RECENT DEVELOPMENTS IN FEDERAL INCOME TAXATION

We apologize to our readers. If we had more time, this outline would be much shorter.

By

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Note: This outline was prepared jointly with Cassady V. ("Cass") Brewer, Shareholder, Carlton Fields, and Professor of Law Emeritus, Georgia State University College of Law, Atlanta, GA,

I. ACCOUNTING

A. Accounting Methods

B. Inventories

C. Installment Method

D. Year of Inclusion or Deduction

1. ♪♫ "You say tomātō. I say tomätō. Let's . . ." ♫♪ consider the all events test? The Morning Star Packing Co., L.P. v. Commissioner, 134 A.F.T.R.2d 2024-6440 (9th Cir. 12/19/24), *aff'g* T.C. Memo. 2020-142. The issue in this consolidated case involving multiple taxpayer-partnerships was whether the "fact of liability" prong of the § 461(h)(4) "all events" test had been met. The *accrual-method* taxpayers were in the business of providing bulk-packaged tomato products. During the tax years in issue (2008-2011), the taxpayers supplied 40 percent of the U.S. market for diced tomatoes and tomato paste. The taxpayers' operations ran continuously (*i.e.*, 24/7) during a 100-day harvest season (approximately July to October). Following each harvest season, the taxpayers' equipment required extensive restoration, reconditioning, and retesting. The costs for goods and services necessary to retore, recondition, and retest the taxpayers' equipment for the years in issue totaled between $16.7 and $21 annually. The taxpayers established reserves ("production accrual reserve accounts") at the end of each harvest season in anticipation of the refurbishing expenditures that would be made before the beginning of the next season's harvest cycle. Between the end of one year's harvest season and the beginning of the next year's harvest season, the taxpayers would use the funds in the "production accrual reserve accounts" to pay for restoring, reconditioning, and retesting production equipment. Upon audit of the taxpayer's taxable years 2008-2011, however, the IRS contended that the amounts in the "production accrual reserve accounts" established at the end of each harvest season should not be fully includable in cost of goods sold for that year but instead should be taken into account as payments were made from those accounts, most of which took place in the next year before the beginning of the next harvest season. In particular, the IRS contended that the "fact of liability" prong of the "all events" test in § 461(h)(4) was not met at the end of each harvest season notwithstanding the taxpayers' "production accrual reserve accounts" until the taxpayer actually paid for the costs associated with restoring, reconditioning, and retesting their production equipment. Accordingly, the IRS asserted a deficiency for the years in issue, and the taxpayers petitioned the Tax Court.

Brief background. Recall that § 461(h)(1) provides as follows: "in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs." Section 461(h)(4) elaborates on the "all events test," stating that the test is met "if all events have occurred which determine the *fact of the liability* and the amount of such liability can be determined with reasonable accuracy." (Emphasis added.) Summarizing, as the Tax Court did in its opinion (see below), "[l]iability is incurred under the all events test if three factors are met: (1) all of the events that establish the fact of the liability must have occurred, (2) the amount must be able to be determined with reasonable accuracy, and (3) economic performance must have occurred." T.C. Memo. 2020-142 at *14. Further, "the fact of liability is established on the earlier of: (1) the event fixing the liability, such as the required performance, or (2) the date the payment is unconditionally due." T.C. Memo. 2020-142 at *15 *citing VECO Corp. & Subs. v. Commissioner*, 141 T.C. 440, 461 (2013). [Note: Section 461(h)(2)(A)(i) & (ii), not relevant in this case for reasons discussed below, specifies how "economic performance" is determined where goods or services are provided to the taxpayer by another person, reciting that "economic performance occurs as such person provides" the goods or services. Section 461(h)(2)(A)(iii), also not relevant in this case, specifies how "economic performance" is determined when the taxpayer uses property and incurs costs associated therewith. Further, the narrow, recurring item exception in § 461(h)(3), likewise not relevant in this case, allows accrual-method taxpayers to take into account certain items that are "recurring in nature" in the current year even though economic performance does not occur until the following year.]

Tax Court. Before the Tax Court (Judge Cohen), the IRS conceded (for reasons not explained in the opinion) that (i) the costs to restore, recondition, and retest their tomato processing equipment at the end of each harvest season could be determined with reasonable accuracy, and (ii) economic performance occurred with respect to the taxpayers at the end of each harvest season. *See* T.C. Memo. 2020-142 at *15. Thus, the determinative issue was whether the "fact of the liability" prong of the all events test was met for such anticipated costs at the end of each harvest season instead of at the beginning of the next season's harvest production cycle. To qualify under the "fact of liability" prong of the all events test, the costs must be "fixed" at the time they are taken into account. The IRS argued that the production costs accrued by the taxpayer and reflected in the "production accrual reserve accounts" were not fixed liabilities at the end of the harvest season. Instead, the liabilities for such costs only became fixed, the IRS argued, when they were actually paid, oftentimes in the next year before the beginning of the next harvest season. The taxpayers countered that their "production accrual reserve accounts" were required to be established at the end of each harvest season, and fixed the taxpayers' liabilities for the amounts therein, to comply with the "good working order" affirmative covenants in the taxpayers' credit agreements with lenders. Judge Cohen, though, was not persuaded, reasoning that general "good working order, wear and tear excepted" covenants in credit agreements, *which do not specifically require the taxpayers to establish "production accrual reserve accounts" at the end of each harvest season*, do not establish the "fact of liability" within the meaning of the all events test in § 461(h)(4). *See* T.C. Memo. 2020-142 at *17. The taxpayers then appealed to the Ninth Circuit.

Ninth Circuit opinion. In a three-judge panel opinion (2-1) not designated for publication, the U.S. Court of Appeals for the Ninth Circuit upheld Judge Cohen's decision in favor of the IRS and against the taxpayers. Judges Graber and Friedland affirmed, while Judge Bumatay dissented. Largely parroting the Tax Court, the majority concluded that inferring a requirement for, and liabilities associated with, establishing "production accrual reserve accounts" from standard "good working order, wear and tear excepted" covenants in the taxpayers' credit agreements "strains credulity." 134 A.F.T.R.2d at 2024-6441. The majority reasoned that, technically, if the taxpayers' argument was correct—*i.e.*, their credit agreements required by implication the "production accrual reserve accounts" solely as a consequence of "good working order, wear and tear excepted" covenants—then in fact the taxpayers must have been in breach of their credit agreements at the end of the harvest season. The taxpayers would have been in breach because at that point their equipment was not in "good working order, wear and tear excepted," notwithstanding their establishment of the "production accrual reserve accounts." For this reason, the majority concluded that the taxpayers' credit agreements did not mandate "production accrual reserve accounts" and thus no liability for refurbishing the taxpayers' equipment at the end of the harvest season was "fixed."

