Consequently, the upfront tax benefits of clean energy investments are reduced.
- ❖ **Effective Date.** Property for which construction begins after December 31, 2024.

ENERGY EFFICIENT COMMERCIAL BUILDINGS

- ❖ Under pre-Act law, taxpayers were eligible for a deduction for the cost of energy efficient commercial building property placed in service during the tax year. [Sec. 179D]
- ❖ There were limitations based upon square footage and previous deductions claimed as well as the amount of reduction of energy and power costs.
- ❖ Under pre-Act law the deduction was not scheduled for sunseting.
 - The Act adds Sec. 179D(i) to terminate the energy efficient commercial building deduction for the cost of energy efficient commercial building property.
 - **Effective Date.** Construction which begins after **June 30, 2026**.

OBBA OF 2025 RESEARCH & EXPERIMENTATION CHANGES

- ❖ Qualifying expenses
- ❖ Amended returns
- ❖ Accelerated write-off



37

R&E DEVELOPMENTS



The TCJA provision was expected to be repealed.

- ❖ The 2017 Tax Cuts and Jobs Act had a delayed “trigger” which dramatically changed how Sec. 174 research and experimentation expenses (R&E) were treated for tax years beginning after 2021.
- ❖ It was a sweeping change that impacted many business taxpayers....causing them to capitalize and amortize expenses which they had been currently deducting.

And now it has been!!!

38

R&E DEVELOPMENTS

The 2022 change was in Section 174 (R&E deduction), not to Section 41 (R&E credit):

Pre-OBBA Law. Items eligible for the deduction (starting in taxable years beginning after December 31, 2021)....

- ❖ Could no longer be expensed in the year they were incurred!!!
- ❖ Purchased software can still be amortized over 3 years, but developed software is subject to the revised Section 174 rules.

- ❖ Instead, the domestic R&E costs had to be capitalized and amortized over 60 months and foreign R&E must be capitalized and amortized over 15 years.
- ❖ All eligible costs that are to be amortized are deemed to have been incurred at the midpoint of the year... *thus there is only a half year of amortization in the first year.*

R&E DEVELOPMENTS

What are the possible scenarios that taxpayers found themselves in before the change in the law applicable to 2022-2024?

- 1: The taxpayer had no R&E expense and was unaffected by the change.
- 2: The taxpayer had R&E expense, but had not previously been capturing the expenses as distinct from other expenses.
- 3a: The taxpayer had been capturing the R&E expense and deducting it each year under Sec. 174.
- 3b: The taxpayer had been capturing the R&E expense and capitalizing and amortizing it under Section 174 (probably 60 months).
- 3c: The taxpayer had been capturing the R&E expense, capitalizing it, and not amortizing it.
- 4: Some combination of #1 - #3a-c.

OBBA R&E PROVISIONS – BACK TO THE FUTURE

Section 174A was enacted and Section 174 now applies only to foreign R&E

Section 174A Treatment as Expenses

- ❖ Despite the capitalization rules of Sec. 263, an immediate deduction is allowed for any *domestic* research or experimental expenditures which are paid or incurred by the taxpayer during the taxable year.
- ❖ “**Domestic research or experimental expenditures**” means research or experimental expenditures paid or incurred by the taxpayer other than such expenditures which are attributable to foreign research [defined by Sec. 41(d)(4)(F)].



R&E DEVELOPMENTS

The scenarios can have a varying impact on taxable income and on financial accounting income **AFTER THE SERIAL TAX ACCOUNTING CHANGES.**

- ❖ Depending on the tax year, the taxpayer can find themselves in different scenarios, how they reacted to those scenarios, and what they have to do now.
- ❖ So - for each impacted taxpayer, we must decide what has to be done next.
- ❖ The only taxpayer not impacted would be a taxpayer in scenario #1 throughout 2022 – 2025 and later years.

WHAT DO I DO NOW?

OBBBA R&E PROVISIONS

- ❖ Taxpayers may *elect* to capitalize their domestic expenditures and amortize them over at least 60 months from the date the R&E first generates benefits to the taxpayer.
- ❖ Foreign expenditures must continue to be capitalized and amortized over 15 years.
- ❖ Taxpayers adopting the immediate expense approach for 2025 that used the capitalization approach before 2025 use the *cutoff method* for their 2025 expenditures --- meaning they treat the 2025 expenditures alone without any Sec. 481 adjustment.
- ❖ **Effective Date.** Amounts paid or incurred in tax years beginning after December 31, 2024.

Transition Rules. For the years 2022 through 2024 taxpayers were required to capitalize and amortize their R&E over 60 months.

Taxpayers have three choices what to do about those years.

