26 What's New Business

Tab 26 Contents

What's New—2025 and Beyond

Related Topics

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- Inflation Adjusted Amounts chart, page 1-2
- Per Diem Rates, page 8-2
- Vehicle Depreciation Limitations (Section 280F), page 10-1

FinCEN Removes BOI Reporting for U.S. Companies

Cross References

- https://www.fincen.gov/news-room/news

Consistent with the U.S. Department of the Treasury's March 2, 2025, announcement, the Financial Crimes Enforcement Network (FinCEN) is issuing an interim final rule that removes the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act.

In that interim final rule, FinCEN revises the definition of "reporting company" in its implementing regulations to mean only those entities that are formed under the law of a foreign country and that have registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as "foreign reporting companies"). FinCEN also exempts entities previously known as "domestic reporting companies" from BOI reporting requirements.

Thus, through this interim final rule, all entities created in the United States—including those previously known as "domestic reporting companies" —and their beneficial owners will be exempt from the requirement to report BOI to FinCEN. Foreign entities that meet the new definition of a "reporting company" and do not qualify for an exemption from the reporting requirements must report their BOI to FinCEN under new deadlines, detailed below. These foreign entities, however, will not be required to report any U.S. persons as beneficial owners, and U.S. persons will not be required to report BOI with respect to any such entity for which they are a beneficial owner.

Upon the publication of the interim final rule, the following deadlines apply for foreign entities that are reporting companies.

- Reporting companies registered to do business in the United States before the date of publication of the interim final rate must file BOI reports no later than 30 days from that date.
- Reporting companies registered to do business in the United States on or after the date of publication of the interim final rate have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.

FinCEN is accepting comments on this interim final rule and intends to finalize the rule this year.

One Big Beautiful Bill Act (OBBBA)

Cross References

- H.R. 1 (Public Law 119-21)

Signed into law on July 4, 2025, OBBBA, officially called *"An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14."*, changes funding for various federal programs, raises the debt ceiling, and makes numerous revisions to the Internal Revenue Code. The following is our coverage of the tax provisions that affect business taxpayers. See Tab 1 for tax provisions that affect individual taxpayers.

Provisions Affecting Tax Year 2025

The provisions affecting tax year 2025 are included ***as follows.***

- Farmland Sales and Exchanges, see page 6-10
- Qualified Small Business (QSB) Stock, see page 6-11

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- Qualified Opportunity Zones, see page 6-14
- Energy Efficient Commercial Buildings Deduction, see page 8-6
- Research and Experimental Costs, see page 8-8,
- Long-term Construction Contracts, see page 8-25
- Section 179, see page 9-7

Qualified Business Income Deduction [IRC §199A]

Prior Law. For tax years 2018 through 2025, an individual taxpayer may deduct 20% of qualified business income from a partnership, S corporation, or sole proprietorship, as well as 20% of aggregate qualified REIT dividends, and qualified publicly traded partnership income. In the case of a partnership or S corporation, the deduction applies at the partner or shareholder level. Special rules apply to specified agricultural or horticultural cooperatives.

A limitation based on Form W-2 wages and qualified property is phased in when the taxpayer's taxable income exceeds a threshold amount, which is adjusted annually for inflation. A disallowance of the deduction with respect to specified services trades or businesses is also phased in when taxable income exceeds the threshold amount.

Qualified business income means the net amount of qualified items of income, gain, deduction, and loss with respect to a domestic qualified trade or business of the taxpayer. It does not include investment income such as interest, dividends, and net capital gains or losses. It also does not include the taxpayer's wages from his or her S corporation, or guaranteed payments from his or her partnership.

A specified service trade or business means any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interest, or commodities.

The qualified business income deduction was scheduled to expire for all tax years beginning after 2025.

New Law. The qualified business income deduction has been made permanent.

The new law also increases the phase-out range for taxpayers that exceed the threshold amount. Effective for 2026, the phase-out range is increased from $50,000 ($100,000 MFJ) to $75,000 ($150,000 MFJ).

Example: The inflation adjusted threshold amount in 2025 for MFJ equals $394,600. The deduction begins to phase-out when taxable income exceeds that amount and is completely phased out when taxable income reaches $494,600 ($100,000 MFJ phase-out range). Beginning in 2026, the MFJ phase-out range increases to $150,000.

The new law also includes a new minimum deduction for active qualified trade or business income. Effective for 2026, the qualified business income deduction for an applicable taxpayer is the greater of $400 or the deduction as calculated under the regular rules. This $400 minimum deduction amount is adjusted annually for inflation after 2026.

Author's Comment: In other words, the deduction after all limitations and phase-outs cannot be less than $400.

An applicable taxpayer means a taxpayer whose aggregate qualified business income with respect to all active qualified trades or businesses of the taxpayer for the year is at least $1,000. An active qualified trade or business means any qualified trade or business of the taxpayer in which he or she materially participates. Material participation has the same meaning as it does under the passive activity loss limitation rules.

Special Depreciation Allowance (Bonus Depreciation) [IRC §168(k)]

Prior Law. The special depreciation allowance (bonus depreciation) allows a trade or business to write off the cost of depreciable property acquired and placed in service during the tax year rather than through depreciation deductions over the class life of the property. Bonus depreciation applies to tangible property depreciated under MACRS with a recovery period of 20 years or less, computer software readily available for purchase by the general public, qualified film, television, and live theatrical production property, water utility property, and specified plants for the tax year in which the plant is planted or grafted. The property acquired does not have to be new property. The provision applies by default if the property qualifies. An election is required to opt out of bonus depreciation.

Unlike the Section 179 deduction, there is no maximum deduction limit for bonus depreciation. While the Section 179 deduction limit is generally large enough for most small business needs, the bonus depreciation provision allows large businesses to deduct larger amounts.

For property placed in service after September 27, 2017, and before 2024, the bonus depreciation percentage was 100% of the cost of the property. For property placed in service in 2024, the percentage was 60% (80% for longer production period property). For 2025, the percentage was scheduled to be 40% (60% for longer production period property). For 2026, the percentage was scheduled to be 20% (40% for longer production period property). For 2027, the percentage was scheduled to be 0% (20% for longer production period property). And for tax years after 2027, the percentage was scheduled to be zero for all property.

New Law. For property acquired after January 19, 2025, the new law permanently extends the 100% expensing of all property eligible for bonus depreciation. For property placed in service during the first tax year ending after January 19, 2025, the taxpayer may elect to have the prior law 40% limit apply (60% for longer production period property). For purposes of applying the after January 19, 2025 effective date provision for property acquired by a written binding contract, the acquisition date is the date on which a written binding contract is entered into for the acquisition

Special Depreciation Allowance for Qualified Production Property [IRC §168(n)]

Prior Law. Nonresidential real property in general is not eligible for the Section 179 deduction or the 100% bonus depreciation allowance. There are some exceptions.