Dissenting opinion of Judge Bumatay. Dissenting, Judge Bumatay disagreed with the majority on the grounds that the "fact of liability" prong of the all events test does not "require the taxpayer to prove the fixed obligation to a metaphysical certitude." 134 A.F.T.R.2d at 2024-6443. In Judge Bumatay's view, the taxpayers' liabilities to restore, recondition, and retest their equipment were fixed and certain at the end of each harvest season, as had been the taxpayers' return position in years before 2008-2011. Apparently vexed by the majority's holding against the taxpayer due in part to the tax dollars at stake, but also perhaps obfuscating the technical aspects of § 461 and the reasoning of the majority, Judge Bumatay wrote in the concluding paragraph of his dissent:

> Whatever "ordinary wear and tear" means, it cannot mean damaging the equipment to the sum of $21 million in repairs. "Ordinary wear and tear" is when your bathroom's tiles fade, a tire tread gets worn down, or when a door handle becomes loose. It is not catastrophic damage that requires millions to repair. Claiming that a recurring, $21 million expense is "ordinary wear and tear" doesn't pass the straight-face test.

134 A.F.T.R.2d at 2024-6443.

2. OBBBA "plows fresh ground" (ha!) under new § 1062, allowing elective deferral of tax payments "stemming" (ha!) from gain attributable to selling farmland to farmers. The 2025 One Big Beautiful Bill Act, § 70437, relocates old § 1062 (cross-references) to § 1063, making way for new § 1062 (Gain From the Sale or Exchange of Qualified Farmland Property to Qualified Farmers). Under this new provision, a taxpayer may elect to pay federal income tax on gain from the sale or exchange of "qualified farmland property" (as defined) to a "qualified farmer" (as defined) in four equal annual installments. The precise amount of permitted tax deferral is determined by reference to the portion of the taxpayer's "net income tax" (as defined) for a taxable year equal to the "applicable net tax liability" (as defined) determined with respect to the taxpayer's sale or exchange gain from farmland for such year. IRC § 1062(a). Of course, to "separate the wheat from the chaff" (ha!) for purposes of advising taxpayers whether to "reap" (ha!) the benefits of new § 1062, one must comprehend the interrelated definitions contained in § 1062(d):

- *"Qualified farmland property" definition*: Section § 1062(d)(2) defines "qualified farmland" as real property that (i) is located in the U.S. and (ii) for a ten-year period ending on the date of the sale or exchange, has been either (a) used by the taxpayer (presumably the seller, although the statute is not entirely clear) as a farm <u>or</u> for farming purposes or (b) leased by the taxpayer (again, presumably the seller) to a "qualified farmer" for farming purposes. For shareholders or partners of a selling S corporation or partnership, the farming use is attributed to "each person who holds a direct or indirect interest in" such corporation or partnership. Moreover, the property sold must be subject to a covenant or other legally enforceable restriction prohibiting the use of the property for anything other than a farm for farming purposes for ten years after the date of the sale or exchange. IRC § 1062(d)(2).
- *"Qualified farmer" definition*: According to § 1062(d)(3), the term "qualified farmer" means any "*individual* [emphasis added] who is actively engaged in farming within the meaning of subsections (b) and (c) of section 1001 of the Food Security Act of 1986 (7 U.S.C. 1308–1(b) and (c)))."
  - *Note*: The use of the term "individual" in the definition of a "qualified farmer," at least in one author's view, creates ambiguity in the statute. In other words, if under § 1062

the "qualified farmland property" must be sold to a "qualified farmer," must the buyer of the farmland in all cases be an individual (not a corporation, partnership, estate, or trust) even if the seller is a corporation, partnership, estate, or trust? What happens if immediately after the sale to an "individual" (or even in connection with the sale) the farmland property is conveyed to an entity in which the individual holds an interest? Is this permissible under § 1062? Additional guidance is needed here.

  - *Another note*: Under the definition, a "qualified farmer" must be "actively engaged" in farming. Accordingly, can a buyer meet the definition of a "qualified farmer" if the farming activities of such individual will not commence until after the purchase of the farmland? Additional guidance is needed here too.

- *"Applicable net tax liability" definition*: According to § 1062(d)(1)(A), the term "applicable net tax liability" means the excess (if any) of the selling taxpayer's total "net income tax" for the taxable year of sale less the selling taxpayer's "net income tax" for the year of sale without taking into account gain recognized from the sale or exchange of the farmland property. The authors encourage advisors to parse the definition for themselves.
- *"Net income tax" definition*: The term "net income tax" is defined in § 1062(d)(1)(B) as the selling taxpayer's regular tax liability (presumably for the taxable year of the sale) reduced by the credits allowed under §§ 21-26 (nonrefundable personal credits), §§27-30D (other credits), and §§ 38-45AA (business related credits).

Effective date. New § 1062 is effective for sales or exchanges in taxable years beginning after 7/4/2025, so most taxpayers will have to wait until 2026 to "harvest" (ha!) any corresponding tax benefits.

Other details. The § 1062 election must be made by the due date—apparently without considering any extension of time for filing—of the taxpayer's return for the taxable year of the sale. IRC § 1062(c)(1). If, however, the taxpayer is an S corporation or a partnership, the election is made at the partner or shareholder level. IRC § 1062(c)(2). Further, § 1062(e) provides that, to make the election under § 1062, the taxpayer must include with the return for the taxable year of the sale or exchange a copy of the covenant or legally enforceable restriction (discussed above) relating to the farmland property sold or exchanged. The first payment of tax relating to the sale or exchange gain is due at the same time as the election (i.e., the due date for the return, without extension, for the taxable year of the sale), followed by three more successive equal payments of tax made on the subsequent three annual due dates for the taxpayer's yearly return. IRC § 1062(b). (New § 1062 does not address circumstances where the S corporation's or partnership's taxable year does not coincide with the shareholder's or partner's taxable year. Presumably, the due date for the shareholder's or partner's return for the taxable year within which the S corporation's or partnership's taxable year ends, and for which the shareholder or partner receives a Schedule K-1, applies.) The scheduled annual payments of tax are accelerated upon certain events: (i) failure to timely pay any installment of tax which results in "an addition to tax for failure to timely pay;" (ii) an individual taxpayer's death; and (iii) in the case of a C corporation, trust, or estate, the liquidation or sale of substantially all of the taxpayer's assets (including in a bankruptcy proceeding), cessation of business (in the case of a C corporation), "or any similar circumstance." IRC § 1062(b)(2)(A)-(C). In this last scenario, the sale of substantially all the assets of a taxpayer to a buyer does not accelerate the payments if the buyer "enters into an agreement with the Secretary under which such buyer is liable for the remaining installments [of tax] in the same manner as if such buyer were the taxpayer." IRC § 1062(b)(2)(C) (last sentence). If a deficiency subsequently is assessed with respect to the taxpayer's "applicable net tax liability," the deficiency is "prorated" across the tax installment payments otherwise due. IRC § 1062(b)(3).