OBBBA R&E PROVISIONS

Choices for expenses capitalized in 2022 – 2024

- 1) Taxpayers may continue to amortize their domestic expenditures over the remaining portion of the 60 months.
 - 2) **Small Business OBBBA Exception.** Taxpayers may amend those returns and adopt immediate expensing ...requiring amended returns or a change in method of accounting request.
 - This option is only available for “small businesses” --- those with average gross receipts [Sec. 448(c)] less than \$31 million for 2022 -2024 and that are not “tax shelters.”
 - 3) **Recovery of unamortized amount method**
 - a) Taxpayers may expense in 2025 the remaining capitalized cost of their 2022 – 2024 expenditures or
 - b) Deduct the remaining unamortized amount ratably over the 2-taxable year period beginning with the first taxable year beginning after December 31, 2024.
- ❖ The IRS has issued extensive rules on each of these approaches in Rev. Proc. 2025-28.

OBBBA R&E PROVISIONS

AICPA Seeks Clarification

The AICPA sent a letter on July 31, 2025 seeking clarification about allowing "eligible small business taxpayers" to elect to swap December 31, 2021, for December 31, 2024, "effectively allowing such taxpayers retroactive treatment of immediate expensing of domestic research costs."

- ❖ As the letter noted, the statute says an eligible taxpayer "shall file an amended return for each" tax year covered by the election [option (2) above].
- ❖ *What about 2024 returns not yet filed?*
 - It was unclear whether taxpayers could deduct 2024 domestic research costs on their 2024 originally filed federal income tax returns *or*
 - Did taxpayers have to capitalize 2024 amounts on an originally filed return and then file amended 2024 returns to deduct the R&E costs?

OBBBA R&E PROVISIONS

IRS Responds with Revenue Procedure

- ❖ Rev Proc 2025-28 (61 pages) clarifies how taxpayers can change their method of accounting or accounting periods to reflect the removal of the amortization requirement for domestic research.
- ❖ The Rev Proc addresses:
 - The separation of domestic and foreign R&E expenditures
 - New elections
 - Transition relief
 - Accounting method changes

PRE-2025 R&E WRITE-OFF ELECTIONS

- ❖ Section 3 of Rev. Proc. 2025-28 sets out the rules for making the small business write-off election (officially the **“small business retroactive method”**). The rules are:
 - On an Administrative Adjustment Request (AAR), or
 - On an amended Federal income tax return, for an "applicable taxable year" (any taxable year beginning after December 31, 2021, and before January 1, 2025).
 - The election applies to all applicable years for which pre-OBBA Sec. 174 applied.
- ❖ A statement titled **"FILED PURSUANT TO SECTION 3.03 OF REV. PROC. 2025-28"** is attached to the AAR or return.

PRE-2025 R&E WRITE-OFF ELECTIONS

- ❖ Section 7 of Rev. Proc. 2025-28 sets out the rules for making the small business accounting method change election (officially the **“small business retroactive method change ”**). The rules are:
 - The election can be made on a **timely** filed (including extensions) original Federal income tax return filed after August 28, 2025),
 - The 2024 R&E is not capitalized and the 2022 and 2023 unamortized R&E is written off as a Sec. 481 adjustment.
 - The election applies to all applicable years for which pre-OBBA Sec. 174 applied.
- ❖ A statement titled **"FILED PURSUANT TO SECTION 7.03 OF REV. PROC. 2025-28"** is attached to the return.

PRE-2025 R&E WRITE-OFF ELECTION

Why an AAR?

- In general, §6031(b) prohibits partnerships subject to the centralized partnership audit procedures (most partnerships unless they are eligible to and elect out) from amending K-1s after the due date of the return.
- Rather, under §6227, such partnerships may file an administrative adjustment request (AAR) in the amount of one or more partnership-related items for any partnership taxable year.

Form 8082 (Rev. October 2023) Department of the Treasury Internal Revenue Service Name(s) shown on return	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR) (For use by partners, S corporation shareholders, estate and domestic trust beneficiaries, foreign trust owners and beneficiaries, REMIC residual interest holders, TMPs, and PRs.) Go to www.irs.gov/Form8082 for instructions and the latest information.	OMB No. 1545-0074 Attachment Sequence No. 84
		Identifying number

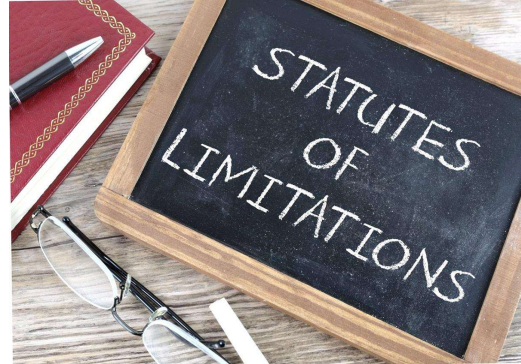
PRE-2025 R&E WRITE-OFF ELECTION

The statements must include:

- Name and taxpayer identification number.
- A declaration that the taxpayer is not a tax shelter for its first taxable year beginning after December 31, 2024 (with an optional declaration of intent to make the § 1.448-2(b)(2)(iii)(B) election if applicable).
- A declaration that the taxpayer meets the § 448(c) gross receipts test for its first taxable year beginning after December 31, 2024.
- A statement indicating the taxpayer is electing to deduct expenditures under § 174A(c).
- A declaration that the taxpayer will file an AAR or amended return for any applicable taxable year(s) for which a return was filed before September 15, 2025, if domestic R&E expenditures were paid or incurred in those years.