Qualified improvement property is eligible for the Section 179 deduction and the 100% bonus depreciation allowance. Qualified improvement property is any improvement to an interior part of a building that is nonresidential real property placed in service after 2017 and after the date the building was first placed in service by any taxpayer. It does not include any enlargement of the building, any elevator or escalator, or the internal structural framework of the building.

Other improvements to real property, such as improvements to roofs, heating, ventilating and air-conditioning property, fire protection and alarm systems, and security systems qualify for the Section 179 deduction.

Single-purpose agricultural or horticultural structures qualify for the Section 179 deduction.

Nonresidential real property used in a trade or business that does not meet one of these exceptions must be depreciated over 39 years.

New Law. Effective for property placed in service after July 4, 2025, a new class of property called qualified production property is eligible for expensing 100% of its adjusted basis rather than depreciating it over 39 years.

Qualified production property means that portion of any nonresidential real property:

- Which is used by the taxpayer as an integral part of a qualified production activity that is placed in service in the United States or any possession of the United States.
- The original use of the property must commence with the taxpayer.
- The construction of the property must begin after January 19, 2025, and before January 1, 2029.
- The taxpayer must elect to expense the property under this provision.
- The property must be placed in service before January 1, 2031.

If the taxpayer leases the property to a lessee, the property is not considered to be used by the taxpayer as part of a qualified production activity.

For purposes of the requirement to commence construction by January 19, 2025 and before January 1, 2029, the taxpayer will satisfy this requirement if:

1) The property was not used in a qualified production activity by any person at any time during the period beginning on January 1, 2021, and ending on May 12, 2025,
2) The property was not used by the taxpayer at any time prior to acquiring the property, and
3) The property was not acquired from:
   - A related party,
   - A component member of a controlled group,
   - A person whose adjusted basis in the property carries over to the person acquiring the property (such as partnership property distributed to a partner or property contributed to a corporation), or
   - A decedent.

The cost of the property does not include the amount of basis that is determined by reference to the basis of other property held at any time by the person acquiring the property.

The property is treated as acquired no later than the date on which the taxpayer enters into a written binding contract for the acquisition of the property.

Qualified production property does not include that portion of any nonresidential real property which is used for offices, administrative services, lodging, parking, sales activities, research activities, software development or engineering activities, or other functions unrelated to the manufacturing, production, or refining of tangible personal property.

Qualified production activity means the manufacturing, production, or refining of a qualified product. The activities of a taxpayer 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.

The term production means agricultural production and chemical production.

The term qualified product means any tangible personal property other than food or beverages prepared in the same building as a retail establishment in which the property is sold.

The syndication rules under IRC section 168(k)(2)(E)(iii) apply to qualified production property.

The IRS may extend the placed-in-service date if the IRS determines that a natural disaster prevents the taxpayer from placing the property in service before January 1, 2031.

The deduction is allowed in computing alternative minimum taxable income.

Qualified production property is treated as a separate class of property for purposes of other special deprecation allowances, such as bonus deprecation under IRC section 168(k).

Qualified production property does not include any property required to be depreciated under IRC section 168(g) (property subject to the alternative depreciation system rules). If the taxpayer elects to use the alternative depreciation system, qualified production property is treated as a separate class of nonresidential real property.

Recapture rules apply to qualified production property. If, at any time during the 10-year period beginning on the date that any qualified production property is placed in service by the taxpayer, the property ceases to be used as an integral part of a qualified production activity and is used by the taxpayer for some other productive use, IRC section 1245 is applied by treating the property as having been disposed of by the taxpayer in which depreciation recapture is required. The basis of the property is adjusted to take into account the amount recognized as gain by reason of the recapture rules.

Unlike bonus deprecation where expensing is the default method unless the taxpayer elects out, the taxpayer must elect to expense property as qualified production property in a manner prescribed by the IRS through regulations or other guidance. If the taxpayer does not make the election, 39-year depreciation is the default method for recovery.

For purposes of the gain from the disposition of certain depreciable property, qualified production property is considered Section 1245 property.

Business Meals Provided to Employees [IRC §274]

Prior Law. For tax years 2018 through 2025, the deduction for employer provided meals to employees related to eating facilities and meals for the convenience of the employer are subject to the 50% meal deduction limitation. For tax years after 2025, no deduction is allowed for meals provided to employees at an employer provided eating facility or meals furnished to employees for the convenience of the employer.

Employees are allowed a 100% exclusion from taxable income under IRC section 132(e) and section 119(a) when the employer provides meals to the employee under the above conditions.

New Law. Effective for amounts paid or incurred after 2025, the new law allows taxpayers a deduction for employer provided meals to employees under two conditions.

1) The meals are provided at a facility in which goods or services (including the use of facilities) are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.
2) Meals are 100% deductible when they are required by federal law to be provided to crew members of a commercial vessel.

A commercial vessel for purposes of this provision means:

1) A commercial vessel operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and is of a kind which would be required by Federal Law to provide food and beverages to crew members if it were operated at sea.
2) An oil or gas platform or drilling rig if the platform or rig is located offshore.
3) An oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

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4) A fishing vessel, fish processing vessel, or fish tender vessel, or 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.

Charitable Contributions Made by C Corporations [IRC §170(b)(2)]

Prior Law. C corporations are allowed to deduct charitable contributions, limited to 10% of the corporation's taxable income.

New Law. Effective for tax years beginning after 2025, C corporations are subject to a 1% floor on deductions for charitable contributions. The deduction is allowed to the extent that the aggregate amount of charitable contributions for the year exceeds 1% of the corporation's taxable income, limited to 10% of the corporation's taxable income.

A 5-year carryover of disallowed deductions applies on a first-in first-out basis. Disallowed deductions due to the 1% floor are carried forward only from years in which the 10% limitation is exceeded. The amount of charitable contributions carried forward are reduced to the extent that the carryforward would reduce taxable income (if the limitations did not apply) and increase a net operating loss carryover to a succeeding tax year.

Tip Credit for Beauty Service Business [IRC §45B]

Prior Law. A credit is allowed for the portion of employer Social Security and Medicare taxes paid on tips received by employees of food and beverage establishments. Tips taken into account for purposes of the credit are those received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary. The credit applies regardless of whether the food is consumed on or off the business premises.

The credit equals the amount of employer Social Security and Medicare taxes paid or incurred by the employer on tips received by the employee, less tips used to meet the federal minimum wage in effect on January 1, 2007 ($5.15 per hour).

New Law. Effective for tax years beginning after 2024, the credit is expanded to include the tipping of employees in the following service industries.

- Barbering and hair care.
- Nail care.
- Esthetics.
- Body and spa treatments.