II. BUSINESS INCOME AND DEDUCTIONS

III. INVESTMENT GAIN AND INCOME

A. Gains and Losses

1. No BS about QSBS: OBBBA significantly expands the § 1202 exclusion for gain from the sale or exchange of C corporation "qualified small business stock" by noncorporate taxpayers. The 2025 One Big Beautiful Bill Act, § 70431, makes several taxpayer-favorable amendments to § 1202 (partial exclusion for gain from certain small business stock). The post-1954 version of § 1202 was enacted in 1993 [the Omnibus Budget Reconciliation Act of 1993, § 13113, effective 9/10/1993] and substantially modified in 2010 [the Creating Small Business Jobs Act of 2010, § 2011, effective 9/27/2010]. The 2010 amendments also provided that gain attributable to "qualified small business stock" ("QSBS," as defined in § 1202(c)) acquired after 9/27/10 is not an AMT preference item; however, under the 2017 Tax Cuts and Jobs Act, this provision was set to expire at the end of 2025. The OBBBA amends § 57(a)(7) to make the AMT preference exclusion permanent. In other respects, the high-level takeaways of the OBBBA changes to § 1202 are as follows:

- *Old $50 million "aggregate gross assets" test, exclusion, and cap*: For QSBS issued after 9/27/2010 but on or before 7/4/2025 by a § 1202 qualifying C corporation ("Pre-OBBBA QSBS"), the "aggregate gross assets" test is $50 million—meaning the corporation's aggregate gross assets may not exceed $50 million before and after the issuance of the QSBS. Further, assuming the § 1202 qualifying C corporation met this test at the time of issuance of the QSBS (and the other requirements of § 1202 are satisfied), a 100 percent exclusion applies to a noncorporate taxpayer's gain from the sale or exchange of Pre-OBBBA QSBS held for more than five years (subject to a cap equal to the greater of (i) $10 million reduced by gain attributable to the corporation's stock excluded in prior years, or (ii) ten times the taxpayer's basis in the corporation's stock sold during the taxable year. *See* IRC § 1202(a)(4), (b)(1) & (4)(A), and (i)(1)(B).
- *New $75 million "aggregate gross assets" test*: For QSBS issued after 7/4/2025 ("Post-OB3 QSBS"), the "aggregate gross assets" test is increased to a not-to-exceed $75 million before and after issuance of the QSBS (up from $50 million), and the $75 million threshold is adjusted for inflation for taxable years beginning after 2026. *See* IRC § 1202(d)(4).
- *New Tiered Exclusion Amount and Higher Cap*: For sales or exchanges *in taxable years beginning after 7/4/2025* (which in most cases will be 2026 and thereafter), new § 1202(a)(5) authorizes:
  - a 50 percent exclusion for a noncorporate taxpayer's gain from the sale or exchange of QSBS acquired after July 4, 2025, and held at least three years but less than four years;
  - a 75 percent exclusion for a noncorporate taxpayer's gain from the sale or exchange of QSBS acquired after July 4, 2025, and held at least four years but less than five years; and
  - a 100 percent exclusion for a noncorporate taxpayer's gain from the sale or exchange of QSBS acquired after July 4, 2025, and held at least five years.
  - Regardless, the exclusion for Post-OB3 QSBS sale or exchange gain is subject to an increased cap equal to the greater of (i) $15 million reduced by gain attributable to the corporation's stock excluded in prior years of gain, or (ii) ten times the taxpayer's basis in the corporation's stock sold during the taxable year. *See* IRC § 1202(a)(5), (b)(1) & (4), and (i)(1)(B).
  - Further, the $15 million gain exclusion cap is adjusted for inflation for taxable years beginning after 2026. *See* IRC § 1202(b)(5).

Further background for readers less familiar with § 1202. Originally designed as a temporary provision providing a partial 50 percent exclusion for gain from the sale or exchange of certain C corporation stock held by noncorporate taxpayers, § 1202 has been amended by Congress no less than twelve times since 1993 (creating the complexities mentioned above as well as others not discussed extensively herein).[1] Basically, the pre-OBBBA version of § 1202(a) allowed a taxpayer (other than a corporation) to exclude 100 percent (or in some cases only 50 percent) of gain from the sale or exchange of "qualified small business stock" ("QSBS," as defined in § 1202(c) and elaborated upon below). Of course, the exclusion was and remains subject to extensive conditions and limitations. More specifically:

- *Original issuance to the taxpayer*: Section 1202(c)(1), defining QSBS, requires original issuance of stock after 9/10/1993 by a § 1202-qualifying C corporation to a noncorporate taxpayer in exchange for money, other property (not including stock), or services. The baseline gain exclusion under § 1202(a)(1)(A) is only 50 percent, but § 1202(a)(4) increases the exclusion to 100 percent for Pre-OBBBA QSBS issued after 9/27/2010. For Post-OBBBA QSBS, the gain exclusion is subject to the tiered structure mentioned above. *See* IRC § 1202(a)(5).
- *Five-year minimum holding period (but only three post-OBBBA) and cap on excludable gain*: Prior to OBBBA, § 1202(b) required a five-year minimum holding period for QSBS and limited exclusion to the greater of (i) $10 million reduced by gain attributable to the corporation's stock excluded in prior years, or (ii) ten times the taxpayer's basis in the corporation's stock sold during the taxable year.a per taxable year. *See* IRC § 1202(a)(4), (b)(1) & (4)(A), and (i)(1)(B). Importantly, though, for purposes of the ten times basis cap, § 1202(i) treats the taxpayer's adjusted basis in QSBS as equal to the fair market value of any property (not including stock) contributed in exchange therefor. OBBBA does not alter the ten times basis cap but does increase the $10 million cap to $15 million for Post-OBBBA QSBS and provides for inflation adjustments starting in 2027. *See* IRC § 1202(b)(5). Further, as noted above, OBBBA introduces the new three-to-five year holding period requirement, allowing corresponding gradual gain exclusion ranging from 50 percent to 75 percent to 100 percent. *See* IRC § 1202(a)(5).
- *"Qualified small business" requirement*: Section 1202(c)(1)(A), both pre- and post-OBBBA, requires that the § 1202-qualifying C corporation must have been a "qualified small business" (*see* § 1202(d) for details) upon original issuance of the QSBS to the taxpayer. Moreover, § 1202(c)(2)(A) imposes an active business requirement (*see* § 1202(e) for details) on the C corporation during substantially all of the taxpayer's holding period for QSBS (with allowances for "reasonably required working capital" under § 1202(e)(6) and limitations on real estate holdings under § 1202(e)(7)).[2]
    - *"Qualified small business" defined*: Section 1202(d), defining "qualified small business," limits a Pre-OBBBA QSBS-issuing C corporation to $50 million in "aggregate gross assets" (see § 1202(d)(2) for details) at all times on or after September

[1] For instance, special rules (including a 60 percent exclusion) may apply to pre-2019 QSBS gain attributable to an "empowerment zone business," and the exclusion is 75 percent (rather than 50 percent or 100 percent) for gain attributable to QSBS acquired in 2009 and on or before September 27, 2010, the date of enactment of the Creating Small Business Jobs Act of 2010. *See*, *e.g.*, § 1202(a)(2) & (3). The numerous amendments have created other complexities within § 1202 as well, including but not limited to restrictions on redemptions of QSBS, special rules for "pass-thru" entities, allowances for transfers by gift or at death, and look-through rules for subsidiaries (but excluding non-subsidiaries). *See* § 1202(c)(3), (e)(5), (g), and (h).

