

UNDERSTANDING THE TAX PROVISIONS OF THE ONE BIG BEAUTIFUL BILL ACT:

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Beauty is indeed in the eye of the beholder. Signed by President Trump on July 4, 2025, Public Law 119-21, formally titled “An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14” but commonly known as the “One Big Beautiful Bill Act,” (“the OBBB Act”), brings to life much of the Republican party’s 2025 project, er, platform for domestic policy. Clocking in at 330 pages, the OBBB Act covers a lot of ground. Given that amendments to the Internal Revenue Code consume 175 of those 330 pages, it is fair to say that taxation was at the heart of the OBBB Act.

These materials summarize several of the key federal income, estate, and gift tax provisions in the OBBB Act. These materials focus only on the provisions set forth in Title VII of the Act, the provisions making changes to the Internal Revenue Code. Accordingly, there is no discussion herein of defense spending allocations, border security measures, the phaseout of clean energy credits, or spending cuts to Medicaid, the Supplemental Nutrition Assistance Program, or other federal programs. Further, these materials focus on provisions of interest to individuals and small businesses and thus do not address international tax reforms, energy tax incentive reforms, or so-called “health tax” reforms.

I. THE BIG PICTURE

In December, 2017, Congress enacted the 2017 Tax Cuts and Jobs Act (“the 2017 Act”), the most dramatic change to the Internal Revenue Code since passage of the Tax Reform Act of 1986. Earlier that year, Senate leadership indicated it would not seek to produce “permanent” legislation with bipartisan support.

To prevent a Democratic filibuster, Senate procedural rules generally required that tax legislation be revenue-neutral over a 10-year timeframe. That led observers to believe any tax reform would “sunset” after 10 years, as was the case with the Economic Growth and Tax Relief Reconciliation Act of 2001. But achieving long-standing tax reform goals proved to be a costly endeavor, even with the potential of a sunset. When it became clear that the hoped-for package of tax cuts would generate a considerable deficit over the next 10 years, leadership in both houses scrambled to get the votes required to pass budget resolutions that allowed a cumulative 10-year deficit not to exceed \$1.5 trillion. Passage of those resolutions late in October, 2017, facilitated the final legislation.

While cuts to corporate taxes and a handful of other provisions were made without expiration dates, the lion’s share of the reforms contained in the 2017 Act were set to expire at the end of 2025. When the 119th Congress convened on January 3, 2025, leadership confirmed that extending most of the expiring provisions of the 2017 Act was a top legislative priority.

A. The Budgetary Dance

At the start of 2025, observers expected Congress simply to extend most (if not all) of the 2017 Act provisions set to expire at year's end. The only question was the length of the extension. Early forecasts from the Congressional Budget Office and other sources suggested that the cost of extending the 2017 Act for 10 years could reach over \$4.6 trillion in lost revenues and additional interest expense. The hefty price tag was a problem, given that early in 2025 the House and Senate approved a budget resolution that allowed \$4.5 trillion in lost revenues over 10 years accompanied by \$2 trillion in spending cuts over 10 years. That led most observers to predict that Congress would extend the 2017 Act for a much shorter period, perhaps 3 or maybe 5 years.

B. Surprise! Permanent Extensions

But the OBBB Act proved to be more than just a short-term extension. As explained herein, most of the tax cuts from the 2017 Act were made permanent in that there is no longer a scheduled sunset date.

How in the world could Congress make most of the 2017 Act permanent when the projected 10-year cost of extension exceeded the budget framework? The answer was in the definition of the budget baseline.

Traditionally, in forecasting lost revenue from legislation, scorers would use a "current law" baseline. Under this approach, lost revenue is based off what the law would be over the next 10 years if no legislation was passed. In this case, then, one would assume that for 2026 through 2035, for example, the highest marginal rate of tax on ordinary income would return to 39.6 percent, the federal wealth transfer tax exclusion would drop from \$10 million adjusted for inflation to \$5 million adjusted for inflation, and the deduction for personal state and local taxes would no longer be limited to \$10,000. As mentioned above, forecasts under a current law baseline estimated the 10-year revenue loss from extending the 2017 Act to be \$4.6 trillion, an amount in excess of the budget resolution.

Normally, that would lead Congress to consider extending the 2017 Act for a shorter period. Instead, Congress opted to shift the scoring paradigm from a "current law" baseline to a "current policy" baseline. Under a current policy baseline approach, lost revenue is based off what the law is in 2025 (i.e., when the 2017 Act is still in place). Because the current policy includes the 2017 Act, there is no cost to extending the 2017 Act. As one commentator says:

That's like saying that when I go to the grocery store this week and put milk and ice cream in my cart, I don't have to pay for milk and ice cream this week because I bought those items last time I came to the store.

Beth Shapiro Kaufman, [*Capital Letter No. 63: One Big Beautiful Bill*](#) (July 7, 2025). Switching to this approach effectively allowed Congress to make most of the 2017 Act permanent without dipping into the \$4.5 trillion in revenue cuts authorized by the budget resolution. Through this budgetary hocus-pocus, then, Congress found a mechanism for making most of the 2017 Act permanent.

B. New Provisions

And because, under a current policy baseline, extending the *status quo* had no revenue cost, there was room for additional tax benefits promised by President Trump while campaigning for office in 2024. These promises included restoring the immediate expensing of certain items of otherwise-depreciable property, excluding social security benefits from gross income, and excluding tips and overtime pay from gross income. One estimate pegged the 10-year cost of enacting all of these additional promises at \$6 trillion. Penn Wharton Budget Model, [*The FY2025 House Budget reconciliation and Trump Administration Tax Proposals: Budgetary, Economic, and Distributional Effects*](#) (February 27, 2025). Ultimately, then, a pared-down version of these promises survived the final cut, as discussed below.

The final tab for the OBBB Act comes to about \$4.5 trillion in tax cuts, spending cuts of \$1.7 trillion, and \$450 billion in increased spending. Congressional Budget Office, [*Estimated Budgetary Effects of an Amendment in the Nature of a Substitute to H.R. 1, the One Big Beautiful Bill Act, Relative to CBO's January 2025 Baseline*](#) (June 27, 2025). These estimates, created using a current law baseline instead of the new-fangled current policy baseline, are supported by the Joint Committee on Taxation, which estimates that the tax cuts in the OBBB Act will cost \$4.475 trillion over the next 10 years (again, using a current law baseline approach). Joint Committee on Taxation, [*Estimated Revenue Effects Relative to the Present Law Baseline of the Tax Provisions in "Title VII – Finance" of the Substitute Legislation as Passed by the Senate to Provide for Reconciliation of the Fiscal Year 2025 Budget*](#), JCX-35-25 (July 1, 2025). In explaining the projected effects of a particular provision over the next 10 years, these materials will use the projections from the Joint Committee on Taxation's report.

C. Provisions Still Set to Expire at the End of 2025

The OBBB Act did not extend all of the provisions from the 2017 Act that are scheduled to sunset at the end of 2025. Here is a partial list of provisions set to expire at the end of 2025:

- The §51 work opportunity credit;
- The §108(a)(1)(E) exclusion from gross income of discharge of indebtedness on a principal residence;
- The 7-year recovery period for motorsports entertainment complexes under §168(e); and

- Several of the empowerment zone tax incentives, including empowerment zone tax-exempt bonds under §1394 and the empowerment zone employment credit in §1396.

D. Republicans Take a Victory Lap

The OBBB Act is a significant legislative victory for Republicans. No provision of the Code is ever “permanent,” of course, as this or a future Congress can always change it at any point through new legislation. But the absence of an expiration date makes it harder for Democrats to use a pending sunset as leverage to effect other changes. If rates and brackets were again scheduled to expire at some future point, Democrats could use the scheduled sunset to coerce a compromise under which the scope of a particular tax cut could be narrowed so as to benefit only taxpayers with low or moderate incomes. But now, by making most of the cuts from the 2017 Act immune to sunset, the only way to undo tax cuts is through new legislation. This will require Democrats to regain control of the executive and legislative branches, and even then, some Democrats may not be completely on board with eliminating this or other tax cuts.

But the OBBB Act may have political costs in addition to revenue costs. Early polling suggests that voters are skeptical of the legislation. A [Pew Research Center poll](#) showed nearly half of over 5,000 Americans polled opposed the OBBB Act while about 30 percent favored it (about 20 percent unsure). A majority of those polled felt the OBBB Act would help high-income people and hurt lower-income people. Even a [Fox News poll](#) showed overall opposition to the OBBB Act, though the results were deeply partisan, with 73 percent of Republicans favoring it while 89 percent of Democrats and 73 percent of independent voters opposed it.

II. PROVISIONS AFFECTING INDIVIDUALS, ESTATES, AND TRUSTS

A. Ordinary Income Tax Brackets for Individuals, Estates, and Trusts

For many years prior to 2018, there were seven tax brackets applicable to ordinary income. Here, for example, were the ordinary income tax rates and brackets in play for 2017:

2017 Taxable Income Exceeding			
Single	Married	Trusts and Estates	Rate
\$0	\$0		10%
\$9,325	\$18,650	\$0	15%
\$37,950	\$75,900	\$2,550	25%
\$91,900	\$153,100	\$6,000	28%
\$191,650	\$233,350	\$9,150	33%
\$416,700	\$416,700		35%
\$418,400	\$470,400	\$12,500	39.6%

In the early stages of producing the 2017 Act, Republican leadership sought to reduce both the number of brackets and the tax rates. Ultimately, the 2017 Act preserved the 7-bracket regime,

though it reduced the rates in five of the brackets and widened the sizes of the top four brackets. The 2017 Act also cut the number of tax brackets applicable to trusts and estates from five to four, but it retained the super-thin lower brackets. Thus, these were the ordinary income tax rates and brackets that took effect in 2018:

2018 Taxable Income Exceeding			
Single	Married	Trusts and Estates	Rate
\$0	\$0	\$0	10%
\$9,525	\$19,050		12%
\$38,700	\$77,400		22%
\$82,500	\$165,000	\$2,550	24%
\$157,500	\$315,000		32%
\$200,000	\$400,000	\$9,150	35%
\$500,000	\$600,000	\$12,500	37%

The 2017 Act called for these rates and brackets to expire at the end of 2025. But the OBBB Act extends the current rate structure and brackets indefinitely. While it is too early to know the tax brackets for 2026, the 2025 brackets give some indication of how the now-permanent regime works:

2025 Taxable Income Exceeding			
Single	Married	Trusts and Estates	Rate
\$0	\$0	\$0	10%
\$11,925	\$23,850		12%
\$48,475	\$96,950		22%
\$103,350	\$206,700	\$3,150	24%
\$197,300	\$394,600		32%
\$250,525	\$501,050	\$11,450	35%
\$626,350	\$751,600	\$15,650	37%

The Joint Committee on Taxation estimates the projected 10-year revenue loss from making the current brackets and rates permanent to be \$2.19 trillion, by far the most expensive provision of the OBBB Act.

