2025 Business Income Tax Workshop

Don Farmer

Tax Education

Nick Preusch, CPA, J.D., LL.M., MSA

INDEXED ITEMS, ETC

Married Filing Jointly & Surviving Spouses (Sec. 1(j)(2)(A))

Rate	Taxable Income
10%	$0 – $23,850
12%	$23,851 – $96,950
22%	$96,951 – $206,700
24%	$206,701 – $394,600
32%	$394,601 – $501,050
35%	$501,051 – $751,600
37%	Over $751,600

Head of Household (Sec. 1(j)(2)(B))

Rate	Taxable Income
10%	$0 – $17,000
12%	$17,001 – $64,850
22%	$64,851 – $103,350
24%	$103,351 – $197,300
32%	$197,301 – $250,500
35%	$250,501 – $626,350
37%	Over $626,350

Single Filers (Sec. 1(j)(2)(C))

Rate	Taxable Income
10%	$0 – $11,925
12%	$11,926 – $48,475
22%	$48,476 – $103,350
24%	$103,351 – $197,300
32%	$197,301 – $250,525
35%	$250,526 – $626,350
37%	Over $626,350

Married Filing Separately & Estates/Trusts

- **MFS:** Half of MFJ thresholds. 37% starts at $375,801.

- **Estates/Trusts:**
- 10%: $0–$3,250
- 24%: $3,251–$11,450
- 35%: $11,451–$15,650
- 37%: Over $15,650

Long-Term Capital Gains & Qualified Dividends

Filing Status	0%	15%	20%
Single	≤$48,350	$48,351–$533,400	$533,401+
MFJ	≤$96,700	$96,701–$600,050	$600,051+
HOH	≤$64,750	$64,751–$566,700	$566,701+
MFS	≤$48,350	$48,351–$300,000	$300,001+

NIIT & Additional Medicare Tax

- **NIIT (3.8%)**
- Applies to lesser of NII or MAGI over threshold:
  - MFJ/QW: $250k | MFS: $125k | Single/HOH: $200k **Additional Medicare (0.9%)**
- Applies to earned income above:
  - MFJ: $250k | MFS: $125k | Single/HOH: $200k

Standard Deduction & Senior Additions

Filing Status	2025 Amount
MFJ/QW	$31,500
HOH	$23,625
Single/MFS	$15,750
Additional (65+)	

- Single/HOH: +$2,000
- MFJ: +$1,600/spouse
- New Senior Bonus (2025–2028): up to $6,000 ($12,000 joint)

AMT Exemptions (2025)

Filing Status	Exemption	Phase-Out Begins
MFJ/QSS	$137,000	$1,252,700
Single/HOH	$88,100	$626,350
MFS	$68,650	$626,350

Rates: 26% up to $220,700; 28% above.

Kiddie Tax & AMT for Children

- First $1,350 tax-free
- Next $1,350 taxed at child's rate
- Over $2,700 taxed at parent's rate
- AMT Exemption: Lesser of $88,100 or earned income + $9,550

Deductions & Credits Highlights

- LTC Insurance: Up to $6,020 per person (age-based)
- Education Savings Bond Exclusion: Phase-out $149k–$179k (MFJ)
- Student Loan Interest: Max $2,500; phase-out $85k–$100k (single) ($170,000 - $200,000 MFJ)
- AOTC: $2,500/student | LLC: $2,000/return
- Educator Deduction: $300

Family Credits

Credit	2025 Amount	Refundable	Phase-Out (MAGI)
CTC	$2,200/child	Up to $1,700	$200k/$400k
ODC	$500	No	Same as CTC
Adoption Credit	$17,280	Up to $5,000 refundable	Phase-out $259,190–$299,190

Estimated Tax & Retirement Contributions

- Safe Harbor: 100% prior year tax or 90% current (110% if AGI > $150k)
- IRA Limits: Under 50: $7,000 | 50+: $8,000
- 401(k)/403(b)/457:Base: $23,500
  - Catch-up (50–59, 64+): +$7,500
  - Ages 60–63: +$11,250
- SIMPLE IRA: up to $21,750 (age 60–63)

Plan Limits & Compensation Caps

- §415(c) DC Plan: $70,000 total contributions
- §415(b) DB Plan: $280,000 annual benefit
- §401(a)(17) Comp Cap: $350,000
- HCE threshold: $160,000

Health Accounts

Account	Self	Family
HSA	$4,300	$8,550
HDHP Min Deductible	$1,650	$3,300
HDHP Max OOP	$8,300	$16,600

FSA: $3,300 (carryover $660)

QSEHRA: $6,350 self / $12,800 family

Estate & Gift Tax (2025)

- Top rate: 40%
- Exclusion: $13.99M per person
- Annual gift exclusion: $19,000 ($38,000/couple)
- Noncitizen spouse exclusion: $190,000
- GST exemption: $13.99M

Payroll & Social Security

- OASDI (6.2% each side): up to $176,100
- Medicare: 1.45% (no cap)
- Max OASDI Tax: $10,918.20
- Combined FICA: 15.3%

Depreciation & Auto Limits

Year	With Bonus	Without Bonus
1st	$20,200	$12,200
2nd	$19,600	$19,600
3rd	$11,800	$11,800
Later	$7,060	$7,060
§179 Limit: $2.5M (phase-out $4M; full at $6.5M)		
Bonus Depreciation: 100% restored for 2025		

Mileage & Penalties

- Standard Mileage (2025):
  - Business: 70¢ | Medical/Moving: 21¢ | Charitable: 14¢
- Late Filing Penalties:1065/1120S: $255/partner per month
- 1099s: $340 for standard - up to $680/intentional disregard
- Individual 1040: up to 47.5% combined (file + pay)

Qualified Business Income & Small Business Test

§199A QBI Deduction:

- MFJ: Full ≤$394,600 | Phase-out to $494,600
- Single: Full ≤$197,300 | Phase-out to $247,300

Small Business Gross Receipts Test:

- ≤$31,000,000 average (3-year)
- Exempt from §163(j), UNICAP, can use cash method

SELECTED PROVISIONS SCHEDULED TO EXPIRE OR BE REDUCED

Expiring & Permanent Tax Provisions Overview (Post-2025)

- Source: JCX-1-25 (Jan. 9, 2025)
- Covers provisions expiring after 2025 and 2026
- Indicates whether each is made permanent, modified, or expiring

Overview – Key Legislative Update

- Many provisions from TCJA were set to expire after 2025
- P.L. 119-21 (2025 Act) makes most individual provisions permanent
- Certain credits and deductions still scheduled to expire

Individual Tax Rates & Deductions

- Individual income tax rates (§1(j)) – Made permanent
- Standard deduction increase (§63(c)(7)) – Made permanent
- Miscellaneous itemized deductions suspension (§67(g)) – Permanent
- Pease limitation suspension (§68(f)) – Permanent
- Personal exemption suspension (§151(d)(5)) – Permanent

Credits – Permanent vs. Expiring

- Permanent / Modified by P.L. 119-21:
  - Child Tax Credit (§24(h))
  - Employer Paid Family & Medical Leave (§45S)
  - New Markets Credit (§45D)

- Expiring:
  - Work Opportunity Credit (§51)
  - Premium Assistance Credit (§36B)

AMT & Base Erosion Tax Changes

- AMT exemption increase (§55(d)(4)) – Permanent
- Base Erosion Minimum Tax (§59A) – Modified

Exclusions & Income Adjustments

- Permanent:
  - Student loan discharge (§108(f)(5))
  - Employer-paid student loan assistance (§127(c)(1)(B))
  - Moving expense suspension (§132(g)(2))
  - Deduction for home equity limitation (§163(h)(3)(F))
  - SALT cap limitation (§164(b)(6))

- Expiring:
  - Mortgage debt forgiveness (§108(a)(1)(E))

Charitable & Miscellaneous Deductions

- Cash contribution limit increase (§170(b)(1)(G)) – Permanent
- Wagering losses computation (§165(d)) – Permanent
- Personal casualty losses (disaster-related only) (§165(h)(5)) – Permanent
- Motorsports facility 7-year depreciation (§168(e)(3)(C)) – EXPIRES

Business Deductions & Credits

- Permanent / Modified:
  - QBI deduction (§199A)
  - FDII & GILTI deduction percentages (§250)
  - State/local tax deduction cap (§164)
  - Employer-provided meals (§274(o)) – EXPIRES

Film, TV, and Live Theater Expensing (§181)

- Modified but expires 12/31/2025
- Full expensing remains available through 2025 only

ABLE Accounts (§529A)

- Contributions eligible for Saver’s Credit (§25B) – Permanent
- Rollovers from §529 plans – Permanent
- Increased contribution limits – Permanent

International & Foreign Rules

- Look-through payments between related CFCs (§954(c)(6)) – Permanent
- Base erosion and anti-abuse tax (BEAT) rules – Modified

Empowerment Zone Incentives

- All Expire after 2025:
  - Zone designations (§1391)
  - Tax-exempt bonds (§1394)
  - Employment credit (§1396)

Estate & Gift Tax Provisions

- Increased exclusion (§2010(c)(3)(C)) – Permanent
- Unified credit and rates remain unchanged at 40%

Miscellaneous Individual Provisions

- Deduction for moving expenses – Permanent
- Exclusion for employer bicycle reimbursements – Permanent
- Limitation on home mortgage interest – Permanent

Military & Special Cases

- Sinai Peninsula service exclusion (PL 115-97 §11026) – Permanent

Summary of Expiring 2025 Provisions

- Premium Assistance Credit (§36B)
- Work Opportunity Credit (§51)
- Mortgage Debt Forgiveness (§108(a)(1)(E))
- Motorsports Complex Depreciation (§168)
- Employer Meal Deduction (§274(o))
- Empowerment Zone Incentives (§§1391–1396)

Provisions Expiring After 2026

- Saver’s Credit (§25B) – Permanent
- Advanced manufacturing credit (§48D) – Expires after 2026
- Bonus depreciation (§168(k)) – Permanent
- Fruit/Nut plant depreciation (§168(k)(5)) – Permanent
- Opportunity Zone investment (§1400Z-2) – Permanent

Key Takeaways

- Most TCJA provisions made permanent by P.L. 119-21
- Remaining expirations mainly affect energy/manufacturing and niche business areas
- Planning for 2026 transitions remains essential

Practitioner Notes

- Expect further IRS guidance
- Legislative watch: post-2026 updates possible
- Review expiring credits and bonus depreciation elections

Summary

- After 2025: Most provisions remain in effect
- After 2026: Minor phase-outs in manufacturing & energy credits
- Result: 2025 Act stabilizes tax code through 2028

DISASTER RELIEF

2025 Disaster Relief Overview

- IRS Disaster Tax Relief Notices – Summary
  - Covers major disaster areas from Jan–Jul 2025
  - Relief includes filing/payment extensions & penalty abatement
  - Automatic relief for taxpayers in FEMA-declared areas

Key Deadlines & General Rules

- Most disaster extensions through Nov 3, 2025 or Feb 2, 2026
- Covers:
  - Individual, business & tax-exempt returns
  - 2024 IRA/HSA contributions
  - Estimated, payroll & excise taxes
- Penalty relief if paid within deadlines
- Automatic relief; others contact IRS Special Services

California (CA-2025-01 / IR-2025-10)

- Event: Wildfires & winds (began Jan 7, 2025)
- Counties: Los Angeles & others
- New Deadline: Oct 15, 2025
- Includes all individual, business, fiduciary & exempt filings
- Payroll deposit penalties waived if paid by Jan 22

Kentucky (KY-2025-02)

- Event: Storms, winds, flooding, landslides (Feb 14, 2025)
- Scope: Statewide
- Deadline: Nov 3, 2025
- Covers individual, business, fiduciary, exempt returns
- Payroll/excise deposits due Feb 14–Mar 3 waived if paid by Mar 3

West Virginia (WV-2025-02 / IR-2025-34)

- Event: Storms, floods, landslides (Feb 15, 2025)
- Counties: Logan, McDowell, Mercer, Mingo, Wayne, Wyoming
- Deadline: Nov 3, 2025
- Includes IRA/HSA contributions & estimated payments
- Payroll deposit penalties waived if paid by Mar 3

Tennessee (TN-2025-02 / IR-2025-47)

- Event: Storms, winds, tornadoes, flooding (Apr 2, 2025)
- Scope: Entire state (95 counties)
- Deadline: Nov 3, 2025
- Covers all filings including payroll/excise
- Payroll deposits (Apr 2–Apr 17) waived if paid by Apr 17

Arkansas (AR-2025-03 / IR-2025-49)

- Event: Tornadoes, flooding, storms (Apr 2, 2025)
- Scope: All 75 counties
- Deadline: Nov 3, 2025
- Includes individual, business, fiduciary & exempt returns
- Payroll/excise deposits Apr 2–Apr 17 waived if paid by Apr 17

Virginia (VA-2025-03)

- Event: Winter storms & flooding (Feb 10, 2025)
- Counties: Amelia, Bedford, Bristol, Botetourt, others
- Deadline: Nov 3, 2025
- Includes individual, business, fiduciary, exempt returns
- Payroll/excise deposits Feb 10–Feb 25 waived if paid by Feb 25

Missouri (MO-2025-01 / MO-2025-02)

- Events:
- MO-2025-01: May 16 (St. Louis area storms)
- MO-2025-02: Mar 14 (statewide storms, winds, wildfires)
- Deadline: Nov 3, 2025
- Payroll penalties waived for deposits made by Mar 31

Mississippi (MS-2025-01)

- Event: Storms, tornadoes, flooding (Mar 14, 2025)
- Counties: Calhoun, Grenada, Issaquena, Lee, Pike, etc.
- Deadline: Nov 3, 2025
- Includes IRA/HSA & estimated taxes
- Payroll/excise penalties waived if paid by Apr 10

Oklahoma (OK-2025-02)

- Event: Wildfires & winds (Mar 14, 2025)
- Counties: Cleveland, Creek, Lincoln, Oklahoma, Pawnee, Payne
- Deadline: Nov 3, 2025
- Includes IRA/HSA contributions, estimated taxes
- Payroll penalties waived if deposits made by Mar 31

Texas (TX-2025-03 / TX-2025-04)

- Events:
- TX-2025-03: Storms/flooding (Mar 26, 2025)
- TX-2025-04: Storms/winds/flooding (Jul 2, 2025)
- Counties: Cameron, Hidalgo, Starr, Willacy, etc.
- Deadlines: Nov 3, 2025 & Feb 2, 2026
- Payroll penalty relief for timely deposits

North Carolina (NC-2025-01)

- Event: Hurricane Helene (Sept 25, 2024)
- Scope: Entire state
- Deadline: Sept 25, 2025
- Covers 2023 extended & 2024 filings
- Automatic relief; contact IRS if outside state

New Mexico (NM-2025-03)

- Event: Storms, flooding, landslides (Jun 23, 2025)
- Counties: Chaves, Lincoln, Otero, Valencia
- Deadline: Feb 2, 2026
- Covers all filing types & estimated payments
- Automatic relief; penalty abatement available

West Virginia (WV-2025-04)

- Event: Storms, flooding, landslides (Jun 14, 2025)
- Counties: Marion, Ohio
- Deadline: Feb 2, 2026
- Includes all return types
- Claim casualty losses on 2024 or 2025 returns

Claiming Casualty Losses

- Losses may be claimed on 2024 or 2025 returns
- Election available 6 months post due date
- Use Form 4684 to claim
- Include FEMA disaster declaration number

Practice Alert

- See IRS Disaster Relief Portal:
  - https://www.irs.gov/newsroom/tax-relief-in-disaster-situations
- Monitor FEMA/IRS updates
- Review taxpayer addresses for qualification

Summary

- Relief extends key deadlines to late 2025 / early 2026
- Automatic penalty relief for designated counties
- Taxpayers outside may qualify if records affected
- Action: Review clients & filing schedules

Other Recent Practice Developments

Overview

- Topic: Other Recent Practice Developments
- Focus Areas:
- - Supreme Court decisions affecting tax regulation
- - Changes in standards of tax practice
- - IRS enforcement and administrative updates
- - New cybersecurity, reporting, and ethics developments
- Objective: Provide a comprehensive understanding of the latest legal, regulatory, and professional developments impacting tax practitioners.

Major Supreme Court Shifts – Overview

- Two landmark Supreme Court rulings reshaped administrative law:
- 1. Loper Bright Enterprises v. Raimondo (June 28, 2024) – Overrules Chevron Doctrine.
- 2. Corner Post, Inc. v. Federal Reserve (July 1, 2024) – Redefines statute of limitations for challenges to federal regulations.

- Both affect how courts review IRS and Treasury regulations.

The Chevron Doctrine – Historical Context

- Chevron v. NRDC (1984): Established judicial deference to agencies interpreting ambiguous statutes.
- Agencies like the IRS benefited when interpretations were deemed 'reasonable'.
- This principle guided regulatory litigation for four decades.

Loper Bright Enterprises v. Raimondo – Case Background

- Facts: NMFS required fishing vessels to carry observers for conservation data. In 2020, regulation required vessels to pay observer costs (up to $710/day).
- Lower courts upheld under Chevron deference.
- Issue: Should courts defer to agency interpretations of ambiguous statutes?

Loper Bright Decision – Supreme Court's Holding

- Ruling (6-3): Chevron is overruled.
- Courts must exercise independent judgment on statutory authority.
- Executive interpretations may inform but not control judicial reasoning.

Post-Loper Bright Standards – Skidmore Deference

- Skidmore v. Swift (1944): Courts may give 'due respect' to agency interpretations based on thoroughness, reasoning, consistency, and persuasiveness.
- IRS interpretations still matter, but courts are final arbiters.

Loper Bright – Practical Implications

- Increased litigation risk for IRS and Treasury regulations.
- Slower regulatory rollout expected.
- Prior Chevron-based rulings remain valid.

- Practice Alert: IRS must craft clearer statutory bases for future regulations.

Corner Post, Inc. v. Federal Reserve – Background

- Law: 28 U.S.C. §2401(a) – Six-year limitation for suits against the U.S.
- Corner Post challenged Regulation II (2011) in 2021 after opening in 2018.
- Lower courts ruled case time-barred.

Corner Post Decision – Supreme Court's Analysis

- Ruling (6-3): Statute begins when plaintiff is injured, not when rule issued.
- Majority: APA causes accrue when final agency action injures plaintiff.
- Dissent: Warned of eliminating limitation periods.

Corner Post – Implications for Tax Practice

- Opens door for challenges to older IRS regulations once injury occurs.
- Refund deadlines remain limiting factor.

- Observation: Expect revived challenges to long-standing IRS rules.

