Review and Analysis of Crucial OBBBA Changes

COB2/26/F1

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Changes to the Standard Deduction

- OBBBA made the increased standard deduction created by the TCJA permanent
- For taxable years beginning after 2024, OBBBA increased the standard deduction to:
  - $15,750 for a single filer,
  - $23,625 for a head of household, and
  - $31,500 for married individuals filing jointly and adjusted for inflation thereafter
- Some tax commentators estimate that well over 90% of individual taxpayers will use the standard deduction in 2025
- The extra standard deduction for individuals age 65 or older is $2,000 for single filers over age 64 and $1,600 for each qualifying spouse that files a joint return for 2025

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Other Individual Tax Changes

- If both spouses are age 65 or older, they can claim a $3,200 deduction on top of the regular $31,500 deduction in 2025, for a total of $33,700
- Additionally, OBBBA made the temporary suspension of personal exemptions, initially set to expire at the end of 2025, permanent
- The senior deduction is available to taxpayers who itemize and to those who do not itemize deductions on their returns. (See Schedule 1-A).
- MAGI is equal to the adjusted gross income reported on the tax return, plus any foreign earned income or housing excluded from taxation, plus income excluded from taxation for residents of Guam, American Samoa, the Northern Mariana Islands, or Puerto Rico

The Senior Deduction

- OBBBA provides for a deduction for seniors 65 years of age or older of $6,000 for each qualified individual for taxable years 2025 through 2028 — the senior deduction
- A qualified individual is a taxpayer who has attained age 65 (and in the case of a joint return, the taxpayer's spouse, if such spouse has attained age 65)
- A taxpayer can claim the senior deduction regardless of whether he or she itemizes or claims the standard deduction and regardless of whether he or she is collecting Social Security
- To qualify for the additional deduction, a taxpayer must attain age 65 on or before the last day of the taxable year
- The senior deduction is per eligible individual (i.e., $12,000 total for a married couple where both spouses qualify)
- The senior deduction is in addition to both the regular standard deduction and the extra standard deduction for individuals age 65 and older

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How and When a Taxpayer May Take the Senior Deduction

- The senior deduction is available to taxpayers who itemize and to those who do not itemize deductions on their returns
- The senior deduction begins to phase out when the taxpayer's MAGI exceeds $75,000 ($150,000 in the case of a joint return)
- The senior deduction is reduced by 6 cents for every dollar above the threshold
- The phase-out is complete at $175,000 of MAGI for single filers and $250,000 for joint filers
- There is no requirement to elect to take Social Security distributions in order to claim the senior deduction
- There is no change in the taxation of Social Security benefits
- No senior deduction is allowed unless the qualified individual includes his or her Social Security Number (SSN) on the tax return for the tax year, and if married, files a joint return
- The SSN must be issued to a U.S. citizen or pursuant to a provision of the Social Security Act relating to lawful U.S. employment

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How and When a Taxpayer May Take the Senior Deduction

- Taxpayers age 65 or older already are eligible for an additional standard deduction on top of the basic standard deduction
- The following examples illustrate how large the three deductions can be on a combined basis for 2025:
  - Single Filer
    - An unmarried individual age 65 or older can potentially deduct a total of up to $23,750: $15,750 for the basic standard deduction, plus $2,000 for the additional standard deduction for a senior single filer, plus $6,000 for the senior deduction
  - Joint Filer
    - If both members of a married couple are age 65 or older, they can potentially deduct a total of up to $46,700: $31,500 for the joint filer basic standard deductions, plus two times $1,600 for the additional standard deductions for senior joint filers, plus two times $6,000 for the senior deduction

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Deduct Interest Paid on Auto Loans

- For years 2025 through 2028, OBBBA provides a deduction of up to $10,000 for qualified passenger vehicle loan interest during a given taxable year which begins to phase out when the taxpayer's MAGI exceeds $100,000 ($200,000 in the case of a joint return)
- Qualified passenger vehicle loan interest means any interest that is paid or accrued during the tax year on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an applicable passenger vehicle for personal use
- The deduction is available for both itemizing and non-itemizing taxpayers
- The IRS will provide transition relief for tax year 2025 for interest recipients subject to the new reporting requirements

Deduct Interest Paid on Auto Loans

- The loan must be a first position lien* and backed by the auto itself
- The auto must be for personal use, not for business or commercial use
- Leases are not included
- The lender must report the amount of interest paid each year directly to the IRS

- *The first position is important because it has the first claim on the property. If there is ever a situation where the property needs to be sold, the holder of the first position receives payment first