[2] A "waiver" of the active business requirement may apply under § 1202(c)(2)(B) for a "specialized small business investment company" licensed under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993). Additionally, under § 1202(e)(2), start-up activities (as described in § 195(c(1)(A)), research and development expenditures (as described in § 174), and in-house research expenses (as described in § 41(b)(4)) may qualify for the active business requirement. Section 1202(e)(8) potentially allows rights to computer software producing royalties to be treated as an asset used in the active conduct of a trade or business.

10, 1993, and immediately before the issuance of the QSBS.[3] New § 1202(d), as noted above, increases allowed "aggregate gross assets" to $75 million (adjusted for inflation starting in 2027) for a Post-OBBBA QSBS-issuing C corporation.

- *"Qualified trade or business" requirement*: Section 1202(e), in addition to imposing the active business requirement noted above, also restricts the QSBS-issuing C corporation further during substantially all of the taxpayer's holding period for QSBS. Under § 1202(e)(1)(A), at least 80 percent by value of the C corporation's assets must have been used during such period in the active conduct of one or more "qualified trades or businesses" (as explained further below). Moreover, under § 1202(e)(1)(B), the QSBS-issuing C corporation must have been an "eligible corporation" (also explained further below) during substantially all of the taxpayer's holding period for QSBS. OBBBA does not amend § 1202(e).
    - *"Qualified trade or business" defined*: Section 1202(e)(3) defines a "qualified trade or business" as any trade or business other than (and generalizing here for brevity):
        - specified professional service businesses (*see* § 1202(e)(3)(A) for details);
        - any banking, insurance, financing, leasing, investing, or similar business (*see* § 1202(e)(3)(B));
        - any farming business (including the business of raising or harvesting trees) (*see* § 1202(e)(3)(C));
        - any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A [percentage depletion] (*see* § 1202(e)(3)(D)); and
        - any business of operating a hotel, motel, restaurant, or similar business (*see* § 1202(e)(3)(E)).
    - *"Eligible corporation" defined*: Section 1202(e)(4) defines an "eligible corporation" as any domestic corporation other than:
        - a DISC or former DISC,
        - a regulated investment company, real estate investment trust, or REMIC, and
        - a cooperative.

A final note. State income tax conformity with § 1202 is "all over the map," so to speak. For a helpful resource in this regard, see here.

B. Interest, Dividends, and Other Current Income

C. Profit-Seeking Individual Deductions

D. Section 121

E. Section 1031

F. Section 1033

1. Leading a horse (or cattle or other livestock) to water? Well, now you've got a little more time (except for chickens, which don't qualify). Notice 2025-52, 2025-41 I.R.B. 474 (9/22/2025). This notice extends the normal two-year "replacement period" of § 1033 for involuntary conversions of property to four years for livestock sold on account of drought, flood, or other weather-related conditions. Recall that § 1033, subject to certain conditions, generally allows nonrecognition of gain (but not loss) for "involuntary conversions" (theft, seizure, requisition, or condemnation) of property if, during a two-year period, the taxpayer replaces such property with other property that is "similar or related in service or use." *See generally* IRC § 1033(a). The basis of qualifying replacement property acquired by a taxpayer in accordance

[3] Section 1202(d)(1)(c) also imposed certain reporting requirements, as the Secretary of the Treasury may require, on a § 1202(d) "qualified small business." To date, however, no such reporting requirements have been promulgated.

with§ 1033 is adjusted downward by the deferred gain. *See* IRC § 1033(b). Notwithstanding the normal two-year replacement period in § 1033(a)(2)(B)(i), however, § 1033(e) contains a special rule permitting extension of the replacement period to four years or even longer, *see* § 1033(e)(2), in cases where:

> [T]he sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

IRC § 1033(e)(1). Notice 2006-82, 2006-2 C.B. 529, provides that the IRS will publish in September of each year a list of counties for which "exceptional, extreme, or severe drought" was reported during the preceding twelve months, and taxpayers may rely upon the IRS's list of affected counties to determine if they qualify for the extended replacement period under § 1033(e). Notice 2006-82 also further extends the replacement period, as permitted under § 1033(e)(2)(B), until:

> [T]he end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's four-year replacement period determined under § 1033(e)(2)(A); and (3)does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region.

Notice 2025-52 implements the mandate previously announced in Notice 2006-82 by listing in an appendix the affected counties for the twelve-month period ending August 31, 2025. Notice 2025-52 further provides that, if a taxpayer qualified for the four-year replacement period, but such period is set to expire at the end of 2025 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2025), the replacement period under § 1033 is further extended until a taxpayer's first taxable year ending after a "drought-free year for the applicable region."

G. Section 1035

H. Miscellaneous

IV. COMPENSATION ISSUES

V. PERSONAL INCOME AND DEDUCTIONS

A. Rates

B. Miscellaneous Income

C. Hobby Losses and § 280A Home Office and Vacation Homes

D. Deductions and Credits for Personal Expenses

1. OBBBA permanently extends the § 165(h) personal casualty loss deduction attributable to a federally (and now state) declared disaster area. The 2025 One Big Beautiful Bill Act, § 70109, makes two important changes to § 165(h). As readers may recall, the deduction for personal casualty losses in § 165(c)(3) generally has been disallowed (except to the extent of personal casualty gains) for all taxable years beginning after 12/31/2017 pursuant to the Tax Cuts and Jobs Act of 2017. *See* IRC § 165(h)(5). Nonetheless, a narrow exception in § 165(h)(5)(B) allows a deduction for such excess personal casualty losses to the extent "attributable to a Federally declared disaster" (as defined in § 165(i)(5)). The general disallowance rule and the narrow exception in § 165(h) were set to expire at the end of 2025; however, the OBBBA permanently extends both. Moreover, the OBBBA broadens the exception a bit to allow personal casualty losses attributable to a "State declared disaster" in addition to a "Federally declared disaster." A "State" for this purpose is defined in new § 165(h)(C)(ii) to include all fifty U.S. states as well as D.C. and U.S. possessions. A "State declared disaster" is defined in § 165(h)(C)(i) as follows:

> [W]ith respect to any State, any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the State, which in the determination of the Governor of such State (or the Mayor, in the case of the District of Columbia) and the Secretary causes damage of sufficient severity and magnitude to warrant the application of the rules of this section.

The above modifications to § 165(h) are effective for taxable years beginning after December 31, 2025.

2. Some good news for workers who depend on tips: up to $25,000 of tip income can be deducted, at least through 2028. The 2025 One Big Beautiful Bill Act, § 70201, added new § 224 of the Code (and renumbered existing § 224 as § 225). New § 224(a) authorizes an individual to deduct the amount of "qualified tips" that the individual receives.

