2025 Edition
Release Notes

The text has been revised, particularly to reflect additions, new developments, new regulations, and corrections in most chapters.

The law relating to material in the text is changing constantly. As this is written, Congress is considering various proposals that could affect drafting partnership agreements and the tax consequences of being a partner. Also, the Internal Revenue Service has announced various regulations projects that could affect partnership taxation. Also, the new Trump Administration will have the opportunity to express its views on how the partnership tax laws will work. It is not possible fully to anticipate what proposals the Trump Administration will make in the area of partnership taxation. The drafter of a partnership agreement is greatly encouraged to check the status of these projects.

The Trump Administration may have a different approach to administration of the partnership tax laws than prior administrations. The Trump Administration may have a different view towards substantive tax policies and doctrines. Readers should be attentive to changes in approach by the Internal Revenue Service and for changes in the partnership tax laws.

These regulations projects appear on the Internal Revenue Service's 2024–2025 Priority Guidance Plan (which was published by the Biden Administration and may not reflect the views of the Trump Administration):

- As this is written, Congress is considering a major tax reconciliation act. Users should consider the effects of recently proposed and recently enacted legislation.
- Users should consider the effects of the uncertainties over funding and staffing of Internal Revenue Service audit efforts. As this is written, there are proposals to reduce Internal Revenue Service funding and substantially to reduce Internal Revenue Service examination personnel. These initiatives may have profound effects on partnerships. The current Administration also may have a substantially different emphasis on regulatory law than prior Administrations.
- As this is written, there is uncertainty concerning the extension of many provisions contained in the Tax Cuts and Jobs Act of 2017. A summary of expiring provisions is provided in Congressional Research Service, *Expiring Provisions of P.L. 115-97 (the Tax Cuts and Jobs Act): Economic Issues*, R48286 (Updated January 17, 2025), https://crsreports.congress.gov. These are some issues to be dealt with:
  - Tax Rate Reform. Without new legislation, the highest individual income tax rate will increase from 37 percent to 39.6 percent. The Tax Cuts and Jobs Act set individual marginal tax rates at 10%, 12%, 22%, 24%, 32%, 35%, and 37%. The top rate of 37% applies to taxable income over $600,000 for married joint filers, or $500,000 for single and head of household filers in 2018, indexed for inflation. The rates prior to the Tax Cuts and Jobs Act were 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. Absent the Tax Cuts and Jobs Act changes, the top rate of 39.6% would have applied to taxable income over $480,050 for married joint filers, $453,350 for head of household filers, or $426,700 for single filers in 2018, also indexed for inflation. While the bottom two brackets covered the same taxable income levels, these brackets changed for other income levels.

- Pass-Through Deduction. The 20% deduction for qualified business income of partnerships, limited liability companies, S corporations and proprietorships expires at the end of 2025. Under the new Section 199A in the Tax Cuts and Jobs Act, taxpayers may deduct 20% of qualified pass-through business income. The deduction is limited to the greater of 50% of W-2 wages, or 25% of W-2 wages plus 2.5% multiplied by the value of depreciable property (equipment and structures) for higher incomes. Specified service businesses generally may not claim the deduction (these are health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, and services consisting of investment and investment management, and trading of securities, partnership interests, or commodities). The specified service business definition does not include architecture or engineering firms. In 2024, both the deduction limitation and specified service business limitation do not apply if taxable income is less than $191,950 (unmarried) or $383,900 (married filing jointly). These limits are phased in over a $50,000 (single) and $100,000 (married) range, and thus apply fully at $241,950 (single) and $483,900 (married). The thresholds at which these limits begin to apply are adjusted for inflation annually. Section 199A is set to expire at the end of 2025, but there are proposals to extend this provision, or to make it permanent, or perhaps to extent and to modify this provision.
- Limitation on Losses for Noncorporate Taxpayers (Expires in 2028). Prior to the Tax Cuts and Jobs Act, businesses were generally permitted to carry over a net operating loss (NOL) to certain past and future years. Under the passive loss rules, individuals and certain other taxpayers are limited in their ability to claim deductions and credits from passive trade and business activities, although unused deductions and credits may generally be carried forward to the next year. Similarly, certain farm losses may not be deducted in the current year, but can be carried forward to the next year or, uniquely, carried back for two years. For taxpayers other than C corporations, the Tax Cuts and Jobs Act disallowed a deduction in the current year for "excess business losses" and treats such losses as a NOL carryover to the following year. An excess business loss is the amount that a taxpayer's aggregate deductions attributable to trades and businesses exceed the sum of: (1) aggregate gross income or gain attributable to such activities; and (2) $250,000 ($500,000 if married filing jointly), adjusted for inflation. For partnerships and S corporations, this provision is applied at the partner or shareholder level.
- Standard Deduction and Personal Exemption. The Tax Cuts and Jobs Act repealed the personal exemptions for taxpayers and their dependents, but offset this loss for many taxpayers by increasing the standard deduction and the child tax credit and providing a family credit for other dependents. The standard deduction is the sum of the basic standard deduction and, if applicable, the additional standard deduction for the blind or elderly. The basic standard deduction amount varies by the taxpayer's filing status and is adjusted annually for inflation. Absent Tax Cuts and Jobs Act changes, the basic standard deduction amounts for 2018 would have been $6,500 for single filers, $9,550 for heads of household filers, and $13,000 for married taxpayers filing jointly. The Tax Cuts and Jobs Act increased the dollar amounts of the basic standard deduction through 2025. Specifically, for 2018, the basic standard deduction amounts were $12,000 for single individuals, $18,000 for heads of household, and $24,000 for married individuals filing jointly. After 2018, these amounts are adjusted for inflation using the chained Consumer Price Index (CPI). The additional standard deduction for the blind and elderly is unchanged.
- State and Local Tax (SALT) Deduction Cap. State and local income and property taxes, as well as foreign property taxes, are deductible as an

itemized deduction. State and local sales taxes paid may be deducted in lieu of income taxes. The Tax Cuts and Jobs Act limited itemized deductions for state and local income, sales, and property taxes to $10,000. No deduction is allowed for foreign real property taxes. Property taxes associated with carrying on a trade or business are fully deductible.

- Itemized Deduction for Miscellaneous Expenses. Prior to the Tax Cuts and Jobs Act, individual taxpayers who itemized their deductions could deduct miscellaneous expenses to the extent that they collectively exceeded 2% of AGI. Expenses subject to the 2% floor included unreimbursed employee expenses, tax preparation fees, and certain other expenses. The Tax Cuts and Jobs Act temporarily suspended itemized deductions for miscellaneous expenses for tax years 2018 through 2025.
- Overall Limitation on Itemized Deductions. For taxpayers with AGI above certain thresholds (inflation adjusted; would have equaled $320,000 for married taxpayers filing jointly and $266,700 for singles in 2018), the total amount of itemized deductions is limited under permanent law (i.e., absent Tax Cuts and Jobs Act changes). For affected taxpayers, the total of certain itemized deductions is reduced by 3% of the amount of AGI exceeding the threshold. The total reduction, however, cannot be greater than 80% of the deductions. The itemized deductions not subject to the limitation include deductions for medical and dental expenses, investment interest, qualified charitable contributions, and casualty and theft losses. The Tax Cuts and Jobs Act repealed the overall limitation on itemized deductions through 2025. This provision does not function as a limit on the value of itemized deductions (unless it meets the maximum) because it is triggered by changes in income. It is equivalent to increasing the marginal tax rate by 3% for affected taxpayers and should be viewed as a rate reduction. For example, an affected taxpayer in the top pre-Tax Cuts and Jobs Act bracket of 39.6% actually has a tax rate of 40.8% (39.6% times 1.03) or 1.2 percentage points higher. The direct rate reduction is 2.6 percentage points (39.6% minus 37%). Thus, overall, the effective tax rate for these taxpayers who itemize decreases by 3.8 percentage points (40.8% minus 37%).
- Individual Alternative Minimum Tax. Without legislation, the individual alternative minimum tax exemption threshold amount will be reduced. For certain taxpayers, a tax is imposed on an individual's alternative minimum taxable income (primarily income without a standard deduction, state and local income deduction, or deductions for personal exemptions) less an exemption amount. For 2018, the exemption would have been $55,400 for singles and $86,200 for married couples prior to the Tax Cuts and Jobs Act's changes. The exemption phased out beginning at $123,100 for singles and $164,100 for married couples. The tax equaled 26% of income (after applying the exemption) below thresholds of $95,750 for single filers and $191,500 for married taxpayers filing joint returns. The tax was 28% on income above these thresholds, and the thresholds were indexed for inflation. Prior-year AMT amounts could be credited against regular tax. The Tax Cuts and Jobs Act increased the AMT exemption amounts to $70,300 for unmarried taxpayers (single filers and heads of households) and $109,400 for married taxpayers filing joint returns. It also increased the exemption phaseout to $500,000 for singles and $1 million for married taxpayers filing jointly. These amounts are indexed for inflation.
- Expensing of Equipment (Completes Phaseout in 2026). Bonus depreciation was reduced to 80% in 2023. Bonus depreciation was reduced to 60 % in 2024. Bonus depreciation was reduced to 40% in 2025. Bonus depreciation is completely eliminated beginning in 2026. Assets such as equipment and buildings are depreciated over time. Prior to the Tax Cuts and Jobs Act, bonus depreciation for equipment, purchased software, and structures