Treasury Circular 230 – Overview

- Purpose: Governs practice before the IRS under 31 U.S.C. §330.
- Covers: Attorneys, CPAs, EAs, and others.
- Core Principles: Character, competence, ethics.
- Last updated 2014; major revision pending.

Circular 230 – Pending Updates

- Treasury Proposal REG-116610-20 (Dec. 26, 2024)
- 700+ comments, public hearing Mar. 6, 2025.
- Focus: Return prep, contingent fees, errors/omissions, appraiser rules.

Circular 230 – Stakeholder Concerns

- Key Issues:
- \- Contingent fees may limit taxpayer access.
- \- Appraiser standards overly restrictive.
- \- Data security & mental impairment provisions debated.
- \- CE expansion and fee concerns.

- Status: Finalization delayed.

AICPA Statements on Standards for Tax Services (SSTS)

- Effective Jan 1, 2024.
- Four Standards:
- 1. Data protection
- 2. Reliance on tools
- 3. Tax representation
- 4. Interpretations & FAQs.
- Aligns professional standards with technology use.

Written Information Security Plan (WISP)

- Authority: FTC Safeguards Rule.
- IRS Pub. 5708 (Aug 2024) template for small firms.
- Must report breaches (500+ individuals) to FTC within 30 days.

- Practice Alert: Report to IRS, FTC, and state agencies.

Self-Reporting Misconduct – OPR Alert (Aug. 2025)

- Practitioners self-reporting Circular 230 violations may get lighter sanctions.
- Benefits: Concurrent suspensions, deferred discipline.
- Proactive disclosure protects ability to practice.

IRS Administrative and Compliance Updates

- Key updates:
- - PTIN verification crackdown
- - Updated OIC Form 656-B (Apr 2024)
- - Rev. Proc. 2025-23 (accounting method changes)
- - Digital asset relief (2026)
- - Estate closing letter fee reduced.

IRS Transcript Access and Security

- IR-2024-136 (May 2024): Enhanced PPS verification.
- Practitioners call 866-860-4259; verify Short ID.
- If identity fails, transcripts mailed.
- Tip: Use online IRS tools for faster access.

Ethics Case Study – IRS Employee Indictment

- Case: U.S. v. Thioub (2024)
- IRS employee filed false returns (2017–2019).
- Understated $90,192 income; tax owed $20,511.
- Practice Alert: Review clients for §183(d) profit motive.

Scam Alerts – EFIN & New Client Scams

- EFIN Scam: Fake emails requesting EFIN docs.
- Indicators: German footer, fax requests.
- New Client Scam: Malware attachments in fake client emails.
- Report to TIGTA & phishing@irs.gov.

BOI Reporting Relief – Domestic Entities Exempt

- FinCEN Interim Final Rule (Mar 21, 2025): Eliminates BOI for U.S. entities.
- Applies only to foreign registrants.
- Impact: 36M U.S. entities exempted.
- Criticism: Weakens AML transparency.

Privacy & Government Efficiency – DOGE Program

- Executive Order establishes Department of Government Efficiency (DOGE).
- USDS renamed US DOGE Service.
- Grants system access; lawsuits filed citing §6103 confidentiality.

Privacy and Enforcement Implications

- Statutory Protections:
- - §6103 confidentiality
- - §7431 civil damages
- - §7213A criminal penalties.
- Former IRS leaders oppose DOGE access.
- Results: Heightened scrutiny on data privacy.

IRS & Security Summit Campaign

- Protect Your Clients; Protect Yourself (IR-2025-73)
- 5-week series:
- 1. Scams
- 2. Phishing
- 3. WISP
- 4. Cyber tools
- 5. ID theft reporting.
- Goal: Strengthen practitioner cybersecurity.

Summary – Key Takeaways

- Courts assert more control over IRS interpretations.
- Circular 230 & SSTS modernize standards.
- Cybersecurity rules tighten.
- Practitioner accountability expands.

- Tip: Stay current with IRS & Treasury updates.

Action Plan for Practitioners

- 1. Review client filings for exposure.
- 2. Update WISP and data protection.
- 3. Reassess engagement letters.
- 4. Train staff on security and scams.
- 5. Monitor FinCEN/Treasury rulemaking.

OBBB Business Provisions

QBI §199A – Overview

- Permanently extends and enhances the Qualified Business Income (QBI) deduction for years after 12/31/2025.
- 20% deduction continues for qualified business income, REIT dividends, and PTP income (subject to limitations).
- Replaces scheduled sunset after 2025.

QBI §199A – Thresholds Expanded

- Phase-in thresholds for wage/capital tests and SSTB phaseout increased:
- Single: $75,000 (from $50,000)
- Joint: $150,000 (from $100,000)
- For 2026, phase-in ranges:
- Joint: $394,600 → $544,600 (was $394,600 → $494,600)
- Single: $197,300 → $272,300 (was $197,300 → $247,300)

QBI §199A – Minimum Deduction & Inflation

- Minimum $400 deduction for active businesses with ≥$1,000 of qualified business income (material participation required under §469(h)).
- Indexed beginning 2027 (base year 2025) for both the $400 minimum and $1,000 income threshold.

QBI §199A – Planning Considerations

- Revisit SSTB exposure and aggregation to optimize wage/UBIA limits.
- Model impacts of higher phase-in thresholds on high-income owners.
- Confirm material participation for the new $400 minimum.
- Effective for tax years beginning after 12/31/2025.

§168(k) – Full Expensing Restored (Permanent)

- OBBB revives permanent 100% bonus depreciation for qualified property acquired after 1/19/2025.
- Applies to most tangible property with ≤20-year recovery period (machinery, equipment, certain improvements).

§168(k) – Specified Plants & Transition

- Includes specified plants (fruit/nut-bearing) planted or grafted after 1/19/2025.
- Transitional election: reduced bonus (e.g., 40%/60% for long production period property/noncommercial aircraft) for first tax year ending after 1/19/2025.

§168(k) – Binding Contract Rules & Effective Dates

- Property under binding written contract entered before 1/20/2025 not eligible for 100% rate.
- If placed in service in 2025: 40% (60% LPPP/aircraft)
- 2026: 20% (40% LPPP/aircraft)
- 2027: 0% or 20%
- 100% applies to property acquired after 1/19/2025.

R&E §174 – Immediate Deduction (Domestic)

- For amounts paid/incurred after 2024: Immediate deduction for domestic research or experimental (R&E) expenditures.
- Excludes foreign research costs; must be connected with a trade or business.

R&E §174 – Optional Amortization

- Election to amortize domestic R&E over ≥60 months starting when benefits first realized.
- Once elected, consistent method/period required absent IRS consent.

R&E §174 – Research Credit Coordination

- For years after 2024: Research credit limited to domestic R&E.
- Must reduce §174 deduction by any §41 research credit claimed.
- Conforming updates to §§41, 56, 59(e), 1202, 280C.

R&E §174 – Small Business Retroactive Election

- Small businesses (non–tax shelters) with ≤$31M avg. receipts may retroactively apply change to years after 12/31/2021.
- Election due by 7/4/2026; amended returns required for impacted years.

R&E §174 – Acceleration & Exclusions

- Capitalized domestic §174 costs (2022–2024) may be accelerated over 1-year or ratably over 2 years beginning with first tax year after 2024.
- Exclusions: land, depreciable/depletable property, mineral exploration, foreign research.

R&E §174 – Software Development

- Software development explicitly treated as domestic §174 and eligible for full expensing.
- Effective generally for years beginning after 12/31/2024.

§163(j) – Interest Limitation Changes (ATI Addbacks)

- For years after 2024: Depreciation, amortization, and depletion are added back to compute ATI (pre-TCJA-style addback returns).

§163(j) – Foreign Items in ATI (After 2025)

- ATI excludes: Subpart F (§951(a)), GILTI (§951A(a)), §78 gross-up, and related deductions under §245A(a)/§964(e)(4) and §250(a)(1)(B).

§163(j) – Floor Plan, Capitalization & Priority

- Floor plan interest expanded to include certain trailers/campers.
- §163(j) applies regardless of capitalization for years after 2025.
- Allowable interest first offsets amounts otherwise capitalized, then currently deductible interest.
- Carryforward interest not subject to capitalization.

§163(j) – Exclusions & Authority

- Excludes interest capitalized under §263(g) and §263A(f) from 'business interest' definition (after 2025).
- Treasury authorized to issue coordination regs (incl. BEAT §59A(c)(3)).

§45S – Paid Family & Medical Leave Credit (Extended/Enhanced)

- For years after 2025: Extends/enhances credit; employers can choose:
- % of wages during leave, or
- % of premiums for insurance covering paid FMLA (credit available even if no leave is taken).

§45S – Aggregation, State Leave & Eligibility

- §414(b),(c) aggregation unless substantial/legitimate business reason.
- State-mandated leave counts toward offering but excluded from federal credit.
- Eligible employee tenure can be ≥6 months; part-time qualifies at ≥20 hrs/week.
- No double benefit: no deduction for amounts credited.
- §414 aggregation clarified; all group members must meet requirements.

§274 – Business Meals Post-2025

- Disallowance retained for:
- §119 employer convenience meals on premises
- §132(e) de minimis fringe meals
- Clarifications on fully deductible categories and targeted expansions.

§274 – Fully Deductible & Fishing Vessel Changes

- Fully deductible:
- Cost of food/beverage sold (§274(e)(8))
- Meals to crews of commercial vessels/drilling rigs (§274(o))
- Expanded to 100%:
- Food/beverages for crews of fishing vessels and qualifying fish processing facilities (§274(n)(2)(C)).
- Effective for years after 12/31/2025.

§179 – Increased Dollar Limits

- For 2025:
- Expensing limit → $2,500,000 (from $1,250,000 indexed)
- Phase-out threshold → $4,000,000 (from $3,130,000 indexed)
- Indexed for inflation from 2026 (base 2024).
- Applies to property placed in service in years after 12/31/2024.

§168(n) – 100% Deduction for Qualified Production Property

- For property placed in service after 7/4/2025: elective 100% deduction for certain nonresidential real property integral to qualified production activities.
- Basis reduced by deduction; new property requirement with limited used-property exception.

§168(n) – Definitions & Exclusions

- Qualified production activity: manufacturing/production/refining with substantial transformation.
- Exclusions: office/admin, lodging, parking, sales, research, software development, engineering; ADS property excluded.
- Used property can qualify if not used in production since 1/1/2021 and meets acquisition criteria.

§168(n) – Recapture & Elections

- §1245 recapture applies (10-year change-in-use window).
- Election is return-based and irrevocable absent IRS consent.
- Allowed for AMT as well.

§48D – Advanced Manufacturing Investment Credit

- Credit rate increased from 25% to 35% for property placed in service after 2025.
- Applies to semiconductor and semiconductor equipment manufacturing facilities (pre-2027 build).

§142 – Spaceports Treated Like Airports (PABs)

- Adds spaceports to exempt facility bond rules.
- Ground leases from U.S. to governments treated as governmental ownership if lease terms met.
- Detailed definitions aligned with 51 U.S.C. §50902.
- Public use not required; industrial park exclusion waived for qualifying spaceport manufacturing.
- Not disqualified if U.S. pays rent/fees.
- Applies to obligations issued after 7/4/2025.

§45F – Employer-Provided Child Care Credit (Enhanced)

- Rate increased: 40% (50% for eligible small businesses) on qualified expenditures; 10% for resource/referral unchanged.
- Annual caps: $500k (most); $600k (eligible small business).
- Indexed from 2027 (base 2025).

§45F – Eligibility & Structures

- Eligible small business uses §448(c) gross receipts test (5-year lookback; 2025 cap $31M).
- Applies to direct provision or via intermediaries partnering with qualified facilities.
- Joint ownership allowed; Treasury to issue guidance.
- Effective for amounts paid/incurred after 12/31/2025.

Opportunity Zones – Permanent Renewal

- Permanent decennial designation starting 7/1/2026; PR special rule repealed 12/31/2026.
- Updated low-income criteria; contiguous-tract rule eliminated.
- Sunset repeal enables indefinite deferral for reinvested gains.

Opportunity Zones – Rural Emphasis & Step-Ups

- Qualified Rural Opportunity Funds (QROFs): ≥90% assets in rural OZ property.
- Basis step-ups:
- 5 years: +10% (30% for rural OZ funds)
- 10 years: FMV basis election.
- Enhanced transparency/reporting for funds/investors.

Opportunity Zones – Example (QROF)

- Investor invests $500,000 gain on 3/1/2027 into QROF for rural housing.
- Indefinite deferral; 5-year 30% step-up in rural case → $150,000 excluded from deferred gain.
- 10-year FMV basis: future OZ gain excluded; deferred gain recognized when triggered.

§42 LIHTC – Permanent Enhancements

- State ceiling: Temporary 12.5% boost becomes 12% and permanent for years after 12/31/2025.
- Bond-financed 4% credit: Qualifies at ≥50% aggregate basis financed by PABs or ≥25% for bonds issued after 12/31/2025 (financing ≥5% of basis).

§45D NMTC – Permanent Extension

- NMTC made permanent; allocation authority each year after 2019.
- Unused allocation carryforward up to 5 years; excess pre-2026 treated as occurring in 2025.

Corporate Charitable Contributions – 1% Floor & 10% Cap

- For years after 2025: Deductible only to extent contributions exceed 1% of taxable income; overall cap remains 10%.
- Carryforwards: 5 years; special rules when NOLs also present.

Corporate Charitable – Example

- C corp TI $1,000,000; contributions $21,000.
- 1% floor = $10,000 → deductible excess = $11,000.
- 10% cap = $100,000 → no further limit.
- $10,000 floor disallowance carried forward (subject to rules).

Distilled Spirits – Cover Over Permanently Increased

- Cover over to PR/USVI permanently set at $13.25 per proof gallon.
- Applies to spirits brought into U.S. after 12/31/2025.

Remote Native Villages – Nonprofit Fisheries Activities

- Clarifies §501(a) exemption for specified fisheries-related activities in Bering Sea/Aleutians per Magnuson-Stevens §305(i)(1)(D).
- Wholly owned subsidiary transfer within 18 months: no gain; future income exempt.
- Effective 7/4/2025 for the CDQ program duration.

Alaskan Subsistence Whaling – Deduction Increased

- §170(n)(1) limit increased from $10,000 to $50,000 per year.
- Applies to years beginning after 12/31/2025.

Residential Construction – PCM Exception & UNICAP Relief

- §460(e)(1)(B): Exempts qualified residential construction contracts entered into in years after 7/4/2025 from PCM.
- UNICAP: Exempt if estimated completion within 3 years and avg receipts ≤$31M (indexed via §448(c)).

Residential Construction – Definitions & AMT

- Residential construction contract = ≥80% costs for dwelling units and integral improvements; excludes transient-use units.
- AMT: Also exempt from PCM for AMT (§56(a)(3)) for contracts entered after 7/4/2025.

QSBS §1202 – Expanded & Phased Exclusion

- For QSBS acquired after 7/4/2025: graduated exclusion by holding period:
- 3 years: 50% • 4 years: 75% • 5+ years: 100%
- Asset limit increased to $75M (from $50M) post-7/4/2025; AMT exemption continues.

QSBS §1202 – Per-Issuer Limits & Example

- Per-issuer cap for post-7/4/2025 stock: greater of $15M (indexed after 2026) or 10× basis.
- Example: Jane buys 8/1/2026; $2M gain.
- 3-year sale: 50% exclusion → $1M taxable
- 5-year sale: 100% exclusion → $0 taxable

§6050W – TPSO Reporting Thresholds Restored

- Restores $20,000 AND 200 transactions thresholds (repeals ARPA lower threshold).
- Backup withholding under §3406 coordinated to require both tests (from 2025 forward rules).

§6041 – Nonemployee Reporting Threshold Raised

- Information reporting threshold increased from $600 → $2,000 for payments to nonemployees.
- Indexed annually from 2027 (base 2025). Applies to years after 12/31/2025.

§181 – Sound Recording Productions

- Allows §181 expensing for qualified sound recordings produced/recorded in U.S.; $150k per production and annual cap.
- Eligible for 100% bonus under §168(k) (placed in service at initial release/broadcast).

§181 – Timing, Recapture & Observation

- §181 deduction regime expires for productions commencing after 12/31/2025 (not extended).
- If elected and production commences post-12/31/2025, costs expensed are subject to recapture.
- Bonus depreciation may provide expensing at in-service date without $150k cap.

Rural/Agricultural Real Estate – Interest Exclusion

- 25% exclusion from gross income for interest on qualified loans secured by rural/ag real estate.
- Qualified lenders include FDIC banks, regulated insurers, certain BHC subs, Farm Credit entities.
- Loans must be originated after 7/4/2025 to non-foreign borrowers; refinances excluded.

Rural/Agricultural – §265 Coordination

- Only 25% of related interest deductions disallowed; 25% of loan basis treated as tax-exempt obligation basis.
- Effective for loans made after 7/4/2025.

REITs – TRS Asset Test Increased

- TRS asset limit increased from 20% → 25% of REIT assets.
- Effective for tax years beginning after 12/31/2025.

Energy Provisions – Selected Terminations/Restrictions (1)

- §45W commercial clean vehicle credit ends for vehicles acquired after 9/30/2025.
- §179D energy-efficient commercial buildings deduction ends for construction beginning after 6/30/2026.

Energy Provisions – Selected Terminations/Restrictions (2)

- §168 5-year recovery for certain energy property repealed (construction after 12/31/2024).
- §45U nuclear credit restrictions for specified foreign/foreign-influenced entities (post-7/4/2025/2027).

Energy Provisions – Selected Terminations/Restrictions (3)

- §45V clean hydrogen credit ends for facilities beginning construction after 12/31/2027.
- §45Y clean electricity production credit ends for wind/solar placed in service after 12/31/2027 if facility construction begins after 7/4/2026; foreign influence limits apply.

Energy Provisions – Selected Terminations/Restrictions (4)

- §48E investment credit similarly terminated for wind/solar placed in service after 12/31/2027 if facility construction begins after 7/4/2026; exceptions for storage.
- Foreign influence restrictions; 10-year recapture if later payments to prohibited foreign entity.

Energy Provisions – §45X Phase-Out & §48C Allocation

- §45X: Critical minerals phase-out (75% in 2031, 50% in 2032, 25% in 2033, 0% after 12/31/2033). No credit for wind components after 2027; metallurgical coal ends after 2029.
- §48C: Revoked allocations can’t be reallocated (from 7/4/2025).

§45Z – Clean Fuel Production Credit (Extended/Modified)

- Extended to 12/31/2029. From 2026, feedstocks must be exclusively from U.S., Mexico, or Canada.
- No negative emissions rates (except animal manure fuels); exclude indirect land-use change emissions; special manure rates.
- Foreign entity restrictions apply (specified foreign: post-7/4/2025; foreign-influenced: post-7/4/2027).

