2026 WICPA TAX CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

HIGHLIGHTED TOPICS:



OBBBA: THE TAX CHANGES TAKING EFFECT NOW

Explore key OBBBA provisions, new IRS guidelines and what practitioners need to know for the year ahead



PAY IT FORWARD: TAX CREDITS & EDUCATION

Learn how Wisconsin's scholarship tax credit can support students while providing a federal tax benefit for donors



TAX PLANNING FOR WEALTHY CLIENTS

Explore practical strategies for income, estate, gift, charitable and business planning in today's tax environment

MONDAY, NOV. 16 & TUESDAY, NOV. 17

BROOKFIELD CONFERENCE CENTER & WICPA CPE LIVESTREAM

CONFERENCE AT A GLANCE

MONDAY, NOV. 16

Brookfield Conference Center & WICPA CPE Livestream

6:15 — 7:15 a.m.
Registration & Networking
Celebration Atrium

7:15 — 7:30 a.m.
Welcome & Opening Remarks
Connect B

7:30 — 8:20 a.m.
GENERAL SESSION
Pay It Forward: Wisconsin's Scholarship Granting Organization to Improve Education Outcomes
Connect B

8:20 — 9:45 a.m.
GENERAL SESSION
Federal Tax Update: Digesting the OBBBA, Part 1
Connect B

9:45 — 10 a.m.
Networking Break
Celebration Atrium

10 — 11:30 a.m.
GENERAL SESSION
Federal Tax Update: Digesting the OBBBA, Part 2
Connect B

11:30 a.m. — 12:45 p.m.
Networking Lunch
Collaborate

12:45 — 1:45 p.m.
BREAKOUT SESSIONS
Advanced Section 1031 Transactions & Related Strategies
Connect C

AI 101 for CPAs: Core Concepts & Practical Applications
Connect B

1:45 — 2 p.m.
Networking Break
Celebration Atrium

2 — 3 p.m.
BREAKOUT SESSIONS
Smarter Tax Services With AI Tools
Connect C

What's New in Pass-Through Taxation: Self-Employment Tax & Other Selected Topics
Connect B

3 — 3:10 p.m.
Networking Break
Celebration Atrium

3:10 — 4 p.m.
BREAKOUT SESSIONS
Capital Cost Recovery: Depreciation Strategies, Tax Savings & Planning Opportunities
Connect B

The Tax Questions Inside Your Clients' 401(k) Plans
Connect C

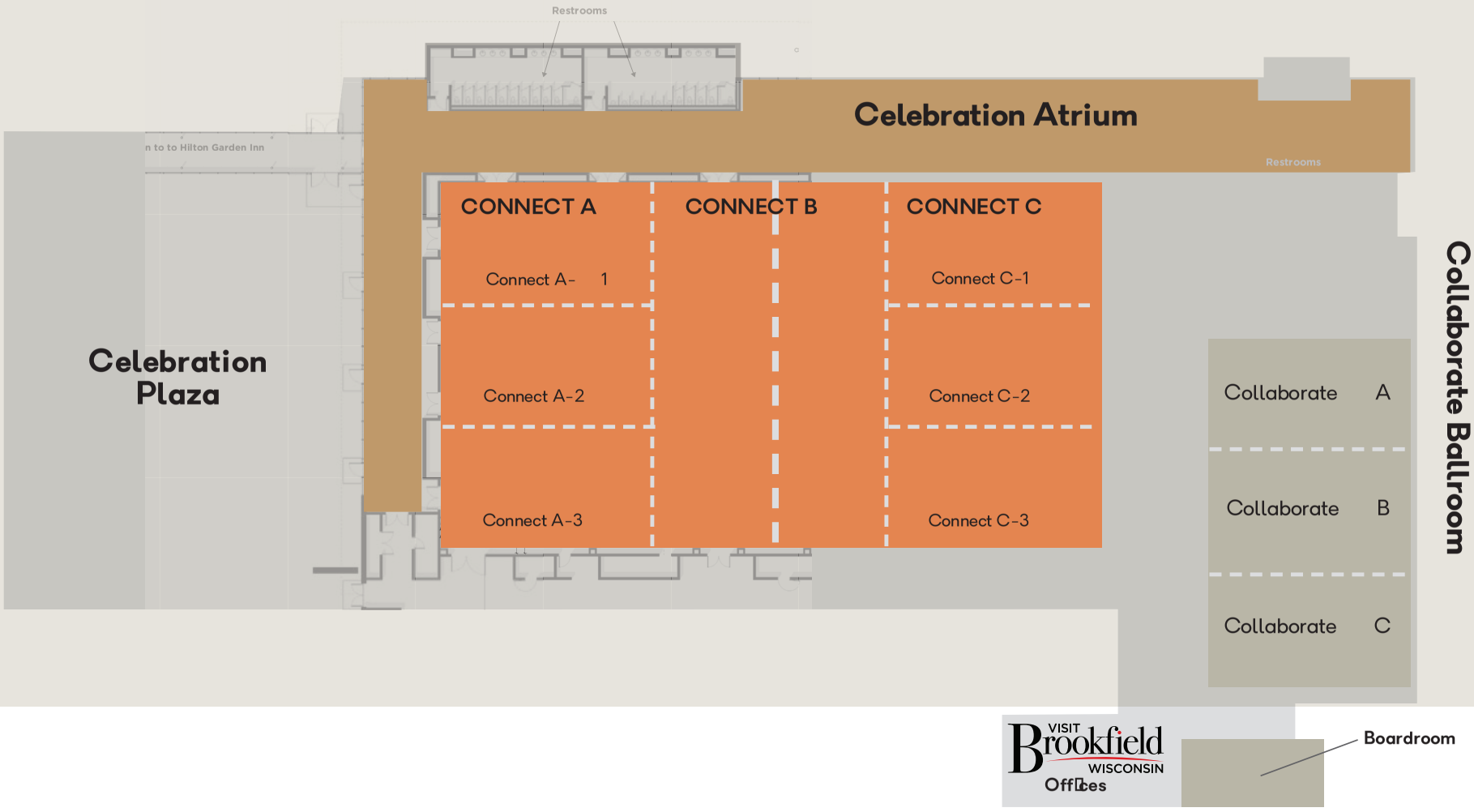
4 — 4:10 p.m.
Networking Break
Celebration Atrium

4:10 — 5 p.m.
GENERAL SESSION
Hot Tax Practice & Procedure & Ethics Issues
Connect B

5 — 6:30 p.m.
Networking Social (In-Person Only)
Celebration Atrium

BROOKFIELD CONFERENCE CENTER

FLOOR PLANS AND CAPACITY CHARTS



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*based on 2020 Client Retention Rates

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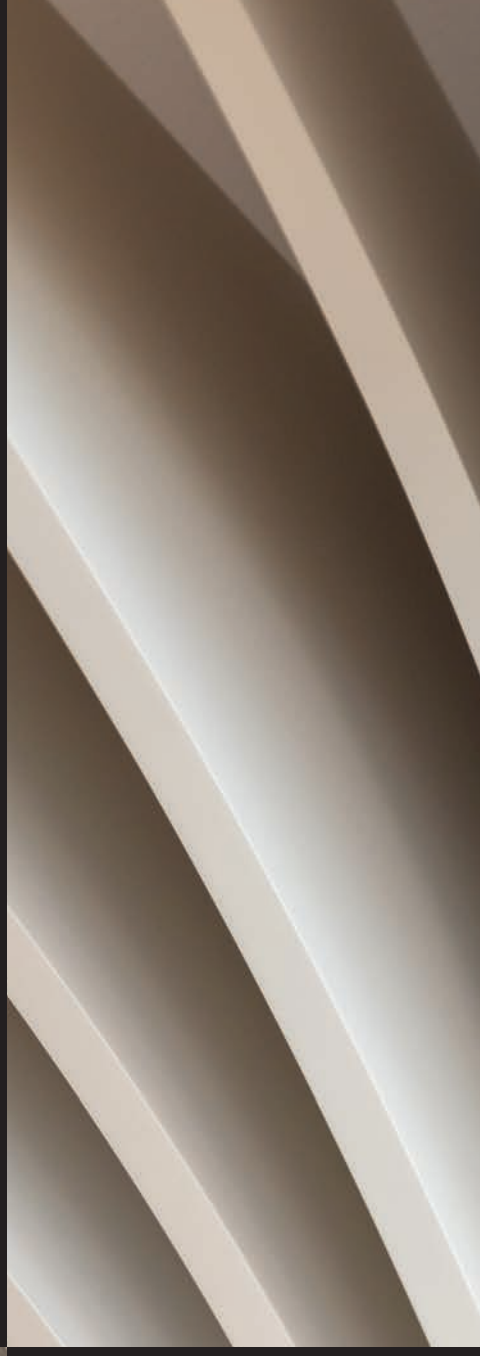

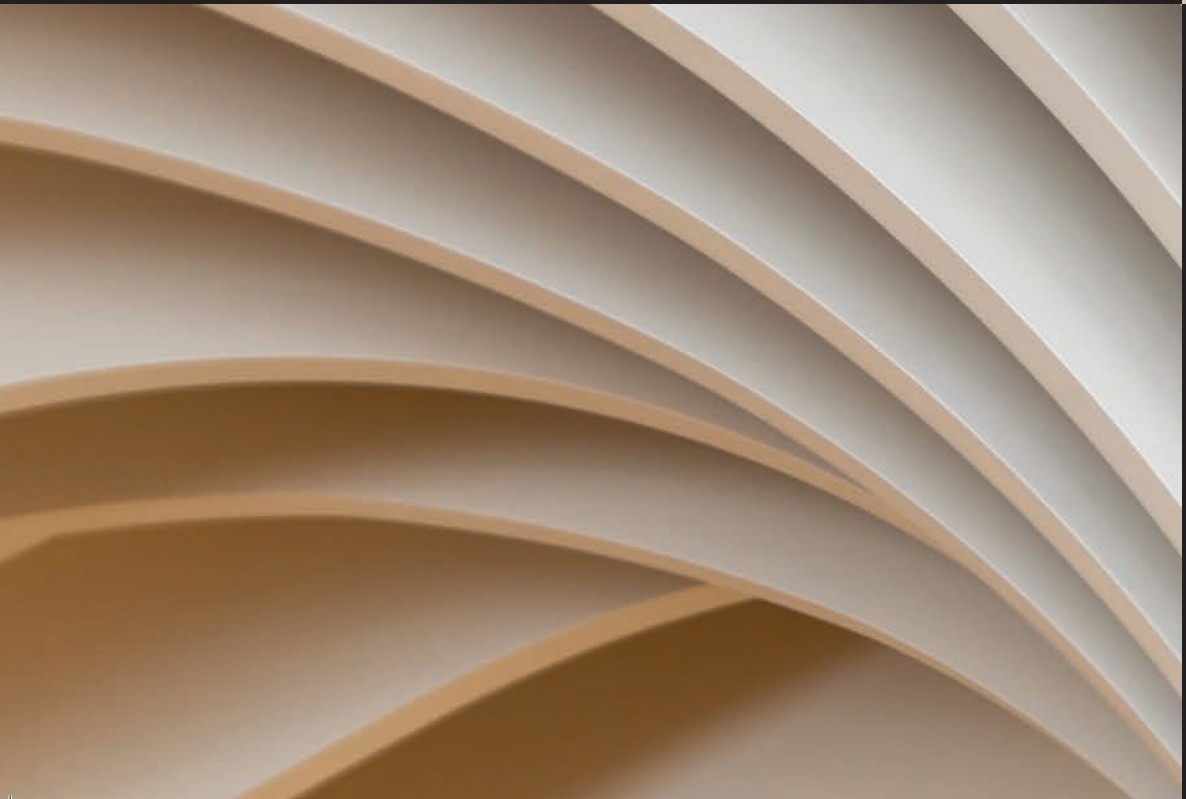

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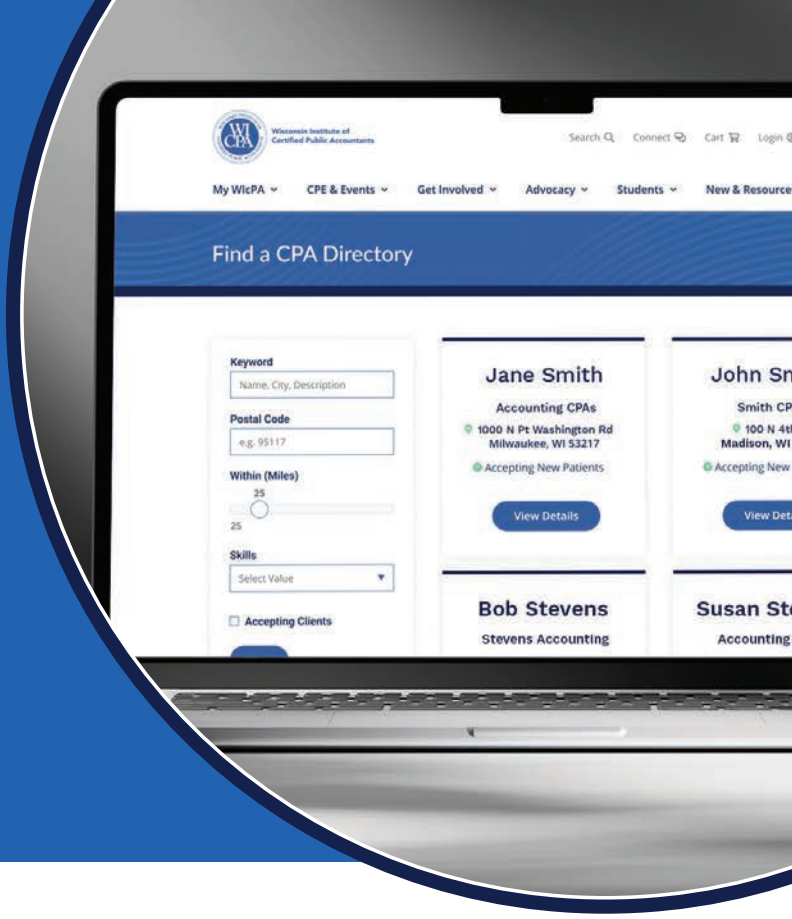

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2027 WICPA

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  - select topics
  - contact speakers
  - introduce speakers at conferences

2027 CONFERENCES

Accepting Volunteers

- MARCH 22 — BUSINESS & INDUSTRY SPRING CONFERENCE
- MAY 13 — FINANCIAL INSTITUTIONS CONFERENCE
- MAY 20 — SCHOOL DISTRICT AUDIT CONFERENCE
- SEPT. 14 — NOT-FOR-PROFIT ACCOUNTING CONFERENCE
- SEPT. 22 — BUSINESS & INDUSTRY FALL CONFERENCE
- NOV. 9 — ACCOUNTING & AUDITING CONFERENCE
- NOV. 15-16 — TAX CONFERENCE

For more information or to join a committee, visit **wicpa.org/committees**.

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NOVEMBER 2026

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- Reach out to one or more high schools you're interested in speaking at
- Schedule a day and time with the school
- Let us know by completing the Accounting Careers Month Volunteer Form
- We'll provide you with everything you need including a presentation, talking points, tips, resources and fun gifts for students!

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Questions? Contact Tammy J. Hofstede, WICPA president & CEO at tammy@wicpa.org.

» To contribute, visit wicpa.org/EF.

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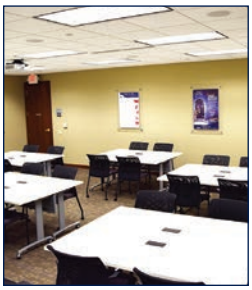

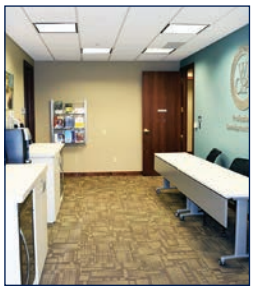

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- Catering and refreshment area

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Nonmember	$600/day	$450/day

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- Equipped for video conferencing
- Granite countertop with sink and refrigerator

Member	$300/day
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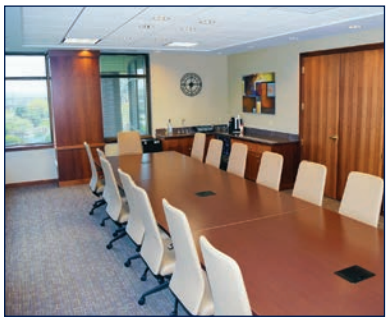



For more information, visit wicpa.org/MeetingSpaces, or to schedule a tour or reserve space, contact the WICPA CPE Department at 262-785-0445.

SAVE THE DATE!

UPCOMING WICPA CONFERENCES & SPECIAL EVENTS

CONFERENCES

WICPA conferences are your source for key updates and insights on timely issues. As a WICPA member, you can save up to $150 on registration!

Accounting Technology Conference
Thursday, Dec. 17
WICPA Office & WICPA CPE Livestream

Business & Industry Spring Conference
Monday, March 22, 2027
Brookfield Conference Center & WICPA CPE Livestream

Financial Institutions Conference
Thursday, May 13, 2027
WICPA CPE Livestream

School District Audit Conference
Thursday, May 20, 2027
WICPA CPE Livestream

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SPECIAL EVENTS

WICPA special events are unique opportunities to connect with fellow members and provide a great way to socialize and have fun!

Bowling Night
Thursday, April 29, 2027
New Berlin Ale House

Member Recognition Banquet & Annual Business Meeting
Friday, May 7, 2027
Brookfield Conference Center

New CPA Banquet
Friday, June 11, 2027
Brookfield Conference Center

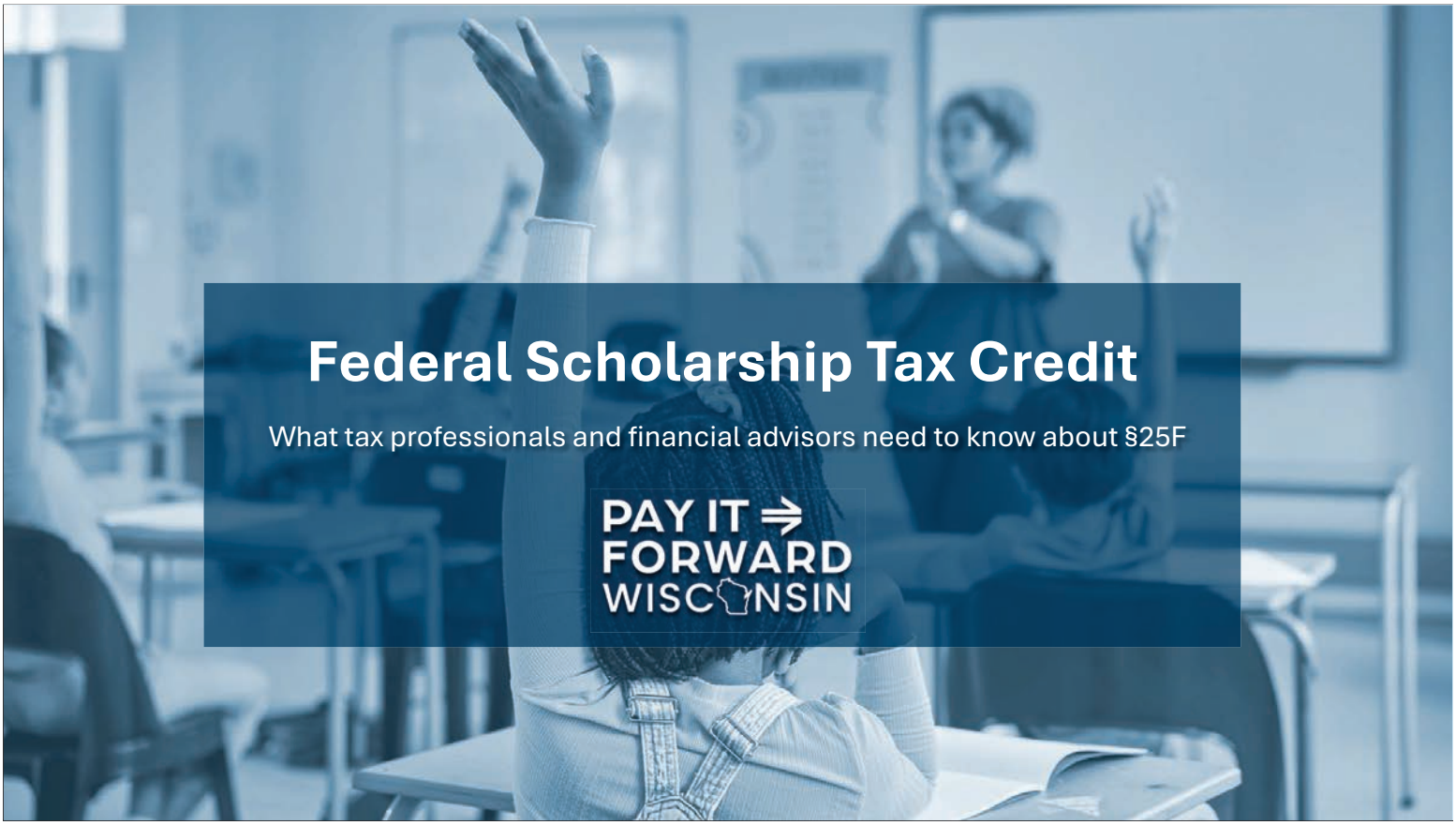
Golf Outing
Friday, Sept. 17, 2027
Ironwood Golf Course

Registration opens approximately eight weeks prior. For more details about each and to register, visit wicpa.org/conferences and wicpa.org/events.

Monday, Nov. 16, 2026
7:30 – 8:20 a.m.

Pay It Forward: Wisconsin's Scholarship Granting Organization to Improve Education Outcomes

Dale Kooyenga, CPA, *President & CEO, Metropolitan Milwaukee Association of Commerce*



Federal Scholarship Tax Credit

What tax professionals and financial advisors need to know about §25F

PAY IT ⇒ FORWARD WISCONSIN



DALE KOOYENGA, CPA

President & CEO

Metropolitan Milwaukee Association of Commerce

The §25F Federal Scholarship Tax Credit



Effective January 1, 2027

- **Dollar-for-dollar credit:** Nonrefundable federal income tax credit for qualifying cash contributions to an eligible Scholarship Granting Organization (SGO).
- **Annual maximum:** $1,700 per individual taxpayer; up to $3,400 for married couples filing jointly when each spouse makes a qualifying contribution.
- **Carryforward:** Unused credit may be carried forward for up to five years.
- **Tax treatment:** Contributions receiving the §25F credit cannot also be claimed as a federal charitable deduction.
- **SGO requirements:** Contributions must be made to an eligible 501(c)(3) SGO authorized by a participating state.
- **Scholarship purpose:** SGOs provide scholarships for eligible K–12 students to cover qualified educational expenses.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

Who Is Eligible?

CREDIT

Up to **$1,700 per individual** taxpayer or **$3,400 for married couples** filing jointly when each spouse makes a qualifying contribution.

Donors

U.S. citizens and residents who make qualifying cash contributions to an eligible SGO. The credit is nonrefundable, so sufficient federal income tax liability is needed to receive the full current-year benefit

STUDENTS

Students eligible to enroll in a public K–12 school whose household income does not exceed 300% of Area Median Gross Income (AMGI), adjusted for household size.

SGOs

Qualifying 501(c)(3) public charities authorized by a participating state. Must **spend at least 90%** of applicable income on scholarships and award scholarships to at least 10 students attending more than one school.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

What Scholarships Can Support

For students and families, qualified expenses may include:

ACADEMIC SUPPORT
Qualified academic tutoring connected with K–12 education.

PRIVATE-SCHOOL TUITION & FEES
Scholarships may pay qualified tuition and school fees directly to the school.

SPECIAL-NEEDS SERVICES
Certain services for students with special needs.

BOOKS, SUPPLIES & TECHNOLOGY
Certain qualified expenses connected with a student's K–12 enrollment or attendance.

Treasury/IRS say additional guidance clarifying §530(b)(3) qualified expenses is forthcoming.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

Dick & Jane's Scenario

$3,400 Contribution

Dick is married to Jane.

Dick and Jane file a joint federal tax return.

Dick and Jane are both public school teachers.

Dick and Jane's combined annual household income is $130,000.

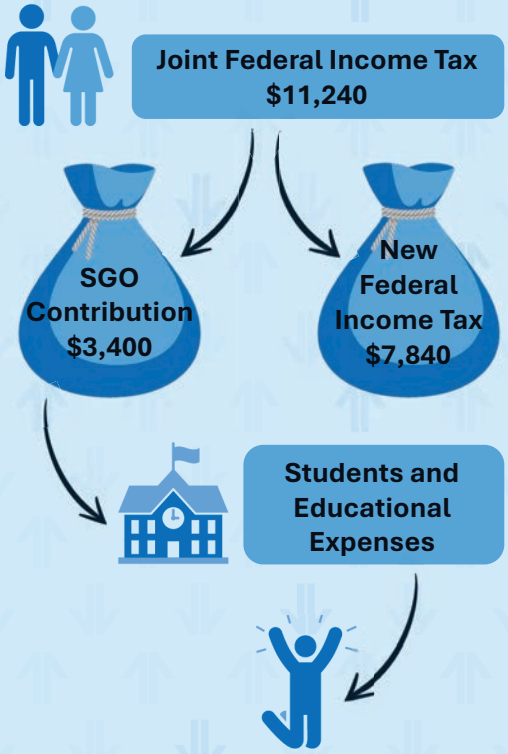
Dick and Jane take the standard deduction (2026: $32,200) and receive no tax credits or pre-tax reductions (such as 401k or HSA).

Dick and Jane's taxable income is **$97,800**.

Dick and Jane's total federal income tax is **$11,240**.

Dick contributes $1,700 and Jane contributes $1,700 to an eligible SGO, for a total contribution of $3,400.

Dick and Jane's new total federal income tax is now **$7,840**.



Important Tax Considerations

NONREFUNDABLE CREDIT

Full current-year benefit depends on available federal income-tax liability.

CARRYFORWARD

Unused qualifying credit may carry forward for up to five years, subject to statutory rules.

MARRIED FILING JOINTLY

Proposed rules address each spouse's individual contribution limit, up to $1,700 per individual.

CHARITABLE DEDUCTIONS

No federal charitable deduction for the amount for which the §25F credit is allowed.

CONTRIBUTION REQUIREMENTS

Qualifying cash contributions must go to an eligible SGO that appears on a state-authorized list.

DOCUMENTATION

Clients need appropriate substantiation and should retain SGO acknowledgments and tax records.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

30 States Have Made an Advance Election for 2027

- Alabama
- Alaska
- Arkansas
- Colorado
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- West Virginia
- Wyoming

30

states have elected to opt in to the FSTC program

Wisconsin has not yet made an advance election.

Source: IRS Federal Scholarship Tax Credit participating states list, as of Sept. 14, 2026.

Where Does Wisconsin Stand?

- **Wisconsin Participation Is Pending**: Wisconsin has not yet elected to participate in the Federal Scholarship Tax Credit program for 2027.
- **Wisconsin Taxpayers May Still Qualify**: Eligible Wisconsin taxpayers may claim the federal tax credit by contributing to an approved SGO operating in a participating state.
- **Wisconsin Student Funding Depends on Opt-In**: Until Wisconsin participates, scholarship funds cannot be guaranteed for Wisconsin students, schools, or district.
- **Pay It Forward Wisconsin Is Preparing**: PIFW has partnered with ACE Scholarships, a national SGO, to help establish the infrastructure and administrative pathway for taxpayer participation beginning in 2027.



Sources: IRS FSTC participating-state page (updated Sept. 14, 2026); Treasury/IRS proposed and temporary regulations, Oct. 1–2, 2026.

How Can CPAs Partner with PIFW?

1. **Educate Your Clients:** Introduce the Federal Scholarship Tax Credit during tax planning conversations and help clients understand its potential benefits.
2. **Identify Potential Donors**: Help clients evaluate their eligibility and consider how a qualifying contribution could fit into their 2027 tax strategy.
3. **Connect Us with Employers:** Introduce PIFW to business clients who may be interested in educating employees about the credit as part of their benefits and employee engagement efforts.
4. **Spread the Word:** Share PIFW resources with colleagues, clients, and professional networks. Invite PIFW to provide educational presentations or client briefings.



Tax professionals will serve as a key partner in connecting eligible donors with this opportunity to support students!

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

What Pay It Forward Wisconsin Will Do

1. Manage Contributions & Compliance: Administer qualifying contributions, maintain required records, and meet federal reporting and audit requirements.

2. Verify Student Eligibility: Confirm household income requirements and eligibility for K–12 scholarships.

3. Ensure Qualified Educational Expenses: Review scholarship uses and facilitate payments to schools and approved educational providers.

4. Work with Schools & Communities: Build statewide partnerships, identify educational needs, and help direct available scholarship funds where they can make an impact.

5. Support Donors & Their Advisors: Provide program information, donor acknowledgments, educational materials, and ongoing updates.

CPAs
Advise their clients.

PIFW
Manages the process.

Together
We expand educational opportunities.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

CPA Check-List

PAY IT ⇒ FORWARD WISCONSIN

Confirm	Confirm their potential credit eligibility and federal income tax liability.
Explain	Explain the $1,700 individual and $3,400 joint-filer maximums.
Review	Review the nonrefundable credit, carryforward, and charitable deduction limitations.
Verify	Verify that contributions are made to a qualifying SGO and appropriate documentation is retained.
Explain	Explain Wisconsin's participation status and the implications for where scholarship funds may be distributed.

Q & A

Connect

PAY IT FORWARD WISCONSIN

payitforwardwi.org

An easy, impactful investment



Connect with
DALE KOOYENGA



Connect with
JENNY GRYNIEWICZ
jgryniewicz@mmac.org
(414) 287-4139



Connect with
DANIELLE ROGERS
drogers@mmac.org
(414) 287-4122

Employee Giving, Community Impact

Turning employee tax credits into student scholarships

The Opportunity:

Organizational workforce	Employees with tax liabilities	Contributions per employee	Total annual scholarships
1,800	**1,200**	**1,700**	**$2 MILLION**

Where the scholarships could go:

816
TUTORING & ACADEMIC MENTORSHIP PROGRAMS
High-impact tutoring and academic mentoring

1,020
STEM ENRICHMENT OPPORTUNITIES
Robotics teams, coding camps, engineering workshops

600
COLLEGE READINESS SCHOLARSHIPS
Dual-credit courses, ACT/SAT prep and application support

680
ART & MUSIC SCHOLARSHIPS
Instruments, private lessons, studio art classes, digital media tools

If you're going to pay it... WHY NOT PAY IT FORWARD?

$1,700

Part of the federal taxes you already pay

Choose Your Path



Federal Government
Your taxes are spent through the federal budget, with nothing set aside for students.



Other States
Funds scholarships for students in states that have opted in.



Wisconsin
Funds scholarships for **students in our communities.**

Only possible if Wisconsin opts in.

You decide the destination for your dollars.

Source: IRS/Treasury proposed regulations (REG-117199-25), Oct. 1–2, 2026. Proposed rules may be relied upon for qualified contributions beginning Jan. 1, 2027.

Monday, Nov. 16, 2026
8:20 – 9:45 a.m.

Federal Tax Update: Digesting the OBBBA, Part 1

Doug Van Der Aa, CPA, JD, *President,*
Van Der Aa Tax Ed, LLC



Part 1

Federal Tax Update: Digesting the OBBBA

Materials developed and presented by:

Douglas J. Van Der Aa, CPA, JD
Grand Rapids, Michigan

VAN DER AA TAX EDUCATION

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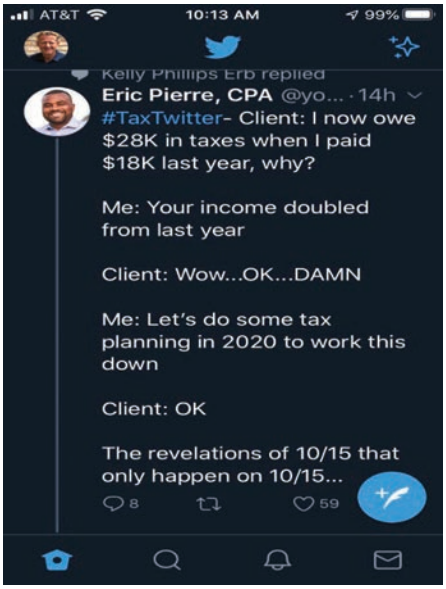
Are You Ready for Tax Planning?

There are lots of opportunities to begin the tax planning conversation!

Understanding last years return is a great starting point!



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Eliminating Unnecessary IRS Guidance

- In response to President Trump's Executive Order the IRS has begun identifying and eliminating extraneous and unnecessary IRB guidance.
- In **Notice 2025-22** the IRS removed nine (9) IRB Documents…



Eliminating Unnecessary IRS Guidance

On July 3, 2025, the IRS identified another 83 pieces of guidance…



Eliminating Unnecessary IRS Guidance

On July 3, 2025, the IRS identified another 83 pieces of guidance…



No More Paper Checks!

In response to President Trump's Executive Order the IRS has announced that starting on September 30, the Department of Treasury will cease issuing paper checks for all Federal Disbursements – including tax refunds.

- ***And it will no longer accept paper checks as payment…..***



No More Paper Checks!

Need to make a payment?

Save time by paying online. Paying online is convenient and secure.

The IRS offers easy ways to electronically pay your taxes.

Use Your Online Account (no fees)	Pay by Bank Account (no fees)	Pay by Card (processing fees apply)
• Go to *www.irs.gov/Account* to login and make a payment. • Make a tax payment online directly from your checking or savings account. • View your balance, payment plan details and options, digital copies of certain notices, and more.	• Use Direct Pay online to make an individual tax payment from your checking or savings account without registration. • Register for the Electronic Federal Tax Payment System (EFTPS) to make one-time or recurring payments from your checking or savings account. • When you e-file with tax software or a tax professional, you can schedule an electronic funds withdrawal (EFW).	• Pay online or by phone. • When e-filing pay through tax preparation software. • Processing fees go to a payment processor and limits apply. The IRS does not receive any fees.

Go to ***www.irs.gov/Payments*** for more details or to make a payment.

$1T Bipartisan Infrastructure

Infrastructure Investment and Jobs Act

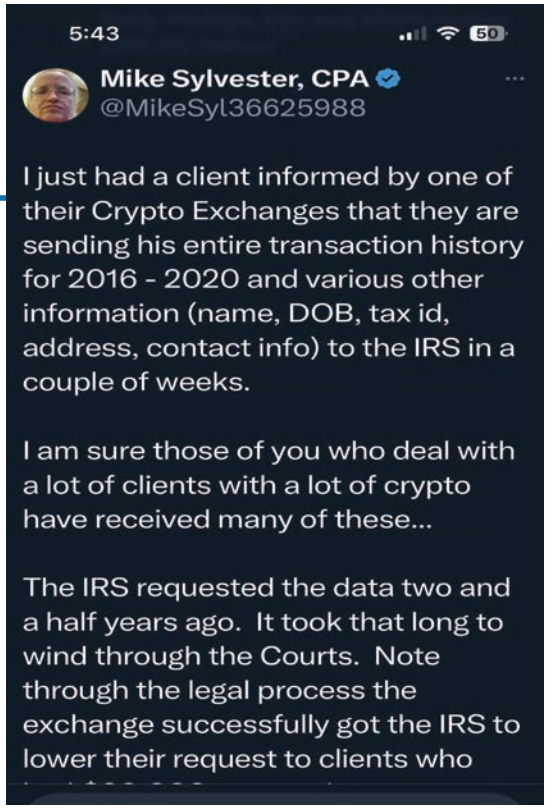
NOT (really) a Tax Act !

- Employee Retention Credit
- **Crypto-asset Reporting**
- Disaster Relief
- Miscellaneous



Digital Assets?

The IRS has been fairly successful with their John Doe subpoenas to the exchanges for account information……



$1T Bipartisan Infrastructure

Cryptocurrency Reporting

Currently, covered Securities Brokers must report customers names, addresses, adjusted basis and ST or LT gain or loss

MERRILL
A BANK OF AMERICA COMPANY

$1T Bipartisan Infrastructure

Cryptocurrency Reporting



The Infrastructure Act extends the definition of **broker** to "any person who (for consideration) is responsible for regularly providing any service affecting transfers of **digital assets** on behalf of another person."

$1T Bipartisan Infrastructure

Cryptocurrency Reporting

A **digital asset** is "any digital representation of value which is recorded on a crypographically secured distributed ledger or any similar technology as specified by the" IRS.



$1T Bipartisan Infrastructure



Cryptocurrency Reporting

- The beginning date for basis tracking was ~~January 1, 2023~~
- 1099-B reporting would start for ~~2023~~
  - Returns required to be filed after December 31, ~~2023~~
    - *Filed ~~in 2024 for 2023~~ activity*

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$1T Bipartisan Infrastructure

Cryptocurrency Reporting



In Announcement 2023-2 the IRS provided transitional guidance:

- It intends to publish regulations, accept public comments, and issue final regulations.
- Brokers may report gross proceeds and basis as required under existing law and regulations as of December 23, 2022.
- Brokers will not be required to report or file returns on dispositions of transfers of digital assets until final regulations are issued.

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$1T Bipartisan Infrastructure

Final Regs. Issued June 28, 2024



- The IRS is working on the draft of the new **Form 1099-DA**
  - *Purportedly they expect to get about 8 billion forms filed!*

Form 1099-DA

The 3rd draft of the form was released on December 5

The actual form was released on January 10

☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.	Applicable checkbox on Form 8949	OMB No. 1545-2330 **2025** Form **1099-DA**	**Digital Asset Proceeds From Broker Transactions**
	1a Code for digital asset		**Copy 1 For State Tax Department**
FILER'S TIN / RECIPIENT'S TIN	1b Name of digital asset		
RECIPIENT'S name	1c Number of units		
Street address (including apt. no.)	1d Date acquired	1e Date sold or disposed	
	1f Proceeds $	1g Cost or other basis $	
City or town, state or province, country, and ZIP or foreign postal code	1h Accrued market discount $	1i Wash sales loss disallowed $	
	2 Check if basis reported to IRS ☐	3a Reported to IRS: ☐ Gross proceeds ☐ Net proceeds	
Account number	3b Check if proceeds from: ☐ Reserved for future use ☐ QOF	4 Federal income tax withheld $	
CUSIP number			
5 Check if loss is not allowed based on amount in 1f ☐	6 Gain or loss: ☐ Short-term ☐ Ordinary ☐ Long-term	7 Check if 1f is only cash ☐	8 Check if broker relied on customer-provided acquisition information ☐
9 Check if digital asset is a noncovered security ☐	10	11a Check if gross proceeds reported in 1f is an aggregate amount for: ☐ Qualifying stablecoins ☐ Specified NFTs	
11b If 11a checked, number of transactions	11c For aggregate reporting of specified NFTs, aggregate gross proceeds reported in 1f that are attributable to first sales by creator or minter $	12a Number of units transferred in	12b If transferred in, provide transfer-in date / 13
14 State name	15 State identification no.	16 State tax withheld $ $	

Form **1099-DA** www.irs.gov/Form1099DA Department of the Treasury - Internal Revenue Service

$1T Bipartisan Infrastructure

1099-DA reporting starts in 2025

- **But only for reporting of gross proceeds!**
- Basis reporting is voluntary in 2025



$1T Bipartisan Infrastructure



All reports filed for sales effected after January 1 **2026 must also include basis information.**

$1T Bipartisan Infrastructure

Cryptocurrency Reporting

Digital assets will now be treated as cash for Code Section 6050I(a) purposes

- Requiring reporting anytime you (a trade or business) receive more than $10,000 in **cash/digital assets**
  - *Returns and statements filed after ~~December 31, 2023~~*



Form 8300 and Reporting Cash Payments of Over $10,000

- "Generally, if you're in a trade or business and receive more than $10,000 in cash in a single transaction or in related transactions, you must file Form 8300.
- The Form 8300, Report of Cash Payments Over $10,000 in a Trade or Business, provides valuable information to the Internal Revenue Service and the Financial Crimes Enforcement Network (FinCEN) in their efforts to combat money laundering. Money is "laundered" to conceal illegal activity, including the crimes that generate the money itself, such as drug trafficking, tax evasion and terrorist financing."

https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000

Form 8300 and Reporting Cash Payments of Over $10,000

When to File

You must file Form 8300 by the 15th day after the date the cash transaction occurred.

Besides filing Form 8300, you also need to provide a written statement to each party whose name you included on the Form 8300 by January 31 of the year following the reportable transaction. This statement must include the name, address, contact person and telephone number of your business and the aggregate amount of reportable cash. The statement must also indicate that you provided this information to the IRS.

Civil and criminal penalties may apply if you fail to file Form 8300 and provide a written statement to each person named on Form 8300. Penalty amounts are adjusted annually for inflation."

https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000

Form 8300 and Reporting Cash Payments of Over $10,000

How to File

Electronic filing. E-filing is a free, quick, and secure method for filing Forms 8300. You may electronically file Forms 8300 using FinCEN's BSA E-Filing System. You'll receive an electronic acknowledgement of each submission. For more information about Form 8300 e-filing, see the FinCEN news release announcing electronic filing.

Effective April 8, 2019, Form 8300 filers have the option to batch file their reports as opposed to discrete filing. Batch filing is for businesses that file a high number of Forms 8300 at a time. The BSA E-Filing System includes batch processing functionality in XML format. Find more information on batch filing in hot topics and quick links on the BSA E-Filing System, including:

- FinCEN's announcement of XML batch processing for FinCEN Form 8300.
- 8300 XML batch processing technical webinar and
- FinCEN 8300 XML filing requirements.

File by mail. You may mail Form 8300 to the IRS at: Detroit Federal Building, P.O. Box 32621, Detroit, Michigan 48232.

Regardless of whether you file electronically or on paper, you must timely file a complete and accurate form."

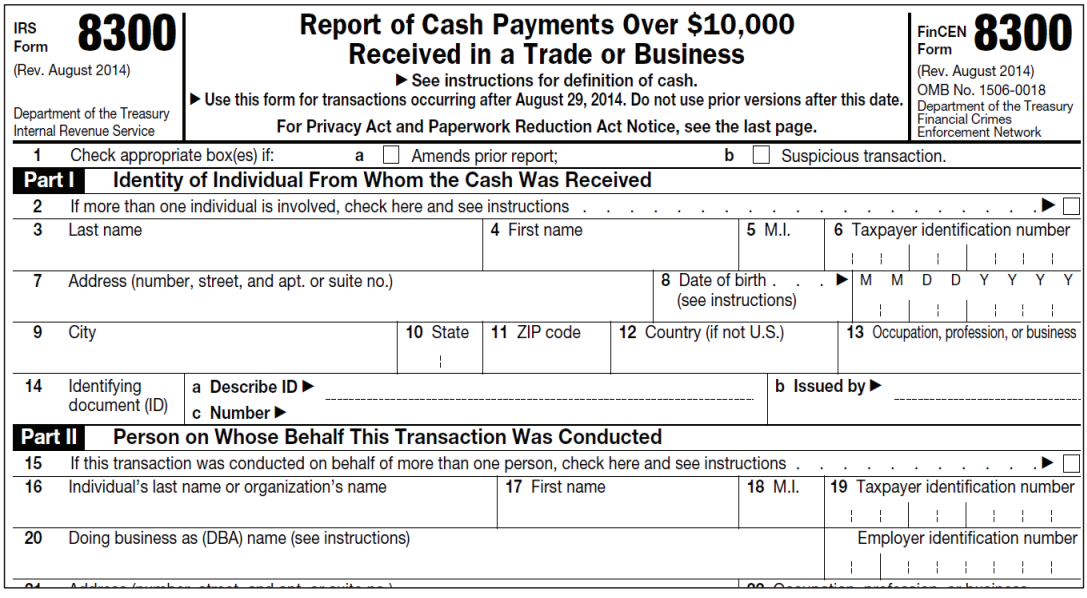
https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000

Form 8300 and Reporting Cash Payments of Over $10,000

- On August 30, 2023, the IRS announced that Businesses **must e-file Form 8300** beginning in 2024.
- Applies to any business required to file at least 10 information returns
  - Of any type other than 8300s
- Set up an Account with FinCen's BSA E-Filing System

  http://bsaefiling.fincen.treas.gov/main.html

Form 8300 and Reporting Cash Payments of Over $10,000



IRS Form **8300** (Rev. August 2014)
Department of the Treasury Internal Revenue Service

Report of Cash Payments Over $10,000 Received in a Trade or Business

▶ See instructions for definition of cash.
▶ Use this form for transactions occurring after August 29, 2014. Do not use prior versions after this date.
For Privacy Act and Paperwork Reduction Act Notice, see the last page.

FinCEN Form **8300** (Rev. August 2014)
OMB No. 1506-0018
Department of the Treasury Financial Crimes Enforcement Network

1 Check appropriate box(es) if: a ☐ Amends prior report; b ☐ Suspicious transaction.

Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions . . . . . ▶ ☐

3 Last name	4 First name	5 M.I.	6 Taxpayer identification number

7 Address (number, street, and apt. or suite no.)	8 Date of birth (see instructions) ▶ M M D D Y Y Y Y

9 City	10 State	11 ZIP code	12 Country (if not U.S.)	13 Occupation, profession, or business

14 Identifying document (ID) a Describe ID ▶ _____ b Issued by ▶ _____ c Number ▶

Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions . . . . . ▶ ☐

16 Individual's last name or organization's name	17 First name	18 M.I.	19 Taxpayer identification number

20 Doing business as (DBA) name (see instructions)	Employer identification number

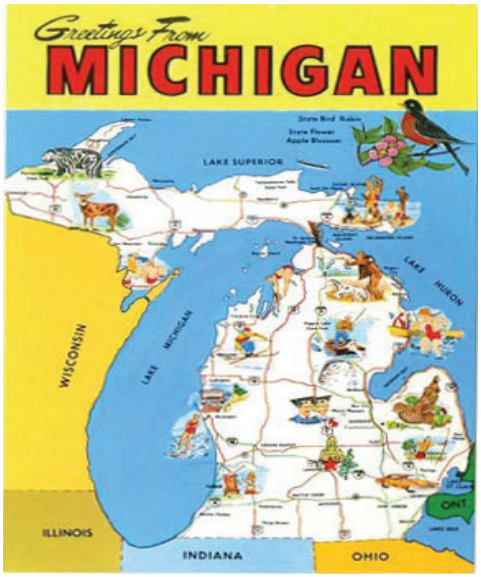
Form 8300 and Reporting Cash Payments of Over $10,000

On Tuesday January 16, 2024, the IRS released Announcement 2024-04 postponing the requirement to report the receipt of digital assets under Section 6050I Until the IRS publishes *Final Regulations.*

(Proposed Regs. were issued on August 29, 2023)

Say goodbye to the Postcard!