with recovery periods no more than 20 years was allowed an immediate deduction of 50% for assets placed in service in 2017, 40% in 2018, and 30% in 2019. Long-lived property was not eligible. The phasedown was delayed for certain property, including property with a long production period. Additionally, under separate permanent law, smaller businesses (formally, those with annual investment of $1,220,000 or less in 2024; adjusted annually for inflation) may elect under Section 179 to expense investments (claim 100% bonus depreciation). The Tax Cuts and Jobs Act allowed full and immediate expensing (100% bonus depreciation) for business assets of businesses too large to qualify for Section 179 expensing through 2022; the bonus percentage is reduced by 20% per year for four years starting in 2023. The Tax Cuts and Jobs Act excluded regulated public utilities (but eliminated the interest limit for these assets) and added theatrical movies and television programs to eligible assets. The phasedown was delayed for property with a long production period. This provision also applies to computer software. Expensing is not available to real estate and farming businesses that elect out of the limit on interest deductions.

- Amortization of Research Expenditures. Immediate full deductibility of research and experimentation expenditures expired at the end of 2021. Assets such as equipment and buildings are depreciated over time. Prior to the Tax Cuts and Jobs Act, bonus depreciation for equipment, purchased software, and structures with recovery periods no more than 20 years was allowed an immediate deduction of 50% for assets placed in service in 2017, 40% in 2018, and 30% in 2019. Long-lived property was not eligible. The phasedown was delayed for certain property, including property with a long production period. Additionally, under separate permanent law, smaller businesses (formally, those with annual investment of $1,220,000 or less in 2024; adjusted annually for inflation) may elect under Section 179 to expense investments (claim 100% bonus depreciation). The Tax Cuts and Jobs Act allowed full and immediate expensing (100% bonus depreciation) for business assets of businesses too large to qualify for Section 179 expensing through 2022; the bonus percentage is reduced by 20% per year for four years starting in 2023. The Tax Cuts and Jobs Act excluded regulated public utilities (but eliminated the interest limit for these assets) and added theatrical movies and television programs to eligible assets. The phasedown was delayed for property with a long production period. This provision also applies to computer software. Expensing is not available to real estate and farming businesses that elect out of the limit on interest deductions. Research expenditures are also eligible for a tax credit, and the amount of expenditures is reduced by the credit for expensing under Section 280C of the tax code. The language in the Tax Cuts and Jobs Act was changed to reduce the credit by the amount of the credit in excess of the deduction, effectively eliminating the basis adjustment. These features together lead to significant negative effective tax rates (effectively a subsidy) under either expensing or five-year amortization, largely due to the credit.
- Deduction for Interest Paid. Before the Tax Cuts and Jobs Act, the deduction for net interest was limited to 50% of adjusted taxable income for firms with a debt-equity ratio above 1.5. Interest above the limitation may be carried forward indefinitely both before and after the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act generally limits deductible interest to 30% of adjusted taxable income for businesses with gross receipts greater than $25 million. Under prior law and the temporary provisions of the Tax Cuts and Jobs Act, this interest limit applied to earnings (income) before interest, taxes, depreciation, amortization, or depletion (referred to as EBITDA). After 2021, the Tax Cuts and Jobs Act permanently changed the measure of income to earnings (income) before interest and taxes (referred to as

EBIT). This change results in a smaller income base and a lower ceiling on the deduction. The provision also excepts floor plan financing. Regulated public utilities are not subject to the limit, and real estate and farm businesses can elect out of it. The Tax Relief for American Families and Workers Act of 2024 proposes to reinstate EBITDA as the basis for the limit.

- Qualified Opportunity Zones (Expires in 2026). The Tax Cuts and Jobs Act allowed a temporary deferral of capital gains taxation if gains are reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from investments in a qualified opportunity fund. The designation of census tracts as opportunity zones is made by a state's governor with the number of tracts capped by statute. This provision is scheduled to expire in 2026.
- Estate and Gift Tax. The Tax Cuts and Jobs Act increased the individual federal estate and gift tax exemption to $10 million. The exemption is indexed for inflation. The exemption amount will return to the pre-Tax Cuts and Jobs Act levels in 2026. The individual exemption for 2026 will become approximately $7 million. Estate and gift taxes are levied on transfers after applying a cumulative exclusion that would have been a $5.6 million per decedent exclusion in 2018 (the $5 million per decedent amount in statute adjusted annually for inflation) absent the TCJA changes. The tax rate is 40%. The TCJA increased the federal estate and gift exclusion to $10 million per decedent (adjusted for inflation).
- The Tax Cuts and Jobs Act altered the international tax regime by eliminating the tax on dividends received from foreign subsidiaries and enacting a global minimum tax on certain income, known as GILTI (global intangible low-taxed income). It also enacted a tax reduction for intangible income received by United States corporations from foreign sources, FDII (foreign-derived intangible income). GILTI and FDII are related provisions and their economic effects depend on each other. The JCT estimated that extending these provisions through 2034 would cost $120 billion through FY3034.
- Lower Tax Rate on Global Intangible Low-Taxed Income (GILTI). The GILTI deduction will be reduced to 37.5 percent of the GILTI inclusion beginning in 2026. This will result in an effective tax rate of 13.125 percent in 2026 and thereafter. As part of the transition to a system with the exclusion of dividends from United States-controlled foreign corporations, the Tax Cuts and Jobs Act imposed a minimum tax on the income of these foreign corporations. Corporations include in income their foreign-source income in excess of 10% of their tangible assets net of interest (focusing on intangible income by excluding a deemed normal return to tangible investments). This income is termed global intangible low-taxed income. A deduction is allowed for 50% of this income for tax years beginning after December 31, 2017, and before January 1, 2026, with a subsequent deduction of 37.5% thereafter. At a 21% corporate tax rate, these deductions result in tax rates of 10.5% and 13.125%, respectively. Foreign taxes are allowed to be creditable — 80% can be credited. As a result, the lowest foreign tax rate at which no United States tax is due is 13.125% initially (80% of 13.125% is 10.5%) and then 16.406%. Because the credit is applied on a global basis, this minimum rate would be on global income. The sum of GILTI and FDII (see below) cannot exceed taxable income considered without regard to GILTI and FDII.
- Lower Deduction for Foreign-Derived Intangible Income (FDII). The Tax Cuts and Jobs Act allowed a deduction for foreign-derived intangible income arising from a trade or business within the United States. The deduction is 37.5% for tax years beginning after December 31, 2017, and before January 1, 2026, with the deduction subsequently reverting to 21.875%. These deductions result in effective rates of 13.125% and

16.406%, respectively. Foreign-derived intangible income is determined by multiplying intangible income of the firm (income minus certain excepted income minus deductions minus 10% of tangible assets) by the share of deductible income from sales of property or services to foreigners to be used abroad to the total deductible income of the firm. Deductible income is gross income minus deductions minus certain exceptions. The exceptions include Subpart F income, GILTI, financial services income, dividends from CFCs, and domestic oil and gas income. GILTI tax is levied on a business's foreign-source income in excess of 10% of the business's tangible assets. Therefore, a business subject to the GILTI tax would realize tax savings by increasing foreign tangible assets. The FDII deduction allows a deduction for the amount by which sales to foreigners exceed 10% of domestic tangible assets. A business would maximize its FDII deduction (holding foreign sales constant) by minimizing domestic tangible assets. For businesses affected by GILTI and FDII, these provisions may provide incentives that encourage foreign investment and discourage domestic investment.