STATUTE OF LIMITATIONS FOR AMENDED RETURNS

- The OBBBA did not modify, or provide an exception to, the statutory period of limitations on filing a claim for credit or refund under § 6511 for purposes of the elections under OBBBA.
- Consequently, the 3-year from date of filing or 2-year from date of paying tax, whichever is later, filing deadlines continue to apply.
- For instance, a partnership return filed on March 10, 2022 could be amended as late as March 15, 2025.



PRE-2025 R&E WRITE-OFF ELECTION

Example: A “small business” C corporation takes an extension for its fiscal year ending May 31, 2025 tax return.

- The corporation takes an extension and files its return on November 2, 2025.
- On that return, the corporation deducts all of its previously capitalized R&E expenditures that have not already been amortized.
- The corporation could do any of the things mentioned above *OR use the –*
- **Deemed Election:** Solely for an original Federal income tax return timely filed on or before November 15, 2025, a small business taxpayer is deemed to have made the pre-2025 write-off election if it deducts the domestic R&E expenditures on that *original return* and complies with other requirements for all other applicable taxable years.

AUTOMATIC EXTENSION FOR 2024 RETURNS

Automatic Extension for Certain 2024 Tax Returns

- Many small business taxpayers may have already filed their 2024 tax returns before becoming aware of the OBBA elections and method changes.
- Section 8 of Rev. Proc. 2025-28 grants an automatic six-month extension of time to **file superseding tax and information returns when the original return has already been filed without extension.**
- The extension applies to entities with a 2024 taxable year that began during 2024 and ended prior to September 15, 2025, for which the due date (excluding extensions) was before September 15, 2025.
- Eligible small business entities include: partnerships, S corporations, C corporations, individuals, trusts, estates, and exempt organizations.
- **Example.** The C corporation in the prior example does not qualify for this extension because its due date without extension was not *before* September 15, 2025, it was *on* September 15, 2025.

POST-2024 IMMEDIATE EXPENSE ELECTION

- ❖ To immediately expense domestic R&E expenditures after 2024, taxpayers must attach a statement to their timely filed return for the year the change in accounting method is made.
- ❖ The change is binding for the year made and all subsequent years unless the taxpayer obtains IRS consent to change the method or period.
- ❖ Automatic consent is provided for accounting method changes to comply with the OBBA rules.

Generally, taxpayers may file a statement in lieu of Form 3115, Application for

3115	Application for Change in Accounting Method	OMB No. 1545-0070
<small>Form 3115 (Rev. December 2023) Department of the Treasury Internal Revenue Service</small>	<small>Go to www.irs.gov/Form3115 for instructions and the latest information.</small>	<small>Attachment Sequence No. 315</small>
Name of filer (name of parent corporation if a consolidated group) (see instructions)		Identification number (see instructions)
Principal business activity code number (see instructions)		
Number, street, and room or suite no. if a P.O. box, see the instructions:		Tax year of change begins (MMDD/YYYY)
City or town, state, and ZIP code		Tax year of change ends (MMDD/YYYY)
Name of applicant(s) (if different than filer and identification number(s) (see instructions)		Contact person's telephone number
Does the filer want to receive a copy of the change in method of accounting letter ruling, or other correspondence related to this Form 3115 by fax or encrypted email attachment? If "Yes," see instructions: <input type="checkbox"/> Yes <input type="checkbox"/> No		

RECOVERY OF UNAMORTIZED AMOUNT METHOD

When nothing further needs to be done

If the taxpayer is a “small business” and has made the election to deduct 2022-2024 unamortized expenses using the small business retroactive method discussed earlier, then no further election is necessary to continue using the immediate write-off method for post-2024 returns.

**ENOUGH IS
ENOUGH!**

POST-2024 IMMEDIATE EXPENSE ELECTION

The **statement in lieu of the Form 3115** must include the following information:

- ❖ A general description of the type of domestic research or experimental expenditures included as "specified" expenditures;
- ❖ The year or years in which the expenditures subject to the change were paid or incurred by the applicant; and
- ❖ A declaration that provides the reason for which the applicant is changing its method of accounting.

POST-2024 IMMEDIATE EXPENSE ELECTION

A taxpayer can make the change to the immediate expense method of accounting on a **cutoff basis** if the change is made during the taxpayer's first taxable year beginning after December 31, 2024.

Thus, there is no Sec. 481 adjustment required.

- The requirement to file a Form 3115, Application for Change in Accounting Method, is waived and a statement in lieu of a Form 3115 is authorized for the change in method of accounting.
- **When to Elect.** The election has to be made by the due date including extensions of the return for the tax year in which the expenditures are incurred.