Eligible Vehicles

- An applicable passenger vehicle means any vehicle:
  - (1) The original use of which commences with the taxpayer (i.e., the vehicle is brand new);
  - (2) That is manufactured primarily for use on public streets, roads, and highways;
  - (3) That has at least two wheels;
  - (4) That is a car, minivan, van, sport utility vehicle, pickup truck, or motorcycle;
  - (5) That is treated as a motor vehicle for purposes of Title II of the Clean Air Act;
  - (6) That has a gross vehicle weight rating of less than 14,000 pounds; and
  - (7) The final assembly of which occurs in the United States
- A refinanced loan can qualify for the deduction if the refinanced loan remains a first lien on the vehicle and the new loan balance does not exceed what was left on the original

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Ineligible Vehicles

- The purchase involves a fleet of vehicles
- The car is used for business
- The vehicle has a salvage title or is purchased for scrap/parts
- Financing is provided by related parties
- The vehicle is leased instead of purchased

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Final Assembly in the United States

- For purposes of the final assembly requirement, final assembly is the process by which a manufacturer produces a vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle
- The location of final assembly is listed on the vehicle information label attached to each vehicle on a dealer's premises
- Alternatively, taxpayers may rely on the vehicle’s plant of manufacture as reported in the vehicle identification number (VIN) to determine whether a vehicle has undergone final assembly in the United States

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Final Assembly in the United States

- The VIN Decoder website* for the National Highway Traffic Safety Administration (NHTSA) provides plant of manufacture information
- Taxpayers can follow the instructions on that website to determine if the vehicle’s plant of manufacture was located in the United States
- The deduction is allowed whether or not a taxpayer itemizes deductions and is in effect for taxable years 2025 through 2028
- OBBBA includes information return and reporting requirements for a person who receives $600 or more in a calendar year in interest that the payor may deduct

- *https://vpic.nhtsa.dot.gov/decoder/

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Final Assembly in the United States

- The reporting requirement applies to loans originated after December 31, 2024, and the first borrower statements, covering 2025 interest, will be due by January 31, 2026
- The information that must be reported includes:
  - The name and address of the individual from whom the interest was received;
  - The amount of interest received for the calendar year;
  - The amount of outstanding principal on the specified passenger vehicle loan as of the beginning of the calendar year;
  - The date of origination of the loan;
  - The vehicle year, make, model, and VIN; and
  - Any other information that the IRS may ask for
- *https://vpic.nhtsa.dot.gov/decoder/

Estate Tax Changes and the Portability Option

- Under the TCJA, the estate and gift tax exemption is $13,990,000 for 2025
- OBBBA permanently increased the exemption amount to $15 million ($30 million for married couples) for gifts made and decedents dying in 2026 and beyond
- This exclusion amount also applies to the federal gift tax and the generation-skipping transfer tax
- As a result of the OBBBA change, there is an additional $1.01 million available for gifting on 1/1/2026 per person
- For any taxable transfers in excess of the exclusion amount, the tax rate remains the same. The excess value of assets will be taxed at a rate of 40%.
- The exemption amount is indexed for inflation for years after 2026

Estate Tax Changes and Gifting Strategies

- The increase in the exemption presents planning options including using the following lifetime gifting strategies:
  - Spousal Lifetime Access Trusts (SLATs)
  - Grantor Retained Annuity Trusts (GRATs)
  - Charitable Lead/Remainder Trusts (CLTs/CRTs)
  - Outright gifts or gifts in trust for children and future generations (dynasty trusts)
  - Gifts and/or sales to intentionally defective grantor trusts (IDGTs)

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Estate Tax Changes and the Portability Option

- Trusts established under prior tax law such as credit shelter, bypass, or marital trusts may need to be revised for both estate and income tax efficiency in light of the OBBBA higher exemption amounts but remain useful as tax strategies
- Residents of states imposing estate taxes with exemption thresholds significantly lower than the federal amount may want to engage in state-specific estate planning even though the estate is no longer subject to federal estate tax
- After the OBBBA spousal portability remains intact
- Thus, a surviving spouse may use any unused portion of their spouse’s exemption, maintaining the ability to transfer up to $30 million tax free

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Consider Making a Portability Election

- A surviving spouse may use their deceased spouse's unused estate and gift tax exemption (deceased spousal unused exclusion (DSUE))
- Portability allows a married couple to use their combined exemptions — under OBBBA changes, this would result in an exclusion of up to $30 million
- Before portability became a permanent part of the tax code with the American Taxpayer Relief Act of 2012, any unused exemption from the first spouse to die was permanently lost
- Currently, the surviving spouse can elect to add the DSUE amount to their own exemption