- Increase Rates for the Base Erosion and Anti-Abuse Tax (BEAT). The Base Erosion and Anti-Abuse Tax results in a 10 percent tax on the corporation's modified taxable income for taxable tax years 2018-2025. The Base Erosion and Anti-Abuse Tax rate will increase in 3026 to 12.5 percent. The Base Erosion and Anti-Abuse Tax enacted in the Tax Cuts and Jobs Act imposes a minimum tax equal to 10% of the sum of taxable income and base erosion payments on corporations with average annual gross receipts of at least $500 million over the past three tax years and with deductions attributable to outbound payments exceeding a specified percentage of the taxpayer's overall deductions. The rate is 5% for payments in 2018, and 12.5% for taxable years beginning after December 31, 2025. (Taxpayers that are members of an affiliated group that includes a bank or registered securities dealer are subject to an additional increase of 1 percentage point in the tax rates.) Base erosion payments include payments to related foreign parties for which a deduction is allowable under Code Chapter 1, the purchase of depreciable or amortizable property, certain reinsurance payments, and payments to inverted firms or foreign persons who are a member of an affiliated firm that includes the inverted firm that became inverted after November 9, 2017 (but not firms that continue to be treated as United States firms). Cost of goods sold would not be included, and cost of services would not be included if determined under the services cost method under the transfer pricing rules in Section 482. Disallowed interest under Section 163(j) would be first allocated to unrelated parties. A related person is a person who owns at least 25% of the taxpayer or parties controlled by the same interests. All firms under common ownership are aggregated with common ownership if one firm (such as a parent) has more than 50% ownership. The research credit and 80% of three credits (including the low-income housing credit and certain energy credits) are allowed to reduce the Base Erosion and Anti-Abuse Tax by comparing it to the regular tax without reducing it by these credits. After 2025, the regular tax will be reduced by all credits. Base Erosion and Anti-Abuse Tax was aimed at profit shifting by increasing the cost of payments made to foreign affiliates, both United States parents of foreign subsidiaries and foreign-owned United States subsidiaries. This is the only provision that can address profit shifting out of the United States by foreign multinationals.

- There currently is an Administration legislative proposal to reduce the corporate income tax rate to 15 percent from the current 21 percent rate.
- There currently is an Administration legislative proposal to permit the SALT cap to expire.
- There currently is an Administration legislative proposal to exempt from income tax tip income, overtime pay, and all Social Security benefits.

- There currently are legislative proposals to repeal incentives for electric vehicles and possibly other clean energy incentives.
- There currently are proposals to increase import tariffs and to impose higher tariffs against countries such as China, Mexico, and Canada.
- In the area of Consolidated Returns, Regulations regarding the ownership of partnership interests by more than one member of a consolidated group.
- In the area of Exempt Organizations, guidance under Section 4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
- In the area of General Tax Issues, final regulations under Section 267 regarding related party transactions and partnerships.
- In the area of International, regulations and other guidance addressing the treatment of foreign entities held by domestic partnerships and S corporations under Sections 953, 958, and 1291–1298. Proposed regulations were published on January 25, 2022.
- Guidance to update the withholding foreign partnership and withholding foreign trust withholding agreements in Rev. Proc. 2017-21 starting for the 2026 calendar year.
- In the area of partnerships, final regulations regarding the application of Section 163(j) to partnerships, S corporations, and their owners. Proposed regulations were published on September 14, 2020.
- In the area of partnerships, final regulations regarding the stock of a corporate partner under Section 337(d). Proposed regulations were published on March 25, 2019.
- In the area of partnerships, final regulations under Section 469(h)(2) concerning limited partners and material participation. Proposed regulations were published on November 28, 2011.
- In the area of partnerships, final regulations on the fractions rule under Section 514(c)(9)(E). Proposed regulations were published on November 23, 2016.
- In the area of partnerships, final regulations under Sections 704, 734, 743, and 755 arising from the American Jobs Creation Act of 2004, regarding the disallowance of certain partnership loss transfers and no reduction of basis in stock held by a partnership in a corporate partner. Proposed regulations were published on January 16, 2014.
- In the area of partnerships, guidance addressing income allocations to withdrawing partners under Section 704.
- In the area of partnerships, guidance on the allocation of investment tax credits under Section 704(c)(1)(C).
- In the area of partnerships, regulations under Section 704(d) regarding charitable contributions and foreign taxes in determining limitation on allowance of partner's share of loss.
- In the area of partnerships, guidance under Section 707 on disguised sales.
- In the area of partnerships, guidance on partnership terminations under Section 708.
- In the area of partnerships, guidance on abusive use of partnerships for inappropriate basis adjustments. Proposed regulations under Section 1.6011-18 were published on June 18.
- In the area of partnerships, final regulations under Section 752 regarding related person rules. Proposed regulations were published on December 16, 2013.
- In the area of partnerships, final regulations under Sections 761 and 1234 on the tax treatment of noncompensatory partnership options. Proposed regulations were published on February 5, 2013.

- In the area of partnerships, final regulations regarding Section 761 modifying existing regulations to allow certain unincorporated organizations that are organized exclusively to produce electricity from certain property to be excluded from the application of partnership tax rules. Proposed regulations were published on March 11, 2024.
- In the area of partnerships, guidance to prevent the elimination of Section 1245 recapture upon a nontaxable exchange of a partnership interest.
- In the area of partnerships, final regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property. Proposed regulations were published on February 2, 2018. (Reproposed on August 17, 2018, in combination with proposed regulations addressing revisions to chapter 63 made by the Tax Technical Corrections Act of 2018).
- In the area of Tax Administration, Regulations under the Centralized Partnership Audit Regime established by the Bipartisan Budget Act of 2015.

These recent developments are important to partnership tax practice:

- The status of increased Internal Revenue Service funding for increased examinations is uncertain, especially with the transition from the Biden Administration to the Trump Administration. The Internal Revenue Service has partially reorganized to accommodate enhanced partnership audits. The Internal Revenue Service has hired additional examiners. The status of training of partnership examiners is uncertain. Many advisors believe that it will take a long training period to produce effective partnership examiners.
- The current status of Revenue Ruling 81-300[1] (concerning management fees to partners) is uncertain.
- The Supreme Court decided *Loper Bright Enterprises v. Raimondo*,[2] and its companion case, *Relentless, Inc. v. Department of Commerce*. *Loper Bright Enterprises* overruled *Chevron v. Natural Resources Defense Council*.[3] *Chevron* allowed substantial court deference to administrative interpretation of statutory law. Under *Chevron*, taxpayers found it difficult to challenge the validity of Treasury Regulations and other regulatory guidance. *Loper Bright Enterprises* requires that courts conduct independent inquiries into the validity of interpretations in Treasury Regulations and accept interpretations in interpretive regulations only to the extent that these interpretations represent the best reading of the statute. Many Treasury Regulations and subregulatory guidance are vulnerable under the *Loper Bright Enterprises* standard. *Loper Bright Enterprises* may represent a major disruption in administrative law. The statute of current Treasury Regulations and subregulatory guidance under *Loper Bright Enterprises* is uncertain on account of ambiguous language in the *Loper Bright Enterprises* opinion concerning *stare decisis*. Regulations discussed in this book should be considered in the light of *Loper Bright Enterprises*.
- As this is written, the Supreme Court had heard oral argument but has not rendered a decision in *Federal Communications Commission v. Consumers' Research*. This case involves an "E-rate program" of the FCC that subsidizes telephone and high-speed internet services in schools, libraries, rural areas, and low-income communities in urban areas. The real underlying dispute concerns the nondelegation doctrine. This doctrine limits the ability of Congress to delegate its legislative power to administrative agencies. Consumers' Research challenged the required Universal Service Fund contributions calculated for several different quarters in the Courts of Appeals for the Fifth,

[1] 1981-2 C.B. 143.

[2] 603 U.S. 369, 144 S. Ct. 2244 (2024).

[3] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), *overruled by Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244 (2024).

Sixth, Eleventh, and District of Columbia Circuits. The Fifth Circuit held that the forced contribution was a "misbegotten tax." In the view of the Fifth Circuit, Congress exceeded its delegation powers when it delegated to the FCC the power to establish carrier contributions to the fund. The FCC failed to provide the FEE with an "intelligible principle" to guide response to this delegation of authority, in violation of the nondelegation doctrine. The nondelegation doctrine has been essentially quiescent for roughly a century. As recently as 2019, in *Gundy v. United States*, the Supreme Court declined to apply the nondelegation doctrine.