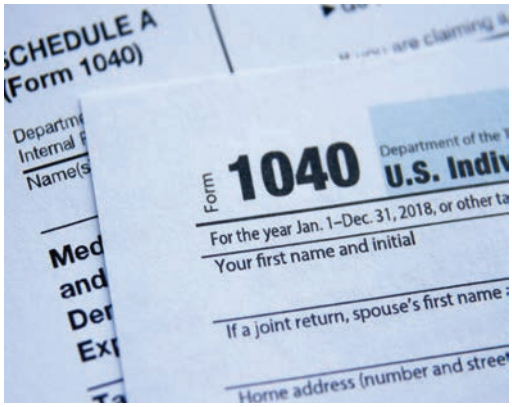
- The Postcard 1040 concept didn't age well
- The 1040 has now morphed into a significantly **longer**, more **complicated** return



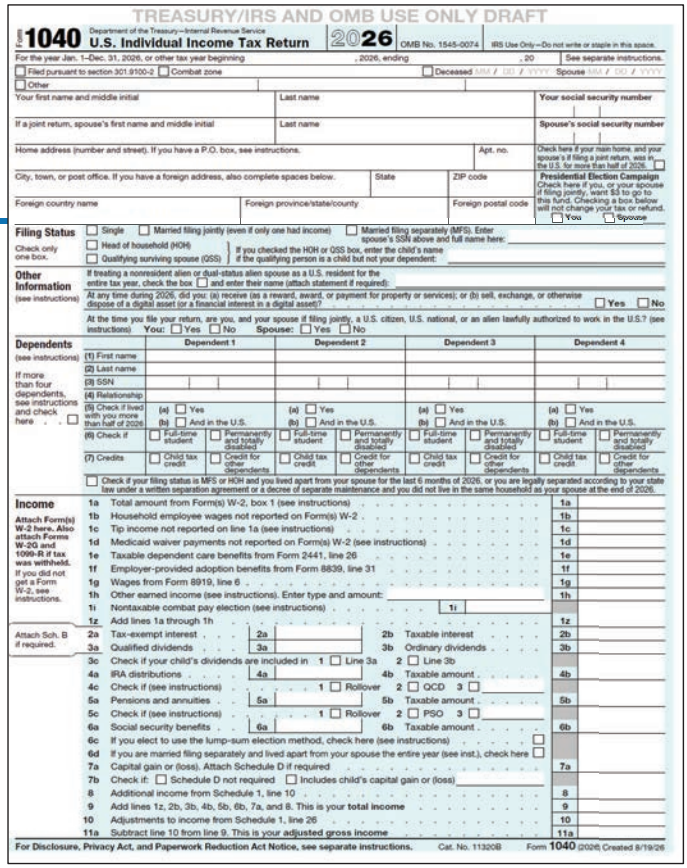
Say goodbye to the Postcard!

For 2026 we're back to a **2 page** 1040, **PLUS**

- **2 page** Schedule 1
- **2 page Sch 1A**
- 1 page Schedule 2
- **2 page** Schedule 3
- **New Schedule 3-A**



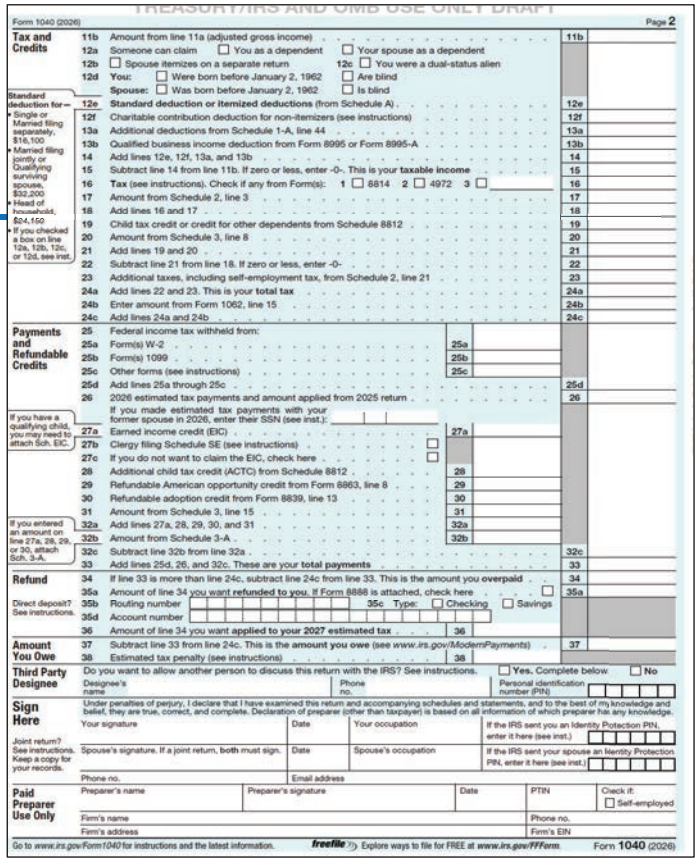
2026 Form 1040


TREASURY/IRS AND OMB USE ONLY DRAFT

Form 1040 U.S. Individual Income Tax Return 2026

Filing Status | Dependents | Income

2026 Form 1040



Form 1040 (2026) Page 2

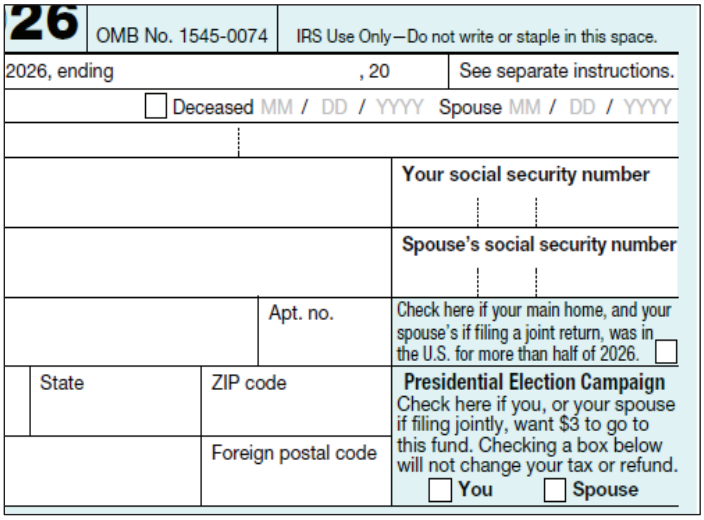
Tax and Credits	11b	Amount from line 11a (adjusted gross income)	11b
	12a	Someone can claim ☐ You as a dependent ☐ Your spouse as a dependent	
	12b	☐ Spouse itemizes on a separate return 12c ☐ You were a dual-status alien	
	12d	You: ☐ Were born before January 2, 1962 ☐ Are blind	
		Spouse: ☐ Was born before January 2, 1962 ☐ Is blind	
Standard deduction for— • Single or Married filing separately, $16,100 • Married filing jointly or Qualifying surviving spouse, $32,200 • Head of household, $24,150 • If you checked a box on line 12a, 12b, 12c, or 12d, see inst.	12e	Standard deduction or itemized deductions (from Schedule A)	12e
	12f	Charitable contribution deduction for non-itemizers (see instructions)	12f
	13a	Additional deductions from Schedule 1-A, line 44	13a
	13b	Qualified business income deduction from Form 8995 or Form 8995-A	13b
	14	Add lines 12e, 12f, 13a, and 13b	14
	15	Subtract line 14 from line 11b. If zero or less, enter -0-. This is your **taxable income**	15
	16	Tax (see instructions). Check if any from Form(s): 1 ☐ 8814 2 ☐ 4972 3 ☐	16
	17	Amount from Schedule 2, line 3	17
	18	Add lines 16 and 17	18
	19	Child tax credit or credit for other dependents from Schedule 8812	19
	20	Amount from Schedule 3, line 8	20
	21	Add lines 19 and 20	21
	22	Subtract line 21 from line 18. If zero or less, enter -0-	22
	23	Additional taxes, including self-employment tax, from Schedule 2, line 21	23
	24a	Add lines 22 and 23. This is your **total tax**	24a
	24b	Enter amount from Form 1062, line 15	24b
	24c	Add lines 24a and 24b	24c
Payments and Refundable Credits	25	Federal income tax withheld from:	
	25a	Form(s) W-2	25a
	25b	Form(s) 1099	25b
	25c	Other forms (see instructions)	25c
	25d	Add lines 25a through 25c	25d
	26	2026 estimated tax payments and amount applied from 2025 return	26
If you have a qualifying child, you may need to attach Sch. EIC.		If you made estimated tax payments with your former spouse in 2026, enter their SSN (see inst.):	
	27a	Earned income credit (EIC)	27a
	27b	Clergy filing Schedule SE (see instructions) ☐	
	27c	If you do not want to claim the EIC, check here ☐	
	28	Additional child tax credit (ACTC) from Schedule 8812	28
	29	Refundable American opportunity credit from Form 8863, line 8	29
	30	Refundable adoption credit from Form 8839, line 13	30
	31	Amount from Schedule 3, line 15	31
If you entered an amount on line 27a, 28, 29, or 30, attach Sch. 3-A.	32a	Add lines 27a, 28, 29, 30, and 31	32a
	32b	Amount from Schedule 3-A	32b
	32c	Subtract line 32b from line 32a	32c
	33	Add lines 25d, 26, and 32c. These are your **total payments**	33
Refund	34	If line 33 is more than line 24c, subtract line 24c from line 33. This is the amount you **overpaid**	34
	35a	Amount of line 34 you want **refunded to you.** If Form 8888 is attached, check here ☐	35a
Direct deposit? See instructions.	35b	Routing number 35c Type: ☐ Checking ☐ Savings	
	35d	Account number	
	36	Amount of line 34 you want **applied to your 2027 estimated tax**	36
Amount You Owe	37	Subtract line 33 from line 24c. This is the **amount you owe** (see www.irs.gov/ModernPayments)	37
	38	Estimated tax penalty (see instructions)	38
Third Party Designee		Do you want to allow another person to discuss this return with the IRS? See instructions. ☐ Yes. Complete below ☐ No	
		Designee's name / Phone no. / Personal identification number (PIN)	
Sign Here		Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.	
Joint return? See instructions. Keep a copy for your records.		Your signature / Date / Your occupation / If the IRS sent you an Identity Protection PIN, enter it here (see inst.)	
		Spouse's signature. If a joint return, **both** must sign. / Date / Spouse's occupation / If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)	
		Phone no. / Email address	
Paid Preparer Use Only		Preparer's name / Preparer's signature / Date / PTIN / Check if: ☐ Self-employed	
		Firm's name / Phone no.	
		Firm's address / Firm's EIN	

Go to www.irs.gov/Form1040 for instructions and the latest information. freefile Explore ways to file for FREE at www.irs.gov/FFForm. Form 1040 (2026)

2026 Form 1040

What's going on here?

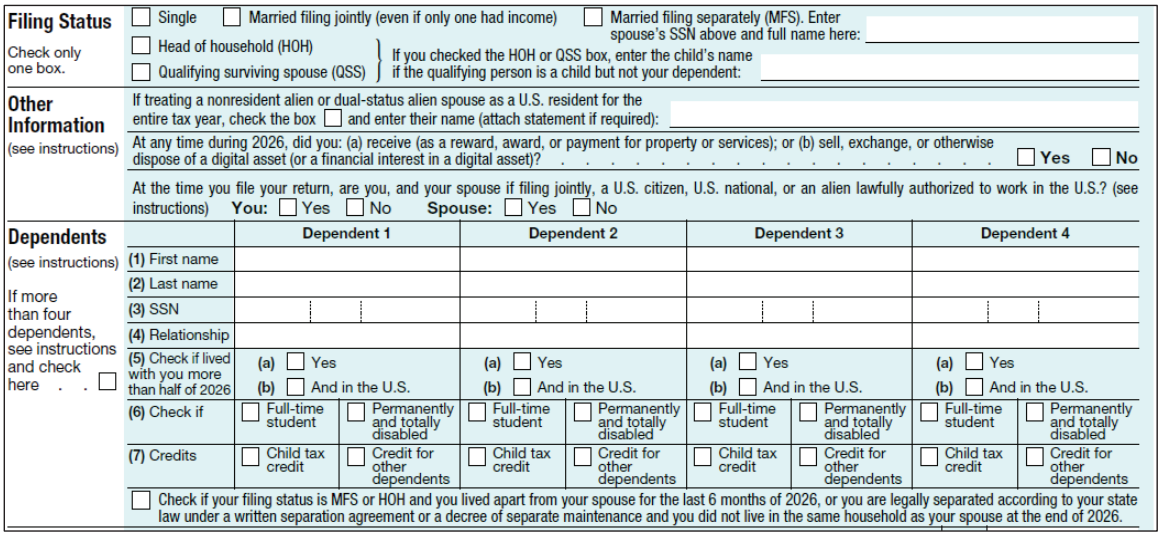




26	OMB No. 1545-0074	IRS Use Only—Do not write or staple in this space.
2026, ending , 20		See separate instructions.
☐ Deceased MM / DD / YYYY	Spouse MM / DD / YYYY	
		Your social security number
		Spouse's social security number
	Apt. no.	Check here if your main home, and your spouse's if filing a joint return, was in the U.S. for more than half of 2026. ☐
State	ZIP code	**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund.
	Foreign postal code	☐ **You** ☐ **Spouse**

2026 Form 1040

What's going on here?



Filing Status (Check only one box.)
☐ Single ☐ Married filing jointly (even if only one had income) ☐ Married filing separately (MFS). Enter spouse's SSN above and full name here: _____
☐ Head of household (HOH) ☐ Qualifying surviving spouse (QSS) — If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: _____

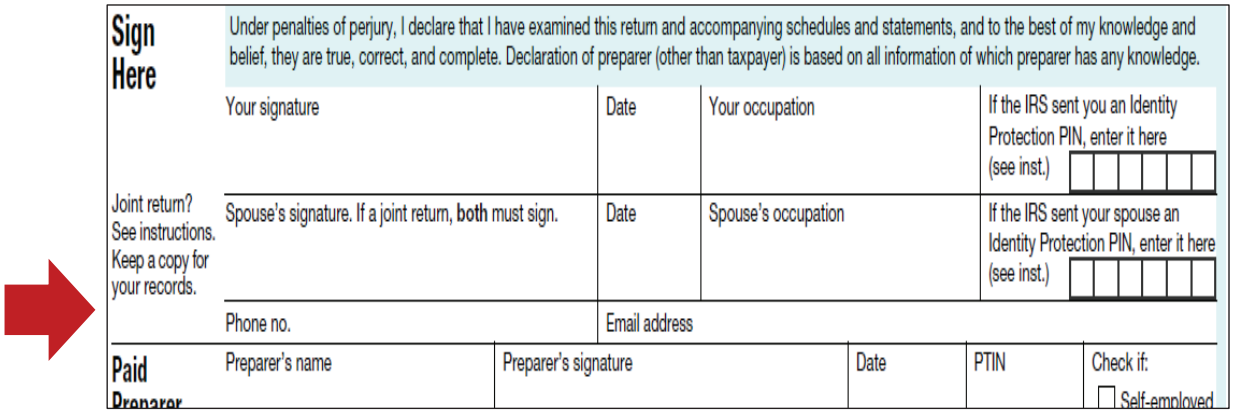
Other Information (see instructions)
If treating a nonresident alien or dual-status alien spouse as a U.S. resident for the entire tax year, check the box ☐ and enter their name (attach statement if required): _____
At any time during 2026, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? ☐ Yes ☐ No
At the time you file your return, are you, and your spouse if filing jointly, a U.S. citizen, U.S. national, or an alien lawfully authorized to work in the U.S.? (see instructions) **You:** ☐ Yes ☐ No **Spouse:** ☐ Yes ☐ No

Dependents (see instructions) If more than four dependents, see instructions and check here ☐

	Dependent 1	Dependent 2	Dependent 3	Dependent 4
(1) First name				
(2) Last name				
(3) SSN				
(4) Relationship				
(5) Check if lived with you more than half of 2026	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.	(a) ☐ Yes (b) ☐ And in the U.S.
(6) Check if	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled	☐ Full-time student ☐ Permanently and totally disabled
(7) Credits	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents	☐ Child tax credit ☐ Credit for other dependents

☐ Check if your filing status is MFS or HOH and you lived apart from your spouse for the last 6 months of 2026, or you are legally separated according to your state law under a written separation agreement or a decree of separate maintenance and you did not live in the same household as your spouse at the end of 2026.

Phone and Email Address?



Sign Here
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.) ☐☐☐☐☐☐
Joint return? See instructions. Keep a copy for your records. Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.) ☐☐☐☐☐☐
Phone no.	Email address		

Paid Preparer

Preparer's name	Preparer's signature	Date	PTIN	Check if: ☐ Self-employed

WHY?

I thought the IRS NEVER initiated contact by phone or email….

Phone and Email Address?

The Form 1040 Instructions now state that entering the phone number and email is OPTIONAL

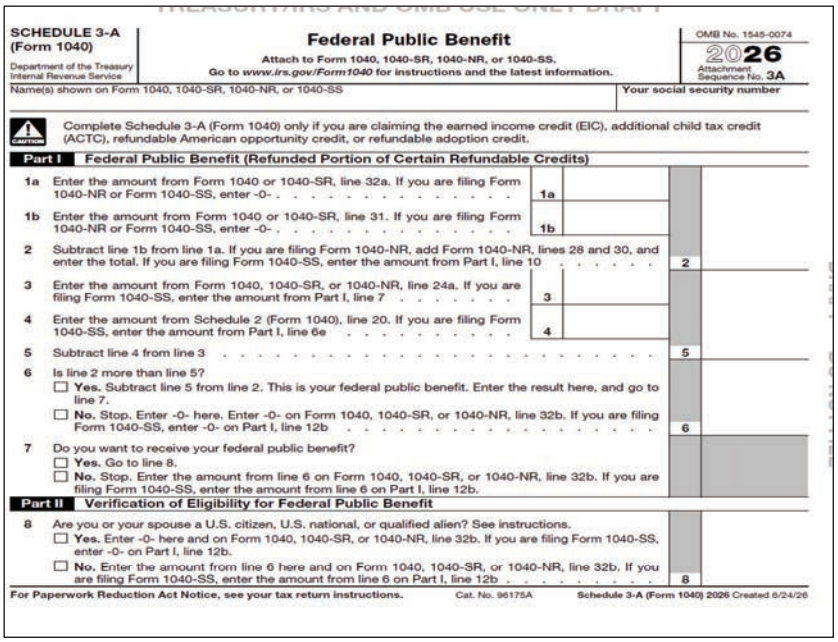
(Page 61 – 2024 instructions)

Phone Number and Email Address

You have the option of entering your phone number and email address in the spaces provided. There will be no effect on the processing of your return if you choose not to enter this information. Note that the IRS initiates most contacts through regular mail delivered by the United States Postal Service.

You can report a phone scam to the Treasury Inspector General for Tax Administration at *IRS Impersonation Scam*

New Schedule 3-A Federal Public Benefit



SCHEDULE 3-A (Form 1040)
Department of the Treasury Internal Revenue Service

Federal Public Benefit

Attach to Form 1040, 1040-SR, 1040-NR, or 1040-SS.
Go to *www.irs.gov/Form1040* for instructions and the latest information.

OMB No. 1545-0074
2026
Attachment Sequence No. 3A

Name(s) shown on Form 1040, 1040-SR, 1040-NR, or 1040-SS | Your social security number

CAUTION Complete Schedule 3-A (Form 1040) only if you are claiming the earned income credit (EIC), additional child tax credit (ACTC), refundable American opportunity credit, or refundable adoption credit.

Part I Federal Public Benefit (Refunded Portion of Certain Refundable Credits)

1a Enter the amount from Form 1040 or 1040-SR, line 32a. If you are filing Form 1040-NR or Form 1040-SS, enter -0- . . . 1a
1b Enter the amount from Form 1040 or 1040-SR, line 31. If you are filing Form 1040-NR or Form 1040-SS, enter -0- . . . 1b
2 Subtract line 1b from line 1a. If you are filing Form 1040-NR, add Form 1040-NR, lines 28 and 30, and enter the total. If you are filing Form 1040-SS, enter the amount from Part I, line 10 . . . 2
3 Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 24a. If you are filing Form 1040-SS, enter the amount from Part I, line 7 . . . 3
4 Enter the amount from Schedule 2 (Form 1040), line 20. If you are filing Form 1040-SS, enter the amount from Part I, line 6e . . . 4
5 Subtract line 4 from line 3 . . . 5
6 Is line 2 more than line 5?
☐ **Yes.** Subtract line 5 from line 2. This is your federal public benefit. Enter the result here, and go to line 7.
☐ **No.** Stop. Enter -0- here. Enter -0- on Form 1040, 1040-SR, or 1040-NR, line 32b. If you are filing Form 1040-SS, enter -0- on Part I, line 12b . . . 6
7 Do you want to receive your federal public benefit?
☐ **Yes.** Go to line 8.
☐ **No.** Stop. Enter the amount from line 6 on Form 1040, 1040-SR, or 1040-NR, line 32b. If you are filing Form 1040-SS, enter the amount from line 6 on Part I, line 12b.

Part II Verification of Eligibility for Federal Public Benefit

8 Are you or your spouse a U.S. citizen, U.S. national, or qualified alien? See instructions.
☐ **Yes.** Enter -0- here and on Form 1040, 1040-SR, or 1040-NR, line 32b. If you are filing Form 1040-SS, enter -0- on Part I, line 12b.
☐ **No.** Enter the amount from line 6 here and on Form 1040, 1040-SR, or 1040-NR, line 32b. If you are filing Form 1040-SS, enter the amount from line 6 on Part I, line 12b . . . 8

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 96175A Schedule 3-A (Form 1040) 2026 Created 6/24/26

Rev. Proc 2024-40

In October 2025, the IRS issued Revenue Procedure 2025-32 with the Tax Inflation Adjustments for 2026.

Tax Cuts and Jobs Act

- The Act adopted the **"Chained CPI"** for inflation adjustments.
  - *C-CPI-U*
- 2025 Adjustments were about **2.75%**



2026 Standard Deduction

Filing Status	Standard Deduction Amount
Single	$15,750
Married Filing Joint & Surviving Spouse	$31,500
Married Filing Separately	$15,750
Head of Household	$23,625

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2026 Standard Deduction

Additional standard deduction for elderly and blind taxpayers:

- $2,000 (Single or HOH)
  - $4,000 if both blind and 65 or older
- $1,600 (MFJ or separately)
  - $3,200 if both blind and 65 or older



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The 2013 Additional Medicare Tax

Additional 0.9% tax on combined Wages & Self-Employment income over:

- $250,000 on a joint return
- $200,000 on a single return
- $125,000 married filing separate



- **These numbers are not adjusted for inflation!**

The 2013 Additional Medicare Tax

Additional 3.8 % "Medicare tax" on lesser of Net Investment Income over:

- $250,000 **modified AGI** on a joint return
- $200,000 **modified AGI** on a single return
- $125,000 married filing separate



§199A Pass-Through Income

There are two limitations on the 20% deduction that apply **only** when your **taxable income** exceeds a threshold amount:

- ~~$157,500 Single/$315,000 MFJ~~
- **$197,300 Single / $394,600 MFJ for 2025**
- W2 wage/depreciable asset limit
- Exclusion of specified services

THE ONE BIG BEAUTIFUL BILL ACT



THE ONE BIG BEAUTIFUL BILL ACT

This is NOT Tax Simplification!

Tax Simplification was nowhere on their radar screen…



THE ONE BIG BEAUTIFUL BILL ACT



There are more new caps, limitations and phaseouts than you can shake a stick at!

THE ONE BIG BEAUTIFUL BILL ACT

Modified Adjusted Gross Income

MAGI

may be the most important number on the return



THE ONE BIG BEAUTIFUL BILL ACT

Modified Adjusted Gross Income

Adjusted Gross Income increased by any amount excluded from gross income under Section 911, 931 or 933

Form 1A
Additional Deductions

TREASURY/IRS AND OMB USE ONLY DRAFT

SCHEDULE 1-A (Form 1040)
Department of the Treasury
Internal Revenue Service

Additional Deductions
Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form1040* for instructions and the latest information.

OMB No. 1545-0074
2026
Attachment Sequence No. 1A

Name(s) shown on Form 1040, 1040-SR, or 1040-NR | Your social security number

Part I Modified Adjusted Gross Income (MAGI) Amount

1	Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 11b			1
2a	Enter any income from Puerto Rico that you excluded	2a		
2b	Enter the amount from Form 2555, line 45	2b		
2c	Enter the amount from Form 2555, line 50	2c		
2d	Enter the amount from Form 4563, line 15	2d		
2e	Add lines 2a, 2b, 2c, and 2d			2e
3	Add lines 1 and 2e			3

THE ONE BIG BEAUTIFUL BILL ACT

- **Social Security Numbers** are now specifically required for many deductions and credits
- And Omission of a correct SSN is now treated as a mathematical or clerical error





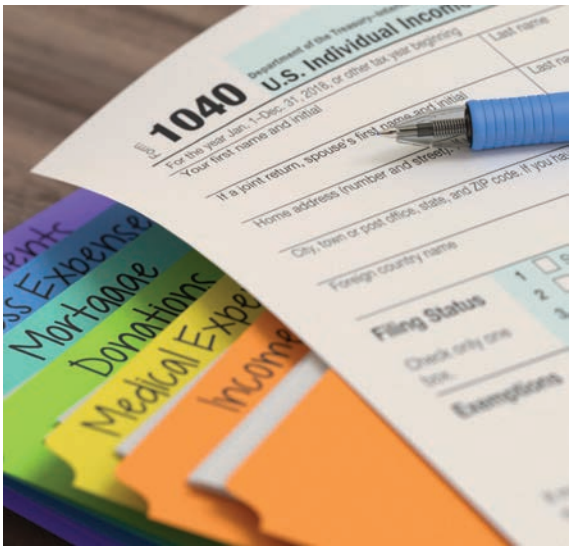
CHAPTER 1

TCJA EXTENDERS

Rates and Brackets

Section 70101:

The TCJA rates and brackets are made <u>permanent!</u>



Including Capital Gains

2026 Tax Brackets

Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Households
10%	$0 to $12,400	$0 to $24,800	$0 to $17,0700
12%	$12,400 to $50,400	$24,800 to $100,800	$17,700 to $67,450
22%	$50,400 to $105,750	$100,800 to $211,400	$67,450 to $105,750
24%	$105,750 to $201,750	$211,400 to $403,550	$105,750 to $201,750
32%	$201,750 to $256,205	$403,550 to $512,450	$201,750 to $256,200
35%	$256,20 to $640,600	$512,450 to $768,700	$256,20 to $640,600
37%	$640,600 or more	$768,70 or more	$640,600 or more
Source: Internal Revenue Service Rev. Proc. 2024-40			

2026 Tax Brackets

The 0%, 15% & 20% rates for LTCG and Qualified Dividends were retained:

- **0% up to $49,450 for Singles / $98,900 MFJ**
- **15% starts at $49,450 for Singles / $98,900 MFJ**
- **20% - More than $613,700**

THE ONE, BIG, BEAUTIFUL BILL

The OBBBA makes the TCJA Individual Income Tax rates permanent

- ***What about Corporate taxes?***
- ***The 21% C Corp rate in the TCJA was already permanent***

Standard Deduction

Section 70102:

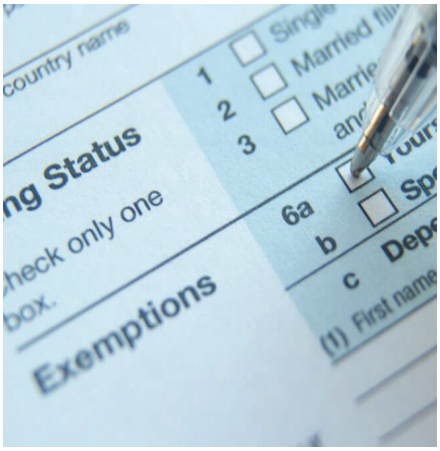
- The TCJA **Increased Standard Deduction** is made permanent
- And increased to:
  - **$15,750 / $31,500 / $23,625** in 2025 & 2026



Personal Exemptions

Section 70103:

- The TCJA elimination of the personal exemption is made permanent.



2025-26 Standard Deduction

The TCJA *keeps* the additional standard deduction for elderly and blind taxpayers.

- $2,000 (Single or HOH)
  - $4,000 if both blind and 65 or older
- $1,600 (MFJ or separately)
  - $3,200 if both blind and 65 or older



New Additional Senior Deduction

Section 70103:

- Senior citizens (age 65 by the close of the year) get an additional standard deduction of $6,000 from 2025-2028
- However, this is reduced by 6% of your MAGI over $75,000/$150,000
- SSN is required



Increased Child Tax Credit



Section 70104:

- The Child Tax Credit is increased from $2,000 to $2,200 beginning in 2025
- **NO CHANGE FOR 2026**
- SSN is required for both the taxpayer and child

Section 199A
Qualified Business Income

Section 70105:

- The deduction is now **Permanent**
- And the **Taxable Income Limitation** is raised for 2026



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Section 199A
Qualified Business Income

Section 70105:

For 2025, the limitation was:

- $197,300 Single
- $394,600 MFJ



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Section 199A
Qualified Business Income

Section 70105:

For **2026** the limitation will begin at:

- **$272,000 Single**
- **$545,000 MFJ**



Section 199A
Qualified Business Income

Section 70105:

- Beginning in **2026,** there is a new $400 minimum deduction.
- Your aggregate qualified business income must be at least $1,000.
- You must **Materially Participate** under the Section 469 passive activity loss rules.

Estate and Gift Tax Exemption

Section 70106:



The Unified Estate and Gift Tax Exemption is raised to $15 million beginning in 2026

And adjusted for inflation in future years

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Alternative Minimum Tax

Section 70107:

- The TCJA increased AMT exemption amounts are extended
- But the phaseout is changed from 25% to **50%** beginning in 2026

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Mortgage Interest



Section 70108:

The TCJA $750,000 mortgage limitation is made permanent

Casualty Losses

Section 70109:

- The TCJA limitation on personal casualty losses Is made permanent
- However, beginning in 2026 the deduction is extended to **"State Declared Disasters"** giving Governors the power to designate disasters



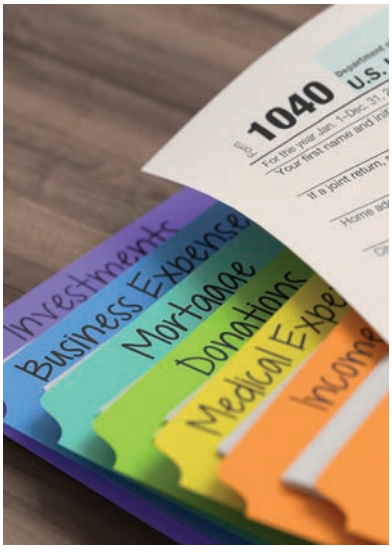
Miscellaneous Itemized Deductions

All miscellaneous itemized deductions subject to the 2% AGI floor were suspended from 2018-2025.

- Employee business expenses
- Investment expenses
- Union and professional dues
- Tax Preparation expenses
- Etc., etc., etc.



Miscellaneous Itemized Deductions



Section 70110:

The TCJA elimination of **Miscellaneous Itemized Deductions** (subject to the 2% AGI floor) is made **permanent.**

New Limit on Itemized Deductions

The old PEASE Limitation on itemized deductions has been "repealed and replaced"



New Limit on Itemized Deductions

Section 70111:

Beginning in **2026** Itemized deductions are reduced by 2/37 of the lesser of:

- Your itemized deductions, or
- Your taxable income over the start of the 37% bracket
- **Effectively limiting your deductions to a 35% rate and/or creating a new 39% tax rate**

New Limit on Itemized Deductions

Section 70111:

- **VIP!** This does **not** impact your Section 199A Deduction.

Charitable Contributions

Section 70424:

Beginning in 2026 non-itemizers will get to claim an above the line deduction for Charitable Contributions

- $1,000/$2,000



Charitable Contributions

Section 70425:

Beginning in 2026, itemizers will only be able to deduct charitable contributions to the extent that they exceed 0.5% of their contribution base for the year.

Charitable Contributions

Section 70426:



Beginning in 2026, Corporations will only be able to deduct charitable contributions to the extent that they exceed 1% of their taxable income for the year.

Moving Expenses

Section 70113:

- The disallowance of Moving Expense deductions (except for active duty military personnel) is permanent.
- However, Beginning in 2026 members of the Intelligence Community can take the deduction.



Gambling



Section 70114:

- Beginning in 2026 wagering losses are limited to 90% of your losses during the year
- AND allowed only to the extend of your gains/winnings

ABLE Accounts

Section 70115:

ABLE Accounts are extended and enhanced beginning in 2026



Section 70116:

Contributions to ABLE Accounts are eligible for the Secure 2.0 Savers Credit beginning in 2027

- *And the credit is increased to $2,100 in 2027*

ABLE Accounts

Section 70117:

The provision permitting rollovers from qualified tuition programs into ABLE accounts is extended permanently



Student Loan Discharge



Section 70119:

- Income from discharge of student loans on account of the death or total and permanent disability of the student will now be tax-free beginning in 2026
- SSN is required

SALT Cap

Section 70120:

The limitation is increased to:

- ✓ $40,000 in 2025
- ✓ $40,400 in 2026
- ✓ In 2027 – 2029 it increases by 101% over the prior year
- ✓ Reverts back to $10,000 in 2030 and beyond

SALT Cap Reduction

Section 70120:

- However, the limitation is subject to a phasedown by 30% of your MAGI over the threshold amount:
  - $500,000 in 2025
  - $505,000 in 2026
  - In 2027 – 2029 it increases by 101% over the prior year
- But doesn't get reduced below $10,000

SALT Cap Reduction

Section 70120:

Good News!

- **State PTET workarounds are <u>unaffected</u> by the OBBBA.**





Thank you for attending!

Thank You



Follow Doug on Twitter and Facebook!
Twitter: @AaTaxed
Facebook: https://www.facebook.com/vanderaataxed/

Doug Van Der Aa
www.vanderaataxed.com
Email Doug at djvanderaa@gmail.com

Monday, Nov. 16, 2026
10 – 11:30 a.m.

Federal Tax Update: Digesting the OBBBA, Part 2

Doug Van Der Aa, *CPA, JD, President,*
Van Der Aa Tax Ed, LLC



Part 2

Federal Tax Update: Digesting the OBBBA

Materials developed and presented by:

Douglas J. Van Der Aa, CPA, JD
Grand Rapids, Michigan

VAN DER AA TAX EDUCATION

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CHAPTER 2

MIDDLE CLASS TAX RELIEF

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No Tax on Tips

Section 70201:

- Up to $25,000 of "**Qualified Tips**" will be tax free from 2025-2028
  - *It is a deduction*
- The deduction is reduced by $100 for every $1,000 of MAGI over $150,000 / $300,000



No Tax on Tips

Section 70201:

The IRS says there are about 6 million workers who *report* tipped wages.



No Tax on Tips

Section 70201:

What are "Qualified Tips"?

- Cash tips received in a business which customarily and regularly received tips on or before 12/31/2024.



No Tax on Tips

Section 70201:

- **"Qualified Tips"**
- Must be paid **voluntarily** without any consequence in the event of non-payment, is not subject to negotiation and is determined by the payor.



No Tax on Tips



Section 70201:

Self Employed taxpayers can claim the deduction too.

- *But total deduction cannot exceed your **NET** business income before the deduction.*

No Tax on Tips

Section 70201:

"Qualified Tips"

Must be included on statements furnished to the individual (W-2s and 1099s), Or are reported to the taxpayer on Form 4137.



No (Income) Tax on Tips!

It's an income tax deduction – Not an Exclusion!



So the tips are still reportable as income

- ✓ **Subject to Social Security and Medicare Taxes**
- ✓ And generally taxable at the state and local level

No (Income) Tax on Tips

Section 70201:

The IRS was directed to publish a list of occupations within 90 days which customarily and regularly received tips.

IRS

No (Income) Tax on Tips

Section 70201:

On August 27, the IRS issued a preliminary list of 68 occupations that made the cut.



Treasury Tipped Occupation Code (TTOC)	TTOC Occupation Title	TTOC Occupation Description	TTOC Illustrative Examples	Related Standard Occupational Classification (SOC) System Code(s)[1]
Beverage & Food Service				
101	Bartenders	Mix and serve drinks to patrons, directly or through waitstaff.	Barkeep, mixologist, taproom attendant, sommelier	35-3011
102	Wait Staff	Take orders and serve food and beverages to patrons at tables in dining establishment.	Cocktail waitress, dining car server	35-3031
103	Food Servers, Nonrestaurant	Serve food to individuals outside of a restaurant environment, such as in hotel rooms, residential care facilities, or cars.	Room service food server, boat hop, beer cart server	35-3041
104	Dining Room and Cafeteria Attendants and Bartender Helpers	Facilitate food service. Clean tables; remove dirty dishes; replace soiled table linens; set tables; replenish supply of clean linens, silverware, glassware, and dishes; supply service bar with food; and serve items such as water, condiments, and coffee to patrons.	Bar back, bar helper, busser	35-9011
105	Chefs and Cooks	Direct and may participate in the preparation, seasoning, and cooking of salads, soups, fish, meats, vegetables, desserts, or other foods.	Executive chef, pastry chef, sous chef, fast food cook, private chef, restaurant cook, saucier, food truck cook, banquet cook, caterer	35-1011, 35-2011, 35-2013, 35-2014, 35-2019
106	Food Preparation Workers	Perform a variety of food preparation duties other than cooking, such as preparing cold foods and shellfish, slicing meat, and brewing coffee or tea.	Salad maker, sandwich maker, fruit and vegetable parer, kitchen steward	35-1012, 35-2021, 35-9099
107	Fast Food and Counter Workers	Serve customers at counter or from a steam table. Perform duties such as taking orders and serving food and beverages. May take payment. May prepare food and beverages.	Barista, ice cream server, cafeteria server	35-3023
108	Dishwashers	Clean dishes, kitchen, food preparation equipment, or utensils.	Dish room worker, silverware cleaner	35-9021
109	Host Staff, Restaurant, Lounge, and Coffee Shop	Welcome patrons, seat them at tables or in lounge, and help ensure quality of facilities and service.	Maître d'hôtel, dining room host	35-9031
110	Bakers	Mix and bake ingredients to produce breads, rolls, cookies, cakes, pies, pastries, or other baked goods.	Bread baker, cake baker, bagel baker, pastry finisher	51-3011

Entertainment & Events				
201	Gambling Dealers	Operate gambling games. Stand or sit behind table and operate games of chance by dispensing the appropriate number of cards or blocks to players, or operating other gambling equipment. Distribute winnings or collect players' money or chips. May compare the house's hand against players' hands.	Blackjack dealer, craps dealer, poker dealer, roulette dealer, pit clerk	39-3011, 39-1013, 39-3013
202	Gambling Change Persons and Booth Cashiers	Exchange coins, tokens, and chips for patrons' money. May issue payoffs and obtain customer's signature on receipt. May operate a booth in the slot machine area and furnish change persons with money bank at the start of the shift, or count and audit money in drawers.	Slot attendant, mutuel teller	41-2012
203	Gambling Cage Workers	In a gambling establishment, conduct financial transactions for patrons. Accept patron's credit application and verify credit references to provide check-cashing authorization or to establish house credit accounts. May reconcile daily summaries of transactions to balance books. May sell gambling chips, tokens, or tickets to patrons, or to other workers for resale to patrons. May convert gambling chips, tokens, or tickets to currency upon patron's request. May use a cash register or computer to record transaction.	Casino cashier, cage cashier	43-3041
204	Gambling and Sports Book Writers and Runners	Post information enabling patrons to wager on various races and sporting events. Assist in the operation of games such as keno and bingo. May operate random number-generating equipment and announce the numbers for patrons. Receive, verify, and record patrons' wagers. Scan and process winning tickets presented by patrons and pay out winnings for those wagers.	Betting runner, bingo worker, keno runner, race book writer	39-3012
205	Dancers	Perform dances.	Club dancer, dance artist	27-2031
206	Musicians and Singers	Play one or more musical instruments or sing.	Instrumentalist, accompanist, lounge singer	27-2042
207	Disc Jockeys, Except Radio	Play prerecorded music for live audiences at venues or events such as clubs, parties, or wedding receptions. May use techniques such as mixing, cutting, or sampling to manipulate recordings. May also perform as emcee (master of ceremonies).	Deejay, club DJ	27-2091
208	Entertainers and Performers	Entertain audiences with artistic expression.	Comedian, clown, magician, street performer	27-2099
209	Digital Content Creators	Produce and publish on digital platforms original entertainment or personality-driven content, such as live streams, short-form videos, or podcasts.	Streamer, online video creator, social media influencer, podcaster	27-2099

No (Income) Tax on Tips!

Treasury Tipped Occupation Code (TTOC)	TTOC Occupation Title	TTOC Occupation Description	TTOC Illustrative Examples	Related Standard Occupational Classification (SOC) System Code(s)[1]
210	Ushers, Lobby Attendants, and Ticket Takers	Assist patrons at entertainment events by performing duties, such as collecting admission tickets and passes from patrons, assisting in finding seats, searching for lost articles, and helping patrons locate such facilities as restrooms and telephones.	Ticket collector, theater usher	39-3031
211	Locker Room, Coatroom, and Dressing Room Attendants	Provide personal items to patrons or customers in locker rooms, dressing rooms, or coatrooms.	Coat checker, washroom attendant, bathhouse attendant	39-3093

No (Income) Tax on Tips!

Hospitality & Guest Services				
301	Baggage Porters and Bellhops	Handle baggage for travelers at transportation terminals or for guests at hotels or similar establishments.	Hotel baggage handler, curbside airport check-in assistant	39-6011
302	Concierges	Assist patrons at hotel or apartment buildings with personal services. May take messages; arrange or give advice on transportation, business services, or entertainment; or monitor guest requests for housekeeping and maintenance.	Hotel guest service agent, activities concierge	39-6012
303	Hotel, Motel, and Resort Desk Clerks	Accommodate hotel, motel, and resort patrons by registering and assigning rooms to guests, issuing room keys or cards, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests.	Front desk clerk, registration clerk	43-4081
304	Maids and Housekeeping Cleaners	Perform any combination of light cleaning duties to maintain commercial establishments, such as hotels, in a clean and orderly manner. Duties may include making beds, replenishing linens, cleaning rooms and halls, and vacuuming.	Hotel maid, housekeeping staff	37-2012

Home Services				
401	Home Maintenance and Repair Workers	Perform work to keep machines, mechanical equipment, or the structure of a building in repair.	Handyman, roofer, window repairer, house painter (interior or exterior), flooring installer	49-9071, 49-9098, 49-9099
402	Home Landscaping and Groundskeeping Workers	Landscape or maintain grounds of property using hand or power tools or equipment. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler installation, and installation of mortarless segmental concrete masonry wall units.	Lawn mower, gardener, tree trimmer, weed sprayer	37-3011
403	Home Electricians	Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with relevant codes. May install or service exterior lights, intercom systems, or electrical control systems.	Electrician	47-2111
404	Home Plumbers	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems.	Plumber, pipefitter, steamfitter, sprinkler installer	47-2152
405	Home Heating and Air Conditioning Mechanics and Installers	Install or repair heating, central air conditioning, HVAC, or refrigeration systems, including oil burners, hot-air furnaces, and heating stoves.	Air conditioning repairer, heating system installer, chimney sweep	49-9021
406	Home Appliance Installers and Repairers	Repair, adjust, or install all types of electric or gas household appliances, such as refrigerators, washers, dryers, and ovens.	Washing machine installer, dishwasher repairer	49-9031
407	Home Cleaning Service Workers	Perform any combination of light cleaning duties to maintain private households in a clean and orderly manner. Duties may include making beds, replenishing linens, cleaning rooms and halls, and vacuuming.	House cleaner, pool cleaner, carpet cleaner, window washer	37-2012
408	Locksmiths	Repair and open locks, make keys, change locks and safe combinations, and install and repair safes.	Safe installer, key maker	49-9094
409	Roadside Assistance Workers	Provide on-road assistance to drivers whose vehicles have broken down.	Tow truck driver, car battery technician, tire repairer, tire changer, car fuel deliverer	49-3023, 53-3032

Personal Services				
501	Personal Care and Service Workers	Provide personalized assistance to individuals with disabilities or illness who require help with personal care and activities of daily living support (e.g., feeding, bathing, dressing, grooming, toileting, and ambulation). May also provide help with tasks such as preparing meals, doing light housekeeping, and doing laundry. Work is performed in various settings depending on the needs of the care recipient and may include locations such as their home, place of work, out in the community, or at a daytime nonresidential facility.	Elderly companion, personal care aide, butler, house sitter, personal valet	31-1122, 39-9099
502	Private Event Planners	Coordinate activities of staff or clients to make arrangements for private events.	Wedding planner, party planner	13-1121
503	Private Event and Portrait Photographers	Photograph people, landscapes, or other subjects. May use lighting equipment to enhance a subject's appearance. May use editing software to produce finished images and prints.	Wedding photographer, headshot photographer	27-4021
504	Private Event Videographers	Operate video or film camera to record images or scenes of private events.	Wedding videographer	27-4031
505	Event Officiants	Lead and facilitate the ceremony for life events such as weddings or funerals. Ceremonies may be religious or civil services.	Wedding officiant, funeral celebrant, clergy, vow renewal officiant	21-2010
506	Pet Caretakers	Feed, water, groom, bathe, exercise, or otherwise provide care to promote and maintain the well-being of pets.	Pet groomer, pet sitter, pet walker, kennel worker, pet trainer	39-2021
507	Tutors	Instruct individual students or small groups of students in academic subjects to supplement formal class instruction or to prepare students for standardized or admissions tests.	Reading tutor, math tutor, language tutor	25-3041
508	Nannies and Babysitters	Attend to children at businesses and private households. Perform a variety of tasks, such as dressing, feeding, bathing, and overseeing play.	Au pair, child sitter at hotels and gyms	39-9011

Personal Appearance & Wellness				
601	Skincare Specialists	Provide skincare treatments to face and body to enhance an individual's appearance.	Facialist, electrologist, spa esthetician	39-5094
602	Massage Therapists	Perform therapeutic massages of soft tissues and joints. May assist in the assessment of range of motion and muscle strength, or propose client therapy plans.	Masseuse, deep tissue massage therapist, sports massage therapist	31-9011
603	Barbers, Hairdressers, Hairstylists, and Cosmetologists	Provide beauty or barbering services, such as cutting, coloring, and styling hair, massaging and treating scalps, trimming beards or giving shaves.	Wig stylist, beautician, hair colorist, hair cutter	39-5012, 39-5011
604	Shampooers	Shampoo and rinse customers' hair.	Scalp treatment specialist, shampoo assistant	39-5093
605	Manicurists and Pedicurists	Clean and shape customers' fingernails and toenails. May polish or decorate nails.	Nail technician, fingernail sculptor, nail painter	39-5092
606	Eyebrow Threading and Waxing Technicians	Enhance and maintain clients' eyebrows using techniques such as threading, waxing, or tweezing.	Eyebrow waxer	39-5091
607	Makeup Artists	Design and apply makeup looks.	Wedding makeup artist, party makeup artist	39-9031
608	Exercise Trainers and Group Fitness Instructors	Instruct or coach groups or individuals in exercise activities for the primary purpose of personal fitness. Demonstrate techniques and form, observe participants, and explain to them corrective measures necessary to improve their skills. Develop and implement individualized approaches to exercise.	Aerobics trainer, yoga instructor, personal trainer	27-1019
609	Tattoo Artists and Piercers	Design and execute tattoos on a client's skin, often using a needle and ink. Create openings in the human body for the insertion of jewelry. May consult clients on aftercare to promote healing and prevent infection.	Tattoo artist, ear piercer, nose piercer	51-6052
610	Tailors	Design, make, alter, repair, or fit garments.	Tailor, seamstress, clothing alterations worker	51-6041
611	Shoe and Leather Workers and Repairers	Construct, decorate, or repair leather and leather-like products, such as luggage, shoes, and saddles. May use hand tools.	Cobbler, shoe shiner	39-5012

No (Income) Tax on Tips!