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Consider Making a Portability Election

- The portability election is not automatic and requires action by the executor of the deceased's spouse's estate
- The portability election is made by filing a complete Form 706, the deadline for which is 9 months after the decedent's date of death
- An automatic 6-month extension is available by filing Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, on or before the original due date

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Consider Making a Portability Election

- Under Rev. Proc. 2022-32, the executor makes a portability election by filing on behalf of the estate a complete and properly prepared Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the fifth anniversary of the decedent's date of death
- The executor must state at the top of the Form 706 that it is "filed pursuant to Rev. Proc. 2022-32 to elect portability under Sec. 2010(c)(5)(A)"

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Tax Consequence Associated With Investing in Opportunity Zones (OZs)

- The TCJA created the Opportunity Zone (OZ), a tax incentive and economic development tool that allows people to invest in distressed areas
- The purpose of OZs is to spur economic development and job creation in distressed communities by providing tax benefits to investors
- In accordance with Rev. Proc. 2018-16, state governors nominated eligible low-income census tracts based on economic indicators such as poverty and income levels
- These census tracts were then certified by the U.S. Treasury and retained their OZ designation through the duration of the program

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Tax Consequence Associated With Investing in Opportunity Zones (OZs)

- Following a nomination process conducted by state governors, the mayor of Washington, D.C., and governors of five U.S. territories, 8,764 communities were certified as qualified opportunity zones (QOZs)
- Congress designated each low-income community in Puerto Rico as a QOZ effective Dec. 22, 2017
- QOZs are located in IRS Notices 2018-48 and 2019-42
- There is also a map of the census tracts designated as QOZs

Benefits of Investing in OZs

- OZs offer tax benefits to investors who elect to temporarily defer tax on capital gains if they timely invest those gain amounts in a qualified opportunity fund (QOF)
- Investors can elect to temporarily defer tax on a capital gain if that gain is invested in a QOF within 180 days of realizing the gain
- Investors can defer tax on the invested gain amounts until there is an event that reduces or terminates the qualifying investment in the QOF (an inclusion event) or December 31, 2026, whichever is earlier
- The length of time the taxpayer holds the QOF investment determines the tax benefits they receive

Benefits of Investing in OZs

- If the investor held the QOF investment for at least 5 years, the basis of the QOF investment increased to 10% of the deferred gain
- If the investor held the QOF investment for at least 7 years, the basis of the QOF investment increased to 15% of the deferred gain
- If the investor held the investment in the QOF for at least 10 years, the investor was eligible to elect to adjust the basis of the QOF investment to its fair market value on the date that the QOF investment is sold or exchanged

Deferral of Eligible Gain

- Gains that may be deferred include both capital gains and qualified 1231 gains that would be recognized for federal income tax purposes before January 1, 2027, and that are not from a transaction with a related person
- To obtain deferral of gain, the taxpayer must timely invest the amount of the eligible gain in a QOF in exchange for an equity interest in the QOF
- Taxpayers can elect to defer the gain on their federal income tax return for the taxable year in which the gain would have been recognized if they had not deferred it
- Taxpayers may elect to defer part of or the whole gain

Investor Reporting Requirements on Form 8997

- A taxpayer who held a qualifying investment in a QOF at any point during the tax year must file Form 8997 with their timely filed federal tax return (including extensions)
- An inclusion event occurs if a taxpayer:
  - Sold or transferred his or her QOF investment;
  - If a taxpayer received a distribution from the QOF;
  - If a taxpayer declared his or her QOF interest worthless;
  - If the QOF ceased to be a QOF; or
  - If the taxpayer or the QOF engaged in certain other transactions
- Some transactions are excepted from being inclusion events
- See Regulations Section 1.1400Z2(b)-1(c) for a full list of inclusion events and exceptions
- Failure to file Form 8997 results in a rebuttable presumption of an inclusion event that terminates the qualifying investment in a QOF

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Investor Reporting Requirements on Form 8949 and Schedule D

- Taxpayers use Form 8949 to report the following:
  - The taxpayer's initial decision to defer capital gain by investing it in a QOF, and
  - Any disposition of an interest in a QOF
- Taxpayers must file Form 8949 for the first year and the last year of a QOF investment but are not required to file Form 8949 for years in which they merely hold a QOF investment
- In addition to reporting QOF investments on Forms 8997 and 8949, the taxpayer reports the QOF disposition by checking a box on Schedule D
- The taxpayer will attach Forms 8997 and 8949 to his or her return and carry relevant amounts from them over to Schedule D
- Taxpayers also must use Schedule D to report any capital gain that they are deferring when they make a QOF investment