POST-2024 IMMEDIATE EXPENSE ELECTION

- ❖ Elections must be made by July 6, 2026, subject to the statute of limitations for refund claims under § 6511.
 - While the statute says the deadline is one year after the enactment of the OBBBA (July 4), that day falls on a Saturday, meaning taxpayers have the weekend to make their elections.
- ❖ The revenue procedure is effective August 28, 2025, for most provisions, with special rules for method changes filed before November 15, 2025.
- ❖ Taxpayers who filed 2024 returns before September 15, 2025, without an extension, may file a **superseding return** by the extended due date to make or revoke elections or change methods under the new rules.

POST-2024 CAPITALIZE AND AMORTIZE ELECTION

- ❖ To make an election to amortize rather than immediately expense domestic R&E expenditures after 2024, taxpayers must attach a statement to their timely filed return for the year the election is made.
- ❖ The election is binding for the year made and all subsequent years unless the taxpayer obtains IRS consent to change the method or period.
- ❖ Automatic consent is provided for accounting method changes to comply with the new rules.
- ❖ Generally, taxpayers may file a statement in lieu of Form 3115, Application for Change in Accounting Method.

Possible Interpretation:

Even if the taxpayer is continuing to capitalize and amortize, an election is necessary because of the post-2024 requirement that amortization not begin until benefits are derived from the R&E expenditures.

POST-2024 CAPITALIZE AND AMORTIZE ELECTION

- ✓ This election is made by attaching a statement, titled "**FILED PURSUANT TO SECTION 6.02 OF REV. PROC. 2025-28.**"
- ✓ The statement is attached to the taxpayer's original Federal income tax return for the election year.
- ✓ The return must be filed by its due date (including extensions).
- ✓ This method is officially the "**§ 174A(c) amortization method.**"

POST-2024 CAPITALIZE AND AMORTIZE ELECTION

The statement must include:

- ❖ The name and taxpayer identification number of the applicant.
- ❖ The taxable year in which the election is being made.
- ❖ A declaration that the applicant is charging such expenditures to a research or experimental capital account, and amortizing the amount over a period of not less than 60 months, beginning with the month in which the applicant first realizes benefits from such expenditures, in accordance with § 174A(c).
- ❖ The number of months (not less than 60) selected for the amortization period.

POST-2024 CAPITALIZE AND AMORTIZE ELECTION

- ❖ The election is irrevocable without consent to change from the IRS.
- ❖ The election does not apply to expenditures from tax years prior to 2025.
- ❖ **Exception.** For a taxable year beginning after December 31, 2024, and before January 1, 2026 a taxpayer can make the election by complying with the automatic change provision of Sec. 7.02(3)(b) of Rev. Proc. 2025-23 (the change of accounting method procedure).



FOREIGN R&E PROVISIONS

Special Rule for Disposition of Foreign R&E

- ❖ OBBBA §70302(b)(1)(C) modifies pre-Act § 174(d) concerning the disposition of property related to foreign R&E expenditures.
- ❖ If such property is disposed of, retired, or abandoned during its amortization period, no deduction or reduction to the amount realized is permitted.
- ❖ Instead, the amortization deduction for those expenditures continues.
- ❖ This specific amendment applies to property disposed, retired, or abandoned after May 12, 2025.

R&E CREDIT

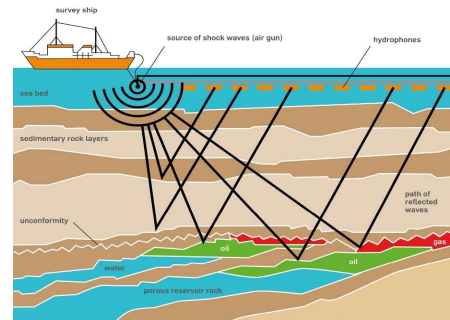
Reduction of R&E Expenses for R&E credit

- ❖ OBBBA § 70302(b)(2)(B) amended pre-Act §280C(c)(1) to state that domestic R&E expenditures immediately expensed or capitalized and amortized are reduced by the amount of the § 41(a) credit.
- ❖ This rule creates somewhat of a “chicken and egg” issue because of the R&E credit eligible expenses “nesting” within the R&E deduction expenditures.
- ❖ It also impacts pre-2025 retroactive write-offs of capitalized R&E because if the taxpayer took the R&E credit in those years, the reduction in the credit is now increased (or, alternatively, the credit rate can be reduced to 21%).

NATURAL RESOURCES

Section 174A(d)(2) provides that § 174A does not apply to any expenditure paid or incurred for the purpose of:

- Ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).
- Thus, exploring for oil is not an R&E expenditure.



OBBBA R&E AND OTHER PROVISIONS

Impact of revised 2022 – 2024 numbers on other tax return items.

- The AICPA recommended future guidance should let taxpayers making the amendment election also adjust things like the net operating loss carryforward years.
- This would apply to years with a NOL affected by the election.
- The rationale is, the letter states, to denote that "the NOL has been adjusted to reflect the election."



**Net
Operating
Loss**

DEFINITION OF R&E

On September 8, 2023, the IRS released a Notice containing a preview of forthcoming proposed regs on the Sec. 174 amortization of specified research or experimental expenditures (SRE) (Notice 2023-63).

The regs were never issued.