Recreation & Instruction				
701	Golf Caddies	Assist a golfer during a round of golf by providing practical support and strategic advice. May carry the golfer's bag, manage their clubs, offer guidance on club selection or course strategy.	Golf caddie, golf cart attendant	39-3091
702	Self-Enrichment Teachers	Teach or instruct individuals or groups for the primary purpose of self-enrichment, rather than for an occupational objective, educational attainment, competition, or fitness.	Knitting instructor, piano teacher, art instructor, dance teacher	25-3021
703	Recreational and Tour Pilots	Pilot and navigate the flight of fixed-wing aircraft, helicopters, or other airborne vehicle for recreational or touring purposes. Excludes regional national, and international airline pilots, and emergency services pilots.	Helicopter tour pilot, hot air balloon aeronaut, skydiving pilot	25-3021
704	Tour Guides and Escorts	Escort individuals or groups on sightseeing tours or through places of interest, such as industrial establishments, public buildings, and art galleries.	Museum guide, sightseeing guide	39-7011
705	Travel Guides	Plan, organize, and conduct long-distance travel, tours, and expeditions for individuals and groups.	Cruise director, river expedition guide	39-7012
706	Sports and Recreation Instructors	Teach or instruct individuals or groups for the primary purpose of recreation, rather than for an occupational objective, educational attainment, competition, or fitness.	Diving instructor, ski instructor, tennis teacher, surfing instructor	53-2012

Transportation & Delivery				
801	Parking and Valet Attendants	Park vehicles or issue tickets for customers in a parking lot or garage. May park or tend vehicles in environments such as a hotel or restaurant. May collect fee.	Parking garage attendant, valet parker	53-6021
802	Taxi and Rideshare Drivers and Chauffeurs	Drive a motor vehicle to transport passengers on a planned or unplanned basis.	Cab driver, personal driver	53-3054
803	Shuttle Drivers	Drive a motor vehicle to transport passengers on a planned route and scheduled basis. May collect a fare. Excludes taxi and rideshare drivers, chauffeurs, municipal bus drivers, and school bus drivers.	Airport shuttle driver, hotel shuttle driver, rental car shuttle driver	53-3053
804	Goods Delivery People	Drive truck or other vehicle over established routes or within an established territory to deliver goods, such as food products, appliances, or furniture, or pick up or deliver packages. May also take orders or collect payment at point of delivery.	Pizza delivery driver, grocery delivery driver, bicycle courier, package delivery person, appliance delivery driver, furniture delivery person	53-3031
805	Personal Vehicle and Equipment Cleaners	Wash or otherwise clean personal vehicles, machinery, and other equipment. Use such materials as water, cleaning agents, brushes, cloths, and hoses.	Car wash attendant, auto detailer, boat waxer	53-7061
806	Private and Charter Bus Drivers	Drive bus or motor coach for charters or private carriage. May assist passengers with baggage.	Motor coach bus driver, tour bus driver	53-3052
807	Water Taxi Operators and Charter Boat Workers	Operate water taxi boats or provide services to passengers on private charter boats. May assist in navigational activities.	Water taxi captain, air boat operator, charter boat deckhand, charter boat steward	53-5022
808	Rickshaw, Pedicab, and Carriage Drivers	Operate rickshaw, pedicab, or carriage to transport passengers.	Horse drawn carriage driver, bike taxi driver	53-6099
809	Home Movers	Manually move furniture, boxes, luggage, or other materials to or from a home or dwelling.	Furniture mover, packer	53-7062

No (Income) Tax on Tips!

But even if your job/business is on the list…

…You're still SOL if you're employed by an SSTB or a self-employed person in an SSTB!



Specified Service Trade or Business

- Income from services in the fields of health, law, ~~engineering, architecture~~, accounting, actuarial science, athletics, performing arts, consulting or any business where the principal asset is the reputation or skill of one or more of its employees, etc. (See Section 1202(e)(3)(A)).
- Also, Income from financial services and brokerage services.
  - Including investing and investment management, trading or dealing in securities, partnership interests or commodities.
  - (See Sections 475(c)(2) and (e)(2))

No (Income) Tax on Tips

Section 70201:

- Businesses/Employers/Third Party Settlement Organizations will need to break out/identify the amount of tips.
  - Currently there are W-2 lines for reporting tips
  - But what about 1099s, including 1099K?
- Withholding tables will need to be adjusted…

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IRS Noncompliance?



On August 7, the IRS issued News Release IR-2025-82 announcing that they would NOT be making OBBBA changes to certain information returns or withholding tables for 2025!!!

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IRS Noncompliance!

Specifically:

- **NO** changes to 2025 Form W-2, 1099, 941 and other payroll forms
- **NO** changes or updates to the 2025 Federal income tax withholding tables

IRS Noncompliance?



The very next day, on August 8, the recently confirmed IRS Commissioner Billy Long was <u>terminated</u>

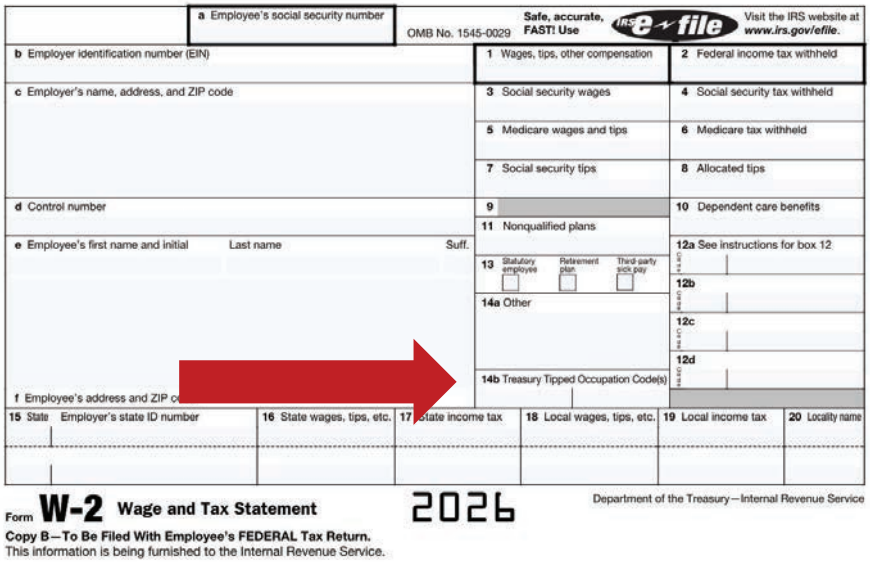
And Appointed to be the Ambassador to Iceland…

IRS Noncompliance!

One week later (!) on August 15 the IRS quietly released a draft of the 2026 W-2 with OBBBA changes!

So why couldn't they do this for 2025….

2026 W-2



a Employee's social security number | OMB No. 1545-0029 | Safe, accurate, FAST! Use IRS e-file | Visit the IRS website at www.irs.gov/efile.

b Employer identification number (EIN) | 1 Wages, tips, other compensation | 2 Federal income tax withheld

c Employer's name, address, and ZIP code | 3 Social security wages | 4 Social security tax withheld | 5 Medicare wages and tips | 6 Medicare tax withheld | 7 Social security tips | 8 Allocated tips

d Control number | 9 | 10 Dependent care benefits | 11 Nonqualified plans

e Employee's first name and initial | Last name | Suff. | 13 Statutory employee | Retirement plan | Third-party sick pay | 12a See instructions for box 12 | 12b | 12c | 12d | 14a Other | 14b Treasury Tipped Occupation Code(s)

f Employee's address and ZIP c

15 State | Employer's state ID number | 16 State wages, tips, etc. | 17 State income tax | 18 Local wages, tips, etc. | 19 Local income tax | 20 Locality name

Form **W-2** Wage and Tax Statement 2026 Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

2026 W-2

HH—Aggregate deferrals under section 83(i) elections as of the close of the calendar year.

II—Medicaid waiver payments excluded from gross income under Notice 2014-7.

TA—Employer contributions under a section 128 Trump account contribution program paid to a Trump account of an employee or a dependent of an employee.

TP—Total amount of cash tips reported to the employer. "Cash tips" includes tips received in cash, charged, or under a tip-sharing arrangement. Use this amount when determining the qualified tip deduction in Part II of Schedule 1-A (Form 1040).

TT—Total amount of qualified overtime compensation. Use this amount when determining the qualified overtime compensation deduction in Part III of Schedule 1-A (Form 1040).

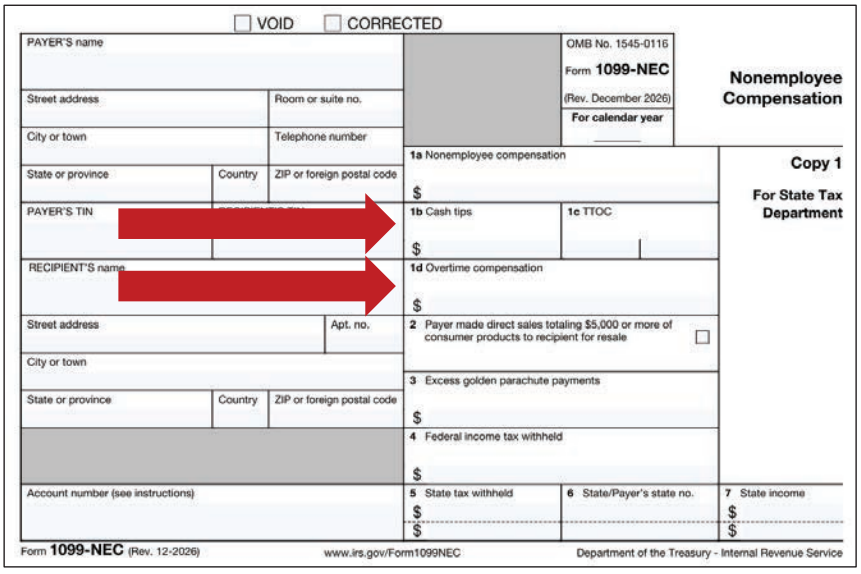
Box 13. If the "Retirement plan" box is checked, special limits may apply to the amount of traditional IRA contributions you may deduct. See Pub. 590-A.

Box 14a. Employers may use this box to report information such as state disability insurance taxes withheld, union dues, uniform payments, health insurance premiums deducted, nontaxable income, educational assistance payments, or a member of the clergy's parsonage allowance and utilities. Railroad employers use this box to report railroad retirement (RRTA) compensation, Tier 1 tax, Tier 2 tax, Medicare tax, and Additional Medicare Tax. Include tips reported by the employee to the employer in railroad retirement (RRTA) compensation.

Box 14b. Employers use this box to report up to two Treasury Tipped Occupation Code(s) for your tipped occupation(s). Use this code(s) and the amount of tips reported in box 12 (code TP) when determining the qualified tip deduction in Part II of Schedule 1-A (Form 1040). If the occupation code 000 is used, **and no other code is included in box 14b**, your cash tips are not qualified tips; do not use the amount reported in box 12 (code TP) for the deduction for qualified tips.

Note: Keep **Copy C** of Form W-2 for at least 3 years after the due date for filing your income tax return. However, to help **protect your social security benefits**, keep Copy C until you begin receiving social security benefits, just in case there is a question about your work record and/or earnings in a particular year.

2026 1099-NEC



☐ VOID ☐ CORRECTED

PAYER'S name

Street address | Room or suite no.

City or town | Telephone number

State or province | Country | ZIP or foreign postal code

PAYER'S TIN

RECIPIENT'S name

Street address | Apt. no.

City or town

State or province | Country | ZIP or foreign postal code

Account number (see instructions)

OMB No. 1545-0116

Form **1099-NEC**

(Rev. December 2026)

For calendar year

Nonemployee Compensation

Copy 1

For State Tax Department

1a Nonemployee compensation $

1b Cash tips $

1c TTOC

1d Overtime compensation $

2 Payer made direct sales totaling $5,000 or more of consumer products to recipient for resale ☐

3 Excess golden parachute payments $

4 Federal income tax withheld $

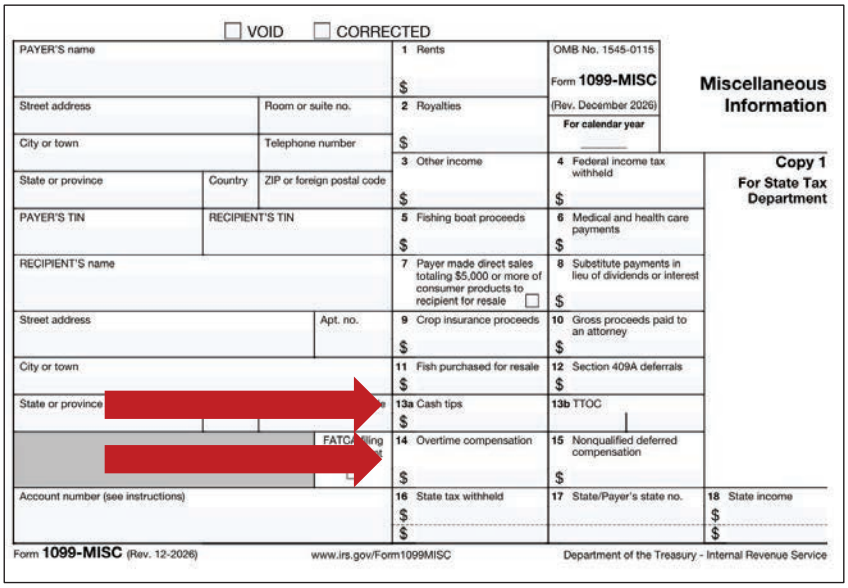
5 State tax withheld $ $

6 State/Payer's state no.

7 State income $ $

Form **1099-NEC** (Rev. 12-2026) www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

2026 1099-MISC

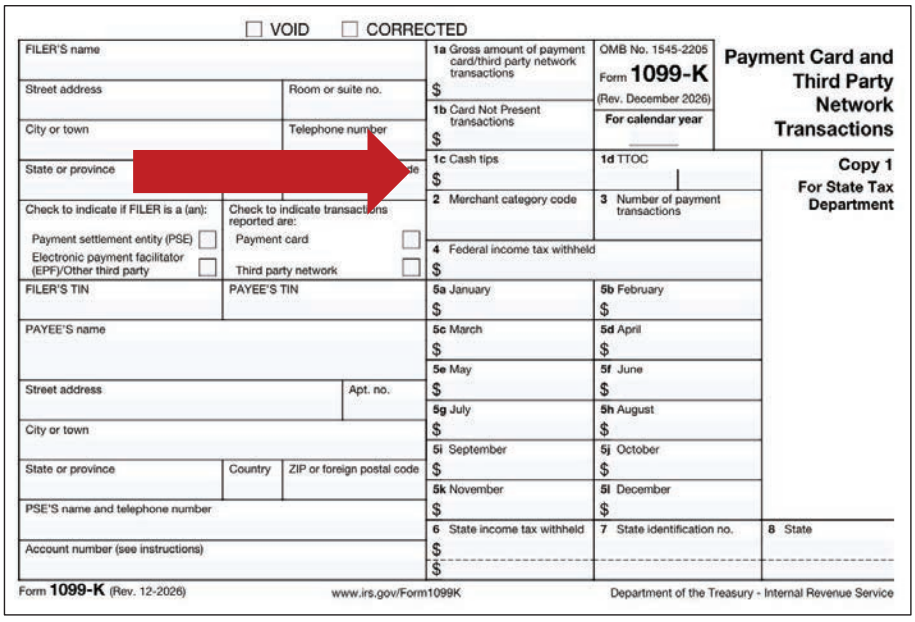


☐ VOID ☐ CORRECTED

PAYER'S name		1 Rents $	OMB No. 1545-0115 Form 1099-MISC (Rev. December 2026) For calendar year — Miscellaneous Information
Street address	Room or suite no.	2 Royalties $	
City or town	Telephone number	3 Other income $	4 Federal income tax withheld $ — Copy 1 For State Tax Department
State or province / Country / ZIP or foreign postal code			
PAYER'S TIN	RECIPIENT'S TIN	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name		7 Payer made direct sales totaling $5,000 or more of consumer products to recipient for resale ☐	8 Substitute payments in lieu of dividends or interest $
Street address	Apt. no.	9 Crop insurance proceeds $	10 Gross proceeds paid to an attorney $
City or town		11 Fish purchased for resale $	12 Section 409A deferrals $
State or province		13a Cash tips $	13b TTOC
FATCA filing		14 Overtime compensation $	15 Nonqualified deferred compensation $
Account number (see instructions)		16 State tax withheld $ $	17 State/Payer's state no. — 18 State income $ $

Form 1099-MISC (Rev. 12-2026) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service

2026 1099-K



☐ VOID ☐ CORRECTED

FILER'S name		1a Gross amount of payment card/third party network transactions $	OMB No. 1545-2205 Form 1099-K (Rev. December 2026) For calendar year — Payment Card and Third Party Network Transactions
Street address	Room or suite no.	1b Card Not Present transactions $	
City or town	Telephone number	1c Cash tips $	1d TTOC — Copy 1 For State Tax Department
State or province		2 Merchant category code	3 Number of payment transactions
Check to indicate if FILER is a (an): Payment settlement entity (PSE) ☐ Electronic payment facilitator (EPF)/Other third party ☐	Check to indicate transactions reported are: Payment card ☐ Third party network ☐	4 Federal income tax withheld $	
FILER'S TIN	PAYEE'S TIN	5a January $	5b February $
PAYEE'S name		5c March $	5d April $
Street address	Apt. no.	5e May $	5f June $
City or town		5g July $	5h August $
State or province / Country / ZIP or foreign postal code		5i September $	5j October $
PSE'S name and telephone number		5k November $	5l December $
Account number (see instructions)		6 State income tax withheld $ $	7 State identification no. — 8 State

Form 1099-K (Rev. 12-2026) www.irs.gov/Form1099K Department of the Treasury - Internal Revenue Service

2026 W-4

Form W-4 (2026) Page 4

Step 4(b)—Deductions Worksheet *(Keep for your records.)*

See the Instructions for Schedule 1-A (Form 1040) for more information about whether you qualify for the deductions on lines 1a, 1b, 1c, 3a, and 3b.

1 Deductions for qualified tips, overtime compensation, and passenger vehicle loan interest.

a **Qualified tips.** If your total income is less than $150,000 ($300,000 if married filing jointly), enter an estimate of your qualified tips up to $25,000 . . . . . 1a $

b **Qualified overtime compensation.** If your total income is less than $150,000 ($300,000 if married filing jointly), enter an estimate of your qualified overtime compensation up to $12,500 ($25,000 if married filing jointly) of the "and-a-half" portion of time-and-a-half compensation . . . . . 1b $

c **Qualified passenger vehicle loan interest.** If your total income is less than $100,000 ($200,000 if married filing jointly), enter an estimate of your qualified passenger vehicle loan interest up to $10,000 1c $

2 Add lines 1a, 1b, and 1c. Enter the result here . . . . . 2 $

3 **Seniors age 65 or older.** If your total income is less than $75,000 ($150,000 if married filing jointly):

a Enter $6,000 if you are age 65 or older before the end of the year . . . . . 3a $

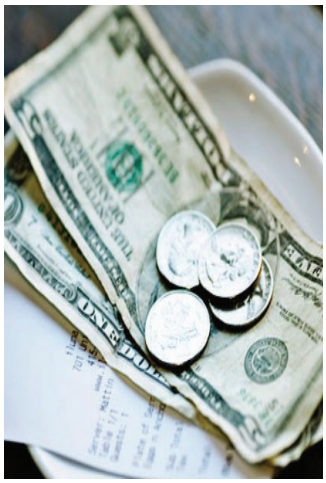
b Enter $6,000 if your spouse is age 65 or older before the end of the year and has a social security number valid for employment . . . . . 3b $

4 Add lines 3a and 3b. Enter the result here . . . . . 4 $

No (Income) Tax on Tips

Section 70201 (f):

Employers and other payors making payments of cash tips **must** include on the information forms filed with the IRS and on the written statement furnished to the payee a separate accounting of any amounts reasonably designated as cash tips and the occupation.



No Tax on Tips or Overtime

On November 5, 2025, the IRS issued **Notice 2025-62** providing Information Return **penalty relief** for 2025 for parties who are required to file information returns in connection with No Tax on Tips and No Tax On Overtime.

- ***Limited to tax year 2025***

No Tax on Tips or Overtime

- Employers and other payors will **not be penalized** for failing to provide a separate accounting of any amounts reasonably designated as cash tips or the occupation of the person receiving the tip.
  - Or the total amount of qualified overtime compensation.
- Specifically, penalty relief is provided for:
  - **Section 6721** - Failure to file correct information returns; and
  - **Section 6722** - Failure to furnish correct Payee statements.

No Tax on Tips or Overtime

However, Employers were ***encouraged*** ***(but not required)*** to provide:

- Occupation codes and a separate accounting of tips.
- A separate accounting of overtime compensation.

This may be done through an online portal, additional written statements or other secure methods.

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Notice 2025-69

On November 21, 2025 the IRS issued Notice 2025-69 providing guidance to workers eligible to claim the deduction for Tips and/or Overtime in 2025.

- *For both employees and non-employees*

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Notice 2025-69

- The IRS recognizes that additional guidance is needed to determine whether the business is an SSTB.
- The IRS is declaring a **transition period** until January 1 of the year after the IRS issues final regulations on the determination of an SSTB.

No Tax on Overtime

Section 70202:



- **Up to $12,500/$25,000 of "Qualified Overtime Compensation" will be tax free from 2025-2028**
  - *It is a deduction*

No Tax on Overtime

Section 70202:



The deduction is reduced by $100 for every $1,000 of MAGI over $150,000/300,000.

- *It's gone at $275,000 single*.

No Tax on Overtime

Section 70202:

"Qualified Overtime Compensation"

- OT compensation **required** under Section 7 of the Fair Labor Standards Act **in excess** of your regular rate.
- So its only the ½ of "Time and a Half"!

No Tax on Overtime

Section 70202:

"Qualified Overtime Compensation"

Some employees are exempt from the FLSA OT rules.

- Ex: Paid a salary of at least $1,128 per week or $58,626 per year.
- Or those in certain occupational roles.

No (Income) Tax on Overtime Premium

It's an income tax deduction – Not an Exclusion!

- **So the OT Premium is still reportable as income.**
- **Subject to Social Security and Medicare Taxes.**
- And generally taxable at the state and local level.



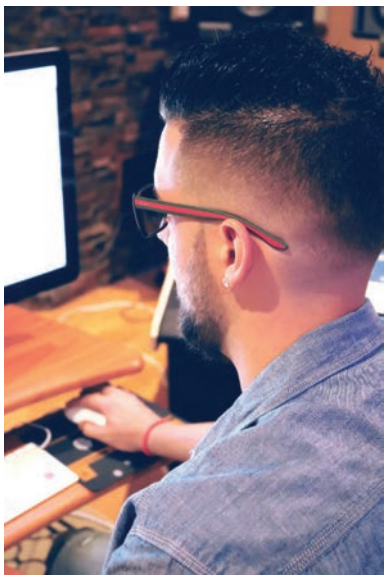
No (Income) Tax on Overtime Premium

Section 70202:

- Businesses/Employers will need to break out/identify the amount of overtime.
  - ***VIP - Allowed to approximate by any reasonable method in 2025.***
- Withholding tables will need to be adjusted.



Notice 2025-69 OT Examples



- Andrew works OT in 2025 and receives a payroll statement showing $5,000 “overtime premium.”
- Andrew may use the $5,000 OT premium on his return.

Notice 2025-69 OT Examples

- Andrew works OT in 2025 and receives a payroll statement showing a total of $15,000 overtime.
- Andrew may use $5,000 on his return.
  - $15,000 divided by 3.

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Notice 2025-69 OT Examples

- Brad's employer pays him double time for OT.
- Brad was paid $20,000 OT pay in 2025.
- Brad's Qualified Overtime compensation is $5,000.
  - $20,000 divided by 4.

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New Car Loan Interest

Section 70203:

- Above the line deduction for up to $10,000 of **NEW** car loan **interest expense** from 2025-2028.
- Deduction is reduced by $200 for each $1,000 of MAGI over $100,000/$200,000.



New Car Loan Interest

Section 70203:

- Original Use starts with Taxpayer (Must be NEW)
- Purchased after 12/31/2024
- **For personal use (not business or commercial use)**
- Secured by a lien on the vehicle



New Car Loan Interest

Section 70203:

- Car, minivan, van, SUV, Pickup truck or motorcycle with a Gross vehicle weight less than 14,000 lbs.
  - Campers & RVs are excluded



New Car Loan Interest

Section 70203:

- Final Assembly in the U.S.
  - Assembly plants in Canada and Mexico don't qualify
- Must include VIN on the return



New Car Loan Interest

Section 70203:

Refinancing is permitted, but only if the amount of the debt is not increased.



New Schedule 1A

Schedule 1-A (Form 1040) (2025) Page **2**

Part IV **No Tax on Car Loan Interest**

Caution: Fill out Part IV only if you paid or accrued qualified passenger vehicle loan interest. See instructions to learn more about what is an applicable passenger vehicle.

22 Applicable passenger vehicle (see instructions). If more than two VINs, see instructions.

	(i) Vehicle identification number (VIN)	Interest for this loan: (ii) Deducted on Schedule C, Schedule E, or Schedule F	Interest for this loan: (iii) Schedule 1-A
a			
b			

23	Add lines 22a and 22b, column (iii)	23	
24	Enter the smaller of the amount on line 23 or $10,000	24	
25	Enter the amount from line 3	25	
26	Enter $100,000 ($200,000 if married filing jointly)	26	
27	Subtract line 26 from line 25. If zero or less, enter the amount from line 24 on line 30	27	
28	Divide line 27 by $1,000. If the resulting number isn't a whole number, increase the result to the next higher whole number. (For example, increase 1.5 to 2, and increase 0.05 to 1.)	28	
29	Multiply line 28 by $200	29	
30	**Qualified car loan interest deduction.** Subtract line 29 from line 24. If zero or less, enter -0-	30	

Part V **Enhanced Deduction for Seniors**

New Car Loan Interest

Section 70203:

In October, the IRS issued Notice 2025-57 with "transitional guidance" on reporting to assist car dealers and car loan lenders.



New Form 1098-VLI

TREASURY/IRS AND OMB USE ONLY DRAFT

☐ CORRECTED (if checked)

RECIPIENT'S/LENDER'S name				*Caution: The amount shown may not be fully deductible by you. Limits based on the amount of interest paid, your income, and the passenger vehicle may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.	OMB No. 1545-XXXX Form **1098-VLI** (December 2026) For calendar year _____
Street address			Room/suite no.		
City/town	State/province	Country	ZIP/foreign code		
Telephone number:				1 Vehicle loan interest received by lender* $	
RECIPIENT'S/LENDER'S TIN	BORROWER'S/PAYER'S TIN				
BORROWER'S/PAYER'S name				2a Year	2b Make
Street address			Apt. no.	2c Model	2d VIN
City/town	State/province	Country	ZIP/foreign code	3a Loan origination date	3b Loan acquisition date
Account number (see instructions)				4 Outstanding principal $	5 Refund of overpaid interest $

Vehicle Loan Interest Statement

Copy B For Borrower

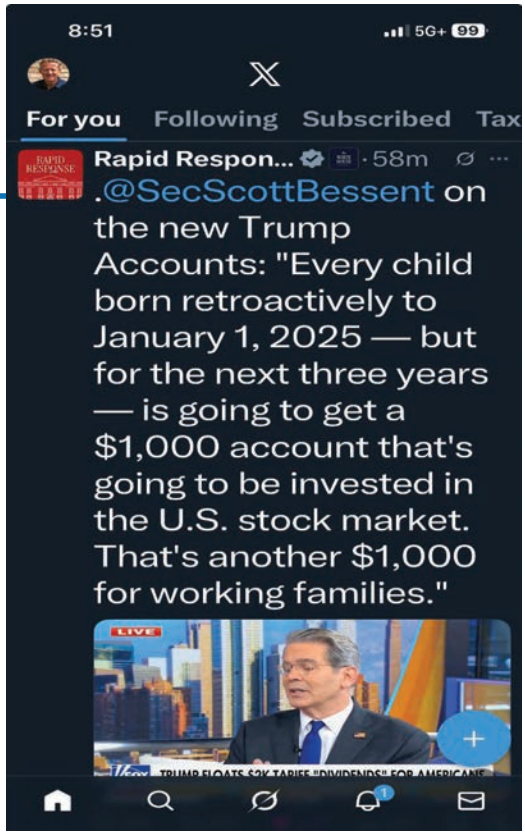
This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for vehicle loan interest.

Form **1098-VLI** (12-2026) (keep for your records) www.irs.gov/Form1098VLI Department of the Treasury - Internal Revenue Service

Trump Accounts

Section 70204:

Trump Accounts are Non-ROTH IRA accounts for the benefit of someone under the age of 18.



Trump Accounts

Section 70204:

- Contributions are non-deductible
- Limited to $5,000 annually
- Employers can contribute up to $2,500
  - See new box 12 code on DRAFT 2026 W-2

2026 W-2

HH—Aggregate deferrals under section 83(i) elections as of the close of the calendar year.

II—Medicaid waiver payments excluded from gross income under Notice 2014-7.

TA—Employer contributions under a section 128 Trump account contribution program paid to a Trump account of an employee or a dependent of an employee.

TP—Total amount of cash tips reported to the employer. "Cash tips" includes tips received in cash, charged, or under a tip-sharing arrangement. Use this amount when determining the qualified tip deduction in Part II of Schedule 1-A (Form 1040).

TT—Total amount of qualified overtime compensation. Use this amount when determining the qualified overtime compensation deduction in Part III of Schedule 1-A (Form 1040).

Box 13. If the "Retirement plan" box is checked, special limits may apply to the amount of traditional IRA contributions you may deduct. See Pub. 590-A.

Box 14a. Employers may use this box to report information such as state disability insurance taxes withheld, union dues, uniform payments, health insurance premiums deducted, nontaxable income, educational assistance payments, or a member of the clergy's parsonage allowance and utilities. Railroad employers use this box to report railroad retirement (RRTA) compensation, Tier 1 tax, Tier 2 tax, Medicare tax, and Additional Medicare Tax. Include tips reported by the employee to the employer in railroad retirement (RRTA) compensation.

Box 14b. Employers use this box to report up to two Treasury Tipped Occupation Code(s) for your tipped occupation(s). Use this code(s) and the amount of tips reported in box 12 (code TP) when determining the qualified tip deduction in Part II of Schedule 1-A (Form 1040). If the occupation code 000 is used, **and no other code is included in box 14b**, your cash tips are not qualified tips; do not use the amount reported in box 12 (code TP) for the deduction for qualified tips.

Note: Keep **Copy C** of Form W-2 for at least 3 years after the due date for filing your income tax return. However, to help **protect your social security benefits**, keep Copy C until you begin receiving social security benefits, just in case there is a question about your work record and/or earnings in a particular year.

Trump Accounts

For a general overview from Treasury on how Trump Accounts are expected to work, see IRS Notice 2025-68.





CHAPTER 3

BUSINESS TAXES

TCJA
§168(k) Bonus Depreciation

100% after Sept 27, 2017 thru 2022 - *Then phases it out:*

- **80% Bonus in 2023 !**
- **60% Bonus in 2024**
- **40% Bonus in 2025**
- 20% Bonus in 2026
- -0-% in 2027



Bonus Depreciation

Section 70301:

- Section 168(k) 100% Bonus Depreciation is made **permanent!**
- But only for property placed in service **after January 19, 2025**
  - *Inauguration Day?*



Delayed TCJA Provisions

In 2022 two critical changes in the TCJA finally kicked in and took effect:

Research and Experimentation costs

Interest Expense



Research & Experimentation



In 2022, the TCJA change from immediate expensing to amortization of R&D costs hit our returns…

Research & Experimentation

Beginning in 2022 Specified Research and Experimental (SRE) expenses are now to be amortized over:

- **5 years**
- 15 years for foreign research



Research Expenses

Section 70302:

- Full expensing of **Domestic** Research & Experimental Expenses is restored .
  - In 2025
  - You may ELECT to amortize over 60 months.
    - It's a year-by-year election.

Research Expenses

Section 70302:

HOWEVER, Foreign Research costs are still subject to 15-year amortization.



Research Expenses

Section 70302:

- This is a change in accounting method
- Initiated by the taxpayer
- With the consent of the IRS
- Applied on a cut-off basis

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Research Expenses

Section 70302:

Certain small businesses may elect to apply the change retroactively to 2022, 2023 and 2024

- *Less than the TCJA $25 Million annual gross receipts as adjusted for inflation*
- *$31 Million in 2025*
- So they can elect to file amended returns

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Research Expenses

Section 70302:

Alternatively, any business may elect to write off any such expenses incurred in 2022, 2023 and 2024.

- Either deduct all in 2025
- Or spread over two years – 2025 & 2026

Research Expenses

Section 70302:

The OBBBA clarifies that expenses paid in connection with any Software Development will continue to be treated as Research and Experimentation (R&E) costs under Section 174A.



Research Expenses

Section 70302:

And there are new provisions to coordinate the R&D deduction with the Section 41 Research Credit.

- You must reduce your deductible research expenses by the amount of the research credit.

§163(j) Business Interest Expense



TCJA

§163(j) Business Interest Expense

Code Section 163(j) limits business interest expense to 30% of **adjusted taxable income.**

- **Tax EBIT**



§163(j) Business Interest Expense

Until 202**2** you were allowed to use:

Tax EBITDA

- Earnings before Interest, taxes, **depreciation** and amortization.
- A critical advantage when using 100% bonus!

Interest Expense

Section 70303:

The section 163(j) interest expense limitation returns to EBITDA for taxable years beginning after 12/31/2024.



Paid FMLA Leave Credit



Section 70304:

The paid Family and Medical Leave Act Credit is extended and enhanced

§179 Deduction



For **2025** the Section 179 limit was:

~~$1,250,000~~

- Phase-out starts at ~~$3,130,000~~
  - *Rev. Proc. 2024-40*

2025

§179 Deduction

Under **OBBA 2025**, the **Section 179** limit is **doubled** to:

$2,500,000

- Phase-out starts at $4,000,000
  - Section 70306

2025



§179 Deduction



For **2026** the Section 179 limit is:

$2,560,000

- Phase-out starts at $4,090,000
  - *Rev. Proc. 2025-32*

2026

Qualified Production Property

Section 70307:

- Beginning in 2025 there is a new special 100% deduction for Qualified Production Property.
- Non-residential real property used by the taxpayer as an **integral part of a qualified production activity**.

Qualified Production Property

Qualified Production Activity

- Manufacturing, production or refining of a qualified product.
- Must result in a substantial transformation of the property comprising the product.

Qualified Production Property

Qualified Production Activity

Production shall not include activities other than agricultural production and chemical production.

Qualified Production Property

Qualified Production Activity

Qualified Product means any tangible personal property .

- But food or beverages prepared in the same building as a retail establishment in which such property is sold are **excluded.**

Qualified Production Property

Office space is specifically excluded!

Offices, administrative services, lodging, parking, sales, research, software development, engineering activities.

- Or other functions unrelated to the manufacturing, production or refining of tangible personal property.

Qualified Production Property

Section 70307:

- Must be in the U.S. or any possession.
- **Original use** starts with the taxpayer (NEW Construction!)
- **Leased property doesn't qualify!**



Qualified Production Property

Section 70307:

- Construction begins after January 19, 2025 and before January 1, 2029.
- Must be placed in service before January 1, 2031.

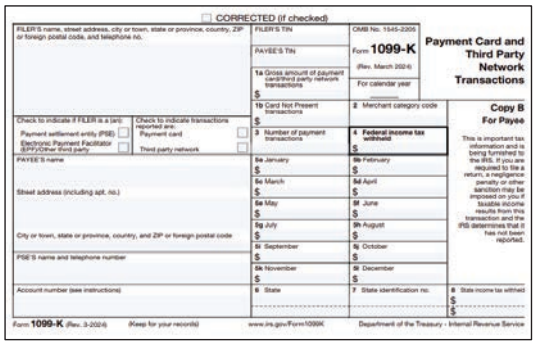


1099K

Section 70432:

The American Rescue Plan change to the 1099K reporting threshold is repealed in 2025.

Reverts back to the original $20,000 / 200 transactions


CORRECTED (if checked)

Form 1099-K (Rev. March 2024)

Payment Card and Third Party Network Transactions

For calendar year

Copy B For Payee

1099-K Reporting

- If I pay Marcie – An Independent Contractor
- I have to send her a 1099-NEC
- So if I pay Marcie by Zelle…
  - Or Paypal, or
- Will she also get a 1099-K for the same money?
  - **Double reported to the IRS?**



1099-K Reporting

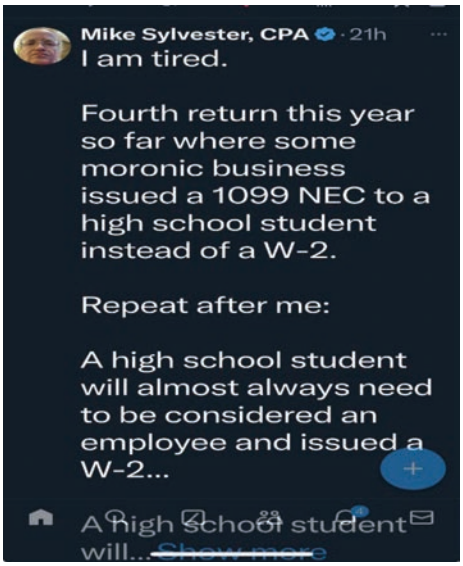
- **NOTE:** The OBBBA change only applies to **payment apps** or online marketplaces for goods and services (TPSOs).
- **Payment Cards** (credit cards, debit cards or stored value/gift cards) do **NOT** have a reporting threshold!
  - If you receive 1 cent, you should receive a 1099-K.

1099s

Section 70433:

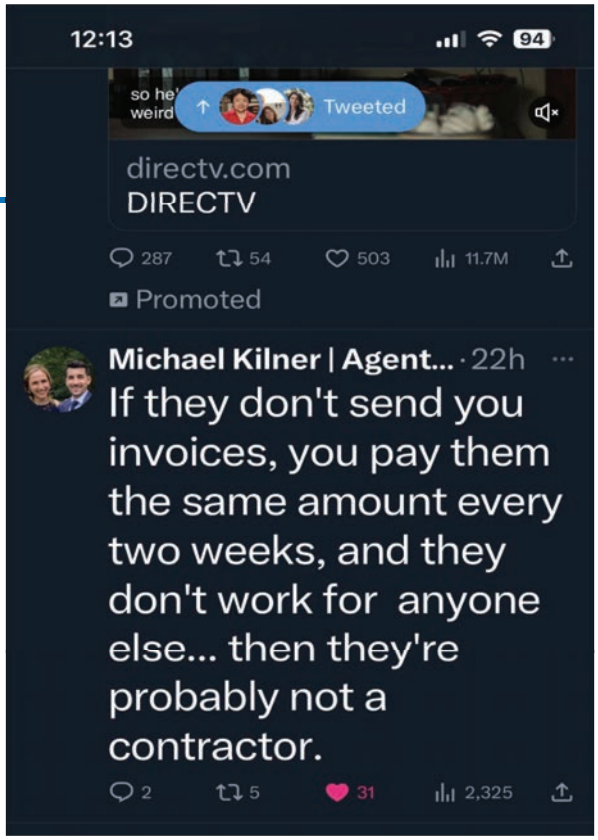
The 1099 reporting threshold is raised from $600 to $2,000 in 2026

And adjusted for inflation after that



Employee vs. Independent Contractor

It's not that hard if you're honest with yourself…



Concluding Thoughts



Thank you for attending!





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Monday, Nov. 16, 2026
12:45 – 1:45 p.m.

Advanced Section 1031 Transactions & Related Strategies

Rick Reuter, CPA, CGMA, *Principal & Chief Tax Strategist, MLG Capital*
John Sikora, JD, *Shareholder, von Briesen & Roper, s.c.*

MLG CAPITAL

2026 WICPA Tax Conference

von Briesen

von Briesen & Roper, s.c. | Attorneys at Law

November 16, 2026

Advanced Section 1031 Transactions & Related Strategies

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INTRODUCTION

- General situation – client wants to transfer real property, but to defer the gain
- Fundamental principles regarding Internal Revenue Code Section 1031 are well known, and CPAs commonly encounter or advise regarding typical "forward" exchanges
- There are circumstances in which the "typical" does not "fit" the situation; the exchange or tax deferral path may then differ
- Objective today – to identify some of the alternative 1031 structures, identify alternatives to use of or complete reliance on 1031, consider what may prompt or drive selection of an alternative, and discuss practical issues encountered in implementing or documenting the alternative

ALTERNATIVE STRUCTURES

- "Reverse" exchanges
- "Build to suit" exchanges
- Partnership contributions
- "Drop and swap" transactions/partnership divisions
- Tenant-in-common structures/Delaware statutory trusts

1031 ESSENTIALS

- Real property
- Transferred ("relinquished prop" or "RQ") or received ("replacement prop" or "RP") in an "exchange"
- By the "same" taxpayer ("TP")
- Who satisfied and will satisfy the "held for" requirements as to the RQ and RP real property
- Who satisfies identification and acquisition timing requirements
- Who doesn't receive any other type of property ("boot"); trading "equal or up" in value
- Who is, generally, not engaging in the exchange with a related party

"REVERSE" EXCHANGES

- Situation – though RP has been located, acquisition of it must occur prior to the transfer of RQ
- Really a misnomer in most instances; most exchanges are simultaneous or "forward" exchanges
- Were being done for years prior to rev. proc. – hazards were principally agency and constructive receipt doctrines
- Rev. Proc. 2000-37 provided a "safe harbor" – essentials:
  - Exchange accommodation title holder ("EAT")
  - Holding of RP or RQ for benefit of taxpayer
  - Qualified exchange arrangement and agreement ("QEAA")
  - Timing requirements – identification and transfer of property
  - Reporting requirements regarding property

"REVERSE" EXCHANGES/TYPICAL STRUCTURE AND DOCUMENTATION/RP PARKED SITUATION

- Select EAT/many in our region use title company affiliates
- Form new LLC to acquire property
- Name EAT as sole member of the LLC
- Potential to name TP representative to sign some closing documents for LLC
- EAT and TP execute QEAA
- LLC enters into or assigns purchase agreement for property to LLC
- Third party lender or TP loans funds to LLC or EAT to fund purchase of the parked property
- Security instruments for the loan (mortgage and pledge)
- Lease or other arrangement regarding property between EAT or LLC and TP
- Relinquished property identification notice

"REVERSE" EXCHANGES – SOME PRACTICAL SUGGESTIONS/OBSERVATIONS

- Additional costs – e.g., legal, accommodator, lender, other
- Additional complexity - e.g., documentation, financing, timing of transactions, tax reporting by EAT, other
- Qualification and capability of EAT
- Advisor responsibilities as to these and other matters/allocating responsibility
- Suggestions/observations:
  - As in all exchanges, understanding and calculation of deferred gain and deferred tax is first step
  - Question to ask - is the additional cost and complexity justified?
  - Question to ask – are there alternatives to a parking arrangement for TP to consider?
    - Can closing of RP be delayed?; negotiation approaches
    - If occupancy needed promptly, is short term lease possible?
  - What if no buyer for TP's RQ within "reverse" safe harbor 180 day period? Consider sale of the RQ to a third party near end of 180 day period and completion of exchange; ownership of RQ for income tax purposes would need to be evaluated.