B. Zero-Bracket Provisions: Standard Deduction, Personal Exemptions, and Child Credit

Prior law achieved a so-called “zero-bracket” through a holy trinity: the standard deduction, the deduction for personal and dependency exemptions, and the child tax credit. In an effort to simplify this regime, the 2017 Act temporarily repealed the deduction for personal and dependency exemptions while expanding both the standard deduction and the child tax credit. These modifications were set to expire at the end of 2025 but have now been extended

without expiration. Furthermore, the standard deduction for 2025 will be even larger and a new, temporary *faux* personal exemption for older taxpayers will debut in 2025.

1. Standard Deduction

The 2017 Act substantially increased the amount of the standard deduction, and the OBBB Act preserves and enhances this increase, as shown in the following table:

Filing Status	2017 Standard Deduction	2018 Standard Deduction	2025 Standard Deduction (Pre-OBBB Act)	2025 Standard Deduction (Post-OBBB Act)
Married Filing Jointly	\$12,700	\$24,000	\$30,000	\$31,500
Head of Household	\$9,350	\$18,000	\$22,500	\$23,625
Unmarried	\$6,350	\$12,000	\$15,000	\$15,750
Married Filing Separately	\$6,350	\$12,000	\$15,000	\$15,750

The OBBB Act makes no changes to the inflation-adjusted additional standard deduction amount available to blind taxpayers and those age 65 and over. Thus, for 2025, the additional standard deduction amount for “the aged or the blind” is \$1,600, or \$2,000 if the taxpayer is also unmarried and not a surviving spouse.

2. Personal Exemptions (and the New Temporary Senior Deduction)

Prior to 2018, a taxpayer could claim a personal exemption deduction of \$2,000, though this amount was adjusted for inflation (the 2018 inflation-adjusted exemption was set to be \$4,150, and the amount would have been \$5,200 for 2025). Married couples filing jointly could claim two exemptions. In addition, a taxpayer could claim an exemption deduction for each of the taxpayer’s dependents, generally defined as either “qualifying children” or “qualifying relatives.” Thus, for example, a married couple with two qualifying children could claim four personal exemptions on their joint return, a total deduction that would have been \$16,600 in 2018 (\$20,800 in 2025). But if the couple’s adjusted gross income exceeded an inflation-adjusted threshold amount (what was to be \$320,000 in 2018), the amount of the deduction would be gradually reduced (reaching zero if the couple’s 2018 adjusted gross income was \$442,000 or more).

The 2017 Act effectively repealed the deduction for personal and dependency exemptions for the years 2018 through 2025 by reducing the exemption amount in those years to zero. The 2017 Act expressly retained the regular personal exemption for so-called “qualified disability trusts,” and the nominal personal exemptions currently in play for estates (\$600) and trusts (\$100 or \$300, depending on whether the trust is required to distribute its income) also survived.

The OBBB Act generally extends the repeal without expiration, but it grants to a “qualified individual” (one who has attained the age of 65 before the end of the taxable year) a personal exemption deduction of \$6,000. A married couple can claim two exemptions on a joint return if both spouses have reached age 65 before the close of the taxable year. This “temporary senior deduction” will be in effect from 2025 through 2028.

The temporary senior deduction comes with three important limitations. First, where a qualified individual is married, the deduction is only available if the couple files jointly. If the spouses file separately, neither one can claim the temporary senior deduction.

Second, as written, the OBBB Act does not allow a taxpayer to claim a temporary senior deduction for a dependent who has reached age 65 before the end of the taxable year. In other words, the deduction is limited to the taxpayer and, in the case of a joint return, the taxpayer’s spouse.

Third, the amount of the temporary senior deduction is reduced once the taxpayer’s “modified adjusted gross income” (generally, the taxpayer’s adjusted gross income increased by amounts of excluded foreign earned income) exceeds \$75,000, a threshold that does not appear to adjust for inflation. (The non-indexed threshold for a married couple filing a joint return is \$150,000.) The temporary senior deduction reduces to zero once the taxpayer’s modified adjusted gross income exceeds \$175,000 (\$250,000 for married couples filing jointly).

3. Child Tax Credit

The 2017 Act generally doubled the amount of the child tax credit and added a temporary, smaller credit for dependents that are not qualifying children of the taxpayer. It also made the credit more available to upper-middle-class taxpayers by increasing the thresholds before phaseout of the credit begins. The 2017 Act also increased the refundable portion of the credit. The OBBB Act extends these rules without expiration and also increases the amount of the credit to \$2,200, a figure set to be adjusted for inflation starting in 2026. The following table summarizes these changes:

Child Credit Feature	2001 – 2017	2018 – 2024*	2025 – beyond
Credit Amount	\$1,000 per child	\$2,000 per child; \$500 per other dependent	\$2,200 per child (as adjusted for inflation); \$500 per other dependent
Phaseout Begins when AGI exceeds...			
Unmarried & Head of House	\$75,000	\$200,000	\$200,000
Joint Filers	\$110,000	\$400,000	\$400,000
Phaseout Complete when AGI hits...			
Unmarried & Head of House	\$95,000	\$240,000	\$240,000
Joint Filers	\$130,000	\$440,000	\$440,000

Refundable Portion	15% of earned income in excess of \$3,000	15% of earned income > \$2,500, not to exceed \$1,400 per child (as adjusted for inflation)	15% of earned income > \$2,500, not to exceed \$1,400 per child (as adjusted for inflation)
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* Does not include 2021, when the American Rescue Plan Act of 2021 increased the credit to \$3,000 per child (\$3,600 in the case of a child under age 6) and made the credit fully refundable.

The Joint Committee on Taxation concludes that the combination of the enhanced standard deduction, the repeal of the personal exemption deduction other than the temporary senior deduction, and the enhanced child tax credit will result in a net revenue loss over 10 years of over \$434 billion:

<u>Provision</u>	<u>Estimated Revenue Effect, 2025 – 2034</u>
Extended, enhanced standard deduction	(\$1,424,682,000,000)
Repealed deduction for personal exemptions other than temporary senior deduction	\$1,807,074,000,000
Extended, enhanced child tax credit	<u>(\$816,846,000,000)</u>
<i>Net Revenue Gain or (Loss)</i>	<i>(\$434,454,000,000)</i>

C. Qualified Business Income Deduction

The 2017 Act introduced §199A, which generally gives a qualifying taxpayer a deduction equal to 20 percent of the taxpayer's "qualified business income" ("QBI"). To qualify for the deduction, one must be a partner in a business entity taxed as a partnership, a shareholder of an S corporation, or a sole proprietor engaged in a trade or business. C corporations and their shareholders do not qualify for the deduction, nor do employees.

Generally, "qualified business income" is the net amount of the items of income, gain, loss, and deduction from an eligible trade or business, excluding items of capital gain and loss, as well as certain dividends from REITs, cooperatives, and publicly-traded partnerships. Compensation paid to the taxpayer from a business (and guaranteed payments paid to a partner by a partnership) are not qualified business income.

Two restrictions on the QBI deduction kick in once a taxpayer's taxable income exceeds a certain threshold. In 2025, that threshold is \$197,300 (\$394,600 for married couples filing a joint return). The first restriction is that if the business is a "specified service business" (one that (1) involves the performance of services in the fields of health, law, accounting, actuarial

science, performing arts, consulting, athletics, financial services, or brokerage services; (2) has as its principal asset the reputation or skill of one or more of its employees or owners; or (3) involves the performance of services consisting of investing and investment management, trading, or dealing in securities, partnership interests, or commodities), then the deduction is subject to a phaseout. The deduction is reduced to zero once the taxpayer's taxable income is more than \$50,000 over the threshold (or more than \$100,000 over the threshold in the case of a married couple filing jointly).

The second restriction applies if the amount of the deduction exceeds the "wage-basis limitation." That limitation is the greater of: (1) 50 percent of the W-2 wages paid by the business, or (2) 25 percent of the W-2 wages paid by the business plus 2.5 percent of the unadjusted basis immediately after acquisition of all depreciable property used in the business still on hand at the close of the taxable year. In fact, once the taxpayer's taxable income is more than \$50,000 over the threshold (or more than \$100,000 over the threshold in the case of a married couple filing jointly), then the deduction is limited to the wage-basis limitation.

The OBBB Act increases the taxable income limitations described above, generally allowing for a greater deduction amount. Starting in 2026, the phaseout for specified service businesses does not completely erase the deduction until taxable income is more than \$75,000 over the threshold (or more than \$150,000 over the threshold in the case of a married couple filing jointly). Likewise, the deduction amount is not limited to the wage-basis limitation unless the taxpayer's taxable income is more than \$75,000 over the threshold (or more than \$150,000 over the threshold in the case of a married couple filing jointly).

But wait, there's more! Under a new §199A(i), a taxpayer will be allowed a minimum QBI deduction of \$400 as long as the aggregate QBI from all trades or businesses in which the taxpayer materially participates (as defined in the passive loss rules in §469) is at least \$1,000. Both the \$400 minimum deduction and the \$1,000 aggregate threshold amounts are to be adjusted for inflation. This means, for example, that a high-income taxpayer who materially participates in a specified service business can still claim a \$400 deduction under §199A even though other provisions of the statute would reduce the deduction to zero. It ain't much, but for the affected taxpayer it's better than no deduction at all.

Earlier drafts of the OBBB Act also provided for an increase in the amount of the deduction, from 20 percent of a taxpayer's QBI to 23 percent of QBI. The final OBBB Act, though, keeps the deduction at 20 percent of QBI. Still, the Joint Committee on Taxation lists the 10-year revenue cost from these changes to the QBI deduction at over \$736 billion.

D. Wealth Transfer Tax Basic Exclusion Amount

The American Taxpayer Relief Act of 2012 made permanent the \$5,000,000 basic exclusion amount for federal estate, gift, and generation-skipping transfer taxes that was introduced in the Tax Relief and Unemployment Insurance Reauthorization and Job Creation

Act of 2010. The 2012 Act also called for the basic exclusion amount to continue to be adjusted for inflation after 2011.