- In *Varian Medical Systems Inc. v. Commissioner*,[4] the Tax Court held that a corporation is entitled to a Section 245A deduction for amounts it properly treated as dividends under Section 78 for its 2018 tax year, finding the statutory text is clear and a regulation did not alter an effective date, but Section 245A(d)(1) does limit the amount of foreign tax credits the corporation is entitled to claim.
- *Ryan LLC v. Federal Trade Commission*[5] considered the validity of the Federal Trade commission's Non-Compete Rule,[6] which makes most non-compete agreements unenforceable. The District Court set aside the Non-Compete Rule. Consequently, the Non-Compete Rule shall not be enforced or otherwise take effect on its effective date of September 4, 2024 or thereafter. The *Ryan LLC* case represents an important affirmation of the non-delegation doctrine, as originally articulated in *Wayman v. Southard*: "It will not be contended that Congress can delegate . . . powers which are strictly and exclusively legislative."[7] Advisors should watch the possibility of the non-delegation doctrine becoming more important in addressing agency regulations and other actions.
- In *Sirius Solutions LLLP v. Commissioner*,[8] a limited partnership argued that Section 1402(a)(13) should exclude state law limited partners from net self-employment earnings under the Self-Employment Contributions Act tax on a limited partner's distributive share of income or loss. *Sirius Solutions* was summarily dealt with by the Tax Court, and a judgement was entered in favor of the government on the basis of *Soroban Capital Partners LP* and *stare decisis*.
- *Soroban Capital Partners LP v. Commissioner*,[9] determined that the Court has jurisdiction to determine a state law limited partner's status for the purpose of determining applicability of the limited partner exception in partnership level proceedings pursuant to the Tax Equity and Fiscal Responsibility Act of 1982.[10] In *Soroban*, the court held that the limited partner exception does not apply to a partner who is limited in name only and that Congress intended Section 1402(a)(13) to apply to partners that are passive investors. Earlier, in *Renkemeyer, Campbell & Weaver, LLP v. Commissioner*,[11] the Court applied a functional analysis test to determine whether the lawyer-partners of a Kansas limited liability partnership were limited partners under Section 1402(a)(13). The court applied a functional analysis inquiry to ascertain the roles and responsibilities of partners to determine their status for tax purposes. *Sirius* is now on appeal to the Fifth Circuit.

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[4] 163 T.C. No. 4 (2024).

[5] *Ryan LLC v. Federal Trade Commission,* 746 F. Supp. 3d 369 (2024).

[6] 16 C.F.R. § 910.1–.6.

[7] 23 U.S. (10 Wheat.) 1, 42 (1825); *Shankland v. The Corp. of Wash.*, 30 U.S. 390, 395 (1831) ("the general rule of law is that a delegated authority cannot be delegated.").

[8] No. 11587-20 (2024).

[9] 161 T.C. 310 (2023).

[10] Pub. L. No. 97-248, 96 Stat. 324.

[11] 136 T.C. 137 (2011).

- *Denham Capital Management LP v. Commissioner*,[12] held that the limited partner exception under Section 1402(a)(13) did not apply to limited partners of a limited partnership that offered investment advisory and management services to affiliated private equity funds that invest in the energy sector, specifically oil and gas, mining, and power. Pursuant to investment advisory agreements, the limited partnership was expected to furnish investment advice, negotiate terms of investments, monitor the health of the investments, and complete the day-to-day administrative tasks associated with managing the funds. The *Denham Capital Management* court applied a functional analysis to determine whether limited partners were limited partners under Section 1402(a)(13). The decision was based on *Soroban Capital Partners LP v. Commissioner*.[13]
- *Baker Brothers Advisors LP v. Commissioner*[14] has filed a Tax Court petition related to the question of whether its limited partners were limited partners under Section 1402(a)(13).
- *Riverstone Equity Partners LP v. Commissioner*[15] has filed a Tax Court petition related to the question of whether its limited partners were limited partners under Section 1402(a)(13).
- The Internal Revenue Service has announced a Sports Industry Losses campaign that is designed to identify partnerships within the sports industry that report significant tax losses and determine if the income and deductions driving the losses are reported in compliance with the applicable sections of the Internal Revenue Code.[16]
- *Exxon Mobil Corp. v. United States*[17] determined that a oil and gas venture, a Development and Production Sharing Agreement between ExxonMobil Middle East Gas Marketing Limited, an ExxonMobil subsidiary, and the Government of the State of the Qatar, concerning an Enhanced Gas Utilization project, was a tax partnership and that production payments from Exxon to Qatar were equivalent to a mortgage loan and allowed the associated interest deductions.
- *Four Square Impex v. Commissioner*[18] was dismissed by the Tax Court for lack of jurisdiction. The entity said that it was a limited liability company, but it had failed to file proper organizational documents in Colorado, where it was supposed to be formed. The court found that it was not a legal entity under state law and did not have the legal capacity to file a case in the Tax Court.
- *Mann Construction v. Commissioner*[19] invalidated Notice 2007-83,[20] entitled "Abusive Trust Arrangements Utilizing Cash Value Life Insurance Policies Purportedly to Provide Welfare Benefits" for failure to comply with the notice and comment requirement of the Administrative Procedure Act.
- *Surk LLC v. Commissioner*[21] considered calculating basis in a partnership interest to account for partnership losses claimed in excess of basis in prior closed years.
- *Otay Project LP v. Commissioner* was heard by the Tax Court on October 5, 2024. This case allegedly involves a basis adjustment transaction involving re-

[12] T.C. Memo. 2024-114.

[13] 161 T.C. 310 (2023).

[14] *Baker Bros. Advisors LP v. Commissioner*, No. 18014-24 (Nov. 15, 2024).

[15] *Riverstone Equity Partners LP v. Commissioner*, No. 17512-24 (Nov. 5. 2024).

[16] See https://www.irs.gov/businesses/corporations/irs-lbi-compliance-campaign-jan-16-2024, consulted 1/19/2025.

[17] *Exxon Mobil Corp. v. United States*, No. 3:22-cv-00515 (Oct 30, 2024).

[18] Docket No. 19354-23 (Jul. 22, 2024).

[19] 27 F.4th 1138 (6th Cir. 2022).

[20] 2007-2 C.B. 960.

[21] T.C. Memo. 2024-99.

lated partners. The case also involved the use of the completed contracts method of accounting.

- Notice 2024-19[22] provides relief from penalties for partnerships with unrealized receivables or inventory items to furnish correct payee statements to the transferor and transferee.
- Notice 2023-7[23] provided interim guidance concerning the corporate alternative minimum tax.
- Notice 2023-64[24] provided interim guidance concerning the corporate alternative minimum tax.
- Notice 2024-10[25] provided interim guidance concerning the corporate alternative minimum tax.
- On September 13, 2024, Treasury and the Internal Revenue Service published proposed corporate alternative minimum tax regulations in the Federal Register.[26] Treasury and the Internal Revenue Service made certain technical corrections to the Proposed Regulations on December 26, 2024.[27]
- Treasury and the Internal Revenue Service published proposed regulations concerning employee remuneration in excess of $1 million (Section 162(m)) in REG-118988-22.[28]
- Treasury and the Internal Revenue Service published proposed regulations in T.D. 10030[29] concerning the appeals process and Resolution of Federal Tax Controversies By the Independent Office of Appeals.
- Treasury and the Internal Revenue Service published final regulations concerning certain basis shifting transactions as reportable transactions in T.D. 10028.[30]
- Treasury and the Internal Revenue Service published T.D. 10025[31] providing final regulations providing Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program.
- Treasury and the Internal Revenue Service have published Notice 2025-2,[32] which provides relief for some partnerships with unrealized receivables or inventory items from Section 6722 penalties for failure to furnish correct payee statements. Section 6722 imposes penalties for failure to furnish correct payee statements and for any failure to include all required information on the statement. Payee statements include statements required to be furnished to transferors and transferees under Section 6050K.

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[22] 2024-5 I.R.B. 627.

[23] 2023-3 I.R.B. 390.

[24] 2023-40 I.R.B. 974.

[25] 2024-2 I.R.B. 406.

[26] 89 Fed. Reg. 75,062 (Sept. 13, 2024).

[27] 89 Fed. Reg. 104,909 (Dec. 26, 2024).

[28] 90 Fed. Reg. 4691-4699 (Jan 16, 2025).

[29] 90 Fed. Reg. 3645-3665 (Jan. 15, 2025).

[30] 90 Fed. Reg. 2958-2977 (Jan. 14, 2025).

[31] 90 Fed. Reg. 2842-2871 (Jan 13, 2025).

[32] 2025-3 I.R.B. 418.