"BUILD TO SUIT" EXCHANGES

- Situation – RP value is not yet sufficient such that TP would be trading "equal or up" in value if RP acquired it in then existing condition, and TP expects to construct improvements on the RP
- Bloomington Coca Cola Bottling principles – improvements on property that is already owned by TP is not RP for1031 purposes
- So, third party (unrelated to TP) must generally be deemed to be the owner of the land during construction and until TP acquires to complete exchange
- Though that can generally be before project is completed, costs incurred in connection with project must be real property under 1031 principles at time of acquisition
- Long term lease alternative structure

"BUILD TO SUIT" EXCHANGES/MOST IMPORTANT ASPECTS

- Can be done in within a "forward" exchange or a "reverse" exchange structure; but, most commonly done in a reverse exchange structure
- Comparison of those 2 structures
- Keys to successful build to suit exchange:
  - Significant advance planning so all 1031 timing requirements will be satisfied – due diligence of all kinds; drawings, specifications; bids; construction approvals; evaluation of amount of construction that can be completed within applicable time periods; potential construction obstacles
  - Coordination with all potentially interested parties in overall transaction, including governmental officials, seller of property, architect, contractors, lenders, others

"BUILD TO SUIT" EXCHANGES

- Again, most occur within reverse exchange structure
- First question to always ask – should it be structured within or outside the 2000-37 safe harbor?; preferred; but, involves understanding of all timing issues
- If outside the safe harbor:
  - Burdens and benefits analysis
  - DeCleene and Estate of Bartell principles

"BUILD TO SUIT" EXCHANGES/SOME PRACTICAL ISSUES

- Proper handling of RP identification; effect of change orders on income tax issues
- Documenting real property improvements and timing – how to coordinate with all parties for later use by tax preparer and taxing authority
- Possible use of RQ exchange proceeds for construction
- Making sure that all paid for improvements are real property, not personal property
- Documentation of foregoing
- Making sure all contractual provisions, representations and warranties survive through the process
- Understanding non income tax issues such as operation of real property transfer tax issues
- Structuring with single purpose LLC as owner of real property; issues relating to transferring the LLC interest to complete exchange
- Control of construction – what is permitted; how to document
- Determining who may be legally responsible for tax-related damages if 1031 time periods not met
- Other

PARTNERSHIP CONTRIBUTIONS - COMMON SCENARIOS



Tired Landlord

Ready to step away from active property management and **become passive.**



Large Capital Gains Burden

Owners often face a **significant tax burden** upon sale which may make them less likely to sell assets.



Partnership or Succession Challenges

Heirs or partners may have **different objectives**. Without proper estate planning, owners may be subject to a large tax bill.



Lacking Diversification

Individuals may have significant wealth in **a single property** or properties, often in **one market**.



Business Owner

Business owners may have **real estate** as **part of their business sales.**

Section 721: form and tax result

What moves

A partner contributes property to a partnership in exchange for a partnership interest.

Immediate result

Section 721 generally provides nonrecognition to both the contributor and the partnership.

What carries forward

The partnership generally receives carryover basis; the contributor receives substituted outside basis.

Tax attributes do not disappear

Section 704(c) preserves pre-contribution built-in gain for allocation back to the contributor.

Section 752 liability shifts can increase or decrease outside basis and may trigger gain under Section 731.

The investment-company exception in Section 721(b), disguised-sale rules, and mixing-bowl rules must be tested separately.

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

The Section 752 liability check

Ending outside basis

- **Carryover basis in contributed property**
- **− liabilities treated as distributed**
- **+ liabilities treated as contributed**
- **= post-contribution outside basis**

Recourse liabilities

Allocate under the economic-risk-of-loss rules. Guarantees and reimbursement arrangements require close review.

Nonrecourse liabilities

Analyze partnership minimum gain, Section 704(c) minimum gain, and excess nonrecourse liabilities under Treas. Reg. §1.752-3.

Gain trigger

If deemed cash distributed under Section 752(b) exceeds outside basis, Section 731 gain may result even though Section 721 otherwise applies.

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

Section 721 Contribution (Example)

PROPERTY CONTRIBUTION

FMV	32,000,000
Debt	(18,000,000)
Net Equity	**14,000,000**
Tax Basis in Property	7,000,000
Debt Contributed	(18,000,000)
Net Tax Capital	**(11,000,000)**
Section 704(c) BIG	**25,000,000**
Unit Ownership	1.4%

DEBT ANALYSIS

Original Debt	**18,000,000**
Liability Allocation under Section 752	
Tier 1	-
Tier 2 - Section 704(c) Minimum Gain	11,000,000
*Debt minus basis	
Tier 3 - Excess 704(c) Addl Method	7,000,000
*Remaining BIG up to debt on contributed	
Tier 3 - Excess General Debt	2,450,000
*Unit ownership * $175M Excess General	
Total New Liability Allocation	**20,450,000**

TAX BASIS

Property Contribution	7,000,000
Orig. Debt Contribution	(18,000,000)
New Liability Allocation	20,450,000
Tax Basis in Fund	**9,450,000**

INVESTMENT

Gain on Sale	25,000,000
Est. Fed & State Tax Rate	30%
Est. Tax	**7,500,000**
After Tax Cash Available to Invest	**6,500,000**
Net Investment under Sec 721	**14,000,000**

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

Some pathways to a diversified partnership interest

1 Direct Section 721

Contribute qualifying real estate directly to the fund or operating partnership. Requires agreement on contribution value and a property that fits the recipient's investment criteria.

2 Overlapping 1031 + 721

For property held in a tax partnership: the partnership sells and exchanges; partners contribute most of their partnership interests while the original partnership remains the exchanging taxpayer.

3 1031, then later 721

For a disregarded entity or S corporation: complete the 1031 first, hold replacement property for investment, then consider a later contribution. The holding-intent analysis is fact-specific.

Ownership structure and property type can drive the path

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

PARTNERSHIP CONTRIBUTIONS - SOURCING CASH

Partial Disguised Sale

Reg. §1.707-3

General: Transfer of property to partnership with transfer of money or other consideration to that partner constitute a sale of property by the partner to the partnership.

Transfers within 2 year presumed to be a sale; however, there is a facts and circumstances test too

Watch for liability release – treated as additional consideration

Qualified Liabilities * net equity %

Net equity % = Cash Consideration/(FMV – Qualified Liabilities)

Can cause recognized gain to be > cash received

Basis used = Adjusted basis of property contributed * net equity %

PARTNERSHIP CONTRIBUTIONS - SOURCING CASH

Preformation Capex Exception to Disguised Sale Rules

- Reg. §1.707-4(d)
- Reimbursements of preformation capex are not treated as proceeds from a disguised sale.
- Preformation Capex:
  - Incurred during the 2-year period before contribution
  - Reimbursed capex cannot exceed 20% of FMV of contributed property (this rule doesn't apply if FMV is less than 120% of adjusted basis in property)
  - Includes capex the taxpayer elects to deduct; does not include deductible expenses the taxpayer elects to treat as Capex.
- Reimbursement reduces Equity Contribution and basis of property contributed

PARTIAL DISGUISED & PREFORM CAPEX EXAMPLE

PARTIAL DISGUISED SALE / PREFORMATION CAPEX

Net FMV (1.707-5(a)(5)(ii)(B))	
FMV of Property at time of Transfer	32,000,000
Qualified Liability Encumbering the Property	(18,000,000)
	14,000,000

Transfers of Money Realized (1.707-5(a)(5)(ii)(A))	
Total Cash Received	1,000,000
Breakdown of Total	
Preformation Capex Reimbursement	750,000
Transfers of Money Realized	250,000

Partner's Net Equity Percentage (1.707-5(a)(5)(ii))	
Transfers of Money Realized	250,000
Net FMV	14,000,000
Net Equity Percentage	**1.79%**

Portion of Qualified Liab as Sale (1.707-5(a)(5)(i))	
Qualified Liability	18,000,000
Liability Relief as Sale (Times Net Equity %)	**321,429**

Basis Relieved as Sale	
Tax Basis Prior to Sale	7,000,000
Basis Relief (Times Net Equity %)	**125,000**

Investor Equity Breakdown		
Cash Consideration	2%	250,000
Preformation Capex Cash Reim	5%	750,000
Legacy Fund Unit Equity	93%	13,000,000
		14,000,000

TAX ITEMS	
Cash Consideration	250,000
Liability Relief as Sale	321,429
Total Sale Proceeds	**571,429**
Less Basis Relief	(125,000)
Taxable Gain	**446,429**

Built in Gain	
FMV of Property	32,000,000
Tax Basis	7,000,000
Original Built in Gain	**25,000,000**
Recognized Gain	446,429
Remaining BIG	**24,553,571**

Total Property FMV	32,000,000
Less Preformation Capex	(750,000)
Less Sales Proceeds	(571,429)
FMV of Contribution	**30,678,571**
Total Property Tax Basis	7,000,000
Less Preformation Capex	(750,000)
Less Basis Relief	(125,000)
Tax Basis of Contribution	**6,125,000**

704c Built in Gain	
FMV of Contribution	30,678,571
Tax Basis Contributed	(6,125,000)
Initial Built-in Gain	**24,553,571**

DROP AND SWAP

- Situation – an entity treated as a tax partnership is considered the TP for 1031 purposes; but, partners often want to separate when a property is expected to be sold, for variety of different reasons – different investment objectives; animosity; relocation; desire for cash by some owners when other owners want to consider tax deferred alternatives
- So, parties sometimes agree to dissolve the entity, and to distribute undivided interests in the property to each of the owners
- Parties then separately, as tenants in common and in proportion to ownership, receive the income from the property and are responsible for the expenses of the property; parties seek and report as separate owners of property (i.e., discontinue 1065 reporting)
- Parties then separately sell their interests, each selecting whether to transfer in taxable or tax deferred transaction

DROP AND SWAP – TAX RISKS

- Principal risk no. 1 – will taxing authorities respect the separate ownership, or might they seek to continue to treat the arrangement as a tax partnership?
- Principal risk no. 2 – will taxing authorities seek to apply Court Holding Company type principles to assert the prior partnership should be treated as the seller of the real property?
- Some factual questions as to above:
  - Were there negotiations regarding sale of the property prior to the "drop"? was there a binding agreement prior to the drop?
  - What was the time period between the liquidation and the sale of the property?
  - Did operation and management of the property change?
  - What third parties were notified of the change in ownership?
  - Were deeds conveying the property recorded?; Were lenders notified?
  - Did parties really share in all income items and expenses after the drop based on relative ownership percentages?
  - Did parties continue to act like an entity, such as in connection with decision making and with third parties?
  - Did parties act separately with regard to their "TIC interests"?

DROP AND SWAP – DOCUMENTATION

- Consent resolution authorizing the liquidation/dissolution
- New LLCs for each owner, typically
- Conveyance documents transferring the partnership property to the TIC owners
- Third party management document with the tenants in common
- Third party notice documents
- State filings
- Tenants in Common Agreement
  - That seeks to satisfy as many of the 15 requirements set forth in Rev. Proc. 2002-22 as possible
  - Note – the rev. proc. requirements are those necessary to seek a ruling, not a list of those necessary so the co-ownership will not be treated as a partnership for income tax purposes

TIC interests and Revenue Procedure 2002-22

A TIC interest in real property can be real property for 1031, but co-ownership must not be treated as a tax partnership. Again, Rev. Proc. 2002-22 states conditions for PLR.

Ownership and voting

No more than 35 co-owners. Unanimous approval for sale, lease, debt, manager selection, and other major decisions.

Economics

Proportionate sharing of revenue, costs, debt, and sale proceeds.

Transfer and financing

Each co-owner has transfer, partition, and separate-financing rights, subject to commercially reasonable restrictions.

Management

Management agreement must be renewable at least annually; fees should be market-based and not depend on income or profits.

Leasing and options

Restrictions apply to related-party leases, purchase options, and arrangements that shift economics away from proportionate ownership.

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

TIC execution: some practical pressure points

Debt matching

The TIC's share of property debt typically follows the owner's proportionate interest; financing costs are allocated proportionately.

Capital calls

The agreement must address how capital needs are funded without converting the arrangement into a centralized business enterprise.

Decision rights

Operational urgency can conflict with unanimous-consent rights. Deadlock, casualty, lender, and leasing provisions need advance planning.

Later Section 721 contribution

A TIC owner may later contribute the TIC interest under Section 721, but Section 1031 holding intent and step-transaction facts must be evaluated.

TIC documents should preserve real ownership rights, not merely label a managed investment as co-ownership.

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

PARTNERSHIP DIVISIONS

- Situation – again, an entity treated as a tax partnership that holds real property is considered the TP for 1031 purposes; as when a drop and swap is considered, the partners contemplating a partnership division also commonly want to separate when a property is expected to be sold, for a variety of different reasons – different investment objectives; animosity; relocation; desire for cash by some owners when other owners want to consider tax deferred sale alternatives
- But, there may be tax reasons that the parties want subsequent ownership of the property to be treated as held by partnerships that will be treated as "continuations" of the prior tax partnership for income tax reasons under Section 708
- Essential requirement is that owners that held more than 50% of the interests in the existing partnership are partners in entities the parties desire be such continuations

Partnership divisions (Sec. 708): assets-over and assets-up

Assets-over

The divided partnership contributes assets and liabilities to resulting partnerships, receives interests, and distributes those interests to its partners.

Assets-up

The divided partnership distributes assets and liabilities to its partners, who then contribute them to resulting partnerships.

- **Prior partnership:** The original partnership being divided.
- **Resulting partnership:** A post-division partnership with at least two partners who were partners in the prior partnership.
- **Continuing partnership:** A resulting partnership whose partners collectively owned **more than 50% of both capital and profits** of the prior partnership.
- **Divided partnership:** The continuing partnership treated as transferring assets and liabilities in the division. It retains the prior partnership's **EIN, tax attributes and tax-return identity**.
- **Recipient partnership:** A partnership that receives assets and liabilities from the divided partnership.

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

Partnership divisions with a 1031 Exchange

In a §1031 exchange, correctly identifying the divided partnership is critical because it supports continuity between the taxpayer that held and sold the relinquished property and the taxpayer that acquires and holds the replacement property

Divided Partnership Determination



Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

DELAWARE STATUTORY TRUSTS

- Situation – TP is looking for RP and may find investment in completely passive investment attractive
- Particular DST may hold one property or a number of properties, so potential diversification
- DSTs, if properly structured and even though in effect held by an entity, can qualify as real property for purposes of 1031 – see next slide
- Are typically made available via private placement offerings
- Proper handling of identification of the DST replacement real property is critical
- Are upsides and downsides to DST RP acquisition:
  - Usually relatively high class real property
  - Because promoter has conducted work to review, finance and acquire the property, TP pre-closing activity may be reduced
  - Some promoters are sophisticated real property operators – but, quality of promoter must be evaluated
  - Costs incurred by promoter passed on to TP
  - Need to consider potential boot issues upon acquisition
  - No control over property or investment
  - No ready resale market for interest in DST if TP needs or wants to monetize or the project is not successful

DSTs: why the trust can qualify as real property

Tax classification

Under the Revenue Ruling 2004-86 fact pattern, the trust is treated as an investment trust rather than a business entity.

Exchange result

A beneficial interest in the DST is treated as an undivided fractional interest in the underlying real property for Section 1031.

The "seven deadly sins" are powers that must be avoided to preserve the structure

1. **Accepting new capital after the offering closes**
2. **Renegotiating or entering new debt**
3. **Renegotiating leases or entering new leases**
4. **Making more than minor nonstructural modifications**
5. **Investing cash other than in short-term debt obligations**
6. **Retaining cash beyond reasonable reserves**
7. **Using sale proceeds to acquire new property**

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

Closing framework: choose the structure from the facts

Five questions to answer before selecting the path

1. **Who is the taxpayer?** Individual, disregarded entity, S corporation, or partnership
2. **What is being transferred?** Real property, TIC interest, or entity interest
3. **What debt must be replaced?** Model both Section 1031 and Section 752 consequences
4. **What level of control is acceptable?** Direct ownership, shared TIC rights, DST passivity, or fund management
5. **What is the long-term objective?** Another exchange, diversification, liquidity planning, or estate transition

Educational discussion only; application depends on the taxpayer's specific facts and advisor analysis.

Thank you.



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Monday, Nov. 16, 2026
12:45 – 1:45 p.m.

AI 101 for CPAs: Core Concepts & Practical Applications

John Higgins, CPA, CITP, *Strategic Technology Advisor, Higgins Advisory, LLC*

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AI 101 for CPAs:
Core Concepts and Practical Applications



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Presented By
John H. Higgins, CPA.CITP
Rochester, Michigan

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Learning Objectives

- Identify core AI concepts relevant to accounting and finance.
- Differentiate common CPA/CFO use cases
- Evaluate key risks and select mitigating controls.

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- Nationally recognized thought leader, advisor, author and speaker on CPA technology
- Strategic technology advisor to the profession w/ 35+ years of experience
- Founded and sold two CPA technology advisory startups
- Former National Mid-market Technology Partner - BDO
- CPA Practice advisor Top 25 Thought Leader for the CPA profession
- AICPA Business & Industry Hall of Fame Inductee
- Past Chair of the Michigan Association of CPAs
- Passionate advocate for the CPA profession!

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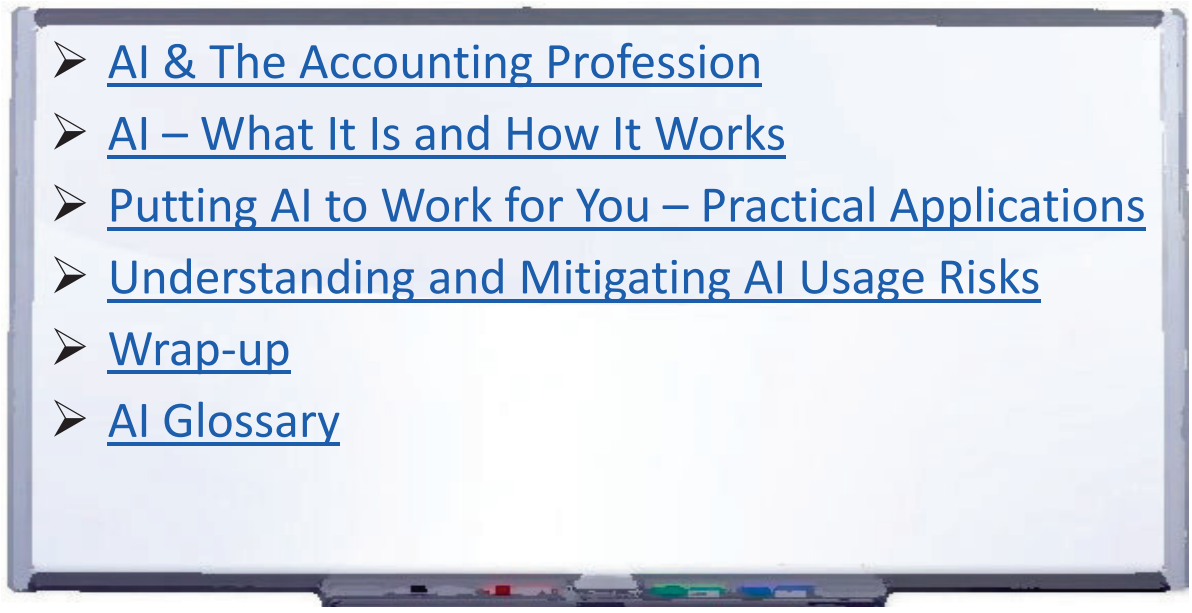
Presentation Outline



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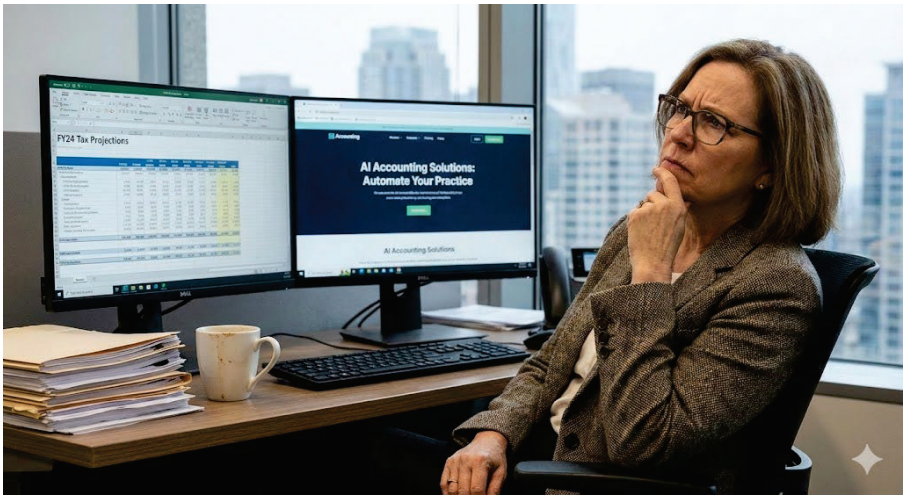
AI & THE ACCOUNTING PROFESSION



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Market Forces Driving AI Adoption by CPAs

- Staffing requirements
- Compliance complexity
- Profitability pressures
- Competition
- Opportunity / Innovation

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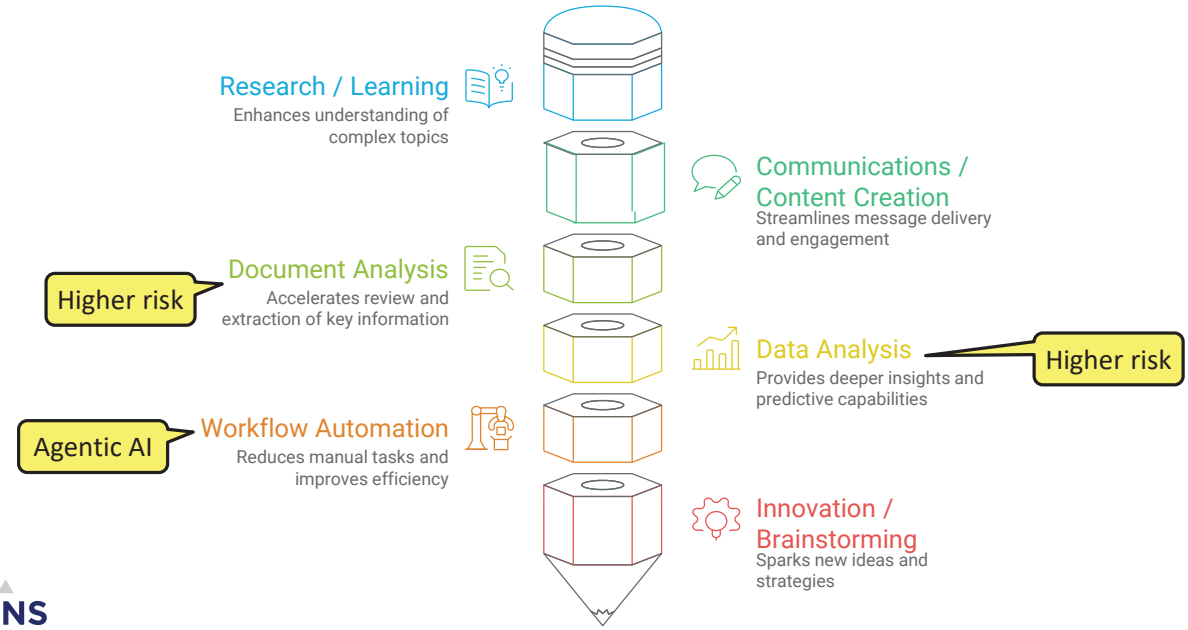
AI Applications in Accounting, Finance & Tax



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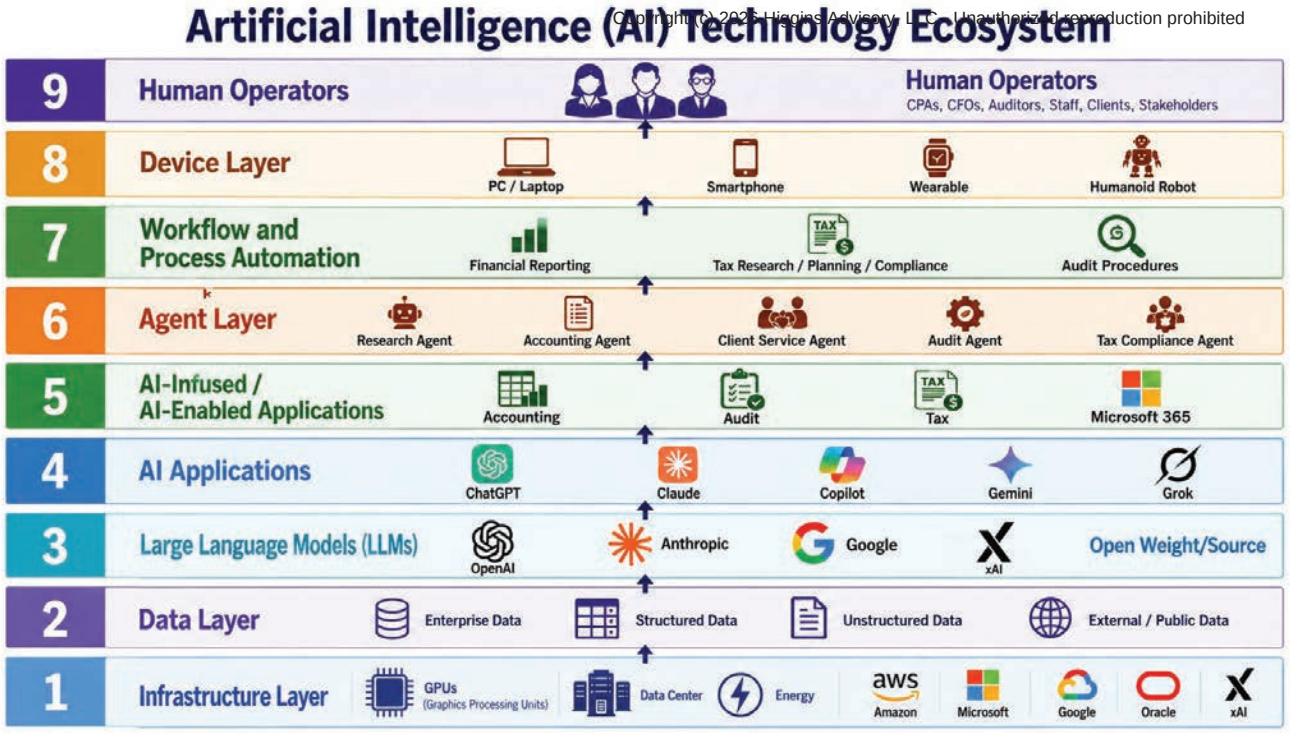

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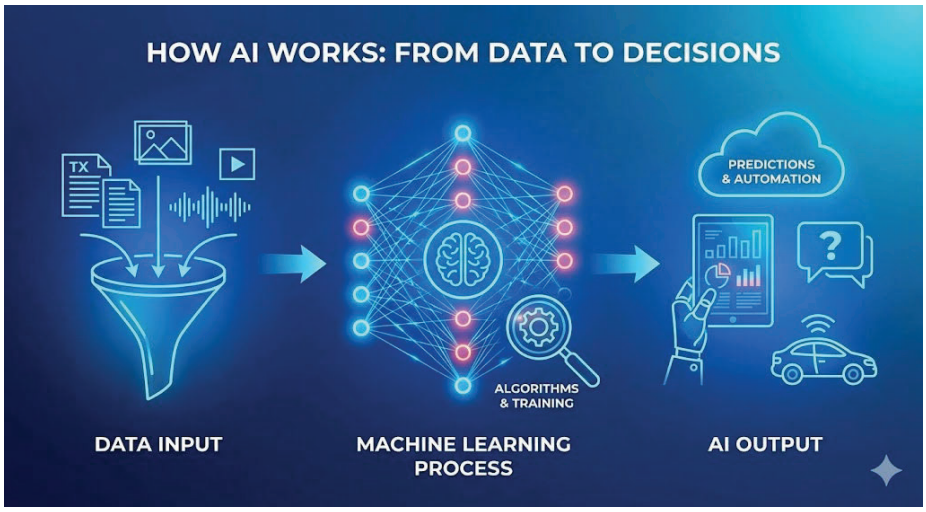
AI – WHAT IT IS AND HOW IT WORKS



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A Simple Generative AI demo

- ***Prompt***: What is AGI?
- ***Response***: AGI stands for Artificial General Intelligence.
- ***Prompt***: In the context of income taxes.
- ***Response***: In the context of *income taxes*, AGI refers to *Adjusted Gross Income*.

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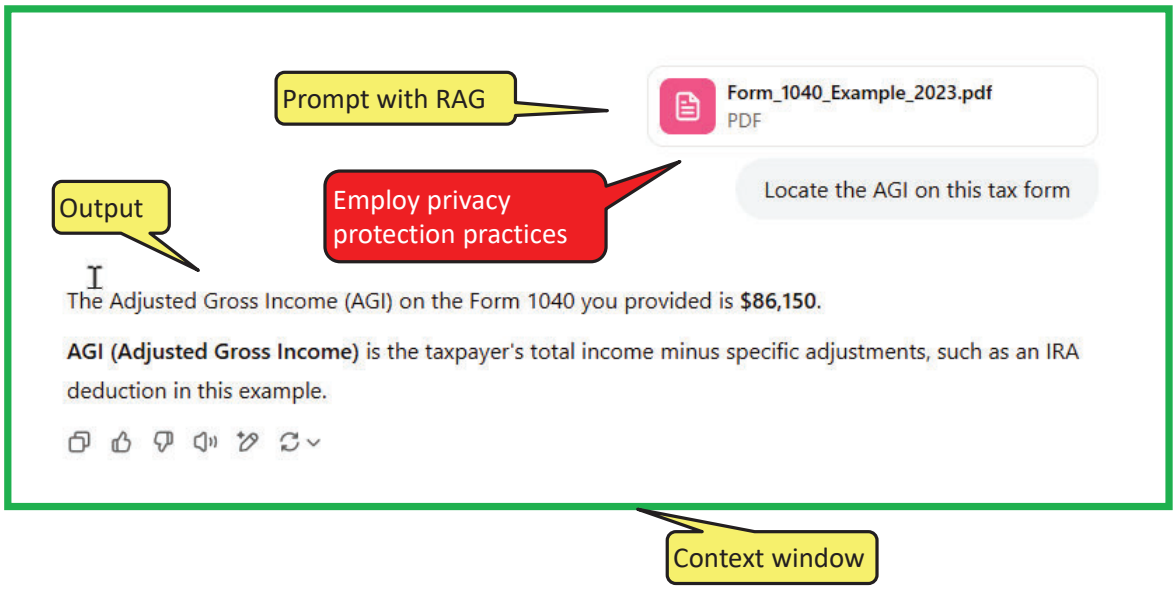
A Simple Generative AI demo with RAG (Retrieval Augmented Generation)



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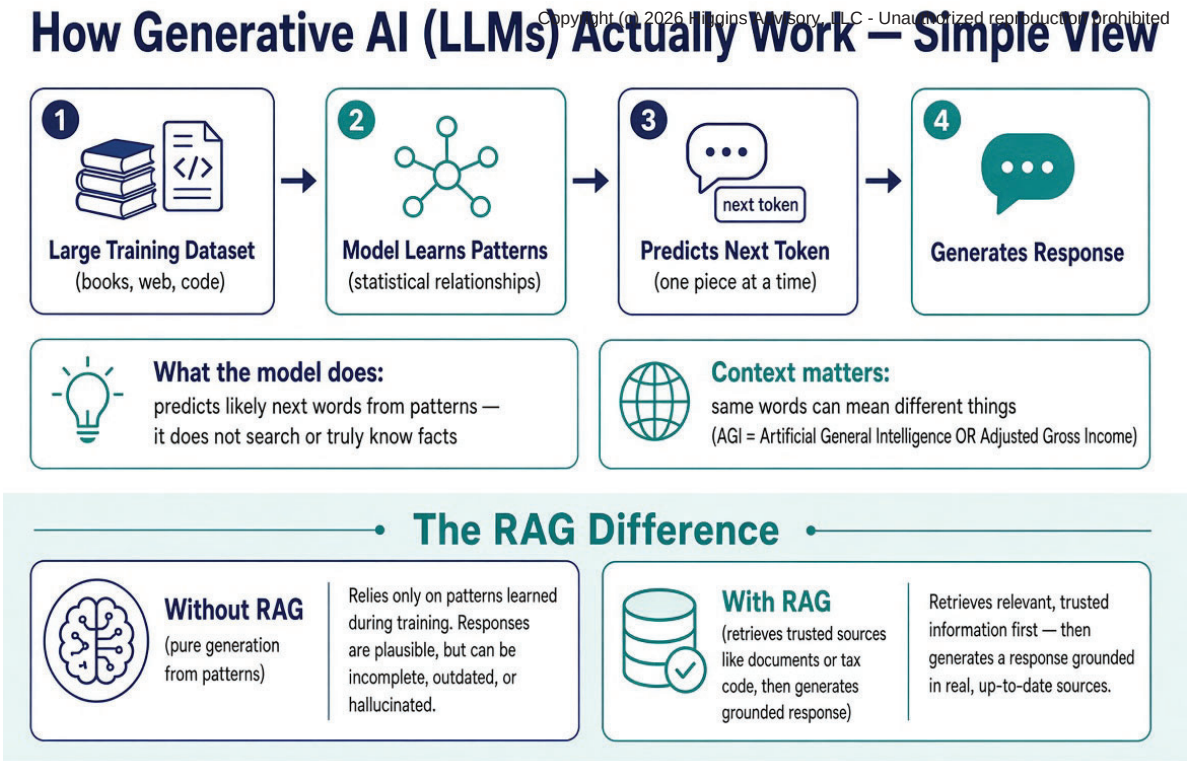

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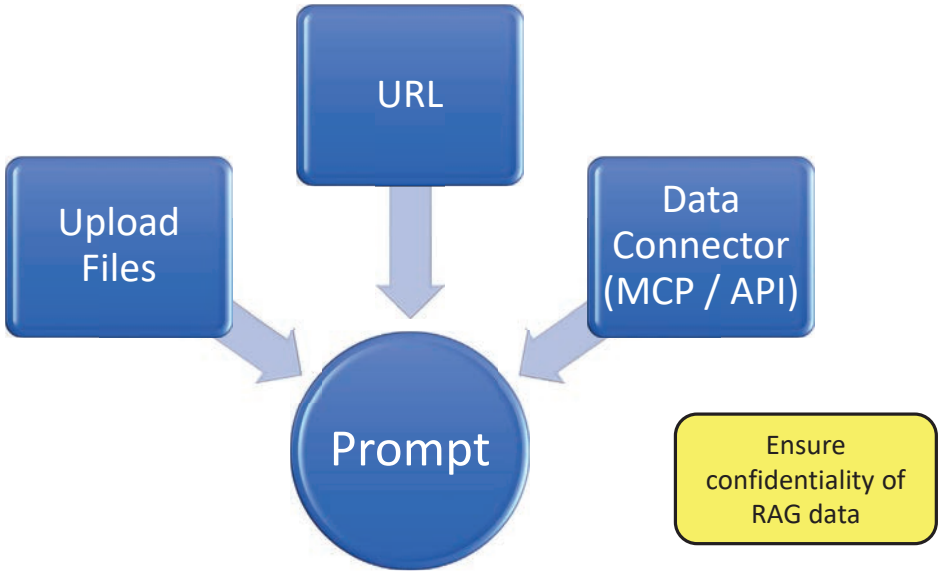
Understanding RAG (Retrieval Augmented Generation)



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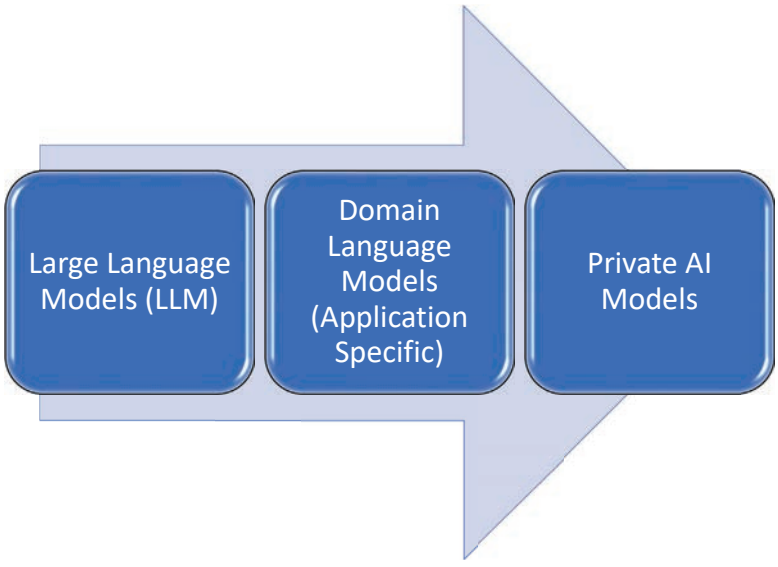
The Evolution of AI Language Models



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Popular Generative AI Apps aka Foundation Models

- ChatGPT (OpenAI)
- Claude (Anthropic)
- Copilot (Microsoft)*
- Gemini (Google)
- Grok (xAI)

* Copilot is an AI app, not an LLM (Large Language Model.) It incorporates OpenAI's ChatGPT and Anthropic' s Claude models

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CPA Related Domain Specific Models

- Blue J
- Caseware AiDA
- MindBridge
- TaxGPT
- Thomson Reuters CoCounsel
- Wolters Kluwer

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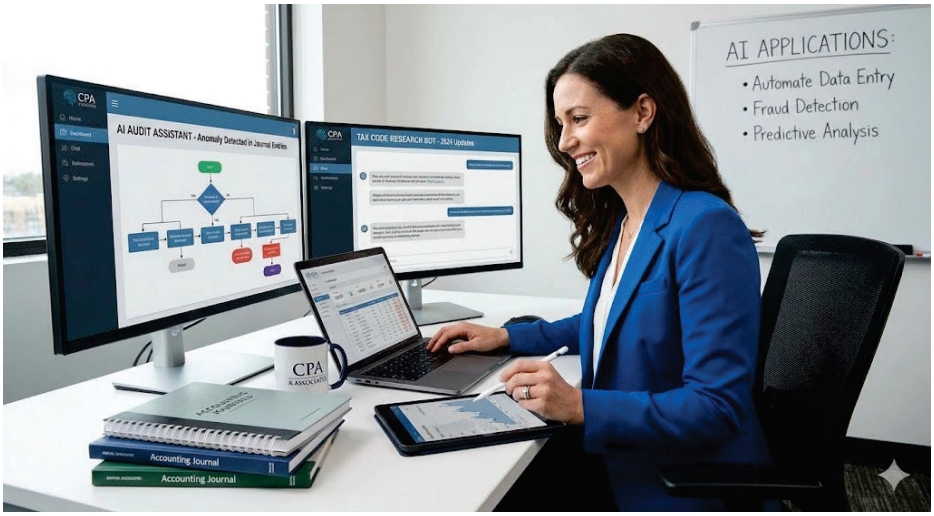
PUTTING AI TO WORK FOR YOU – PRACTICAL APPLICATIONS



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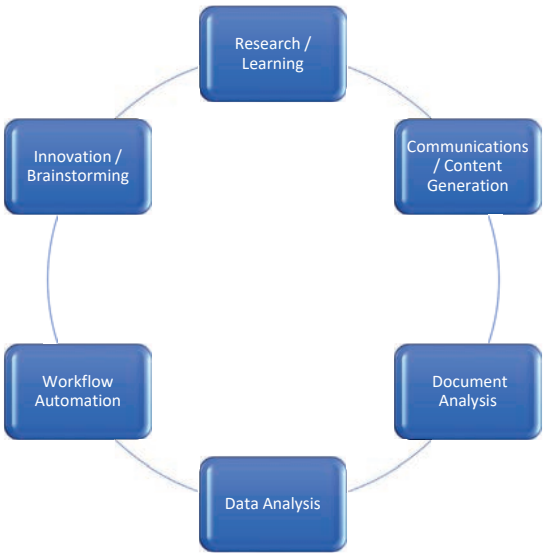
GENERATIVE AI APPLICATIONS FOR CPAS



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Case Study 1: Tax Research

- Scenario: You are asked by a client to explain the tax treatment of cryptocurrency staking rewards.

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Case Study 1: Tax Research



Prompt example

Prompt:

- Act as a professional tax advisor.
- The audience is a non-financial taxpayer.
- Prepare a summary explanation of the tax treatment of cryptocurrency staking.
- Keep the tone professional, less than 500 words, in a bulleted list, in memo format, provide citations, write at the 10th grade level.

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Case Study 2: Communications / Content Generation

- Scenario: You need to present the highlights of the University of Notre Dame's FY2025 financial statements to the Board of Trustees.

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Case Study 2: Communications / Content Generation



Prompt example

Prompt:

- Act as a professional communications coach to accounting and finance professionals.
- The audience is the Board of Trustees of the University of Notre Dame. They are a combination of clergy and lay people. They may or may not be financial reporting savvy.
- Prepare a timed outline for a 45-minute presentation on the FY 2025 audited financial statements.
- Keep the tone professional. Format in a bulleted list. Suggest potential charts and graphs to enhance the presentation. Compose at the undergraduate college reading level.
- The FY 2025 Audited financial statements are added as RAG.

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Case Study 3: Document Analysis

- Scenario: Analyze the terms of an office lease agreement for your client or company and provide an opinion on the quality, or lack thereof, of the lease agreement.

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Case Study 3: Document Analysis



Prompt example

Prompt:

- Act as a legal expert specializing in commercial real estate agreements.
- The audience is a potential lessee of a commercial office. Assume the lessee is not versed in the legalities of a lease agreement.
- Prepare a summarized analysis of the lease agreement to identify any lease terms that are detrimental to the lessee, as well as any missing terms that should be added to the agreement. Include an executive summary with your opinion of the quality of the lease from the perspective of the lessee.
- Keep the tone professional. Format in a bulleted list. Compose at the 10th grade reading level.
- An actual lease agreement will be added as RAG.

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Case Study 4: Data Analysis

- Scenario: Analyze the annual reports of four major AI technology companies to understand the financial strengths and weaknesses of them comparatively.

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Case Study 4: Data Analysis



Prompt example

Prompt:

- Act as an expert financial analyst.
- The audience is a professional financial advisor who advises clients on financial planning and wealth management issues.
- Analyze the annual reports of these four AI technology leaders and provide a comparative analysis of financial strengths and weaknesses of each of them relative to the others. Include an executive summary of each company's financial performance and position.
- Keep the tone professional. Format as comparative tables. Create charts and graphs as appropriate. Compose at the 10th grade reading level. Provide definitions of any complex financial terms or metrics.
- Actual annual report files will be added as RAG.

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Case Study 5: Workflow Automation

- Scenario: Create an agent to prepare you for an upcoming meeting to review the Nvidia annual financial statements with their department managers.
- Link to agent

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Case Study 5: Workflow Automation



Prompt example

Prompt:

You are a CPA meeting-prep assistant.

Goal: Create a short client meeting briefing.

Steps you should follow:

1. Ask me for the company name, industry, and any financial statements I can upload.
2. Search for recent news and key industry trends.
3. Review the financials I provide and note major trends or red flags.
4. Produce a one-page briefing with:
   - Company & industry snapshot
   - Key financial observations
   - 4–5 thoughtful questions for the meeting
   - Any risks or opportunities worth raising
5. Clearly note anything you could not verify.

Keep the tone professional and concise. Use bullet points. Flag any information that is uncertain.

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Case Study 6: Innovation / Brainstorming

- Scenario: Develop the framework for a strategic planning retreat for a 50-person CPA firm to develop an effective and responsible AI adoption plan for the firm.

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Case Study 6: Innovation / Brainstorming



Prompt example

Prompt:

- Act as a strategic planning facilitator for accounting and advisory firms.
- The audience is the leadership team of a 50 person CPA firm responsible for designing an effective AI adoption planning retreat for the firm.
- Develop a comprehensive plan for a one-day retreat with the goal of having a comprehensive framework for the firm to adopt an AI implementation plan that is effective, efficient and safe. Create a timed agenda, define the methodology for capturing thoughts and ideas and organizing them into a manageable format that facilitates synthesizing them into actionable initiatives. Define specific deliverable outcomes for the event.
- Keep the tone professional. Format as a timed agenda for the event. Identify the specific roles and responsibilities. Develop a series of thought-provoking questions to encourage input and feedback from all participants. Recommend documentation procedures.