The 2017 Act doubled the basic exclusion amount under §2010(c)(3) from \$5 million to \$10 million, still with adjustments for inflation after 2011. But the 2017 Act also provided that the basic exclusion amount would revert to \$5 million (adjusted for post-2011 inflation) after 2025. The OBBB Act prevents the reduction by resetting the basic exclusion amount to \$15 million starting in 2026, with adjustments for inflation after 2026.

<u>For decedents dying in</u>	<u>The basic exclusion amount is</u>	<u>For decedents dying in</u>	<u>The basic exclusion amount is</u>
2011	\$5,000,000	2018	\$11,180,000
2012	\$5,120,000	2019	\$11,400,000
2013	\$5,250,000	2020	\$11,580,000
2014	\$5,340,000	2021	\$11,700,000
2015	\$5,430,000	2022	\$12,060,000
2016	\$5,450,000	2023	\$12,920,000
2017	\$5,490,000	2024	\$13,610,000
		2025	\$13,990,000
		2026	\$15,000,000

Importantly, for the first time since 2001, there is no scheduled reduction in the basic exclusion amount. Further, the OBBB Act makes no changes to the application of §1014, which provides a fair-market-value-at-date-of-death basis for property acquired from a decedent.

Even if the basic exclusion amount had reverted to a \$5 million base in 2026, Congress would not have seen a huge surge in revenue. It is not too surprising, then, that the Joint Committee on Taxation projects a 10-year revenue loss from the new \$15 million base for the basic exclusion amount at “just” about \$211 billion.

E. Alternative Minimum Tax Exemptions for Individuals, Estates, and Trusts

Individuals, estates, and trusts are subject to the alternative minimum tax (AMT). The minimum tax imposed is the amount by which tentative minimum tax exceeds the regular income tax liability for the year. There is a “tentative minimum tax” when “alternative minimum taxable income” (AMTI) exceeds the exemption amount. Taxpayers with high AMTIs face a phaseout of the exemption amount.

The 2017 Act temporarily increased both the exemption amount and the phaseout threshold, with the increased dollar amounts adjusted for inflation. But these higher exemptions and thresholds were scheduled to expire at the end of 2025. The OBBB Act extends the higher exemptions and phaseouts indefinitely, making minor tweaks to the inflation adjustments starting in 2026. Although the 2026 amounts are yet to be determined, the following table indicates the effect of the extensions:

Taxpayer	2017			2018			2025		
	Joint Filers	Single	Estates and Trusts	Joint Filers	Single	Estates and Trusts	Joint Filers	Single	Estates and Trusts
AMT Exemption Amount	\$84,500	\$54,300	\$24,100	\$109,400	\$70,300	\$24,600	\$137,000	\$88,100	\$30,700
Exemption phaseout begins when AMTI exceeds	\$160,900	\$120,700	\$80,450	\$1,000,000	\$500,000	\$82,050	\$1,252,700	\$626,350	\$102,500

The Joint Committee on Taxation estimates the total amount of lost revenue over the next 10 years from this extension to be over \$1.36 trillion.

F. Charitable Contributions

The OBBB Act makes three significant changes to the rules for deducting charitable contributions, all taking effect in 2026. Two of the changes are favorable for donors; the last is projected to raise revenues by limiting the deduction.

1. Up to \$1,000 Deduction for Cash Donations by Non-Itemizers

First, the OBBB Act restores the special rule from 2021 that allows individuals who do not itemize their deductions to claim a “partial” deduction for charitable contributions of cash to public charities in the computation of taxable income. While the 2021 rule allowed a maximum deduction of \$300 (\$600 for joint filers), the new rule permits a deduction of up to \$1,000 (\$2,000 for joint filers). This reinstatement of a limited charitable contribution deduction for standard deduction taxpayers is predicted to cost over \$73.7 billion over 10 years.

2. Permanent Increase in Cap on Cash Contributions

Second, the OBBB Act makes permanent the increase in the deduction limit for cash contributions to charitable organizations. Under prior law, a taxpayer could not deduct cash contributions in excess of 50 percent of the taxpayer’s “contribution base” (in most cases, an amount equal to the taxpayer’s adjusted gross income). Thus, for example, if a taxpayer donated \$100,000 cash to a qualified charitable organization in a year in which the taxpayer’s contribution base was \$150,000, the taxpayer could deduct only \$75,000 of the contribution in the year of donation. The remaining \$25,000 would carry over to the next year as though the cash contribution was made in that year.

The 2017 Act provided that, for cash donations made from January 1, 2018, through December 31, 2025, the applicable limit would be 60 percent of the donor's contribution base. In the prior example, then, the taxpayer could deduct \$90,000 of the \$100,000 cash contribution under the new rule, with only \$10,000 carrying over to the next year. Further, cash contributions are deemed to happen before all other contributions, maximizing the chance of their deduction. This rule is now made permanent.

3. Charitable Contribution Floor

Finally, new §170(b)(1)(I) imposes a 0.5-percent floor on donations by individuals. Specifically, an individual can only deduct otherwise allowable charitable contributions to the extent such contributions, in the aggregate, exceed 0.5 percent of the taxpayer's contribution base. For example, if an individual taxpayer with a 2026 contribution base of \$100,000 donates \$10,000 to charity, the taxpayer can only deduct \$9,500 in 2026 (0.5 percent of \$100,000 = \$500). Amounts disallowed under this rule carry over for up to five taxable years.

The 0.5-percent floor does not apply to standard deduction taxpayers (meaning the \$1,000 deduction described above is not affected by this new rule). The OBBB Act provides ordering rules for determining which contributions are disallowed under this new rule, generally sacrificing deductions that are more limited (like donations of capital gain property to private foundations and other non-public charities) before turning to preferred donations like contributions to public charities. This new floor on charitable contribution deductions is expected to raise over \$16.6 billion in revenue over 10 years.

G. Home Mortgage Interest Deduction

Before 2018, a taxpayer could deduct "qualified residence interest," generally defined as the interest paid on either "acquisition indebtedness" or "home equity indebtedness." Acquisition indebtedness is debt incurred to buy, build, or improve either the taxpayer's principal residence or one other residence selected by the taxpayer (a taxpayer thus cannot have acquisition debt on three or more homes), provided the subject home secures the debt. Home equity indebtedness is any other debt secured by the residence, regardless of how the loan proceeds are used by the taxpayer. Prior law limited the amount of acquisition indebtedness to \$1 million (half that amount for a married individual filing separately) and the amount of home equity debt to \$100,000. Thus, for example, if an unmarried taxpayer borrowed \$1.5 million to purchase the taxpayer's only home and gave the lender a mortgage on the home, the taxpayer could deduct 11/15 of the interest paid to the lender (\$1 million of the \$1.5 million loan is acquisition debt and another \$100,000 of the loan qualified as home equity debt).

The 2017 Act temporarily limited the amount of acquisition debt to \$750,000 (\$375,000 for a married individual filing separately) and temporarily suspended the deduction for interest paid on home equity debt. In the above example, then, the taxpayer could only deduct half of

the interest paid to the lender (\$750,000 of the \$1.5 million loan is acquisition debt and none of it qualifies as home equity debt).

Importantly, the limit on acquisition debt only applied to debt incurred after December 15, 2017; preexisting acquisition debt was (and is) subject to the original \$1 million cap. The 2017 Act also applied the old \$1 million acquisition debt cap to taxpayers who made a binding contract before December 15, 2017, to close on the purchase of a principal residence before 2018 and who actually purchased such residence by the end of March, 2018. There was no similar exception for home equity debt—the deduction for interest on home equity debt was suspended regardless of when such debt was incurred.

All of the foregoing was set to expire at the end of 2025, but the OBBB Act extends these rules indefinitely. It also makes clear that qualified mortgage insurance premiums will continue to be treated as qualified residence interest. By continuing to limit the deductibility of home mortgage interest, the Joint Committee on Taxation projects a 10-year revenue gain of over \$39.5 billion.

H. Casualty Loss Deduction

Prior to 2018, individuals could deduct losses unrelated to a business or investment activity when such losses arose from fire, storm, shipwreck, or other casualty, or from theft, but only to the extent any such loss exceeded \$100 and only to the extent the net personal casualty loss for the year exceeded 10 percent of an individual's adjusted gross income. Under the 2017 Act, such losses in 2018 through 2025 were deductible only if they were attributable to Presidentially-declared disasters under §401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The OBBB Act extends this disaster requirement indefinitely, but with one modification. Starting in 2026, both losses attributable to Presidentially-declared disasters and "State declared disasters" will be deductible. New §165(h)(5)(C) defines a state declared disaster as:

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.

Even with the addition of a deduction for state-declared disasters, extension of the disaster requirement for casualty losses is expected to raise \$1.3 billion in revenue over the next 10 years, according to the Joint Committee on Taxation.

While the impact of the new rules for casualty losses is clear, it is uncertain to what extent these limitations apply to theft losses. Section 165(c)(3) allows a deduction for both casualty losses and theft losses. A limitation requiring a disaster declaration makes sense for casualties, but, save for post-disaster looting, thefts do not arise from disasters. Does the limitation mean that losses from non-disaster thefts are entirely non-deductible, or does the limitation have no effect on theft losses (making them deductible to the extent they survive the other limitations in §165(h))? Some clarification would have been helpful.

I. Miscellaneous Itemized Deductions

Prior law allowed an individual to deduct “miscellaneous itemized deductions” to the extent that they, in the aggregate, exceeded two percent of the individual’s adjusted gross income. Section 67 defines a “miscellaneous itemized deduction” as any itemized deduction other than one listed in §67(b). Common examples of miscellaneous itemized deductions include safe deposit box rentals for storing investment assets, net hobby expenses, fees paid for appraisals in connection with casualty loss and charitable contribution deductions, fees paid to accountants and attorneys for tax advice and tax return preparation, and the unreimbursed business expenses of an employee.

Practitioners used to refer to §67 as the “two-percent haircut.” The 2017 Act turned a haircut into a decapitation: it flat out disallowed all miscellaneous itemized deductions from 2018 through 2025. Notably, the 2017 Act did not affect the above-the-line deduction of up to \$250 for unreimbursed expenses paid by an elementary or secondary school educator under §62(a)(2)(D).