§45Q – Carbon Oxide Sequestration Credit Changes

- Foreign entity restrictions (specified foreign or foreign-influenced) post-7/4/2025.
- Parity across geological storage, tertiary injectant, other utilization.
- Credit amounts: $17/ton for years after 2024 and before 2027; inflation-adjusted thereafter (base 2025). $36/ton for EOR.

CAMT – AFSI Treatment of IDCs

- IDCs under §263(c) (incl. §59(e)/§291(b)(2) amortized) included in AFSI to extent deducted for tax.
- Adjusts related depreciation/depletion for AFSI.
- Applies to years after 12/31/2025.

PTPs – Expanded Qualifying Income

- Qualifying income now includes: H2 transport/storage, §6426 fuels, power at §45Q facilities, advanced nuclear (§45J), hydropower/geothermal (§45(c)), and operation of certain §48 energy property.
- Effective for years after 12/31/2025.

De Minimis Entry Privilege – Tightened Rules

- New civil penalties for misuse of §321 de minimis:
- Up to $5,000 first violation; up to $10,000 subsequent.
- Repeals commercial shipment exception (effective 7/1/2027). Penalties effective 30 days after 7/4/2025.

§461(l) – Excess Business Losses Made Permanent

- Permanent rule; thresholds reset using 2024 as base and inflation reference 12/31/2025.
- For 2025, thresholds: $313k single / $626k joint (expect lower indexed amounts for 2026).

§461(l) – Example

- Single filer 2026: Business income \$200k; deductions \$1,000k → loss \$800k; other income \$50k.
- Assume EBL threshold \$260k: deductible loss limited to \$260k; \$540k becomes NOL carryforward under §172.

§707 – Payments to Partners for Property/Services

- Introductory language changed to 'Except as provided' (from 'Under regulations prescribed').
- Signals narrower IRS recharacterization discretion for disguised sales/guaranteed payments absent explicit statutory authority.

§707 – Example

- ABC LLC pays partner John $100k for services and $100k for contributed real estate.
- Post-amendment likely §707(a) transactions: ordinary income for services; taxable sale for property; partnership basis step-up.
- Separate from distributive share; report on K-1 as applicable.
- Effective for services/property after 7/4/2025.

§162(m) – Controlled Group Compensation Aggregation

- If any member pays >$1M to a specified covered employee, the 162(m) deduction limit applies across the controlled group.
- Cap allocated among members based on their paid compensation.
- Effective for years after 12/31/2025.

Excise Tax – Certain Remittance Transfers (1% Tax)

- New §4475: 1% excise tax on qualifying outbound remittance transfers funded with cash/money orders/cashier’s checks.
- Sender liable; provider must collect and remit quarterly; secondary liability if not collected.
- Exempt: transfers funded by U.S. bank accounts or U.S.-issued debit/credit cards.

ERC – Enforcement & Promoter Penalties

- $1,000 per failure due diligence penalty for COVID–ERTC promoters.
- No ERC claims/refunds after 7/4/2025 unless filed by 1/31/2024.
- Extended assessment: at least 6 years from return filing/deemed filing/claim date.
- §6676 20% erroneous refund penalty expanded to employment taxes.
- Coordination with wage deduction timing when ERC disallowed.

OBBB Non-Profit / Misc.

Excise Tax on Investment Income – Overview

- IRC §4968 excise tax revised with new tiered rate structure and expanded definitions.
- Applies to private colleges/universities with large endowments (3,000+ students, >50% in U.S.).

Excise Tax – New Tiered Rates

- 1.4% for student-adjusted endowment $500k–$750k
- 4% for $750k–$2M
- 8% for >$2M
- Student-adjusted endowment = FMV of non-exempt-use assets ÷ number of full-time equivalent students.

Excise Tax – Expanded Income Definition

- Net investment income now includes:
- Interest from institutional or related-entity student loans
- Federally subsidized royalties from IP developed with federal funds (previously exempt)
- Related organization income included if controlled or for institution's benefit.

Excise Tax – Reporting and Compliance

- Annual reporting of tuition-paying and total student counts
- Calculation transparency for student-adjusted endowment
- Institutions must identify related organizations and their asset values
- Effective for taxable years beginning after 12/31/2025.

Tax on Excess Compensation – Expanded Scope

- IRC §4960 (21% excise tax) broadened under §70416.
- Applies to current and former employees of tax-exempt organizations and predecessors.

Excess Compensation – Covered Employee Definition

- Covered employee now includes:
- Any current employee
- Any former employee employed in any year after 12/31/2016
- Purpose: Capture deferred or post-employment compensation arrangements previously outside §4960 scope.
- Effective for years after 12/31/2025.

Excess Compensation – Compliance Considerations

- Review executive compensation structures, including deferred comp.
- Ensure tracking systems identify all covered employees back to 2017.
- Coordinate with §162(m) for applicable taxable affiliates.

Task Force on Replacement of IRS Direct File – Purpose

- Creates Treasury task force to evaluate and propose alternatives to IRS-run Direct File system.
- Report due to Congress within 90 days after 7/4/2025.

Task Force – Objectives and Scope

- Report must include:
- Cost analysis for enhancing public-private partnerships providing free filing to up to 70% of taxpayers (based on AGI)
- Taxpayer preference study: government vs. private service
- Feasibility and simplicity across providers
- Development and operating cost estimates by income and return complexity.

Task Force – Implementation and Funding

- Appropriation: $15 million for FY2026, available until 9/30/2026
- Focus: Transition feasibility, taxpayer usability, and public-private coordination.
- Goal: Replace or augment Direct File with scalable, taxpayer-friendly filing options.

OBBB International

Foreign Tax Credit – Overview

- Modifications to allocation/apportionment rules, deemed paid credits, and sourcing of inventory income.
- New §904(b)(5)–(6) and §960(d) updates effective for tax years beginning after 12/31/2025.

FTC Limitation – Allocation of Deductions (70311)

- Under new §904(b)(5), for NCTI category (formerly GILTI):
- No interest or R&E expenses allocable/apportionable.
- Only two deduction types allowed:
- 1. §250(a)(1)(B) deduction (40% of NCTI + §78 gross-up) net of §164(a)(3) taxes.
- 2. Deductions directly allocable to NCTI.
- All other deductions allocated to U.S. source income.

FTC – Deemed Paid Credit Modifications (70312)

- Deemed paid credit increased from 80% → 90% for taxes on NCTI (§960(d)(1) amended).
- §78 gross-up increased accordingly.
- No FTC allowed for 10% of foreign taxes on distributions of previously taxed NCTI after 6/28/2025 (new §960(d)(4)).

FTC – Sourcing of Inventory Income (70313)

- Current: 100% U.S.-source if produced in U.S. and sold abroad.
- New §904(b)(6): For taxpayers with a foreign office/fixed place of business, up to 50% of income from U.S.-produced inventory sold abroad may be foreign-source.
- Applies to years after 12/31/2025.

FDDEI and NCTI Deductions – Overview

- Revisions to §250: permanent extension, renamed terms, reduced deduction percentages.
- GILTI → NCTI (Net CFC Tested Income); FDII → FDDEI (Foreign-Derived Deduction Eligible Income).

§250(a) – Deduction Rates Modified (70321)

- FDDEI deduction: 37.5% → 33.34%
- NCTI deduction: 50% → 40%
- Both made permanent (deleted §250(a)(3)).
- Effective tax rate ≈ 14% for both FDDEI and NCTI (after 10% haircut in §960(d)(4)).

§250(b) – Definition of Deduction Eligible Income (70322)

- New §250(b)(3)(A)(i)(VII): Excludes income/gain from sale/disposition of intangibles and depreciable/amortizable/depletable property (including §367(d) deemed transfers).
- §250(b)(3)(A)(ii): Excludes interest and R&E from DEI allocation.
- Applies to years after 12/31/2025.

§951A & FDDEI – Elimination of DTI Concepts (70323)

- Removes §951A(b),(d): deletes deemed tangible income (DTI) and net deemed tangible income return.
- FDII/FDDEI and GILTI/NCTI renamed throughout §§250 and 951A.
- Simplifies FDDEI/NCTI computation structure effective after 12/31/2025.

Base Erosion and Anti-Abuse Tax (BEAT) – Rate and Credit Modifications (70331)

- §59A(b)(1)(A): BEAT rate fixed at 10.5% (was scheduled to rise to 12.5%).
- §59A(b)(2) (credit limitation) repealed.
- Applies to years after 12/31/2025.

§163(j) – Definition of ATI for Interest Limitation (70342)

- Excludes from ATI: Subpart F (§951(a)), GILTI (§951A(a)), §78 gross-up, and portions of §245A(a) deductions for foreign-source dividends.
- §956 inclusions remain excluded.
- Effective for years after 12/31/2025.

CFC Look-Through Rule – Permanent Extension (70351)

- §954(c)(6) look-through rule made permanent.
- Allows related CFC payments of dividends, interest, rents, and royalties to be non-Subpart F if underlying income not Subpart F.
- Effective for tax years of foreign corps after 12/31/2025.

§898 – Repeal of 1-Month Deferral Election (70352)

- Strikes §898(c)(2) election for specified foreign corporations to adopt year 1 month earlier than majority U.S. shareholder.
- Transition: First year after 11/30/2025 must end with required year (short year).
- Change deemed initiated by corporation with Treasury consent.

Constructive Ownership – Downward Attribution Limits Restored (70353)

- Restores pre-TCJA §958(b)(4): no downward attribution of stock owned by a foreign person to a U.S. person.
- Adds new §951B: allows limited downward attribution to 'foreign-controlled U.S. shareholders' (>50% owned U.S. entities).
- Applies to foreign corp years after 12/31/2025.

Pro Rata Share Rules – Modified (70354)

- U.S. shareholder must include Subpart F/NCTI income if stock owned any day during CFC's year (not just last day).
- Transition rule: Dividends paid by CFC before 6/28/2025 (or before first post-2025 year) not treated as §951(a)(2)(B) dividends.
- Applies to CFC years after 12/31/2025.

Summary of International Changes

- NCTI/FDDEI structure simplified and made permanent.
- FTC improved (90% deemed paid credit) but haircut on distributions adds complexity.
- BEAT stabilized at 10.5%; §163(j) aligned with domestic interest rules.
- CFC rules modernized: permanent look-through, downward attribution restored.

Other Recent Changes

Recordkeeping & Burden of Proof – Overview

- Taxpayers must substantiate income, deductions, and credits per §6001 and Reg. §1.6001-1.
- Burden of proof generally on taxpayer (T.C. Rule 142(a)); may shift to IRS under §7491(a)(1) when credible evidence introduced.

Cohan Rule & Substantiation

- Cohan v. Commissioner (1930): permits estimation of deductible expenses only if payment proven but amount uncertain.
- Tax Court requires sufficient evidence for reasonable estimate; otherwise, deduction denied.

Recent Cases – Weston & Langlois

- Weston v. Commissioner (T.C. Memo 2025-16): business loss denied; insufficient records to apply Cohan rule.
- Langlois v. Commissioner (T.C. Memo 2025-12): 'shoebox method' records rejected; Court refused to sift through disorganized evidence.
- Practice Pointer: remind clients of recordkeeping duties and burden of proof rules.

§280E – Marijuana Business Deductions

- §280E disallows deductions for businesses trafficking in Schedule I or II substances; COGS still allowed per Reg. §1.61-3(a).
- Marijuana currently Schedule I; DOJ process to move to Schedule III would remove §280E application.

§280E – New Mexico Top Organics Case

- Case No. 19661-24 (T.C. 2025): taxpayer argues 'within the meaning of schedule I or II' ≠ 'listed in schedule I or II.'
- Seeking $2.76M refund for §162 expenses disallowed under §280E.
- Petition filed Dec. 16, 2024; no hearing scheduled yet.

§280E – Legislative Update

- Bill S.471 introduced to deny business deductions for marijuana businesses even if rescheduling to Schedule III occurs.
- IRS continues disallowance until law or classification changes.

Beneficial Ownership Reporting (BOI) – Overview

- FinCEN interim rule (Mar. 21, 2025): U.S. entities and beneficial owners exempt from BOI reporting.
- Only foreign entities registered to do business in U.S. must report foreign beneficial owners.

BOI Reporting – Background and Timeline

- Feb. 18: FinCEN set March 21 filing deadline for pre-2024 entities.
- Feb. 27: FinCEN announced no enforcement pending rule revisions.
- Mar. 2: Treasury confirmed no penalties for U.S. entities; future rule to limit BOI to foreign companies only.

BOI Reporting – Policy & Litigation Concerns

- Critics argue exclusion of domestic entities (≈99.8% of covered population) undermines AML enforcement.
- FACT Coalition, Transparency International raise constitutional and policy objections.
- Expected litigation likely over foreign/domestic reporting disparity.

IRS Individual Online Account Enhancements (IR-2025-28)

- IRS added Forms W-2 and 1095-A (2023–2024) to Individual Online Account.
- Future additions planned; expands taxpayer digital self-service capability.

Employee Retention Credit (ERC) – New FAQs (Mar. 20, 2025)

- IRS added 5 FAQs clarifying tax treatment and compliance aspects.
- Covers income tax effects, wage expense adjustments, disallowed claims, and fraud reporting.

ERC – Income Tax Impact & Wage Expense Adjustments

- ERC reduces wage expense in year wages paid.
- If not reduced previously, overstated wage expense included as income when ERC received.
- If claim disallowed, prior wage expense reduction reversed in disallowance year.
- No amended returns generally required; tax benefit rule applies.

ERC – Example Summary Tables

- Illustrations show interaction between claim filing, receipt, and amended returns.
- Key takeaway: timing of wage adjustment depends on ERC receipt/disallowance year.

ERC – Fraud Reporting and FAQ Reliability

- Fraud: use Form 14242 to report abusive ERC claims/promotions.
- FAQs are non-authoritative; may support penalty relief but conflict with Notices 2021-20 and 2021-49.
- IRS acknowledges reliance allowed for penalty protection only.

ERC – Practice Alert

- ERC FAQ treatment allows inclusion/deduction in year of resolution—contradicting prior guidance.
- Given regulatory freeze, FAQs may reflect interim IRS enforcement approach.

Rev. Proc. 2025-23 – Automatic Accounting Method Changes

- Updated list of automatic method changes under Rev. Proc. 2015-13 (as modified).
- Supersedes parts of Rev. Proc. 2024-23.
- Includes 18 significant updates (10 obsolete removals; 5 clarifications).
- Automatic changes via Form 3115 attached to return + duplicate filing.

Partnership Basis Shifting TOI Regulations Removed (Notice 2025-23)

- Treasury/IRS to remove §1.6011-18 (basis-shifting transactions of interest).
- Penalties under §§6707A(a), 6707(a), 6708 waived; Notice 2024-54 withdrawn.
- Legislation proposed to address related-party basis shifting.

Partnership Reporting – Proposed Regs on §751(a) Sales (REG-108822-25)

- Proposed Aug. 19, 2025: partnerships gain more time to report gains/losses to partners on Form 8308.
- Removes Reg. §1.6050K-1(c)(2); modifies (c)(1) to limit Jan. 31 reporting to Parts I–III only.
- Full Form 8308 due with Form 1065 by due date.
- Comments due Sep. 18, 2025.

Property Transactions

Background & Core Framework

- Gross income includes gains from property transactions (§61(a)(3)).
- Gain = Amount realized – Adjusted basis (§1001(a)).
- Amount realized includes cash + FMV of other property, incl. nonrecourse debt assumed (Crane; Tufts) (§1001(b)).
- Two recurring issues: timing (recognition/deferral) and character (capital, §1231, recapture).

Capital Gains & Losses — Entity Basics

- C corps: long-term capital gains taxed at ordinary corporate rates.
- C corp capital losses deductible only to extent of capital gains (§1212(a)(1)).
- C corp capital loss carry periods: back 3 years, forward 5 years.
- S corp capital items pass through to shareholders (see individual rules).

When Is Gain/Loss Capital? (§1222 / §1221)

- Need BOTH a capital asset AND a sale or exchange.
- §1221 defines capital asset broadly as property held by taxpayer… BUT lists exclusions.
- Congress intended capital treatment to be the exception; exclusions drive most outcomes.

§1221(a) — Key Exclusions from Capital Asset Status

- 1) Inventory / property held primarily for sale (§1221(a)(1)).
- 2) Depreciable property or real estate used in a trade or business (§1221(a)(2)).
- 3) Certain copyrights, literary/musical/artistic compositions (§1221(a)(3)).
- 4) A/R and certain notes from ordinary-course sales (§1221(a)(4)).
- 5) Certain U.S. government publications (§1221(a)(5)).
- 6) Certain commodities, hedges, and supplies (§1221(a)(6)-(8)).

Real Estate Dealer vs. Investor — Why It Matters

- Property held primarily for sale to customers → ordinary income; no capital gain.
- Dealer status impacts §1031 eligibility and §453 installment method.
- Rev. Rul. 2016-15: dealer real estate ineligible for QRPBI CODI exception under §108(a)(1)(D).

Determining Dealer Status — Facts & Circumstances

- Courts look at purpose, frequency/continuity of sales, development activity, marketing, improvements, time held, etc.
- Malat v. Riddell (1966): ‘primarily’ = ‘of first importance’; substantial resale intent didn’t preclude investment capital gain.
- Bynum v. Comm’r (1966): converting investment land to dealer property via subdivision and improvements.

Statutory Dealer Relief — §1237 (Subdivided Realty)

- Prevents automatic dealer taint solely due to subdivision if ALL met:
- 1) Seller not a dealer in the property (and not a dealer in other real estate that year).
- 2) No substantial improvements that substantially enhance value.
- 3) 5-year holding period unless acquired by inheritance/devise.
- Additional special rules in §1237(b).
- Planning: consider development timing if seeking ordinary loss vs. capital loss.

Abandonment/Worthlessness of Partnership Interest — Rev. Rul. 93-80

- §731 generally: gain/loss on distributions treated as from sale/exchange.
- Rev. Rul. 93-80: loss on abandonment or worthlessness is ORDINARY if no sale/exchange applies.
- BUT any actual/deemed distribution (incl. liability decrease under §752) → sale/exchange → CAPITAL loss.
- See Rev. Rul. 76-189 (capital on termination with no assets) vs. Rev. Rul. 70-355 (ordinary for certain limited partner bankruptcy).

TCJA: Self-Created Intangibles Not Capital Assets (§1221(a)(3))

- For dispositions after 2017: patent, invention, model/design, secret formula/process created by taxpayer (or transferee with carryover basis) → ordinary.
- Copyrights and similar works were already ordinary under §1221(a)(3).
- Election remains for self-created musical compositions/copyrights to be capital assets (§1221(b)(3)).