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PROMPT BEST PRACTICES



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Creating Effective Prompts

- Define AI's role (functional role + domain expertise)
- Describe the audience for the output
- Objective – specific outcome desired
- Context – background information
- Provide example(s)
- Optimize supporting data – RAG
- Define any constraints
- Require links to citations
- Output structure / deliverables

Ask the AI to create / improve the prompt

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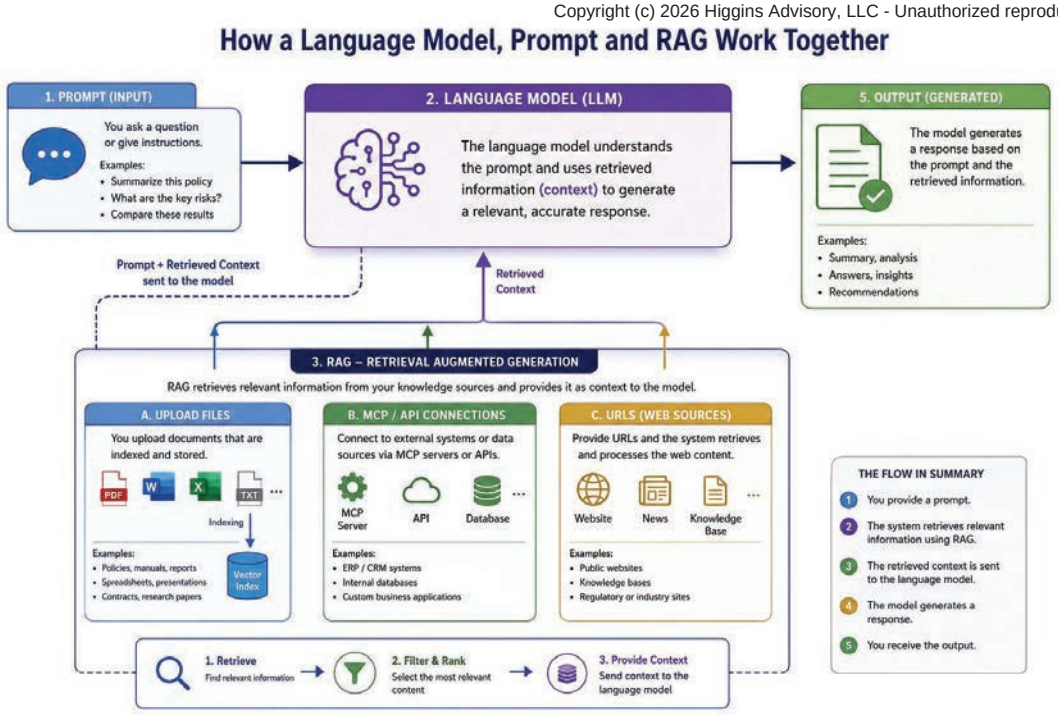

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Requesting Source Citations

- Specify acceptable authoritative sources
- Format for citation with direct links
- Traceability to the exact location

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Grounding Prompts With Authoritative Sources

1. Explicitly identify the authoritative sources
2. Cite every material statement with a link to the source
3. Distinguish facts from interpretations
4. If information is absent from the source, explicitly state that
5. Do not use general model knowledge or other web sources
6. Note any conflicts among sources

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Case Study 7 – Prompt Citations Request

1. Provide a summary of current cryptocurrency tax treatment in the U.S. Support all key points with citations exclusively from these authoritative sources IRS, SEC, and FASB. Explicitly identify the authoritative sources
2. Cite every material statement with a link to the source
3. Distinguish facts from interpretations
4. If information is absent from the source, explicitly state that
5. Do not use general model knowledge or other web sources
6. Note any conflicts among sources



Prompt example

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UNDERSTANDING AND MITIGATING AI USAGE RISKS



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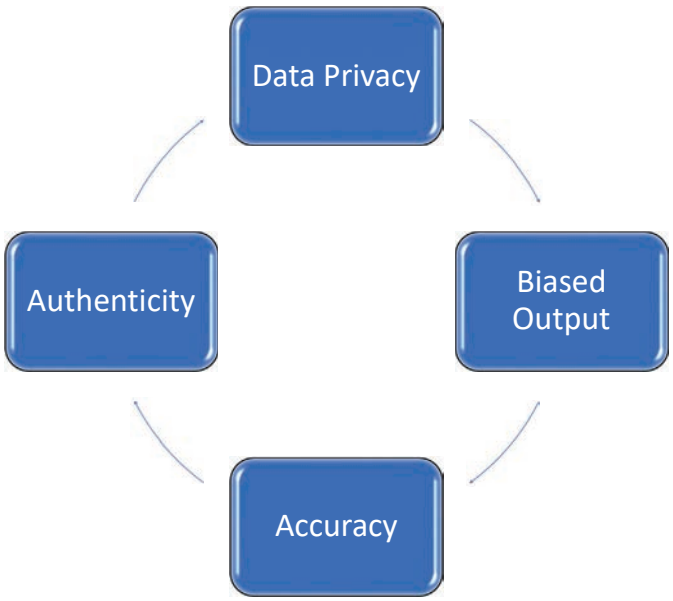
Primary AI Usage Risks



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Risk Mitigation - Apply Due Diligence in Selecting AI Tools

Select	Select reputable tools
Investigate	Investigate their data privacy and acceptable use policies.
Limit	Limit staff to using only approved tools

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Risk Mitigation - Develop Documentation Standards

- Maintain an audit trail of AI prompts and outputs for client engagements as part of your engagement documentation standards
- Establish a policy for when and how AI usage on client engagements should be disclosed
- Consult with your professional liability carrier for guidance

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Risk Mitigation - Authenticity and Accuracy Validation Policy



Establish guidelines for standard procedures for validating the accuracy and authenticity of AI generated output



Include links to sources in prompt output

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Risk Mitigation - AI Acceptable Usage Policies and Procedures



Establish an AI prompt champion to lead communication, oversight and knowledge sharing regarding prompt best practices



Maintain a library of firm approved prompts for technical applications on client engagements



Monitor standards setters and regulatory agencies for compliance requirements

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Risk Mitigation - Develop an AI Acceptable Usage Policy

- Incorporate all these policies & procedures in a comprehensive and documented AI usage policy
- Provide mandatory education on the policy for all staff
- Monitor and update quarterly
- Monitor standards setters and regulatory agencies for compliance requirements

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WRAP-UP



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In Summary

- Take time to review the case study example prompts
- Experiment with your own prompts throughout your day
- Be sure to follow best practices for risk mitigation
- Leveraging AI can be a jet pack for your career

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Thank you!!!

Let’s connect on LinkedIn

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AI GLOSSARY



Glossary created by ChatGPT

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AGI (Artificial General Intelligence)

Human-level intelligence across most cognitive tasks.

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Agentic AI

AI that plans, acts, and adapts to achieve goals.

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AI Ethics

Principles guiding responsible, fair, and trustworthy AI use.

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AI Governance

Policies and controls managing AI risk and accountability.

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AI-Enabled

Traditional processes enhanced using AI tools.

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AI-Native

Processes designed around AI from inception.

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ASI (Artificial Superintelligence)

Intelligence far exceeding human cognitive abilities.

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Autonomous

Operates independently without continuous human oversight.

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BCI (Brain–Computer Interface)

Direct communication between brain and external devices.

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Benchmarking

Comparing AI performance against standardized tasks or metrics.

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Closed Source aka Proprietary

Privately owned Artificial Intelligence models, restricted access, limited modification, controlled distribution.

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Context Window

Amount of information a model can consider simultaneously.

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Data Leakage

Unintended exposure of sensitive data through AI systems.

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Explainability

Ability to understand and justify AI outputs.

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Fine Tuning

Additional training on task-specific or proprietary data.

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Foundation Model

Broad pre-trained model adaptable to many tasks.

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Generative AI

Creates new content from learned data patterns.

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Guardrails

Constraints preventing unsafe or noncompliant AI behavior.

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Hallucination

Confidently generated but incorrect or fabricated output.

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Human-in-the-Loop

Human review integrated into AI decision workflows.

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Inference

Generating outputs using a trained AI model.

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Latency

Time delay between input and response.

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LLM (Large Language Model)

Model trained on massive text datasets.

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Model

Trained system producing probabilistic outputs from inputs.

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Multi-modal

Processes multiple data types simultaneously.

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Open Source

Publicly available Artificial Intelligence models, freely used, modified, shared.

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Orchestration

Coordinating multiple AI tools, agents, or workflows.

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Physical AI

AI embedded in machines interacting with the physical world.

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Pre-Trained

Initially trained on large, general-purpose datasets.

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RAG (Retrieval Augmented Generation)

Combines retrieved data with model-generated responses.

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Reasoning

Ability to infer, plan, and draw conclusions logically.

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Return on AI (ROAI)

Measured business value
generated from AI investments.

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Semantic

Focused on meaning, context,
and relationships.

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Singularity

Hypothetical point of rapid, uncontrollable AI intelligence growth.

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Synthetic Data

Artificially generated data resembling real datasets.

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Token

Smallest text unit processed by a model.

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Transformer

Neural architecture using attention for sequence modeling.

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Vibe Computing

Software coding using natural language prompts and AI

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Workflow Automation

AI-driven execution of multi-step business processes.

Monday, Nov. 16, 2026
2 – 3 p.m.

Smarter Tax Services With AI Tools

John Higgins, CPA, CITP, *Strategic Technology Advisor, Higgins Advisory, LLC*

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Smarter Tax Services with AI Tools



Presented By
John H. Higgins, CPA.CITP
Rochester, Michigan

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Learning Objectives

- Recognize specific ways to leverage AI technology in your tax services.
- Identify specific AI tools that can be leveraged to automate and enhance tax planning, research and compliance services.

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John H. Higgins, CPA.CITP

Strategic Technology Advisor



john@higginsadvisoryllc.com

- Nationally recognized thought leader, advisor, author and speaker on CPA technology
- Strategic technology advisor to the profession w/ 35+ years of experience
- Founded and sold two CPA technology advisory startups
- Former National Mid-market Technology Partner - BDO
- CPA Practice advisor Top 25 Thought Leader for the CPA profession
- AICPA Business & Industry Hall of Fame Inductee
- Past Chair of the Michigan Association of CPAs
- Passionate advocate for the CPA profession!

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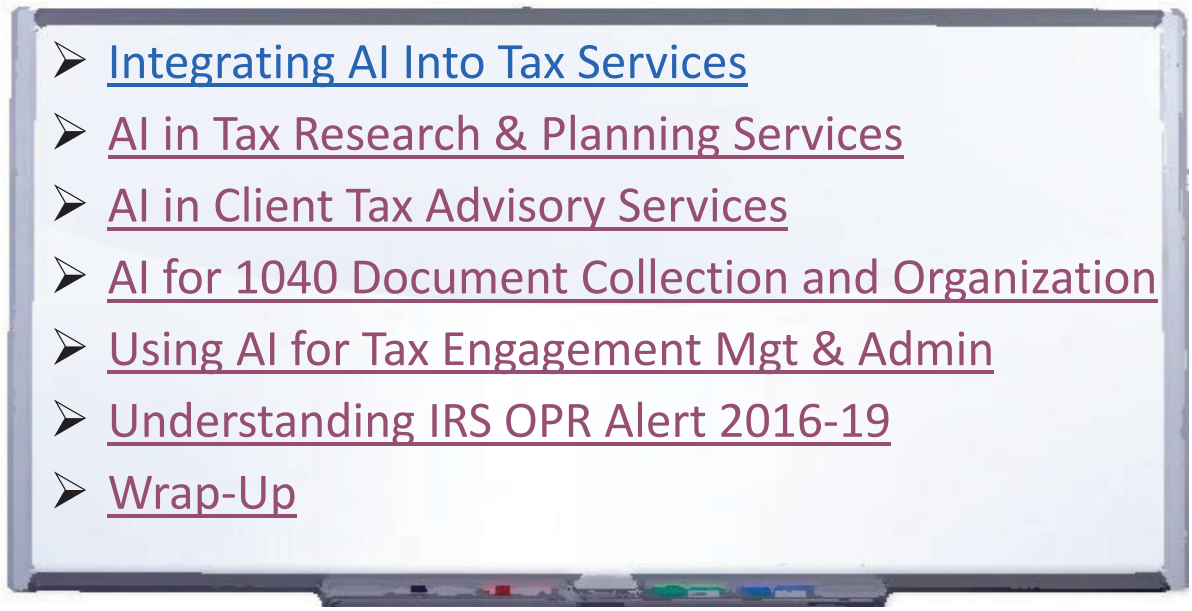
Presentation Outline



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INTEGRATING AI INTO TAX SERVICES



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~~Artificial Intelligence~~

= Next Generation Automation

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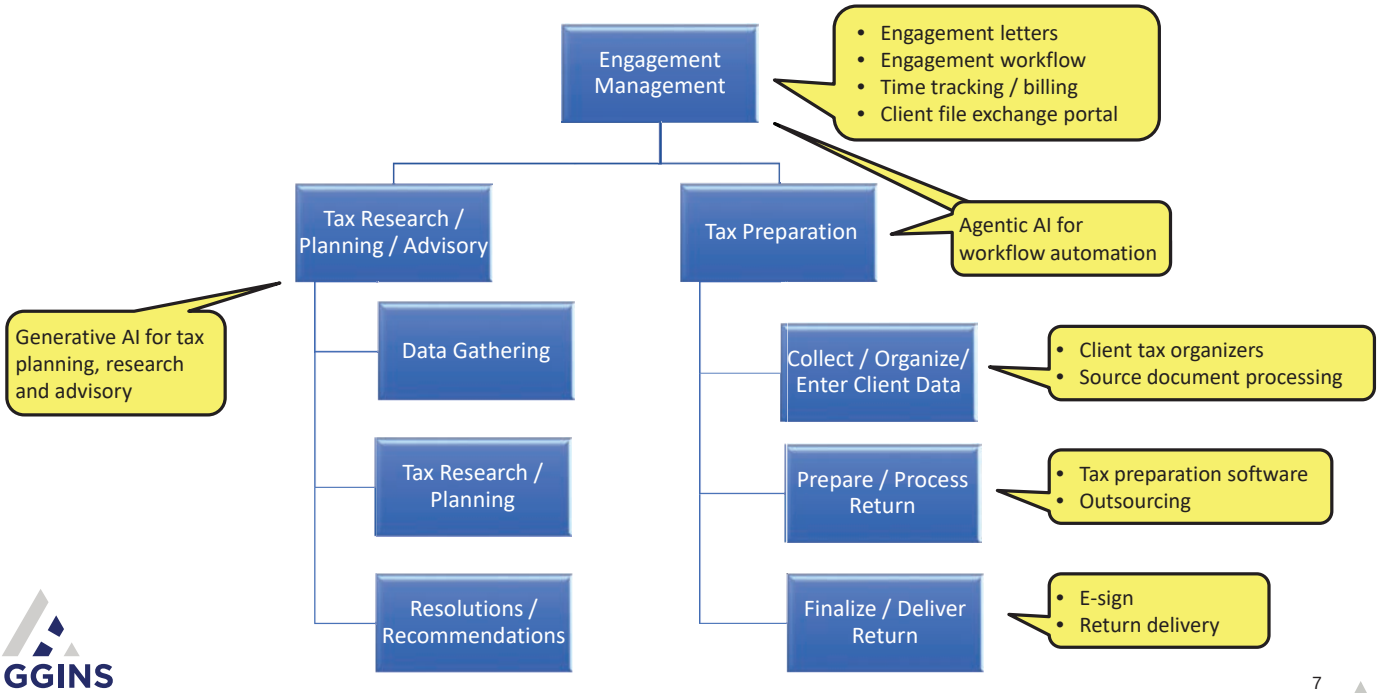
Tax Services Workflow Automation



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Practical Applications of AI in Tax Services

DEEP TAX RESEARCH

"JUST IN TIME" LEARNING

DOCUMENT / DATA ANALYSIS

DOCUMENT / WORKPAPER CREATION

DOCUMENT RECOGNITION / ORGANIZATION

CLIENT COMMUNICATIONS

MEETING DOCUMENTATION

WORKFLOW AUTOMATION

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AI IN TAX RESEARCH & PLANNING SERVICES



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Case Study 1: Tax Research

Prompt example

Prompt:

- Act as a professional tax advisor.
- The audience is a non-financial taxpayer.
- Prepare a summary explanation of the tax treatment of cryptocurrency staking.
- Keep the tone professional, less than 500 words, in a bulleted list, in memo format, provide citations, write at the 10th grade level.

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Case Study 2 - Choice of Entity Analysis

- Use Copilot to create a prompt for you to analyze a business entity type selection for a new client
- Use this link to reference a sample prompt created by Copilot
- Use this link to reference the results of the Copilot generated prompt

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Popular AI Based Tax Research Applications

- Accordance
- Bloomberg Tax Research
- Blue J
- Thomson-Reuters CoCounsel Tax
- Tax ChatGPT
- Wolters Kluwer – CCH Answer Connect

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Tax Planning Software

- Holistiplan
- TaxPlanIQ
- Bloomberg BNI Tax Planner
- Intuit Lacerte Tax Planner (ProConnect)
- Corvee Tax Planning

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AI IN CLIENT TAX ADVISORY SERVICES



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Specific Applications of AI in Client Tax Advisory

- Analyze prior year tax return for tax saving opportunities (*see Google Gem example*)
- Automatic email reminders for tax estimate payments (*Microsoft Copilot Cowork example*)
- Generate / respond to IRS letters / notifications
- Analyze complex documents for potential tax implications

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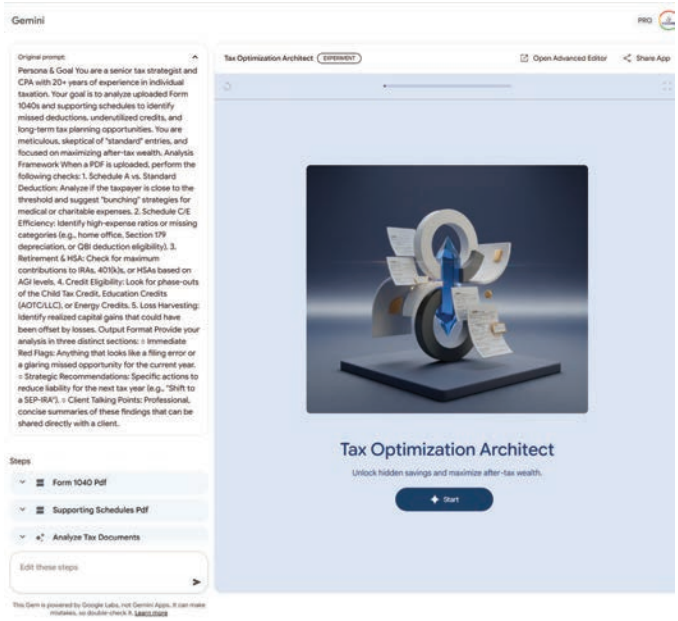
Google Gem Example – Tax Optimization Architect



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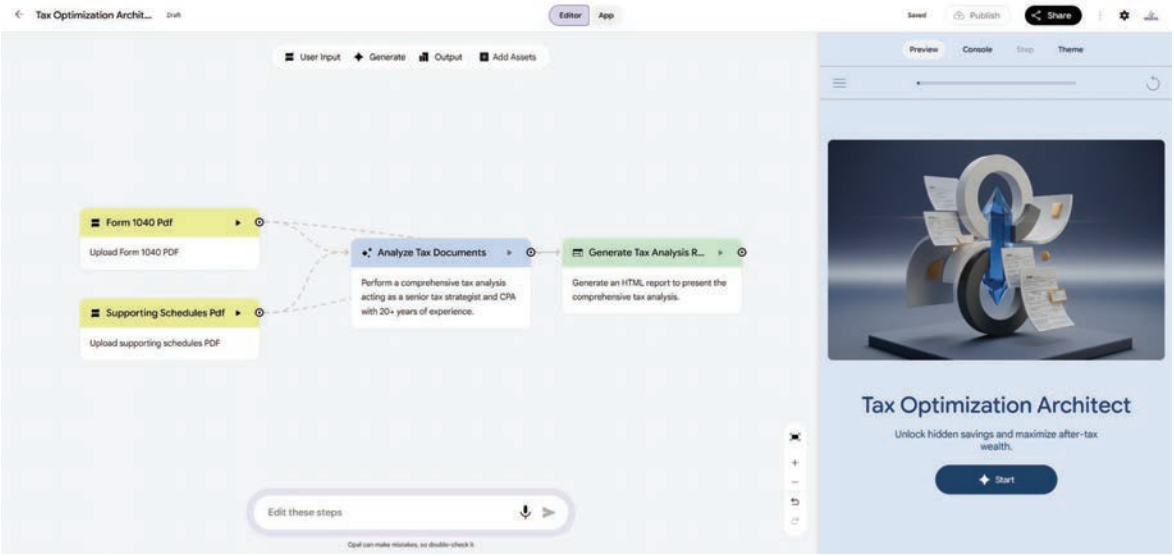
Google Gem Example – Tax Optimization Architect



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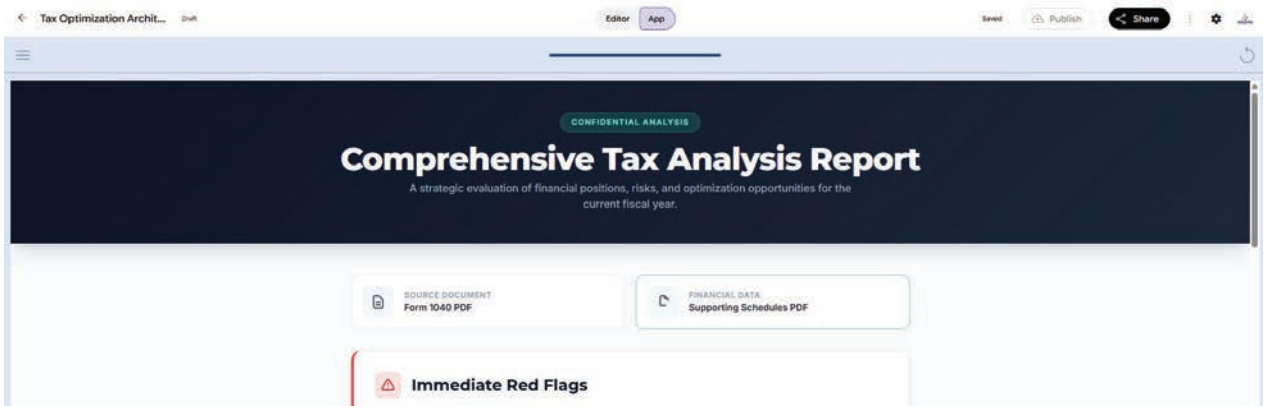
Gem Example – Tax Optimization Architect



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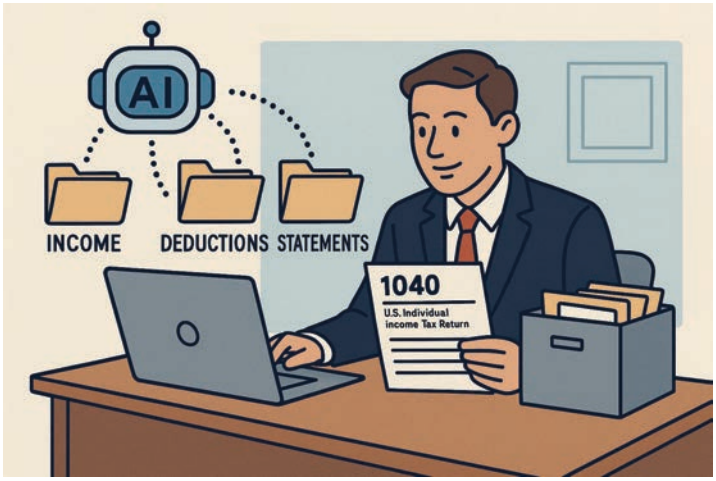
USING AI FOR 1040 DOCUMENT COLLECTION AND ORGANIZATION



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1040 AI Document Intake and Collection Tools

- Black Ore
- GruntWorx
- SafeSend Intake
- Soraban
- StanfordTax

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USING AI FOR TAX ENGAGEMENT MANAGEMENT



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Additional AI Opportunities in Engagement Administration

- Client Proposals / Engagement Letters
- Email communications
- Excel workbook automation
- Client meeting documentation / recap
- Tax workflow management

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AI Generated 1040 Engagement Letter

Microsoft Copilot for Word Prompt

Create a client services agreement aka engagement letter for a CPA to send to the client that outlines the terms of service that will be provided to prepare the client's 1040 tax returns. Include an outline of the various steps in the service that will be provided, the client's responsibilities, standard legal terms, the fees, which will be determined as a fixed price, subject to out-of-scope services that may be required. Add a signature block for the client and the CPA.

Link to output document

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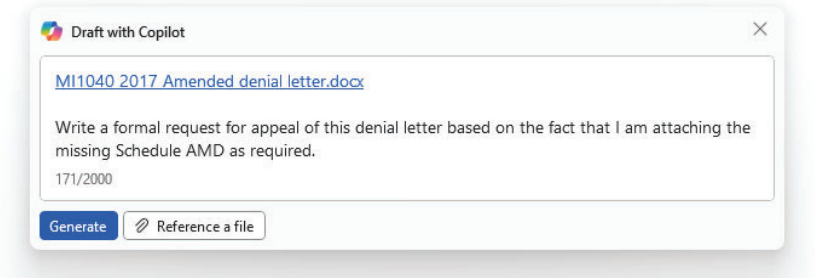
Content Generation Example - Tax Appeal Letter

- Compose a letter to respond to a Treasury Department amended return denial



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Using AI for Email Client Communications

- Explain the need to make a large payment with the tax return filing
- Reminder to pay quarterly tax estimate
- Request speeding up the submission of tax data and documents
- Explain the need to file a tax extension

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Tax Workflow Automation Example

Create an AI agent to send clients a personalized tax estimate payment reminder email

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Client Meeting Documentation

- Record and transcribe meetings for 100% documentation and AI summary and query capability
- The meeting recording / transcript becomes RAG (Retrieval Augmented Generation)
- Prompt for specific information about the meeting

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OPR Alert 2026-19: Overview

- Issued June 24, 2026, by IRS Office of Professional Responsibility
- Introductory Guidelines for Responsible AI Use in Federal Tax Practice
- Does not create new rules — applies existing Circular 230 duties to AI
- Applies to tax practitioners: CPAs, attorneys, enrolled agents, etc.
- Key principle: Technology is a powerful tool, not a substitute for professional judgment
- Virtually all firms already use some form of AI

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Circular 230: Due Diligence & Competence

- §10.22 Due Diligence: Thoroughly review all AI-created documents before client delivery or IRS submission
- Verify accuracy of facts, citations, and calculations
- Cannot rely solely on AI — human scrutiny and editing essential
- §10.35 Competence: Understand both tax law AND the technology
- Know AI operational mechanics, limitations, risks, and potential for bias/errors
- Evaluate suitability of AI outputs for IRS matters

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Fees, Written Advice & Firm Oversight

- §10.27 Fees: Do not charge unconscionable fees; pass AI efficiency savings to clients
- Disclose AI activities (general or specific); credit cost reductions fairly
- Avoid billing for time not spent or double-billing AI-assisted work
- §10.36 Procedures: Firm leaders must ensure adequate AI compliance procedures

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Confidentiality & Data Protection

- Use only secure, enterprise-approved AI systems for client data
- Never upload sensitive taxpayer information to public or unsecured platforms
- IRC §§6713 & 7216: Civil and criminal penalties for unauthorized use/disclosure of tax return information
- Circular 230 §10.51(a)(15): Willful disclosure/use prohibited

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Best Practices for Responsible AI Use

- Stay updated on federal/state AI laws, regulations, and guidance
- Establish secure AI data handling protocols and access controls
- Document AI usage and verification processes (audit trail)
- Provide comprehensive staff training on AI risks and requirements
- Vet third-party AI vendors thoroughly
- Treat all AI output as a draft — review for accuracy, citations, and bias

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Enforceability for Professional Tax Preparers

- Introductory guidance — not a new regulation or amendment to Circular 230
- Enforceable through existing Circular 230 disciplinary framework
- Violations of due diligence, competence, confidentiality, or fees can lead to OPR sanctions
- Firm owners/principals responsible under §10.36 for procedures and oversight
- Real-world risks: Court sanctions (as seen in legal cases), reputational harm, fee refunds
- Professional liability and client trust implications

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Practical Action Steps for Firms

- Develop and document a comprehensive AI Acceptable Use Policy
- Train all staff on Circular 230 application to AI and approved tools only
- Implement verification checklists for AI-generated research, advice, and documents
- Review billing practices to reflect AI efficiencies transparently
- Audit current AI tools for data security and enterprise approval
- Monitor ongoing IRS/OPR and professional body guidance

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WRAP-UP



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In Summary

- AI is revolutionizing the automation of tax services
- Embracing AI will provide you with a significant competitive advantage
- Don’t sit on the sidelines!

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Thank you!!!

Let’s connect on LinkedIn

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Monday, Nov. 16, 2026
2 – 3 p.m.

What's New in Pass-Through Taxation: Self-Employment Tax & Other Selected Topics

Joseph Rekrut, JD, *Associate, Reinhart Boerner Van Deuren s.c.*

What's New in Pass-Through Taxation: Self-Employment Tax and Other Selected Topics

WICPA Tax Conference
Brookfield Conference Center
November 16, 2026

Wisconsin Institute of Certified Public Accountants

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Agenda

- The § 1402(a)(13) Limited Partner Exception
- Profits Interests and § 1202
- S Corporation Compliance Refresher
- Basis Shifting Rollback
- OB3 Refresher for Pass-Throughs
- IRS Enforcement and Guidance Outlook
- Other Noteworthy Developments



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The § 1402(a)(13) Limited Partner Exception

Why the Limited Partner Exception Matters

- A partner's distributive share of trade or business income is generally net earnings from self-employment ("NESE") (§ 1402(a))
  - 12.4% OASDI (up to the wage base – $184,500 for 2026) + 2.9% Medicare (uncapped) + 0.9% Additional Medicare Tax
- § 1402(a)(13) excludes "the distributive share of any item of income or loss of a **limited partner, as such**, other than guaranteed payments . . . for services actually rendered"
  - The Code does not define "limited partner"
- The stakes are larger than SECA alone
  - Income excluded from NESE but earned in an active trade or business generally also escapes the 3.8% NIIT (§ 1411)
  - The game: Potentially no Medicare/Social Security-type tax at all on very large distributive shares

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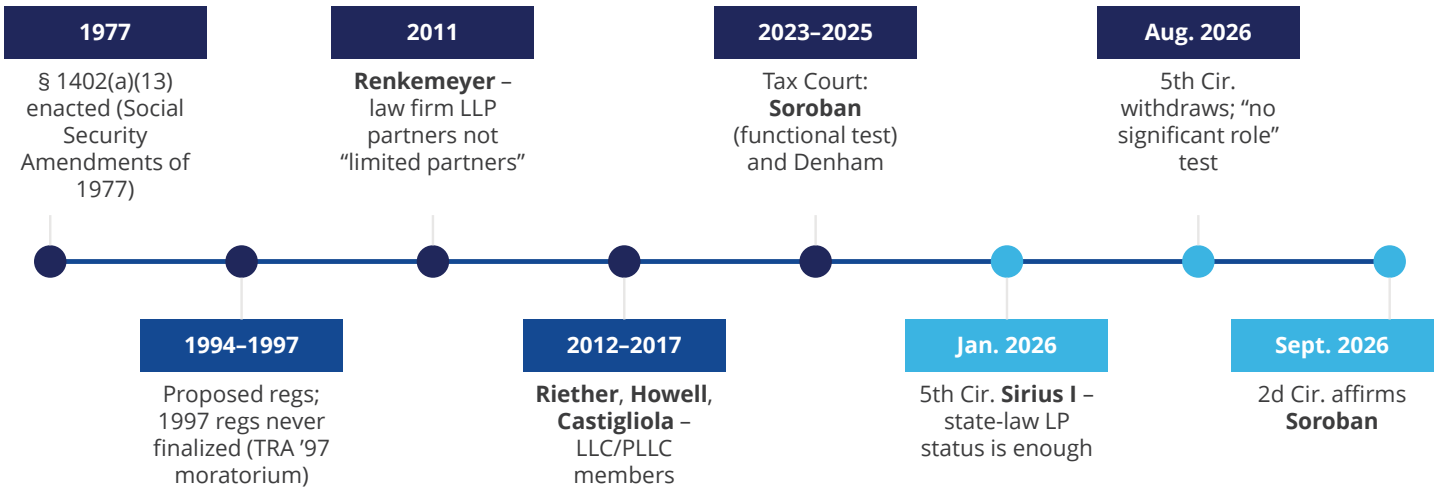
Five Decades of Uncertainty – A Timeline



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Early History – The Statute and the Rulings

- **1977:** § 1402(a)(13) enacted as part of the Social Security Amendments of 1977 (P.L. 95-216)
  - Goal was "to exclude for coverage purposes certain earnings which are basically of an investment nature. However, the exclusion from coverage would not extend to guaranteed payments (as described in 707(c) of the Internal Revenue Code), such as salary and professional fees, received for services actually performed by the limited partner for the partnership."
  - In 1977, RULPA provided that a limited partner loses his limited liability protection if, in addition to the exercise of his rights and powers as a limited partner, he takes part in controlling the business.
- **Rev. Rul. 69-184:** Bona fide partners are not employees – partner compensation is SE income, not W-2 wages
  - NOTE: Unlike S corporation shareholders, the concept of "reasonable compensation" generally does not apply to partners
  - See Rev. Rul. 59-221 – in part due to reasonable compensation requirements, S corporation shareholder's pass-through share of income is not NESE
- **1990s – Rise of LLCs and LLPs:** Entities with limited liability for all owners – so who is the "limited partner"?

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The 1994 and 1997 Proposed Regulations

- **1994 Proposed Regulations** – LLC members treated as a limited partner only if not a manager (the "management test") and the entity could have been formed as an LP
  - These Regs were withdrawn and re-proposed in 1997
- **1997 Prop. Reg. § 1.1402(a)-2(h):** an individual is a limited partner unless he or she:
  - Tests:
    - Has personal liability (§ 301.7701-3(b)(2)(ii)) for partnership debts by reason of being a partner;
    - Has authority under state law to contract on behalf of the partnership; or
    - Participates in the partnership's trade or business for **more than 500 hours** during the year
  - Service partners in professional service partnerships (health, law, engineering, architecture, accounting, actuarial science, consulting) cannot be limited partners
  - "Two-hat" rules for partners holding more than one class of interest
- **Taxpayer Relief Act of 1997, § 935:** Moratorium on temporary or final regulations until July 1, 1998
  - The 1997 proposed regs were never finalized or withdrawn

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The Moratorium – Forbes to the Rescue



- **Memo from Steve Forbes to Republicans on Tax Increases**
  - "While Republicans fight each other over tax cuts, the Treasury Department is about to slip through a nasty little tax increase on America's partnerships"
  - "Stealth income tax"
  - "The attached enclosure spells out the grizzly details of Clinton's latest effort to find new ways to pick the pockets of the American people. Will the House and Senate Republicans stand up and say no to this stealth tax increase?"
  - + Rush Limbaugh & Newt Gingrich





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Early Case Law & IRS Guidance – Renkemeyer and Its Progeny

- **Renkemeyer, Campbell & Weaver, LLP v. Comm'r**, 136 T.C. 137 (2011)
  - Kansas LLP law firm; partners' distributive shares arose from legal services they performed, not from capital investment
  - Legislative history: Exclusion intended for returns on investment by passive investors → partners were not limited partners "as such"
- **Riether v. United States**, 919 F. Supp. 2d 1140 (D.N.M. 2012)
  - Husband-and-wife LLC members subject to SE tax; LLC members are not automatically limited partners
- **Howell v. Comm'r**, T.C. Memo. 2012-303
  - LLC member who provided occasional management and marketing services was not a limited partner "as such"
- **Castigliola v. Comm'r**, T.C. Memo. 2017-62
  - Mississippi law firm PLLC; members shared management of a member-managed firm, so not limited partners
- **CCA 201436049**
  - Investment management LLC; members' fee income subject to SE tax

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Soroban & The Tax Court (2023 and 2025)

SOROBAN Capital Partners LP

- Soroban is a DE investment firm – originally formed as an LLC, but later converted under state law to an LP.
- GP was an LLC owned by the 3 LPs.

161 T.C. 310 (Nov. 2023)

- Cross MSJs
- Rejected argument that state-law limited partner status is dispositive
- "Limited partner, as such" requires a **functional analysis** of the partner's actual role
- Test examines how income is earned and whether partners' activities generate it
- Holding – analysis is a partnership level inquiry (TEFRA)

T.C. Memo. 2025-52 (May 2025)

- *Role in Generating Income*: LP skill & judgment (~$141.5 million received in 2016–2017)
- *Time Devoted*: Worked full-time (~2,300–2,500 hours/year)
- *Role in Mgmt*: Managed investments, sat on governing committees, oversaw hiring, firing and operations
- Material guaranteed payments, but residual shares excluded are subject to SECA

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Denham Capital – T.C. Memo. 2024-114

- Delaware LP providing investment advisory and management services to private equity funds
- Tax Court applied the **Soroban** functional analysis – key facts:
  - Income came solely from advisory and management services, not investment activity
  - Partners devoted nearly all working time; authority over investments, valuations, personnel and fund activity
  - Marketing materials touted partner involvement as a key value driver for investors
  - Guaranteed payments did not reflect the value of services – distributive shares looked like compensation
  - Only one partner contributed capital for his interest
- **Holding:** Not limited partners "as such" → distributive shares subject to SECA
- **On appeal (1st Cir.):** Argued February 2026; mired in administrative issue
  - Court ordered supplemental briefing on whether NESE is a TEFRA "partnership item" – may not reach § 1402(a)(13)

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Sirius Solutions (K Alain) – Fifth Circuit, Round 1

- **Jan. 16, 2026** – Sirius Solutions, L.L.L.P. v. Comm'r, No. 24-60240 (now K Alain, L.L.L.P.)
  - Appeal of Tax Court decision entered following **Soroban**, which was precedential
- 2–1 panel vacated the Tax Court's decision and remanded
  - "Limited partner" = a partner in a state-law limited partnership with limited liability
  - Rejected the Tax Court's functional analysis / "passive investor" standard
  - Partners' full-time, controlling roles were irrelevant
- Fun decision to read
  - Applauded by some, heavily criticized by others
  - Many revisited prior reporting, current reporting and structuring decisions; some sponsors filed refund claims
- **Short-lived…**

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K Alain – Round 2: The Fifth Circuit Changes Course

- **Aug. 12, 2026** – Government's en banc petition denied but treated as a petition for panel rehearing and granted; January opinion withdrawn; substitute per curiam opinion issued
- New standard: a limited partner "is a partner who plays *no significant role in managing or running a business*"
  - "Some participation is allowed, so long as the partners do not exercise control over the business"
  - Allegedly grounded in the 1977 understanding of "limited partner" (hard to square with prior decision)
- Still rejects the Tax Court's bar on "even the most minor involvement"
- Left open: No definition of "control"; no discussion of two hats or return on capital
- Judge Graves (dissent): Majority created "an indefensible, illogical, and illegal loophole" (agreed with Tax Court)
- Tax Court decision still vacated and remanded to apply the new test; K Alain petitioned for rehearing en banc (Sept. 28, 2026)

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Soroban – The Second Circuit Affirms

- **Sept. 17, 2026** – Soroban Cap. Partners LP v. Comm'r, Nos. 25-2079(L), 25-2250(CON) (2d Cir.)
  - Upheld Tax Court jurisdiction
- Holding: a "limited partner" is "one who has limited liability **and** who does not run, manage, or otherwise exert control or managerial authority over the partnership"
- Principals "exerted managerial control," including the power to "hire, fire, promote, terminate, and evaluate" employees
- "As such" limits the exclusion to income attributable to the partner's **investment**, not to management of the business
- On the Fifth Circuit: "to the extent [Sirius] holds that a limited partner may provide some services to the partnership, we do not disagree. Nor does the Commissioner."

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Comparing the Standards

Court / Decision	Standard for "Limited Partner"	Active Principals
Tax Court – Soroban (2023/2025), Denham (2024)	Functional analysis of the partner's role; passive-investor orientation	Subject to SECA
5th Cir. – Sirius I (Jan. 2026) [withdrawn]	State-law LP with limited liability is enough	Excluded (withdrawn)
5th Cir. – K Alain (Aug. 2026)	No significant role in managing or running the business; some participation allowed	Generally subject to SECA Pending review
2d Cir. – Soroban (Sept. 2026)	Limited liability + does not run, manage or control the partnership	Subject to SECA
1st Cir. – Denham	Pending – TEFRA jurisdiction question may be dispositive	?

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Where Do We Stand?

- **Circuit split – or not?**
  - Generally not, despite some commentary
  - There is "little daylight" between the standards, per 2nd Circuit judge
  - Practical consensus: state-law limited partner status alone is not enough
- **Golsen rule:** Tax Court follows K Alain in Fifth Circuit cases; Soroban / its own precedent elsewhere
- **Still moving:**
  - K Alain en banc petition (5th Cir.)
  - Denham (1st Cir.) – may turn on TEFRA jurisdiction
  - Point72 Asset Management (T.C. Dkt. 12752-23) – IRS urging the Second Circuit standard (Sept. 18, 2026)
- **Supreme Court? Congress? Treasury?** – § 1402(a)(13) guidance did not appear on the 25-26 or 26-67 Priority Guidance Plans, despite having been included on the 24-25 Priority Guidance Plan (bigger fish to fry – OB3, etc.)

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Open Questions After K Alain and Soroban

1. What is "significant" participation? Will the IRS import the 500-hour test (§ 469 regs; 1997 proposed regs)?
2. What is "control"? Only partners with state-law authority to bind the entity?
3. Two hats: can an individual manage through a separate management entity paid a reasonable fee, while holding a non-managing interest?
4. Do services rendered "wearing a different hat" count against the limited partner interest?
5. Can one person be designated as the controlling party while others who perform significant services (or hold veto rights) remain limited partners?
6. How do these standards apply to LLC members?
7. All-or-nothing, or a partial exclusion for a return on capital? (*e.g.*, PE investors in CPA firms who sit on the board of managers)

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Planning and Compliance Considerations

- **Inventory exposure** – Which partners claim the exclusion, and on what facts?
  - Hours, titles, committee roles (investment, valuation, hiring), authority to bind
  - LP exception likely going to be tough for active partners/members
- **Align documents with reality** – Partnership agreements, side letters, job descriptions, offering and marketing materials
- **Compensation structure** – Reasonable guaranteed payments for services; large residual shares relative to guaranteed payments invite recharacterization
- **Model exposure** (SECA and NIIT) and consider disclosure (Form 8275) for positions taken
  - Careful with planning decks!

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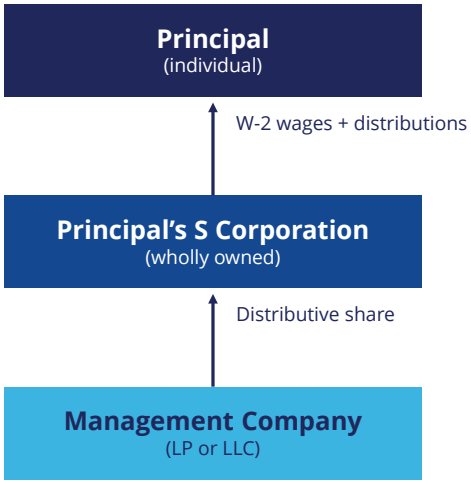
An Alternative? - The S Corporation Holding Structure



- Principal forms a wholly owned S corporation to hold the management company interest
- S corporation pays the principal reasonable compensation (FICA applies)
- Remaining S corporation income/distributions are not NESE as a matter of law (Rev. Rul. 59-221) – does not depend on the limited partner exception
- Considerations:
  - Defensible reasonable compensation
  - Typical S corporation limitations
  - Substance over form risks?

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Profits Interests and § 1202

Do Profits Interests Qualify for QSBS?

- Generally, § 1202(g) permits the exclusion for owners of pass-through entities that own QSBS
  - § 1202(g): A partner may exclude its share of partnership gain on QSBS if it held its partnership interest on the date the partnership acquired the stock (and holding period is met)
  - § 1202(g)(3): Exclusion limited to the amount determined by reference to the interest held on the acquisition date
- How does this apply in the context of partnership interests?
  - The statute does not define the partner's "interest" – capital? profits? both?
- No § 1202 regulations to date, BUT
  - Treasury has been indicating that these are in the works (*e.g.*, at the May 2026 ABA Tax Section meeting)
  - On the 2026–2027 Priority Guidance Plan ("Regulations under § 1202 regarding the exclusion of gain from the sale or exchange of qualified small business stock" as part of OB3 work)

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Two Views on Profits Interests and § 1202

Exclusion Available

- Rights are fixed when the partnership acquires QSBS – no later change in the "interest"
- Plain language: § 1202(g) refers only to the partner's "interest"; a profits interest is a partnership interest
- 1993 legislative history (Sen. Lieberman): interest = "greater of the partner's interest in the capital or the profits"

Capital Interest Controls

- Reg. § 1.1045-1(d): rollover limited by the partner's "smallest percentage interest in partnership capital"
- § 1045(b)(5) applies rules "similar to" § 1202(g)
- A profits interest holder's capital percentage at acquisition is, by definition, zero
- Query whether § 1045 regs should govern outside a § 1045 rollover

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Loper Bright and the § 1045 Regulations

- IRS position: § 1045(b)(5) points to § 1202(g), so the § 1045 capital-only rule should carry over – a profits interest has no capital at acquisition
- Before Loper Bright, Chevron might have upheld that reading – or the regs might have been held inapplicable to § 1202
- Now courts decide the "best reading"; Treasury's view only persuades
- Fallback reading of § 1202(g)(3) - measure the interest at acquisition (only the portion actually in the money / allocated)

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Practice Pointers – Profits Interests and § 1202

- **Baseline:** Common practice, but query whether that means low risk
- **Alternative structure:** Issue stock directly at the corporate level (preferred to investors; common to the key employee)
  - Both classes can be QSBS; § 1202(f) protects stock acquired on conversion
  - Trade-off: Lose profits interest non-taxability (but still better than restricted stock)
- **If the profits interest structure is used:**
  - Partnership reports § 1202 gain on Schedule K-1, and partner decides whether to claim it
  - Penalty exposure is the partner's issue – consider Form 8275 and/or Form 8275-R disclosure
- **Watch for § 1202 regulations** (2026–2027 PGP) – could resolve (or foreclose) the issue

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Fund-Level § 1202 Traps

- **Subsequent closings** – Partners admitted after the fund acquires QSBS get no § 1202 benefit on that stock (§ 1202(g)(2))

- **Warehousing** – Stock acquired by the sponsor and later transferred to the fund is not acquired at original issuance
  - Possible workaround for controlling stakes is that the fund capitalizes a new corporation that acquires the target

- **Miscellaneous Issues**
  - Significant Redemptions
  - In-Kind Distributions
  - Add-on Acquisitions
  - Estate Planning Transfers?
  - Capital Contributions on Existing Shares
  - Subsidiaries

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S Corporation Compliance Refresher

S Corporation Eligibility – The Basics

- **Small business corporation (§ 1361(b)):**
  - Domestic corporation that is not an ineligible corporation
  - No more than 100 shareholders (family members may be treated as one)
  - Only eligible shareholders (individuals, estates, certain trusts, certain exempt organizations) – no nonresident aliens
  - Only one class of stock

- **Most common failure points:**
  1. Late or missing elections;
  2. Missed trust elections;
  3. Missed spousal consents; and
  4. Governing-document single class of stock problems

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Relief Roadmap for S Election Failures – Common Fixes

Path	Covers	Key Requirements	Cost / Process
Rev. Proc. 2013-30	Late S, QSub, QSST and ESBT elections, and related entity classification elections	Generally within 3 years and 75 days of intended effective date; failure solely due to untimely filing; reasonable cause; consistent reporting	No user fee; file election marked "Filed Pursuant to Rev. Proc. 2013-30"
Rev. Proc. 2022-19	Six identified issues (e.g., non-identical governing provisions; principal-purpose determinations; disproportionate distributions; inadvertent Form 2553/8869 errors)	For non-identical provisions: no disproportionate distributions; timely Forms 1120-S; correct provisions; signed statements before IRS discovers issue	Self-certifying; nothing filed; no user fee; retain in records
Rev. Proc. 2004-35	Missing consent of a community property spouse on Form 2553	Spousal consent is the only defect; both spouses reported all S corporation items consistently on all affected returns	Dated statement signed by both spouses under penalties of perjury, filed with the corporation's service center
Private letter ruling – § 1362(f) / § 1362(b)(5)	Everything else (e.g., ineligible shareholder; combined defects such as non-identical provisions plus a missing spousal consent)	Inadvertence; prompt corrective steps; shareholders agree to adjustments	User fee; professional fees; months to obtain

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Rev. Proc. 2022-19 – Self-Help Relief

- Designed to reduce PLR requests for routine, low-risk S corporation failures

- **Disproportionate Distributions:** IRS will not treat them as violating the single class of stock rule if the governing provisions provide identical rights
- **Non-Identical Governing Provisions:** Relief if no disproportionate distributions were made, Forms 1120-S were timely filed, and the provisions are corrected
- **Requirements:** Every affected shareholder reported consistently with S status; signed shareholder statements and corporate governing provision statement obtained before the IRS discovers the issue
  - Nothing is filed with the IRS – retain documentation and produce it on exam
  - Gap: no simplified relief for "double fault" cases (non-identical provisions plus disproportionate distributions) – ABA has requested expansion

- Supplements (does not replace) Rev. Proc. 2013-30; PLR still required outside its scope

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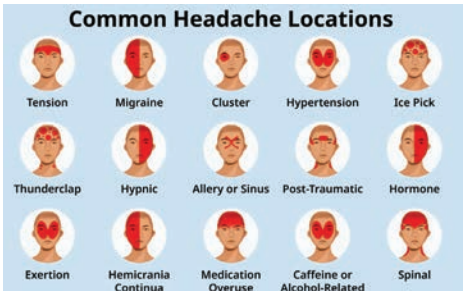
Aside – F Reorganizations



- Guidance: 2026–2027 PGP
  - Guidance on assignment of employer identification numbers under § 6109 in reorganizations under § 368(a)(1)(F) involving S corporations

- Administrative Note

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Recent Development – PLR 202633009

- **Released Aug. 14, 2026 (dated May 13, 2026)**
  - S corporation shares transferred to a trust eligible to be a QSST; beneficiary never made the QSST election
  - IRS says S election terminated on the transfer date – but termination was inadvertent under § 1362(f)
  - Conditions (within 120 days): beneficiary files QSST election effective as of transfer date; corporation and shareholders file any needed original or amended returns; attach copy of ruling
  - Relief premised on consistent reporting and agreement to any required adjustments

- **Takeaways:** monitor transfers to trusts (estate planning!); calendar the QSST election window; use automatic relief where available – PLR as last resort

- **On the horizon:** PGP item for a new revenue procedure under § 1362(f) on validity/continuation of S and QSub elections
  - "Revenue procedure under 1362(f) regarding the validity or continuation of an S corporation or qualified subchapter S subsidiary election" under the "Deregulation and Burden Reduction" section
  - Get excited!