The OBBB Act makes permanent the suspension of miscellaneous itemized deductions, while at the same time treating the deduction for “educator expenses” as a regular, non-miscellaneous itemized deduction. New §67(g), effective in 2026, defines “educator expenses” as those which would be described in §62(a)(2)(D) without regard to the \$250 limitation, without regard to the exception in §62(a)(2)(D) for “nonathletic supplies for courses of instruction in health or physical education” (read: condoms), and without regard to the limitation that such costs relate to supplies used in a classroom.

To illustrate the new rule, suppose an elementary school teacher in 2026 spends \$2,000 out of pocket on supplies used in the classroom but the school district does not reimburse the teacher for this cost. Under §62(a)(2)(D), the teacher can deduct \$250 of the cost in computing the teacher’s adjusted gross income, regardless of whether the teacher itemizes or claims the standard deduction. If the teacher itemizes, the teacher can claim the extra \$1,750 cost as deductible “educator expenses,” reducing taxable income. If the teacher takes the standard deduction, however, the extra \$1,750 cost is not deductible, which is the case under current (2025) law.

The Joint Committee on Taxation concludes that the revenue gain from the permanent disallowance of miscellaneous itemized deductions will exceed \$231 billion over 10 years. One suspects the new deduction for educator expenses likely did not reduce this total by very much.

J. New Overall Limit on Itemized Deductions

Prior to 2018, §68 generally reduced the amount of otherwise allowable itemized deductions once a taxpayer's adjusted gross income exceeded a certain inflation-adjusted threshold. (That threshold, for example, was set to be \$320,000 for married couples and \$266,700 for unmarried individuals in 2018.) For taxpayers with very high adjusted gross incomes, up to 80 percent of itemized deductions could be lost under this rule. But the 2017 Act suspended the application of this phaseout for the years 2018 through 2025.

The OBBB Act does not extend the suspension. Rather, it replaces the old overall limitation with a new one applicable only to taxpayers in the highest ordinary income tax bracket. Starting in 2026, the amount of itemized deduction otherwise allowable for the taxable year shall be reduced by, get this, 2/37 of the lesser of: (1) the amount of such itemized deductions, or (2) the amount by which the taxpayer's taxable income (increased by the amount of itemized deductions) exceeds the dollar amount at which the 37-percent bracket begins with respect to the taxpayer.

Suppose, for example, that an unmarried individual in 2026 has an adjusted gross income of \$1,000,000 and otherwise allowable itemized deductions of \$100,000. Assume too that, in 2026, the 37-percent bracket for unmarried individuals starts once taxable income exceeds \$650,000. Under new §68, the individual's itemized deductions would be reduced by \$5,405, computed as follows:

<i>Lesser of –</i>	
<i>(1) 2/37 of \$100,000 in itemized deductions:</i>	<i>\$ 5,405</i>
<i>or (2) 2/37 of \$350,000 excess of</i>	
<i> \$1,000,000 taxable income over \$650,000</i>	
<i> threshold for 37% tax bracket</i>	<i><u>\$18,919</u></i>
	<i>\$5,405</i>

Thus, in this example, the individual's itemized deductions would be reduced to \$94,595 (\$100,000 less the \$5,405 reduction under §68), resulting in a 2026 taxable income of \$905,405.

If the individual's adjusted gross income was only \$700,000, §68 would reduce the itemized deductions by only \$2,703:

<i>Lesser of –</i>	
<i>(1) 2/37 of \$100,000 in itemized deductions:</i>	<i>\$5,405</i>
<i>or (2) 2/37 of \$50,000 excess of</i>	

*\$700,000 taxable income over \$650,000
threshold for 37% tax bracket*

\$2,703
\$2,703

In this modified example, the individual's itemized deductions would be reduced to \$97,297 (\$100,000 less the \$2,703 reduction under §68), resulting in a 2026 taxable income of \$902,703.

The new limitation is less onerous than the old one, as evidenced by the Joint Committee on Taxation's estimate that the 10-year revenue loss from the new regime will be over \$255 billion.

K. Exclusion for Qualified Bicycle Commuting Reimbursements

Former §132(f)(1)(D) allowed an employee to exclude from gross income any "qualified bicycle commuting reimbursement," defined generally in §132(f)(5)(F)(i) as a reimbursement paid to an employee to cover reasonable expenses "for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment." The exclusion was limited to \$20 per "qualified bicycle commuting month," defined generally as a month in which the employee uses the bike for a substantial portion of the commute to and from work and during which the employee receives no other qualified transportation fringe.

The 2017 Act suspended the exclusion for qualified bicycle commuting reimbursements from 2018 through 2025. The OBBB Act makes the suspension permanent. At the same time, the OBBB Act changes the basis for inflation adjustments to the dollar amounts applicable to other qualified transportation fringes like transit passes and transportation in a commuter highway vehicle. Going forward, adjustments will be based on post-1997 inflation rather than post-1998 inflation. That may explain why the Joint Committee on Taxation concludes that the changes to qualified transportation fringes will not raise revenues over a 10-year period but, in fact, result in a 10-year revenue loss of over \$1.9 billion.

L. Deduction for Moving Expenses

Subject to certain requirements related to the distance moved and the amount of work time spent at the new location, §217 generally permits a deduction for moving expenses (costs of moving household goods plus traveling expenses except meals) paid or incurred during the taxable year in connection with starting work as an employee or as a self-employed individual at a new principal place of work. The 2017 Act suspended the deduction from 2018 through 2025, except in the case of members of the United States Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station.

The OBBB Act both makes the suspension permanent and expands the scope of the exception for members of the United States Armed Forces to include "members of the

intelligence community,” as defined in Section 3 of the National Security Act of 1947, who move pursuant to a change in assignment. The OBBB Act makes a corresponding change to §132(g), under which both members of the United States Armed Forces and members of the intelligence community can exclude moving expense reimbursements from gross income, while other employees who receive moving expense reimbursements must continue to include such amounts in gross income. The permanent suspension of the moving expense deduction for most taxpayers is expected to raise over \$13.5 billion in revenue over the next 10 years, according to the Joint Committee on Taxation.

M. Wagering Losses

For decades, §165(d) has limited the deduction for losses from wagering transactions to the extent of the gains from such transactions. Suppose, for example, an individual had gambling gains of \$9,500 and gambling losses of \$10,000 in a single taxable year. Under prior law, the individual would include the \$9,500 of gambling gains in gross income and deduct \$9,500 of the \$10,000 in gambling losses; the excess \$500 loss would not be deductible and would not carry over to the next taxable year.

Prior to 2018, an additional rule applied to professional gamblers, those for whom gambling was a “trade or business.” Professional gamblers, like other taxpayers engaged in business, could also deduct under §162 the ordinary and necessary expenses paid or incurred in carrying on the gambling business. So while gambling *losses* were subject to the limit in §165(d), gambling *expenses* (travel away from home, supplies, and the like) were deductible without limitation.

The 2017 Act effectively provided that, for the years 2018 through 2025, the business expenses of professional gamblers would be treated as gambling losses, subjecting them to the §165(d) limitation. The OBBB Act makes this rule permanent, and goes one step further. Taking effect in 2026, new §165(d) provides that only 90 percent of losses from wagering transactions shall be allowed, and even then the allowable portion can be deducted only to the extent of gains from wagering transactions.

To illustrate, suppose the facts in the example above take place in 2026 or later. The \$10,000 in gambling losses would first be reduced to \$9,000 (90 percent of the total wagering losses for the year). Because that amount is less than the \$9,500 in gambling gains, the full \$9,000 would be deductible. But that is \$500 less than the amount that the individual would have been able to deduct if the gains and losses occurred in 2025. The new 10-percent vigorish is a bad beat for gamblers, but the Joint Committee on Taxation concludes it will raise over \$1.1 billion in revenue over the next 10 years.

N. ABLE Accounts

In 2014, Congress created §529A, which authorized states to create so-called “qualified ABLE programs” under which one could make contributions to a tax-exempt account for the

benefit of a disabled individual. A disabled person (defined as one who would qualify as blind or disabled under Social Security Administration rules) may have a single account to which total annual contributions may not exceed the federal gift tax annual exclusion amount (\$14,000 at the time, but now \$19,000). Income from the account is exempt from federal income tax, and distributions made to the beneficiary for “qualified disability expenses” are likewise tax-free. Qualified disability expenses are defined broadly to include education, housing, transportation, employment training, assistive technology, health, wellness, financial management, and legal expenses (some of which are not already covered by Medicaid and OASDI benefits). Any other distributions, however, are subject to a 10-percent penalty and count as resources for purposes of the beneficiary’s Medicaid exemption.

There is no income tax deduction for contributions to the account, and any such contributions from third parties are treated as completed gifts of present interests to the beneficiary. Assets inside of an ABLE account do not count as “resources” of the beneficiary for purposes of qualifying for federal assistance. If, however, the account balance ever exceeds \$100,000, the beneficiary will be denied eligibility for SSI benefits. Furthermore, any assets inside of the account upon the beneficiary’s death are subject to Medicaid payback rules.

The 2017 Act contained three temporary modifications to ABLE accounts, all of which were to expire at the end of 2025. The OBBB Act extends all three modifications permanently. The revenue loss from making these rules permanent is expected to be just \$25 million, according to the Joint Committee on Taxation.

Contribution Limits. First, §529A(b)(2)(B) provides that once an amount of cash equal to the federal gift tax annual exclusion amount has been contributed to an ABLE account, the account’s designated beneficiary generally may contribute an additional amount up to such beneficiary’s compensation for the year or, if less, the federal poverty line for a one-person household. This increase in the annual contribution limit is now permanent.

Saver’s Credit. Second, the amount of any such additional contribution made by the designated beneficiary is eligible for the so-called “saver’s credit” under §25B. This too is now permanent. (Interestingly, the OBBB Act provides for two additional changes to the saver’s credit that take effect in 2027: (1) *only* the additional contributions made by designated beneficiaries to ABLE accounts will be eligible for the credit, as all other qualified retirement contributions will no longer be eligible; and (2) the maximum amount of the credit increases from \$2,000 to \$2,100.)

Rollovers Between §529 Plans and ABLE Accounts. Finally, the OBBB Act permanently allows amounts from a qualified tuition plan to be rolled over to an ABLE account without penalty, so long as the ABLE account is owned either by the qualified tuition plan’s designated beneficiary or the beneficiary’s spouse, descendant, sibling, ancestor, stepparent, niece, nephew, aunt, uncle, first cousin, or in-law. Any amounts rolled over from a qualified tuition plan count toward the overall limit on amounts that can be contributed annually to an ABLE

account. As was the case from 2018 through 2025, any rolled-over amount in excess of the contribution limit will be treated as ordinary income to the distributee.