The new law amends the federal minimum wage in effect to apply to the current federal minimum wage of $7.25 per hour rather than the minimum wage in effect on January 1, 2007.

Employer Credit for Paid Family and Medical Leave [IRC §45S]

Prior Law. This provision originally applied for tax years after 2017 and before 2020 but was later extended and revised. For tax years 2021 through 2025, an eligible employer can claim a business credit ranging from 12.5% to 25% of certain wages paid to a qualifying employee while the employee is on family and medical leave. The 12.5% credit applies if the rate of employee pay during the paid leave is 50% of normal wages. The credit increases by 0.25 percentage points for each percentage point by which the rate of pay exceeds 50%, up to a maximum credit of 25% if the employee's pay is 100% of normal wages.

A qualifying employee is an employee who has been employed by the employer for one year or more and whose compensation for the previous year does not exceed 60% of the compensation threshold for that year for highly compensated employees ($155,000 × 60% = $93,000 in 2025). An employee is not required to work a minimum number of hours per year to be a qualifying employee.

Family and medical leave is leave taken for purposes defined in the Family and Medical Leave Act (FMLA). Paid leave is qualifying leave only if it is specifically designated for one of these purposes.

- The birth or care of a child.
- Adoption or foster care of a child.
- Caring for a spouse, child, or parent with a serious health condition.
- An employee's serious health condition that makes the employee unable to perform the functions of the position.
- A qualifying exigency arising out of the fact that a spouse, child, or parent is a member of the U.S. Armed Services and is on covered active duty.
- Caring for a service member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the service member.

New Law. Effective for tax years beginning after 2025, the new law permanently extends the employer credit for paid family and medical leave under IRC section 45S. The new law also makes the following modifications.

If the employer has an insurance policy with regards to the provision of paid family and medical leave, the premiums paid or incurred on the insurance policy qualify for the credit. The rate of payment under the insurance policy is determined without regard to whether any qualifying employee is on family and medical leave during the tax year. Any credit claimed under this provision decreases the deduction for premiums paid.

Employers can elect to include employees who have worked a minimum of 6 months or more for purposes of the credit. The new law also includes a 20-hour work-per-week requirement.

Employer-Provided Child Care Credit [IRC §45F]

Prior Law. Employers are allowed a credit for a qualified childcare facility and resource and referral expenditures. The credit is part of the general business credit.

The credit is 25% of the qualified childcare facility expenditures plus 10% of the qualified childcare resource and referral expenditures paid or incurred during the tax year. The credit is limited to $150,000 per tax year.

Qualified childcare expenditures are amounts paid or incurred:

- To acquire, construct, rehabilitate, or expand property that is to be used as part of a qualified childcare facility of the taxpayer, is depreciable property, and is not part of the principal residence of the taxpayer or any employee of the taxpayer,
- For the operating expenses of a qualified childcare facility of the taxpayer, including expenses for training of employees, scholarship programs, and providing increased compensation to employees with higher levels of childcare training, or
- Under a contract with a qualified childcare facility to provide childcare services to employees of the taxpayer.

A qualified childcare facility is a facility that meets the requirements of all applicable laws and regulations of the state or local government in which it is located, including the licensing of the facility as a childcare facility. The following conditions must also be met.

- The principal use of the facility must be to provide childcare, unless the facility is also the personal residence of the person operating the facility.

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- Enrollment in the facility must be open to employees of the taxpayer during the tax year.
- If the facility is the principal trade or business of the taxpayer, at least 30% of the enrollees of the facility must be dependents of employees of the taxpayer.
- The use of the facility must not discriminate in favor of highly compensated employees.

Qualified childcare resource and referral expenditures are amounts paid or incurred under a contract to provide childcare resource and referral services to employees of the taxpayer. The provision of the services must not discriminate in favor of highly compensated employees.

New Law. Effective for amounts paid or incurred after 2025, the credit is increased to 40% of the qualified childcare facility expenditures (50% in the case of an eligible small business). The credit limit is increased to $500,000 for the tax year ($600,000 in the case of an eligible small business). The $500,000 and $600,000 amounts are adjusted annually for inflation.

An eligible small business means a business whose average gross receipts over the previous 5-year period do not exceed $25 million.

In the case where a taxpayer is under a contract with another entity to provide childcare services to its employees, the contract can be with an intermediate entity that contracts with a qualified child care facility to provide child care services to the employees of the taxpayer.

A facility does not fail to be treated as a qualified child care facility of the taxpayer merely because it is jointly owned or operated by the taxpayer and other persons.

Information Reporting for Businesses [IRC §6041(a) and IRC §6041A(a)]

Prior Law. All taxpayers engaged in a trade or business who make payments in the course of their trade or business to another person must file an information return with the IRS and issue a copy to the payee if total payments are $600 or more during the tax year. A common example is when a sole proprietor pays an independent contractor $600 or more during the year for performing some type of service. The sole proprietor is required to file Form 1099-NEC, *Nonemployee Compensation,* with the IRS and issue a copy to the independent contractor.

New Law. Effective for payments made after 2025, the $600 threshold is increased to $2,000. This amount will be adjusted annually for inflation after 2026. This provision applies to both payments of $600 or more under IRC section 6041(a) and payments of remuneration for services under IRC section 6041A(a).

Limitation on Business Interest [IRC §163(j)]

Prior Law. Effective for 2018, the law places limits on the deduction for interest paid on business debt for taxpayers with average annual gross receipts in excess of $25 million. The deduction for business interest is limited to the sum of:

1) Business interest income for the tax year,
2) 30% of the adjusted taxable income of the taxpayer for the tax year (but not below zero), and
3) The floor plan financing interest of the taxpayer for the tax year.

Floor plan financing indebtedness is debt used to finance the acquisition of motor vehicles that the taxpayer holds for sale or lease (inventory held for sale or lease to customers). Motor vehicles are any self-propelled vehicle designed for transporting people or property on public streets, highways, or roads, any boat, and any farm machinery or equipment. This provision is designed to allow businesses to deduct 100% of the interest paid on debt to acquire such inventory without regard to the other two limitations on business interest.

The amount of any business interest not allowed as a deduction for any tax year may be carried forward and treated as business interest paid or accrued in the succeeding tax year. In the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level.

Business interest expense does not include investment interest expense. Business interest income does not include investment income.

New Law. For tax years beginning after 2024, floor plan financing indebtedness also includes financing to acquire any trailer or camper designed to provide temporary living quarters for recreational, camping, or seasonal use and is designed to be towed by, or affixed to, a motor vehicle.

Effective for tax years beginning after 2025, the law adds an interest capitalization provision. The limitation applies to business interest without regard to whether the taxpayer would otherwise deduct the interest or capitalize the interest under an interest capitalization provision. The new law includes an ordering rule that states the limitation applies first to capitalized interest, and any disallowed interest carried forward is not treated as capitalized interest to which an interest capitalization provision applies.