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Single Class of Stock – The Rules

- All outstanding shares must confer identical rights to distribution and liquidation proceed**s** (Treas. Reg. § 1.1361-1(l))

- Differences in voting rights are disregarded (§ 1361(c)(4)) – useful for estate planning and key employees

- Straight debt safe harbor (§ 1361(c)(5)): written; sum certain; payable on demand or fixed date; interest not contingent on profits or discretion; not convertible; eligible creditor

- Governing provisions (articles, bylaws, state law, binding agreements on distributions/liquidation) control

- Commercial contractual agreements (leases, employment, loans) – problem only if a principal purpose is to circumvent the rule

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Single Class of Stock – Traps and Best Practices

Watch For	Best Practices
• LLC partnerships that check the box and elect S status – capital account liquidation, special allocations, targeted distributions • Terminating the LLC agreement may leave state default rules in place • State nonresident withholding • Warrants/options substantially certain to be exercised at a deep discount • § 83(b) elections?	• Replace the LLC agreement with an S-compliant agreement effective at the election • Add a single class of stock "savings clause" to shareholder agreements • Pro rata tax distribution provisions, including post-filing true-ups • Reconcile distributions annually; promptly correct timing differences • Review shareholders (particularly trusts)

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Disproportionate Distributions – Maggard and Beyond

- **Maggard v. Comm'r**, T.C. Memo. 2024-77, aff'd, No. 25-4131 (9th Cir.; Aug. 26, 2026)
  - Two co-shareholders made unauthorized (embezzled) disproportionate distributions to themselves for years
  - Founder argued the S election terminated due to a second class of stock (so no tax on income he never received)
  - Held: Single class of stock is determined by the governing provisions, not actual distributions
  - Result: Shareholder taxed on his share of income he never received
  - Affirmed – "Tax Court properly determined that Schricker Engineering Group, Inc. did not lose its S corporation status for tax years 2014 through 2016, and that as a shareholder, Maggard's proportional share of its income therefore was taxable to him"
- **Minton v. Comm'r**, T.C. Memo. 2007-372, aff'd, 562 F.3d 730 (5th Cir. 2009) – Informal, non-binding arrangement for unequal payments did not create a second class of stock
- **Best Practices?**

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Reasonable Compensation Refresher

- Shareholder-employees must receive reasonable compensation before taking distributions (Rev. Rul. 74-44)
- **IRS factors** (Fact Sheet 2008-25): training and experience; duties; time devoted; dividend history; payments to non-shareholder employees; bonus timing; comparable pay; compensation agreements; formulas
- **Growing importance:** S corporation is now a leading alternative to the LP exception – compensation must be defensible
- **§ 199A interplay:** Reasonable compensation is not QBI, but counts as W-2 wages for the wage limitation
- Common diligence finding

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Basis Shifting Rollback

The 2024–2025 Regulatory Push

- **General Summary**

- **June 17, 2024 Package:** Rev. Rul. 2024-14 (economic substance applies to related-party basis shifting); Notice 2024-54 (future regulations); Proposed transaction-of-interest (TOI) regulations

- **Jan. 2025:** Final TOI regulations (Treas. Reg. § 1.6011-18) (released Jan. 10; published Jan. 14, 2025)
  - Thresholds: $10 million of net basis increase ($25 million during the six-year lookback)
  - Retroactive six-year lookback; penalties up to $50,000 per transaction per participant
  - Expanded to "substantially similar" transactions with tax-indifferent parties
  - Broad reach

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The Rollback

Apr. 17, 2025	Mar. 6, 2026	2026–2027 PGP
Notice 2025-23	**Proposed Removal Regs**	**Final Removal**
Intent to withdraw final TOI regs; immediate penalty relief; Notice 2024-54 withdrawn – no proposed regs anticipated	Proposed regulations removing Treas. Reg. § 1.6011-18 published (will be retroactive to January 14, 2025)	"Final regulations removing § 1.6011-18 regarding identification of partnership related party basis adjustment transactions as transactions of interest. Proposed regulations were published on March 6, 2026" under "Deregulation and Burden Reduction"

What remains

Rev. Rul. 2024-14 was NOT withdrawn?

Document business purpose; model § 754 consequences in family and related-party partnerships

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OB3 Refresher for Pass-Throughs

OB3– Key Pass-Through Provisions

§ 199A	§ 707(a)(2)	§ 1202
SALT Cap	Cost Recovery	§§ 163(j) / 174A

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§ 199A – Now Permanent

- QBI deduction made permanent
- Phase-in and phase-out limits increased
  - 2026: limits begin at $201,750 / $403,500 (joint); fully phased in at $276,750 / $553,500 (Rev. Proc. 2025-32)
- New **$400 minimum deduction** for taxpayers with at least $1,000 of QBI from active trades or businesses in which they materially participate (indexed after 2026)
- Effective for tax years beginning after Dec. 31, 2025
- **Planning:**
  - Reasonable compensation vs. QBI; aggregation
  - Entity choice vs. 21% C corporation rate (and QSBS)
- **Guidance:** § 199A regulations are on the 2026–2027 Priority Guidance Plan
  - "Regulations under § 199A regarding deduction for qualified business income" under OB3 implementation

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Congressional Research Service Report (Sept. 24, 2026)

- **Title:** Estimated Effects on Effective Tax Rates and Revenues of Increasing the 199A Deduction for Pass-Through Businesses

- According to IRS data, the number of 199A deduction claims rose from 18.7 million in 2018, when it was first available, to 26.6 million in 2023 (the most recent year for which data are available). The total amount of claims rose from $150.0 billion to $214.6 billion over that period.

Table 1. Use of 199A Deduction in 2023 by AGI

Adjusted Gross Income (AGI)	Share of Section 199A Claims	Share of the Amount of Section 199A Claims	Average Amount per Section 199A Claim
Up to $200,000	74.7%	25.8%	$2,790
$200,000 to $1 million	23.0%	31.3%	$10,977
$1 million to $5 million	2.1%	21.0%	$82,544
$5 million and above	0.2%	22.0%	$724,162
Overall	100%	100%	$8,079

Source: Internal Revenue Service, *Individual Income Tax Returns: Complete Report*, Table 1.4, 2023.

Table 1 shows a distributional summary, by adjusted gross income (AGI), of 199A claimants in 2023. The figures indicate that pass-through business owners with less than $1 million in AGI accounted for 97.7% of claimants. The shares of the total $214.6 billion in deductions claimed were more evenly distributed across incomes. Table 1 indicates that the average claim amount increased with income, with those earning less than $200,000 deducting $2,790 on average, and those with an AGI of $5 million and above deducting $724,162 on average.

Table 2. Marginal Effective Tax Rates on Investment

Business Form	Current Law	25% 199A	No 199A
Pass-through	17.0%	16.1%	20.9%
C corporation	9.5%	9.5%	9.5%
Difference (percentage points)	7.5	6.6	11.4

Source: CRS estimates; see CRS Report R48277, *CRS Model Estimates of Marginal Effective Tax Rates on Investment Under Current Law*, by Mark P. Keightley and Jane G. Gravelle, for more information.

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§ 707(a)(2) – Now Self-Executing

- **Prior law:** "Under regulations prescribed by the Secretary—" → **OB3:** "Except as provided by the Secretary—"
  - Not exactly news
- Recharacterization of disguised payments for services (§ 707(a)(2)(A)) and disguised sales (§ 707(a)(2)(B)) applies even without final regulations
- Effective for services performed and property transferred after July 4, 2025 – no inference for prior periods
- **Planning Points**

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QSBS (§ 1202) Enhancements and Entity Choice

- For stock issued after July 4, 2025:
  - Tiered Exclusion: 50% (3 years), 75% (4 years), 100% (5 years)
  - Increased Cap: Greater of **$15 million** (indexed after 2026) or 10× aggregate adjusted basis
  - Gross Asset Test: **$75 million** (indexed after 2026)
- Only domestic C corporation stock qualifies – not S corporation stock or partnership interests (pass-throughs can hold QSBS under § 1202(g))
- Entity choice is still an important consideration; conversion of LLCs/S corporations to C corporations
  - Pre-conversion appreciation not eligible; prior S status and existing stock require careful planning
- **Guidance:** 2026–2027 PGP
  - "Regulations under § 1202 regarding the exclusion of gain from the sale or exchange of qualified small business stock" under OB3 Implementation

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SALT Cap Increase and Pass-Through Entity Taxes

- SALT cap temporarily (?) raised to **$40,000** for 2025 ($20,000 MFS); increases 1% per year through 2029 ($40,400 for 2026); reverts to $10,000 in 2030
  - Phase-down: cap reduced by 30% of MAGI over $500,000 ($505,000 for 2026) – but not below $10,000 ($5,000 MFS)

- **PTET Workaround Preserved** – Final law does not restrict entity-level SALT deductions (House version would have barred them for SSTBs; Senate draft's 50% limit also dropped)
  - Notice 2020-75 remains the governing IRS guidance
  - PTET value remains

- **Wisconsin:** Entity-level tax election remains available for partnerships and tax-option (S) corporations

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Other OB3 Items Affecting Pass-Throughs

- **100% bonus depreciation** made permanent for property acquired after Jan. 19, 2025; § 179 limit $2.5 million (phase-out at $4 million), indexed

- **§ 163(j):** EBITDA-based adjusted taxable income restored for tax years beginning after 2024 – partner-level excess business interest tracking continues

- **§ 174A:** Immediate expensing of domestic R&E for tax years beginning after 2024; retroactive relief for small businesses (≤ $31 million average gross receipts)

- **§ 461(l)** excess business loss limitation made permanent

- **§ 1062:** Election to pay tax on gain from sales of qualified farmland to qualified farmers in four annual installments

- **Carried interest (§ 1061)** – Unchanged

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IRS Pass-Through Enforcement and Guidance Outlook

Figure 5: Top 6 IRS Business Units Affected by the Separations With the Count and Percentage Impact



Figure 6: Top 6 IRS Job Series Affected by the Separations With the Count and Percentage Impact



Figure 4: Separation Totals



Figure 7: Employee Separations by State

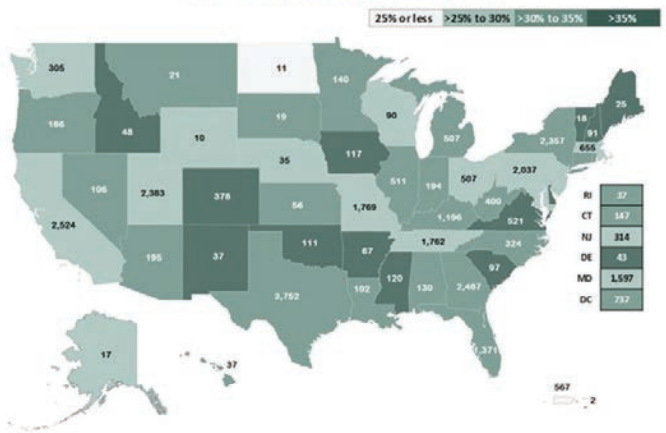

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Figure 9: Number of Separated Employees and the Percentage of Reduction by Age Group

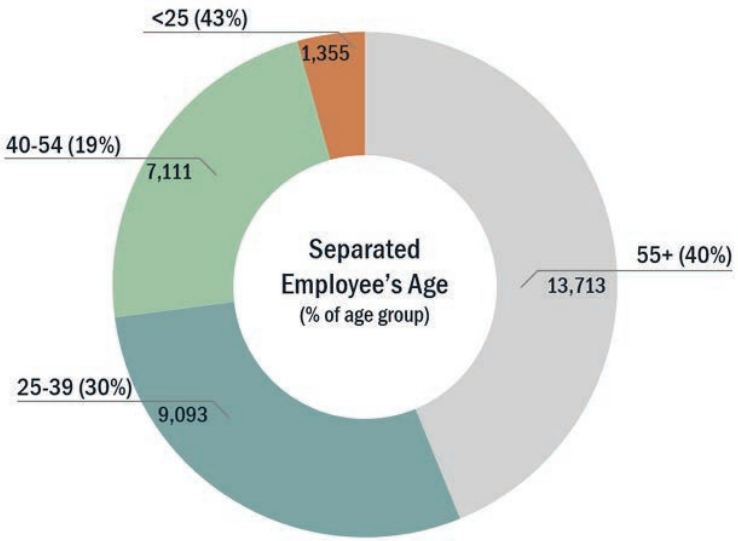
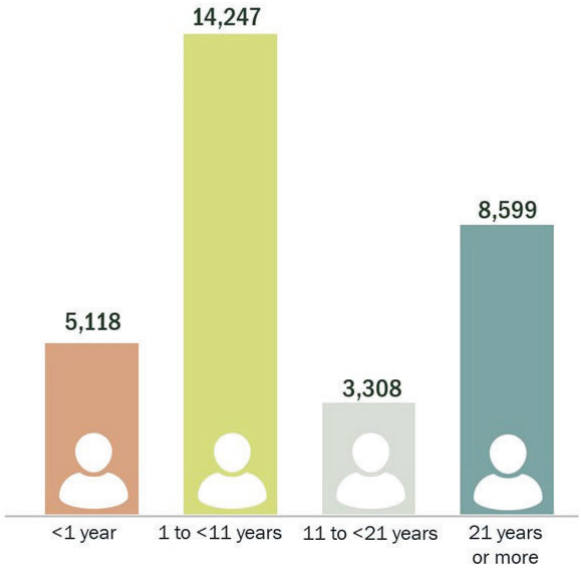


Figure 8: Separated Employees' Years of IRS Service



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TIGTA: No Successful Large Partnership Exam Strategy Yet

334,686	< 0.1%	47%	> 20%
Large partnership returns (TY 2023), up from 140,577 in TY 2011	Exam rate for large partnerships (TY 2023), down from 2.7% in TY 2011	No-change rate on partnership exams (TY 2021), up from 44% (TY 2014)	of Pass-Through Entities program staff lost in 2025 (from 1,079 employees)

- IRA funding cut from $79.4 billion to ~$26 billion (including $41.8 billion from enforcement), $11.7 billion of which occurred in the 2026 CAA; IRS must "reassess" large partnership exam coverage goals
- Yet complex partnership exams yield average adjustments 8× those of large corporate exams – and ~$20 per $1 spent

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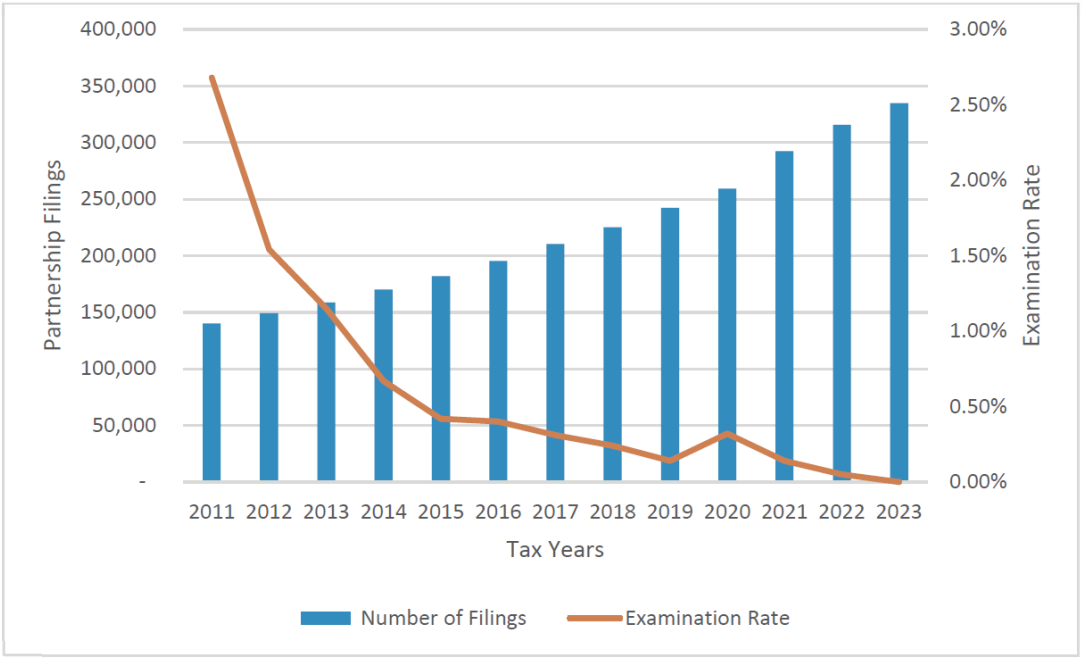
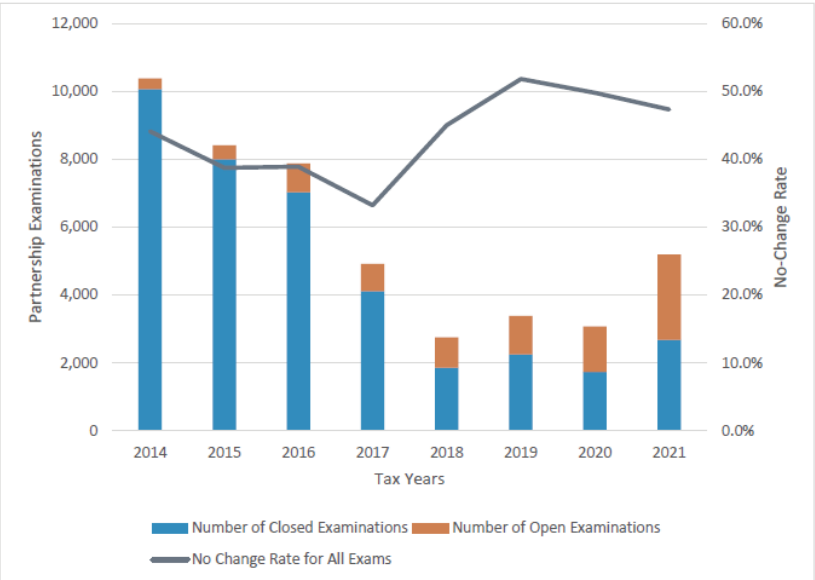
Figure 1: Large Partnership Returns Filed Increased While Examination Rates Declined From TY 2011 to TY 2023



Source: IRS provided data for partnerships with assets of $10 million or more.

Figure 2: Partnership Examinations Have Decreased While No-Change Rates Increased From TY 2014 to TY 2021



Source: Analysis of IRS Data Books for Fiscal Year 2024 Table 17. The no-change rate is subject to fluctuation as open cases are closed.

"High no-change rates may be a measure of inefficiency, because the IRS expends time and resources on the examination but makes no adjustments to the taxes owed. They also unnecessarily burden compliant taxpayers."

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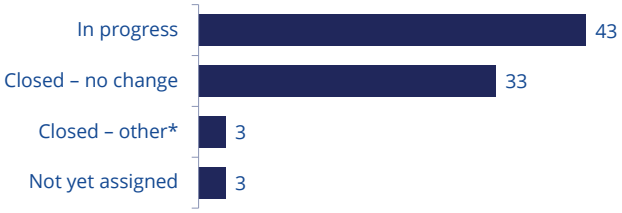
TIGTA Findings – Soft Letters and the LPC Program

Soft letters to 483 partnerships (Oct. 2023)



82 LPC exams (status at Dec. 31, 2025)



* TIGTA redacted the split between closed with an adjustment and closed without examination

Soft letter campaign

- 57% of responses rejected
- IRS decided (Apr. 2024) not to examine any of the returns – resources and statute of limitations

Large Partnership Compliance Program

- AI model screened 282,884 TY 2021 returns; 82 selected for exam
- 92% of closed exams were no-change
- 2,204 returns filed after Feb. 2023 never screened (model run once)

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Lessons from the TIGTA Report Data

- Large partnership audit coverage is likely to remain low in the near term – but selection is becoming data- and AI-driven
- Schedule L matters: balance sheet discrepancies without a reconciliation statement can render a return "incomplete"
- Do not ignore soft letters – non-responses and rejected responses are candidates for exam
- Statute of limitations remains the IRS's binding constraint (IRS generally won't start an exam with < 12 months remaining)
- **BBA Regime:** Imputed underpayments, push-out elections and partnership representative designations are still where exams are won and lost

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2026–2027 Priority Guidance Plan – Overview

- Released **Sept. 29, 2026**; 121 projects
- Plan year now tracks the federal fiscal year (Oct. 1, 2026 – Sept. 30, 2027)
- **Focus areas:**
  - Continued OB3 implementation
  - Deregulation and burden reduction
  - Exempt organizations
  - Digital assets
- Some 2025–2026 projects dropped as completed or reflecting changed priorities

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PGP Items Affecting Partnerships and S Corporations

OBBBA Implementation	Item
§ 163(j)	15
§ 168(k)	17
§§ 174 / 174A	19
§ 199A	20
§ 1062	31
§ 1202	32
Other: tax-aware investment fund strategies	Other 1
Other: § 761 electricity-producing orgs (Final Regulations)	Other 12

Deregulation and Burden Reduction	Item
§ 267 related-party transactions and partnerships (Final Regulations)	14
PFICs held by domestic partnerships and S corps (Final Regulations)	33
Subchapter S conforming regs / § 1361 calculations	34
Rev. Proc. under § 1362(f) – S/QSub election validity	35
Removal of § 1.6011-18 basis-shifting TOI regs (Final Regulations)	45
Electronic furnishing of partnership schedules (K-1s)	46
EINs in F reorganizations involving S corporations	49
BBA centralized partnership audit regime regs	51

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Other Noteworthy Developments

Continental Grand – Contributed Notes Don't Create Basis

- **Continental Grand LP v. Comm'r**, 166 T.C. No. 3 (March 2026)
  - Partial summary judgment granted to the IRS
  - Facts: German parent's note was contributed to the partnership by its subsidiary (2001); the sub then elected, retroactively, to be disregarded as of three days before the note was issued
  - Holdings: zero basis in the note (no "cost," § 1012), in the partnership interest (§ 722), and for the partnership (§ 723)
- Consistent with **VisionMonitor**, T.C. Memo. 2014-182
  - Zero basis can arise without a direct note transfer
- **Practice point:** Basis planning for loss allocations and § 465/§ 704(d) limits – use real capital or properly structured debt

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Mammoth Cave Property – BBA Notice Procedures

- **Mammoth Cave Property, LLC v. Comm'r**, 166 T.C. No. 4 (Mar. 9, 2026) (reviewed opinion)
  - Partnership filed 2018 return in Sept. 2019 claiming a charitable deduction related to syndicated conservation easement (bad start)
    - Changed partnership representative during the course of the subsequent audit
  - IRS mailed the Notice of Proposed Partnership Adjustment (NOPPA) to the partnership, its attorneys and the former partnership representative – not the new one
    - A copy reached the individual who was the current partnership representative's designated individual
  - Held: NOPPA validly issued (minimal notice; no prejudice)

- **Takeaways:**
  - Keep partnership representative and designated individual designations and addresses current
  - Actual receipt can cure mailing defects – statute-of-limitations arguments based on notice defects are hard to win

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Key Takeaways

- **SECA**
  - State-law limited partner status is no longer a safe harbor anywhere – function and control matter; review structures, documents and refund claims
- **§ 1202 and profits interests**
  - Watch for § 1202 regulations
- **S corporations**
  - Use Rev. Procs. 2013-30 and 2022-19; Audit governing documents for single class of stock problems
- **Basis shifting**
  - Reporting rules are going away, but economic substance risk remains
- **OB3:**
  - Permanent § 199A, self-executing § 707(a)(2), richer QSBS and a higher SALT cap reshape entity choice
- **IRS**
  - Limited exam capacity for large partnerships today, smarter selection tomorrow

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Monday, Nov. 16, 2026
3:10 – 4 p.m.

Capital Cost Recovery: Depreciation Strategies, Tax Savings & Planning Opportunities

Kyle Chuck, CPA, *Principal, CLA*
Allen LaCrosse, CPA, *Principal, CLA*

We'll get you there

CPAs | CONSULTANTS | WEALTH ADVISORS

Capital Cost Recovery: Depreciation Strategies, Tax Savings, and Planning Opportunities

Maximizing deductions and cash flow from your capital investments

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Why capital cost recovery matters

- **Big dollars:** Fixed assets are often a company's largest investment, and when the tax deduction is taken drives cash flow.
- **A timing choice:** Tax law lets you expense cost now or recover it through depreciation over years.
- **New rules:** 2025 legislation made 100% bonus depreciation permanent and doubled Section 179 limits.
- **The goal:** Match deductions to income, tax rates and cash needs — not just the biggest write-off this year.

Step 1: Capitalize or deduct?

Capitalize (recover over time)

- Acquisition and construction of tangible property
- Betterments, restorations and adaptations to a new use
- Costs to place an asset in service: freight, installation, sales tax

Deduct currently

- Routine maintenance and repairs
- De minimis safe harbor: items up to $2,500 per invoice ($5,000 with audited financials)
- Small-building safe harbor: repairs up to the lesser of $10,000 or 2% of basis (building basis ≤ $1M)

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MACRS: how long assets take to recover

- **5-year:** computers, cars and light trucks
- **7-year:** office furniture, most machinery and equipment
- **15-year:** land improvements (parking lots, landscaping) and qualified improvement property
- **27.5 / 39-year:** residential rental / nonresidential buildings; land is never depreciable
- **Q4 trap:** if more than 40% of the year's purchases are placed in service in Q4, the mid-quarter convention shrinks first-year depreciation

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Section 179 vs. bonus depreciation

Bonus depreciation

- 100% for property acquired after Jan. 19, 2025, now permanent
- No dollar cap or income limit; can create or increase a net operating loss
- Automatic unless you elect out by asset class; new and qualifying used property

Section 179 expensing

2026 limit of $2,560,000, phased out dollar-for-dollar above $4,090,000 of purchases

Limited to business taxable income; cannot create a loss

Elected asset by asset, including certain building improvements such as roofs and HVAC

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Bonus depreciation is back at 100%

- **Broad reach:** property with a recovery period of 20 years or less — most equipment, land improvements and QIP
- **Acquisition date matters:** generally the date of the binding written contract
- **Opt-out option:** elect out by asset class when deductions would be wasted or taxed at low rates
- **New for factories:** 100% expensing for qualified production property (construction begins after Jan. 19, 2025 and before 2029)
- **State conformity:** many states decouple from federal bonus rules

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What is qualified production property?

The property

- Nonresidential real property, such as a factory or plant building, located in the U.S.
- Original use begins with the taxpayer; used property qualifies only in limited cases
- Offices, parking, lodging, sales, research and engineering space is excluded

The activity

- Manufacturing, chemical production, agricultural production or refining
- The activity must substantially transform property into a qualified product
- The building must be an integral part of that activity





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QPP timeline and deadlines

- **Construction start:** after Jan. 19, 2025 and before Jan. 1, 2029
- **Placed in service:** after July 4, 2025 and before Jan. 1, 2031
- **Location:** U.S. or its territories; regular MACRS (not ADS)
- **The deduction:** 100% of unadjusted depreciable basis in the year placed in service
- **Long lead times:** map construction start and in-service dates now



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QPP election, recapture and planning

- **Election required:** you must designate the property as QPP; once made, the election is irrevocable
- **Recapture risk:** if the property stops being used for production within 10 years, the deduction can be recaptured
- **Documentation:** support the construction start date and allocate basis between qualifying and non-qualifying space
- **Stay current:** Notice 2026-16 is interim guidance; proposed regulations are still to come

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QPP and related-party leases

The general rule

- Property used by a lessee generally does not qualify as QPP for the lessor
- Passive real estate owners leasing to an unrelated operator are typically left out
- Common setup at risk: a holding company/separate LLC owns the plant; an operating company runs it

Related-party exceptions

- Consolidated group: intercompany leases look-through to the lessee's production activity
- Commonly controlled owners: look-through if they own 50%+ of the operating entity, with attribution
- Confirm ownership and entity structure before the election is made

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REAL ESTATE

Cost segregation speeds deductions

What it is: an engineering study that reclassifies parts of a building from 39-year to 5-, 7- and 15-year property

Typical candidates: specialty lighting, millwork, site work, parking lots, landscaping

Bonus effect: with 100% bonus, reclassified components can be deducted in year one

Look-back studies: owned a building for years? Claim missed depreciation with Form 3115, no amended returns

Weigh: study cost, planned sale date and depreciation recapture

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Like-kind exchanges under §1031

What qualifies

- Only real property held for business or investment use
- Personal property (equipment, vehicles, art) no longer qualifies after 2017
- Property swapped must be like-kind: any real property for other real property in the U.S.

Rules and planning points

- Identify replacement property within 45 days; close within 180 days
- Use a qualified intermediary; never touch the sale proceeds
- Cash or debt relief (boot) is taxable; basis and recapture carry over

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R&E costs: Section 174 vs. 174A

2022–2024 (TCJA rules)

- All research costs, including software development, had to be capitalized
- Domestic costs amortized over 5 years; foreign over 15 years
- Amortization continued even if the project was abandoned

2025 and later (new §174A)

- Domestic research costs are deductible in the year incurred, permanently
- Or elect to amortize over at least 60 months
- Foreign research stays under §174: 15-year amortization

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Transition relief for 2022–2024 costs

- **All taxpayers:** deduct remaining unamortized domestic costs from 2022–2024 in 2025, or spread them over 2025 and 2026
- **Small businesses:** those meeting the §448(c) gross receipts test may apply §174A retroactively to 2022 and amend returns
- **Method changes:** generally made through automatic Form 3115 procedures in Rev. Proc. 2025-28
- **Elections are time-limited:** confirm deadlines and model the cash refund before choosing

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Planning around R&E expensing

- **Separate domestic from foreign:** only U.S.-based research qualifies for immediate expensing
- **Revisit the R&D credit:** check §41 and §280C interaction before finalizing the deduction
- **Model the side effects:** corporate AMT, state conformity and §163(j) can offset the benefit
- **Document the costs:** support wages, supplies, contractors and software development
- **Pair with capital planning:** research deductions free up cash for equipment and building projects

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Vehicle limits to know

Autos up to 6,000 lbs

- Subject to “luxury auto” first-year caps
- 2026 cap: $20,300 with bonus, $12,300 without
- Business use must exceed 50%; keep mileage logs

Vehicles over 6,000 lbs

- Generally avoid the luxury auto caps
- Heavy SUVs: Section 179 capped at $32,000; bonus still available
- Qualified nonpersonal-use vehicles, such as cargo vans and work trucks, are generally not capped

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Plan around the trade-offs

Recapture on sale

- Equipment gain is ordinary income up to the depreciation taken (§1245)
- Building gain is taxed up to 25% for depreciation taken (§1250)
- Faster deductions now mean more taxable gain later; model your exit

Other limits

- Many states decouple from federal bonus and §179 rules
- Interest (§163(j)), QBI and loss limitations can defer or reduce the benefit
- Book-tax differences create deferred tax balances

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Depreciation recapture rules

§1245: personal property

- Gain on sale is ordinary income up to all depreciation taken, including §179 and bonus
- Gain above original cost is generally §1231 gain
- Loss on sale is generally an ordinary §1231 loss

§1250: real property

- Straight-line depreciation: gain is "unrecaptured §1250 gain," taxed up to 25% for individuals
- Accelerated depreciation above straight-line is recaptured as ordinary income
- C corporations add 20% of the §291 amount as ordinary income

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ACT BEFORE DEC. 31

Year-end planning checklist

IN SERVICE BY DEC. 31: ORDERED OR DELIVERED IS NOT ENOUGH; THE ASSET MUST BE READY AND AVAILABLE FOR USE

PROJECT 2026 TAXABLE INCOME BEFORE ELECTING SECTION 179 OR OPTING OUT OF BONUS

SPREAD Q4 PURCHASES TO AVOID TRIGGERING THE MID-QUARTER CONVENTION

CLEAN UP THE ASSET LEDGER: WRITE OFF ABANDONED OR DISPOSED ASSETS AND BUILDING COMPONENTS

CONFIRM YOUR CAPITALIZATION POLICY TO USE THE DE MINIMIS SAFE HARBOR

ORDER COST SEGREGATION STUDIES FOR 2026 ACQUISITIONS, CONSTRUCTION AND RENOVATIONS

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QUESTIONS?

THANK YOU!

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Monday, Nov. 16, 2026
3:10 – 4 p.m.

The Tax Questions Inside Your Clients' 401(k) Plans

Scott Pooch, CEPA, *Consultant & Editor, 401Grow, LLC*

The Tax Questions Inside Your Clients' 401(k) Plans

Design, who pays the costs, and the credits: three questions worth asking more than once.

Scott Pooch, CEPA · Consultant and Educator, 401Grow, LLC

20+ years working with business owners

WICPA Tax Conference · November 16, 2026

THREE QUESTIONS INSIDE AN EXISTING PLAN

Set up once. Deduction taken. Never revisited.

Many business owners set up a 401(k), took the deduction, and haven't revisited it since. A design chosen when the plan started may still be in place after the owner and the workforce have changed.

1 **Does the design still fit?**

The owner's age, compensation, and workforce may have changed. Has the design?

2 **Who pays the plan's costs?**

The business, with eligible costs generally deductible, or the participants, from their balances.

3 **Were the credits claimed?**

SECURE 2.0 small-employer credits, with rules a CPA will want to check.

LEARNING OBJECTIVES

By the end of this session you will be able to:

1. Identify client profiles where a 401(k) design deserves another look, based on the owner's age, compensation, and workforce.
2. Explain the tax effect of paying plan costs from the business instead of from participant accounts.
3. Explain the SECURE 2.0 small-employer credit rules covered here, including the prior-plan bar and the five-year clock.
4. Recognize when a client's plan question is really a payroll, operations, or succession question, and the questions that open that conversation.

BEFORE WE GO FURTHER

I'm not going to give you a number for a specific client from this stage, and you should be suspicious of anyone who does.

Contribution figures turn on the dates of birth, dates of hire, and compensation of everyone in the plan: owners, highly compensated employees, and rank-and-file alike. That calculation belongs with a TPA. On purpose.

Narrowing the field is a conversation, not a calculation: which structures are in play, which are out, and why. That conversation comes first, and it is the one I'm in.

QUESTION 1: DOES THE DESIGN STILL FIT? THE SIMPLE STRUCTURES

SEP-IRA

Fits: an owner with few or no employees who wants simplicity.

Gives up: employee deferrals. Generally one percentage of pay for everyone, which adds up as staff grows.

$72,000

SEP maximum contribution, 2026

SIMPLE IRA

Fits: a small firm where simplicity outranks contribution room.

Gives up: room. Required employer contribution, immediately vested.

$17,000

standard-tier deferral (+ $4,000 at 50)

401(k), no match

Fits: an owner who wants employee deferrals without an employer match.

Brings: nondiscrimination testing, which can cap what the owner defers.

$24,500

402(g) deferral (+ $8,000 at 50)

A design that fit a 38-year-old owner with three employees deserves another look when that owner is 56 with twenty.

2026 figures: IRS Notice 2025-67. Ages 60 to 63 catch-up: $11,250 in a 401(k) instead of $8,000 (total deferral ceiling $35,750); $5,250 in a SIMPLE. SIMPLE tiers cannot be combined.

QUESTION 1: WHERE PLAN DESIGN BECOMES A DEDUCTION DECISION

Safe harbor 401(k)

Fits: avoids ADP testing, so staff savings rates do not cap the owner's deferral.

Costs: a 3% nonelective contribution or a basic matching contribution for eligible non-highly compensated employees.

$72,000

415(c) annual additions per participant, 2026

Cross-tested (new comparability) profit sharing

Fits: an owner meaningfully older and better paid than the staff.

Depends on: the census. Testing on projected benefits can favor the owner group.

by group

allocation tested on projected benefits

Cash balance plan paired with a 401(k)

Fits: durable high profit (3+ years) and an owner nearing retirement.

Is: a funding commitment, not a discretionary contribution.

$290,000

415(b) maximum annual benefit, 2026

Same business, same year, different design: it can be the difference between a modest deferral and a substantially larger deductible contribution.

2026 figures: IRS Notice 2025-67. Pairing a cash balance plan with a 401(k) can limit how much profit sharing stays deductible (IRC 404(a)(7)), depending on PBGC coverage and contribution levels; the TPA and actuary calculate it.

QUESTION 1: HOW MUCH ROOM DESIGN CREATES, 2026

$24,500	$35,750	$72,000	$290,000
401(k) deferral	**at ages 60 to 63**	**annual additions**	**benefit per year**
402(g), any design	with the $11,250 catch-up	415(c), before catch-ups	415(b), defined benefit

Plan design decides how much of that room reaches the owner.

A plain 401(k) gets the owner to the deferral line if testing allows. Safe harbor removes ADP testing as the barrier to that line. Profit sharing carries toward the annual additions limit. The last column is a defined benefit limit, so reaching it takes a defined benefit design and the right client profile.

Statutory ceilings, not a client's number. What a client can put in depends on the census.

IRS Notice 2025-67, 2026 plan year. Catch-ups replace rather than stack. The defined benefit figure is a maximum annual benefit, not a contribution. Compensation cap, 401(a)(17): $360,000. Catch-ups generally must be Roth for participants whose 2025 FICA wages from the plan sponsor exceeded $150,000.

TRY IT: WHICH PLAN FITS, RIGHT NOW

Seven questions. No client data needed.

Headcount band, owner's age, owner's age against the staff, profit available, what the owner actually wants, the existing plan, and whether the state runs an auto-IRA program. Then tap Narrow the field.

Three lists come back: in play (worth pricing), conditional (the census decides), and ruled out, with the reason. Being able to say why an option is out is half the conversation.

It does not run testing and it does not size a contribution. It asks the questions and narrows the field before anyone prices anything.

Next: two illustrative Wisconsin clients, both with a 401(k) today. No signal in the room? Each result slide shows what the tool returns.

OPEN THIS NOW, THEN TAP WHICH PLAN FITS

401grow.com/talk/cpa

Which Plan Fits?

The one we run together, next.

What Are the Credits Worth?

The Form 8881 credits, year by year.

Who Pays the Plan's Fees?

Where an asset-based fee falls, and what changes if the company pays it.

Scan, or type it in

Free, no login,
nothing to sign up for.

Keep the page open. At the end you can choose to have the tools emailed to you.

CLIENT A: ENTER THESE SEVEN ANSWERS

Twelve employees. Owner in their forties, staff about the same age. Steady, moderate profit. A plain 401(k) set up years ago. Wants to keep good people.

Employees besides the owner(s)	**5 to 24**
Owner's age	**40 to 49**
Owner's age vs. the staff	**Roughly the same**
Profit available to fund a plan	**Moderate and fairly steady**
What the owner actually wants	**Help retain and reward staff**
Existing plan?	**Has a 401(k)**
Does the state run an auto-IRA program?	**No program in this state**

Then tap Narrow the field.

Questions and choices as they read on 401grow.com/plan-fit. Illustrative client, not a real one.

CLIENT A: THE FIELD NARROWS TO SAFE HARBOR DESIGNS

IN PLAY

- Safe harbor, 3% non-elective
- Safe harbor, basic match
- QACA safe harbor (auto-enrollment)
- Safe harbor + profit sharing

CONDITIONAL

- SIMPLE IRA (a replacement, not an addition)
- Cross-tested profit sharing

RULED OUT

- State auto-IRA (none in Wisconsin)
- Solo 401(k)
- SEP-IRA
- Cash balance + 401(k)
- 412(e)(3) fully insured DB

With the owner and staff about the same age, a cross-tested design loses most of its edge. A safe harbor removes ADP testing as the barrier to the owner's full deferral. If the plan adds an eligible automatic-enrollment arrangement, a separate $500-a-year credit can come with it. Cash balance is ruled out for this profile: with moderate profit, its funding commitment could become a liability in a bad year.

Output of 401grow.com/plan-fit for these seven answers, captured Oct 1, 2026. Concept and conversation only; a TPA prices the census. The 45T auto-enrollment credit is covered under Question 3.

CLIENT B: CHANGE FOUR ANSWERS AND RUN IT AGAIN

Twelve employees. Owner past sixty, well older than the staff. Strong profit for three-plus years. Same plain 401(k). Wants to save as much as the rules allow.

Employees besides the owner(s)	**5 to 24**
Owner's age	**60 or older**
Owner's age vs. the staff	**Owner is meaningfully older**
Profit available to fund a plan	**Strong and durable (3+ yrs)**
What the owner actually wants	**Maximize the owner's own savings**
Existing plan?	**Has a 401(k)**
Does the state run an auto-IRA program?	**No program in this state**

Owner's age, age against the staff, profit, and the goal change. Tap Narrow the field.

Questions and choices as they read on 401grow.com/plan-fit. Illustrative client, not a real one.

CLIENT B: SAME CURRENT PLAN, MORE DESIGNS COME INTO PLAY

IN PLAY

- Safe harbor, 3% non-elective
- Safe harbor, basic match
- Safe harbor + profit sharing
- Cross-tested profit sharing
- Cash balance + 401(k)

CONDITIONAL

- SIMPLE IRA (a replacement, not an addition)
- QACA safe harbor
- 412(e)(3) fully insured DB

RULED OUT

- State auto-IRA (none in Wisconsin)
- Solo 401(k)
- SEP-IRA

Same tool, same seven questions, a different client. A design that can use the age difference moves onto the list, along with a defined benefit layer. The questions before anything is priced: does the age spread hold once the real census is in, and what funding obligation is the owner comfortable committing to in a bad year?

Output of 401grow.com/plan-fit for these seven answers, captured Oct 1, 2026. No contribution figure, no testing. Have a TPA price two designs side by side.

WHAT THE DESIGNS ACTUALLY DO: ONE CENSUS, SIX ANSWERS

Same nine people, same profit. Six designs put $56,000 to $298,000 into the owners' accounts.

Illustrative census: two owners, both 62, W-2 of $248,000 and $180,000 · seven staff, ages 35 to 70, wages $21,000 to $47,000 · about $428,000 of year-end profit

DESIGN	TO OWNERS	OWNERS' % OF TOTAL	TO STAFF	EST. TAX SAVINGS
401(k), no match	**$56,000**	100%	$0	**$23,000**
Safe harbor, 3% non-elective	**$73,000**	91%	$7,000	**$31,000**
Safe harbor, basic match	**$77,000**	89%	$10,000	**$33,000**
Safe harbor with profit sharing	**$140,000**	75%	$46,000	**$68,000**
New comparability (cross-tested)	**$140,000**	92%	$12,000	**$59,000**
Cash balance with 401(k)	**$298,000**	93%	$24,000	**$125,000**

The design decides how the dollars are allocated. The census decides which designs are available.

Illustrative sample from plan-design software, run on an earlier plan year's limits, rounded to the nearest $1,000. Tax savings at the sample's assumed combined rates (owners 40%, staff 25%), before credits. Not a client projection; a TPA prices the real census.

QUESTION 2: WHO PAYS THE PLAN'S COSTS?

One decision, four considerations: paying eligible plan costs from the business instead of from participant accounts.

1 Business-expense treatment

Eligible administrative expenses the company pays are generally deductible business expenses. Fees charged to participant accounts simply reduce those accounts.