O. Discharge of Student Loan Debt

The 2017 Act introduced §108(f)(5), which generally excluded from gross income the cancellation of a student loan on account of the student's death or total disability where such cancellation occurred after 2017 and before 2026. The American Rescue Plan Act of 2021 made the exclusion applicable to all federal student loan forgiveness occurring from 2021 through 2025, regardless of the reason. The OBBB Act returns to the exclusion to its original scope (applicable only in cases of death or total disability) and makes it permanent.

Because the exclusion is now permanent, it is expected to result in a 10-year revenue loss of \$386 million, according to the Joint Committee on Taxation. That figure would have been substantially higher if Congress had decided to make permanent the exclusion for all forms of student loan forgiveness.

P. Limit on Deduction for Personal State and Local Taxes

Prior to 2018, a taxpayer could deduct state and local property tax as well as either state and local income or sales taxes (as well as foreign real property taxes) without limitation. For example, if a taxpayer in 2017 paid local real property tax of \$5,000 in connection with the taxpayer's personal residence, state income tax of \$10,000, and state sales tax of \$13,000 on personal costs, the taxpayer could deduct a total of \$18,000 (the \$5,000 in real property tax and the sales tax of \$13,000, because that amount is larger than the \$10,000 of state income tax).

But the 2017 Act famously limited the total deduction a taxpayer could claim for state and local taxes unrelated to the taxpayer's trade or business or other profit-seeking activity to just \$10,000, and the deduction for foreign real property taxes on property unrelated to a business or investment activity was repealed entirely. In the example above, then, if the same taxes were paid in 2024, the total deduction would be limited to \$10,000. If, on the other hand, the real property taxes were paid in connection with investment property, the total deduction for 2024 would be \$15,000 (\$10,000 in state income or sales tax plus the \$5,000 in real property taxes because the real property taxes are incurred in connection with a profit-seeking activity).

The \$10,000 limit on personal state and local taxes was reduced to \$5,000 in the case of a married individual filing a separate return. All of these changes were slated to sunset at the end of 2025. Had the sunset occurred, taxpayers in 2026 would again have been able to deduct personal state and local taxes (and foreign real property taxes) without limit.

But the OBBB Act retained a cap on the deduction for personal state and local taxes, now restricting the amount of the deduction to the “applicable limitation amount.” The applicable limitation amount, defined in new §164(b)(7), starts as a specific dollar amount:

<u>Taxable Year Beginning in</u>	<u>Applicable Limitation Amount</u>
2025	\$40,000
2026	\$40,400
2027	\$40,804
2028	\$41,212
2029	\$41,624
2030 or later	\$10,000

But if a taxpayer’s “modified adjusted gross income” (generally, a taxpayer’s adjusted gross income increased by the amount of any excluded foreign earned income) for 2025 through 2029 exceeds the “threshold amount,” the applicable limitation amount is reduced by 30 percent of the excess, though in no case can the applicable limitation amount dip below \$10,000. Like the applicable limitation amount, the threshold amount changes from year to year:

<u>Taxable Year Beginning in</u>	<u>Threshold Amount</u>
2025	\$500,000
2026	\$505,000
2027	\$510,050
2028	\$515,151
2029	\$520,302

For example, an unmarried taxpayer with a modified adjusted gross income of \$510,000 in 2025 can deduct up to \$37,000 in personal state and local taxes paid in 2025:

Modified AGI	\$510,000	
Less Threshold Amount	<u>(500,000)</u>	
Excess	\$10,000	
X 30%	<u>x 0.30</u>	
Reduction to Limitation Amount		\$3,000
Applicable Limitation Amount for 2025	\$40,000	
Less Reduction to Limitation Amount(above)	<u>(\$3,000)</u>	
Maximum Personal SALT Deduction		\$37,000

The applicable limitation amount and the threshold amount for married couples filing jointly is the same as for unmarried taxpayers and heads of households. This was true of the original \$10,000 limitation imposed by the 2017 Act. And, as was the case under the 2017 Act, the amounts are cut in half for any married taxpayer who files separately. Thus, if the taxpayer

in the above example is married but filing separately, the taxpayer can deduct up to \$5,000 in personal state and local taxes paid in 2025:

Modified AGI	\$510,000	
Less Threshold Amount	<u>(250,000)</u>	
Excess	\$260,000	
X 30%	<u>x 0.30</u>	
Reduction to Limitation Amount		\$78,000
Applicable Limitation Amount for 2025	\$40,000	
Less Reduction to Limitation Amount(above)	<u>(\$78,000)</u>	
Maximum Personal SALT Deduction (minimum)		\$5,000

The continued limitation of the deduction for personal state and local taxes, while with a more generous cap, is expected to raise over \$946 billion in revenue over the next 10 years, according to the Joint Committee on Taxation.

Q. Deduction for Qualified Tips

Starting in 2025, individuals can deduct up to \$25,000 in “qualified tips” received during the year. This deduction, set forth in new §224, is available through 2028. Like the temporary senior deduction and the qualified business income deduction, the deduction for qualified tips is allowed both to taxpayers who itemize and those who take the standard deduction, but the deduction is taken into account after the computation of adjusted gross income. (In other words, it is a “below the line” deduction available to all individual taxpayers.) No deduction for qualified tips is allowed for married individuals who file separate returns.

Qualified Tips. Section 224(d)(1) generally defines “qualified tips” as “cash tips received by an individual in an occupation which customarily and regularly received tips on or before December 31, 2024, as provided by the Secretary.” (The OBBB Act requires Treasury to publish within 90 days of the date of enactment of the OBBB Act a list of occupations with customarily and regularly received tips on or before December 31, 2024.) While this gives Treasury some discretion, §224(d)(2) provides that tips received by someone engaged in (or employed by) a specified service business are not qualified tips. Section 224(d)(2) further requires that qualified tips must be “paid voluntarily without any consequence in the event of nonpayment” in an amount “determined by the payor” and must not be the subject of negotiation. Section 224(d)(3) clarifies that “cash tips” includes tips paid in cash, tips charged to a debit or credit card, and tips received under “any tip-sharing arrangement.”

Phaseout of Deduction. Under §224(b)(2), the amount of the qualified tips deduction otherwise allowable under §224(a) is reduced by \$100 for every \$1,000 by which the taxpayer’s “modified adjusted gross income” (again, generally, adjusted gross income increased by the amount of excluded foreign earned income) exceeds \$150,000 (or \$300,000, in the case of joint return filers). Thus, for example, if an individual who receives \$50,000 in qualified tips in 2025

has a modified adjusted gross income of \$200,000, the amount of the individual's §224(a) deduction for 2025 is \$20,000: the \$25,000 maximum deduction minus \$5,000 (\$50,000 excess modified adjusted gross income, divided by \$1,000, multiplied by \$100).

Tips Received by Non-employees. Where a self-employed individual receives tips, §224(c) provides that the §224(a) deduction will only apply to the extent that the gross income from the individual's business for the taxable year (including any qualified tips) exceeds the total deductions allocable to the business. Suppose, for example, that an individual entrepreneur in 2025 has \$100,000 of gross income from the individual's business activity, \$20,000 of which is in the form of qualified tips. Further suppose the individual has \$85,000 of deductible expenses in connection with the business (not including the §224 deduction) in 2025. Under §224(c), the individual can only deduct \$15,000 in qualified tips, the amount by which the business income exceeds the other deductions allocable to the business.

Not Quite "No Tax on Tips." The OBBB Act section introducing new §224 calls it "No Tax on Tips," but that's not accurate. For one thing, a below-the-line deduction is not the same as an exclusion or even an above-the-line deduction. The deduction does not reduce an individual's adjusted gross income, only the individual's taxable income. For another, the deduction is limited to the first \$25,000 in tips received. Oh, and the deduction only covers cash tips (not tips in kind) and does not exempt any amount of tips from payroll or self-employment taxes. A more accurate title would be "Limited Deduction for Some Cash Tips," though obviously that has substantially less political appeal.

Delivering (to a limited extent) on this campaign promise will, according to the Joint Committee on Taxation, cost over \$31.6 billion over 10 years. Given the prevalence of tipping in many service-based industries, this number initially seems modest. But then one must remember that many (most?) tips are not included in gross income already. Cash slipped to a valet, a skycap, or a bellhop rarely finds its way to a federal income tax return.

R. Deduction for Qualified Overtime Compensation

Starting in 2025, individuals can deduct up to \$12,500 in "qualified overtime compensation" received during the year. This deduction, set forth in new §225, is available through 2028. Like the deduction for qualified tips, the deduction for qualified overtime compensation is allowed both to taxpayers who itemize and those who take the standard deduction, but the deduction is taken into account after the computation of adjusted gross income. The maximum amount deductible grows to \$25,000 in the case of married couples that file joint returns, but married individuals who file separately do not qualify for any deduction.

Qualified Overtime Compensation. Section 225(c) defines "qualified overtime compensation" with reference to section 7 of the Fair Labor Standards Act of 1938. In essence, any compensation that is in excess of the regular rate at which an individual is employed that is required to be paid under federal law counts as qualified overtime compensation.

Phaseout of Deduction. Section 225(b)(2) contains a phaseout provision that copies the one applicable to qualified tips. Under this rule, the amount of the qualified overtime compensation deduction otherwise allowable under §225(a) is reduced by \$100 for every \$1,000 by which the taxpayer's modified adjusted gross income exceeds \$150,000 (or \$300,000, in the case of joint return filers). To use a familiar example, if an unmarried individual who receives \$50,000 in qualified overtime compensation in 2025 has a modified adjusted gross income of \$200,000, the amount of the individual's §225(a) deduction for 2025 is \$7,500: the \$12,500 maximum deduction minus \$5,000 (\$50,000 excess modified adjusted gross income, divided by \$1,000, multiplied by \$100).

Not Quite "No Tax on Overtime," Either. "No tax on overtime" suggests a complete exclusion of overtime from gross income. A below-the-line deduction will not be as beneficial to individual taxpayers as an exclusion from gross income would have been. Still, the revenue loss from delivering on this promise is significant. Even though the maximum amount of the deduction for qualified overtime compensation is half the maximum amount of the deduction for qualified tips, the estimated revenue loss is considerably higher: over \$89.5 billion, according to the Joint Committee on Taxation. To assist employees in determining the amount of the §225(a) deduction, the OBBB Act requires employers to list the total amount of qualified overtime compensation received by an employee on the employee's Form W-2 for any given taxable year.