The new law also states capitalized interest under IRC section 263(g) or section 263A(f) is not business interest for purposes of the business interest limitation.

The new law also modifies the definition of adjusted taxable income for purposes of the business interest limitation to include certain foreign source income.

Educational Assistance [IRC §127]

Prior Law. Up to $5,250 of employer paid educational assistance provided to employees is excluded from the employee's taxable income. Expenses include the cost of books, equipment, fees, supplies, and tuition. In the case of employer payments made before January 1, 2026 (whether paid to the employee or to the lender) of principal or interest on any qualified student loan incurred by the employee for education of the employee, the payments qualify as employer paid educational assistance.

New Law. Effective for payments made after 2025, the new law permanently extends the provision to treat employer payments of student loans as educational assistance under IRC section 127.

For tax years beginning after 2026, the $5,250 amount is increased annually for inflation.

Third Party Network Transactions [IRC §6050W]

Prior Law. Third party settlement organizations that make payments to participating payees of third party network transactions are required to file Form 1099-K, *Payment Card and Third Party Network Transactions,* with the IRS and issue copies to the payees. An example of a third party settlement organization is a credit card company. When a business accepts a credit card as payment for goods or services sold to customers, the credit card company issues a 1099-K to the business reporting all of the transactions that were processed through the credit card company for the year. Another example is when a person sells products on eBay or Facebook Marketplace. Facebook and eBay are considered third-party settlement organizations because they are the third party processing the transaction between the seller and buyer. Reporting thresholds (the amounts at which a 1099-K must be issued) are as follows.

- For 2023 and prior years, the payee receives over $20,000 in payments and has over 200 transactions.
- For 2024, the payee receives over $5,000 in payments for any number of transactions.

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- For 2025, the payee receives over $2,500 in payments for any number of transactions.
- For 2026 and after, the payee receives over $600 in payments for any number of transactions.

New Law. Effective for all tax years after 2023, the threshold for reporting is when the payee receives over $20,000 in payments and has over 200 transactions.

The new law also includes reportable payments under the third-party network transaction rules as being subject to the backup withholding rules under IRC section 3406. Backup withholding generally applies when the payee fails to furnish his or her taxpayer identification number to the payor (the payor being the third party settlement organization in this case).

Limitation on Excess Business Losses [IRC §461(l)]

Prior Law. Losses from the trades or businesses of a noncorporate taxpayer are limited if deductions from the businesses exceed gross income and gains from the businesses, plus a threshold amount. The inflation adjusted threshold amount for 2025 is $313,000 ($626,000 MFJ). Any disallowed excess business loss is carried over under the net operating loss (NOL) carryover rules. The limitation was set to expire for tax years beginning after 2028.

New Law. The new law permanently extends the limitation on excess business losses under IRC section 461(l).

Payments from Partnerships to Partners for Property or Services [IRC §707(a)(2)]

Prior Law. The IRS can recharacterize a transaction under certain circumstances when the substance of the transaction is the avoidance of tax without a legitimate business purpose. Disguised partnership sales are one such transaction. Gain is not recognized when a partner contributes property to a partnership. Likewise, gain is not recognized by a partner when property is distributed to the partner, unless money is distributed.

A disguised sale is a transaction that appears to be a contribution of property and a subsequent distribution, but is actually a taxable sale or exchange for tax purposes.

IRC section 707(a)(2) reads: "Treatment of payments to partners for property or services. Under regulations prescribed by the Secretary…"

This provision means the IRS can issue regulations that define circumstances in which the transaction is either a disguised sale or a legitimate transaction between a partnership and a partner. This generated some controversy and debate over the guidance the IRS provided, because the IRS has never issued final regulations specifically for disguised sales, and critics claim the IRS cannot interpret the rules until final regulations are issued. Final regulations require a period for public comment before they can become finalized.

New Law. The new law removes the reference to "under regulations prescribed" by the Secretary and inserts "except as provided" by the Secretary, meaning that the IRS can issue guidance to interpret the disguised sale rules under the substance-over-form principle without having to issue final regulations.

Sales or Exchanges of Certain Partnership Interests

Cross References

- REG-108822-25, August 19, 2025

The IRS has issued proposed regulations that would allow partnerships to file Part IV of Form 8308 with a partnership's annual tax return and file the other three parts of Form 8308 by January 31. This procedure conforms to the previous notice that provided relief to taxpayers.

In general, partnerships are required to file Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests,* with respect to each IRC section 751(a) exchange. IRC section 751(a) applies when unrealized receivables or inventory items are included in the sale or exchange of a partnership interest (partnership assets that produce ordinary gain rather than capital gain).

Each partnership that is required to file a Form 8308 must furnish it (or similar information on a statement) to the transferor and transferee by the later of:

1) January 31 of the year following the calendar year in which the IRC section 751(a) exchange occurs, or
2) 30 days after the partnership receives notice of the exchange.

Form 8308 requires the following information:

1) The names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership filing the return,
2) The date of the exchange, and
3) Such other information as may be required by Form 8308 or its instructions.

In addition to being furnished to the transferor and transferee, Form 8308 must be attached to the partnership's Form 1065, *U.S. Return of Partnership Income,* for the partnership's tax year that includes the last day of the calendar year in which the IRC section 751(a) exchange took place.

Part IV of Form 8308 requires a partnership to report, among other items, the partnership's gain or loss from a deemed sale under IRC section 751 and the transferor partner's share of such amount.

On January 11, 2024, IRS Notice 2024-19 was published which provided limited relief for partnerships that failed to furnish a completed Part IV of Form 8308 by January 31, 2024, for IRC section 751(a) exchanges during calendar year 2023. Penalty relief was contingent on the partnership timely and correctly furnishing to the transferor and transferee a copy of Parts I, II, and III of Form 8308 by the January 31 deadline (or 30 days after the partnership was notified of the IRC section 751(a) exchange) and furnishing Part IV by the later of the Form 1065 due date (including extensions) or 30 days after the partnership was notified of the 751(a) exchange.

Under the new proposed regulations, the procedures described in Notice 2024-19 will generally apply for all years. Instructions for Form 8308 and Form 1065 will be updated to include the following for when an IRC section 751(a) exchange occurs:

1) A partnership would be required to furnish to the transferor and transferee the information reported in Parts I, II, and III of Form 8308 by the later of (1) January 31 of the year following the calendar year in which the IRC section 751(a) exchange occurred, or (2) 30 days after the partnership has received notice of the exchange,
2) The partnership must attach Form 8308, including information required to be reported in Part IV, to its Form 1065 by the due date of the return for the tax year of the partnership that includes the last day of the calendar year in which the IRC section 751(a) exchange took place, and

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3) Information from Part IV of Form 8308 must be included in the partner's Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, for the applicable year.