- Treasury and the Internal Revenue Service published T.D. 10014,[33] containing final regulations related to recourse liabilities of a partnership and related persons. Proposed regulations had been issued in REG-136984-12.[34]
- Treasury and the Internal Revenue Service have published REG-105479-18,[35] which contains proposed regulations on previously taxed earnings and profits of foreign corporations. Future guidance will address structures in which controlled foreign corporations are partners in a partnership.
- Treasury and the Internal Revenue Service have published REG-116017-24,[36] which contains proposed regulations on the interaction of Section 6417 elective pay election and the Section 761(a) partnership election.
- Treasury and the Internal Revenue Service have published T.D. 10012,[37] which published final regulations allowing certain entities to elect to be excluded from the application of partnership tax rules.
- Many states have enacted state partnership audit rules based on the BBA partnership audit rules, but many states have not. For example, Texas, Illinois, Pennsylvania, New York, Maryland, District of Columbia, Florida, North Carolina, South Carolina have not conformed to the BBA partnership audit rules as of this writing.
- Senator Ron Wyden, chair of the Senate Finance Committee, issued a Discussion Draft of proposals to modify partnership tax rules.
- The Hamilton Project and Tax Law Center at New York University School of Law similarly issues a discussion paper on modernizing partnership taxation (September 2024).
- Tax Notes Today reports that the Internal Revenue Service is studying stuffing allocations under Section 704(c).[38]
- In September 2024, Treasury Secretary Janet L. Yelin announced in Austin, Texas the first results of an Internal Revenue Service initiative to pursue 125,000 wealthy taxpayers who had not filed taxes for years.[39] The Internal Revenue Service had not had the resources to pursue these wealthy non-filers. According to Secretary Yellen, in only six months, nearly 21,000 of these taxpayers have already filed, leading to $172 million recovered. The Internal Revenue Service also continues to make substantial progress to collect tax debt from wealthy filers. Nearly 80 percent of 1,600 millionaires with delinquent tax debt have now paid, leading to over $1.1 billion recovered. This is an additional $100 million since July, when the Internal Revenue Service announced reaching the $1 billion milestone. The Internal Revenue Service has launched audits of 76 of the largest partnerships, from hedge funds to law firms, with average assets of $10 billion. According to Secretary Yellen, the Internal Revenue Service is working to close a major tax loophole exploited by complex partnerships; has cracked down on the abuse of corporate jets for personal travel; and is now launching audits of the 60 largest corporate taxpayers, with average assets of $24 billion. Treasury and Internal Revenue Service analysis shows that investments in technology, data, and high-end enforcement, if extended, could generate $851 billion in additional revenue over the next decade.

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[33] 89 Fed. Reg. 95108-95116; 2024-51 I.R.B. 1340 (Dec. 9, 2024).

[34] 2014-2 I.R.B. 378; 78 Fed. Reg. 76092-76096 (Dec. 16, 2013).

[35] 89 Fed. Reg. 95362-95464 (Dec. 9, 2024).

[36] 89 Fed. Reg. 91617-91624, 2024-50 I.R.B. 1232 (Nov. 20, 2024).

[37] 89 Fed. Reg. 91552-91563, 2024-50 I.R.B. 1207 (Nov. 20, 2024).

[38] Kristen A. Parillo, Government Eyes Best Path on Partnership Allocation Tactic, DOC 2024-33486, 2024 TNTF 225-4 (Nov. 25, 2024).

[39] See Remarks by Secretary of the Treasury Janet L. Yellen in Austin, Texas, DOC 2024-35053, 2024 TNTF 234-7 (September 6, 2024).

- Treasury and the Internal Revenue Service published final regulations in T.D. 10007[40] concerning reporting of conservation easements.
- Treasury and the Internal Revenue Service published REG-112916-23,[41] containing proposed regulations concerning deductions for conservation contributions made by a partnership or an S corporation.
- Treasury and the Internal Revenue Service published final regulations in T.D. 9945[42] concerning correcting prior final carried interest regulations.
- Treasury and the Internal Revenue Service published proposed regulations in REG-112261-24[43] concerning spinoff transactions and transfers in a Section 351 exchange (including a divisive reorganization that overlaps with a Section 351 exchange; see Section 357(c)(3) (referencing an exchange to which Section 357(c)(1) applies)) a liability the payment of which either would give rise to a deduction or would be described in Section 736(a) of the Code (concerning payments made in liquidation of the partnership interest of a retiring or deceased partner).
- Treasury and the Internal Revenue Service published proposed regulations in REG-105479-18[44] concerning previously taxed earnings and profits of foreign corporations and related basis adjustments.
- Treasury and the Internal Revenue Service published final regulations in T.D. 10015[45] concerning energy property and the energy credit.
- Treasury and the Internal Revenue Service published T.D. 9999,[46] concerning final regulations on disallowing a deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022.
- Treasury and the Internal Revenue Service published final regulations in T.D. 9993[47] describing rules for the election to transfer eligible credits in a tax year, including definitions and special rules applicable to partnerships and S corporations and regarding excessive credit transfer or recapture events.
- Treasury and the Internal Revenue Service published proposed regulations in REG-116017-24[48] concerning elective pay election and the Section 761(a) partnership election.
- Treasury and the Internal Revenue Service published proposed regulations in REG-101552-24[49] that allow certain unincorporated organized that are organized exclusively to produce electricity from specified property to be excluded from Subchapter K.
- Treasury and the Internal Revenue Service published proposed regulations in REG-131756-11[50] concerning whether persons are treated as related persons under Section 267 and Section 707.
- On June 17, 2024, in IR-2024-166, the Internal Revenue Service announced new steps to combat abusive use of partnerships. According to the announcement, the Internal Revenue Service is accelerating work in the partnership

[40] 89 Fed. Reg. 81341-81358, 2024-43 I.R.B. 981 (Oct. 8, 2024).

[41] 88 Fed. Reg. 80910-80945, 2023-49 I.R.B. 1323 (Nov. 20, 2023).

[42] 89 Fed. Reg. 50524-50526 (Jun 14, 2024).

[43] 90 Fed. Reg. 5220-5295 (Jan. 16, 2025).

[44] 89 Fed. Reg. 95362-95464 (Dec. 2, 2024).

[45] 89 Fed. Reg. 100598-100660, 2024-52 I.R.B. 1355 (Dec. 12, 2024).

[46] 89 Fed. Reg. 54284-54327, 2024-30 I.R.B. 72. (July 1, 2024).

[47] 89 Fed. Reg. 34770-34816, 2024-25 I.R.B. 1679 (Apr. 30, 2024).

[48] 89 Fed. Reg. 91617-91624, 2024-50 I.R.B. 1232 (Nov. 20, 2024).

[49] 89 Fed. Reg. 17613-17619, 2024-13 I.R.B. 741 (Mar. 11, 2024).

[50] 2023-50 I.R.B. 1386 (Nov. 24, 2023).

arena, which has been overlooked for more than a decade and allowed tax abuse to go on for far too long. The announcement said that the Internal Revenue Service is building teams and adding expertise inside the agency so that the Internal Revenue Service can reverse long-term compliance declines that have allowed high-income taxpayers and corporations to hide behind complexity to avoid paying taxes. The Internal Revenue Service is increasing audits on complex partnerships, and the issues covered in this guidance will emerge as an important focus area. The Internal Revenue Service is looking at these issues in current audits and will equip examiners to identify these issues on other partnership returns identified for examination as part of either the Large Partnership Compliance program, partnership audit campaigns or other selection methods.

- Treasury and the Internal Revenue Service published final regulations concerning clean electricity credits in T.D. 10024.[51]
- Treasury and the Internal Revenue Service published final regulations concerning the appeals process in T.D. 10030.[52]
- Rev. Proc. 2025-3[53] updates the Internal Revenue Service's no rule list. This includes:
  - Section 45. — Electricity Produced from Certain Renewable Resources, Etc. — The allocation by a partnership of the Section 45 credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.
  - Section 45Q. — Credit for Carbon Oxide Sequestration. — The allocation by a partnership of the Section 45Q credit, the validity of the partnership, or whether any partner is a valid partner in the partnership.
  - Section 47. — Rehabilitation Credit. — The allocation by a partnership of the Section 47 rehabilitation credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.
  - Sections 101, 761, and 7701. — Certain Death Benefits; Terms Defined; Definitions. — Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under Sections 761 and 7701, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer for value rules of Section 101, when substantially all of the organization's assets consist or will consist of life insurance policies on the lives of the members.
  - Section 170. — Charitable, Etc., Contributions and Gifts. — Whether a charitable contribution deduction under Section 170 is allowed for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in Section 170(c).
  - Sections 331, 453, and 1239. — Gain or Loss to Shareholder in Corporate Liquidations; Installment Method; Gain from Sale of Depreciable Property Between Certain Related Taxpayers. — The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corpora-

[51] 90 Fed. Reg. 4006-4127 (Jan. 15, 2025).

[52] 90 Fed. Reg. 3645-3665 (Jan. 15. 2025).

[53] 2025-1 I.R.B. 142.

tion or the selling shareholders includes an installment obligation of the purchasing entity.