Look-Through Rules on Sale of Pass-Through Interests — Reg. §1.1(h)-1

- Applies to partnership, S corp, trust interests: identifies 28% collectibles gain and unrecaptured §1250 gain (25%).
- Uses §751 look-through for unrealized receivables/inventory; §1250 treatment flows to unrecaptured §1250 bucket.
- 'Deem sold' approach: compute seller's share as if entity sold all collectibles or §1250 property immediately before the interest sale.

Collectibles & Unrecaptured §1250 on Interest Sales

- Collectibles gain portion from underlying collectibles is taxed at 28%.
- Unrecaptured §1250 gain from underlying real property taxed at up to 25%.
- Special rule: §1250 capital gain from selling partnership interest is NOT §1231 gain for applying the §1(h)(7)(B) cap.
- Look-through rules generally do NOT apply to redemptions of interests.

Holding Period in Partnership Interests — Reg. §1.1223-3

- Divided holding periods if portions acquired at different times or single acquisition yields split periods.
- PTPs with identifiable units may use actual unit holding periods; otherwise pro-rata by FMV of portions.
- Entire interest sale: split LTCG/STCG based on overall long/short proportions.
- Distributions: HP usually unaffected; if gain recognized, split long/short using same-ratio rule.
- See Reg. §1.1223-3(e) examples.

§1231 — The ‘Best-of-Both-Worlds’ Rule

- If §1231 gains > losses → all §1231 items are capital.
- If §1231 losses > gains → all §1231 items are ordinary.
- Applies to: (i) sales/exchanges of §1231(b) property (depr. or real property used in T/B held >1 year), and (ii) involuntary conversions of §1231(b) assets or certain long-held capital assets used in T/B or for profit.

§1231 Mechanics & Special Casualty Rule

- Nonrecognition exchanges (e.g., §1031) excluded from §1231 netting.
- Casualty/theft netting: if losses exceed gains, exclude casualty items from §1231 → ordinary treatment.
- Policy: protect taxpayers where casualty losses dominate; preserve capital treatment for other §1231 gains.

§1231(c) 5-Year Look-Back Recapture

- Current net §1231 gain is recharacterized as ordinary income up to prior 5 years' net §1231 losses.
- 'Look back' only — no 'look forward.'
- Track a running §1231(c) recapture account by taxpayer.

Depreciation Recapture — Why It Exists

- Prevents conversion of ordinary income (via depreciation) into capital gain on disposition.
- §1245 (generally personal property + certain intangibles) and §1250 (real property) recharacterize gain as ordinary to extent of defined depreciation amounts.
- §291: C corps treat 20% of straight-line depreciation on realty as §1250 recapture.

§1245 Recapture — Key Rules

- §1245 property: depreciable personal property; some intangibles; certain pre-1987 realty under ACRS; §179 counts as depreciation.
- Ordinary income recapture = lesser of (i) total depreciation/amortization allowed/allowable (recomputed basis – adjusted basis), or (ii) gain realized.
- If allowed < allowable and taxpayer proves it, recaptures only allowed amount.

§1250 Recapture & Unrecaptured §1250

- §1250 recaptures ‘excess’ depreciation over straight-line; post-1986 realty SL means little/no §1250 recapture for individuals.
- For C corps, §291 pulls 20% of SL depreciation into ordinary income.
- Remaining gain attributable to SL depreciation for individuals taxed as unrecaptured §1250 gain (max 25%).

Recapture Events & Exceptions

- Recapture applies ‘notwithstanding any other provision’ and on any disposition unless expressly excepted.
- Gifts: no current recapture; potential carries to donee (§1245(b)(2); §1250(d)(1)).
- Death: no recapture; §1014 step-up wipes potential (§1245(b)(2); §1250(d)(2)).
- §351/§721 formations: no current recapture; carries over (§1245(b)(3); §1250(d)(3)).
- Conversion to personal use not a disposition (Rev. Rul. 69-487); but watch §179/§280F recapture.
- Installment sales: recapture recognized in year of sale; increases basis for gross profit % (§453(i)).

Special Asset Note — Retail Motor Fuels Outlets

- §168(e)(3)(E) classifies certain retail motor fuels outlets as 15-year §1250 property.
- Thus, not §1245; apply §1250/§291 framework.

§1239 — Related-Party Sales of Depreciable Property

- All gain is ordinary on sale/exchange to a ‘related person’ if property is depreciable in transferee’s hands (§1239(a)).
- Related persons include >50% controlled entities, certain trusts/beneficiaries, employer-affiliated relationships (§1239(b)-(d), §267 attribution).
- Applies even if property was nondepreciable to transferor (e.g., selling personal residence to controlled corp that will rent it).
- Installment method generally barred unless no federal tax avoidance purpose (§453(g)).

§267 — Related-Party Loss Disallowance

- Disallows losses on sales/exchanges between specified related parties (individual↔controlled corp, members of >50% controlled group, overlapping corp/partnership ownership, two S corps, S corp with commonly owned C corp, etc.).
- Coordinates with later gain recognition rules. See Publication 544 for details.

Personal Goodwill in Closely Held Corporations — H&M, Inc. (2012)

- Tax Court found shareholder’s relationships/reputation constituted personal goodwill; buyer’s $600k payments to shareholder not reallocated to selling C corp.
- Key factors: absence of covenant not to compete/employment agreement restricting shareholder; customers ‘came to buy from him.’
- Planning: document personal relationships; avoid shareholder noncompete with own corp; allocate reasonably between services, noncompete, and goodwill.

§1202 QSBS — Entity Form & Trade/Business Scope

- PLRs 201603010–014: QSBS can persist through conversion to LLC taxed as a corporation via §368(a)(1)(F) reorg; form change alone doesn't break QSBS.
- PLR 202221006: specialty pharmacy retailing drugs (no diagnostics/treatment) = qualified trade/business; principal asset not employee skill but exclusive distribution rights.
- CCA 202204007: online leasing marketplace = 'brokerage services' → NOT a qualified §1202 business; software intermediation still brokerage.

IRS Forms & Publications (Reference)

- Form 8594 — Asset Acquisition Statement (§1060).
- Form 8023 — §338 elections.
- Publication 544 — Sales and Other Dispositions of Assets.

Planning: Corporate Dispositions of Appreciated Assets

- Asset sales trigger corporate-level gain; look first for nonrecognition paths: §351, §337 parent–sub liquidations, §368 reorganizations, §1031 like-kind (real estate), §1033 involuntary conversions.
- Distributions of appreciated property generally trigger gain.

Planning: Locking In Capital Gain on Undeveloped Land

- Risk: development activity → dealer status → ordinary income on lot/home sales.
- Strategy: sell land to related S corp (not partnership) via installment sale to ‘lock in’ existing LTCG; S corp conducts development.
- Avoid §453(g) and §1239 issues (land is nondepreciable; §453(g) targets depreciable property to related parties).
- Guardrails: substantial down payment; reasonable interest; straight-debt features; timely payments; recorded mortgage; adequate equity (debt-equity ≤ ~4:1); independent appraisal; business purpose; consider unrelated co-owners.
- Watch OZ related-party rules (§1400Z-1/-2) — gain won’t qualify if sold to related person.

Travel, Meals and Entertainment

Key Code & Regulation Framework

- Meals & Entertainment — §274(a), (e), (n); Regs. §§1.274-11, -12 (TD 9925)
- Travel — §162(a)(2), §262; Rev. Ruls. 90-23, 94-47, 99-7
- Employer Meals — §119, §132(e); Reg. §1.132-7; Jacobs v. Comm’r (Boston Bruins)
- Employer-Provided Vehicles — §61, §132; Reg. §1.61-21; TD 9893 (2020)

Pre-TCJA vs. Post-TCJA Overview

- Pre-2018: 50% limit on food, beverage, entertainment with exceptions.
- Post-TCJA: Entertainment 0% deductible; Meals 50% deductible; Exceptions under §274(e) remain fully deductible.
- Examples: Holiday parties, public events, employee meals reimbursed under accountable plans.

TD 9925 Final Regulations – Clarifications

- Meals vs. Entertainment distinction solidified.
- Separate billing required for food/beverage from entertainment.
- Employer meals 50% deductible until 2025. (for some meals)
- Written documentation required for business purpose and taxpayer presence.

Employer Meals – 2026 Nondeductibility

- Starting 1/1/2026:
- Meals for employer's convenience (§119) — 0% deductible.
- Employer cafeterias and breakroom snacks — 0% deductible.
- Action: Reclassify GL accounts; budget for lost deductions.

Case Study: Boston Bruins (Jacobs v. Comm’r, 148 T.C. 24)

- Facts: Bruins deducted 100% of pregame meals at away hotels.
- Held: Qualifies as de minimis fringe (§132(e)); hotel rooms treated as leased eating facilities.
- Implication: Expands meaning of 'on or near business premises' for temporary work sites.
- IRS Acquiesced in result only — narrow precedent.

§274(e) – 100% Deductible Categories

- 1. Compensation (§274(e)(2))
- 2. Accountable reimbursements (§274(e)(3))
- 3. Employee social events (§274(e)(4))
- 4. Publicly available events (§274(e)(7))
- 5. Goods sold (§274(e)(8))
- 6. Reimbursed expenses (§274(e)(9))

Substantiation Requirements (TD 9925)

- Must record contemporaneously:
- Amount, date, location
- Business purpose
- Business relationship
- Taxpayer presence
- Evidence hierarchy: Receipts/logs > expense reports > reconstructions.

Commuting vs. Business Transportation

- Commuting personal (§262, Reg. 1.262-1(b)(5)).
- Business transportation: Between work locations (Rev. Rul. 55-109).
- 'On-call' commuting rejected except narrow police cases (Pollei v. Comm.).

Temporary Work Location Rules

- Rev. Ruls. 90-23, 94-47, 99-7:
- Travel to temporary site outside metro area — deductible.
- From home (principal office) to temporary site — deductible.
- Home = principal place of business (§280A(c)(1)(A)) — travel to other sites deductible.
- Temporary = ≤1 year.

Commuting Case Law Highlights

- Flowers (1946) — commuting personal choice.
- Sanders (1971) — distance irrelevant.
- Bogue (2013) — supply stores not 'work locations.'
- Andrews (1991) — duplicated living expenses deductible if business justified.

One-Year Rule & Chief Counsel Clarifications

- Rev. Rul. 93-86:
- Rule #1: ≤1 year = temporary.
- Rule #2: >1 year = indefinite.
- Rule #3: expectation shifts → deductible only until change.
- CCMs: Separate projects get separate clocks; short breaks don’t restart; >1 year break may.

Away-from-Home Travel (§162(a)(2))

- Must meet 3 prongs:
- 1. Ordinary and necessary
- 2. Away from home (sleep/rest rule, Correll)
- 3. Pursuing trade/business.
- Home = principal place of business (Rev. Rul. 93-86).

Family Member Travel (§274(m)(3))

- Deductible only if:
- 1. Spouse/dependent is employee.
- 2. Travel has bona fide business purpose.
- 3. Expenses would be deductible by them.
- Otherwise: treated as compensation or disallowed.

Per Diem & Substantiation Rules

- Employees: Federal per diem rates OK under accountable plan.
- Owners (>10%): Lodging receipts required; M&IE per diem OK.
- Self-employed: Actual expenses only (Starr, T.C. Memo 2000-305).
- High-low per diem allowed with policy.

Nonaccountable Plans & Payroll Impact

- If not substantiated timely or excess not returned:
- → Included in W-2 wages.
- → Subject to FITW/FICA.
- → Employee cannot deduct (TCJA suspended unreimbursed expenses).
- Accountable plan deadlines: 60 days substantiation; 120 days return excess.

Employer-Provided Vehicles (§61, Reg. 1.61-21)

- Personal use = taxable fringe.
- Valuation methods:
- 1. Cents-per-mile (mileage × IRS rate)
- 2. Lease value table (4-year reset)
- 3. Commuting rule ($1.50 one-way)
- 4. Arm's-length rental value.
- Select one and stay consistent.

FMV Thresholds – Cents-Per-Mile Method

- Eligibility: ≥10,000 miles/year or >50% business use.
- | Year | FMV Cap |
- |------|----------|
- | 2017 | $15,900 |
- | 2018–20 | $50,000–$50,400 |
- | 2021 | $51,100 |
- | 2025 | $61,200 (est.) |

Lease Value Table Method

- Annual Lease Value × Personal-use % × months/12.
- Add fuel (FMV or 5.5¢/mile).
- Revalue every 4 years.
- Best for higher-value vehicles with variable usage.

Commuting Valuation Rule ($3/day)

- Requirements:
- Employer-owned/leased vehicle used for business.
- Written policy prohibiting personal use.
- Employee required to commute for business reasons.
- Not available to 'control employees' (≥1% owners, directors, $100k comp).

Qualified Nonpersonal-Use Vehicles

- Rev. Rul. 86-97 examples:
- Dump trucks, cranes, tractors, forklifts.
- Police/fire/ambulance vehicles.
- Vans with permanent shelving; pickups with mounted equipment.
- Exempt from §274(d) substantiation; no fringe inclusion.

Recordkeeping Essentials

- Meals/travel: receipts, calendar logs, city codes.
- Vehicles: mileage logs, driver certifications.
- Policies: accountable plan, commuting-only rule.
- Retention: 3–4 years; electronic accepted.

Planning & Compliance Checklist

- Meals/Entertainment: separate 50% vs. 100% accounts.
- Travel: track temporary assignments.
- Vehicles: maintain written policies.
- Recordkeeping: enforce substantiation windows.

2026 Transition Planning

- Audit cafeteria/snack accounts for §119 meals.
- Revise contracts by FY2025 Q4.
- Train staff on nondeductibility.
- Rebudget employee meal programs.

Key Cases Recap

- Starr (2000): no per diem for lodging.
- McNeill (2003): no tax home → no deduction.
- Barrett (2017): home justified by business nexus.
- Jacobs (2017): Bruins meals 100% deductible.
- Bogue (2013): commuting reaffirmed.

Practitioner Tips

- Segregate 50%, 100%, 0% items.
- Use per diem only if qualified.
- Document vehicle business %.
- Maintain exclusive-use proof for home offices.

Audit Triggers & Fixes

- Common issues:
- Meals/entertainment lumped.
- Travel logs missing.
- Vehicle mileage undocumented.
- Late accountable plan substantiation.
- Fixes: enforce policy, retain logs, verify GL codes.

Decision Trees – Meals & Travel

- Meals:
- 1. Entertainment? 0% unless §274(e) → 100%.
- 2. Separate meal substantiated? 50% or 100% if exception.
- 3. Employer-provided? 50% → 0% post-2025.

- Travel:
- 1. Temporary site ≤1 year? Yes → deductible.
- 2. Outside metro or PPoB? Yes → deductible.
- Else → commuting.

179 vs Bonus Comparison

Advantages of §168(k) Over §179 — Overview

- Both provide immediate expensing, but §168(k) is broader and less restricted.

- Key areas of advantage:
- 1. Broader property eligibility.
- 2. No annual dollar limits or income phase-outs.
- 3. Applicable to noncorporate lessors.
- 4. No taxable income limitation.
- 5. More favorable recapture treatment for non-listed property.

Real Property Eligibility

- §168(k) covers tangible depreciable property ≤20-year recovery period.
- Includes: sidewalks, roads, landscaping, fences, golf greens, motor fuel facilities, radio/TV towers, and farm buildings.
- These assets typically excluded from §179 as they are not §1245 property.

No Deduction Limitation or Phase-Outs

- §168(k) has no maximum deduction amount, phase-out threshold, or taxable income limit.
- May create or increase NOLs.
- §179 limited to annual deduction cap and phase-out threshold, and cannot exceed active trade/business taxable income.

No Limits for Trucks, Vans, SUVs

- §179 limits deduction for SUVs >6,000 lbs GVW.
- §168(k) allows 100% write-off for such vehicles.

- Practice Alert:
- Pickup with ≥6 ft cargo bed or van with >9 seats behind driver is not subject to SUV limit (§179(b)(5)).

§168(k) Allowed to Noncorporate Lessors

- §179(d)(5): Disallows deduction for noncorporate lessors unless special production and lease-term conditions met.
- §168(k): No restriction—noncorporate lessors may claim full bonus depreciation.

Recapture — 50% Business Use

- §179(d)(10): Recapture ordinary income if business use ≤50% before end of recovery period.
- §168(k): Recapture applies only to listed property (e.g., passenger autos) under §280F.

- Note: Conversion to personal use does not trigger recapture except for listed property.

Listed Property Recapture Differences

- If listed property business use ≤50% → recapture §179 & §168(k) excess over straight-line (§280F(b)).

- TCJA Change:
- Computers/peripherals not 'listed property' after 2017.
- §179 recapture may still apply to such assets.

QIP Recapture — §1250 vs §1245

- Both §179 and §168(k) apply to Qualified Improvement Property (QIP).
- §179 recapture = §1245 (ordinary income on sale up to deduction).
- §168(k) recapture = §1250 (ordinary income only to excess over straight-line depreciation).

- Example: QIP disposed in 7th year → only 53% of §168(k) depreciation recaptured.

New to Business Use Property

- New property converted from personal to business use may qualify under §168(k) (Reg. 1.168(k)-1(b)(3)(ii)(A)).
- Does not qualify for §179 since conversion ≠ qualifying purchase.

Estates and Trusts

- §179 deduction disallowed for estates and trusts (§179(d)(4); Reg. 1.179-1(f)(3)).
- Estates/trusts may claim §168(k) depreciation.

Property Held for Production of Income

- §179 limited to property used in 'active conduct of trade or business.'
- §168(k) applies to both trade/business and property held for production of income (e.g., rentals).

§1031 Exchanges and Carryover Basis

- §179: Excludes carryover basis from qualified property (§179(d)(3); Reg. 1.179-4(d)).
- §168(k): Entire basis (carryover + boot) may qualify for new property.
- Example: Trade \$200k basis + \$300k cash → §168(k) eligible for full \$500k.

Advantages of §179 Deduction Over §168(k)

- §179 retains unique advantages despite bonus generosity:
- 1. Broader 'Qualified Real Property' definition.
- 2. Partial election flexibility.
- 3. Better state conformity.
- 4. Exemption from UNICAP capitalization.
- 5. Available where §168(k) disallowed (e.g., §163(j) elect-outs, utilities).

Qualified Real Property vs Qualified Improvement Property

- §179 QRP includes roofs, HVAC, fire protection, and security systems in addition to QIP.
- QIP covers only interior improvements.
- Example: Roof qualifies for §179 but not §168(k).