Occupations That Regularly Receive Tips

Cross References

• REG-110032-25

The IRS has issued proposed regulations that list occupations that customarily and regularly received tips on or before December 31, 2024, for purposes of the deduction for tips received under the One Big Beautiful Bill Act (OBBBA). The list in the proposed regulations is almost the same list that was issued as a preliminary list by the IRS on August 27, 2025, with a few minor changes. The official list, page 26-8, is as it appears in the proposed regulations.

In addition to requiring that qualified tips must be received in an occupation that customarily and regularly received tips on or before December 31, 2024, OBBBA provides that tips do not qualify for the deduction if they are received in the course of certain specified trades or businesses, including the fields of health, performing arts, and athletics. The following is a summary of some of the provisions contained in the proposed regulations.

Qualified tips. IRC section 224(d)(1) defines "qualified tips" as cash tips received by an individual in an occupation that customarily and regularly received tips on or before December 31, 2024. The proposed regulations would define "qualified tips" as amounts received as cash tips by an individual in an occupation that customarily and regularly received tips on or before December 31, 2024, subject to certain limitations. The proposed regulations would define cash tips as tips received from customers or, in the case of an employee, through a mandatory or voluntary tip-sharing arrangement, such as a tip pool, that are paid in a cash medium of exchange, including by cash, check, credit card, debit card, gift card, tangible or intangible tokens that are readily exchangeable for a fixed amount in cash (such as casino chips), and any other form of electronic settlement or mobile payment application that is denominated in cash. Cash tips would not include items paid in any medium other than cash or charge, such as event tickets, meals, services, or other assets that are not exchangeable for a fixed amount in cash (such as most digital assets). For purposes of the proposed regulations, tips would be amounts paid by customers for services that are in excess of the amount agreed to, required, charged, or otherwise reasonably expected to have to be paid for the services in an arm's length transaction.

Payments must be voluntary. IRC section 224(d)(2)(A) provides that"qualified tips" must be paid voluntarily without any consequence in the event of nonpayment, must not be the subject of negotiation, and must be determined by the payor. In Revenue Ruling 2012-18, the IRS applied similar factors in distinguishing tips from non-tip wages, specifically service charges, for FICA and income tax withholding purposes. Revenue Ruling 2012-18 provides that the absence of any of the following factors creates a doubt as to whether a payment is a tip and indicates that the payment may be a service charge.

1) The payment must be made free from compulsion,
2) The customer must have the unrestricted right to determine the amount,
3) The payment should not be the subject of negotiation or dictated by employer policy, and
4) Generally, the customer has the right to determine who receives the payment.

Example A in Revenue Ruling 2012-18 concludes that an 18% charge automatically added to a bill for a large party is a service charge and not a tip because it was dictated by the employer and was not paid free from compulsion. Consistent with both existing IRS guidance on tips and evolving practices concerning service charges, the proposed regulations would clarify that service charges, automatic gratuities, and other mandatory amounts automatically added to a customer's bill by the vendor or establishment, are not qualified tips for purposes of IRC section 224(d) unless the customer is expressly provided an option to disregard or modify it without consequence.

Special rules regarding a specified service trade or business. IRC section 224(d)(2)(B) provides that qualified tips do not include those received in the course of a trade or business that is a specified service trade or business (SSTB) as defined in IRC section 199A(d)(2). An SSTB is defined as any trade or business:

• Involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or
• That involves the performance of services that consist of investing and investment management, trading, or dealing in securities, partnership interests, or commodities.

Regulation section 1.199A-5(b)(2) further defines what it means to perform services in the fields listed in IRC section 199A(d)(2)(A). For example, the meaning of services performed in the performing arts means "the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such." The regulations further provide that the performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts, or the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public. The proposed regulations would provide that an amount received by an individual in the course of an SSTB is not a qualified tip.

The proposed regulations would also provide that tips received by an employee performing services for the employee's employer in the course of a specified service trade or business operated by the employer are not qualified tips. The proposed regulations would clarify that this rule applies without regard to whether an owner of the trade or business is able to claim a Section 199A deduction. For example, this rule applies if the employer is a corporation, even though corporations are not eligible for the deduction under IRC section 199A.

The proposed regulations would also clarify that this rule applies even if the employee receiving tips in the course of working for an SSTB employer is working in an occupation that customarily and regularly received tips on or before December 31, 2024, for purposes of IRC section 224(d)(1) and is listed in proposed regulation section 1.224-1(f). The proposed regulations would provide examples illustrating this rule.

Determining qualified tips for employees who participate in voluntary tip reporting programs with tip rates. Employees who enter into a Tipped Employee Participation Agreement as part of the Tip Rate Determination Agreement (TRDA) program or a Model Gaming Employee Tip Reporting Agreement as part of the Gaming Industry Tip Compliance Agreement (GITCA) program agree to report tips to their employer at or above the