- ❖ The term “**research or experimental expenditures**” means those expenditures incurred in connection with a taxpayer's business that represent research and development costs in the experimental or laboratory sense, and generally includes all such costs incident to the development or improvement of a product or a component or subcomponent of the product, as well as the costs of obtaining a patent.
- ❖ Very inclusive definition of SRE:
 - Both direct costs (e.g., research department) and
 - Indirect costs (payroll, accounting, legal, manufacturing, equipment depreciation, independent contractors, etc.)
 - Software development costs are R&E costs.

R&E DEVELOPMENTS

The changes are in Section 174 (foreign R&E deduction) and Section 174A (domestic R&E), not in Section 41 (R&E credit):

Prior Law. Items eligible for the deduction (starting in taxable years beginning before January 1, 2022)....

- ❖ Could be deducted in the year they were incurred (now in Sec. 174A),
- ❖ Capitalized and amortized over 60 months (now in Sec. 174A),
- ❖ Capitalized and amortized over 10 years (not re-enacted), or
- ❖ Capitalized under Sec. 263 and not amortized.

Most taxpayers want to select deduction in the year incurred rather than the other options in order to reduce taxable income.

- ❖ ASC 730-10-25 requires that all R&E costs be recognized as an expense as incurred in financial accounting.
- ❖ However, some costs associated with R&E activities that have an alternative future use (e.g., materials, equipment, facilities) may be capitalizable.

R&E DEVELOPMENTS

What are the collateral impacts of the Section 174 change for those businesses that have been capitalizing the R&E expenses?

Taxable income will decrease....

- ❖ Because such companies will no longer capitalize R&E costs.
- ❖ Consequently, quarterly estimated tax payments should be reduced.



A “book/tax” difference is no longer created...

- ❖ Financial accounting allows expensing the R&E expenses.
- ❖ Therefore, a Schedule M-1 adjustment may no longer be necessary on the applicable business tax return.

R & E DEVELOPMENTS

Planning Implications



- ❖ The simplest choice for those taxpayers that capitalized R&E during 2022 – 2024 is to continue amortizing those expenses and switch back to immediate write-off for 2025 and beyond.
- ❖ Choosing a retroactive approach for 2022 – 2024 requires consideration of the time, expense, and tax refunds which will occur.
- ❖ The relevant tax brackets in those years and the impact on the Sec. 199A deduction for flow-through entities need to be considered.
- ❖ Choosing the 2025 or 2025-2026 write-off of the remaining 2022 – 2024 capitalized costs also needs to consider the relevant tax brackets and the impact on the Sec. 199A deduction for flow-through entities.

OBBBA OF 2025 BUSINESS INCOME AND DEDUCTIONS

Interest Expense

Farmland Gains

Executive Compensation

Information Reporting

Charitable Contributions

Percentage of Completion

71

BUSINESS MEAL DEDUCTION

Generally, the deduction for business meals is limited to 50% of the expenditure.

In order to get Alaska Senator Murkowski's vote on OBBA, a special provision was put in.

- ❖ The Act provides an additional exception from the limitations on the deduction of business meals for the expenses of food or beverages provided:
 - a) On a fishing vessel, fish processing vessel, or fish tender vessel or
 - b) At a facility for the processing of fish for commercial use or consumption which is located in the United States north of 50 degrees north latitude and is not located in a metropolitan statistical area.
- ❖ The Act also clarifies that the limitations on the deduction of business meals don't apply to expenses for goods or services (including the use of facilities) sold by a taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth. [Sec. 274(o)]



Effective Date. Amounts paid or incurred after December 31, 2025.

72

PERCENTAGE OF COMPLETION METHOD

- ❖ Under prior law, construction accounting generally required the percentage of completion method.
- ❖ One exception was the ability to use the completed contract method for certain home construction.



- The Act expands this exception to “residential construction contracts” from “home construction contracts”....thereby expanding the exception to multi-family dwellings.
- For residential construction contracts the “long-term” requirement is now three years instead of two years.
- **Effective Date.** Contracts entered into in taxable years beginning after July 4, 2025.

CORPORATE CHARITABLE CONTRIBUTIONS

A corporation can deduct charitable contributions.

- ❖ The deduction can't exceed 10% of the corporation's taxable income before the charitable contribution.
- ❖ Excess contributions can be carried forward over the next five years. [Sec. 170(b)(2)]



Floor on Charitable Contributions. The Act provides allowable charitable contributions are allowed only to the extent they exceed 1% of the taxpayer's taxable income (before charitable contributions for the tax year. [Sec. 170(b)(2)(A)]

- So, there is now a floor and a ceiling on corporate charitable contributions.

CORPORATE CHARITABLE CONTRIBUTIONS

- Charitable contributions disallowed either for exceeding the 10% maximum or the portion below the 1% threshold can be carried forward for five years.
- **Effective Date.** Tax years beginning after December 31, 2025.