Electivity and Control

- §179: May elect asset-by-asset, even partial asset amounts.
- §168(k): Applies automatically to all eligible assets unless elect-out by class.
- Elect-out must apply to all assets in class.

State Conformity Differences

- §179 widely accepted by states (often lower limits).
- §168(k) frequently decoupled—states require add-back.
- Results in timing mismatches between federal and state income.

UNICAP Implications

- §263A capitalization rules: §179 specifically excluded from UNICAP (Reg. 1.263A-1(e)(3)(iii)(c)).
- §168(k) depreciation must be capitalized into inventory costs.

Interest Limitation and Industry Restrictions

- §163(j) elect-out or floor plan financing disqualifies property from §168(k) bonus.
- §179 unaffected.
- Also, regulated utilities cannot claim §168(k).

Similar Attributes of §179 and §168(k)

- 1. Both now apply to 'used' and 'new' property (TCJA removed prior §168(k) restriction).
- 2. Both available for property used in lodging (post-TCJA amendment).

- Caution: §179 applies only to 'active' trade or business assets.

§179 Carryover vs. Bonus Depreciation and NOLs

- §179 disallowed amounts carry forward indefinitely and can offset 100% of income in future years.
- Bonus depreciation can create NOLs, but post-2017 NOLs limited to 80% of taxable income under §172(a)(2).

- Planning: Bonus = immediate cash benefit; §179 = flexibility for future income offset.

Example — §179 vs. Bonus in NOL Scenario

- Facts: $1M eligible deduction; $700K income.
- Bonus: Creates $300K NOL → offsets 80% of future income.
- §179: $700K deducted; $300K carryover → can offset 100% of future income.

State-Level Considerations

- §179 generally accepted but limited by state caps.
- Bonus depreciation often disallowed; states require add-back.
- Federal-state mismatch can distort taxable income and apportionment.

Planning Perspective — §179 vs. Bonus

- Bonus: Accelerates deductions, may create NOL; good for immediate benefit.
- §179: Provides selective control and full-offset carryover.
- Often used together—bonus for short-term benefit, §179 for long-term flexibility.

Summary Chart — Major Differences

- §168(k): Unlimited, applies automatically, broad property base.
- §179: Elective, limited by income, includes QRP.
- §168(k): Creates/expands NOLs; §179: cannot create NOL but carryforward flexible.
- §168(k): Broader eligibility (lessor, estates, passive income property).

Practice Tips

- Use §168(k) for high-cost, short-life assets or when creating NOL beneficial.
- Use §179 for real property improvements, state conformity, and flexible timing.
- Blend both methods strategically based on taxable income and state conformity.

Key Planning Alerts

- QIP under §168(k): partial §1250 recapture; under §179: full §1245 recapture.
- §179 carryover retains full deductibility (no 80% cap).
- Avoid §168(k) for trades electing out of §163(j).
- Monitor 2025–2026 phase changes and state decoupling.

PTE Taxes

IRS Notice 2020-75 Overview

- Issued November 9, 2020, the IRS clarified that partnerships and S corporations can deduct 'Specified Income Tax Payments' directly at the entity level. This bypasses the $10,000 SALT deduction limit on individual returns. Taxpayers may rely on this guidance until formal regulations are issued.

Purpose and Implications

- Enables entity-level deduction of state/local income taxes.
- Avoids the SALT limitation for partners/shareholders.
- Applies even when entity elects into a tax regime.
- Owners may still receive state credits or income reductions.
- Significant planning opportunity under PTET regimes.

SALT Deduction Changes Under OBBB (2025–2030)

- 2025: SALT cap increases from $10,000 to $40,000 ($2,000 if MFS).
- Phase-down for MAGI above $500,000 (MFJ) / $250,000 (MFS).
- Annual 1% increases 2026–2029.
- Reverts to $10,000 in 2030.
- PTET workarounds remain unaffected by OBBB.

Effective Date and Retroactivity

- Applies to payments made on/after Nov. 9, 2020.
- Also applies to payments made in years ending after Dec. 31, 2017, if law enacted before Nov. 9, 2020.
- Retroactive treatment provides flexibility for prior payments.

Definition of Specified Income Tax Payment

- Amount paid by partnership/S corp to satisfy an income tax directly imposed on the entity by a state or D.C.
- Includes elective PTET taxes.
- Qualifies even if owners receive credits or exclusions.
- Must be imposed directly on the entity (not owners).

Deductibility and Timing

- Deduction allowed in the year payment is made.
- Entities should make payments before year-end to ensure deduction.
- Estimated payments may help secure deduction timing.
- Applies similarly to cash and accrual taxpayers.

Accrual Method Taxpayers – Recurring Item Exception

- Reg. §1.461-5 allows deduction in year accrued if:
- 1) Liability fixed by year-end.
- 2) Payment within 8½ months after year-end.
- 3) Liability is recurring.
- 4) Amount immaterial or better matches income.
- PTET liability must be determinable at year-end.

Accounting Method Considerations

- Recurring-item exception is a method of accounting.
- If previously deducted when paid, an automatic change may be required (Rev. Proc. 2023-24 §20.02).
- Liability can qualify even if PTET election not annual.
- First-time PTET elections may also qualify.

Interaction with SALT Deduction Limitation

- Specified Income Tax Payments excluded from SALT cap.
- IRS reversed prior position—now aligns with state PTET statutes.
- State-level PTET elections preserve full deduction.
- States continue refining PTET rules post-Notice 2020-75.

Practical Planning and Compliance

- Confirm tax is imposed directly on the entity.
- Pay entity-level taxes before year-end.
- Review accounting method and apply recurring-item exception where possible.
- Coordinate owner credits and reporting on state returns.
- Retain documentation for payments and elections.

Check the Box Rules

Background and Pre-1997 Rules

- Before 1997, the Kintner regulations governed entity classification, comparing six corporate characteristics. As LLCs and LLPs emerged, distinctions blurred. To simplify, the IRS issued Notice 95-14, followed by the Check-the-Box (CTB) regulations effective January 1, 1997.

Overview of the Check-the-Box (CTB) Regulations

- Most business entities can elect classification as corporation, partnership, or disregarded entity.
- Certain entities are per se corporations and cannot elect.
- If no election is made, default classification applies based on number of owners and liability structure.

Hybrid and Reverse Hybrid Entities

- CTB regulations enable hybrid entities—treated differently under U.S. and foreign law.
- Hybrid: Partnership for U.S. tax, corporation under foreign law.
- Reverse hybrid: Corporation for U.S. tax, partnership abroad.
- These structures create complex international tax implications.

Default Classifications – Domestic Entities

- Partnership – two or more owners.
- Disregarded entity (DRE) – single owner.
- Per se corporations – automatically corporations under state or federal law:
- - Incorporated or chartered entities
- - Joint-stock companies, insurance companies, state-chartered banks
- - Entities owned by governments
- - Entities taxable as corporations under the Code.

Default Classifications – Foreign Entities

- Partnership – two or more owners, at least one without limited liability.
- Corporation – all owners have limited liability.
- DRE – single owner without limited liability.
- Limited liability determined under organizing jurisdiction’s law.
- Certain foreign entities are per se corporations per Reg. §301.7701-2(b)(8).

Step 1: Determine Domestic or Foreign

- Domestic: Created or organized in the U.S. or under U.S./State law.
- Foreign: Any entity not meeting domestic criteria.
- If organized in both U.S. and a foreign jurisdiction → treated as domestic.
- This determination must occur before applying default or elective classification rules.

Step 2a: Domestic Entity Classification

- Eligible entity (not per se): Partnership (2+ owners) or DRE (single owner).
- Per se corporations: Incorporated entities, banks, insurance companies, or those treated as corporations under other Code sections.
- Eligible associations can elect corporate treatment but are not per se corporations.

Step 2b: Foreign Entity Classification

- Partnership – 2+ owners, at least one without limited liability.
- Corporation – all owners have limited liability.
- DRE – single owner without limited liability.
- Certain listed foreign entities (Reg. §301.7701-2(b)(8)) are per se corporations and cannot elect.
- Limited liability test is key for determining status.

Step 3: Filing Form 8832 (Entity Classification Election)

- Must be filed by eligible entity (not per se corporation).
- Entities with 2+ owners may elect partnership or corporate treatment.
- Single-owner entities may elect DRE or corporate treatment.
- Election effective on specified date (retroactive ≤75 days or prospective ≤12 months).
- Attach copy to tax return; IRS sends confirmation letter.

Election Restrictions and Timing

- Cannot change classification within 60 months of prior election unless >50% ownership change.
- Election by newly formed entity effective on formation date does not trigger 60-month rule.
- Form 8832 must be signed by all owners or authorized officers under penalty of perjury.

Failure to Elect and Relief Options

- Failure to attach Form 8832 does not invalidate election but may cause penalties.
- Automatic relief: election filed within 3 years + 75 days of desired effective date.
- Foreign entities may qualify if owner count error occurred.
- Relief under Reg. §301.9100-1 to -3 ("9100 relief") allows extensions.
- Examiners cannot grant relief—must be via formal procedure.

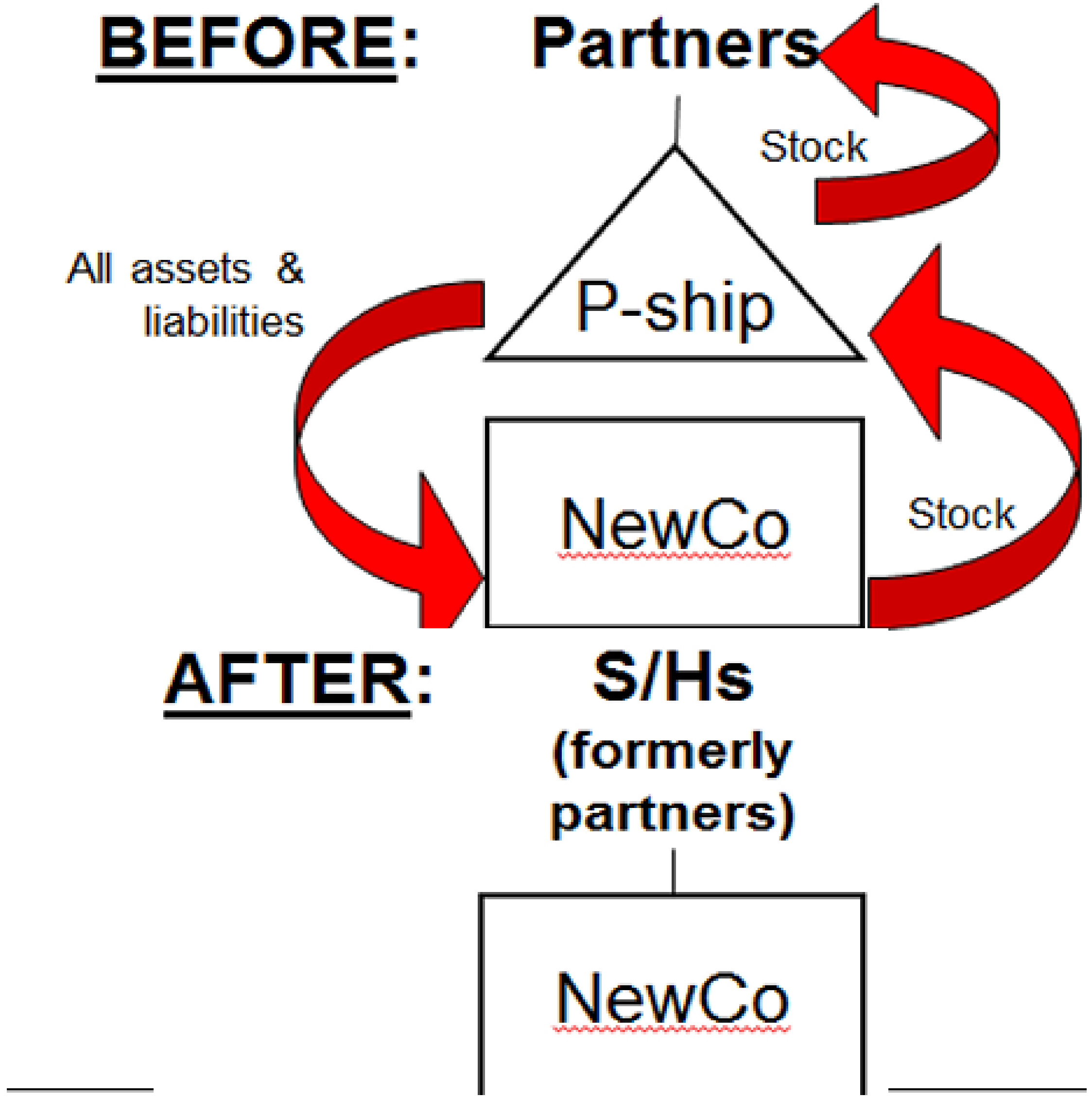
Deemed Elections – Ownership Changes

- Partnership → DRE: If members drop to one.
- DRE → Partnership: If ownership increases to two or more.
- Corporation (association): Not affected by ownership count.
- These deemed changes are automatic; no Form 8832 required.
- Not subject to 60-month reclassification rule.

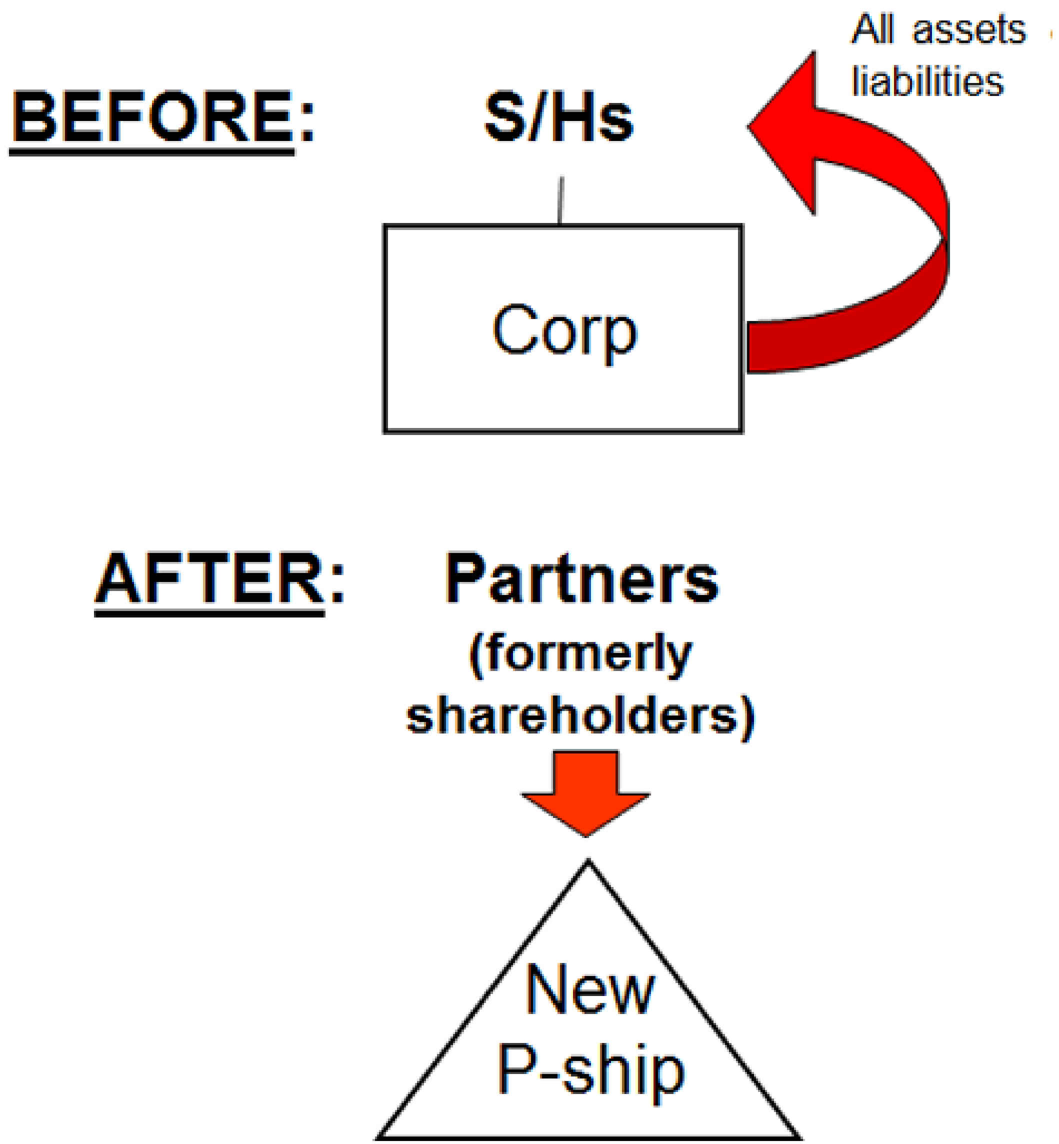
Deemed Transactions Upon Classification Change

- When entity changes classification, tax law deems certain transactions:
- Partnership → Corporation: Contribution of assets/liabilities for stock, then liquidation.
- Corporation → Partnership: Liquidation, then contribution to new partnership.
- Corporation → DRE: Liquidation to single owner.
- DRE → Corporation: Owner contributes assets/liabilities for stock.