Qualified tips. The term "qualified tips" is defined in § 224(d)(1) as the *cash tips* an individual receives in an occupation that "customarily and regularly received tips on or before December 31, 2024," as provided in guidance to be published by the IRS. The legislation directs the Secretary of the Treasury to publish a list of such occupations not later than 90 days after the date of enactment. Because the date of enactment was July 4, 2025, the list should be published by October 2, 2025. A "cash tip," according to § 224(d)(3), includes "tips received from customers that are paid in cash or charged and, in the case of an employee, tips received under any tip-sharing arrangement." An amount received is not a qualified tip, under § 224(d)(2)(A), unless the amount is "paid voluntarily without any consequence in the event of nonpayment, is not the subject of negotiation, and is determined by the payor." Further, under § 224(d)(2)(B), an amount is not a qualified tip if it is received in a specified service trade or business as defined in § 199A(d)(2), even if the tip is received by an employee in the trade or business. Readers will recall that a specified service trade or business for this purpose includes most professional services, including the practice of law, medicine, and accounting. In addition, under § 224(d)(2)(C), an amount can be a qualified tip only if it meets any other requirements established by the IRS in published guidance. Finally, to be considered a qualified tip, an amount must either be reported on certain statements furnished to the individual, such as a W-2 or 1099 form, or be reported by the individual on Form 4137, which is the form used to determine Social Security and Medicare tax owed on tips the individual did not report to the individual's employer.

Self-employed individuals. Section 224(c) makes clear that the deduction is available not only to employees, but also to those who are self-employed. In the case of a self-employed individual, however, the deduction cannot exceed the amount by which the taxpayer's gross income from the trade or business for the year (including tip income) exceeds the deductions allocable to the trade or business. This effectively means that the deduction for tip income can reduce income from the trade or business to zero, but cannot create a loss. For example, if a self-employed individual has $150,000 of gross income from the trade or business, including $20,000 of tip income, and has $140,000 of other allowable deductions for the trade or business, the taxpayer's deduction for tips is limited to $10,000 ($150,000-$140,000). In addition, § 224(d) provides that any amount for which a deduction is allowed under § 224 is excluded from the taxpayer's qualified business income for purposes of § 199A. Thus, in the example just given, if the self-employed individual has $20,000 of tip income and is able to deduct $10,000 of it under § 224, then only the remaining $10,000 of the tip income is taken into account in determining the taxpayer's qualified business income.

Limitations on the deduction. There are two limitations on the deduction. First, § 224(b)(1) provides that the amount allowed as a deduction under new § 224 cannot exceed $25,000. Second, § 224(b)(2) provides that the amount allowed as a deduction is reduced by $100 for each $1,000 by which the taxpayer's modified adjusted gross income exceeds $150,000 ($300,000 for joint returns). This means that, if the taxpayer receives $25,000 or more in tips, the deduction is completely phased out when a taxpayer's modified AGI reaches $400,000 ($550,000 for joint returns). These amounts are not adjusted for inflation. If the taxpayer receives less than $25,000 in tips, then the first limitation does not apply but the second limitation does. For example, if a single taxpayer with MAGI of $200,000 receives $12,000 in tips, then the first ($25,000) limitation has no impact, but because the taxpayer's MAGI exceeds $150,000 by $50,000, the taxpayer's deduction is reduced by $5,000 (50 * $100) to $7,000 ($12,000 in tips - $5,000 reduction).

Deduction available to non-itemizers. The deduction authorized by new § 224 is *not* an itemized deduction on Schedule A. Instead, it is a deduction that is available regardless of whether the taxpayer itemizes deductions or takes the standard deduction. The deduction necessarily will be taken on Form 1040, similar to the existing deduction for qualified business income under § 199A, and will *not* be taken on Schedule C for self-employed individuals.

Other requirements. If an individual is married, then, according to § 224(f), the deduction for tip income is allowed only if the individual files a joint return with his or her spouse. One situation in which this rule would not apply is when a married person is eligible for head-of-household filing status because they support a child and live apart (and file separately) from their spouse. Such an individual is treated as not being married under § 7703(b). In addition, to claim the deduction for tip income, an individual must have (and include on the return) a Social Security Number issued by the due date of the return. Therefore, an individual with an Individual Taxpayer Identification Number (ITIN) is not eligible for the deduction.

Will we see large amounts of income being reclassified as "tips"? Maybe. But § 224(g) directs the Secretary of the Treasury to "prescribe such regulations or other guidance as may be necessary to prevent reclassification of income as qualified tips, including regulations or other guidance to prevent abuse of the deduction allowed by this section."

Reporting by employers. The legislation directs employers reporting compensation to employees on Form W-2 or to independent contractors on Form 1099 to provide "a separate accounting of any such amounts reasonably designated as cash tips and the occupation described in section 224(d)(1) of the person receiving such tips." For tips required to be reported for periods before January 1, 2026, employers "may approximate a separate accounting of amounts designated as cash tips by any reasonable method specified by the Secretary." Guidance on the reporting requirements should be forthcoming.

State tax considerations. Although new § 224 allows deduction of tip income (subject to the limitations and requirements described above), states that impose an income tax on individuals may not allow the deduction, which means that tip income could be subject to state taxation.

Effective date. New § 224 applies to taxable years beginning after December 31, 2024. According to § 224(h), no deduction is allowed under § 224 for any taxable years beginning after December 31, 2028.

a. Proposed regulations provide guidance on the § 224 deduction for tips, including a list of occupations that customarily received tips on or before December 31, 2024. REG-110032-25, Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips, 90 F.R. 45340 (9/22/25). As discussed above, new § 224(a), enacted as part of the 2025 One Big Beautiful Bill Act, authorizes an individual to deduct the amount of "qualified tips" that the individual receives. To constitute qualified tips, they must be received in an occupation that "customarily and regularly received tips on or before December 31, 2024," as provided in guidance to be published by the IRS. The legislation directed the Secretary of the Treasury to publish a list of occupations. These proposed regulations both identify occupations that customarily and regularly received tips on or before December 31, 2024, and provide a definition of ‘‘qualified tips’’ for purposes of the new deduction for qualified tips. The regulations are proposed to apply for taxable years beginning after December 31, 2024. Taxpayers can rely on the proposed regulations for taxable years beginning after December 31, 2024, and on or before the date these regulations are published as final regulations in the Federal Register, provided that taxpayers follow the proposed regulations in their entirety and in a consistent manner.