CORPORATE CHARITABLE CONTRIBUTIONS

Charitable Contribution Taxable Income Base. The deduction base is Form 1120 taxable income (line 30, after virtually all deductions including the NOL deduction), but not computed with:

- Any deduction for contributions.
- The special dividends received deductions on line 29b.
- The limitation under Sec. 249 on the deduction for bond premium.
- Any net operating loss (NOL) *carryback* to the tax year under Sec. 172.
- Any capital loss *carryback* to the tax year under Sec. 1212(a)(1).
- The deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

CORPORATE CHARITABLE CONTRIBUTIONS

Scenario #1 → The TI base is negative. All the charitable contributions carryforward.

Scenario #2 → The TI base is positive, but the charitable contributions are less than 1% of the TI base. There is no current year deduction and no carryforward.

Scenario #3 → The TI base is positive, the charitable contributions are greater than 1% of the TI base, but the *total* charitable contributions are ≤ 10% of the TI base. The excess above the 1% floor is currently deductible *and* the amount disallowed by the 1% floor carries forward.

Scenario #4 → The TI base is positive, the charitable contributions are greater than 1% of the TI base, but the *total* charitable contributions are > 10% of the TI base. The excess above the 10% *and* the amount disallowed by the 1% floor carry forward.

2026 Corporate Charitable Contribution Examples

Facts: C corporation made \$10,000 cash charitable contributions in its calendar year 2026. Its properly determined taxable income base for the year is shown below.

Scenarios	#1	#2	#3	#4
Charitable Contribution	10,000	10,000	10,000	10,000
Taxable income base (TIB)	(26,000)	1,320,000	122,000	56,000
TIB X .01	0	13,200	1,220	560
TIB X .1	0	132,000	12,200	5,600
Net CC	10,000	0	8,780	5,040
Current year deductible CC	0	0	8,780	5,040
CC Carryforward	10,000	0	1,220	4,960
Permanent non-deductible CC	0	10,000	0	0

CORPORATE CHARITABLE CONTRIBUTIONS

Planning Implications

- ✓ An already complicated computation of corporate charitable contribution deductions has now become more complicated.
- ✓ Taxpayers will be tempted to categorize “charitable contributions” as “gifts” to avoid the loss of the charitable contribution deduction.
- ✓ Also, notice that as TI rises as compared to a small charitable contribution, the 1% floor will finally absorb more and more of the CC until there is no CC.
- ✓ Since no limitation exists on charitable contributions for financial accounting, there are new implications for accounting for income taxes.
- ✓ In addition, CCs *carried forward* into 2026 and beyond are apparently subject to the limitations.

BUSINESS INTEREST LIMITATION

Business interest is limited by Sec. 163(j) and the limitation became more onerous due to a change that computes “**adjusted taxable income**” *after* depreciation.

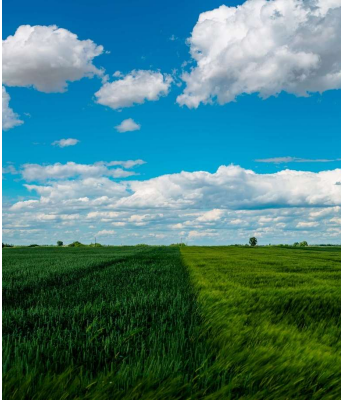
- ❖ The result has been more disallowed interest expense.
- ❖ The Act once again allows adjusted taxable income to be computed *before* reduction by depreciation.
- ❖ The Act also added some other adjustments for certain foreign items under Secs. 951, 951A, and 78 and also makes clear that the adjusted taxable income is calculated before any interest capitalization requirements.
- ❖ Generally, to be subject to interest expense limitations, the taxpayer’s 3-year average annual gross receipts have to exceed \$31 million for 2025 (\$32 million for 2026).

Effective Date. Tax years beginning after December 31, 2025.



FARMLAND GAINS

Treatment of gains from the sale of certain farmland property [Sec. 1062]



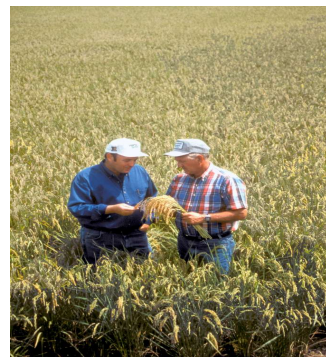
- ✓ The Act allows sellers of qualified farmland property to elect paying capital gains tax in four equal annual installments.
- ✓ **Qualified farmland property** means real U.S. property used as a farm or leased to a qualified farmer. [Sec. 2032(e)]
- ✓ To qualify, the property must be used substantially for farming purposes for the 10 years preceding the sale.
- ✓ The property must also be subject to prohibitions on non-farm use for at least 10 years after the sale.
- ✓ The gain eligible for deferment is the relative amount of tax related to the gain that is part of the net tax liability.

FARMLAND GAINS

A **qualified farmer** is an individual actively engaged in farming, as defined in the **Food Security Act of 1985**.

The first installment payment is due with the tax return for the year in which the sale occurs.

- ✓ The following three payments are also due with the returns for the subsequent tax years.
- ✓ If a payment is missed, the entire remainder of the capital gains tax balance is then due immediately.
- ✓ If the taxpayer is an individual who dies before paying all four installments, the unpaid installments are due with the last year's return.