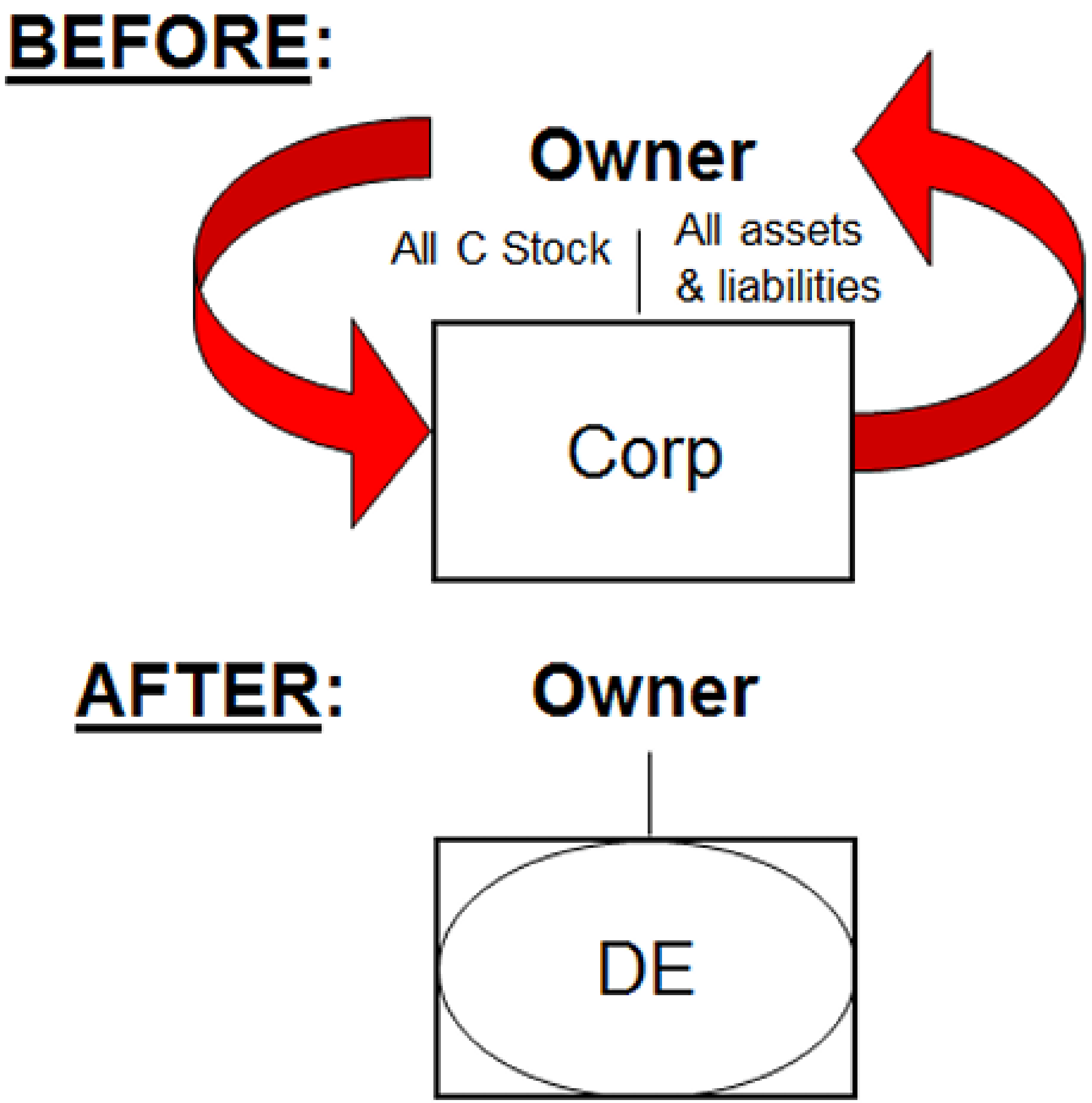
Partnership to Corp



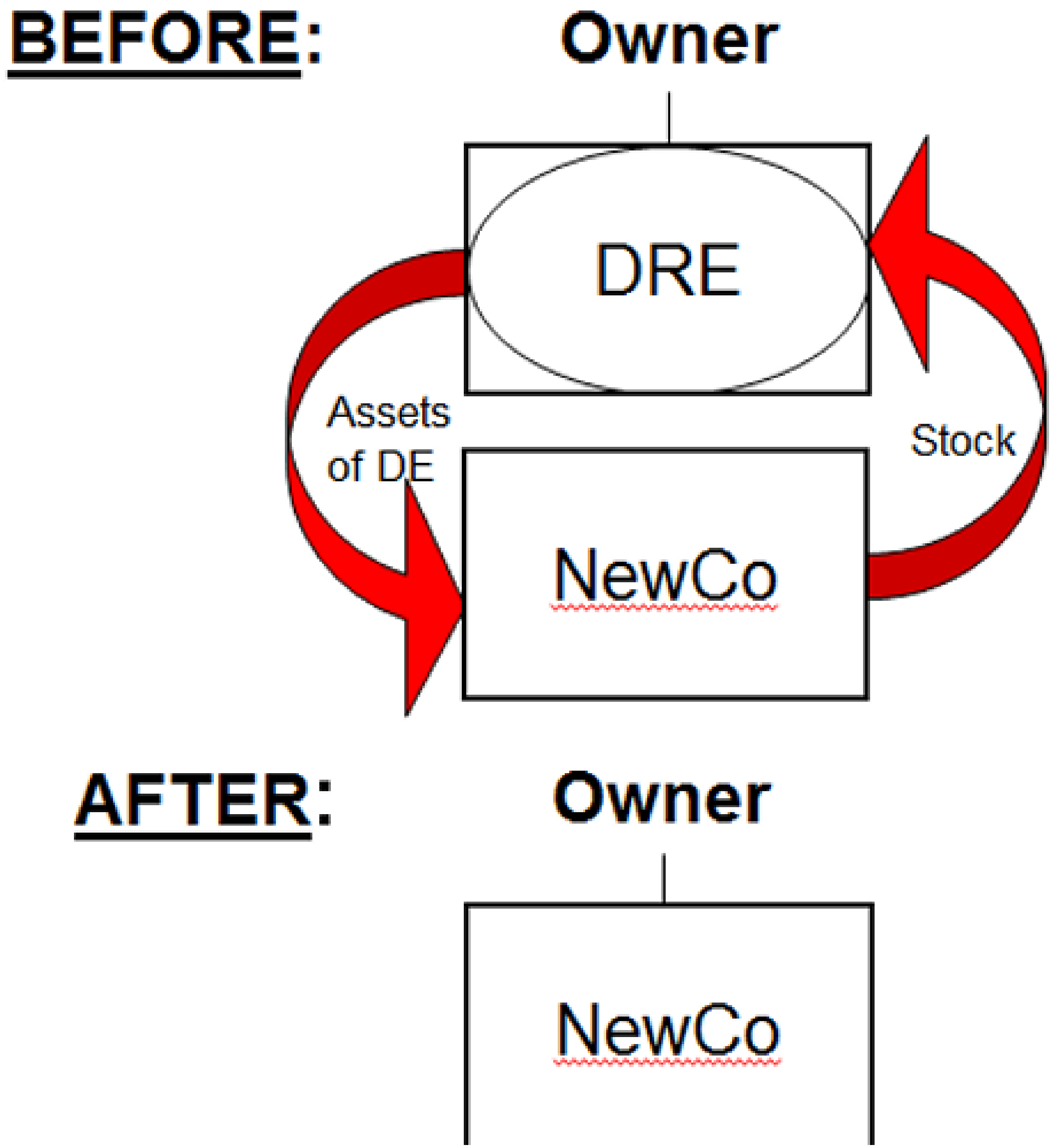
Corp to Partnership



Corp to DRE


BEFORE:
Owner
All C Stock
All assets
& liabilities
Corp
AFTER:
Owner
DE

DRE to Corp



IRC 199A REFRESHER

Part 1 – The Calculation

- Objective – Understand how QBI is calculated with the different thresholds

QBI

- Is it simple?
- 20 percent of qualified business income will be the deduction right?
- Wrong
- Unfortunately, we’re seeing clients have issues with the calc
- Form 8995

Interaction with 21% Corp Rate

- Need to be weary of clients wanting to go C Corp because of 21 percent rate
- 21+20+3.8 = ?
- Never let the tax tail wag the dog

Key Terms

- **QBI:** Qualified Business Income
- **RPE:** Relevant Passthrough Entity
- **SSTB:** Specified Service Trade or Business
- **UBIA:** Unadjusted Basis Immediately after Acquisition of qualified property

Calculation

- First Threshold:
  - If below threshold, then lesser of 20% of QBI or taxable income
  - We don’t care about SSTB or non-SSTB
  - We don’t care about UBIA or W-2 wages

Calculation

- Second Threshold SSTB
  - Once we cross the first threshold, we care if it is an SSTB or not
  - If over the threshold, no QBI deduction

Calculation

- Second Threshold – Non-SSTB – Driven by W-2 Wages and UBIA

REIT and PTP Calc

- These get their own separate 20% bucket

Special Rules

- ***Coordination with alternative minimum tax.*** For purposes of determining alternative minimum taxable income under section 55, the deduction allowed under section 199A(a) for a taxable year is equal in amount to the deduction allowed under section 199A(a) in determining taxable income for that taxable year (that is, without regard to any adjustments under sections 56 through 59).
- ***Imposition of accuracy-related penalty on underpayments.*** 5% understatement for substantial understatements vs 10%.

Part 2 - SSTBs

- Objective – Understand which businesses are SSTBs

SSTBs

- (i) *Health*
- (ii) *Law*
- (iii) *Accounting*
- (iv) *Actuarial science*
- (v) *Performing arts*
- (vi) *Consulting*
- (vii) *Athletics*
- (viii) *Financial services*
- (ix) *Brokerage services*
- (x) *Investing and investment management*
- (xi) *Trading*
- (xii) *Dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2))*

- (xiii) *Any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners*

Health

- ***Meaning of services performed in the field of health.*** The *performance of services in the field of health* means the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals performing services in their capacity as such. The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

Example

- B is a board-certified pharmacist who contracts as an independent contractor with X, a small medical facility in a rural area. X employs one full time pharmacist, but contracts with B when X's needs exceed the capacity of its full-time staff. When engaged by X, B is responsible for receiving and reviewing orders from physicians providing medical care at the facility; making recommendations on dosing and alternatives to the ordering physician; performing inoculations, checking for drug interactions, and filling pharmaceutical orders for patients receiving care at X. B is engaged in the performance of services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

Example

- X is the operator of a residential facility that provides a variety of services to senior citizens who reside on campus. For residents, X offers standard domestic services including housing management and maintenance, meals, laundry, entertainment, and other similar services. In addition, X contracts with local professional healthcare organizations to offer residents a range of medical and health services provided at the facility, including skilled nursing care, physical and occupational therapy, speech-language pathology services, medical social services, medications, medical supplies and equipment used in the facility, ambulance transportation to the nearest supplier of needed services, and dietary counseling. X receives all of its income from residents for the costs associated with residing at the facility. Any health and medical services are billed directly by the healthcare providers to the senior citizens for those professional healthcare services even though those services are provided at the facility. X does not perform services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

Example

- Y operates specialty surgical centers that provide outpatient medical procedures that do not require the patient to remain overnight for recovery or observation following the procedure. Y is a private organization that owns a number of facilities throughout the country. For each facility, Y ensures compliance with state and Federal laws for medical facilities and manages the facility's operations and performs all administrative functions. Y does not employ physicians, nurses, and medical assistants, but enters into agreements with other professional medical organizations or directly with the medical professionals to perform the procedures and provide all medical care. Patients are billed by Y for the facility costs relating to their procedure and by the healthcare professional or their affiliated organization for the actual costs of the procedure conducted by the physician and medical support team. Y does not perform services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

Example

- Z is the developer and the only provider of a patented test used to detect a particular medical condition. Z accepts test orders only from health care professionals (Z's clients), does not have contact with patients, and Z's employees do not diagnose, treat, or manage any aspect of patient care. A, who manages Z's testing operations, is the only employee with an advanced medical degree. All other employees are technical support staff and not healthcare professionals. Z's workers are highly educated, but the skills the workers bring to the job are not often useful for Z's testing methods. In order to perform the duties required by Z, employees receive more than a year of specialized training for working with Z's test, which is of no use to other employers. Upon completion of an ordered test, Z analyses the results and provides its clients a report summarizing the findings. Z does not discuss the report's results, or the patient's diagnosis or treatment with any health care provider or the patient. Z is not informed by the healthcare provider as to the healthcare provider's diagnosis or treatment. Z is not providing services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section or where the principal asset of the trade or business is the reputation or skill of one or more of its employees within the meaning of paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

Law

- ***Meaning of services performed in the field of law -*** the *performance of services in the field of law* means the performance of legal services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law; for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

Accounting

- ***Meaning of services performed in the field of accounting.*** The *performance of services in the field of accounting* means the provision of services by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such.

- ***- Meaning of services performed in the field of actuarial science.*** The *performance of services in the field of actuarial science* means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such.

Performing Arts

- ***Meaning of services performed in the field of performing arts.*** The *performance of services in the field of the performing arts* means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public

Example

- A, a singer and songwriter, writes and records a song. A is paid a mechanical royalty when the song is licensed or streamed. A is also paid a performance royalty when the recorded song is played publicly. A is engaged in the performance of services in an SSTB in the field of performing arts within the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and (b)(2)(vi) of this section. The royalties that A receives for the song are not eligible for a deduction under section 199A.

Example

- B is a partner in Movie LLC, a partnership. Movie LLC is a film production company. Movie LLC plans and coordinates film production. Movie LLC shares in the profits of the films that it produces. Therefore, Movie LLC is engaged in the performance of services in an SSTB in the field of performing arts within the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and (b)(2)(vi) of this section. B is a passive owner in Movie LLC and does not provide any services with respect to Movie LLC. However, because Movie LLC is engaged in an SSTB in the field of performing arts, B's distributive share of the income, gain, deduction, and loss with respect to Movie LLC is not eligible for a deduction under section 199A.

Consulting

- ***Meaning of services performed in the field of consulting.*** The *performance of services in the field of consulting* means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales (or economically similar services) or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person's services are sales or economically similar services will be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided. Performance of services in the field of consulting does not include the performance of consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor) if there is no separate payment for the consulting services. Services within the fields of architecture and engineering are not treated as consulting services.

Example

- D is in the business of providing <u>services</u> that assist <u>unrelated</u> entities in making their personnel structures more efficient. D studies its client's organization and structure and compares it to peers in its industry. D then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers. D does not provide any temporary workers to its clients and D's <u>compensation</u> and <u>fees</u> are not affected by whether D's clients used temporary workers. D is engaged in the performance of <u>services</u> in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

Example

- E is an individual who owns and operates a temporary worker staffing firm primarily focused on the software consulting industry. Business clients hire E to provide temporary workers that have the necessary technical skills and experience with a variety of business software to provide consulting and advice regarding the proper selection and operation of software most appropriate for the business they are advising. E does not have a technical software engineering background and does not provide software consulting advice herself. E reviews resumes and refers candidates to the client when the client indicates a need for temporary workers. E does not evaluate her clients' needs about whether the client needs workers and does not evaluate the clients' consulting contracts to determine the type of expertise needed. Rather, the client provides E with a job description indicating the required skills for the upcoming consulting project. E is paid a fixed fee for each temporary worker actually hired by the client and receives a bonus if that worker is hired permanently within a year of referral. E's fee is not contingent on the profits of its clients. E is not considered to be engaged in the performance of services in the field of consulting within the meaning of section 199A(d)(2) or (b)(1)(vi) and (b)(2)(vii) of this section.

Example

- F is in the business of licensing software to customers. F discusses and evaluates the customer's software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. F is paid a flat price for the software license. After the customer licenses the software, F helps to implement the software. F is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

Athletics

- The *performance of services in the field of athletics* means the performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

Example

- C is a partner in Partnership, which solely owns and operates a professional sports team. Partnership employs athletes and sells tickets and broadcast rights for games in which the sports team competes. Partnership sells the broadcast rights to Broadcast LLC, a separate trade or business. Broadcast LLC solely broadcasts the games. Partnership is engaged in the performance of services in an SSTB in the field of athletics within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vii) and (b)(2)(viii) of this section. The tickets sales and the sale of the broadcast rights are both the performance of services in the field of athletics. C is a passive owner in Partnership and C does not provide any services with respect to Partnership or the sports team. However, because Partnership is engaged in an SSTB in the field of athletics, C's distributive share of the income, gain, deduction, and loss with respect to Partnership is not eligible for a deduction under section 199A. Broadcast LLC is not engaged in the performance of services in an SSTB in the field of athletics.

Financial Services

- The *performance of services in the field of financial services* means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 of the Code or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals performing services in their capacity as such. Solely for purposes of section 199A, the performance of services in the field of financial services does not include taking deposits or making loans, but does include arranging lending transactions between a lender and borrower.

Example

- G is in the business of providing services to assist clients with their finances. G will study a particular client's financial situation, including, the client's present income, savings, and investments, and anticipated future economic and financial needs. Based on this study, G will then assist the client in making decisions and plans regarding the client's financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client's financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. G is engaged in the performance of services in an SSTB in the field of financial services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.

Example

- H is in the business of franchising a brand of personal financial planning offices, which generally provide personal wealth management, retirement planning, and other financial advice services to customers for a fee. H does not provide financial planning services itself. H licenses the right to use the business tradename, other branding intellectual property, and a marketing plan to third-party financial planner franchisees that operate the franchised locations and provide all services to customers. In exchange, the franchisees compensate H based on a fee structure, which includes a one-time fee to acquire the franchise. H is not engaged in the performance of services in the field of financial services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.

Brokerage

- The *performance of services in the field of brokerage services* includes services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

Investing and Investment Management

- The *performance of services that consist of investing and investment management* refers to a trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. The performance of services of investing and investment management does not include directly managing real property.

Trading

- The *performance of services that consist of trading* means a trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof.

Securities

- T*he performance of services that consist of dealing in securities (as defined in section 475(c)(2))* means regularly purchasing securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. Solely for purposes of the preceding sentence, the performance of services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is dealing in securities.

Commodities

- T*he performance of services that consist of dealing in commodities (as defined in section 475(e)(2))* means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business. Solely for purposes of the preceding sentence, gains and losses from qualified active sales as defined in paragraph (b)(2)(xiii)(B)(*1*) of this section are not taken into account in determining whether a person is engaged in the trade or business of dealing in commodities.

Partnership Interests

- T*he performance of services that consist of dealing in partnership interests* means regularly purchasing partnership interests from and selling partnership interests to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in partnership interests with customers in the ordinary course of a trade or business.

Example

- J is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. Customers place orders with J to trade securities or commodities based on the taxpayer's recommendations. J's compensation for its services typically is based on completion of the trade orders. J is engaged in an SSTB in the field of brokerage services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(ix) and (b)(2)(x) of this section.

Skill or Reputation

- The term *any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners* means any trade or business that consists of any of the following (or any combination thereof):
  - **(A)** A trade or business in which a person receives fees, compensation, or other income for endorsing products or services;
  - **(B)** A trade or business in which a person licenses or receives fees, compensation, or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity; or
- **(C)** Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

Example

- K owns 100% of Corp, an S corporation, which operates a bicycle sales and repair business. Corp has 8 employees, including K. Half of Corp's net income is generated from sales of new and used bicycles and related goods, such as helmets, and bicycle-related equipment. The other half of Corp's net income is generated from bicycle repair services performed by K and Corp's other employees. Corp's assets consist of inventory, fixtures, bicycle repair equipment, and a leasehold on its retail location. Several of the employees and K have worked in the bicycle business for many years, and have acquired substantial skill and reputation in the field. Customers often consult with the employees on the best bicycle for purchase. K is in the business of sales and repairs of bicycles and is not engaged in an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

Example

- L is a well-known chef and the sole owner of multiple restaurants each of which is owned in a disregarded entity. Due to L's skill and reputation as a chef, L receives an endorsement fee of $500,000 for the use of L's name on a line of cooking utensils and cookware. L is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB. However, L is also in the trade or business of receiving endorsement income. L's trade or business consisting of the receipt of the endorsement fee for L's skill and/or reputation is an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

In Exchange for Business Interest

- For purposes of paragraphs (b)(2)(xiv)(A) through (C) of this section, the term *fees, compensation, or other income* includes the receipt of a partnership interest and the corresponding distributive share of income, deduction, gain, or loss from the partnership, or the receipt of stock of an S corporation and the corresponding income, deduction, gain, or loss from the S corporation stock.