E. Divorce Tax Issues

F. Education

VI. CORPORATIONS

VII. PARTNERSHIPS

A. Formation and Taxable Years

B. Allocations of Distributive Share, Partnership Debt, and Outside Basis

C. Distributions and Transactions Between the Partnership and Partners

D. Sales of Partnership Interests, Liquidations and Mergers

E. Inside Basis Adjustments

F. Partnership Audit Rules

1. A Valentine's Day card (Form 8980) sent to the IRS leads the Tax Court to invalidate Reg. § 301.6235-1(b)(2)(A) under the BBA's centralized partnership audit regime, saving this taxpayer approximately $2 million due to a lapsed statute of limitations period. JM Assets v. Commissioner, 165 T.C. No. 1 (7/2/25). As readers recall, The Bipartisan Budget Act of 2015 § 1101, Pub. L. No. 114-74 ("BBA"), made sweeping changes to the partnership audit rules. The old TEFRA rules (in §§ 6221-6231) and Electing Large Partnership rules (in §§ 6240-6242, 6245-6248, 6251-6252, and 6255) were repealed and replaced in new §§ 6221-6223, 6225-6227, 6231-6235, and 6241, with an entity-level audit process (unless the partnership validly elects out) allowing the IRS to assess and collect any determined tax underpayment against the partnership (not the partners). Extensive regulations interpreting and implementing the new BBA centralized partnership audit regime were promulgated and finalized from 2018 through 2022. *See* Preamble to T.D. 9969, Treatment of Special Enforcement Matters, 87 FR 75473 (12/9/2022). As far as the authors are aware, the regulations had yet to be tested in the courts, so this case is not good news for the IRS. Specifically, in this reviewed decision written by Judge Buch, the Tax Court unanimously (17-0) held that Reg. § 301.6235-1(b)(2)(A) is invalid to the extent it extends the period for the IRS's issuance of a Notice of Final Partnership Adjustment ("FPA") beyond 270 days after the date specified in § 6235(a)(2). The date specified in § 6235(a)(2) is "the date on which everything required to be submitted to the Secretary pursuant to [a § 6225(c) modification request] is so submitted." The Tax Court found that Reg. § 301.6235-1(b)(2)(A) contradicted the plain language of IRC § 6235(a)(2) regarding when the 270-day window for issuing an FPA begins following a partnership's § 6225(c) modification request. Furthermore, the court rejected the Commissioner's alternative argument that a six-year limitations period applied due to a substantial omission of income, concluding that the taxpayer had adequately disclosed the transactions in question. We could stop here, but for the tax procedure wonks out there, the discussion below provides deeper background and analysis.

General background on BBA audit regime. As mentioned above, the BBA centralized partnership audit regime, and the regulations issued thereunder, implement an entity-level audit process allowing the IRS to assess and collect underpaid taxes from a partnership (not the partners) unless the partnership properly elects out of the regime or properly "pushes out" (not discussed herein) the tax liability to its partners. Under the BBA procedures, the IRS audits the partnership's items of income, gain, loss, deduction, and credit, and the partners' distributive shares thereof, for a partnership's taxable year (the "reviewed year"). Then, the Service sends the partnership a "notice of proposed partnership adjustment" ("NOPPA") for the reviewed year. *See* § 6221; § 6231; Reg. § 301.6221(a)-1; Reg. § 301.6231-1. In effect, the IRS is permitted to "impute" to the partnership the determined tax underpayment of its partners. Thereafter, the partnership has a 270-day period (subject to waiver or agreed-upon extensions) to respond to the IRS's proposed adjustments, including the ability to request modifications[4] to any imputed tax underpayment asserted against the partnership in the NOPPA. *See* § 6225(c)(7); Reg. § 301.6225-2. *See also* IRS Form 8980, Partnership Request for Modification of Imputed Underpayments Under IRC Section 6225(c). Requesting a modification is optional. If no modification is requested, then after the 270-day NOPPA period, the IRS issues a "final notice of partnership adjustment" ("FPA," as mentioned above) to the partnership (which, in the taxable year of receipt by the partnership, becomes the "adjustment year"). The partnership then may pay the imputed underpayment or seek judicial review. Alternatively, during the 270-day NOPPA period, the partnership may waive the right to request a modification (*see* IRS Form 8981, Waiver of the Period Under IRC Section 6231(b)(2)(A) and Expiration of the Period for Modification Submissions Under IRC Section 6225(c)(7)), after which the IRS issues the FPA. Notice that the FPA generally may not be issued by the IRS any earlier than 270 days (unless waived by the partnership) after the NOPPA. *See* § 6231(b)(2). Overlaying these procedural steps is a comprehensive statute of limitations found in § 6235(a). Generally, the NOPPA must be sent to the taxpayer-partnership before any applicable limitations period in § 6235(a) expires. As the Tax Court aptly summarized in this case:

> Section 6235(a) provides the period by which the Commissioner may make adjustments to a BBA partnership. Under section 6235(a), the period within which the Commissioner must make those adjustments is the latest of five possible dates: (1) three years after the date on which the partnership return was filed, I.R.C. § 6235(a)(1)(A); (2) three years after the due date of the return, I.R.C. § 6235(a)(1)(B); (3) three years after the date on which the partnership filed an administrative adjustment request under section 6227, I.R.C. § 6235(a)(1)(C); (4) in the case of a proposed partnership adjustment under section 6231(a)(2), the date that is 330 days (plus any extension under 6225(c)(7)) after the date of such a notice, I.R.C. § 6235(a)(3); or (5) *in the case of a modification request made pursuant to section 6225(c), 270 days (plus any extension under 6225(c)(7)) after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted*, I.R.C. § 6235(a)(2).

165 T.C. at _____ (emphasis added).

Determining the end of the modification period. Importantly, and directly relevant to this case, where the partnership requests a modification via IRS Form 8980 within the 270-day period that starts with the NOPPA (hereinafter the "modification period"), § 6235(a)(2) provides additional time for the IRS to consider and respond to the requested modification before eventually

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[4] Modifications to a proposed partnership-level adjustment can be asserted by the partnership based upon mitigating factors (e.g., tax-exempt partners, amended returns filed by partners from the reviewed year, lower tax rates applied to some partners, etc.). To assert such modifications, the partnership submits a "request for modification with respect to a partnership adjustment" to the Service within 270 days (subject to consensual extension) of the date of the NOPPA. *See* § 6225(c); Prop. Reg. § 301.6225-2. The purpose of allowing partnership-asserted modifications is to determine as accurately as possible the amount of tax owed by the partners stemming from the partnership-level adjustment without requiring the IRS to assess and collect the tax separately from each partner (as was the case under TEFRA). Accordingly, as compared to TEFRA, the new regime substantially eases the IRS's administrative burden with respect to partnership audits and collection of taxes, but correspondingly increases the administrative burden imposed upon partnerships and their partners.

issuing an FPA. Specifically, § 6235(a)(2) extends the limitations period, setting an outside date for the IRS's review of the modification request and eventual issuance of the FPA as follows:

> [T]he date that is 270 days (plus the number of days of any extension consented to by the Secretary under paragraph (7) thereof) *after the date on which everything required to be submitted to the Secretary* pursuant to such section is so submitted. (Emphasis added.)

IRC § 6235(a)(2) (as cited by the Tax Court above). In other words, when a partnership timely submits (within the modification period) a § 6225(c) underpayment modification request, an additional 270-day period for the IRS's issuance of the FPA starts to run as of the close of the modification period (and which can extend beyond the other limitation periods specified in § 6235(a)). *The precise issue at the heart of this case was when, exactly, did the modification period end thereby marking the beginning of the additional 270-day period described in 6235(a)(2) during which the IRS must issue the FPA*?