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Opportunity Zone Investments

- Opportunity Zone investments must be made through qualified opportunity funds (QOFs), which are specially created investment vehicles that invest at least 90% of their assets in opportunity zone property, which may be qualified opportunity zone business property (QOZBP) or a partnership or corporate interest in a qualified opportunity zone business (QOZB) that was created for the purpose of holding QOZBP
- QOZBP is tangible property that is:
  - Used in a QOF's trade or business
  - Purchased after December 31, 2017
  - Originally used or substantially improved by the QOF
  - Substantially used in a QOZ during substantially all of the QOF's holding period

Opportunity Zone Investments

- Tangible property used in a QOF's trade or business is considered substantially improved if investments are made to the property during the 30 months following the property's acquisition, and those investments exceed the property's adjusted basis at the beginning of the 30-month period (i.e., the investments equal at least 100% of the property's basis after 30 months)
- For real estate investments, only the value of the building, and not the land, must be substantially improved

Qualified Opportunity Funds (QOF)

- A QOF is an investment vehicle that files either a partnership or corporate federal income tax return and is organized for the purpose of investing in QOZ property
- To become a QOF, an eligible corporation or partnership self-certifies by filing Form 8996 with its timely filed federal income tax return (including extensions)
- The entity that elected or is electing to be a QOF must file a completed Form 8996 annually with their timely filed federal tax return (including extensions) to report that the QOF meets the 90% investment standard or to figure the penalty if it fails to meet the investment standard
- This is required even in years the corporation or partnership has no taxable income
- An LLC that chooses to be treated either as a partnership or corporation for federal income tax purposes can organize as a QOF

90% Rule

- The 90% asset test requires that a QOF must hold at least 90% of its assets in qualified opportunity zone property (QOZP) to maintain its tax-advantaged status
- A QOF must hold at least 90% of its assets, measured on two annual testing dates, in qualified opportunity zone property, or pay a monthly penalty for every month it is out of compliance
- This rule ensures that QOFs actively invest in and improve distressed communities rather than just hold cash or non-qualifying assets
- The 90% asset test is conducted typically on the last day of the first 6-month period of the QOF's taxable year and on the last day of the taxable year and is reported on Form 8996
- If a QOF fails to meet the 90% investment standard, it must pay a penalty for each month it remains noncompliant

QOZ Property

- QOZ property is a QOF's qualifying ownership interest in a corporation or partnership that operates a QOZ business in a QOZ or certain tangible property of the QOF that is used in a business in the QOZ
- To be a qualifying ownership interest in a corporation or partnership:
  - The interest must be acquired after December 31, 2017, solely in exchange for cash;
  - The corporation or partnership must be a QOZ business; and
  - For 90% of the holding period of that interest, the corporation or partnership was a QOZ business

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QOZ Business Property

- QOZ business property is tangible property that a QOF acquired by purchase after 2017 and uses in a trade or business and:
  - The original use of the property in the QOZ commenced with the QOF or QOZ business; or
  - The property was substantially improved by the QOF or QOZ business; and
  - During 90% of the time the QOF or QOZ business held the property, substantially all (generally at least 70%) of the use of the property was in a QOZ

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QOZ Business Property

- Leased property may also qualify as QOZ business property
- To qualify, the lease must be a market rate lease entered into after December 31, 2017

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QOZ Business

- Each taxable year, a QOZ business must earn at least 50% of its gross income from business activities within a QOZ
- The regulations provide 3 safe harbors that a business may use to meet the 50% test:
  - At least half of the aggregate hours of services received by the business were performed in a QOZ; or
  - At least half of the aggregate amounts that the business paid for services were for services performed in a QOZ; or
  - Necessary tangible property and necessary business functions to earn the income were located in a QOZ
- The QOZ program would have expired after December 31, 2026, had OBBBA not extended it permanently

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OBBBA Changes to QOZs

- OBBBA extended the QOZ program indefinitely
- Taxpayers who invest capital gains into a QOF on or after Jan. 1, 2027, will be able to take a 10% basis step up for investments held for at least 5 years
- Gains deferred will now be recognized on the 5th anniversary of the investment date
- OBBBA created a new category of fund for rural areas — the qualified rural opportunity fund (QROF), which provides for a 30% basis step-up for investments held at least 5 years
- Gains deferred will also be recognized on the 5th anniversary of the investment date