Example

- M is a well-known actor. M entered into a partnership with Shoe Company, in which M contributed her likeness and the use of her name to the partnership in exchange for a 50% interest in the partnership and a guaranteed payment. M's trade or business consisting of the receipt of the partnership interest and the corresponding distributive share with respect to the partnership interest for M's likeness and the use of her name is an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

De Minimis Rule

- ***Gross receipts of $25 million or less.*** For a trade or business with gross receipts of $25 million or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to the SSTB.
- For purposes of determining whether this 10 percent test is satisfied, the performance of any activity incident to the actual performance of services in the field is considered the performance of services in that field.
- ***Gross receipts of greater than $25 million.*** For a trade or business with gross receipts of greater than $25 million for the taxable year, use 5% instead of 10%.

Example

- Landscape LLC sells lawn care and landscaping equipment and also provides advice and counsel on landscape design for large office parks and residential buildings. The landscape design services include advice on the selection and placement of trees, shrubs, and flowers and are considered to be the performance of services in the field of consulting under paragraphs (b)(1)(vi) and (b)(2)(vii) of this section. Landscape LLC separately invoices for its landscape design services and does not sell the trees, shrubs, or flowers it recommends for use in the landscape design. Landscape LLC maintains one set of books and records and treats the equipment sales and design services as a single trade or business for purposes of sections 162 and 199A. Landscape LLC has gross receipts of $2 million. $250,000 of the gross receipts is attributable to the landscape design services, an SSTB. Because the gross receipts from the consulting services exceed 10 percent of Landscape LLC's total gross receipts, the entirety of Landscape LLC's trade or business is considered an SSTB.

Example

- Animal Care LLC provides veterinarian services performed by licensed staff and also develops and sells its own line of organic dog food at its veterinarian clinic and online. The veterinarian services are considered to be the performance of services in the field of health under paragraphs (b)(1)(i) and (b)(2)(ii) of this section. Animal Care LLC separately invoices for its veterinarian services and the sale of its organic dog food. Animal Care LLC maintains separate books and records for its veterinarian clinic and its development and sale of its dog food. Animal Care LLC also has separate employees who are unaffiliated with the veterinary clinic and who only work on the formulation, marketing, sales, and distribution of the organic dog food products. Animal Care LLC treats its veterinary practice and the dog food development and sales as separate trades or businesses for purposes of section 162 and 199A. Animal Care LLC has gross receipts of $3,000,000. $1,000,000 of the gross receipts is attributable to the veterinary services, an SSTB. Although the gross receipts from the services in the field of health exceed 10 percent of Animal Care LLC's total gross receipts, the dog food development and sales business is not considered an SSTB due to the fact that the veterinary practice and the dog food development and sales are separate trades or businesses under section 162.

Services and Property to SSTB

- **General Rule*.*** If a trade or business provides property or services to an SSTB within the meaning of this section and there is 50 percent or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to the related parties.
- ***50 percent or more common ownership.*** Direct or indirect ownership by related parties within the meaning of sections 267(b) or 707(b).

Example

- Law Firm is a partnership that provides legal services to clients, owns its own office building and employs its own administrative staff. Law Firm divides into three partnerships. Partnership 1 performs legal services to clients. Partnership 2 owns the office building and rents the entire building to Partnership 1. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for fees. All three of the partnerships are owned by the same people (the original owners of Law Firm). Because Partnership 2 provides all of its property to Partnership 1, and Partnership 3 provides all of its services to Partnership 1, Partnerships 2 and 3 will each be treated as an SSTB under paragraph (c)(2) of this section.

Example

- Assume the same facts as in Example 1 of this paragraph (c)(2), except that Partnership 2, which owns the office building, rents 50 percent of the building to Partnership 1, which provides legal services, and the other 50 percent to various unrelated third party tenants. Because Partnership 2 is owned by the same people as Partnership 1, the portion of Partnership 2's leasing activity related to the lease of the building to Partnership 1 will be treated as a separate SSTB. The remaining 50 percent of Partnership 2's leasing activity will not be treated as an SSTB.

Trade or business of performing services as an employee

- **General Rule*.*** The trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder.

Use of EIN

- For purposes of determining whether wages are earned in a capacity as an employee as provided in paragraph (d)(1) of this section, the treatment of an employee by an employer as anything other than an employee for Federal employment tax purposes is immaterial. Thus, if a worker should be properly classified as an employee, it is of no consequence that the employee is treated as a non-employee by the employer for Federal employment tax purposes.

Presumption

- An individual that was properly treated as an employee for Federal employment tax purposes by the person to which he or she provided services and who is subsequently treated as other than an employee by such person with regard to the provision of substantially the same services directly or indirectly to the person (or a related person), is presumed, for three years after ceasing to be treated as an employee for Federal employment tax purposes, to be in the trade or business of performing services as an employee with regard to such services

Rebuttal

- Upon notice from the IRS, an individual rebuts the presumption by providing records, such as contracts or partnership agreements, that provide sufficient evidence to corroborate the individual's status as a non-employee.

Example

- A is employed by PRS, a partnership for Federal tax purposes, as a fulltime employee and is treated as such for Federal employment tax purposes. A quits his job for PRS and enters into a contract with PRS under which A provides substantially the same services that A previously provided to PRS in A's capacity as an employee. Because A was treated as an employee for services he provided to PRS, and now is no longer treated as an employee with regard to such services, A is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with regard to his services performed for PRS. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including the common-law employee classification rules), A is not an employee, any amounts paid by PRS to A with respect to such services will not be QBI for purposes of section 199A. The presumption would apply even if, instead of contracting directly with PRS, A formed a disregarded entity, or a passthrough entity, and the entity entered into the contract with PRS.

Example

- C is an attorney employed as an associate in a law firm (Law Firm 1) and was treated as such for Federal employment tax purposes. C and the other associates in Law Firm 1 have taxable income below the threshold amount. Law Firm 1 terminates its employment relationship with C and its other associates. C and the other former associates form a new partnership, Law Firm 2, which contracts to perform legal services for Law Firm 1. Therefore, in form, C is now a partner in Law Firm 2 which earns income from providing legal services to Law Firm 1. C continues to provide substantially the same legal services to Law Firm 1 and its clients. Because C was previously treated as an employee for services she provided to Law Firm 1, and now is no longer treated as an employee with regard to such services, C is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services C provides to Law Firm 1 indirectly through Law Firm 2. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), C is not an employee, C's distributive share of Law Firm 2 income (including any guaranteed payments) will not be QBI for purposes of section 199A. The results in this example would not change if, instead of contracting with Law Firm 1, Law Firm 2 was instead admitted as a partner in Law Firm 1.

Example

- E is an engineer employed as a senior project engineer in an engineering firm, Engineering Firm. Engineering Firm is a partnership for Federal tax purposes and structured such that after 10 years, senior project engineers are considered for partner if certain career milestones are met. After 10 years, E meets those career milestones and is admitted as a partner in Engineering Firm. As a partner in Engineering Firm, E shares in the net profits of Engineering Firm, and also otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner. E is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services E provides to Engineering Firm. However, E is able to rebut the presumption by showing that E became a partner in Engineering Firm as a career milestone, shares in the overall net profits in Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Example

- F is a financial advisor employed by a financial advisory firm, Advisory Firm, a partnership for Federal tax purposes, as a fulltime employee and is treated as such for Federal employment tax purposes. F has taxable income below the threshold amount. Advisory Firm is a partnership and offers F the opportunity to be admitted as a partner. F elects to be admitted as a partner to Advisory Firm and is admitted as a partner to Advisory Firm. As a partner in Advisory Firm, F shares in the net profits of Advisory Firm, is obligated to Advisory Firm in ways that F was not previously obligated as an employee, is no longer entitled to certain benefits available only to employees of Advisory Firm, and has materially modified his relationship with Advisory Firm. F's share of net profits is not subject to a floor or capped at a dollar amount. F is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services F provides to Advisory Firm. However, F is able to rebut the presumption by showing that F became a partner in Advisory Firm by sharing in the profits of Advisory Firm, materially modifying F's relationship with Advisory Firm, and otherwise satisfying the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

Part 3 – W-2 Wages

- Objective – Calculate Amount of W-2 wages for QBI purposes

Definition

- Definition of W-2 wages. Section 199A(b)(4)(A) provides that W-2 wages means, with respect to any person for any taxable year of such person, the sum of the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Thus, W-2 wages include: (i) the total amount of wages as defined in section 3401(a); (ii) the total amount of elective deferrals (within the meaning of section 402(g)(3)); (iii) the compensation deferred under section 457; and (iv) the amount of designated Roth contributions (as defined in section 402A)

Three Methods

- Unmodified Box 1
- Modified Box 1
- Tracking Wages

Unmodified Box 1

- *Unmodified box method*. Under the unmodified box method, W-2 wages are calculated by taking, without modification, the lesser of— (
- A) The total entries in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer; or
- (B) The total entries in Box 5 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer.

Modified Box 1

- *Modified Box 1 method*. Under the Modified Box 1 method, the taxpayer makes modifications to the total entries in Box 1 of Forms W-2 filed with respect to employees of the taxpayer. W-2 wages under this method are calculated as follows—
- (A) Total the amounts in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the 7 taxpayer;
- (B) Subtract from the total in paragraph .02(A) of this section amounts included in Box 1 of Forms W-2 that are not wages for Federal income tax withholding purposes, including amounts that are treated as wages for purposes of income tax withholding under section 3402(o) (for example, supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72); and
- (C) Add to the amount obtained after paragraph .02(B) of this section the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, and S.

Tracking Wages Method

- *Tracking wages method*. Under the tracking wages method, the taxpayer actually tracks total wages subject to federal income tax withholding and makes appropriate modifications. W-2 wages under this method are calculated as follows—
- (A) Total the amounts of wages subject to federal income tax withholding that are paid to employees of the taxpayer for employment by the taxpayer and that are reported on Forms W-2 filed with SSA by the taxpayer for the calendar year; plus
- (B) The total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and 8 that are properly coded D, E, F, G, and S.

Short Tax Years

- Use tracking wages method

Part 4 – UBIA

- Objective – Calculate Amount of UBIA for QBI purposes

General Rule

- The determination of the UBIA of qualified property must be made for each trade or business (or aggregated trade or business) by the individual or RPE that directly conducts the trade or business (or aggregated trade or business). The UBIA of qualified property is presumed to be zero if not determined and reported for each trade or business (or aggregated trade or business).

General Rule

- The term *qualified property* means, with respect to any trade or business (or aggregated trade or business) of an individual or RPE for a taxable year, tangible property of a character subject to the allowance for depreciation under section 167(a) -
- **(A)** Which is held by, and available for use in, the trade or business (or aggregated trade or business) at the close of the taxable year;
- **(B)** Which is used at any point during the taxable year in the trade or business's (or aggregated trade or business's) production of QBI; and
- **(C)** The depreciable period for which has not ended before the close of the individual's or RPE's taxable year.

Improvements

- In the case of any addition to, or improvement of, qualified property that has already been placed in service by the individual or RPE, such addition or improvement is treated as separate qualified property first placed in service on the date such addition or improvement is placed in service for purposes of paragraph (c)(2) of this section.

Depreciable Period

- The term *depreciable period* means, with respect to qualified property of a trade or business, the period beginning on the date the property was first placed in service by the individual or RPE and ending on the later of -
- **(A)** The date that is 10 years after such date; or
- **(B)** The last day of the last full year in the applicable recovery period that would apply to the property under section 168(c), regardless of any application of section 168(g).

Interaction with Bonus

- The additional first-year depreciation deduction allowable under section 168 (for example, under section 168(k) or (m)) does not affect the applicable recovery period under this paragraph for the qualified property.

1031 and 1033

- The date on which replacement property that is of like-kind to relinquished property or is similar or related in service or use to involuntarily converted property was first placed in service by the individual or RPE is determined as follows -
- ***(1)*** For the portion of the individual's or RPE's UBIA, as defined in paragraph (c)(3) of this section, in such replacement property that does not exceed the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, the date such portion in the replacement property was first placed in service by the individual or RPE is the date on which the relinquished property or involuntarily converted property was first placed in service by the individual or RPE; and
- ***(2)*** For the portion of the individual's or RPE's UBIA, as defined in paragraph (c)(3) of this section, in such replacement property that exceeds the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, such portion in the replacement property is treated as separate qualified property that the individual or RPE first placed in service on the date on which the replacement property was first placed in service by the individual or RPE.

Example

- On January 5, 2012, A purchases Real Property X for $1 million and places it in service in A's trade or business. A's trade or business is not an SSTB. A's basis in Real Property X under section 1012 is $1 million. Real Property X is qualified property within the meaning of section 199A(b)(6). As of December 31, 2018, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $821,550.
- For purposes of section 199A(b)(2)(B)(ii) and this section, A's UBIA of Real Property X is its $1 million cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2).

Example

- The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031 in which A exchanges Real Property X for Real Property Y. Real Property Y has a value of $1 million. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $820,482.
- A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

Example

- The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million, and Real Property Y also has a value of $1.3 million. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.
- A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

Example

- The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million, but Real Property Y has a value of $1.5 million. A therefore adds $200,000 in cash to the exchange of Real Property X for Real Property Y. On January 15, 2019, A places Real Property Y in service. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.
- A's UBIA in Real Property Y is $1.2 million as determined under paragraph (c)(3)(ii) of this section ($1 million in UBIA from Real Property X plus $200,000 cash paid by A to acquire Real Property Y). Because the UBIA of Real Property Y exceeds the UBIA of Real Property X, Real Property Y is treated as being two separate qualified properties for purposes of applying paragraph (c)(2)(iii)(A) of this section. One property has a UBIA of $1 million (the portion of A's UBIA of $1.2 million in Real Property Y that does not exceed A's UBIA of $1 million in Real Property X) and it is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A. The other property has a UBIA of $200,000 (the portion of A's UBIA of $1.2 million in Real Property Y that exceeds A's UBIA of $1 million in Real Property X) and it is first placed in service by A on January 15, 2019, which is the date on which Real Property Y was first placed in service by A.

Example

- The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million. Real Property Y has a fair market value of $900,000. Pursuant to the exchange, A receives Real Property Y and $400,000 in cash. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.
- A's UBIA in Real Property Y is $900,000 as determined under paragraph (c)(3)(ii) of this section ($1 million in UBIA from Real Property X less $100,000 excess boot ($400,000 in cash received in the exchange over $300,000 in appreciation in Property X, which is equal to the excess of the $1.3 million fair market value of Property X on the date of the exchange over the $1 million fair market value of Property X on the date of acquisition by the taxpayer)). Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

Example

- The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has declined in value to $900,000, and Real Property Y also has a value of $900,000. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.
- Even though Real Property Y is worth only $900,000, A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section because no cash or other property was involved in the exchange. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

Example

- C operates a trade or business that is not an SSTB as a sole proprietorship. On January 5, 2011, C purchases Machinery Y for $10,000 and places it in service in C's trade or business. C's basis in Machinery Y under section 1012 is $10,000. Machinery Y is qualified property within the meaning of section 199A(b)(6). Assume that Machinery Y's recovery period under section 168(c) is 10 years, and C depreciates Machinery Y under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. As of December 31, 2018, C's basis in Machinery Y, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $2,500. On January 1, 2019, C incorporates the sole proprietorship and elects to treat the newly formed entity as an S corporation for Federal income tax purposes. C contributes Machinery Y and all other assets of the trade or business to the S corporation in a non-recognition transaction under section 351. The S corporation immediately places all the assets in service.
- For purposes of section 199A(b)(2)(B)(ii) and this section, C's UBIA of Machinery Y from 2011 through 2018 is its $10,000 cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2). The S corporation's basis of Machinery Y is $2,500, the basis of the property under section 362 at the time the S corporation places the property in service. Pursuant to paragraph (c)(3)(iv) of this section, S corporation's UBIA of Machinery Y is $10,000, which is C's UBIA of Machinery Y. Pursuant to paragraph (c)(2)(iv)(A) of this section, for purposes of determining the depreciable period of Machinery Y, the S corporation's placed in service date of Machinery Y will be January 5, 2011, which is the date C originally placed the property in service in 2011. Therefore, Machinery Y may be qualified property of the S corporation (assuming it continues to be used in the business) for 2019 and 2020 and will not be qualified property of the S corporation after 2020, because its depreciable period will have expired.

Example

- LLC, a partnership, operates a trade or business that is not an SSTB. On January 5, 2011, LLC purchases Machinery Z for $30,000 and places it in service in LLC's trade or business. LLC's basis in Machinery Z under section 1012 is $30,000. Machinery Z is qualified property within the meaning of section 199A(b)(6). Assume that Machinery Z's recovery period under section 168(c) is 10 years, and LLC depreciates Machinery Z under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. As of December 31, 2018, LLC's basis in Machinery Z, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $7,500. On January 1, 2019, LLC distributes Machinery Z to Partner A in full liquidation of Partner A's interest in LLC. Partner A's outside basis in LLC is $35,000.
- For purposes of section 199A(b)(2)(B)(ii) and this section, LLC's UBIA of Machinery Z from 2011 through 2018 is its $30,000 cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2). Prior to the distribution to Partner A, LLC's basis of Machinery Z is $7,500. Under section 732(b), Partner A's basis in Machinery Z is $35,000. Pursuant to paragraph (c)(3)(iv) of this section, upon distribution of Machinery Z, Partner A's UBIA of Machinery Z is $30,000, which was LLC's UBIA of Machinery Z.

Part 4 – QBI Defined

- Objective – Calculate Amount of QBI

Defined

- The term *qualified items of income, gain, deduction, and loss* means items of gross income, gain, deduction, and loss to the extent such items are -
- **(A)** Effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting “trade or business (within the meaning of section 199A)” for “nonresident alien individual or a foreign corporation” or for “a foreign corporation” each place it appears); and
- **(B)** Included or allowed in determining taxable income for the taxable year.