continued on page 26-10

Treasury Tipped Occupation Code (TTOC)	TTOC Occupation Title	Percent With Reported Tips[1]	Percent of All Reported Tips[2]	Reported Tips As Percent of Wages of Tipped Workers[3]	Related Standard Occupational Classification (SOC) System Code
Beverage & Food Service					
101	Bartenders	82.8	9.8	63.4	35-3011.
102	Wait Staff	74.6	34.2	63.5	35-3031.
103	Food Servers, Nonrestaurant	30.4	0.1	33.0	35-3041.
104	Dining Room and Cafeteria Attendants and Bartender Helpers	38.9	1.0	44.8	35-9011.
105	Chefs and Cooks	12.8	2.0	17.1	35-1011, 35-2011, 35-2013, 35-2014, 35-2019.
106	Food Preparation Workers	21.4	3.3	33.5	35-1012, 35-2021, 35-9099.
107	Fast Food and Counter Workers	40.1	1.4	17.9	35-3023.
108	Dishwashers	11.0	0.1	15.8	35-9021.
109	Host Staff, Restaurant, Lounge, and Coffee Shop	46.3	0.8	35.3	35-9031.
110	Bakers	12.0	0.1	14.7	51-3011.
Entertainment & Events					
201	Gambling Dealers	70.9	4.3	70.7	39-3011, 39-1013, 39-3013.
202	Gambling Change Persons and Booth Cashiers	78.0	0.4	64.8	41-2012.
203	Gambling Cage Workers	37.6	0.2	57.7	43-3041.
204	Gambling and Sports Book Writers and Runners	30.0	(*)	43.3	39-3012.
205	Dancers	8.8	(*)	54.3	27-2031.
206	Musicians and Singers	2.9	(*)	36.8	27-2042.
207	Disc Jockeys, Except Radio	15.7	(*)	44.9	27-2091.
208	Entertainers and Performers	7.9	(*)	52.0	27-2099.
209	Digital Content Creators	7.9	(*)	52.0	27-2099.
210	Ushers, Lobby Attendants, and Ticket Takers	3.1	(*)	11.6	39-3031.
211	Locker Room, Coatroom, and Dressing Room Attendants	12.0	(*)	19.1	39-3093.
Hospitality & Guest Services					
301	Baggage Porters and Bellhops	7.0	0.1	18.6	39-6011.
302	Concierges	3.7	(*)	11.7	39-6012.
303	Hotel, Motel, and Resort Desk Clerks	11.7	0.7	42.8	43-4081.
304	Maids and Housekeeping Cleaners	2.7	0.1	10.6	37-2012.
Home Services					
401	Home Maintenance and Repair Workers	0.5	0.1	16.1	49-9071, 49-9098, 49-9099, 49-9063, 49-2097, 51-7021.
402	Home Landscaping and Groundskeeping Workers	0.5	(*)	14.0	37-3011.
403	Home Electricians	0.1	(*)	10.6	47-2111.
404	Home Plumbers	0.2	(*)	5.1	47-2152.
405	Home Heating and Air Conditioning Mechanics and Installers	0.2	(*)	4.0	49-9021.
406	Home Appliance Installers and Repairers	1.8	(*)	1.9	49-9031.
407	Home Cleaning Service Workers	2.7	0.1	10.6	37-2012.
408	Locksmiths	2.0	(*)	3.1	49-9094.
409	Roadside Assistance Workers	0.2	(*)	10.8	49-3023, 53-3032.
Personal Services					
501	Personal Care and Service Workers	0.6	0.1	31.1	31-1122, 39-9099.
502	Private Event Planners	5.9	0.1	16.3	13-1121, 27-1023.
503	Private Event and Portrait Photographers	2.3	(*)	22.0	27-4021.
504	Private Event Videographers	(*)	(*)	(*)	27-4031.
505	Event Officiants	0.2	(*)	16.8	21-2011.

continued

Occupations That Regularly Receive Tips continued

Treasury Tipped Occupation Code (TTOC)	TTOC Occupation Title	Percent With Reported Tips [1]	Percent of All Reported Tips [2]	Reported Tips As Percent of Wages of Tipped Workers [3]	Related Standard Occupational Classification (SOC) System Code
Personal Service continued					
506	Pet Caretakers	19.1	0.3	16.2	39-2021.
507	Tutors	0.5	(*)	34.5	25-3041.
508	Nannies and Babysitters	0.7	(*)	28.8	39-9011.
Personal Appearance & Wellness					
601	Skincare Specialists	54.7	0.5	24.4	39-5094.
602	Massage Therapists	55.8	0.6	25.7	31-9011.
603	Barbers, Hairdressers, Hairstylists, and Cosmetologists	52.4	3.2	22.7	39-5012, 39-5011.
604	Shampooers	(*)	(*)	(*)	39-5093.
605	Manicurists and Pedicurists	36.2	0.3	14.9	39-5092.
606	Makeup Artists	13.1	(*)	14.8	39-5091.
607	Exercise Trainers and Group Fitness Instructors	1.0	(*)	25.8	39-9031.
608	Tattoo Artists and Piercers	11.1	(*)	15.8	27-1019.
609	Tailors	0.8	(*)	15.9	51-6052.
610	Shoe and Leather Workers and Repairers	(*)	(*)	(*)	51-6041.
611	Eyebrow Threading and Waxing Technicians	53.2	3.0	22.6	39-5012.
Recreation & Instruction					
701	Golf Caddies	8.0	(*)	27.9	39-3091.
702	Self-Enrichment Teachers	1.9	(*)	7.5	25-3021.
703	Sports and Recreation Instructors	1.9	(*)	7.5	25-3021.
704	Tour Guides	14.2	(*)	17.1	39-7011.
705	Travel Guides	13.3	(*)	16.2	39-7012.
706	Recreational and Tour Pilots	(*)	(*)	(*)	53-2012.
Transportation & Delivery					
801	Parking and Valet Attendants	17.4	0.1	21.5	53-6021.
802	Taxi and Rideshare Drivers and Chauffeurs	24.9	(*)	21.2	53-3054.
803	Shuttle Drivers	16.7	0.1	28.0	53-3053.
804	Goods Delivery People	3.7	0.5	30.0	53-3031.
805	Personal Vehicle and Equipment Cleaners	4.8	(*)	12.4	53-7061.
806	Private and Charter Bus Drivers	0.7	(*)	9.9	53-3052.
808	Rickshaw, Pedicab, and Carriage Drivers	0.8	(*)	21.4	53-6099.
809	Home Movers	2.5	2.8	32.8	53-7062.
Total			[4] 67.4	44.6	

Notes: Data are for Tax Year 2023. An * indicates a share of less than 0.1% or a small cell size.

[1] Percentage of individuals within the Related SOC code(s) who have at least $100 of tips reported on a W-2 or Form 4137 ("reported tips").

[2] Reported tips of individuals in Related SOC code(s) as a percentage of all reported tips. The denominator includes all individuals regardless of whether their occupation could be mapped to a SOC code or if their SOC code is related to a TTOC code.

[3] Reported tips of individuals in Related SOC code(s) as a percentage of wages of individuals with tips in Related SOC code(s). The denominator includes wages of individuals in Related SOC code(s) only if they report tips.

[4] Occupation codes are matched to SOC codes, which are then related to TTOC occupation titles, using the self-reported character strings in the "Your occupation" box next to the signature box on the Form 1040. The occupation box does not affect a taxpayer's tax liability, and taxpayers with a single W-2 sometimes enter an occupation (character string) that does not correspond to the W-2. For example, a student who was also a bartender might have entered "Student" in the occupation box, or they may have misspelled "bartender" as "batrender." In either case, we would not be able to match the "Student" or "batrender" who received tips to a TTOC code. These data shortcomings are the primary reason that the percentage of all reported tips for occupations listed in the table sum to only 67.4%. Source: Office of Tax Analysis, August 9, 2025.

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tip rate established by their employer for their occupational category. In exchange for the employees' voluntary agreement to report tips at this agreed upon rate, the IRS provides tip examination protection to the employees for the taxable years in which their agreements were in effect. The proposed regulations would clarify that "qualified tips" include tips reported pursuant to an agreement under the TRDA or GITCA program provided that the participating employee in the TRDA or GITCA program is otherwise eligible for the deduction under IRC section 224, and reports tips using the tip rates established under their agreement. Additionally, the proposed regulations would clarify that an employee participating in the TRDA or GITCA program may report additional qualified tips to the IRS on Form 4137.