S. Deduction for Interest Paid on Qualified Passenger Vehicle Loans

Section 163(h)(1) generally disallows any deduction for "personal interest" paid or accrued during a taxable year. Section 163(h)(2) defines "personal interest" as any interest that would otherwise be deductible, with just six exceptions (including, notably, business interest, qualified residence interest, and student loan interest). The OBBB Act introduces a seventh exception, allowing a deduction of up to \$10,000 in "qualified passenger vehicle loan interest," available for taxable years beginning in 2025 through 2028. The details of the new exception are set forth in what is a modified §163(h)(4).

Qualified Passenger Vehicle Loan Interest. New §163(h)(4)(B) generally defines "qualified passenger vehicle loan interest" as any interest paid or accrued on debt incurred after 2024 used for the purchase of an "applicable passenger vehicle" for personal use, provided the debt is secured by a first lien on that vehicle. There is no deduction for interest paid on loans to finance fleet sales, loans for the purchase of a commercial vehicle, any lease financing, or loans to finance the purchase of a vehicle to be used for scrap or parts. In addition, under §163(h)(4)(E)(iii), no deduction is allowed for interest paid on a debt owed to a related party.

Applicable Passenger Vehicle. Section 163(h)(4)(D) defines an "applicable passenger vehicle" as any vehicle that meets these seven requirements: (1) final assembly occurred within the United States; (2) the original use of the vehicle commences with the taxpayer; (3) the vehicle is manufactured primarily for use on public streets, roads, and highways; (4) it has at

least two wheels; (5) it is a car, minivan, van, SUV, pickup truck, or motorcycle; (6) it is classified as a motor vehicle for purposes of title II of the Clean Air Act; and (7) it has a gross vehicle weight of less than 14,000 pounds.

Phaseout of Deduction. Under §163(h)(4)(C)(ii), the amount of the deduction is reduced by \$200 for every \$1,000 (or portion thereof) by which a taxpayer's modified adjusted gross income exceeds \$100,000 (or, in the case of a married couple filing jointly, \$200,000). Here too an example may be helpful. Assume an individual borrows \$50,000 in 2025 to purchase an applicable passenger vehicle and the loan is secured by the vehicle. The individual pays \$4,000 interest on the loan in 2025, and the individual's modified adjusted gross income for 2025 is \$115,000. The individual can take a §163(h)(4) deduction of \$1,000: a \$4,000 deduction minus \$3,000 (\$15,000 excess modified adjusted gross income, divided by \$1,000, multiplied by \$200).

Deduction Available to Non-Itemizers Too. While most other forms of deductible personal interest are classified as itemized deductions under §67, the new deduction for car loan interest is also available to those who take the standard deduction, though it only serves to reduce taxable income and not adjusted gross income. While the deduction is only scheduled to last for 4 years, the Joint Committee on Taxation estimates the revenue loss from the new deduction at over \$30.6 billion.

T. Trump Accounts

Dubbed "MAGA accounts" ("MAGA" standing for "Money Accounts for Growth and Advancement") in the original House of Representatives bill, the OBBB Act provides for the 2026 debut of so-called "Trump accounts" in new §530A. In simplest terms, Trump accounts function as individual retirement accounts (IRAs) created for children under the age of 18. A child can only be the beneficiary of a single Trump account. The new accounts are expected to cost over \$15.2 billion in foregone revenue, according to the Joint Committee on Taxation.

Eligible Individuals. A Trump account can only be created for the exclusive benefit of an "eligible individual," defined in §530A(b)(2) as one who: (1) will not have reached age 18 by the close of the calendar year in which the account is created, and (2) has been issued a social security number. An election to treat an account as a Trump account must be made, either by Treasury or by someone else.

Contributions. Trump accounts can be funded starting July 4, 2026. Contributions, which are not deductible, can be made in any calendar year before the year in which the beneficiary reaches age 18. For 2026 and 2027, the total amount that can be contributed to a Trump account is, generally, \$5,000. Starting in 2028, the contribution limit is adjusted for inflation. Unlike other IRAs, contributions to Trump accounts for any calendar year must be made during the calendar year. In other words, there is no ability to designate a contribution made early in 2027 as a contribution for 2026.

Under new §128, up to \$2,500 in contributions by an employer to a Trump account for the benefit of an employee or an employee's dependent are not included in the employee's gross income. The \$2,500 limit adjusts for inflation starting in 2028.

The OBBB Act also provides for a "contribution pilot program" under which the federal government will indirectly fund the first \$1,000 placed into a Trump account for a child born in 2025, 2026, 2027, or 2028. Rather than fund a new Trump account directly, new §6434 treats the first \$1,000 placed into a Trump account by an individual as a refundable payment of income tax. Thus, the government's \$1,000 contribution comes in the form of a \$1,000 credit against the federal income tax liability of the contributing individual. The \$1,000 indirect contribution does not count against the \$5,000 contribution limit in play for 2026 or 2027 (or the inflation-adjusted limits for 2028 and later). The OBBB Act sets aside \$410 billion to remain available through 2034 to carry out this pilot program.

Rollovers. The funds from a Trump account can be rolled over into a new Trump account for the same beneficiary, but because a child can only be the beneficiary of a single Trump account, all funds from the old account must roll over into the new account. Qualified rollovers are not treated as contributions and do not give rise to federal income tax consequences.

Investments. Until the start of the calendar year in which the beneficiary reaches age 18, Trump account funds can only be held in "eligible investments," a term defined in §530A(b)(3) as, generally, a mutual fund or exchange traded fund that tracks the S&P 500 or any other index comprised of equity investments in "primarily United States companies," provided the index is not industry- or sector-specific. Further, the fund must not charge annual fees and expenses in excess of 0.1 percent of the fund's balance.

Distributions. Generally, no distributions are allowed until the start of the calendar year in which the beneficiary reaches age 18. Once the beneficiary turns 18, a Trump account is treated like an ordinary IRA. This means, for instance, that withdrawals will be treated as ordinary income to the beneficiary, and withdrawals taken before the beneficiary reaches age 59.5 may incur a 10-percent penalty. Certain early withdrawals, however, like those for a first-time home purchase, for qualified educational expenses, or for certain medical expenses, are not subject to the early withdrawal penalty even though they remain taxable as ordinary income.

ABLE Account Rollovers. A Trump account can also distribute funds to an ABLE account established for the benefit of the Trump account beneficiary without tax consequence, provided the rollover happens during the calendar year in which the beneficiary reaches age 17.

Account Beneficiary's Death. If the beneficiary of a Trump account dies before reaching age 18, the account ceases to be a Trump account and taxable amounts in the account are included on the beneficiary's final federal income tax return. If someone other than the beneficiary's estate acquires the beneficiary's interest in the Trump account upon the

beneficiary's death, the taxable amounts are included in that person's gross income for the taxable year which includes the beneficiary's date of death.

U. Adoption Credit

Section 23 offers a credit for "qualified adoption expenses" paid or incurred by individual taxpayers. The credit is generally claimed in the year in which the adoption is finalized. See §23(a)(2)(A). Traditionally, the credit was nonrefundable, meaning that if the credit amount exceeded a taxpayer's total liability for tax, the credit would reduce the taxpayer's liability to zero but the excess credit would not be refunded to the taxpayer. Instead, the excess credit would carry over and be added to other credit amounts claimed under §23 for up to five succeeding taxable years. See §23(c). But under the OBBB Act, up to \$5,000 of the credit is refundable, starting in 2025. To the extent the taxpayer still has unused credit, the normal carryover rule will apply. This refundable feature is expected to cost the fisc over \$2.3 billion in lost revenues over 10 years, according to the Joint Committee on Taxation.

V. Child and Dependent Care Credit

Section 21 offers a credit equal to a stated percentage of a taxpayer's "employment-related expenses" in providing the principal place of abode for certain dependents and incapacitated spouses. Under current law, the amount of the credit varies from 20 percent to 35 percent of such expenses. (The higher one's adjusted gross income gets, the lower the applicable percentage, although the applicable percentage never gets lower than 20 percent.) Specifically, §21(a)(2) provides that the credit decreases by 1 percent for each \$2,000 or fraction thereof increase in adjusted gross income above \$15,000. In any case, under §21(c), the total amount of the credit cannot exceed \$3,000 (\$6,000 if the taxpayer has two or more dependents for the year). Furthermore, because the credit is designed to assist those taxpayers who need to hire caretakers while away at work, §21(d) provides that the amount of the credit generally cannot exceed the taxpayer's earned income for the year.

Starting in 2026, however, the credit is enhanced. The OBBB Act increases the credit to anywhere from 35 percent to 50 percent of employment-related expenses. The reduction under §21(a)(2) for taxpayers with adjusted gross incomes over \$15,000 still applies, but as of 2026 there is another limit: for every \$2,000 (or fraction thereof) by which a taxpayer's adjusted gross income exceeds \$75,000 (\$150,000 for joint return filers), the credit is further reduced by 1 percent, but in no event less than 20 percent total. According to the Joint Committee on Taxation, this increase in percentage of creditable expenses is expected to cost over \$9.2 billion in revenue over the next 10 years.

W. Provisions Related to School Choice Programs

School choice programs get a boost starting in 2027, when new §§25F and 139K take effect. Section 25F creates a dollar-for-dollar nonrefundable credit of up to \$1,700 for cash contributions to "scholarship granting organizations" that grant elementary and secondary

education scholarships to students living in households with an income not more than 300 percent of the median gross income in the local area. The amount of the §25F credit will be reduced by any amount allowed to the taxpayer as a credit on any state income tax return. Further, any credit allowed under §25F cannot be claimed as a charitable contribution under §170. Although the credit is nonrefundable, the statute contains a carryover mechanism so that any unused credit from one year can carry over to the next taxable year.

The benefits are not limited exclusively to donors. New §139K excludes from gross income any amounts provided to the taxpayer or to the taxpayer's dependent pursuant to a grant from a scholarship granting organization. There is no dollar limitation or expiration date associated with the exclusion.

The combined credit for donors and exclusion for recipients is expected to cost over \$25.9 billion in foregone revenue over the next 10 years, according to the Joint Committee on Taxation.