Items that are not QBI

- **(A)** Any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss, including any item treated as one of such items under any other provision of the Code. This provision does not apply to the extent an item is treated as anything other than short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss.
- **(B)** Any dividend, income equivalent to a dividend, or payment in lieu of dividends described in section 954(c)(1)(G). Any amount described in section 1385(a)(1) is not treated as described in this clause.
- **(C)** Any interest income other than interest income which is properly allocable to a trade or business. For purposes of section 199A and this section, interest income attributable to an investment of working capital, reserves, or similar accounts is not properly allocable to a trade or business.

Items that are not QBI

- **(D)** Any item of gain or loss described in section 954(c)(1)(C) (transactions in commodities) or section 954(c)(1)(D) (excess foreign currency gains) applied in each case by substituting "trade or business (within the meaning of section 199A)" for "controlled foreign corporation."
- **(E)** Any item of income, gain, deduction, or loss described in section 954(c)(1)(F) (income from notional principal contracts) determined without regard to section 954(c)(1)(F)(ii) and other than items attributable to notional principal contracts entered into in transactions qualifying under section 1221(a)(7).
- **(F)** Any amount received from an annuity which is not received in connection with the trade or business.

Items to not QBI

- **(G)** Any qualified REIT dividends as defined in paragraph (c)(2) of this section or qualified PTP income as defined in paragraph (c)(3) of this section.
- **(H)** Reasonable compensation received by a shareholder from an S corporation. However, the S corporation's deduction for such reasonable compensation will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.
- **(I)** Any guaranteed payment described in section 707(c) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction for such guaranteed payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.
- **(J)** Any payment described in section 707(a) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction for such payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

751 Gains

- With respect to a partnership, if section 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and is taken into account for purposes of computing QBI.

Guaranteed Payments Use of Capital

- Income attributable to a guaranteed payment for the use of capital is not considered to be attributable to a trade or business, and thus is not taken into account for purposes of computing QBI except to the extent properly allocable to a trade or business of the recipient. The partnership's deduction associated with the guaranteed payment will be taken into account for purposes of computing QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

Section 481

- Section 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of this section and section 199A are otherwise satisfied, but only if the adjustment arises in taxable years ending after December 31, 2017.

Part 5 – Aggregation

- Objective – Understand aggregation and how it works for QBI

Aggregation

- 1. The same person or group of persons, directly or indirectly, owns 50 percent or more of each trade or business to be aggregated, meaning in the case of such trades or businesses owned by an S corporation, 50 percent or more of the issued and outstanding shares of the corporation, or, in the case of such trades or businesses owned by a partnership, 50 percent or more of the capital or profits in the partnership;
- 2. The ownership described in paragraph 1 exists for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income
- 3. All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years;

Aggregation

- 4. None of the trades or businesses to be aggregated is a specified service trade or business (SSTB) as defined in § 1.199A-5; and
- 5. The trades or businesses to be aggregated satisfy at least two of the following factors (based on all of the facts and circumstances):
- (A) The trades or businesses provide products and services that are the same or customarily offered together
- (B) The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resource
- (C) The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies).

Aggregation - Attribution

- 1. The individual’s spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and
- 2. The individual’s children, grandchildren, and parents.

Aggregation

- For each taxable year, individuals must attach a statement to their returns identifying each trade or business aggregated under the regulations. The statement must contain—
- (A) A description of each trade or business;
- (B) The name and EIN of each entity in which a trade or business is operated;
- (C) Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the taxable year; and
- (D) Such other information as the Commissioner may require in forms, instructions, or other published guidance.

Aggregation vs IRC 469

- IRC 469 allows for our passive loss rules
- Grouping under 1.469-4T (trade or business)
  - Self Rentals
- Grouping under 1.469-9 (R/E professional)

Example

- A wholly owns and operates a catering business and a restaurant through separate disregarded entities. The catering business and the restaurant share centralized purchasing to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business. A maintains a website and print advertising materials that reference both the catering business and the restaurant. A uses the restaurant kitchen to prepare food for the catering business. The catering business employs its own staff and owns equipment and trucks that are not used or associated with the restaurant.

Example

- Because the restaurant and catering business are held in disregarded entities, A will be treated as operating each of these businesses directly and thereby satisfies paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, A satisfies the following factors: Paragraph (b)(1)(v)(A) of this section is met as both businesses offer prepared food to customers; and paragraph (b)(1)(v)(B) of this section is met because the two businesses share the same kitchen facilities in addition to centralized purchasing, marketing, and accounting. Having satisfied paragraphs (b)(1)(i) through (v) of this section, A may treat the catering business and the restaurant as a single trade or business for purposes of applying § 1.199A-1(d).

Example

- Assume the same facts as in *Example 1* of paragraph (d)(1) of this section, but the catering and restaurant businesses are owned in separate partnerships and A, B, C, and D each own a 25% interest in each of the two partnerships. A, B, C, and D are unrelated.

Example

- Because under paragraph (b)(1)(i) of this section A, B, C, and D together own more than 50% of each of the two partnerships, they may each treat the catering business and the restaurant as a single trade or business for purposes of applying § 1.199A-1(d).

Example

- W owns a 75% interest in S1, an S corporation, and a 75% interest in PRS, a partnership. S1 manufactures clothing and PRS is a retail pet food store. W manages S1 and PRS.

Example

- W owns more than 50% of the stock of S1 and more than 50% of PRS thereby satisfying paragraph (b)(1)(i) of this section. Although W manages both S1 and PRS, W is not able to satisfy the requirements of paragraph (b)(1)(v) of this section as the two businesses do not provide goods or services that are the same or customarily offered together; there are no significant centralized business elements; and no facts indicate that the businesses are operated in coordination with, or reliance upon, one another. W must treat S1 and PRS as separate trades or businesses for purposes of applying § 1.199A-1(d).

Example

- E owns a 60% interest in each of four partnerships (PRS1, PRS2, PRS3, and PRS4). Each partnership operates a hardware store. A team of executives oversees the operations of all four of the businesses and controls the policy decisions involving the business as a whole. Human resources and accounting are centralized for the four businesses. E reports PRS1, PRS3, and PRS4 as an aggregated trade or business under paragraph (b)(1) of this section and reports PRS2 as a separate trade or business. Only PRS2 generates a net taxable loss.

Example

- E owns more than 50% of each partnership thereby satisfying paragraph (b)(1)(i) of this section.
  Under paragraph (b)(1)(v) of this section, the following factors are satisfied: Paragraph (b)(1)(v)(A) of this section because each partnership operates a hardware store;
  and paragraph (b)(1)(v)(B) of this section because the businesses share accounting and human resource functions.
  E's decision to aggregate only PRS1, PRS3, and PRS4 into a single trade or business for purposes of applying § 1.199A-1(d) is permissible. The loss from PRS2 will be netted against the aggregate profits of PRS1, PRS3, and PRS4 pursuant to § 1.199A-1(d)(2)(iii).

Example

- Assume the same facts as *Example 4* of paragraph (d)(4) of this section, and that F owns a 10% interest in PRS1, PRS2, PRS3, and PRS4.

Example

- Because under paragraph (b)(1)(i) of this section E owns more than 50% of the four partnerships, F may aggregate PRS 1, PRS2, PRS3, and PRS4 as a single trade or business for purposes of applying § 1.199A-1(d), provided that F can demonstrate that the ownership test is met by E.

Example

- D owns more than 50% of the stock of each S corporation thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the grocery stores satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business. Only S1 and S2 satisfy paragraph (b)(1)(v)(B) of this section because of their centralized purchasing and accounting offices. D is only able to show that the requirements of paragraph (b)(1)(v)(B) of this section are satisfied for S1 and S2; therefore, D only may aggregate S1 and S2 into a single trade or business for purposes of § 1.199A-1(d). D must report S3 as a separate trade or business for purposes of applying § 1.199A-1(d).

Example

- Assume the same facts as *Example 6* of paragraph (d)(6) of this section except each store is independently operated and S1 and S2 do not have centralized purchasing or accounting functions.

Example

- Although the stores provide the same products and services within the meaning of paragraph (b)(1)(v)(A) of this section, D cannot show that another factor under paragraph (b)(1)(v) of this section is present. Therefore, D must report S1, S2, and S3 as separate trades or businesses for purposes of applying § 1.199A-1(d).

Example

- G owns 80% of the stock in S1, an S corporation and 80% of LLC1 and LLC2, each of which is a partnership for Federal tax purposes. LLC1 manufactures and supplies all of the widgets sold by LLC2. LLC2 operates a retail store that sells LLC1's widgets. S1 owns the real property leased to LLC1 and LLC2 for use by the factory and retail store. The entities share common advertising and management.

Example

- G owns more than 50% of the stock of S1 and more than 50% of LLC1 and LLC2 thus satisfying paragraph (b)(1)(i) of this section. LLC1, LLC2, and S1 share significant centralized business elements and are operated in coordination with, or in reliance upon, one or more of the businesses in the aggregated group. G can treat the business operations of LLC1 and LLC2 as a single trade or business for purposes of applying § 1.199A-1(d). S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A-1(b)(14) and meets the requirements of paragraph (b)(1) of this section.

Example

- Same facts as *Example 8* of paragraph (d)(8) of this section, except G owns 80% of the stock in S1 and 20% of each of LLC1 and LLC2. B, G's son, owns a majority interest in LLC2, and M, G's mother, owns a majority interest in LLC1. B does not own an interest in S1 or LLC1, and M does not own an interest in S1 or LLC2.

Example

- Under the rules in paragraph (b)(1) of this section, B and M's interest in LLC2 and LLC1, respectively, are attributable to G and G is treated as owning a majority interest in LLC2 and LLC1; G thus satisfies paragraph (b)(1)(i) of this section. G may aggregate his interests in LLC1, LLC2, and S1 as a single trade or business for purposes of applying § 1.199A-1(d). Under paragraph (b)(1) of this section, S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A-1(b)(14) and meets the requirements of paragraph (b)(1) of this section.

Example

- F owns a 75% interest and G owns a 5% interest in five partnerships (PRS1-PRS5). H owns a 10% interest in PRS1 and PRS2.
  Each partnership operates a restaurant and each restaurant separately constitutes a trade or business for purposes of section 162. G is the executive chef of all of the restaurants and as such he creates the menus and orders the food supplies.

Example

- F owns more than 50% of the partnerships thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the restaurants satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business, and paragraph (b)(1)(v)(B) of this section is satisfied as G is the executive chef of all of the restaurants and the businesses share a centralized function for ordering food and supplies. F can show the requirements under paragraph (b)(1) of this section are satisfied as to all of the restaurants. Because F owns a majority interest in each of the partnerships, G can demonstrate that paragraph (b)(1)(i) of this section is satisfied. G can also aggregate all five restaurants into a single trade or business for purposes of applying § 1.199A-1(d). H, however, only owns an interest in PRS1 and PRS2. Like G, H satisfies paragraph (b)(1)(i) of this section because F owns a majority interest. H can, therefore, aggregate PRS1 and PRS2 into a single trade or business for purposes of applying § 1.199A-1(d).

Example

- H, J, K, and L own interests in PRS1 and PRS2, each a partnership, and S1 and S2, each an S corporation. H, J, K, and L also own interests in C, an entity taxable as a C corporation. H owns 30%, J owns 20%, K owns 5%, and L owns 45% of each of the five entities. All of the entities satisfy 2 of the 3 factors under paragraph (b)(1)(v) of this section. For purposes of section 199A the taxpayers report the following aggregated trades or businesses: H aggregates PRS1 and S1 together and aggregates PRS2 and S2 together; J aggregates PRS1, S1 and S2 together and reports PRS2 separately; K aggregates PRS1 and PRS2 together and aggregates S1 and S2 together; and L aggregates S1, S2, and PRS2 together and reports PRS1 separately. C cannot be aggregated.

Example

- Under paragraph (b)(1)(i) of this section, because H, J, and K together own a majority interest in PRS1, PRS2, S1, and S2, H, J, K, and L are permitted to aggregate under paragraph (b)(1) of this section. Further, the aggregations reported by the taxpayers are permitted, but not required for each of H, J, K, and L. C's income is not eligible for the section 199A deduction and it cannot be aggregated for purposes of applying § 1.199A-1(d)

Example

- L owns 60% of PRS1, a partnership, a business that sells non-food items to grocery stores. L also owns 55% of PRS2, a partnership, which owns and operates a distribution trucking business. The predominant portion of PRS2's business is transporting goods for PRS1.

Example

- L is able to meet paragraph (b)(1)(i) of this section as the majority owner of PRS1 and PRS2. Under paragraph (b)(1)(v) of this section, L is only able to show the operations of PRS1 and PRS2 are operated in reliance of one another under paragraph (b)(1)(v)(C) of this section. For purposes of applying § 1.199A-1(d), L must treat PRS1 and PRS2 as separate trades or businesses.

Example

- C owns a majority interest in a sailboat racing team and also owns an interest in PRS1 which operates a marina. PRS1 is a trade or business under section 162, but the sailboat racing team is not a trade or business within the meaning of section 162.

Example

- C has only one trade or business for purposes of section 199A and, therefore, cannot aggregate the interest in the racing team with PRS1 under paragraph (b)(1) of this section.

Example

- Trust wholly owns LLC1, LLC2, and LLC3. LLC1 operates a trucking company that delivers lumber and other supplies sold by LLC2. LLC2 operates a lumber yard and supplies LLC3 with building materials. LLC3 operates a construction business. LLC1, LLC2, and LLC3 have a centralized human resources department, payroll, and accounting department.

Example

- Because Trust owns 100% of the interests in LLC1, LLC2, and LLC3, Trust satisfies paragraph (b)(1)(i) of this section. Trust can also show that it satisfies paragraph (b)(1)(v)(B) of this section as the trades or businesses have a centralized human resources department, payroll, and accounting department. Trust also can show is meets paragraph (b)(1)(v)(C) of this section as the trades or businesses are operated in coordination, or reliance upon, one or more in the aggregated group. Trust can aggregate LLC1, LLC2, and LLC3 for purposes of applying § 1.199A-1(d).

Example

- PRS1, a partnership, directly operates a food service trade or business and owns 60% of PRS2, which directly operates a movie theater trade or business and a food service trade or business. PRS2's movie theater and food service businesses operate in coordination with, or reliance upon, one another and share a centralized human resources department, payroll, and accounting department. PRS1's and PRS2's food service businesses provide products and services that are the same and share centralized purchasing and shipping to obtain volume discounts.

Example

- PRS2 may aggregate its movie theater and food service businesses. Paragraph (b)(1)(v) of this section is satisfied because the businesses operate in coordination with one another and share centralized business elements. If PRS2 does aggregate the two businesses, PRS1 may not aggregate its food service business with PRS2's aggregated trades or businesses. Because PRS1 owns more than 50% of PRS2, thereby satisfying paragraph (b)(1)(i) of this section, PRS1 may aggregate its food service businesses with PRS2's food service business if PRS2 has not aggregated its movie theater and food service businesses. Paragraph (b)(1)(v) of this section is satisfied because the businesses provide the same products and services and share centralized business elements. Under either alternative, PRS1's food service business and PRS2's movie theater cannot be aggregated because there are no factors in paragraph (b)(1)(v) of this section present between the businesses.

Example

- PRS1, a partnership, owns 60% of a commercial rental office building in state A, and 80% of a commercial rental office building in state B. Both commercial rental office building operations share centralized accounting, legal, and human resource functions. PRS1 treats the two commercial rental office buildings as an aggregated trade or business under paragraph (b)(1) of this section.

Example

- PRS1 owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, PRS1 may aggregate its commercial rental office buildings because the businesses provide the same type of property and share accounting, legal, and human resource functions.

Example

- S, an S corporation owns 100% of the interests in a residential condominium building and 100% of the interests in a commercial rental office building. Both building operations share centralized accounting, legal, and human resource functions.

Example

- S owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Although both businesses share significant centralized business elements, S cannot show that another factor under paragraph (b)(1)(v) of this section is present because the two building operations are not of the same type of property. S must treat the residential condominium building and the commercial rental office building as separate trades or businesses for purposes of applying § 1.199A-1(d).

Example

- M owns 75% of a residential apartment building. M also owns 80% of PRS2. PRS2 owns 80% of the interests in a residential condominium building and 80% of the interests in a residential apartment building. PRS2's residential condominium building and residential apartment building operations share centralized back office functions and management. M's residential apartment building and PRS2's residential condominium and apartment building operate in coordination with each other in renting apartments to tenants.

Example

- PRS2 may aggregate its residential condominium and residential apartment building operations. PRS2 owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Paragraph (b)(1)(v) of this section is satisfied because the businesses are of the same type of property and share centralized back office functions and management. M may also add its residential apartment building operations to PRS2's aggregated residential condominium and apartment building operations. M owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i

Part 6 – Rental Real Estate

- Objective – Understand rental real estate

- We will look to put together a lot of the concepts already discussed and see how we can apply them looking at rental real estate

Rental Real Estate

- What is rental real estate?
- Do we have a trade or business or just rental?
- What if we have an investment?

Trade or Business

- Look at IRC 162
- No clear definition
- First, a taxpayer must enter into and carry on the activity at issue with a good-faith intention to earn a profit. Second, the taxpayer must engage in the activity on a regular and continuous basis (see *Groetzinger*, 480 U.S. 23 (1987)).
- Case law
  - Continuous profit motive
  - IRC 183 – hobby losses

Trade or Business

- What does Real Estate Professional Status tell us?
- Do we need to issue 1099s?
- What else can we do to establish trade or business purpose?

Safe Harbor

- Separate books and records are maintained to reflect income and expenses for each rental real estate enterprise.
- For rental real estate enterprises that have been in existence less than four years, 250 or more hours of rental services are performed per year. For other rental real estate enterprises, 250 or more hours of rental services are performed in at least three of the past five years.
- The taxpayer maintains contemporaneous records, including time reports, logs, or similar documents, regarding the following: hours of all services performed; description of all services performed; dates on which such services were performed; and who performed the services.
- The taxpayer or RPE attaches a statement to the return filed for the tax year(s) the safe harbor is relied upon.
- Is it really needed though?

Aggregation

- Rental Aggregation

W-2 Wages - Trap

- Be careful with W-2 wages with real estate business and IRC 199A.
- Wages paid through the trade or business could affect IRC 469 calculations and which are available if we have a R/E pro

UBIA

- Commonly missed
  - Use MACRS life even if ACRS property
  - Watch out for credit reduction to basis in software. Need to use unadjusted basis prior to credit reduction

Small Business Safe Harbor

- Remember we have the small business safe harbor for repair expenses:
  - 10% of unadjusted basis of building or $10,000 (lesser)
  - Does it make sense to expense or capitalize for UBIA?

DFTE on LinkedIn

Don Farmer
Tax Education

Where practical tax insights meet engaging education