Other requirements. IRC section 224(d)(2) provides that the term "qualified tips" does not include amounts received by an individual unless such other requirements as may be established by the Secretary in regulations or other guidance are satisfied. The proposed regulations would provide that amounts received for services the performance of which is a felony or misdemeanor under applicable law are not qualified tips. In addition, the proposed regulations would provide that amounts received for prostitution services and pornographic activity are not qualified tips. Finally, to prevent reclassification of income as qualified tips, and to prevent abuse of the deduction, the proposed regulations would also provide that a payment is not a qualified tip if the tip recipient has an ownership interest in or is employed by the payor of the tip.

Trade or business limitations. IRC section 224(c) imposes a limitation on a taxpayer who receives tips in the course of a trade or business (other than the trade or business of performing services as an employee). The proposed regulations would restate the statutory limit, which is the difference between the gross income from the taxpayer's trade or business for the taxable year minus the sum of deductions (other than the deduction for qualified tips) for that trade or business for the taxable year. The proposed regulations would clarify that the deduction allowed for qualified tips is not taken into account for this purpose because it is not a deduction associated with a trade or business.

Social Security Numbers and married individuals. The proposed regulations would clarify that a taxpayer must include on the tax return for the taxable year the SSN of the individual who has received the tips. The proposed regulations would also restate the statutory requirement that a taxpayer who is married must file a joint return with the taxpayer's spouse to claim the deduction allowed by IRC section 224. The proposed regulations would further clarify that married taxpayers are only required to include the SSN of the taxpayer who has received the qualified tips to claim the deduction, and that an SSN is required of both taxpayers only when both have qualified tips for which they are claiming a deduction.

The proposed regulations would also clarify that the total amount of qualified tips that can be deducted on a return per calendar year is $25,000 regardless of filing status. After applying the $25,000 limitation, the proposed regulations would provide that the amount is subject to the phase-out based on the taxpayers' modified adjusted gross income described in IRC section 224(b)(2).

Remittance Transfer Tax

Cross References

- IRC §4475, *Imposition of tax*
- Notice 2025-55

Effective for transfers made after 2025, the One Big Beautiful Bill Act (OBBBA) imposes a 1% excise tax on the transfer of money from a sender located in the United States to a foreign recipient where the sender sends cash, a money order, or a cashier's check. The law exempts transfers funded through accounts at certain financial institutions or U.S. issued debit or credit cards. The tax (remittance transfer excise tax) is paid by the sender.

Individuals and businesses are subject to the tax if they send money out of the United States using a service such as MoneyGram or Western Union, money orders, cashier's checks, or similar physical instruments. Examples of affected parties include:

- Immigrants sending money to family in their home country.
- U.S. citizens sending financial gifts or supporting relatives overseas.
- Dual nationals and expats supporting foreign dependents.
- Green card holders and those with work visas.
- Businesses making cash-based international payments to vendors.

Examples of exempt transactions include:

- Electronic transfers such as wire transfers, Automated Clearing House (ACH)payments, and transactions through mobile apps.
- Transfers funded by a U.S. issued debit or credit card.
- Withdrawals from accounts at financial institutions subject to Bank Secrecy Act requirements, such as U.S. banks and credit unions.
- Transfers of virtual currency, such as cryptocurrencies.

The individual or business sending the money is subject to the tax, but it is collected and paid over to the government by the remittance transfer providers, such as money service businesses. Remittance transfer providers can be held liable if the tax is not collected from the sender.

The IRS is providing relief from failure to deposit penalties under IRC section 6656 in connection with the remittance transfer excise tax for the first, second, and third calendar quarters of 2026. To provide a transition period for remittance transfer providers to familiarize themselves with the new tax and its reporting and deposit requirements, the IRS has determined that it is in the interest of sound tax administration to provide relief with respect to remittance transfer tax deposits for the first three calendar quarters of 2026. A remittance transfer provider will be deemed to have satisfied the reasonable cause standard under IRC section 6656 if:

1) The remittance transfer provider makes timely deposits of the applicable remittance transfer tax, even if the deposit amounts are computed incorrectly, and
2) The amount of any underpayment of the applicable remittance transfer tax for each calendar quarter is paid in full by the due date for filing the Form 720 for that quarter.

In addition, a remittance transfer provider's ability to use the deposit safe harbor under Regulation section 40.6302(c)-1(b)(2) will not be affected by a failure during the first three calendar quarters of 2026 to make deposits of the remittance transfer tax, provided the remittance transfer provider satisfies the reasonable cause standard for those quarters.

New ERC Claims Under OBBBA

Cross References

- FS-2025-07

The IRS recently released frequently asked questions (FAQs) that address the Employee Retention Credit (ERC) compliance provisions, as provided for under the One Big Beautiful Bill Act (OBBBA).

These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Accordingly, these FAQs may not address any particular taxpayer's specific facts and circumstances, and they may be updated or modified upon further review. Because these FAQs have not been published in the Internal Revenue Bulletin, they will not be relied on or used by the IRS to resolve a case. Similarly, if a FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability.

Nonetheless, a taxpayer who reasonably and in good faith relies on these FAQs will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. Any later updates or modifications to these FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of these FAQs will be maintained on IRS.gov to ensure that taxpayers, who may have relied on a prior version, can locate that version if they later need to do so.

This fact sheet provides frequently asked questions about the limitation on credits and refunds for Employee Retention Credits claimed for the third and fourth quarters of 2021 filed after January 31, 2024.

Q1. How did the One Big Beautiful Bill Act affect the Employee Retention Credit (ERC)?
A1. The One Big Beautiful Bill Act (OBBBA) introduced new enforcement provisions affecting the ERC. One of these provisions prevents the IRS from allowing or refunding ERCs after July 4, 2025, for the third and fourth quarters of 2021 if those claims were filed after January 31, 2024, even if you otherwise met eligibility requirements. Other parts of the bill strengthen compliance enforcement by imposing penalties on certain promoters of the ERC who fail to meet due diligence requirements when assisting with certain credit claims.

Q2. Are all ERC claims for the third and fourth quarters of 2021 limited by OBBBA?
A2. No, only new ERC claims filed after January 31, 2024, are limited by OBBBA.

Q3. What if I filed a return claiming an ERC for the third or fourth quarter of 2021 after January 31, 2024, and I already got my refund – will I get a bill from the IRS?
A3. Generally, no. If your claim was filed after January 31, 2024, but was refunded or credited before July 4, 2025, OBBBA does not apply to your claim.

However, other IRS compliance activities may still result in an adjustment or bill.

Q4. What if I claimed an ERC for the third or fourth quarter of 2021 on or before January 31, 2024, and then filed an amended return withdrawing the claimed ERC after January 31, 2024, for the same period?
A4. OBBBA does not apply to your amended return. Accordingly, the IRS will process your amended return withdrawing the claimed ERC.