- Section 704(b). — Determination of Distributive Share. — Whether the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or an item thereof) has substantial economic effect or is in accordance with the partner's interest in the partnership.
- Section 761. — Terms Defined. — Matters relating to the validity of a partnership or whether a person is a partner in a partnership.
- Section 1361. — S Corporation Defined. — Whether a state law limited partnership electing under Section 301.7701-3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of Section 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with Section 1361(b)(1)(D).
- Section 2055. — Transfers for Public, Charitable, and Religious Uses. — Whether a charitable contribution deduction under Section 2055 is allowed for the transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in Section 2055(a).
- Section 2522. — Charitable and Similar Gifts. — Whether a charitable contribution deduction under Section 2522 is allowable for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in Section 2522(a).
- Section 7704. — Certain Publicly Traded Partnerships Treated as Corporations. — Whether interests in a partnership that are not traded on an established securities market (within the meaning of Section 7704(b) and Section 1.7704-1(b)) are readily tradable on a secondary market or the substantial equivalent thereof under Section 1.7704-1(c)(1). This specifically includes, but is not limited to, whether an investment fund or portfolio supporting variable contract arrangements of life insurance companies is a publicly traded partnership.

- The Internal Revenue Service normally will not issue rulings in these areas:
  - Section 162(m). — Certain Excessive Employee Remuneration. — Whether the deduction limit under Section 162(m) applies to compensation attributable to services performed for a related partnership.
  - Section 664. — Charitable Remainder Trusts. — Whether a trust that will calculate the unitrust amount under Section 664(d)(3) qualifies as a Section 664 charitable remainder trust when a grantor, a trustee, a beneficiary, or a person related or subordinate to a grantor, a trustee, or a beneficiary can control the timing of the trust's receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under Section 643(b) and income for Federal income tax purposes for the benefit of the unitrust recipient.
- The Internal Revenue Service normally will not issue rulings in these areas that are covered by automatic approval:
  - 05 Section 704(c). — Contributed Property. — Requests from Qualified Master Feeder Structures, as described in Section 4.02 of Rev. Proc.[54] for permission to aggregate built-in gains and losses from contributed qualified financial assets for purposes of making Section 704(c) and reverse Section 704(c) allocations.
- The Internal Revenue Service has announced an examination campaign addresses the attempted deferral of contingent or court-awarded attorney fees by

[54] 2001-36, 2001-1 C.B. 1326.

cash-method attorneys/law firms (taxpayers) who direct that such fees be paid to a third-party instead of the taxpayer. The taxpayers do not report the fee as income when it is paid to the third party and the required Forms 1099-MISC or 1099-NEC may not be issued at the time of payment. The taxpayer may gain access to some or all the fees by taking out a purported loan from such third party or a related party. The goal of this campaign is to ensure taxpayer compliance and consistent treatment of similarly situated taxpayers.[55]

- The Internal Revenue Service has announced the Business Aircraft Campaign, which addresses compliance concerns related to business aircraft usage by large corporations, large partnerships, and high-income taxpayers. Areas of emphasis will include qualified business use, personal use, and fringe benefit inclusion. The campaign objective is to ensure tax compliance while also increasing awareness related to the business aircraft regulations and reporting requirements. The initial treatment streams for this campaign are issue-based examinations and form revisions.[56]
- The Internal Revenue Service has announced the Partnership losses in excess of partner's basis campaign. This campaign addresses partners that report flow-through losses from partnerships and must have adequate outside basis as determined pursuant to Section 705 to deduct the losses or else the losses are suspended per Section704(d) to the extent they exceed the partner's basis in the partnership interest.[57]
- Jeffrey Erickson of EY has been selected to become Associate Chief Counsel of the Passthroughs, Trusts and Estates office, starting in January 2025.[58]
- The Internal Revenue Service has published draft Form 7217 for "Partner's Report of Property Distributed by a Partnership." This form is required to be filed for tax years beginning in 2024. Notice 2025-2[59] provides relief similar to the relief provided in Notice 2024-19[60] from penalties under Section 6722 for failures by certain partnerships to furnish correct payee statements. This notice grants relief if a partnership with unrealized receivables or inventory items described in Section 751(a) (Section 751 property) fails to furnish Part IV of Form 8308, Report of a Sale or Exchange of Certain Partnership Interests, to the transferor and transferee in a Section 751(a) exchange occurring in calendar year 2024 by the due date specified in Section 1.6050K-1(c)(1). This relief applies only if the partnership furnishes to the transferor and transferee by the due dates specified in section III of the notice (1) a correct copy of Parts I, II, and III of Form 8308, or a statement that includes the same information, and (2) a correct copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under Section 1.6050K-1(c).
- T.D. 9999[61] contains final regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's rel-

[55] See https://www.irs.gov/businesses/corporations/irs-lbi-compliance-campaign-december-2-2024, consulted 1/19/2025.

[56] See https://www.irs.gov/businesses/corporations/irs-lbi-compliance-campaign-february-21-2024, consulted 1/19/2024.

[57] See https://www.irs.gov/businesses/corporations/lbi-active-campaigns#Partnership-Losses-in-Excess, consulted 1/19/2024.

[58] See IRS hires new Associate Chief Counsel to focus on partnerships and other passthrough entities, R-2024-284 (Oct. 29, 2024).

[59] 2025-3 I.R.B. 418.

[60] 2024-5 I.R.B. 627.

[61] 89 Fed. Reg. 54284-54327, 2024-30 I.R.B. 72.

evant basis. These final regulations provide guidance regarding this statutory disallowance rule, including definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, the three statutory exceptions to the statutory disallowance rule, and related reporting requirements. In addition, these final regulations provide reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property). These final regulations affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share, as applicable, of a noncash charitable contribution.

- The Eleventh Circuit in *Estate of Keeter v. Commissioner*[62] held that, because making adjustments required an individualized assessment of each taxpayer's unique circumstances, the adjustments required partner level determinations and deficiency procedures.
- There continues to be a flood of tax cases concerning syndicated conservation easements.
- *ES NPA Holding LLC v. Commissioner*[63] extended the scope of Revenue Procedure 93-27 to tiered structures. An upper-tier partnership's avoided income on receipt of a profits interest in a lower-tier partnership in exchange for services that the upper-tier partnership provided for the benefit of a remote lower-tier operating partnership. The Tax Court valued the interest based on a contemporaneous sales transaction.
- *Rawat v. Commissioner*[64] treated a foreign partner as selling her share of Section 751 assets outside of the partnership when the partner sold her partnership interest.
- The Seventh Circuit is considering the appeal of *Tribune Media Co. v. Commissioner*[65] concerning the allocation of partnership liabilities. The Tax Court held that subordinated debt was equity and not genuine debt. The Tax Court held that guaranteed senior debt was recourse debt.
- In *Liberty Global, Inc., v. United States*,[66] the District Court invalidated the Section 245A temporary regulations regulation for failure of notice and comment. The government argued that the temporary regulations were not required to comply with the Administrative Procedure Act because a more specific statute, Section 7805(e), governs the regulations and contemplates the creation of immediately effective temporary rules. The government also argued that requiring temporary regulations to undergo notice and comment is at odds with the legislative history of Section 7805 and that Section 7805 takes precedence over the Administrative Procedure Act. The District Court considered an exception to the requirement that an agency promulgating legislative rules or regulations must engage in notice and comment procedures. This exception requires that "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or con-

[62] 75 F.4th 1268 (11th Cir. 2023).

[63] T.C. Memo. 2023-55.

[64] 108 F.4th 891 (D.C. Cir. 2024).

[65] T.C. Memo. 2020-2.

[66] 2022 WL 1001568, 129 A.F.T.R.2d 2022-137 (D. Colo., 2022).

trary to the public interest."[67] The taxpayer is appealing the case to the 10th Circuit.