X. Exclusion for Employer Payment of Student Loans

Section 127 generally allows an employee to exclude from gross income up to \$5,250 of "educational assistance" furnished by an employer. Section 127(c)(1)(B) provides that payments made by an employer on an employee's qualified education loan are treated as excludable "educational assistance," but that rule was scheduled to sunset at the end of 2025. The OBBB Act makes the rule permanent. It also contains a mechanism for adjusting the \$5,250 exclusion cap for inflation starting in 2027. These measures are expected to sacrifice over \$11.2 billion in federal revenues over the next 10 years.

Y. Section 529 Plan Withdrawals for Elementary and Secondary Schooling

Distributions from "qualified tuition programs" (also known as "§529 plans") are not included in gross income if used to pay for "qualified higher education expenses." The 2017 Act expanded the definition of "qualified higher education expenses" to include tuition expenses at "an elementary or secondary public, private, or religious school." The OBBB Act clarifies that this expanded definition includes tuition, curricular materials, books, instructional materials, online educational materials, standardized test fees, dual enrollment fees, educational therapy fees, and even costs for tutoring by unrelated persons.

The 2017 Act provided that the maximum amount that may be distributed tax-free for elementary and secondary school tuition or for homeschooling expenses is \$10,000 per child (not \$10,000 per account); distributions in excess of that amount are taxable under the normal rules of §529. The OBBB Act increases this limitation of \$20,000 per child starting in 2026. The projected revenue cost of these measures is \$997 million over 10 years.

Z. Excise Tax on Certain Private Colleges and Universities.

Although this particular change does not directly affect individuals, it affects college education and is thus included here. The 2017 Act imposed on certain private colleges and universities an excise tax equal to 1.4 percent of the school's net investment income. The excise tax only applies to tax-exempt private schools with: (1) at least 500 tuition-paying full-time equivalent students (more than half of whom are located in the United States); and (2) aggregate endowments of at least \$500,000 per student.

Starting in 2026, the tax rates change. The tax remains at 1.4 percent of a school's net investment income where the aggregate endowments are at least \$500,000 per student but not more than \$750,000 per student. The rate is 4 percent for institutions with aggregate endowments of more than \$750,000 per student but not more than \$2 million per student, and the rate balloons to 8 percent for institutions with aggregate endowments of more than \$2 million per student. The OBBB Act also changes the threshold number of students for the excise tax to apply: starting in 2026, the tax only applies to private colleges and universities with at least 3,000 tuition-paying full-time equivalent students (more than half of whom are located in the United States).

The increase in the excise tax rates is expected to raise \$761 million in new revenue over the next 10 years. As adjusted by the OBBB Act, few private colleges and universities will face liability for tax, according to [one ranking](#):

<u>Endowment Per Student</u>	<u>Number of Colleges/Universities</u>	<u>New Tax Rate</u>
More than \$2 million	5	8.0%
More than \$750,000	29	7.0%
More than \$500,000	13	1.4%

III. PROVISIONS AFFECTING SMALL BUSINESSES AND THEIR OWNERS

A. Section 179 Expensing

Prior to 2018, a taxpayer (other than an estate or trust) generally could elect to expense the first \$500,000 of so-called “§179 property” placed in service during the taxable year, but that amount was reduced by the amount by which all such property placed in service during the year exceeded \$2 million. Both of those numbers, however, were adjusted for post-2015 inflation. “Section 179” property, generally, is depreciable tangible personal property (or certain computer software) acquired by purchase for use in the active conduct of a trade or business.

The 2017 Act increased the annual cap from \$500,000 to \$1 million and increased the phaseout threshold from \$2 million to \$2.5 million. Both numbers adjusted for post-2018 inflation. In 2024, for example, the dollar limit on the §179 election was \$1,220,000 and the phaseout threshold was \$3,050,000.

The OBBB Act resets both figures, effective for taxable years beginning in 2025. For 2025, the dollar limit is \$2.5 million and the phaseout threshold is \$4 million. These numbers will still be adjusted inflation going forward. The Joint Committee on Taxation estimates that the bump in the §179 election amount will cost over \$24.8 billion in foregone revenue over the next 10 years.

B. Expensing of Depreciable Property

Prior law allowed a bonus depreciation deduction equal to 50 percent of the adjusted basis of “qualified property” (generally, new property with a recovery period of not more than 20 years and certain improvements made to other property) in the year the property was placed in service. For this purpose, the property’s adjusted basis is determined after the elective application of §179 but before the application of the regular depreciation rules described in §168(a).

The 2017 Act generally increased the bonus depreciation deduction for qualified property, as shown in the following table:

<u>Year(s)</u>	<u>Applicable Percentage of Adjusted Basis</u>
2018 – 2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027 and later	0%

The OBBB Act allows a permanent bonus depreciation deduction equal to 100 percent of the adjusted basis of qualified property, effective for property acquired after January 19, 2025. This means taxpayers can simply elect to expense (i.e., deduct) the entire cost of qualified property acquired after January 19, 2025, all in the year of acquisition. The depreciation rules under §§167 and 168 will only come into play for taxpayers who affirmatively elect out of the application of bonus depreciation under §168(k) and for taxpayers holding depreciable property to which §168(k) does not apply. Revival of 100-percent expensing comes with a hefty price tag: over \$362.6 billion over 10 years, according to the Joint Committee on Taxation.

C. Expensing of Qualified Production Property

The OBBB Act adds §168(n), which allows a deduction equal to 100 percent of the adjusted basis of “qualified production property” (“QPP”) to electing taxpayers. Effectively the provision allows for immediate expensing of costs of constructing manufacturing facilities rather than depreciating such construction costs over 39 years.

Section 168(n)(2)(A) defines QPP as any nonresidential real property that meets the following five requirements: (1) it is used by the taxpayer as an integral part of a “qualified production activity” (defined in §168(n)(2)(D) and (F) as the manufacturing, production, or refining of tangible personal property other than food or beverage in a restaurant); (2) it is placed in service in the United States or in a possession of the United States; (3) the original use of the property commences with the taxpayer; (4) construction of the property begins after January 19, 2025, and before 2029; and (5) the property is placed in service before 2031. Under §168(n)(2)(C), QPP does not include property used for “offices, administrative spaces, 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.”

If the property ceases to be used as QPP at any time during the 10-year period after it is placed in service, the property will be deemed to have been disposed of at an amount equal to its recomputed basis as computed under §1245, effectively requiring the taxpayer to recognize ordinary income equal to the amount expensed under §168(n).

The Joint Committee on Taxation predicts the new §168(n) expensing election will reduce revenues by over \$141.3 billion over 10 years.

D. Qualified Small Business Stock

As originally enacted, §1202(a)(1) generally excludes half of the gain from the sale or exchange of qualified small business stock held for more than 5 years. Under §1(h), the other half of such gain is subject to a preferential tax rate of 28 percent. In effect, then, the entirety of such gain is taxed at a rate of 14 percent (half of the gain is taxed at 28 percent, half of the gain is not taxed at all).

Over the last 16 years, however, Congress has tinkered with the exclusion amount, at every turn making the exclusion more favorable. In the American Recovery and Reinvestment Act of 2009, the exclusion increased to 75 percent of the gain from the sale or exchange of qualified small business stock acquired after February 17, 2009, and before January 1, 2011. (Where the special 75 percent exclusion applies, the effective rate of tax on the entire gain is only 7 percent.) The Creating Small Business Jobs Act of 2010 then went one step further: qualified small business stock acquired from September 28, 2010, through December 31, 2010, was eligible for a 100-percent exclusion. The Tax Relief and Unemployment Insurance Reauthorization and Job Creation Act of 2010 extended the 100-percent exclusion for stock acquired through 2012, and the American Taxpayer Relief Act of 2012 further extended the 100-percent exclusion to stock acquired in 2013. It was extended again through 2014 by the Tax Increase Prevention Act of 2014. Finally, the Consolidated Appropriations Act of 2016 made the 100-percent exclusion permanent for stock acquired after September 27, 2010.

The OBBB Act again modifies the exclusion amount, effective for qualified small business stock acquired on or after July 4, 2025. Under a new phased increase exclusion, a taxpayer need

only hold §1202 stock for 3 years in order to qualify for a partial exclusion. The exclusion percentage grows to 75 percent where the stock is held for 4 years, and the 100-percent exclusion still applies where the holding period reaches at least 5 years. The following table sets for the applicable exclusion amount based on when qualified small business stock was acquired:

For qualified small business stock acquired:	The amount of gain excluded under §1202 is:
On or before February 17, 2009	50% if held 5+ years
After February 17, 2009, but before September 28, 2010	75% if held 5+ years
After September 27, 2010, but before July 4, 2025	100% if held 5+ years
On or after July 4, 2025	50% if held 3 years 75% if held 4 years 100% if held 5+ years

As before, only C corporation stock can claim this benefit. Specifically, “qualified small business stock” is any stock in a domestic C corporation originally issued after August 10, 1993, but only if such stock was acquired by the shareholder either as compensation for services provided to the corporation or in exchange for money or other non-stock property, and only if the corporation is a qualified small business. Section 1202(d)(1) used to define a “qualified small business” as one with aggregate gross assets of \$50 million or less at all times after August 10, 1993, and before the date of issuance. The OBBB Act adjusts the cap on aggregate gross assets to \$75 million or less (adjusted for inflation as of 2027), effective for stock issued after July 4, 2025.

Section 1202(b)(1) traditionally limited the total amount of gain to which the exclusion could apply to \$10 million per issuer (or, if more, 10 times the total adjusted basis of all qualified small business stock of the corporation sold by the taxpayer during the taxable year). The OBBB Act increases this limit to \$15 million per issuer, effective for stock issued by the corporation and acquired by the taxpayer after July 4, 2025. The \$15 million limit is to be adjusted for inflation starting in 2027.

Combined, the modifications to §1202 are expected to cost over \$17.1 billion in revenue over the next 10 years.

E. Research and Experimental Expenditures

Section 174 allows taxpayers to amortize the cost of research or experimental expenditures paid or incurred in connection with a trade or business ratably over a 5-year period beginning with the midpoint of the taxable year in which such amounts are paid or incurred. The amortization period for expenditures attributable to “foreign research” (research conducted outside the United States, Puerto Rico, or United States possessions) is 15 years.

While software development costs are expressly within the scope of this rule, costs to acquire or improve land and exploration costs in connection with any deposit of oil, gas, ore, or other mineral are not eligible for amortization.