OBBBA Changes to QOZs

- After December 31, 2026, all gains that are not prematurely triggered through a sale or exchange of an investment in a QOF will benefit from a 10% basis increase
- OBBBA eliminated the additional 5% step-up which previously applied at the 7-year mark, capping the benefit at 10%
- OBBBA capped the holding of an investment at 30 years
- On the 30-year anniversary of an investment, the basis in the investment is stepped up to its fair value
- Any increase in value after the 30-year investment period is subject to tax

Qualified Rural Opportunity Fund (QROF)

- A qualified rural opportunity fund (QROF) is similar to a QOF, except the QOZ business (QOZB) in which the QROF invests must be comprised entirely of a rural area
- A QROF's 90% "good" asset test must be invested in a QOZ comprised entirely of a rural area
- A rural area is any area other than:
  - (1) A city or town with a population of greater than 50,000, and
  - (2) An urbanized area adjacent to a city or town with a population in excess of 50,000

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Qualified Rural Opportunity Fund (QROF)

- OBBBA substantially increased the tax benefits obtained by QROFs compared to those available to regular QOFs by providing:
  - a) A rolling 30% basis step-up after 5 years (compared to a 10% basis step-up for regular QOFs); and
  - b) A reduced substantial improvement requirement providing that only in excess of 50% of adjusted basis must be reinvested in property improvements compared to in excess of 100% of adjusted basis for regular QOFs
- OBBBA reduced the substantial improvement requirement for rural OZs from 100% to 50%

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OBBBA Provides for Rolling 10-year QOZ Designations

- State governors will propose new QOZs that will be certified by the secretary of the U.S. Department of the Treasury every 10 years
- The next designation will be on July 1, 2026
- After the IRS certifies the new zones, each census tract will remain a QOZ for 10 years beginning on Jan. 1 of the following year

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OZ Eligibility Criteria Tightened

- OBBBA narrowed the eligibility criteria for OZs by lowering the threshold for designating a low-income community
- OBBBA tightened the rules around which census tracts can qualify as QOZs
- Under pre-OBBBA rules, a census tract's eligibility to be part of the QOZ program was measured by reference to the New Markets Tax Credit definition of "low-income community," which generally required the census tract to have a poverty rate of at least 20% or that median family income not exceed 80% of the applicable state or metropolitan area median family income
- OBBBA decreased the percentage of area or statewide median income from 80% to 70%

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OZ Eligibility Criteria Tightened

- After December 31, 2026, tracts will qualify as QOZs only if median family income does not exceed 70% (rather than 80%) of the applicable state or metropolitan area median family income
- The alternative poverty rate test (20% or more) remains, but it disqualifies applicable census tracts if median family income exceeds 125% of applicable state or metropolitan area median family income
- The contiguous tract rule, which allowed a census tract contiguous to a "low-income community" to be designated as a QOZ census tract so long as its median family income did not exceed 125% of the low-income community to which the tract was adjacent, was repealed
- The blanket QOZ designation for all low-income communities in Puerto Rico was repealed, effective as of December 31, 2026

IRS Notice 2025-50

- Notice 2025-50 defined a "rural area" in OBBBA that would be available for investment as of January 1, 2027, and clarified that:
  - (1) The 2020 Decennial Census applies;
  - (2) An urbanized area is any area that is designated by the Census Bureau as an urban area; and
  - (3) Contiguous and adjacent means any areas that share a common boundary or at least one common point
- Under this definition, the Treasury and the IRS determined that 3,309 QOZ census tracts qualify as "rural areas," which are listed in the Appendix to the Notice
- The Notice applies to all tangible property located in 2018 QOZs that consist entirely of a rural area that has been, or is in the process of being, substantially improved
- Notice 2025-50 applies for any determination made on or after July 4, 2025

Full Expensing of Domestic R&E

- Under pre-OBBBA law, for taxable years beginning after December 31, 2021, taxpayers were required to capitalize and amortize specified research or experimental expenditures (R&E) ratably over a 5-year period or, in the case of expenditures attributable to research that is conducted outside of the United States, over a 15-year period, beginning with the midpoint of the taxable year in which those costs are paid or incurred

R&E Expenditures

- The term R&E generally includes all such costs incident to the development or improvement of a product
- R&E includes the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application
- Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product

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Incentives To Conduct R&E in the U.S.