- In *Corner Post v. Board of Governors of the Federal Reserve System*,[68] the Supreme Court limited the statute of limitations in the Administrative Procedure Act. This makes it easier for an entity to seek judicial review of public agency rules. *Corner Post* interpreted the Statute of Limitations under the Administrative Procedure Act to permit challenges to agency actions that are filed within six years of that entity's injury, regardless of whether the rule was issued more than six years before the action was filed. A claim under the Administrative Procedure Act claim does not exist for purposes of the 6-year statute of limitations for suits against the United States does not apply until the injured party is injured by final agency action. The statute of limitations "begins to run only when the plaintiff has a complete and present cause of action." Challenges to old regulations can be brought either by newly-formed entities that were not formed when the rule or regulations was adopted or by entities that existed on the adoption date but that were first harmed within six years of filing the challenge to the rule or regulation. A new entity could be formed to challenge the rule or regulation. *Corner Post* leaves open question of whether 6 year limitation applies to procedural challenges and whether those challenges are limited to 6 years after promulgation.
- In *Valley Park Ranch v. Commissioner*[69] in 2024, the Tax Court held, in a case involving charitable contribution of a conservation easement, that Treasury Regulations Section 1.170A-14(g)(6)(ii) was procedurally invalid under the Administrative Procedure Act. The Internal Revenue Service and Treasury failed to respond to significant comments to the regulations when the regulation was proposed. The Tax Court thus concluded that the deed involved in a charitable contribution of an easement met the "restriction (granted in perpetuity)" requirement of Section 170(h)(2)(C). The deed also met the protected in perpetuity requirement of Treasury Regulations Section 170(h)(5)(A).
- *Buckelew Farm LLC v. Commissioner*[70] applied Treasury Regulation Section 1.170A-13(c)(5)(ii). The court approved a 40 percent gross valuation misstatement penalty. The court reduced a claimed $47.6 million charitable contribution deduction for a conservation easement donation to $4.6 million. The court rejected the government's argument that the charitable contribution deduction should be denied in full, on the basis of the conservation purpose's not being protected in perpetuity as required by Section 170(h)(5)(A) and in violation of Treasury Regulation Section 1.170A-14(g)(6)(ii), to be meritless. The court found that the government had failed to establish the applicability of Treasury Regulation Section 1.170A-13(c)(5)(ii) and therefore held that the appraiser involves was a "qualified appraiser."[71]
- *Moore v. United States*[72] considered whether the income tax must be limited to realized income to be constitutional under the 16th Amendment. A tax on income or profits that does not qualify under the 16th Amendment would be subject to apportionment under the 16th Amendment, The 16th Amendment provides that "the Congress shall have power to lay and collect taxes on incomes, from whatever source derived." If the Supreme Court held that there was a Constitutional realization requirement to tax income under the 16th Amendment, this presumably would have had a seismic effect on the income tax system. *Moore* involved the mechanism for taxing controlled foreign

[67] 5 U.S.C.A. § 553(b)(B).

[68] 603 U.S. 799 (2024).

[69] 162 T.C. No. 6 (2024).

[70] T.C. Memo. 2024-52.

[71] See Treas. Reg. § 1.170A-13(c)(5).

[72] 144 S. Ct. 1680 (2024).

corporations and how it taxed controlled foreign corporation as pass-through entities. In 2017, Congress passed the Tax Cuts and Jobs Act. Congress imposed a one-time, backward-looking, pass-through tax on some American shareholders of American-controlled foreign corporations to address the undistributed income that had been accumulated by those foreign corporations over the years. This Mandatory Repatriation Tax imposed tax at a rate from 8 to 15.5 percent on the pro rata shares of American shareholders.[73] The Supreme Court held that the 16th Amendment does not prohibit the Mandatory Repatriation Tax taxing a shareholder on the realized income of a controlled foreign corporation and that this tax is not subject to apportionment among the states. The Supreme Court concluded that the Mandatory Repatriation Tax is an indirect tax that is not subject to the constitutional requirement of being apportioned among the states according to each state's population. The Supreme Court also advised that the Constitution permits taxing partners on undistributed income of partnership and S corporation shareholders on undistributed income of an S corporation without apportionment among the states. *Moore* did not address whether there is a Constitutional realization requirement for the income tax.

- *YA Global Investments LP v. Commissioner*[74] was a withholding tax case. YA Global Investments LP was a Cayman fund. The fund made investments in public equity transactions. YA Global adopted a master-feeder structure. YA Global had a Cayman feeder for foreign or exempt investors. YA Global had a separate feeder for United States investors. YA Global was managed by a management company and investment adviser. Another LLC served as general partner. A significant issue in *YA Global* was whether YA Global was engaged in a United States trade or business. The court determined that all of YA Global's income was effectively connected with a United States trade or business. This subjected the income to Section 1446 withholding. The court determined that YA Global was a dealer in securities under Section 475. The court determined that the activities of the manager were attributable to YA Global. Thus, YA Global was subject to the mark-to-market rule provided in Section 475(a)(2). The Internal Revenue Service determined that YA Global was engaged in a United States trade or business and that all of its income was ordinary income that was effectively connected with the U.S. trade or business. As a result, YA Global was required to "withhold on effectively connected taxable income allocable to its foreign partners under I.R.C. § 1446." The Commissioner determined that YA Global was liable for taxes that were required to be withheld under Section 1446 and related additions to tax and penalties. The Tax Court also held that the act of filing the Form 1065 did not start the running of the statute of limitations for Section 1446 tax. The statute starts running when Form 8804 is filed. Section 1446 withholding tax is a partnership item. "Because Section 1461 makes the partnership liable for any tax required to be withheld under Section 1446, any tax required to be withheld under Section 1446 is a partnership liability. The regulations are clear that partnership liabilities are partnership items." "Section 1446 is also in subtitle A. Because the tax imposed by Section 1446 is found in subtitle A, it is among the items that may be partnership items if the Secretary determines by regulation that the tax is more appropriately determined at the partnership level. Sec. 6231(a)(3). But the Secretary has not promulgated any such regulation . . . . The tax imposed by Section 1446 is brought within the scope of partnership items because that tax is a partnership liability. 'Partnership liabilities' are included within the scope of the definition of partnership items. Sec. 301.6231(a)(3)-1(a)(1)(v), Proced. & Admin. Regs. Because Section 1461 makes the partnership liable for any tax required to be withheld under Section 1446, any tax required to be withheld under Section 1446 is a partnership

[73] I.R.C. § 965(a)(1), (c), (d).

[74] 161 T.C. No. 11 (2023).

liability. And the regulations are clear that partnership liabilities are partnership items."

- In a subsequent memorandum decision in *YA Global Investments, LP v. Commissioner*,[75] the Tax Court determined that YA Global was required by I.R.C. Section 475(a)(2) to recognize gain or loss as if each security it held on December 31, 2009, had been "sold for its fair market value" on that date. The court similarly determined that no portion of the $148,269,798 value that YA Global assigned to its C convertible debentures was attributable to one or more assets that were not "securities" under Section 475(c)(2). The court also held that "if the participation interests held by the Foreign SPVs provided them with contractual rights to proceeds from the sale of securities owned by YA Global, so that the Foreign SPVs held capital interests in the partnership, Section 704(e)(1), as in effect for 2009, would have required recognition of the Foreign SPVs as partners regardless of the extent to which they intended to join YA Onshore and YA Offshore in the conduct of YA Global's business." The petitioners did not meet their burden of establishing that the Foreign SPVs were not partners in YA Global. "We thus conclude that YA Global's Section 1446 withholding tax liability for 2009 includes the product of (1) the items of partnership income, gain, loss, and deduction allocable to the Foreign SPVs, [citation omitted] and (2) the highest marginal tax rate specified in Section 11(b)(1). Each Foreign SPV's shares of partnership income, gain, loss, and deduction include (1) those items reported on the Schedule K-1 issued to it other than the write-off of interest receivable deemed uncollectable included in the other deductions reported on line 13d, [citation omitted] and (2) the Foreign SPV's share of YA Global's mark-to-market gain for 2009 under Section 475(a)(2)."
- In *SN Worthington Holdings LLC v. Commissioner*,[76] SN Worthington Holdings, LLC filed a partnership return for 2016. In October 2018, the Commissioner sent Letter 2205-D to SN Worthington, notifying it that the Commissioner had selected its 2016 partnership return for examination. The letter also informed SN Worthington that it could elect into the BBA partnership audit procedures. The letter instructed that, to do so, the partnership had to make an election within 30 days from the date of the letter.[77] Within 30 days of that letter, SN Worthington submitted to the Commissioner a completed Form 7036, Election under Section 1101(g)(4) of the Bipartisan Budget Act of 2015, signed under penalties of perjury. To complete Form 7036, SN Worthington had to make certain representations. One of those representations was that it "[h]as sufficient assets, and reasonably anticipates having sufficient assets, to pay the potential imputed underpayment that may be determined during the partnership examination."[78] Soon after receiving the election, the Commissioner sent a letter to petitioner stating that the partnership did not meet the requirements of electing into the BBA audit rules. Absent any election, SN Worthington Holdings, LLC would be subject to the TEFRA partnership audit and litigation procedures. In so electing, SN Worthington Holdings, LLC represented that it had sufficient assets to pay a potential imputed underpayment. To elect into the BBA procedures, the regulations require that a partnership, among other things, provide a statement that "[t]he partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment with respect to the partnership taxable year."[79] The regulations do not require the partnership to otherwise establish that it has sufficient assets to pay a potential

[75] T.C. Memo. 2024-78.

[76] 162 T.C. 10 (2024).

[77] See Treas. Reg. § 301.9100-22(b)(1).

[78] See Treas. Reg. § 301.9100-22(b)(2)(ii)(E)(4).

[79] Treas. Reg. § 301.9100-22(b)(2)(ii)(E)(4).

imputed underpayment. The Tax Court found that SN Worthington Holdings, LLC had made a valid election. The Tax Court further held that a notice of final partnership administrative adjustment issued pursuant to the repealed TEFRA procedures with respect to a partnership that is subject to the BBA procedures is invalid. Finally, the notice of final partnership administrative adjustment issued pursuant to the repealed TEFRA procedures with respect to W's 2016 return is invalid.