2 Use of plan assets

Fees paid from participant accounts carry fiduciary duties, including prudence and reasonableness. Paying eligible fees from company assets avoids using plan assets for those charges.

3 Employee communication

"The company pays the plan's costs" is a simple benefit message.

4 The largest account pays the most

With a pro-rata asset-based fee, the largest account bears the largest dollar share, straight out of the retirement account. When the owner holds the largest balance, the owner pays the most.

ON THE PAGE Who Pays the Plan's Fees: the fee, who bears it, and what stays invested if the company pays.

Whether a given company payment is a deductible expense or a plan contribution is the preparer's call; Rev. Rul. 86-142 and Sklar, Greenstein & Scheer, 113 T.C. 135 (1999) are where that discussion starts. DOL, Understanding Retirement Plan Fees and Expenses.

QUESTION 3: WERE THE CREDITS CLAIMED?

SECURE 2.0 small-employer credits, Form 8881

For the 45E credits: 100 or fewer employees paid $5,000 or more in the prior tax year, with at least one non-highly compensated employee eligible to participate.

Startup cost credit, 45E

100% of qualified startup costs for 1 to 50 employees (50% for 51 to 100), for three years. Capped at the greater of $500, or the lesser of $250 per eligible non-highly compensated employee or $5,000.

Employer contribution credit, 45E(f)

Up to $1,000 per employee with 2026 wages of $110,000 or less, defined contribution plans only. 100 / 100 / 75 / 50 / 25 percent over years one to five, applied to the contribution first; the $1,000 cap comes after. Over 50 employees, the amount is cut 2% per employee over fifty.

Auto-enrollment credit, 45T

$500 for the first year the plan includes an eligible automatic contribution arrangement, and $500 for each of the next two years it is maintained. Uses the small-employer test, with no prior-plan bar: an existing plan that adds the arrangement can qualify.

ON THE PAGE What Are the Credits Worth: eligibility questions first, then the Form 8881 credits, year by year.

IRC 45E and 45T as amended by SECURE 2.0; Form 8881 instructions (rev. 12/2025); 2026 wage threshold per IRS Notice 2025-67. The 45AA military spouse credit is separate and not shown.

QUESTION 3: WHAT TO CHECK BEFORE ANYONE CLAIMS THEM

The prior-plan bar

A qualified employer plan (including a SEP or SIMPLE) covering substantially the same employees, with contributions made or benefits accrued in any of the three tax years before the first credit year, rules out both 45E credits. Controlled groups and predecessors count. A state auto-IRA does not.

The five-year clock

The contribution credit runs from the plan's effective date, not from when employer contributions begin. A plan effective before 2023 claims only the years left in its five-year window.

The deduction

Both 45E credits reduce the corresponding deduction: startup costs on line 5, employer contributions on line 6g of Form 8881. 45T does not.

Two different numbers

The $110,000 wage test is not the $160,000 highly compensated employee threshold.

For a client whose plan started in the last few years, ask: was Form 8881 filed? In one study of IRS data, about one in twenty firms that appeared eligible claimed the credit in 2023.

IRC §§45E(c)(2) and 4972(d); IRS Notice 2024-2, Q&A B-2 and B-5; Form 8881 and instructions (rev. 12/2025); IRS Notice 2025-67. Take-up: Bloomfield, Goodman, Ramnath and Slavov, Georgetown CRI Working Paper 2025-02 (IRS data, 2014 to 2023): about 5% of apparently eligible firms (sole proprietors excluded) claimed in 2023; 94% of eligible firms use a paid preparer; clients of a preparer who had filed the credit before were about 11 points more likely to claim it.

WHEN THE PLAN QUESTION IS REALLY A DIFFERENT QUESTION

WHAT THE CLIENT ASKS	WHAT ELSE IT MAY BE ABOUT
"Can we afford to add a match?"	**Payroll** — What does replacing a good employee already cost this business?
"Who keeps the plan paperwork straight?"	**Operations** — Which processes live in one person's head, including the owner's?
"Can I put more away before I sell?"	**Succession** — How much of the owner's net worth is the business itself?

The plan can be part of each conversation without being the whole conversation.

THE SUCCESSION QUESTION, IN TWO NUMBERS

80 to 90%

of an owner's total net worth can be represented by business value

65%

of owners say they will need to harvest that value to support a post-exit lifestyle

A workplace plan can move money out of the business into retirement assets the owner holds outside it, with eligible employer contributions generally deductible.

The same plan can serve the employees and help the owner build retirement assets outside the business.

Exit Planning Institute, 2025 State of Owner Readiness: Generational Report, analyzing the 2023 National SOOR survey (1,162 US business owners): business value "can represent 80-90% of an owner's total net worth"; 65% say they will need to harvest business value to support a post-exit lifestyle.

CLIENT PROFILES WORTH A SECOND LOOK

☐ An owner 50 or older, meaningfully older than the staff, with steady profit, on a plain 401(k)	**Design (Question 1)**
☐ Plan fees coming out of participant accounts, including the owner's	**Who pays (Question 2)**
☐ A plan started in the last few years with no Form 8881 on the return	**Credits (Question 3)**
☐ A new 401(k) preceded by SEP or SIMPLE contributions for substantially the same employees	**Credits: the prior-plan bar**
☐ An owner asking about a match, the plan paperwork, or putting more away before a sale	**Payroll, operations, succession**

Write down one client for each line before you leave the room.

THE QUESTIONS THAT TURN A PLAN REVIEW INTO A BUSINESS CONVERSATION

1. When was the design last looked at, and what has changed since: the owner's age, compensation, headcount, profit?

2. What are the plan's all-in costs, and who pays them today: the business or the participants?

3. When did the plan become effective, was Form 8881 filed, and was there a SEP or SIMPLE in the three years before?

4. What is the entity type, and could the plan contribution affect the qualified business income deduction?

5. What is the owner actually trying to accomplish: more of their own savings, keeping good people, or a simple plan?

The last one helps decide which of the others matter most.

The next time a 401(k) shows up on a client's return,

you have three questions to ask about it.

Does the design still fit? Who pays the costs? Were the credits claimed?

Scott Pooch · scott@scottpooch.com · 401grow.com

Questions welcome.

BEFORE YOU HEAD OUT

Use the page you opened for Which Plan Fits.

If you want the three tools by email, enter your address at the top and choose this session. One email. No mailing list. No sequence.

If your own firm has a plan, you can also check the box and I'll pull its public Form 5500 filing and send a one-page snapshot.

Scan, or visit

401grow.com/talk/cpa

Scott Pooch | scott@scottpooch.com | 614-434-6670

Monday, Nov. 16, 2026
4:10 – 5 p.m.

Hot Tax Practice & Procedure & Ethics Issues

Michael Goller, JD, *Shareholder, Reinhart Boerner Van Deuren s.c.*

HOT TAX PRACTICE, PROCEDURE AND ETHICS ISSUES FOR 2026

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Michael G. Goller, Esq.

Michael Goller has more than three decades of experience assisting clients with federal and state tax controversy, tax litigation and tax planning. He is a shareholder in Reinhart's Tax and Corporate Law Practices. Michael represents corporations, partnerships, limited liability companies, family offices, closely held businesses, tax-exempt organizations and individuals.

He is a self-described "tax geek who litigates," pairing his outgoing personality with extensive detailed knowledge and a dedicated work ethic. He represents clients involved in complex disputes with the IRS, the U.S. Department of Justice and various other authorities and has an impressive track record of favorable settlements. His practice includes IRS examinations and appeals, federal refund litigation, partnership tax controversies, valuation disputes, estate and gift tax matters, employment tax controversies and challenges to Treasury regulations.

Michael has built a reputation as the "Velvet Hammer" of tax controversy practice—combining a collaborative and pragmatic approach with the experience and resolve necessary to litigate complex disputes. He believes the most effective advocates are both credible negotiators and formidable litigators. By approaching disputes professionally and constructively while remaining thoroughly prepared for administrative appeals, trial and appellate review, Michael is often able to achieve favorable resolutions without unnecessary conflict, yet he does not hesitate to pursue litigation when necessary to protect his clients' interests.

Michael also advises clients before disputes arise, including on federal tax planning, state and local tax matters, partnership tax issues, business transactions, Qualified Opportunity Funds and Qualified Opportunity Zone investments.

Michael is a longtime faculty member at the University of Wisconsin-Milwaukee's Lubar School of Business and teaches Law Practice and Procedure in the Graduate Tax Program.

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Table of Contents

ROADMAP

01 IRS Enforcement: Staffing, High Wealth & Audit Priorities

02 Ethics and Artificial Intelligence

03 Other Hot Ethical Issues

04 Responding to Information Requests: Ethical Issues

05 IRS Landscape & Procedure

06 Valuation & Appraisal Issues

07 Refund Claim Traps

08 High-Net-Worth / Family Office Audits

09 Passive Loss & Research Credit

10 Passive Losses and the Real Estate Professional

11 Research Credit Issues

12 Employment Tax & ERC

13 IRS Practitioner Oversight Restructuring

14 Proposed Circular 230 Amendments

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01

IRS Enforcement Is Rebuilding—Selectively

Staffing, high-wealth coverage and the enforcement heat map

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THREE CENTRAL FINDINGS

Executive summary

TARGETED REBUILD

The IRS is attempting to rebuild targeted enforcement capacity.

EXPERIENCE GAP

Experienced personnel losses are more significant than raw hiring numbers suggest.

UNEQUAL EFFECTS

Consequences will differ across high-wealth individuals, partnerships and large corporations.

CENTRAL THESIS

Expect selective enforcement priorities to re-emerge before the IRS regains broad operational capacity.

WHY REBUILDING WILL TAKE TIME

The experience gap

DEPARTURES

Experienced agents and managers leave

→

TRAINING

Specialized skills require time

→

SUPERVISION

New personnel add management demands

→

KNOWLEDGE

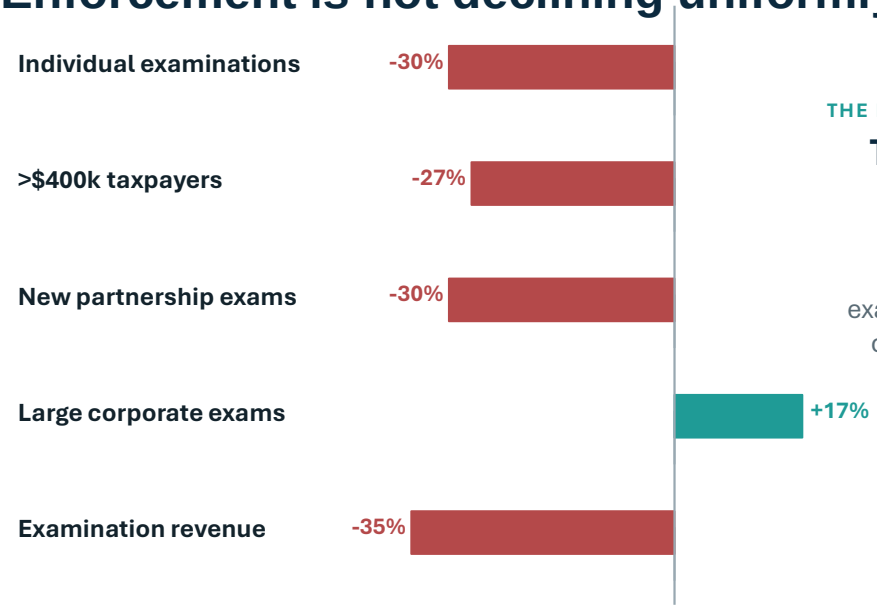
Institutional context is hard to replace

PRACTICAL CONSEQUENCE

Near-term audits may be uneven in quality, sophistication and timing.

FY2025 REPORTED COMPARISONS

Enforcement is not declining uniformly



THE DISTINCTION

The IRS is not retreating uniformly.

Resources and examination activity are changing differently among taxpayer categories.

Figures require confirmation against underlying IRS/TIGTA tables before external distribution.

LOSSES BEFORE REBUILDING

The staffing problem

~28%

Net workforce reduction reported by TIGTA

~33%

Revenue-agent departures

WHY THIS MATTERS

- Experienced audit personnel cannot be replaced simply by hiring new employees.
- LB&I lost experienced management and technical personnel.
- Complex examinations require institutional knowledge and supervisory experience.

Headcount loss → **Experience loss** → **Longer rebuilding curve**

Source: TIGTA, Status of the IRS Workforce as of January 2026 (June 9, 2026).

TARGETED ADDITIONS

The hiring announcement

~1,000

SB/SE and LB&I
Announced hiring across civil examination divisions

~175

Criminal Investigation
Additional hires for the IRS crime unit

UNANSWERED QUESTIONS

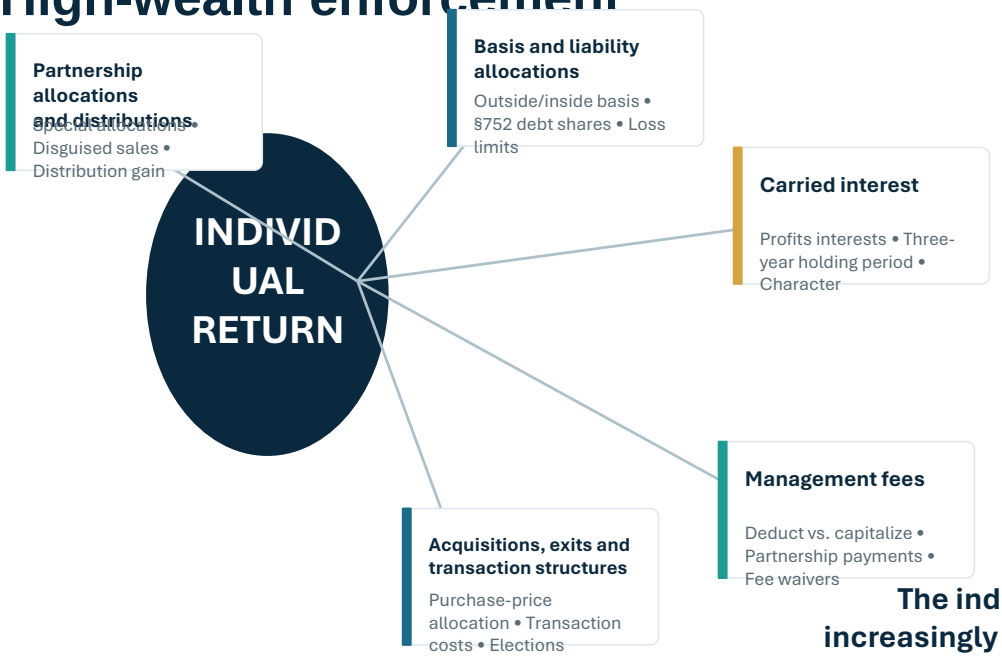
- How will the 1,000 hires be allocated between LB&I and SB/SE?
- How many are experienced specialists?
- How quickly will they become productive?
- Is hiring replacing departures or expanding capacity?

Hiring announcements measure intent. Productive cases measure capacity.

Source: Bloomberg Tax, "After DOGE Cuts, IRS to Now Hire About 1,000 for Civil Divisions" (Oct. 23, 2026).

THE RETURN AS A GATEWAY

High-wealth enforcement



The individual return increasingly becomes the starting point for a broader examination of related entities and transactions.

HIGH-WEALTH AUDITS

High-net-worth individual audit coverage is elevated, but the directional story is mixed

Total-income examination coverage for highest-wealth individuals, not partnerships, private-equity funds or corporations.

6.6%

TY2021 examination coverage

$10M+ total positive income; latest IRS Data Book year outside the limitations period.

8%

Treasury audit-rate objective

$10M+ individual returns; GAO reported IRS was on track for tax years 2018–2020.

DEC. 12, 2025

Global High Wealth IRM revised

Population identification, examination groups, program controls and effectiveness reporting updated. An IRM revision can serve as a "heat map" of where the IRS is building enforcement capability.

Targeted rebuilding is visible; the data do not yet establish a broad surge in completed high-wealth audits.

Interpretive caution: high-income audits often begin later in the limitations period, so early tax-year coverage figures can materially understate eventual audit activity.

Sources: IRS Data Book 2025, Compliance Presence; GAO-24-106112; IRS IRM 4.52.1 (Dec. 12, 2025).

HIGH-WEALTH INDIVIDUALS • RELATED ENTITIES

How a high-wealth examination can expand

01 **Partnership allocations and distributions**

02 **Basis and liability allocations**

03 **Carried interest**

04 **Management fees**

05 **Acquisitions, exits and transaction structures**

ILLUSTRATIVE PATH

Multiple related entities + **Multiple owners** + **Multiple returns**

ISSUES BEHIND THE TOUCHPOINTS

What the IRS is looking at

PARTNERSHIP & OWNER-LEVEL ISSUES

- **Partnership allocations and distributions**

  Whether allocations follow the agreement and economic arrangement, and whether distributions trigger basis, disguised-sale or gain-recognition issues.

- **Basis and liability allocations**

  Whether outside and inside basis, debt allocations and resulting loss or distribution treatment are correctly reported.

- **Passive loss rules**

  Whether the taxpayer materially participated, grouped activities properly and had sufficient passive income to use suspended losses.

- **Carried interest**

  Whether profits interests and related gains receive the claimed character and holding-period treatment.

FEES, ASSETS & TRANSACTIONS

- **Management fees**

  Whether fees are currently deductible, must be capitalized or should be treated as partnership payments; fee-waiver arrangements may receive added scrutiny.

- **Acquisitions, exits and structures**

  Purchase-price allocations, transaction costs, debt-versus-equity treatment, elections and related-party payments may be examined across multiple returns.

- **Cost-segregation issues**

  Whether property was placed in the correct asset class, assigned a supportable recovery period and eligible for accelerated depreciation.

- **Private-airplane issues**

  Whether business use is substantiated and whether personal use, fringe benefits, depreciation limits and expense allocations were handled correctly.

CORPORATE TAX ISSUES

- **Research credit cases**

  Whether activities satisfy the statutory tests and whether qualified wages, supplies and contract-research costs are adequately documented.

- **Compensation and benefits**

  Whether owner or executive compensation is reasonable and whether fringe benefits and personal expenses were properly included or disallowed.

- **Capitalization and deductions**

  Whether significant expenditures were deducted currently or should have been capitalized and recovered over time.

- **Related-party and entity issues**

  Whether intercompany charges, loans, distributions and entity-level reporting reflect the actual economics and applicable tax rules.

The issue set can expand quickly from one return to related owners, entities, assets and transactions.

THE ENFORCEMENT HEAT MAP

The Big Four

HIGH SIGNAL

BBA PARTNERSHIPS

Field-exam procedures revised May 8, 2026
Planning • risk analysis • linkage • partner-level audits

HIGH SIGNAL

RESEARCH / §174

LB&I manual uses centralized risking
Issue selection • engineering and specialist referrals

HIGH SIGNAL

DEPRECIATION & CAPITALIZATION

Engineering manual refreshed Jan. 16, 2025
Cost segregation • bonus depreciation • capital vs. expense

HIGH SIGNAL

PRIVATE AIRCRAFT

Active LB&I Business Aircraft Campaign
Campaign announced Feb. 21, 2024 • analytics-based selection

The common thread: selection tools, specialist capacity and procedures that let one exam reach related entities and issues.

HIGH-SIGNAL DETAIL

Partnership examinations: the BBA manual was rebuilt

IRM 4.31.9 • revised May 8, 2026

WHAT CHANGED

Operational field-examination procedures

- Expanded and reorganized instructions for examination planning and risk analysis.
- Requires coordination and referral to a BBA point of contact in covered examinations.
- Addresses partnership-representative authority, election-out questions and administrative adjustment procedures.
- Provides procedures and examples for partnership-level and partner-level examinations, adjustment computation, push-out elections and case closing.

WHY IT MATTERS

A platform for multi-entity examinations

- The revision concerns how agents administer cases, not merely the substantive partnership tax rules.
- Procedures support movement from a partnership return to affected partners, related returns and resulting tax computations.
- The manual makes BBA process knowledge part of examination planning, development and closure.

Heat-map reading: HIGH — selection, linkage, procedural control and closing instructions were updated together.

Authority: IRS IRM 4.31.9, Centralized Partnership Audit Regime Field Examination Procedures (May 8, 2026).

HIGH-SIGNAL DETAIL

Research, §174 and engineering-supported issues

Centralized risk analysis plus specialist infrastructure

RESEARCH / §174

LB&I examination planning

- IRM 4.46.3 contains a dedicated section titled “Centralized Risking of Research Issues Under IRC 41 and IRC 174.”
- The planning manual also addresses issue selection, risk analysis, materiality, specialist referrals and issue-team staffing.
- This is a selection-and-planning signal: the IRS has a stated process for centrally evaluating research issues before and during examination.

ENGINEERING PROGRAM

IRM 4.48.1 • revised January 16, 2025

- Identifies research expenditures and research credits as engineering examination issues.
- Also identifies depreciation, cost segregation, bonus depreciation, capital-versus-expense and capital-versus-repair issues.
- Assigns program leadership responsibilities for referral criteria, national projects, issue trends, staffing and training.

Heat-map reading: HIGH — centralized risking can identify cases; engineering specialists can develop the selected issues.

Authorities: IRS IRM 4.46.3, Planning the Examination; IRS IRM 4.48.1, Overview of Engineering Program (Jan. 16, 2025).

HIGH-SIGNAL DETAIL

Private aircraft: campaign evidence is stronger than a manual revision

Project Airplane announced February 21, 2024

CAMPAIGN

IRS announcement and case selection

- The IRS announced plans to begin dozens of audits focused on business aircraft use by corporations, partnerships and high-income individual filers.
- The IRS stated that it would use advanced analytics and resources made available through Inflation Reduction Act funding.
- The announced concern was whether aircraft deductions were properly allocated between business use and personal use.

EXAMINATION ISSUES

What the campaign puts in play

- Business-purpose substantiation and allocation of use.
- Personal use and treatment of taxable fringe benefits.
- Depreciation, bonus depreciation and expense limitations.
- Entity-level deductions together with owner or executive consequences.

Heat-map reading: HIGH — an announced campaign with analytics-based selection is a direct enforcement signal.

Authority: IRS News Release IR-2024-46, "IRS begins audits of corporate jet usage" (Feb. 21, 2024).

MEDIUM-SIGNAL DETAIL

The supporting manuals show how an audit can expand

Recent revisions to projects, related returns, withholding and employment tax

JULY 23, 2025

IRM 4.17.4 — Compliance Initiative Projects

- Addresses market segments, supporting data, action plans, measures, national and cross-division projects, monitoring and reporting.

AUGUST 28, 2025

IRM 4.10.5 — Required Filing Checks

- Directs examination attention to prior and subsequent returns, related and spin-off returns, employment tax, information returns and foreign-entity filings.

SEPTEMBER 5, 2025

IRM 3.21.15 — Withholding on Foreign Partners

- Updates processing instructions for Forms 8804 and 8805 and section 1446 withholding, including language changes requested by LB&I.

AUGUST 26, 2025

IRM 4.23.3 — Employment Tax Examination Planning

- Covers examination sources, classification and selection, referrals, required filing checks, pre-contact analysis and examination scope.

Heat-map reading: MEDIUM — these revisions strengthen the machinery for targeted projects and related-return expansion.

Authorities: IRS IRM 4.17.4; IRM 4.10.5; IRM 3.21.15; IRM 4.23.3.

02

Ethics and Artificial Intelligence

Existing duties applied to new tools

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OPR ALERT 2026-19 | CONSEQUENCES

Improper AI Use Has Real Professional Consequences

OPR ALERT 2026-19

Courts have imposed sanctions for fake citations and other AI-generated hallucinations in legal filings.

CONSEQUENCES IDENTIFIED BY OPR

Financial sanctions; public censure; required ethics or professional-responsibility courses; default judgments; removal from representation; disciplinary referrals to state bar authorities; and reputational harm.

WHY THIS MATTERS IN TAX PRACTICE

The problem is not merely a bad citation. Inaccurate AI work can affect the client, the tax position, the administrative record, the tribunal, the responsible professional, and the firm. Human oversight must occur before delivery or filing.

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Introductory Guidelines for Responsible AI Use in Federal Tax Pra

OPR ALERT 2026-19

“Ethical obligations of competence, diligence, and confidentiality remain unchanged.”

WHAT THE ALERT IDENTIFIES

AI can offer cost savings and rapid data analysis, but it also presents risks involving fabricated outputs, bias, lack of transparency, privacy, confidentiality, and data protection.

THE CENTRAL PRACTICE RULE

Treat AI-generated work as a draft. A qualified professional must review the facts, law, citations, calculations, assumptions, and client-data handling. Technology is a tool, not a substitute for professional judgment.

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AI-Assisted Fees: Efficiency Must Be Reflected Fairly

CIRCULAR 230 § 10.27(a)

“A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.”

WHAT OPR ALERT 2026-19 SAYS

“Cost savings should be passed on openly, with billing practices that reflect the efficiencies gained from the use of GAI.” Practitioners should “disclose, in general or specific terms as needed, the AI activities performed,” and “fairly credit to the client’s account any cost reductions.”

PRACTICE APPLICATION

- Bill only for work actually performed.
- Do not describe machine-generated effort as professional labor.
- Avoid double billing for AI-assisted tasks.
- Address AI use and vendor charges in the engagement terms.
- Disclose AI activities when general or specific disclosure is needed.
- Fairly credit cost reductions to the client.

Takeaway: AI may increase value, but the fee must remain reasonable, transparent, and consistent with the engagement and the work actually performed.

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AI ETHICS

The core rule: AI does not dilute professional responsibility

> *AI may improve efficiency, but it does not reduce the practitioner's duties of diligence, competence, confidentiality, reasonable written advice, billing fairness, and professional judgment.*
>
> **Summary of OPR Alert 2026-19**

- Use AI as an accelerator, not as a substitute for legal judgment.
- The practitioner owns the final factual, legal, and citation accuracy.

This is still your work.

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DUE DILIGENCE

Circular 230 § 10.22

> *A practitioner must exercise due diligence in preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters; in determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and in determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.*
>
> **31 C.F.R. § 10.22**

- Verify the facts, citations, quotations, calculations, and assumptions.
- Correct known errors rather than allowing continued reliance on them.

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ABA MODEL RULE 1.4

Communication with the client

RULE / AUTHORITY

ABA Model Rule 1.4: "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

WHAT THE RULE REQUIRES

AI use can become a client-communication issue when the means materially affect confidentiality, cost, staffing, quality, or a client instruction. Formal Opinion 512 does not require disclosure of every ordinary technology use, but disclosure or consent may be necessary depending on the facts.

PRACTICE APPLICATION

Check engagement letters, outside-counsel guidelines, and client-specific restrictions before use. Explain material benefits and risks when AI use affects the agreed method of representation or requires disclosure of protected information.

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DUE DILIGENCE

What AI Can and Cannot Do

AI draft may supply

- Issue list
- Draft language
- Candidate authorities
- Preliminary calculations

Professional must confirm

- Primary authority
- Current validity
- Record facts
- Arithmetic and assumptions

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CIRCULAR 230 § 10.35

Competence in federal tax practice

RULE / AUTHORITY

Circular 230 § 10.35: "Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged."

WHAT THE RULE REQUIRES

Competence is substantive and technological. The practitioner must understand the tax issue and enough about the selected tool to recognize hallucinations, missing law, unreliable reasoning, and confidentiality risks.

PRACTICE APPLICATION

Match the reviewer to the risk. A junior user may create an outline, but a qualified practitioner should review a client conclusion, protest, opinion, return position, or filing. Consult another professional or decline the task when necessary.

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COMPETENCE

Circular 230 § 10.35

A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.

31 C.F.R. § 10.35

- Know when the tool is likely to hallucinate or omit an exception.
- Understand enough about the system to supervise its use.

AI does not replace knowing the law.

ABA MODEL RULE 1.1

Competence includes technological competence

RULE / AUTHORITY

ABA Model Rule 1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

WHAT THE RULE REQUIRES

Formal Opinion 512 applies the ordinary competence duty to generative AI. A lawyer need not become a computer scientist, but must understand enough about the particular tool's capabilities and limitations to use it responsibly. Competence is continuing because tools, models, and risks change.

PRACTICE APPLICATION

Before use, identify the task, tool, risks, source limitations, and required level of human review. Do not permit an AI system to supply the final legal judgment. Verify cases, quotations, statutes, regulations, factual statements, and calculations.

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COMMENT [8] TO RULE 1.1

Keeping abreast of technology

RULE / AUTHORITY

Comment [8] to ABA Model Rule 1.1: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

WHAT THE RULE REQUIRES

The technology duty is not satisfied merely because a tool is approved or widely used. The user must understand the benefits and risks relevant to the specific assignment, including hallucinations, incomplete authority, bias, data handling, and unreliable explanations.

PRACTICE APPLICATION

Training should be role-specific and refreshed when a material feature, vendor term, or model changes. For high-risk work, require documented verification by a qualified lawyer who understands the governing substantive law.

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COMPETENCE

Technological competence is contextual

Competence includes the ability to identify limitations and compensate for them

1. Select the tool appropriate to the sensitivity and purpose of the task.
2. Understand what data leaves the firm environment and how it may be retained.
3. Recognize that confident language is not evidence of legal reliability.
4. Escalate unfamiliar issues to a qualified reviewer or independent source.
5. Decline or narrow the task when adequate verification is not possible, or present the limitation clearly.

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AICPA Rules

AICPA Code of Professional Conduct, Section 50, Article V, Due Care
“... Members should be diligent in discharging responsibilities to clients, employers and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards...”

MRPC -1.3

A lawyer shall act with reasonable diligence and promptness in representing a client

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CIRCULAR 230 § 10.37

Written advice and unreasonable reliance

RULE / AUTHORITY

Circular 230 § 10.37: Written advice must rest on reasonable factual and legal assumptions, consider relevant facts and circumstances, use reasonable efforts to ascertain the facts, relate law to facts, and avoid unreasonable reliance on representations, findings, or agreements.

WHAT THE RULE REQUIRES

Blind reliance on an output whose logic, sources, or assumptions are unknown conflicts with the structure of § 10.37. The practitioner must know the actual facts, identify the governing authority, and determine whether the result follows.

PRACTICE APPLICATION

Use AI to identify questions, organize records, or generate a draft. Then replace unverified propositions with primary authority, test assumptions, address inconsistencies, and document the professional analysis.

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Circular 230 § 10.37

> *The practitioner must base written advice on reasonable factual and legal assumptions; reasonably consider all relevant facts and circumstances; use reasonable efforts to identify and ascertain relevant facts; not rely on unreasonable representations; and relate applicable law and authorities to the facts.*
>
> **31 C.F.R. § 10.37**

- AI output is not authority. You must give the AI the controlling facts before its work can even be evaluated.
- Opaque sourcing increases, rather than decreases, the need for independent review.

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Requirements for Written Tax Advice: § 10.37(a)

The Practitioner must

- Base written advice on reasonable factual and legal assumption
- Including assumptions as to future events
- Reasonably consider all relevant facts and circumstances the practitioner knows or reasonably should know
- Use reasonable efforts to identify and ascertain the facts relevant to written advice on each federal tax matter

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Requirements for Written Tax Advice: § 10.37(a)

- Not rely upon representations, statements, findings or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance upon them would be unreasonable
- Relate applicable law and authorities to the facts; and not, in evaluating a federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit
- Further, reliance upon a representation, statement, finding or agreement is specifically unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based is incorrect, incomplete or inconsistent

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Reliance on Others Section 10.37(b)

- The practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances
- Reliance is specifically not reasonable when
- The practitioner knows or reasonably should know that the opinion of the other person should not be relied upon;
- The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or
- The practitioner knows or reasonably should know that the other person has a conflict of interest in violation with Circular 230
- e.g., the conflict has not been properly waived

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The AI Review Checklist Before Delivery of Your Work Product

Use this checklist for IRS submissions, opinions, memoranda, client emails, research summaries, calculations, and any other AI-assisted professional work product.

1. Facts: compare the draft with source documents and the client record.
2. Law: read every cited statute, regulation, ruling, and case.
3. Quotations: inspect the original and confirm context.
4. Calculations: recompute independently and test assumptions.
5. Counterarguments: identify adverse authority and missing exceptions.
6. Scope: state limitations, uncertainties, and unresolved factual questions. Common sense: ask, “Does this make sense?”

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Firm Management Procedures to Ensure Circular 230 Compliance Section 10.36

- The IRS appears to be attempting to create a “culture of compliance”
- Practitioners in a position of authority must do more than ensure their own compliance with Circular 230
- Supervising practitioners must ensure that all individuals they supervise comply with Circular 230 as it pertains to the preparation of returns, claims for refund or other documents submitted to the IRS

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CIRCULAR 230 § 10.36

Firm compliance procedures

RULE / AUTHORITY

Circular 230 § 10.36: A person with principal authority and responsibility for overseeing a firm's practice must take reasonable steps to ensure that adequate Circular 230 compliance procedures are in effect and properly followed.

WHAT THE RULE REQUIRES

AI governance should be integrated into Circular 230 procedures. A firm can face supervisory risk when it lacks adequate controls, ignores patterns of noncompliance, or fails to take prompt corrective action.

PRACTICE APPLICATION

Assign ownership. Maintain approved-tool lists, training records, client restrictions, verification requirements, vendor review, incident protocols, and periodic testing. Correct repeated misuse promptly.

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FIRM PROCEDURES

Circular 230 § 10.36

- Written policy alone is not enough; implementation and correction matter.
- Supervision should scale with risk, sensitivity, and reviewer experience.

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Section 10.36

- A practitioner responsible for implementation of Circular 230 compliance procedures will be subject to disciplinary action if:
- 1(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230; and
- 1(b) One or more individuals who are members of, associated with, or employed by the firm are, or have engaged in a practice in connection with their practice with the firm of failing to comply with Circular 230;

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Section 10.36

- 2(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that firm procedures in effect are properly followed; and
- 2(b) One or more individuals who are members of, associate with, or are employed by the firm or have engaged in a pattern or practice, in connection with their practice with the firm of failing to comply with Circular 230; or

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Section 10.36

- 3(a)The responsible practitioner knows or should know that one or more individuals who are a member of, associated with, or employed by the firm are, or have engaged in a pattern or practice in connection with their practice with the firm that does not comply with Circular 230, as applicable; and
- 3(b)The responsible practitioner, through willfulness, recklessness or gross incompetence, fails to take prompt action to correct the noncompliance.

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ABA MODEL RULES 5.1 AND 5.3

Supervision of lawyers, staff, vendors, and systems

RULE / AUTHORITY

ABA Model Rules 5.1 and 5.3: Partners and supervising lawyers must make reasonable efforts to ensure that lawyers and nonlawyer assistance are compatible with the lawyer's professional obligations.

WHAT THE RULE REQUIRES

AI use is a management issue, not merely an individual-user issue. A firm must establish expectations, train users, select and monitor vendors, define review requirements, and correct known patterns of misuse. Delegation never eliminates the responsible lawyer's duty.

PRACTICE APPLICATION

Adopt written controls covering approved tools, restricted tasks, client-data rules, audit logs, review levels, vendor diligence, incident response, and escalation. Supervisors should verify actual compliance rather than relying only on a policy document.

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Standard of Review: Have I Complied with the Rule?

- In evaluating whether a practitioner's written tax advice complies with Section 10.37, the IRS will apply a "reasonable practitioner" standard, considering all facts and circumstances, including, but not limited to the scope of the engagement and the type and specificity of the advice sought by the client

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Standard of Review: Have I Complied with the Rule?

- In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner in promoting, marketing or recommending a transaction, a significant purpose of which is the avoidance or evasion of tax, the IRS will apply an elevated "reasonable practitioner" standard. Emphasis will be given to the additional risk, caused by the practitioner's lack of knowledge of the specific taxpayer's particular circumstances (i.e., when tax advice is going to be used to promote a transaction to a third party, the IRS will apply an elevated standard of care).

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FIRM PROCEDURES

Minimum elements of an AI-use policy

The policy should create an auditable, repeatable review process that identifies who may use AI, what information may be entered, who reviews the output, and how corrections are documented.

1. Approved tools and prohibited uses: identify the tools that may be used and the assignments for which they may be used.
2. Client-data controls: determine what happens to the data, where it is retained, and who can access it.
3. Human review and citation verification: the responsible professional must personally review and verify the work.
4. Training: make sure every user knows how to use the tool and understands its limitations.
5. Vendor diligence and retention: confirm that the product and its data practices are safe.
6. Periodic audits and remediation: trust but verify both the AI system and the people using it.

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IRC §§ 6713 AND 7216

Tax-return information and AI platforms

RULE / AUTHORITY

IRC §§ 6713 and 7216: Civil and criminal consequences may apply to unauthorized use or disclosure of tax-return information. The term reaches information furnished in any form or manner for, or in connection with, preparing a taxpayer's return.

WHAT THE RULE REQUIRES

A prompt can disclose return information without attaching a return. Identifiers, business facts, ownership, income, deductions, transaction terms, and draft positions may be protected even when presented as isolated facts.

PRACTICE APPLICATION

Use only systems authorized for the information involved. Follow consent and regulatory requirements. Apply data minimization, access controls, retention controls, and deletion procedures. Do not assume a consumer AI account is confidential.

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CONFIDENTIALITY

We Must Protect Tax Return Information — IRC §§ 7216 and 6713

> *Tax return information includes any information, including a taxpayer's name, address, or identifying number, furnished in any form or manner for, or in connection with, the preparation of a tax return. The definition reaches information furnished in all manner and form.*
>
> **Treas. Reg. § 301.7216-1(b)(3)(i)**

- Do not upload sensitive data to public or unapproved systems.
- Use secure, enterprise-approved tools and the minimum data necessary.

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CONFIDENTIALITY

Data minimization before prompting, including redaction

Avoid

- Names and TINs
- Unredacted returns
- Bank and payroll details
- Privileged strategy

Prefer

- Redacted facts
- Synthetic examples
- Need-to-know excerpts
- Approved enterprise workspace

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FEES

Circular 230 § 10.27(a)

> *A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.*
>
> 31 C.F.R. § 10.27(a)

- Record the professional time actually devoted to the matter.
- Do not represent machine-generated effort as lawyer or accountant labor.
- Review your engagement letters.

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ABA MODEL RULE 1.5

Fees and AI efficiency

RULE / AUTHORITY

ABA Model Rule 1.5: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

WHAT THE RULE REQUIRES

AI does not convert work that took minutes into hours of billable labor. The reasonableness of a fee depends on the engagement and Rule 1.5 factors, not simply the historical time required to perform the task manually. A fixed or value-based fee must still be reasonable.

PRACTICE APPLICATION

Time entries must describe work actually performed. Do not double bill machine-assisted work. Treat vendor charges consistently with the engagement terms. Professional review, revision, and judgment remain compensable when actually provided.

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FEES

AI-assisted billing questions

The ethical answer depends on the engagement agreement, the work actually performed, the professional judgment supplied, and whether the billing description fairly communicates the basis for the charge.

1. What professional judgment and review did the matter require?
2. Was the fee based on value, a fixed arrangement, or actual time?
3. Does the narrative accurately describe the work performed?
4. Are AI efficiencies being handled consistently under the engagement terms?
5. Would the client understand the basis for the charge if asked?

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RISK CONTROL

High-risk and lower-risk uses

Higher risk

- Filing-ready legal analysis
- Client-specific tax advice
- Uploading return data
- Unverified quotations

Lower risk with review

- Outlines and issue lists
- Plain-language rewrites
- Checklists
- Formatting and organization

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CONTROVERSY PRACTICE

AI Safeguards for IRS- and DOR-Facing Work

Credibility with Exam, Appeals, and the courts is difficult to rebuild once lost

1. Preserve the chain from record facts to each factual assertion.
2. Check every citation and pin cite against the underlying authority.
3. Do not use fabricated or generalized quotations.
4. Reconcile calculations to returns, transcripts, and workpapers.
5. Have a qualified professional sign off before submission.
6. Retain an appropriate record of review and corrections.

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AI ETHICS

Practical bottom line

The governing duties are familiar; the failure modes are new

1. Treat output as a draft.
2. Protect taxpayer data.
3. Verify every material proposition.
4. Apply professional judgment.
5. Supervise people and systems.
6. Document the process.

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ABA MODEL RULE 1.6

Confidentiality of information

RULE / AUTHORITY

ABA Model Rule 1.6: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent," subject to stated exceptions. A lawyer must also make reasonable efforts to prevent inadvertent or unauthorized disclosure or access.

WHAT THE RULE REQUIRES

Prompts and uploaded files may reveal far more than names. Facts, transaction structures, draft arguments, return information, and strategy can identify a client or disclose protected information. The relevant question is what the vendor receives, stores, uses, or exposes.

PRACTICE APPLICATION

Use approved systems. Review terms on retention, model training, human review, location, access controls, and deletion. Minimize the data entered. Redact when possible. Obtain informed consent if disclosure to the system is not otherwise authorized.

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ABA MODEL RULE 3.1

Meritorious claims and contentions

RULE / AUTHORITY

ABA Model Rule 3.1: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue, unless there is a basis in law and fact that is not frivolous, including a good-faith argument for extension, modification, or reversal of existing law.

WHAT THE RULE REQUIRES

An AI-generated theory is not a legal basis. The lawyer must determine whether supporting authority exists, whether contrary authority has been addressed, whether factual predicates are supported, and whether the argument is properly characterized as existing law or proposed development.

PRACTICE APPLICATION

For every material contention, preserve the primary authority reviewed, factual support, and analysis. Do not rely on summaries that cannot be traced to a citable source. Clearly identify novel arguments as such.

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ABA MODEL RULE 3.3

Candor toward the tribunal

RULE / AUTHORITY

ABA Model Rule 3.3: A lawyer shall not knowingly make a false statement of fact or law to a tribunal and must correct a material false statement previously made.

WHAT THE RULE REQUIRES

The duty extends beyond the moment of filing. If a lawyer learns that an AI-assisted submission contains a nonexistent case, fabricated quotation, false factual statement, or materially misleading description, continued advocacy can aggravate the problem.

PRACTICE APPLICATION

Stop relying on the error, determine its effect, notify the responsible lawyer, and make the correction required by the governing rules and court orders. Preserve the record of discovery and remediation.

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FEDERAL RULE OF CIVIL PROCEDURE 11

The signer certifies reasonable inquiry

RULE / AUTHORITY

Federal Rule of Civil Procedure 11: By presenting a paper to the court, an attorney certifies that, after an inquiry reasonable under the circumstances, factual contentions have evidentiary support and legal contentions are warranted by existing law or a nonfrivolous argument for changing it.

WHAT THE RULE REQUIRES

Rule 11 responsibility is personal to the signer. AI assistance does not reduce the required inquiry. A polished draft, a quoted “case,” or a functioning hyperlink does not establish authenticity or accuracy.

PRACTICE APPLICATION

Read the authority. Confirm the docket, court, date, treatment, quotation, and proposition. Confirm facts against evidence. Check the current local rules, standing orders, and any required AI disclosure or certification.

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MATA V. AVIANCA

The gatekeeping role belongs to the lawyer

RULE / AUTHORITY

Mata v. Avianca, 678 F. Supp. 3d 443 (S.D.N.Y. 2023): "Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings."

WHAT THE RULE REQUIRES

The sanctionable failure was not simply opening an AI tool. The attorneys submitted nonexistent opinions containing fabricated quotations and citations, then continued to stand by the material after its authenticity was questioned.

PRACTICE APPLICATION

The practical lesson is verification plus correction. A lawyer should be able to retrieve every cited authority from an authoritative source and should promptly correct an AI-related error rather than defend an output that cannot be substantiated.

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S.D. TEXAS GENERAL ORDER 2025-04

Responsibility does not shift to the tool

RULE / AUTHORITY

S.D. Texas General Order 2025-04: "Any attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under Rule 11, regardless of whether generative artificial intelligence drafted any portion of that filing."

WHAT THE RULE REQUIRES

The order warns against filing AI-drafted material without checking accuracy and states that AI should never replace independent legal judgment. The order treats AI as a method of preparation, not as a defense to an inaccurate filing.

PRACTICE APPLICATION

Before filing in any tribunal, check the tribunal's current AI rules and the assigned judge's standing orders. Build the certification or disclosure requirement into the filing checklist.

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CIRCULAR 230 § 10.33

Best practices remain useful even when aspirational

RULE / AUTHORITY

Circular 230 § 10.33: Best practices include clearly communicating the engagement, establishing relevant facts, evaluating the reasonableness of assumptions, relating applicable law to relevant facts, and advising the client about conclusions and consequences.

WHAT THE RULE REQUIRES

Section 10.33 is framed as best practice rather than an independent sanction rule, but its structure provides a practical workflow for AI-assisted tax work. It emphasizes facts, assumptions, law, consequences, and client communication.

PRACTICE APPLICATION

Use a written review form that records the assignment, source record, assumptions, authorities checked, calculations recomputed, reviewer, client communication, and final conclusion.

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INTEGRATED STANDARD

One professional obligation across three regimes

RULE / AUTHORITY

The Model Rules, Circular 230, and court rules converge on a common principle: AI may assist the work, but the professional must protect information, exercise independent judgment, verify accuracy, supervise the process, communicate when necessary, and charge fairly.

WHAT THE RULE REQUIRES

The exact rule depends on the forum and role. A tax lawyer may simultaneously be governed by state professional rules, Circular 230, statutes protecting tax-return information, client terms, and a court's local AI order.

PRACTICE APPLICATION

At intake, identify every governing regime. At completion, require a single documented review covering authority, facts, calculations, confidentiality, client instructions, court requirements, billing, and final professional approval.

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TAKE-HOME CHECKLIST

The file should show the professional owned the result

RULE / AUTHORITY

For each AI-assisted matter, the file should identify the approved tool used, information provided to it, authorities and facts independently checked, calculations recomputed, client or court restrictions considered, reviewer, corrections made, and final approval.

WHAT THE RULE REQUIRES

This documentation is not intended to create unnecessary work. It is the record that the professional treated AI as a draft and performed the same competent, diligent, confidential, and candid review required for any other work product.

PRACTICE APPLICATION

Use a short review certificate for higher-risk work: IRS submissions, opinions, protests, briefs, valuation analyses, return positions, refund claims, penalty defenses, and advice dependent on procedural deadlines.