FARMLAND GAINS

- ❖ If the taxpayer is a C corporation, trust, or estate - and there is a liquidation, sale of substantially all assets, or cessation of business - then the unpaid installments are due immediately.
- ❖ **Partnerships and S corporations** – The election is made at the partner or shareholder level.
 - *Property which is used or leased by a partnership or S corporation is treated as used or leased by each person who holds a direct or indirect interest in the partnership or S corporation.*
- ❖ In the event of a tax deficiency assessed as a result of the gain from the farmland sale, the deficiency is prorated across the remaining installments. However, this does not apply if the deficiency is due to negligence or fraud.

Effective Date. Sales or exchanges in tax years beginning after July 4, 2025.

FARMLAND GAINS

Planning Implications



- ❖ The gain from disposition of the farmland is likely Sec. 1231 gain rather than initially capital gain, although the section heading says “capital gains.”
- ❖ The deferral is related to the gain from the disposition of the real property, not any equipment included in the disposition.
- ❖ The provision differs from the installment sale method (which also may be available on such dispositions) because the tax is being deferred rather than the *gain* being deferred.
- ❖ There is no dollar limitation or phaseout in the provision, so large corporate farms are eligible for the provision.

INFORMATION REPORTING

Form 1099-MISC and Form 1099-NEC

- ❖ Under pre-Act law, Sec. 6041(a) requires all persons engaged in a business to file an information return for non-wage payments totaling \$600 or more per calendar year.
- ❖ Such payments include remuneration for services to persons other than employees.
- ❖ **Backup withholding** under Sec. 3406(b)(6) applies when payments meet or exceed the \$600 threshold and the payee fails to provide a correct taxpayer identification number or otherwise fails to comply with applicable reporting requirements.

The image shows a sample Form 1099-NEC (Rev. 4-2025) titled "Nonemployee Compensation". The form includes fields for PAYER'S name, address, city or town, state or province, county, ZIP or foreign postal code, and telephone no.; PAYER'S TIN; RECIPIENT'S TIN; RECIPIENT'S name; Street address (including apt. no.); City or town, state or province, country, and ZIP or foreign postal code; Account number (see instructions); 1 Nonemployee compensation; 2 Payer made direct sales totaling \$1,000 or more of consumer products to recipient for resale; 3 Excess golden parachute payments; 4 Federal income tax withheld; 5 State tax withheld; 6 State/Payer's state no.; 7 State income tax withheld; and 8 State income tax withheld. It also includes a "CORRECTED (if checked)" box, OMB No. 1545-0118, and a "Copy B For Recipient" section with instructions.

INFORMATION REPORTING

- ❖ The Act increases the general reporting threshold and the reporting threshold for remuneration to non-employees from \$600 to \$2,000 for both the 1099-MISC and 1099-NEC.
- ❖ **Beginning in 2027**, the general reporting threshold is adjusted annually for inflation with calendar year 2025 as the base year.
- ❖ The Act also revises the backup withholding rules to reflect the inflation-adjusted threshold.



Effective Date. Payments made after December 31, 2025.

INFORMATION REPORTING

Form 1099-K

- ❖ Sec. 6050W requires third-party network transactions to be reported on Form 1099-K, and reportable transactions are potentially subject to backup withholding under Sec. 3406.
 - ❖ There is a de minimis exception which excludes aggregate transactions in a year below a certain threshold from the 1099-K reporting requirements.
 - ❖ This exception does not extend to payment card transactions.
- ❖ The American Rescue Plan Act of 2021 (ARPA) changed the statutory de minimis threshold to \$600.
 - That threshold was scheduled to start applying to 2022 transactions.
 - However, the IRS allowed delayed implementation.
 - Before the Act, under IRS guidance, reporting entities could follow a \$2,500 de minimis exception for 2025 transactions.

INFORMATION REPORTING

Form 1099-K

- ❖ The Act reverts the de minimis exception to the pre-ARPA threshold, which means that only aggregate transactions in a year for a payee exceeding both \$20,000 and 200 transactions are required to be reported.
- ❖ The Act also clarifies that both components of the de minimis exception - dollar amount and transaction count - are considered for backup withholding.
- ❖ **Effective Date.** Calendar years beginning after December 31, 2024.