- There are two incentives for a business to invest in research activities in the United States:
  - The ability to expense under the OBBBA rules or capitalize and amortize specified research or experimental expenditures over 5 years
  - The ability to claim an immediate credit for qualified research expenses
- Eligible research costs include those paid or incurred for research conducted by the taxpayer as well as research conducted on the taxpayer's behalf

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R&E Credit Versus R&E Deduction

- Section 41 provides a nonrefundable income tax credit for incremental R&D expenses
- The R&D tax credit is incremental in nature to encourage enlarged research efforts by companies that already may be engaged in some research activities
- Taxpayers cannot receive a double tax benefit so that a taxpayer cannot both deduct research costs and claim a research credit for the same expenditure
- Section 280C provides that a taxpayer must reduce the research expenditure deduction otherwise allowable by the amount of the research credit claimed

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Full Expensing of Domestic R&E

- OBBBA allows taxpayers to immediately deduct or capitalize and amortize domestic R&E expenditures paid or incurred in taxable years beginning after December 31, 2024
- R&E expenditures attributable to research that is conducted outside the United States must continue to be capitalized and amortized over 15 years under Section 174
- Rev. Proc. 2025-28 provides that small business taxpayers (SBTs) can elect to apply this change retroactively to taxable years beginning after December 31, 2021
- An eligible small business cannot be a tax shelter and must meet the gross receipts test under Section 448(c) for the taxpayer's first tax year beginning after December 31, 2024, of having average annual gross receipts of $31 million or less for the 3 prior tax years (2022-2024)
- Revenue Procedure 2025-28 provides detailed guidance on how small businesses should handle R&E expenses under OBBBA

Small Businesses Can Fully Expense Domestic R&E

- Businesses meet the definition of a "small business" if their average annual gross receipts are $31 million or less for their first tax year beginning after December 31, 2024
- Small businesses can retroactively apply the OBBBA rules relating to domestic R&E back to 2022
- A small business can amend its 2022 to 2024 returns to claim immediate deductions instead of amortizing the expenses and potentially receive refunds for overpaid taxes
- A qualifying business cannot be a tax shelter and must make the election by July 6, 2026
- Companies that already filed their 2024 tax return may file a superseded return by the extended deadline

Summary of Options for Small Taxpayers

- 1. Normal catchup all in 2025 (same as for large taxpayers)
- 2. Spread catchup 50% in 2025, and 50% in 2026 (same as for large taxpayers)
- 3. File 2024 under the old rules — then amend 2022, 2023, and 2024 returns
- 4. File 2024 (either original or superseded by the extended tax return date even if an extension was not filed), do not deduct amortization from 2022 or 2023; deduct 2024 expenses in full and then amend 2022 and 2023
- 5. File 2024 with a change in method of accounting (either original or superseded by the extended tax return date even if an extension was not filed) and take the full catchup in 2024 and then deduct 2024 expenses in full. No amended returns are required.
- 6. Continue capitalizing and amortizing

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Revenue Procedure 2025-28 Provides Options for Small Taxpayers

- Small partnerships that do not want to do an administrative adjustment request (AAR) can do 1, 2, 5, or 6 on prior slide
- If a taxpayer wanted the effect on a 2024 calendar year partnership return without amending the tax return, the taxpayer could have filed either an original or superseded tax return by September 15, 2025
- R&E deductions must be reduced by the amount of the R&D tax credit under Section 41
- Taxpayers may elect instead to reduce the credit amount, preserving a larger deduction

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Making or Revoking the Section 280C Election

- Taxpayers may also be eligible to make or revoke the Section 280C election previously made under the TCJA requirements
- The 280C(c) election is an election made on a currently filed tax return that reduces the amount of research and development tax credit by the corporate tax rate
- By making the 280C(c) election, the taxpayer is not required to add back the amount of the R&D tax credit to income as would otherwise be required
- The reduced credit election under Section 280C is made at the top of the Form 6765

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Individual Charitable Contributions – Charitable Contributions for Non-itemizers

- Under pre-OBBBA law, only individual taxpayers who elected to itemize could receive a deduction for charitable contributions — non-itemizers did not receive a tax benefit for making a charitable contribution
- OBBBA created a permanent above-the-line deduction for taxpayers who do not itemize deductions
  - For taxable years after December 31, 2025, non-itemizers can claim a deduction of up to $1,000 for single filers ($2,000 for married filing jointly) for certain charitable contributions
- Contributions taken into account for this purpose include only contributions made in cash during the taxable year to a charitable organization described in Section 170(b)(1)(A), other than contributions to:
  - (i) A supporting organization; or
  - (ii) For the establishment of a new, or maintenance of an existing donor advised fund
- Contributions of noncash property, such as securities, are not qualified contributions under this provision
- The contemporaneous written acknowledgement requirement applies

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Individual Charitable Contributions – Taxpayers Who Itemize

- OBBBA introduced a 0.5% floor for itemized charitable deductions which starts in 2026 for taxpayers who do itemize
- A donor who itemizes his or her deductions may claim a charitable contribution deduction only to the extent that the aggregate amount of his or her contribution for the year exceeds 0.5% of AGI
- The 0.5% floor applies across all otherwise deductible contributions, regardless of the type of charitable donee or the form of property that is contributed to the charity
- The 0.5% floor operates independently of other AGI percentage limitations
- Example: assume a taxpayer's AGI for 2026 is $1 million. The first $5,000 of charitable donations will not be deductible.