Q5. Can I still file a return claiming an ERC for the third or fourth quarter of 2021 if I missed the January 31, 2024, deadline?
A5. No. Under OBBBA, effective July 4, 2025, no new ERCs claimed on a return for those periods will be allowed or refunded if filed after the January 31, 2024, deadline.

Q6. When is my tax return considered "filed" for purposes of OBBBA?
A6. An original or amended return claiming a refund or credit based on an ERC is treated as filed on or before January 31, 2024, if the claim was postmarked and properly mailed or submitted to the appropriate IRS office, by that date.

Q7. Can the IRS continue processing other items on a return if an ERC claimed on that return is limited by OBBBA?
A7. Yes. If the disallowed ERC claim is just one among other items claimed on your return, the IRS can continue to process the other items as appropriate.

Q8. Are appeals rights available if an ERC claimed on a return is disallowed under OBBBA?
A8. Yes. If your claim is disallowed, you will receive Letter 105-C, *Claim Disallowed*. You may appeal to the IRS Independent Office of Appeals if you believe your refund claim reporting ERC eligibility was timely filed on or before January 31, 2024, and the IRS improperly disallowed it under OBBBA. Additional information on how to respond to this letter if you disagree with the disallowance can be found at IRS.gov/erc105c.

Penalty Relief for Tip and Overtime Reporting

Cross References

- IR-2025-110
- Notice 2025-62

The IRS has issued guidance providing penalty relief to employers and other payors for tax year 2025 regarding new information reporting requirements for cash tips and qualified overtime compensation under the One Big Beautiful Bill Act (OBBBA).

Notice 2025-62 provides penalty relief from the new information reporting requirements for cash tips and qualified overtime compensation under OBBBA to employers and other payors for not filing correct information returns and not providing correct payee statements to employees and other payees.

Specifically, employers and other payors will not face penalties for failing to provide a separate accounting of any amounts reasonably designated as cash tips or the occupation of the person receiving such tips. In addition, employers and other payors will also not face penalties for failing to separately provide the total amount of qualified overtime compensation. The relief is limited to returns and statements filed and provided for tax year 2025 and applies only to the extent that the person required to make the return or statement otherwise files and provides a complete and correct return or statement.

The IRS is aware that employers and other payors may not currently have the information required to be reported under OBBBA, or the systems or procedures in place to be able to correctly file the additional information with the IRS, or SSA in the case of a Form W-2, and provide it to employees and other payees. Moreover, the IRS has announced that Forms W-2 and 1099 for tax year 2025 will not be updated to account for the OBBBA-related changes. Therefore, tax year 2025 will be treated as a transition period for IRS enforcement and administration of the new information reporting requirements for cash tips and qualified overtime compensation.

While not a requirement to receive the penalty relief provided in Notice 2025-62, employers and other payors are encouraged to provide employees and payees, particularly those in a tipped occupation, with the occupation codes and separate accountings of cash tips, so the employee or payee can claim the deduction for qualified tips for tax year 2025. Likewise, employers and payors are encouraged to provide employees and payees with separate accountings of overtime compensation, so the employee or payee has readily available the information necessary to claim the deduction for qualified overtime compensation for tax year 2025. Employers and payors can make the information available to their employees and payees through an online portal, additional written statements provided to the employees or payees, other secure methods, or in the case of qualified overtime compensation in Box 14 of the employee's Form W-2.

Nondeductible Wages Not Allowed in Computing Qualified Business Income Deduction

Cross References

• *Savage, Torres,* 165 T.C. No. 5, September 11, 2025

Taxpayers are allowed to deduct up to 20% of qualified business income from a domestic business operated as a sole proprietorship, partnership, S corporation, trust or estate (IRC §199A). There is a limitation, based on Form W-2 wages paid by the business and the unadjusted basis immediately after acquisition of qualified business property, that is phased in when the taxpayer's taxable income (computed without regard to the deduction) exceeds a threshold amount. In this case, the deduction is limited to the greater of 50% of the Form W-2 wages paid by the business, or the sum of 25% of the Form W-2 wages paid by the business plus 2.5% of the unadjusted basis immediately after acquisition of qualified business property. For 2018, the threshold amount was $157,500 for taxpayers filing as single and $315,000 for MFJ. For 2019 the threshold amount was $160,700 for taxpayers filing as single and $321,400 for MFJ.

For 2018 and 2019, the taxpayers in this case claimed the qualified business income deduction with respect to the activities of their S corporations. Both S corporations were subject to IRC section 280E which disallows deductions for businesses expenses, including W-2 wages paid to employees, if the business activities consist of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by federal law or the law of any state in which such trade or business is conducted. The sale of cannabis and cannabis-derived products is legal in Washington state where the businesses are located but illegal under federal law.

In court, both the taxpayers and the IRS agreed that IRC section 280E disallows a deduction for the W-2 wages that the S corporation paid to its employees for 2018 and 2019. The only disagreement between the taxpayers and the IRS was whether total W-2 wages or deductible W-2 wages should be used for computing the business income deduction under IRC section 199A.

The court noted that W-2 wages for purposes of IRC section 199A(c)(1) must be properly allocable to qualified business income. Properly allocable means it must be appropriately or correctly allocated to that category of income. Qualified business income is defined under the Internal Revenue Code as the net amount of certain items of income, gain, deduction, and loss.

IRC section 199A(c)(3) states that wages are included in the term "qualified items of income, gain, deduction, and loss" only "to the extent" they are "allowed in determining taxable income for the tax year." To state the converse, if certain wage amounts are not allowed in determining taxable income for the tax year, those amounts are not part of the term "qualified items of income, gain, deduction, and loss" for purposes of IRC section 199A(c).

The court stated because nondeductible wages are not part of the defined term "qualified items of income, gain, deduction, and loss," they cannot be included in the defined term "qualified business income." Thus, they cannot be used in calculating the W-2 wage limitation for taxpayers whose taxable income exceeds the threshold amount.

The taxpayers argued that W-2 wages include all remuneration included on the W-2s issued by the business. They claimed that any attempt to add conditions and additional language not in the statute to limit W-2 wages to those wages allowed to be deducted by the business after application of IRC section 280E is manifestly contrary to the clear statutory language.

The court stated the taxpayers' view rests on a selective reading of the statute. Their proposed reading focuses on the general rule of IRC section 199A(b)(4)(A), but wholly ignores the express limitation set out in IRC section 199A(b)(4)(B) and the ordinary meaning of the phrase "properly allocable." This text focuses the inquiry on whether an amount is "properly allocable" to "qualified business income," a net amount. The text does not refer to "gross receipts" or specific items of income or gain.

The court ruled that W-2 wages disallowed as a deduction under IRC section 280E are not properly allocable to qualified business income and thus cannot be used in computing the W-2 wage limitation.

~ End ~