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03

Other Hot Ethical Issues

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Use of Estimates

AICPA Statement on Standards for Tax Services No. 4, Use of Estimates

Unless prohibited by statute or by some other rule, a CPA may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the CPA determines that the estimates are reasonable based on the facts and circumstances known to the CPA

The taxpayer's estimate should be presented in a manner that does not imply greater accuracy than exists

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Am I Bound by the Prior Audit or Court Case?

AICPA Statement on Standards for Tax Services No. 5, Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision

A conclusion in an audit or court proceeding does not restrict a CPA from recommending a different position in a later year unless a taxpayer is bound to a specified treatment by a formal closing agreement or some other method

However, the CPA must still satisfy the normal standards for preparing a tax return. See SSTS No. 1, Tax Return Positions.

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Am I Bound by the Audit or Prior Court Case?

- Thus generally, the result of the audit or court case will indicate how to treat the item in a later year
- There could be exceptions, for example
- If the prior decision was due to nothing more than a lack of documentation;
- If the taxpayer yielded in an administrative proceeding for settlement purposes, but has a legitimate basis for not adopting the position; or,
- New court decisions, rulings or other authorities have been promulgated since the prior proceeding.

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Preparer Penalty Standards Under I.R.C. § 6694(a)

1. The percentage of comfort is perhaps 5% or less
2. Reasonable basis is defined in Section 1.6662-3(b)(3); the percentage of comfort is perhaps 20%
3. Use Form 8275 or 8275R, or disclose pursuant to annual revenue procedure (e.g., Rev. Proc. 2015-16)
4. “Substantial authority” is defined in Section 1.6662-4(d). It is a comfort level of perhaps 40% or more
5. A tax shelter is an arrangement that has a significant purpose of avoidance or evasion of income tax. Section 6662(d)(2)(C)(iii). See Notice 2009-5 for how, in limited situations, to lower the standard to substantial authority for a tax shelter (basically educate the taxpayer about penalty exposure and document this fact)

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Conflicts of Interest Section 10.29

A major cause of malpractice claims for Tax Practitioners

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A Conflict of Interest Exists If

The representation of one client will be directly adverse to another client; or
There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or third person, or by the personal interest of the practitioner

Comment: Virtually same Rule as MRPC 1.7

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Conflict Waivers

The client must provide a written consent waiving the conflict within 30 days of giving verbal consent

The written waiver must be retained for at least three years after the conclusion of the representation of any affected client

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Obtain a Waiver

Where a conflict exists, a practitioner may still handle the matter if the practitioner reasonably believes that he/she will be able to provide competent and diligent representation to each affected client, the representation will not otherwise violate the law and each affected client waives the conflict in an informed consent at the time the conflict is discovered by the practitioner

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More Conflict Traps for the Unwary

The Practitioner's Own Interest

- A common conflict, which is often overlooked, is the situation where a practitioner prepares a tax return, either as a signing or nonsigning preparer, and then handles the subsequent tax audit or appeal
- In this situation, there may be a conflict if the practitioner has a personal interest that conflicts with the client's interest
- For example, if the IRS asserts an accuracy-related penalty, will the practitioner be hesitant to argue that the penalty should not apply because of the taxpayer's good-faith reliance on the practitioner's tax advice?
- Comment: The estate and gift tax valuation penalties are mathematical triggers. Thus, if value is too low the trigger (and thus a possible conflict) could arise without much warning

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More Conflict Traps for the Unwary (cont.)

Representing Both Spouses

Another common conflict exists when the practitioner represents both a husband and wife, and the two spouses' interests become adverse

In such a situation, the practitioner may be unable to represent either spouse

Example — clients divorce and there is a pending Tax Court case. Does one spouse have a claim for relief under Section 6015 (i.e., innocent spouse and similar relief)?

Who is My Client?

- Who is my client
- Partnership matters under the Bipartisan Budget Act (Do I represent the partnership, partners, or both?)
- Estate Planning Issues
- Related Issues
- What is my duty to my client?
- What are my possible conflicts of interest?
- Multiple Client Issues
- Representing spouses
- Representing a closely-held business
- Representing fiduciaries (i.e., the trustee or personal representative)

Prompt Disposition of Matters and Responses to Requests for Information §§10.20 and 10.23 (cont.)

- Where the documents or information requested by the IRS are not in the possession of the practitioner or client, the practitioner must promptly provide the IRS employee seeking the information with any information the practitioner has about who has possession or control of the requested information

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Ethical Obligation to Talk About Penalty Avoidance

- Under IRS Circular 230, practitioners must advise the client of any penalties that are reasonable reasonably likely to apply, and the practitioner must discuss the possibility of penalty avoidance via disclosure. §10.34(c)
- Document discussion to avoid penalty under 6662 & 6694

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04

Responding to Information Requests – Ethical Issues

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Due Diligence – Ethical Issues

- Due Care – AICPA Code of Professional Conduct, Section 50 Article V.
- Model Rule of Prof. Res. 1.3
- Wis. SCR 20:1.3
- Missouri Supreme Court Rule (4-1.3)

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Circular 230 – Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- If the IRS makes proper request for records or information, a practitioner must promptly respond to the request unless the practitioner reasonably has the good-faith belief that the information is privileged
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS

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Responding to IRS Information Requests

AUDIT

Prompt Response

Respond to proper requests unless there is a reasonable good-faith privilege position.

Possession & Control

Make reasonable inquiry of the client concerning who has possession or control of requested information.

Build the Record

Treat IDR responses as part of the later Appeals and litigation record. Track facts, documents and unresolved requests.

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Getting to and Working in Appeals

APPEALS

30-day letter and protest strategy: decide how much factual and legal development belongs in the protest.

Consider an FOIA request and the examination team's administrative record.

Focus on hazards of litigation, but recognize limits on Appeals authority for certain regulation challenges.

If the process stalls, evaluate escalation paths without weakening the factual record.

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Burden of Proof: Build It During the Audit

EVIDENCE

§ 7491	A factual burden can shift in qualifying court proceedings when the taxpayer introduces credible evidence and satisfies statutory requirements.
Audit Conduct	Substantiation, cooperation and exhaustion of administrative remedies matter before trial.
Evidence Discipline	Contemporaneous documents, credible testimony and a clean production record improve the litigation posture.

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Switching the Burden of Proof to the IRS

- Burden of proof can be important in valuation cases
- This is especially so if the IRS does not obtain a good valuation report

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial

- Burden to IRS
  - In most civil controversies, a rebuttable presumption existed that the IRS's determination of tax liability is correct
    - *i.e.,* the taxpayer has the burden of proving the IRS is wrong
- Section 7491 switched the burden to the government in any non-criminal court proceedings, regarding a factual issue, if the taxpayer introduces credible evidence, which is relevant to determination of its liability

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Qualification
  - Code section 7491, which switches the burden of proof to the IRS, applies only to litigation in the courts between the taxpayer and the IRS
  - In order to obtain a shift in the burden of proof, the taxpayer must first comply with all requirements of the code section
- Comply with substantiation requirements contained in the Code and Regulations;
- Cooperate fully with the IRS;
- Exhaust all administrative remedies available to the taxpayer, such as going to the IRS Appeals office; and
- Produce credible evidence at trial.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- The requirements to prove credible evidence means that the burden technically starts out on the taxpayer, but shifts to the government unless the taxpayer produces evidence that would enable the court to find in the favor of the taxpayer, absent any contrary evidence being produced by the IRS and ignoring the judicial presumption of IRS correctness
- Finally, the shift in the burden of proof applies to all income, gift, estate, generation-skipping, taxes and all penalties in addition to tax
  - However, it does not apply to corporations, partnerships, or trusts with the net worth exceeding $7 million (book value)
  - **Is some planning possible**

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Privilege and the Reasonable-Cause Tradeoff

PRIVILEGE

Attorney-client privilege, work product and § 7525 can apply differently in tax matters.	A Kovel arrangement is aimed at facilitating lawyer-client legal communication through an agent.
Reliance-on-adviser defenses can put otherwise privileged advice at issue.	Decide early whether the likely penalty defense is worth the potential privilege consequences.

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05

2026 IRS Landscape & Procedure – Not A Lot of Smiling Faces

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IRS Landscape: What Matters in Practice

IRS LANDSCAPE

Operating Environment	Staffing and organizational changes affect the audit environment. Expect uneven experience levels and practical pressure on case management. Tell your story in writing.

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Regulations After Loper Bright

REFERENCE

Overview

- *Chevron*is dead, but*Skidmore*lives
- Chevron USA Inc. v. National Reserve Defense Counsel, 467 U.S. 837 (1984)– two famous factors used to make a Reg. legally binding
  - Regulation must be consistent with the plain meaning of the statute
  - Regulation is not an unreasonable interpretation of the statute

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Loper Bright: The New Starting Point

LOPER BRIGHT

Independent judicial judgment **Prior law:*Chevron***	Courts decide the best reading of the statute rather than deferring merely because the statute is ambiguous.
Skidmore still matters	Agency reasoning may persuade to the extent it is thorough, consistent and well reasoned.Skidmore v. Swift (0323 U.S. 134 (1944)Skidmore Deference- courts will defer to an agency depending on the thoroughness of its consideration, validity of its reasoning, consistency with other pronouncements and all of those factors which give it a power to persuade.
Delegated authority remains critical	The central question becomes whether Congress delegated authority and whether the agency stayed within its boundaries.

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Post-Loper Practice Consequences

LOPER BRIGHT

Rule Challenge

Identify statutory text, delegation, procedural pedigree and the claimed regulatory gap.

Appeals Limitation

Appeals regulations restrict consideration of regulation-invalidity challenges absent qualifying final judicial authority.
Section 7803(e) – Codified the Internal Revenue Service Independent Office ofAppeals § 7803(e)(1). Purpose is to resolve cases, without litigation on a basis which is “fair and impartial.” §7803(e)(3)(A)

Ethics Overlay

Coordinate substantive challenge with disclosure, preparer-penalty and reasonable-cause analysis.
Form 8275 v. Form 8275-R
Disclosure Issues
Circular 230, AICPA Rules, State Bar Rules
Practical Realities- hard to challenge a regulation on IRS guidance

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Audit, Appeals & Evidence

REFERENCE

Practical Take Aways -

What is the IRS looking at?
IRS training materials

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IRS Audit Issues

AUDIT PRIORITIES

Capitalization & High Wealth

Expect detailed factual testing of repairs versus capital items, estate and high-wealth valuations, ownership, transfers and deductions.

Research Credit & Aircraft

Both areas demand granular, contemporaneous evidence tied to the claimed tax treatment.

Compensation

Nonqualified deferred compensation examinations focus on income timing, employer deduction and employment-tax treatment.

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IRS Audit Issues

IRS TRAINING

Business Aircraft

Qualified business use; personal use; fringe-benefit inclusion; § 280F; flight and passenger documentation.

NQDC / § 409A

Income-inclusion timing; employer deduction; employment-tax timing; plan, election and payment records.

Research Credit

Business components; people and projects; QRE support; four-part-test evidence.

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Airplane Cases

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What is the Tax Planning Technique?

- Sutherland Lumber – Southwest Inc. v. Comm'r, 255 F.3d 495 (8th Cir. 2001)
- SIFL planning

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Airplane Cases

- Need 51% business use to take accelerated depreciation. The first 25% of business use cannot be a rental to a related party or personal use treated as a fringe benefit.
- Depreciation and the Section 280F trap
- Entertainment Facility trap
  - No deduction is allowed for an entertainment facility. §274(a)(1)(B). Exception Transportation entertainment facilities are deductible if the facility is used in pursuit of a trade or business. §1.274-2(b)(1)(iii)(1); TAM9608004. (Planning – Document business need for the plane)
  - Take the time to do good flight logs
  - Watch the 280F depreciation recapture
  - FAA rules require a dry lease. Make sure you do not violate Section 280F

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Airplane Cases

- IRS Activity
  - IRS Notice – IR – 2024-46 (2/21/24) – IRS Notice of more audits
  - LB&I “Campaign” Issue
  - Checklist
    - Flight Logs
    - Business Purposes – Document (162 + 183)
    - 280F
    - PE v. PNE Flights – Document
    - Entity – Partnership or Corporation
    - Dry Lease
    - FAA – Part 91 or 135
    - State Tax Issues – Fly Away States

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Airplane Cases

- Use a Partnership or Corporate structure
- SIFL or §274-10(e)
- Personal Entertainment v. Non-Personal Entertainment
- SIFL is much more favorable than §274-10(e)
- Avoid Schedule C Structure – CCA 202117012 (4/30/21)
    - IRS: Can not pay a fringe benefit to a sole proprietor so income is not SIFL income. Simply disallow all personal expenses. Unclear how to measure expenses.

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Airplane Cases

- Section 280F
    - Leasing and Fringe Benefit Traps
    - Here's a new one – a single member LLC is not a single member LLC
    - New IRS training materials issued November, 2024
- Section 183 – Hobby Loss
    - Business Plan
    - Factors §1.183-2(b) – SeeSchwarz v. Comm'r, Tax CourtDkt. 12347-20 (case pending)

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Family Office Planning

- LenderMgmtLLC V. Comm'r, T.C. Memo 2017-25
- Family office takes a profits interests in investments and is treated as a trade or business
- Has to be a real trade or business – 162 and 183 issues
- Pending issues
  - Planes
  - Cost Seg
  - Real Estate Professional
  - Not For Profit
  - Professional Gambler

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Family Office Planning

- Section 183 concerns
  - Section 183(a) – Disallows expenses of not-for-profit activities
  - Section 183 on its face applies to "an individual on an S- corporation... " Section 183(a) applies to partnership and trusts as well.
    - Note Section 183 creates presumptions
  - Section 183 does not apply to C-corporations. However 162 still applies to a C-corporation and IRS regulations state that "no inference can be drawn from Section 183 and the regulations thereunder that any activity of a [C] corporation... is or is not a business or engaged in for profit." Treas. Reg. 1.183-7(a)
  - Sorry – Slapping a hobby into a C-corporation does not work (at least not well)

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Cost Segregation Issues

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Cost Segregation Ethical Concerns

- Watch the numbers on audit.
- IRS cannot disallow the depreciation and disallow the same expense as passive
- Recalculate and check any revised gain
- Need a good cost segregation study – Engineers are not tax experts
- How to correctly retain an expert
- May need credible testimony about holding property until death
- Diligence – Cir. 230 § 10.22
- Reliance on written advice – Cir. 230 § 10.22, 10.37(b)
- Document any purchase price allocation
- Penalty issues
- Educate client about risks

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Cost Segregation (cont.)

- New Section 168(n) – 100% depreciation for Qualified Production Property
- For a mixed use facility the Taxpayer will need to allocate to production and non-production components
  - Comment: What do “manufacturing” and “production” mean? Not defined.

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Cost Segregation: Planning and Audit Risk

COST SEGREGATION

Planning Goal

Identify shorter-life building components for accelerated cost recovery and potential bonus depreciation.

Audit Focus

Expect scrutiny of engineering support, classifications, purchase-price allocations and transactions surrounding exchanges.

Ethical Overlay

Check revised computations, reliance on engineers, written advice, penalty exposure and client risk communication.

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Change-in-Accounting-Method Trap

COST SEGREGATION

Changes in depreciation recovery period or convention can implicate method-of-accounting rules.	Analyze the lifetime-income concept rather than assuming every reclassification is merely a timing item.
Consider the effect of exchanges, basis step-up, later dispositions and other provisions before taking a position.	Tell the client at the planning stage if a Form 3115 or § 481 adjustment issue may need analysis.

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06

Valuation & Appraisal Issues

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Valuation Checklist

What does the client want:
- High value
- Low value

- The Cover Letter- Summary
- Who is the retaining party and other intended users?
- Use the Correct Definition of Fair Market Value (“FMV”), FMV for a gift, Treas. Reg. Section 25.2512-1 defines fair market value as
    - [T]he price at which property would change hands between a willing buyer and a willing seller, Neither being under any compulsion to buy or sell and both having reasonable knowledge of the Relevant facts

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Valuation Checklist (cont.)

- The “as of” or date
- Purpose of the valuation and intended use (*e.g.*estate and gift tax purposes)
- Type of asset and interest being valued (*i.e.*a minority interest...)
- Control Rights – if any
- Access to Liquidity
- The Scope of Work
- Information Considered
- Methodologies Utilized
- Fair Market Value Conclusion

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Valuation Checklist (cont.)

- The Report – Body
- Standard of value – Define FMV again
- Purpose of the valuation
- What is being valued?
- Prior transactions, if any
- Rights, preferences, and privileges of interest being valued
- Economic overview/ market conditions
- Company specific information
- Methodologies used to determine FMV (Holding Company v. Active Business)

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Valuation Checklist (cont.)

- Discounts. Do not rely only on case law.Berg Estate v. Comm'r,T.C. Memo 1991-279
- Explain the weight given to each methodology used. Otherwise, if one methodology is rejected, the whole report any fail.True Estate v. Comm'rT.C. Memo 2001-167 aff'd., 390 F.3d 1210 (10thCir 2004)
- Tax Affecting Earnings if an S Corp. or Partnership. Calculation both ways. Recent Cases,Kress, Estate of Jones.If do not tax affect, can the marketability discount be increased
- 2703 – Watch it
- Do I need a "good" Form 8283?
- Do I need a "good" receipt/ acknowledgement

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Valuation Checklist (cont.)

- Justify the discount rate being used in the calculation
- Statement of qualifications that meets Tax Court Rule 143
- Exhibits showing calculations
- What is the FMV of the interests being valued?
- Signed certification

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Traps for the Unwary When Obtaining Valuation/ Appraisal Reports

- *Exelon v. Comm'r,*906 F.3d 513 (7thCir. 2018)
  - SILO tax shelter
  - Appraisal of power plant found to lack credibility because the attorney interfered with the integrity and independence of the appraiser by providing wording and conclusions the lawyer expected to see so that the lawyer could issue a tax opinion
  - Loss on (1) valuation issue; and (2) reasonable cause defense to a penalty
- Need an appraiser who understands the process
- Be careful about "educating" an appraiser
- Assume whatever is sent to the expert will be made available to the IRS – What can I ethically say valuation expert.

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Low Valuation Issues (*e.g.*Charitable Donations)

Three Concerns
- Form 8283
- Qualified Appraisal
- The Receipt/ Acknowledgement from theDonee

- Section 170(f)(11)(A)(i) provides that no charitable contribution deduction is allowed unless the taxpayer meets certain requirements
- (B) requires the taxpayer to "include with the return... a description of such property and such other information as the Secretary may require..."
- (D) requires that for donations over $500,000 the taxpayer must "attached to the return a qualified appraisal of [the donated]... property."
- (H) – IRS can issue regulations

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Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donation

- Reg. 1.170A- 13(c)(2)(A) must attach a<u>qualified appraisal</u>to the return; and (2)(B) must attach the<u>appraisal summary</u>(*i.e.,*Form 8283)
- Reg. 1.170A-13(f)(2) and (3) –Doneemust provide a contemporaneous written acknowledgment as to whether the Donor received any goods or services from theDonee. Must be received by the earlier of the filing or extended due date of the tax return.
- Reg. 1.170A- 13(c)(4)(iv)(H) – Reasonable Cause for Failing to Attach Appraisal Summary (may help with appraisal and receipt)

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Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations (cont.)

- Arguments

Qualified Appraisal

- Taxpayer must provide sufficient information to permit the IRS to evaluate the reported contributions, as intended by Congress. See Mohamed v. Comm'r T.C. Memo 2012-152, quoting the Estate of Clause v. Comm'r 122 T.C. 115, 122 (2009). The qualified appraisal and Form 8283 that was attached to the 1040 meet this test

Form 8283

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Bad Form 8283 – Solutions

- Further, Treasury Regulation Section 1.170A- 12(c)(4) and (c)(4)(iv)(H) note that a taxpayer is allowed to explain if he or she has reasonable cause for an inadequate Form 8283. The same regulation allows the IRS to request that a taxpayer provide a correct Form 8283 within 90 days. If this request is complied with the charitable deduction will not be disallowed as long as the taxpayer's error was in good faith. See Treas. Reg. 170A-13(c)(4)(iv)(H).
- In the instant case the Service has not requested that the alleged defects noted in the Revised Lead Sheets on the Form 8283 be corrected.

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Inadequate Form 8283 - Solutions

- Strategy
- “While the Service has never requested that the defects on the Form 8283 alleged in the Revised Lead Sheets at issue be corrected, a new Form 8283 is being faxed to you. The Taxpayer is providing the IRS with a new Form 8283 that is signed by the appraiser andDonee. Also, the basis of the donation at issue is included on this form.
- As noted in the instructions to Form 8283, failure to attach a correct Form 8283 to a tax return will not result in a contribution deduction being disallowed if the failure is due to reasonable cause and not willful neglect. See instructions to Form 8283 at 8 (Rev. December 2021).

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WT Apt Partnership LP v. Comm’r,T.C. Memo 2025-030 (4.9.2025)

- Reasonable cause exemption does exist.
  - May help with an inadequate qualified appraisal

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Get a Good Appraisal – Section 2703 Trap

- 2703(a) – When valuing property for Gift, estate, or GST purposes, cannot consider any option agreement or right to acquire or use the property at a price below fair market value.
- 2703(b) – Exception to (a) if the restriction is
  1. A bona fide business arrangement;
  2. Not a device to transfer property to Members of the transfer's family for less than fair market value; and
  3. Terms similar to arms-length transaction.SeeEst. ofAmlie v. Comm'r,T.C. Memo 2006-76

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Valuation Traps

1. Assumption Letter and/or in the Report – avoid this assumption:

"This valuation assumes there are no Internal Revenue Code Chapter 14 or other federal or state laws or regulations that will have a material impact on the value of the property being appraised. Specifically, we assume the LLC meets the legal requirements of IRC Sections 2703 and 2704 of Chapter 14 if the Internal Revenue Code as they apply to the specific facts and the LLC Agreement. In addition, we have assumed that the terms and conditions of the ___ Agreement are not more restrictive that applicable state law."

Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

"The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code."

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Traps and Models (cont.)

Watch Local Law – Wisconsin LLC law – Pre and Post 12/31/2022. Common trap if states that adopted the Uniform Limited Liability Company Law (WELLCL) (*e.g.,*Missouri LLC formed before 8.28.2022 could so elect)

Pre 1.1.2023 (caution if the LLC predates 2023, it may have elected to stay under this law – Check the State Department of Financial Institutions for a "Statement ofNonapplicability") Wisconsin example

183.0604. Distribution upon dissociation. Except as otherwise provided in this subchapter, upon an event of dissociation under s. 183.0802 that does not cause dissolution of the limited liability company, a dissociating member is entitled to receive any distribution to which the member is entitled under an operating agreement and , if not otherwise provided in an operating agreement,**within a reasonable time after dissociation, the dissociating member is entitled to receive a distribution in complete redemption of the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company.**

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Traps and Models (cont.)

Post 12.31.2022

183.0404 Sharing of and right to distributions before dissolution.

(1) Except to the extent necessary to comply with any transfer effective under s.183.0502or charging order in effect under s.183.0503,any distributions made by a limited liability company before its dissolution and winding up must be made proportionally among members and dissociated members on the basis of the value of the contributions made by each such member, as stated in the records required to be kept under s. 183.0402(2) or, in the case of a company treated as a partnership for tax purposes, the partnership capital account of each such member as computed for tax reporting purposes.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

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Ethical Concerns

- Need a good appraisal
- How to correctly retain an expert
- Watch the details and requirements
- Hot audit issue
- Diligence
- Reliance on written advice
- Valuation penalties under 6662(h), 20% and 40% Substantial (65% or less of “correct” amount) and Gross (40% or less of the “correct” amount)

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Valuation Penalties

- Four Penalties – two in the gift tax context and two in the income tax context. These “triggers” are mathematical:
  - Substantial Valuation Misstatement (income tax)
  - Substantial Estate or Gift Tax Valuation Understatement
  - Gross Valuation Misstatement (income tax)
  - Gross Estate or Gift Tax Valuation Understatement

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Valuation Penalties (cont.)

- Estate and Gift Tax Understatement of Value
  - Substantial Valuation Misstatement
  - There is a 20% penalty of the portion of the underpayment of tax attributed to undervaluation if the value on the estate or gift tax return is 65% or less of the amount determined to be correct
    - Section 6662(a), (b)(5), (g)
- Gross Valuation Misstatement
  - There is 40% of the tax attributable to the undervaluation if the amount is reported on the estate or gift tax return is 40% less of the value determined to be correct
    - Section 6662(h)(1), (2)(C)
  - There is no penalty if the underpayment of tax is $5,000 or less
    - Section 6662(g)(2)

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Income Tax Overstatement of Valuee*.g., a Charitable Contribution*

- Substantial Valuation Misstatement
  - There is a 20% penalty applicable to any underpayment attributable to a Substantial Valuation Misstatement
    - Section 6662(b)(3)
  - A substantial valuation misstatement occurs if the value (or adjusted basis) of any property claimed on a return claimed income is 150% or more of the correct amount
    - Section 6662(e)
  - The penalty is not imposed unless the misstatement results in an underpayment of greater than $5,000 ($10,000 for a C-corporation)
    - Section 6662(b)(2)

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Gross Valuation Misstatement

- There is a 40% penalty in the case of a Gross Valuation Misstatement.
- A Gross Valuation Misstatement occurs if the value of the property is 200% or more of the correct value section.
- The standard is automatically met if the correct value is zero.
  - Treas. Reg. Section 1.6662-5(g).
- Example
  - Donor claims a deduction under Section 170 for the donation of property to a qualified charity

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Reasonable Cause and the Income Tax Valuation Penalties

- A reasonable cause exception under Section 6664 can apply when the underpayment is attributable to a substantial (but not a gross) understatement with regard to a charitable contribution if the follow occurs:
  - The claimed value of the property is based upon a qualified appraisal by a qualified appraiser;
  - The taxpayer also made a good faith investigation of the value of the contributed property; and
  - The taxpayer acted with reasonable cause and in good faith
    - Section 6664(c)(3)
  - A showing of reasonable cause and good faith avoids the estate and gift tax penalties except does not apply to a gross valuation misstatement on a Charitable Contribution Section 6664(c)(2)
    - Section 6664(c)(1)

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Reliance – General Rule Reasonable Cause – IRS Regulation

- In order to establish reasonable cause and good faith the taxpayer must show the following:
  - The advice received was based on all pertinent facts and circumstances and the laws that relate to those facts and circumstances
  - The advice was not based on unreasonable assumptions and did not unreasonably rely on the taxpayer's or someone else's statement findings, etc.
  - The advice was not based on the invalidity of a regulation unless certain disclosure requirements are met.
    - See Treas. Reg. Section 1. 6664-4(c)

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Reasonable Cause

- Defined as Ordinary Business Care and Prudence
- Section 6662 Penalty can be avoided by showing reasonable cause (in most cases)
- Proof of Reasonable Cause, when arguing reliance on a professional – 3-part test
  - Advisor was competent and had significant expertise to justify reliance
  - Taxpayer gave advisor adequate and necessary information
  - Taxpayer relied in good faith upon the advisor

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Valuation: Four Questions Before You Rely on the Report (1 of 2)

VALUATION

1. Engagement

Who retained the appraiser? What is the purpose, date, standard of value and interest being valued?

2. Methodology

Does the report explain information considered, methods used, weighting, discounts and calculations?

3. Legal Assumptions

Check Chapter 14, operating-agreement restrictions and applicable state LLC law. Do not let a boilerplate assumption decide a legal issue.

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Valuation: Four Questions Before You Rely on the Report (2 of 2)

VALUATION

4. Defensibility

Confirm qualifications, certification, exhibits and the final fair-market-value conclusion.

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Appraiser Independence: The Exelon Warning

VALUATION

Use a qualified appraiser who understands the assignment and process.	Educate the appraiser about relevant facts and legal constraints, but do not dictate wording or conclusions.
Assume substantive communications with the expert may be scrutinized later.	Coordinate appraisal quality with the potential reasonable-cause defense.

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Charitable Contributions: Three Documents, One File

CHARITABLE CONTRIBUTIONS

Qualified Appraisal	Confirm the valuation meets applicable qualified-appraisal requirements.
Form 8283	Review completeness carefully, including basis and required signatures when applicable.
Donee Acknowledgment	Check the contemporaneous written acknowledgment and whether goods or services were provided.

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Chapter 14 and Local-Law Traps

VALUATION

§ 2703 can disregard certain restrictions for estate, gift and GST valuation unless the statutory exception applies.	Avoid valuation assumptions that simply presume compliance with §§ 2703 and 2704.
For LLC interests, compare governing-document restrictions with the applicable state-law default rules.	For Wisconsin entities, determine which version of the LLC statute governs before analyzing dissociation and distribution rights.

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07

Refund Claim Traps

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Refund Claims: Deadline Issues

REFUNDS

§ 6511	Track the three-year-from-return and two-year-from-payment rules, together with the applicable lookback limitation.
Claim Content	State all grounds carefully. The variance doctrine can limit later refund litigation to grounds presented administratively.
Denial	A formal disallowance can start a separate two-year period for filing refund litigation. Track Letter 105C and any extension strategy.

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Protective Claims and Filing Discipline

REFUNDS

Use the proper claim form and preserve proof of timely filing.	Protective claims can preserve rights when the ultimate entitlement depends on unresolved facts or law.
Do not wait for an audit or another proceeding to resolve if the refund statute may expire first.	Treat limitations analysis as a separate workstream with its own calendar and written confirmation.

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Do Not Blow Critical Deadlines

- The Three Principal Claim for Refund forms are as follows:
  - Form 1040X is used to claim a refund of individual income taxes
  - Form 1120X is used to claim a refund of an overpayment of corporate income tax
  - Form 843 is used to claim a refund of any tax other than income tax as well as penalties and interest
- Informal claims are possible – but not recommended
- If a return is filed or the tax is paid prior to the due date, for statute of limitations purposes, the return is treated as filed and the tax is treated as paid on “the last possible day” the return could have been filed without being delinquent
- The early payment of the tax rule occurs when a taxpayer’s wages are subject to withholding or estimated tax payments are made
- The amount of the claim is limited by whether the taxpayer has fallen under the three-year statute of limitations or two-year statute of limitations
- Code Section 6511 provides that a claim for refund must be filed within three years of the date the underlying return was filed or within two years of the date the tax was paid, whichever is later

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Amended Returns and Mail Box Rule of Section 7502

- An amended return showing tax due – no mail box rule (not “required” to be filed
- Return claiming a refund of tax – mail box rule applies (return is “required” to be filed) CCA 20152003 – but be smart. Avoid the fight

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The Protective Refund Claims

- Use the correct form
- Can you just send a letter?
- Comment: Big problem if this is missed

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Hot Issue, Refund Claim Traps For The Unwary

- Trap for the Unwary
  - The claim is formally denied on IRS Letter 105C. This starts a two-year clock from filing a complaint in Court. The IRS is not routinely issuing Letter 105C.
- Comment: Trap for the unwary – a Form 907, which extends the two-year clock, requires a special power of attorney. The form also requires high level authority to sign.

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Contents of Refund Claim

- Make your claim as broad as possible
- Watch out for the “variance doctrine”
- Courts will only allow a taxpayer to bring suit on a claim for refund on the grounds raised in the claim for refund. Thus, care should be taken to assure that all grounds have been stated in the claim for refund

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Do Not Wait to File a Refund Claim

- NOL Example
- Audit Example
- IRS Letter 105C Example

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08

High-Net Worth / Family Office Audits

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High-Net-Worth / Family Office Audits

HIGH NET WORTH

Broad Scope

One examination can reach valuation, business entities, charitable contributions, aircraft, foreign items, basis, at-risk and passive-loss questions.

§ 162 / § 183

Business-purpose and profit-motive documentation should coexist with tax planning, not be reconstructed only after examination begins.

Family Office

Business status requires actual business facts. Entity choice alone does not convert a nonbusiness activity into a trade or business.

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Private Aircraft: Audit Checklist

AIRCRAFT

Document business purpose and maintain dependable flight logs.	Analyze § 280F business-use and recapture rules, related-party leasing and fringe-benefit treatment.
Separate personal entertainment from non-personal entertainment and evaluate SIFL consequences.	Coordinate federal structure with FAA operating rules, dry-lease facts and state tax issues.

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09

Passive Loss & Research Credit

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Passive Loss and Real Estate Professional

PASSIVE LOSS

Material Participation

Build evidence under the applicable tests. Investor-type activity generally receives different treatment from operational participation.

Real Estate Professional

Track the more-than-half personal-services test and the 750-hour requirement together with material participation.

Proof

Contemporaneous logs, supported testimony and careful grouping analysis are stronger than after-the-fact estimates.

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10

Passive Losses and the Real Estate Professional

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Passive Losses and the Real Estate Professional

- Section 469
- Rental Real Estate
- Real Estate Professional
- Proving Material Participation
- Make a Grouping Election – watch limited partnership trap

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Passive Loss Rules

- Limit a taxpayer from deducting losses and excess credits from a passive activity against income from nonpassive activities. I.R.C. § 469(a)
- A passive activity is one that:
  - Involves the conduct of a trade or business in which the taxpayer does not materially participate. I.R.C. § 469(c)(1)
  - Is a rental activity. I.R.C. § 469(c)(2)

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Passive Loss Rules (cont.)

- Establishing Material Participation
  - A taxpayer materially participates in an activity if, and only if, the taxpayer meets one of the following seven tests:
    - Work done in a taxpayer's capacity as an investor does not count toward the 500 Hour test, unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2)(ii)
    - Investor activities include studying and reviewing financial statements or reports on an activity, preparing studies or analyses of the activity's finances or operations for the taxpayer's own use, and monitoring the activity's finances or operations in a nonmanagerial capacity

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Passive Loss Rules (cont.)

- Facts and circumstances. Treas. Reg. § 1.469-5T(a)(7)
  - Taxpayer can establish material participation by regular, continuous and substantial involvement in an activity based on all the facts and circumstances
  - Must participate in activity for more than 100 hours. Treas. Reg. § 1.469-5T(b)(2)(iii)
  - Caution! Services performed in the management of an activity are disregarded unless:
    - No other individual is compensated for performing management services in connection with such activity; and
    - No other individual performs management services that exceed the hours spent by the taxpayer. Treas. Reg. § 1.469-5T(b)(2)(ii)

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Passive Loss Rules (cont.)

- A taxpayer must establish hours of participation under the seven tests
  - Any reasonable means of proof is sufficient to establish hours of participation. Treas. Reg. § 1.469-5T(f)(4)
  - Courts and the IRS are skeptical when a taxpayer makes extravagant claims on the number of hours of participation
  - Courts generally do not accept "post-event ballpark guesstimate" of hours unless supported by credible testimony and other objective evidence
  - Taxpayers are recommended to keep careful records of participation
  - Practice Tip
    - Use an affidavit
    - A client interview
    - Keep good logs

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Passive Loss Rules (cont.)

- Special Rules for Real Estate Rental Activities
  - Taxpayers who qualify as "real estate professionals" may treat their real estate rental activities as nonpassive upon a showing of material participation. I.R.C. § 469(c)(7)
  - To qualify as a "real estate professionals"

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Passive Loss Rules (cont.)

- For individuals:
  - The taxpayer must satisfy the two following requirements:
    - More than one half of all personal services performed in trades or businesses must be performed in the real property trades or businesses; and
    - More than 750 hours of services must be performed in real property trades or businesses in which the taxpayer materially participates. I.R.C. § 469(c)(7)(B)
  - Personal services include any work performed by the individual in the connection with a trade or business, except for:
    - Worked performed by an individual in the individual's capacity as an investor. Treas. Reg. § 1.469-9(d)(4)

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Passive Loss Rules (cont.)

- Services performed as an employee, unless the employee is a 5% owner of the employer. I.R.C. § 469(c)(7)(D)(ii)
  - Practice Tip: When looking to purchase Real Estate (*e.g.*, Apartment Buildings), document that the activity is not investment activity
- Services of the taxpayer's spouse cannot be combined to satisfy either of the two requirements. Treas. Reg. § 1.469-9(c)(4)
- Caution! Rental activities held through a passthrough entity constitute a single interest if the entity grouped its real estate as a single activity. Treas. Reg. § 1.469-9(h). However, if a taxpayer owns directly or indirectly a 50% or greater interest in the passthrough entity, each interest in rental real estate is treated as a separate interest unless the taxpayer makes his or her own election to treat all interests in real estate as a single activity.

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11

Research Credit Issues

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Research Credit: A Clean Four-Part-Test Framework (1 of 2)

RESEARCH CREDIT

Business component and permitted purpose

Identify what was developed or improved and the intended improvement in function, performance, reliability or quality.

Technological uncertainty

Identify capability, method or appropriate-design uncertainty existing at the outset.

Process of experimentation

Show alternatives evaluated through modeling, simulation, testing, systematic trial and error or another evaluative process.

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Research Credit: A Clean Four-Part-Test Framework (2 of 2)

Technological in nature

Tie the experimentation to engineering, physical or biological sciences, or computer science.

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Research Credit: Proof by Business Component

People

Who performed or supported qualified services, and what records support that conclusion?

Projects & Activities

Tie each business component to uncertainty, alternatives evaluated and the actual technical work undertaken.

QRE Reconciliation

Connect wages, supplies and contract research from source records through workpapers to Form 6765.

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Research Credit: 2026 Practice Focus

RESEARCH CREDIT

Substantiation

Maintain contemporaneous project and QRE documentation, including relevant base-period support.

Form 6765

More granular business-component reporting increases the importance of tying the return to the underlying technical record.

Audit Management

Expect questions about sampling, generic narratives and the match between claimed activities and actual records.

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Taxpayer Assistance and Service Act: Proposed Changes to Watch

PROPOSED LEGISLATION

Tax Court

The proposal would expand Tax Court options for certain refund and CDP matters, including qualifying refund cases up to $2 million.

Refund Claims & Appeals

The proposal would structure IRS action on timely refund claims, Appeals review and suspension of the refund-suit period during Appeals.

Practice Administration

Other provisions address online practitioner access, electronic filing timeliness, collection procedure and selected penalty processes.

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Proposed Refund, Appeals and Tax Court Changes

PROPOSED LEGISLATION

Potential Tax Court refund jurisdiction for qualifying claims not exceeding $2 million.	Potential partial-payment refund litigation for certain taxpayers in installment agreement or currently-not-collectible status.
Proposed 12-month IRS determination period for timely refund claims, absent agreement otherwise.	Proposed Appeals path for disallowances, with a deemed-disallowance mechanism if the IRS does not timely act.
Proposed suspension of the two-year refund-suit period during Appeals and for 30 days afterward.	These items remain proposals until enacted and applicable effective-date requirements are satisfied.

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12

Employment Tax & ERC

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Worker Classification: Section 530 Safe Harbor

EMPLOYMENT TAX

Reasonable Basis

Potential grounds include prior IRS audit practice, published authority, industry practice or another reasonable basis.

Consistency

The taxpayer must satisfy return-filing and worker-treatment consistency requirements.

Scope

Section 530 addresses employment-tax treatment. Do not treat it as a universal worker-classification rule.

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§ 409A and Deferred Compensation: Keep the Issue Focused

COMPENSATION

Exam Questions

When are deferred amounts included in the service provider’s income, deductible by the employer and subject to employment tax?

Document Check

Identify the arrangement, deferral and payment terms, election timing, payment triggers, payroll reporting and any correction history.

Equity Connection

Options, stock appreciation rights and restricted stock units can raise § 409A questions depending on structure. Valuation may matter for stock-right exceptions.

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Employment-Tax Procedure

EMPLOYMENT TAX

§ 6513(c) affects when timely filed employment-tax returns are deemed filed for refund-limitations purposes.	Interest-free adjustment rules can reward resolving and paying certain employment-tax adjustments promptly.
If a case proceeds too far into notice-and-demand territory, interest-free treatment may no longer be available.	ERC work raises merits, penalty, diligence and limitations questions that should be separately documented.

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13

IRS Practitioner Oversight Restructuring

OPR and RPO aligned under a new TPMO

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OFFICIAL ANNOUNCEMENT

What the IRS changed

The announcement frames the change as an organizational efficiency measure

1. On June 8, 2026, the IRS announced the Tax Professional Management Office.
2. Effective June 28, 2026, RPO and OPR align under the TPMO.
3. Chris Pleffner was identified as the head of the new office.
4. The IRS described the goal as simplified and modernized interaction with the tax professional community.

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ORGANIZATION

Distinct missions under one umbrella

Return Preparer Office

- PTIN administration
- Enrollment programs
- Annual Filing Season Program
- Program and registration functions

Office of Professional Responsibility

- Circular 230 enforcement
- Misconduct investigations
- Disciplinary proceedings
- Practitioner conduct and discipline

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IRS ASSURANCE

The missions are stated to remain intact

> *The missions of RPO and OPR will remain intact and will operate independently within their respective roles and authorities.*
>
> **IRS statement, June 8, 2026**

- The IRS says credentialed professionals and uncredentialed preparers remain distinct.
- The stated change is organizational, not a change to Circular 230 itself.

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PRACTITIONER CONCERNS

Why the structure matters

Distinguish confirmed organizational facts from predictions about enforcement behavior

1. RPO performs registration and program-administration functions.
2. OPR performs investigative and disciplinary functions.
3. Housing both within one office creates questions about functional separation, resources, and perceived independence.
4. The official assurance of independent roles should be compared with actual implementation.

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OPR BASELINE

What has not changed

The formal legal duties continue even when the reporting structure changes

1. OPR retains exclusive delegated authority and oversight responsibility for practitioner conduct and discipline.
2. Circular 230 continues to govern practice before the IRS.
3. Disciplinary tools include proceedings and sanctions for confirmed violations.
4. Education and outreach remain part of OPR’s mission.

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DUE PROCESS

How a Circular 230 matter begins

Use the process, not assumptions about restructuring, to evaluate a specific matter

1. Referrals may come from internal or external sources.
2. OPR first determines jurisdiction.
3. OPR independently evaluates whether allegations merit inquiry or investigation.
4. The path depends on the facts, evidence, and applicable standards.
5. Not every referral is sanctionable; some matters may close or receive a “soft” letter.

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PRACTICE RESPONSE

Risk management without overreacting

The prudent response is better documentation, consistent review, prompt correction of mistakes, and careful handling of a separate OPR inquiry, not an unnecessary concession on the underlying tax issue.

1. Strengthen support for factual and legal positions.
2. Correct errors promptly and document the correction.
3. Use consistent review standards across matters.
4. Treat referrals and OPR correspondence as distinct from the underlying tax dispute.
5. Protect privilege while developing the factual record.
6. Monitor TPMO implementation and published OPR guidance.

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OPEN QUESTIONS

What remains worth watching

These are monitoring questions, not established consequences

1. Will OPR and RPO maintain operationally separate intake and decision paths?
2. How will staffing and resource allocation be handled?
3. Will public guidance identify new referral or coordination procedures?
4. Will disciplinary timelines or published sanctions change?
5. How will TPMO describe accountability and review within the combined structure?

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Bottom line

Anchor the presentation in the IRS announcement and current Circular 230

1. The new TPMO is real and effective June 28, 2026.
2. RPO and OPR are aligned under it.
3. The IRS says the offices retain separate missions, roles, and authorities.
4. Circular 230 standards remain the controlling practitioner rules.
5. Implementation should be watched, but unsupported predictions should be avoided.

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14

Proposed Circular 230 Amendments

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PROPOSED AMENDMENTS AFFECTING §§ 10.50 AND 10.51

PROPOSED, NOT CURRENT LAW

Treasury's stated scope

> *These regulations propose to eliminate provisions related to registered tax return preparers, classify the use of certain contingent fee arrangements by practitioners as disreputable conduct, establish new standards for appraisals and the disqualification of appraisers, and update certain provisions as appropriate.*
>
> **89 Fed. Reg. 104915**

- The changes affect practitioners, preparers, appraisers, and program participants.
- The proposal modernizes rather than replaces Circular 230.

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STRUCTURE

PROPOSED, NOT CURRENT LAW

Four principal categories of change

For each proposed amendment, identify the existing rule, quote the proposed language, determine who is affected, and clearly state that the proposal is not operative unless finalized.

1. Remove obsolete registered tax return preparer provisions.
2. Move specified contingent-fee conduct into § 10.51 disreputable conduct.
3. Create or revise appraisal and appraiser-disqualification standards.
4. Update competence and other provisions to reflect modern practice.

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PROPOSED, NOT CURRENT LAW

Current Rule and Proposed Change

CURRENT § 10.27

- Current § 10.27 governs contingent-fee restrictions and exceptions.
- Analyze the current text and applicable authority before agreeing to or charging a contingent fee.
- Existing judicial authority remains relevant under current law.

PROPOSED §§ 10.50 AND 10.51

- The proposal would treat specified contingent-fee conduct as disreputable conduct under § 10.51.
- The proposal addresses specified pre-examination return and refund-claim work.
- The proposal is not operative unless and until finalized.

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PROPOSED, NOT CURRENT LAW

Practice questions under the proposal

Do not rely on shorthand labels; analyze the actual service and trigger

1. Is the engagement for an original return, amended return, refund claim, examination, Appeals, or litigation?
2. Has the IRS initiated an examination of the return or claim?
3. Is the fee tied to a refund, tax savings, or another result?
4. What do state ethics and fee rules independently require?
5. Does the engagement letter accurately describe the scope and fee mechanics?

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APPRAISERS

PROPOSED, NOT CURRENT LAW

Proposed appraisal and disqualification standards

Coordination among lawyer, accountant, client, and appraiser requires careful role definition

1. The proposal would establish new appraisal standards.
2. It would authorize disqualification where appraisals fail governing standards through reckless conduct or gross incompetence.
3. Tax practitioners should evaluate the appraiser’s qualifications, methodology, independence, and compliance record.
4. The retaining professional’s diligence remains separate from the appraiser’s duties.

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IMPLEMENTATION

PROPOSED, NOT CURRENT LAW

What firms should do now

Current §§ 10.22, 10.35, 10.36, and 10.37 already require substantial controls

1. Track finalization rather than treating the proposal as operative law.
2. Inventory contingent-fee engagements and appraisal-dependent matters.
3. Update technology and AI controls under existing duties now.
4. Prepare engagement-letter and policy revisions that can be activated if finalized.
5. Train professionals to distinguish proposed language from current requirements.

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Questions

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