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35% Cap on Charitable Contributions

- Starting in 2026, OBBBA provides a 35% cap on the value of itemized deductions for high-income taxpayers
- Itemized deductions will only reduce an individual's tax liability by 35% for those in the top 37% marginal tax bracket
- Because of this limit, regardless of a taxpayer's actual marginal tax rate, the maximum tax benefit a taxpayer may receive from making charitable contributions is limited to 35%
- OBBBA also made the 60% AGI limit for cash gifts to public charities permanent — this limit was previously 50% of AGI

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Corporate Charitable Contributions

- Under pre-OBBBA law, total deductions for charitable contributions by corporate taxpayers for any taxable year were limited to 10% of the taxpayer's taxable income
- Charitable contributions over the percentage limitation in any taxable year could be carried forward to the next 5 taxable years
- OBBBA allows a deduction for corporate charitable contributions only to the extent that the aggregate of corporate charitable contributions exceeds 1% of a taxpayer's taxable income and does not exceed 10% of the taxpayer's taxable income
- When a taxpayer makes aggregate contributions exceeding the 1% floor, the contributions are allowable only for the portion of such contributions exceeding the floor (subject to the 10% limit)

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Wagering Losses

- Under pre-OBBBA law, losses from wagering transactions were deductible only to the extent of gains from such transactions
- Losses from wagering transactions included any deduction otherwise allowable under the IRC in carrying on any wagering transactions
- OBBBA provided that losses from wagering transactions include any deduction otherwise allowable under chapter 1 of the IRC incurred in carrying on any wagering transactions
- The OBBBA limits the deduction for wagering losses to the lesser of:
  - (1) 90% of the wagering losses for the taxable year,
  - or
  - (2) The wagering gains for the taxable year
- This loss limitation applies to both professional gamblers and recreational gamblers
- This change in wagering losses is permanent starting in 2026; although some commentators believe that this OBBBA provision stands a good chance of repeal at some point in the near future

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Wagering Losses – Example

- In 2025 a person with $100,000 in gambling winnings and $100,000 in gambling losses would pay no tax on gambling income
- In 2026, that same taxpayer will be able to deduct only $90,000 of their losses, resulting in $10,000 of taxable income even though the taxpayer has no net profit

Wagering Losses – Example

- Winnings: $1 million
- Losses: $1 million
- Old rules (through 2025): No taxable income
- New rules (2026 onward): only $900,000 of losses deductible → $100,000 taxable income

Recordkeeping Responsibilities for Gamblers

- The IRS expects gamblers to keep detailed documentation of all gambling activity:
  - Win/loss logs (daily or session-based);
  - Casino or sportsbook statements;
  - Receipts, tickets, and betting slips;
  - Travel expenses (if part of a professional gambling routine);
  - Bank and credit card records tied to gambling activity;
  - Know where to report gambling winnings and losses;
  - Report winnings on Form 1040, line 8b (or 1z on newer forms);
  - Deduct losses on Schedule A, Line 16 – but only if itemizing;
  - Non-residents: use Form 1040-NR, with relevant attachments

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Discharges of Student Loans

- Section 61(a)(12) provides that cancellation of debt creates income unless an exception applies
- For taxable years 2018 through 2020, gross income did not include income from the discharge of a student loan on account of the death or total and permanent disability of the student
- For taxable years 2021 through 2025, the exclusion for student loan discharge income was broadened to include income from most discharges of student loans whether or not by reason of the death or disability of the student
- Under pre-OBBBA law, the exclusion for a discharge of debt on account of the student's death or disability would have expired after 2025

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Discharges of Student Loans

- A student loan is a loan made to assist a student in attending a qualified educational organization, and originated or guaranteed by:
  - The U.S. government or its agencies
  - A state or local government
  - Certain tax-exempt public benefit corporations
  - The educational institution itself (if meeting program requirements)
  - Private lenders, but only for discharges occurring in 2018-2020 or post-2025 due to death or disability
- Loans made specifically for post-secondary education expenses (and properly documented as such) are also covered