The facts of the case. As noted above, the taxpayer was subject to the BBA centralized partnership audit regime. The taxpayer reported several real property dispositions as installment sales on its 2018 federal income tax return (Form 1065). After audit, the IRS issued a NOPPA on June 9, 2022, to the taxpayer's partnership representative. The IRS asserted an imputed underpayment (§ 6232) resulting from an increase in § 1231 gain relating to the taxpayer's reported installment sales. The imputed underpayment asserted by the IRS in 2022 (relating to the partnership's 2018 return) was roughly $2 million. Then, on February 14, 2023—hence, the Valentine's Day reference above—the taxpayer requested a § 6225(c) underpayment modification with respect to the NOPPA, submitting an IRS Form 8980 (see above) in connection therewith. The Form 8980 was submitted 250 days into the 270-day modification period authorized by § 6225(c)(7) and Reg. § 301.6225-2. The taxpayer made no other submissions to the IRS (and did not file an IRS Form 8981 waiver (see above)) in connection with the § 6225(c) underpayment modification request. The IRS even approved the modification request, sending a letter ("Notice of Modification Request") dated June 5, 2023, to the taxpayer. Then, on December 1, 2023 (289 days after the taxpayer submitted the Form 8980, but exactly 270 days after the end of the 270-day NOPPA period), the IRS issued an FPA to the taxpayer asserting the $2 million (approximate) imputed underpayment. The taxpayer then timely filed a petition in Tax Court, and the issue noted above—when, for purposes of determining the timeliness of the FPA, did the modification period end?—was presented to the court on cross-motions for summary judgement.

The taxpayer's arguments. The taxpayer's argument was straightforward: the modification request was submitted on February 14, 2023, was complete, was accepted by the IRS, and no further submissions were made. Therefore, the "date on which everything required to be submitted to the Secretary pursuant to [§ 6225(c)]" was February 14, 2023 (the date the Form 8980 was submitted to the IRS). Accordingly, February 14, 2023, was the last day of the modification period, and the IRS had 270 days from that date to send the FPA to the taxpayer under § 6235(a)(2). November 11, 2023, is 270 days after February 14, 2023, but November 11, 2023, was a Saturday, so the IRS technically had until November 13, 2023, to send the FPA to the taxpayer. Alternatively, under § 6235(a)(3), the IRS could have sent the FPA within 330 days after June 9, 2022 (the date of the NOPPA), which was May 5, 2023. Therefore, because the IRS did not send the FPA until December 1, 2023, well after both dates allowed by § 6235(a)(2) & (3), any adjustment imputing an underpayment to the taxpayer is time-barred.

The IRS's arguments. The IRS countered by pointing to Reg. § 301.6235-1(b)(2)(A) & (B), which reads:

> [T]he *date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted* is the earlier of—
> (A) The date the period for requesting modification ends (including extensions) as described in § 301.6225-2(c)(3)(i) and (ii) [*i.e.*, the date that is 270 days <u>after</u> the

> 270-day period following issuance of the NOPPA, which in this case was December 1, 2023]; or . (B) The date the period for requesting modification expires as a result of a waiver of the prohibition on mailing a notice of final partnership adjustment (FPA) under § 301.6231-1(b)(2) [not applicable in this case because no waiver was filed by the taxpayer]. See § 301.6225-2(c)(3)(iii). (Emphasis added.)

In other words, the IRS contended, Reg. § 301.6235-1(b)(2)(A) deems the § 6225(c) "date on which everything required to be submitted" as being no sooner than 270 days <u>after</u> the expiration of the 270-day NOPPA period regardless of exactly when a complete Form 8980 was submitted (unless a waiver on Form 8981 was filed with the Form 8980 or thereafter). The 270-day NOPPA period in this case ended on March 6, 2023, and in the view of the IRS by relying on Reg. § 301.6235-1(b)(2)(A), that was the end of the modification period, not February 14, 2023. Two hundred seventy (270) days after March 6, 2023, is December 1, 2023. Thus, according to the IRS, December 1, 2023, not November 13, 2023, was the last day the IRS was permitted to send the FPA to the taxpayer under § 6235(a). *See* Reg. § 301.6235-1(b)(2)(A). Because the IRS complied with the deadline in Reg. § 301.6235-1(b)(2)(A), the IRS maintained that the FPA was timely and the imputed underpayment was not time-barred. In addition, because the taxpayer did not submit a Form 8981 (the waiver form mentioned above) with its Form 8980 modification request, the taxpayer implicitly signaled to the IRS that it might submit more modification information before the absolute last day to do so of March 6, 2023. Under the IRS's view, Reg. § 301.6235-1(b)(2)(A) takes this possibility into account, thereby in this case deeming March 6, 2023, as the end of the modification period, not February 14, 2023, regardless of the fact that the taxpayer filed a complete Form 8980 on that date. The IRS acknowledged that the language of Reg. § 301.6235-1(b)(2)(A) was inconsistent with the language in § 6235(a)(2); however, the IRS pointed to § 6225(c)(1), which directs the Secretary "to establish procedures under which the imputed underpayment amount may be modified." The IRS contended that the interpretation of § 6235(a)(2) by Reg. § 301.6235-1(b)(2)(A) was within Treasury's and the IRS's Congressionally delegated authority. Moreover, the IRS argued, even if § 6235(a)(2) is read to require that the FPA in this case must have been sent by November 13, 2023 (as the taxpayer contended), the taxpayer's return omitted substantial gross income, triggering a six-year statute of limitations period under § 6501(e)(1)(A), and December 1, 2023, was well within a six-year limitations period.

The Tax Court's decision. Although the Tax Court, in an opinion by Judge Buch, thoroughly considered the IRS's arguments, the court ultimately agreed with the taxpayer's position based upon the plain language of § 6235(a)(2). Judge Buch wrote: "[E]ven where Congress expressly delegates broad rulemaking authority, that authority does not extend to contradicting statutory text." 165 T.C. at ______. Consequently, "the regulation must give way to the statute." 165 T.C. at ______. With respect to the IRS's alternative argument that the six-year limitations period of § 6501(e)(1)(A) applied due to the taxpayer's substantial omission of gross income, the court was similarly unsympathetic. The court determined that the taxpayer did not "omit" income in its 2018 partnership return, even if the IRS believed the taxpayer improperly applied § 1231 to the reported the income. The court found that the taxpayer's return disclosed all of the taxpayer's gross income and the information relevant to allow the IRS to determine whether an audit was appropriate, so there was no omission triggering the six-year statute of limitations within the meaning of § 6501(e)(1)(A). Concluding, the Tax Court denied the IRS's motion for summary judgment regarding the timeliness of the FPA, and instead granted summary judgment in favor of the taxpayer that the FPA was untimely.