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		FILER'S TIN	OMB No. 1545-2026	Form 1099-K (Rev. March 2024)	Payment Card and Third Party Network Transactions
PAYEE'S TIN					
1b Card Not Present transactions		2 Merchant category code		3 For calendar year	
Check to indicate if FILER is a (a) <input type="checkbox"/> Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF) <input type="checkbox"/> Other third party		Check to indicate transactions reported are: <input type="checkbox"/> Payment card <input type="checkbox"/> Third party network		4 Federal income tax withheld \$	
PAYEE'S name		5a January \$		5b February \$	
Street address (including apt. no.)		5c March \$		5d April \$	
City or town, state or province, country, and ZIP or foreign postal code		5e May \$		5f June \$	
PSE's name and telephone number		5g July \$		5h August \$	
Account number (see instructions)		5i September \$		5j October \$	
		5k November \$		5l December \$	
		6 State		7 State identification no.	
				8 State income tax withheld \$	

Form **1099-K** (Rev. 3-2024) (Keep for your records) www.irs.gov/Form1099K Department of the Treasury - Internal Revenue Service

OBBBA OF 2025 – FLOW-THROUGH ENTITIES

- ❖ Section 199A
- ❖ Payments to Partners
- ❖ Excess Business Losses



SECTION 199A FLOWTHROUGH ENTITY DEDUCTION

The Flow-Through Entity

- An organization separate from the owners
- Not generally subject to tax
- Entity functions as a reporting mechanism for the owners
- All income or loss is reported by the owners on their own tax returns
- The entity serves as a tax conduit

- ❖ The Sec. 199A deduction was to expire after 2025.
- ❖ It has been extended permanently.
- ❖ Many changes that would have made the 199A provision less valuable (service businesses not eligible) or more valuable (23% of QBI instead of 20%) were proposed and/or included in the House version of OBBBA.
- ❖ Instead, there are few changes.
- ❖ There are two good changes and perhaps one worrisome change.

Effective Date. Tax years beginning after 2025.

SECTION 199A DEDUCTION COMPARISON

Filing Status	2025		2026	
	Phase-out Threshold	Phase-out Complete	Phase-out Threshold	Phase-out Complete
MFJ & SS	\$394,600	\$494,600	\$403,550	\$553,550
Single & H of H	\$197,300	\$247,300	\$201,750	\$276,750
MFS	\$197,300	\$247,300	\$201,775	\$276,775

SECTION 199A FLOWTHROUGH ENTITY DEDUCTION

For 2026, the phaseout range is **\$75,000** (\$150,000 for MFJ) once the threshold is reached.

- ❖ The result is that few taxpayers will be impacted (or impacted less) by the more complicated provisions dealing with W-2 wages and depreciation.

The Act sets the minimum deduction for active qualified business income (QBI) at **\$400**. [Sec. 199A(i)]

- ❖ A taxpayer must have a minimum of \$1,000 QBI to claim the deduction.
 - 20% of \$1,000 would normally be \$200.

SECTION 199A FLOWTHROUGH ENTITY DEDUCTION



- ❖ However, to qualify for the \$400 minimum, the \$1,000 qualified business income must be from an **"active qualified trade or business."**
- ❖ Which means any qualified trade or business of the taxpayer in which the taxpayer **"materially participates,"** as defined in Sec. 469(h) --- the passive activity material participation tests.
 - *Does this mean that the annual "rental real estate safe harbor" of Rev. Proc. 2019-38 has been, in effect, been revoked?*
 - *Or is this language just relevant to the minimum \$400/\$1,000 requirements?*
- ❖ The safe harbor is by design independent of the Sec. 469 material participation rules.

TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP

IRS Gets Broader Authority

- ❖ **Disguised Sales.** Under pre-Act law, Sec. 702(a)(2) required recharacterization when transactions between the partner and the partnership attempted to avoid unfavorable treatment --- such as being treated as a distribution rather than a sale between the parties.
- ❖ **Allocations and Distributions.** The IRS issued extensive regs on disguised sales of property to partnerships, but did not issue regs on another aspect --- direct or indirect allocations and distributions to a partner who provides services or transfers property to a partnership, where the performance of the services (or the transfer of property) and the allocation and distribution, when viewed together, are properly characterized as a transaction between the partnership and the partner acting other than in his capacity as a partner.
 - *In those cases, the allocation and distribution are treated as a transaction between the partnership and an outsider.*

TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP

IRS Gets Broader Authority

- ❖ The Act eliminates the language that the recharacterization be under IRS regs.
- ❖ Thus, the IRS may recharacterize transactions without issuing any regs.
- ❖ The change is not intended to create any inference with respect to the proper treatment of payments from a partnership to a partner for services performed, or property transferred, on or before July 4, 2025.

Effective Date. Services performed or property transferred after July 4, 2025.



Note. Form 7217 (new in 2024) already incorporates reporting of distributions from the partnership to the partner.

EXCESS BUSINESS LOSSES



Effective Date. Tax years beginning after December 31, 2025.

- ❖ The excess business loss provisions were to expire after 2028. [Sec. 461(l)]
- ❖ Also, farm losses are subject to the excess business loss provisions.
- ❖ Entities other than C corporations are subject to the limitation.
- ❖ Thus, the provision impacts taxpayers with flow-through losses from partnerships and S corporations as well as sole proprietorships.
- ❖ For 2025 the limitation is \$626,000 on joint returns and \$313,000 on other returns.
- ❖ The Act makes the excess business loss provision permanent and changes the inflation base from 2017 to 2024.

Business Tax Update: OBBBA and Recent Developments

Thank you for attending this presentation!



Steven C. Dilley, CPA, JD, PhD
www.dilleyftw.com