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Student Loan Discharges

- OBBBA made the exclusion from a taxpayer's income for any income resulting from the discharge of student debt on account of the death or total disability of the student permanent
- OBBBA requires that the taxpayer include his or her SSN on the tax return for the year for which the exclusion is claimed
  - The SSN must be issued to a U.S. citizen or pursuant to a provision of the Social Security Act relating to lawful U.S. employment
- This OBBBA change applies to discharges after December 31, 2025

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Taking Advantage of Scholarship Granting Organizations (SGOs)

- OBBBA created a new nonrefundable income tax credit (School Choice Tax Credit (§25F))for an individual who is a U.S. citizen or resident in an amount equal to qualified contributions made during the taxable year up to $1,700 (reduced by the amount allowed as a credit on any state tax return of the taxpayer for qualified contributions during the taxable year)
- Qualified expenses include tuition, fees, books, supplies, equipment, tutoring, and special needs services
- The federal credit is reduced by any state tax credit received for the same contribution
- Unused credit amounts may be carried forward for up to 5 years
- Starting for amounts received after December 31, 2026, scholarships for qualified elementary or secondary education expenses provided by SGOs to eligible students (or their dependents) will not be included in gross income for federal tax purposes
- Thus, the scholarship money received by the family is tax free

Taking Advantage of Scholarship Granting Organizations (SGOs)

- A qualified contribution is a charitable contribution of cash made to a scholarship granting organization that uses the contribution to fund scholarships for eligible students solely within the state in which the organization is listed
- The recipient 501(c)(3) organization must also spend not less than 90% of its income for scholarships providing qualified elementary or high school education expenses, which include tuition, fees, books, room and board, uniforms, and computer technology or equipment
- Parents cannot direct their tax credit directly to their child's education expenses; rather, the scholarship-granting organizations are to independently determine students' eligibility

Taking Advantage of Scholarship Granting Organizations (SGOs)

- The credit only applies to contributions made in states that opt in and provide the IRS with a list of qualified SGOs
- An eligible student is an individual who is:
  - (1) A member of a household with an income not greater than 300% of the area median gross income and
  - (2) Eligible to enroll in a public elementary or secondary school
- This change is effective for taxable years ending after December 31, 2026

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Taking Advantage of Scholarship Granting Organizations (SGOs)

- SGOs must:
  - Be a 501(c)(3) nonprofit,
  - Serve at least 10 students across multiple schools,
  - Spend at least 90% of income on scholarships, and
  - Operate within a single state
- Donations cannot be earmarked for a particular student
- Scholarships can only support K–12 education expenses such as tuition, books, room and board, uniforms, and educational technology
- Eligible students must be enrolled or eligible to enroll in public K–12 schools and come from households earning no more than 300% of area median income
- The credit replaces the charitable deduction for the same donation and is reduced by any equivalent state tax credit
- The program is not a direct federal expenditure but rather foregone federal tax revenue, which is capped at $5 billion annually for tax years 2026 through 2029
- States must opt in for SGOs to operate; no state is required to participate

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Dependent Care Assistance Program

- A dependent care assistance program (DCAP) is an employer-sponsored plan that pays or reimburses dependent care expenses incurred by the employee to enable both the employee and their spouse to work or look for work
- For DCAP purposes, an “employment-related expense” is an expense that an employee incurs in order to enable the employee (and the employee’s spouse) to be “gainfully employed” and is for the “care” of one or more “qualifying individuals”
- An employer can directly fund a DCAP under a cafeteria plan with pre-tax salary reduction dollars
- Pre-OBBBA provided that the annual maximum tax exclusion provided under a DCAP was $5,000 per year (if single or married, filing jointly), or $2,500 if married, filing separately
- OBBBA increases the annual tax exclusion to $7,500 (or $3,750 if filing separately) for tax years beginning January 1, 2026, and indexed annually for inflation
- Employers are not required to raise the exclusion amount under their DCAPs, but those that do for 2026 must work with their vendors to update applicable plan documents, enrollment materials, and payroll systems

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Dependent Care Assistance Program

- Expenses are employment-related expenses only if they are for the purpose of enabling the taxpayer to be gainfully employed
- The expenses must be for the care of a qualifying individual or household services performed during periods in which the taxpayer is gainfully employed or is in active search of gainful employment
- Employment may consist of service within or outside the taxpayer’s home and includes self-employment
- An expense is not employment-related merely because it is paid or incurred while the taxpayer is gainfully employed
- The purpose of the expense must be to enable the taxpayer to be gainfully employed
- Whether the purpose of an expense is to enable the taxpayer to be gainfully employed depends on the facts and circumstances of the particular case
- Work as a volunteer or for a nominal consideration is not gainful employment

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Thank You!