G. Miscellaneous

VIII. TAX SHELTERS

IX. EXEMPT ORGANIZATIONS AND CHARITABLE GIVING

A. Exempt Organizations

B. Charitable Giving

1. Yet more tinkering with the charitable contribution deduction for individuals and corporations under OBBBA. Section 170 regarding the charitable contribution deduction has seen more than its fair share of changes over the years since the 2017 Tax Cuts and Jobs Act. Recall, for instance, that TCJA significantly increased the standard deduction for *individuals*—now, under OBBBA, $31,500 in 2025 for joint returns—resulting in many taxpayers ceasing to itemize deductions, thereby foregoing any deduction under § 170 for charitable contributions. At the same time, though, the 2017 Tax Cuts and Jobs Act increased the overall § 170(b) deduction limit on individual cash contributions to § 170(b)(1)(A) organizations (primarily, so-called "public charities" such as churches, schools, hospitals, and publicly-supported nonprofits, but not non-operating private foundations, donor-advised funds, and Type III supporting organizations). The limit was increased from 50 percent to 60 percent of an individual taxpayer's (or couple's) "contribution base" (roughly, adjusted gross income) for a taxable year. TCJA continued the pre-existing charitable contribution limit for *corporations*, maintaining the cap at 10 percent of a corporation's taxable income per taxable year. Congress tinkered with the foregoing rules in 2020 and 2021 (due in part to the pandemic), enacting special provisions permitting a partial charitable contribution deduction for non-itemizing individuals and an increased deduction limit for others; however, these special rules expired for tax years beginning after 2021.[5]

Thus, *as things stand in 2025*, the § 170 charitable contribution deduction rules applicable to individuals and corporations for donations of *cash* are as follows (subject, of course, to numerous exceptions and limitations, especially relating to non-cash contributions and contributions to non-§ 170(b)(1)(A) organizations):

- Non-itemizers for 2025 cannot take a charitable contribution deduction under § 170. *See* § 63(b).

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[5] To wit, in 2020 the CARES Act, § 2204, added new Code § 62(a)(22), which allowed individual taxpayers who claimed the standard deduction (i.e., non-itemizers) to deduct up to $300 in above-the-line "qualified charitable contributions." The legislation also added new Code § 62(f), effective for 2020, which defined "qualified charitable contributions" as donations of cash to organizations described in Code § 170(b)(1)(A). Then, effective for 2021, a provision of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, Division EE, Title I, § 212(a) of the 2021 Consolidated Appropriations Act, amended Code § 170 by enacting new § 170(p). Section 170(p) provides that, if an individual does not elect to itemize deductions, then the deduction authorized by § 170 is equal to the deduction that would be determined, not more than $300 ($600 for joint filers), for cash contributions to organizations described in Code § 170(b)(1)(A). The legislation simultaneously repealed § 62(a)(22) and § 62(f), both enacted by the CARES Act, and amended the definition of taxable income in § 63(b) to make clear that the limited deduction authorized by § 170(p) is subtracted from adjusted gross income to arrive at taxable income. Thus, effective in 2021 only, the $300 deduction for cash contributions to public charities by individuals was no longer an above-the-line deduction but nevertheless was available to non-itemizers. Furthermore, the CARES Act, § 2205, an uncodified provision, temporarily suspended for 2020 the charitable contribution limits of Code § 170(b) for electing individual and corporate taxpayers donating to organizations described in Code § 170(b)(1)(A), allowing "qualified contributions" (essentially, cash donations) by individuals up to 100 percent of the "contribution base," and by corporations up to 25 percent of taxable income. Then, Congress extended these increased limits on cash contributions to organizations described in Code § 170(b)(1)(A) for 2021 (but not thereafter) pursuant to the Taxpayer Certainty and Disaster Tax Relief Act of 2020, Division EE, Title I, § 213 of the 2021 Consolidated Appropriations Act, which amended § 2205 of the CARES Act.

- Individuals who itemize for 2025 may take a charitable contribution deduction under § 170 up to 60 percent of the individual's "contribution base" (roughly, adjusted gross income). *See* § 170(b)(1)(G). Any excess over the 60 percent limitation may be carried forward for five years (subject to further limitation in the carryforward years). *See* § 170(d)(1).
- Corporations may take a charitable contribution deduction for 2025 under § 170 up to 10 percent of taxable income. *See* § 170(b)(2)(A). Any excess over the 10 percent limitation may be carried forward for five years (subject to further limitation in the carryforward years). *See* § 170(d)(2).

Changes for individuals. OBBA changes effective in 2026 allow individuals who do not itemize deductions to deduct up to $1,000 ($2,000 for joint returns), impose a new floor that limits the deduction of individuals who do itemize, and caps the benefit of charitable contributions for those in the 37% rate bracket at 35%. In summary, these changes, effective in taxable years beginning after December 31, 2025, are as follows:

- For individuals, non-itemizers may deduct up to $1,000 ($2,000 in the case of joint returns) for cash contributions to public charities. *See* § 170(p) (as amended by OBBBA).
- Individuals who itemize and make cash contributions to public charities may deduct up to a limit equal to 60 percent of the individual's "contribution base" (roughly, adjusted gross income). See § 170(b)(1)(G)(i). Contributions in excess of and disallowed by the 60 percent limitation may be carried forward for five years. See § 170(b)(1)(G)(ii).
- Individuals who itemize are subject to a new .5 percent floor on charitable contributions, i.e., charitable contributions are allowed only to the extent they exceed .5 percent of the individual's "contribution base" (generally AGI). *See* § 170(b)(1)(I) (as amended by OBBBA). Thus, or every $1,000 a taxpayer contributes to a charitable organization, the first $5 is not deductible. Contributions disallowed by the .5 percent floor apparently can be carried forward for five years, but only from years in which the 60 percent limitation described above is exceeded. *See* § 170(d)(1)(C) (as amended by OBBBA). In other words, if the taxpayer's deduction is disallowed by the .5 percent floor, but the taxpayer's contributions are not limited by the 60 percent limitation, then it appears that the deductions disallowed by the .5 percent floor cannot be carried forward. Detailed computations and ordering rules determine application of the .5 percent floor in cases where individuals contribute cash and property to § 170(b)(1)(A) organizations or donate in part to organizations not described in § 170(b)(1)(A). *See* § 170(b)(1)(I) (as amended by OBBBA. Moreover, individuals who itemize must keep in mind that, separate from the rules in § 170, OBBBA implements a new limitation on the benefit of itemized deductions taken in 2026 and thereafter by high-income-bracket taxpayers. *See* § 68 (as amended by OBBBA).
- For individuals in the 37 percent rate bracket, the benefit of charitable contributions for itemizers is capped at 35%. Thus, if an individual in the 37 percent rate bracket contributes $100,000 to a public charity, the donation will save the taxpayer only $3,500 in tax rather than $3,700.

Changes for corporations. For taxable years beginning after December 31, 2025, corporations may deduct up to a limit equal to 10 percent of the corporation's taxable income for the year, subject to a disallowance floor equal to 1 percent of the corporation's taxable income. *See* § 170(b)(2)(A) (as amended by OBBBA). Thus, the first 1 percent of donations by a corporation are not deductible. Amounts exceeding the 10 percent limitation may be carried forward for five years. *See* § 170(d)(2)(A)-(B) (as amended by OBBBA). Contributions disallowed by the 1 percent floor apparently can be carried forward for five years, but only from years in which the 10 percent limitation is exceeded. *See* § 170(d)(2)(C) (as amended by OBBBA). In other words, if the taxpayer's deduction is disallowed by the 1 percent floor, but the taxpayer's contributions are not limited by the 10 percent limitation, then it appears that the deductions disallowed by the 1 percent floor cannot be carried forward.

X. TAX PROCEDURE

XI. WITHHOLDING AND EXCISE TAXES

XII. TAX LEGISLATION

XIII. TRUSTS, ESTATES & GIFTS