The OBBB Act essentially replaces this amortization rule with the enactment of new §174A, effective in 2025. The new rule allows an immediate deduction for any domestic research or experimental expenditures paid or incurred during a taxable year. Alternatively, a taxpayer may elect to amortize such costs ratably over a 60-month period. The new rule has the same scope as §174, meaning it does not apply to costs to acquire or improve land, nor to exploration costs in connection with any deposit of oil, gas, ore, or other mineral. Like §174, §174A treats amounts paid or incurred in connection with software development as research or experimental expenditures.

Certain small businesses are eligible for a retroactive application of the new regime to include expenditures from 2022, 2023, and 2024. In addition, a taxpayer may elect to deduct unamortized domestic research or experimental expenditures from 2022, 2023, and 2024 in 2025 (or, at the taxpayer's option, ratably over 2025 and 2026).

Going forward, §174 applies only to foreign research and experimental expenditures, still with a 15-year amortization period. Further, the research credit under §41 is revised to limit its scope to domestic research expenditures. The full expensing of domestic research and experimental expenditures is expected to cost over \$141.4 billion in foregone revenue over the next 10 years, according to the Joint Committee on Taxation.

F. Limit on Deduction for Business Interest

Since 2018, the deduction for “business interest” in the case of a taxpayer with average annual gross receipts of \$25 million or more over the past 3 years has been limited to an amount equal to the sum of: (1) the taxpayer’s “business interest income;” plus (2) 30 percent of the taxpayer’s “adjusted taxable income;” plus (3) where applicable, the taxpayer’s “floor plan financing interest.” Any business interest not allowed as a deduction under this rule carries over to the next taxable year. In the case of partnerships, the limit is applied at the entity level, and each partner will have a share of the entity’s adjusted taxable income.

Section 163(j)(5) defines “business interest” as any interest paid or accrued on debt properly allocable to a trade or business. The term does not include “investment interest,” which has its own cap under §163(d). Section 163(j)(6) defines “business interest income” as the amount of interest includible in the taxpayer’s gross income for the year that is properly allocable to a trade or business of the taxpayer. Here too, investment interest income expressly does not count as business interest income.

Section 163(j)(8) defines adjusted taxable income as the taxpayer’s taxable income computed without regard to six items: (1) items not properly allocable to a trade or business; (2) business interest; (3) business interest income; (4) any net operating loss deduction; (5) any

deduction for qualified business income under new §199A; and (6) deductions for depreciation, amortization, or depletion. Originally, the sixth item (depreciation, amortization, and depletion deductions) only applied for the years 2018 through 2021. Under the OBBB Act, however, this item is reincluded and applies to taxable years beginning after 2024.

Section 163(j)(9) generally defines floor plan financing interest as interest paid on debt used to finance the acquisition of motor vehicles (defined to include both boats and farm equipment) held for sale or lease and which is secured by such vehicles. The OBBB Act now makes clear that “any trailer or camper which is 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” also counts as a “motor vehicle.”

These tweaks may sound minor, but the Joint Committee on Taxation projects that the modifications will cost over \$60.5 billion in foregone revenue over the next 10 years.

G. Business Meals on Fishing Boats and at Fish Processing Facilities

The 2017 Act introduced §274(o), a provision that takes effect in 2026. That rule disallows a deduction by any employer for any the costs of operating an eating facility on the employer’s business premises, as well as the cost of any meal furnished on the employer’s business premises that is excluded from an employee’s gross income under §119.

The OBBB Act carves out certain exceptions from this rule, including exceptions for food and beverage costs required by federal law to be provided to crew members of a commercial vessel or provided on an offshore oil or gas platform or offshore drilling rig. It also creates an exception for food and beverage provided on a fishing vessel or at a fish processing facility that is “located in the United States north of 50 degrees north latitude” and not within a metropolitan statistical area. In effect, then, employers providing eating facilities or meals to employees of fishing vessels and certain fish processing facilities will be able to deduct the cost of furnishing meals in 2026 and beyond.

The Joint Committee on Taxation projects that this narrow exception will cost \$948 million in foregone revenue over 10 years. It would seem to be of particular benefit to Alaskans, where fishing and fish processing is a major industry (not to mention the only state north of 50 degrees north latitude). Perhaps Alaska Senator Lisa Murkowski—a Republican holdout in the fight to pass the OBBB Act—can explain why the final legislation contains this provision.

H. Employer-Provided Child Care Credit

Current law allows an employer to deduct 25 percent of “qualified child care expenditures” paid or incurred during the taxable year, with a maximum credit of \$150,000. The OBBB Act provides that, starting in 2026, the amount of the credit will increase to 40 percent of qualified child care expenditures, with a maximum credit amount of \$500,000 (adjusted for inflation after 2026). Moreover, the amount of the credit for an “eligible small

business” is 50 percent of qualified child care expenditures, with a maximum credit amount of \$600,000 (also adjusted for inflation after 2026). An eligible small business is one that has average annual gross receipts of less than \$25 million for the past five taxable years.

Qualified child care expenses are costs to purchase, build, rehabilitate, or expand property used or to be used as a child care facility and not as the principal residence of any employee. It includes costs to operate the facility, including staff training. It also includes costs paid to an existing child care facility to provide child care services to the employer’s employees.

I. Opportunity Zones

The 2017 Act introduced §§1400Z-1 and 1400Z-2, special rules for gains invested in specially designated low-income communities known as “opportunity zones.” Under the 2017 Act, a taxpayer who, within six months of realizing a gain from the sale or exchange of any property to an unrelated person, invested such gain in a qualified opportunity fund (a fund that would then invest in development or business projects in designated opportunity zones) would receive three key federal income tax benefits. First, the gain from the sale would be deferred until 2026 (or, if earlier, the date on which the taxpayer sold or exchanged the investment in the qualified opportunity fund). Second, the deferred gain would be reduced by 10 percent if the taxpayer remained invested in the qualified opportunity fund for at least 5 years (15 percent if the taxpayer remained invested in the fund for at least 10 years). Finally, if the taxpayer remained invested in the qualified opportunity fund for at least 10 years, any gain from the sale or disposition of the taxpayer’s investment in the fund would be excluded from gross income.

Opportunity zones were popular in 2018 and 2019, as taxpayers could maximize the period of deferral from their original gains. As 2026 neared, however, opportunity zones became less attractive to investors. Hoping to make opportunity zone investments attractive once again, the OBBB Act not only makes opportunity zones permanent but also provides for enhanced incentives to attract investors. First, gains invested in qualified opportunity funds starting in 2027 qualify for 5-year deferral in all cases, no matter when the investment occurs. Second, while the deferred gain will still be reduced by 10 percent if the taxpayer remains invested in the qualified opportunity fund for at least 5 years, the gain will be reduced by 30 percent in the case of a “qualified rural opportunity fund” (generally, a fund that devotes at least 90 percent of its assets to investments in opportunity zones in rural areas).

Because the rules do not take effect until 2027, there should be few new investments in opportunity zones in 2025 or 2026. The extended and expanded opportunity zone regime is expected to cost over \$40.9 billion over 10 years.

J. Qualified Farmland Property

Under new §1062, a taxpayer may elect to pay the “applicable net tax liability” attributable to any gain from the sale or exchange of “qualified farmland property” occurring

after July 4, 2025, in four equal annual installments starting with the due date for the tax return for the year in which the sale or exchange occurs. The “applicable net tax liability” is the excess of the taxpayer’s tax liability for the taxable year over what the tax liability would have been without regard to any gain recognized from the sale or exchange of qualified farmland property.

New §1062(d)(2) defines qualified farmland property as: (1) real property located in the United States, (2) that the taxpayer uses or leases for farming purposes during substantially all of the 10-year period ending on the date of the sale or exchange, and (3) which is subject to some legally enforceable restriction that prohibits the use of the property for anything other than a farm for at least 10 years after date of the sale or exchange. “Farm” and “farming purposes” have the same meanings here as they do for purposes of the special use valuation rules for federal wealth transfer tax purposes in §2032A, including animal farms, orchards, ranches, greenhouses, and other operations.

Payments are accelerated if the taxpayer dies or makes a late installment payment. In the case of corporations, payments are accelerated if the corporation liquidates or makes a late installment payment. The installment payment of taxes attributable to gains from qualified farmland property is projected to cost over \$7.2 billion in foregone revenue over 10 years.

K. Excess Business Losses of Individuals, Partnerships, and S Corporations

Introduced in the 2017 Act, §461(l) disallows a noncorporate taxpayer’s “excess business loss” for the taxable year and treats the disallowed loss as a net operating loss carryover to the next taxable year. “Excess business loss” is defined as the amount by which the taxpayer’s aggregate deductions attributable to all trades or businesses exceeds the sum of the taxpayer’s aggregate gross income attributable to all such trades or businesses plus \$250,000 (or \$500,000 in the case of joint filers). Both of these dollar amounts are adjusted for inflation. In 2025, the threshold amount is \$313,000 (\$626,000 for joint filers).

Originally, §461(l) was set to expire at the end of 2025. But legislation in 2020, 2021, and 2022 kept extending the sunset date. Prior to the OBBB Act, §461(l) would have expired at the end of 2028. The OBBB Act makes the disallowance permanent. This is expected to raise over \$18.4 billion in revenue over the next 10 years.

L. Disguised Payments for Services Provided by a Partner to a Partnership

Section 707(a)(2)(A) gives the IRS the power to recharacterize certain distributions from a partnership to a partner who performs services for the partnership as transaction between the partnership and one who is not a partner as determined “under regulations prescribed by the Secretary.” The IRS has earmarked a regulation for this purpose, but Regulation 1.707-2 has been sitting dormant (or “reserved”) for decades. The lack of regulations has led some to question whether the rule is really effective. If a Code provision provides for a rule to be issued “under regulations prescribed by the Secretary” but the IRS does not issue any regulations, does the Code provision still have effect?

The OBBB Act removes any doubt, changing “Under regulations prescribed by the Secretary” to “Except as provided by the Secretary.” This ensures that §707(a)(2)(A) applies no matter whether the IRS ever issues any regulations.

The OBBB Act makes clear too that the change should not be constructed “to create any inference with respect to the proper treatment under section 707(a) of the Internal Revenue Code of 1986 with respect to payments from a partnership to a partner for services performed, or property transferred, on or before the date of the enactment of this Act.” Though seemingly of minor import, this clarification is expected to generate over \$12.4 billion in added revenues over the next 10 years.