- Press Release, IR-2024-166 (June 17, 2024), announces steps to combat abusive use of partnerships. Internal Revenue Service compliance work continues to accelerate in this complex area of law. The Internal Revenue Service announced a new dedicated group in the Office of Chief Counsel specifically focused on developing guidance on partnerships, including closing loopholes. The office will work closely with a new passthrough work group being established in the Internal Revenue Service Large and Business International division. The release also announced new guidance that is designed to stop the use of "basis shifting" transactions that use related-party partnerships to avoid taxes. "In these complex moves, high-income taxpayers and corporations strip basis from assets they own where the basis is not generating tax benefits and then move the basis to assets they own where it will generate tax benefits without causing any meaningful change to the economics of their businesses. These basis shifting transactions allow closely related parties to avoid taxes." Commissioner Danny Werfel commented: "This announcement signals the IRS is accelerating our work in the partnership arena, which has been overlooked for more than a decade and allowed tax abuse to go on for far too long. We are building teams and adding expertise inside the agency so we can reverse long-term compliance declines that have allowed high-income taxpayers and corporations to hide behind complexity to avoid paying taxes. Billions are at stake here." The Internal Revenue Service is increasing audits on complex partnerships, and the issues covered in this guidance will emerge as an important focus area. "In essence, basis shifting amounts to a shell game where sophisticated tax maneuvers take place by shifting the basis of assets between closely related entities, ultimately allowing these complex partnership arrangements to hide from a tax bill," Werfel said. "These complicated maneuvers take time and resources for the IRS to uncover. The new guidance is aimed at telling promoters that the IRS considers these transactions inappropriate, and we are bringing new Inflation Reduction Act resources into play to beef up our compliance work in the overlooked partnerships and passthroughs area."
- Fact Sheet FS-2024-21 (June 17, 2024) announces concurrently released and future guidance intended to crack down on partnership basis-shifting transactions (REG-124593-23, Revenue Ruling 2024-14, Notice 2024-54), which the Internal Revenue Service believes generate inappropriate tax benefits by stripping tax basis over a period of years using sophisticated tax strategies and technology. The crackdown targets three types of transactions: the transfer of a partnership interest to a related party, the distribution of property to a related party, and the liquidation of a related partnership or partner.
- Notice 2024-54[80] previews two sets of proposed regulations that address basis shifting transactions involving partnerships and related persons. This notice announces that the Treasury Department and the Internal Revenue Service intend to publish two sets of forthcoming proposed regulations that would address certain basis-shifting transactions involving partnerships and related parties. These "covered transactions" (1) involve partners in a partnership and their related parties, (2) result in increases to the basis of property under Section 732, Section 734(b), or Section 743(b), and (3) generate increased cost recovery allowances or reduced gain (or increased loss) upon the sale or other

[80] 2024-28 IRB 24.

disposition of the basis-adjusted property. The Treasury Department and the Internal Revenue Service intend to propose regulations under Sections 732, 734(b), 743(b) and 755 that would (1) provide the required method of recovering adjustments to the bases of property held by a partnership, property distributed by a partnership, or both, arising from the covered transactions, (2) provide rules governing the determination of gain or loss on the disposition of such basis-adjusted property, and (3) include similar transactions involving tax-indifferent parties (for example, certain foreign persons, a tax-exempt organization, or a party with tax attributes that make it tax-indifferent) rather than related parties. Second, the Treasury Department and the Internal Revenue Service intend to propose regulations under Section 1502 (forthcoming Proposed Consolidated Return Regulations) to clearly reflect the taxable income and tax liability of a consolidated group whose members own interests in a partnership. The forthcoming Proposed Consolidated Return Regulations would provide for single-entity treatment of members that are partners in a partnership, so that covered transactions cannot shift basis among group members and distort group income.

- REG-124593-23[81] represents a portion of full court attack on basis shifting transactions. Proposed Treasury Regulations would identify as transactions of interest and impose disclosure requirements related to the use by related persons of partnerships of transactions that inappropriately exploit the basis adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests. These transactions are structured to exploit the mechanical basis adjustment provisions to produce significant tax benefits with little or no economic impact on the related parties. Proposed regulations address four variations of the transaction, which are referred to as "Partnership Related-Party Basis Adjustment Transactions." These transactions rely on the basis adjustment provisions of Sections 732(b) and (d), 734(b), and 743(b). Generally, in a Partnership Related-Party Basis Adjustment Transaction, partnership property is distributed to a partner who is related to one or more other partners, and that distribution results in a person related to the distributee partner, the distributee partner, or both, receiving all or a share of a basis increase in the distributed property or remaining partnership property under Section 732 or 734(b). Alternatively, a partnership interest is transferred between related persons or to a transferee partner who is related to an existing partner in the partnership, and that transfer results in an increase to the inside basis in partnership property with respect to the transferee partner under Section 743(b). The proposed Treasury Regulations would include a relatedness requirement. The proposed Treasury Regulations would be subject to a $5 million minimum threshold requirement. The proposed Treasury Regulations would have a disclosure requirement for participants and materials advisors. Participants required to disclose transactions who fail to do so would be subject to penalties under Section 6707A. Material advisers required to disclose transactions under Section 6111 who fail to do so would be subject to penalties under Section 6707. Material advisers required to maintain lists of investors under Section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to penalties under Section 6708(a). Other penalties may all apply. The Internal Revenue Service may impose other penalties on persons involved in reportable transactions or substantially similar transactions, including accuracy-related penalties under Section 6662 or Section 6662A, the penalty under Section 6700 for promoting abusive tax shelters, and the penalty under Section 6701 for aiding and abetting understatement of a tax liability.
- Revenue Ruling 2024-14[82] advises that the Internal Revenue Service will challenge three types of partnership related-party transactions as lacking eco-

[81] 89 F.R. 51476-51491, 2024-28 IRB 40.

[82] 2024-28 I.R.B. 18.

nomic substance under Section 7701(o). The Internal Revenue Service intends to disregard the basis adjustments. The transactions (1) create basis disparities; (2) involve transferring a partnership interest in a nonrecognition transaction or making a current or liquidating distribution of partnership property to a partner; and (3) claim a basis adjustment under Sections 732(b), 734(b), or 743(b), generating increased cost recovery deductions or reducing gain on sale. Revenue Ruling 2024-14 concludes that the transactions fail economic substance under Section 7701(o)(1). The Internal Revenue Service also may apply the substance-over-form doctrine and step-transaction doctrine. The federal tax effects of the transactions must be disregarded. The transactions are also subject to penalties.

- The Corporate Transparency Act became effective on January 1, 2024. The Corporate Transparency Act requires domestic and foreign legal entities to file an ownership report with the Division of the Department of Treasury called the Financial Crimes Enforcement Network (FinCEN). This requires reporting of personal information about the entities' individual beneficial owners and applicants. The Corporate Transparency Act mandates that millions of private entities formed under state law disclose sensitive personal information to federal law enforcement. The Act applies even to entities that are not alleged to be involved in a crime and to entities that are not engaged in interstate or foreign commerce. Failure to comply may result in fines, penalties, and imprisonment. There are various cases filed in which the Constitutionality of the Act has been challenged. Courts have reached different conclusions about the law's constitutionality.[83]
- In *Securities and Exchange Commission v. Jarkesy*,[84] the Supreme Court held that "the Seventh Amendment entitles a defendant to a jury trial when the [Securities and Exchange Commission] seeks civil penalties against him for securities fraud." Investment adviser and his firm petitioned for review of final order of United States Securities and Exchange Commission affirming an administrative law judge's imposition of $300,000 civil penalty. The Securities and Exchange Commission held that the advisor and the investment advisory firm had committed fraud under Securities Act of 1933, Securities Exchange Act of 1934, and Investment Advisers Act of 1940. The Supreme Court held that the civil penalties the agency sought against George Jarkesy were legal, not equitable. The penalties sought to punish and deter. The penalties thus implicated the Seventh Amendment guarantee of trial by jury. The fraud claims did not fall within one of the "historic categories of adjudications" that the Court has held can be adjudicated in agency proceedings (e.g., revenue-collection issues or customs or immigration disputes). The fraud claims involved adjudication of private rights. The fraud claims there required trial by jury. The case creates uncertainty concerning civil penalties imposed by administrative agencies and other proceedings where the defendant is not guaranteed the right of trial by jury. The Seventh Amendment "entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud." The defendant thus was entitled to a jury trial. There is a right to a jury trial in all suits not based in "equity or admiralty jurisdiction." The Seventh Amendment guarantees a trial by jury when the claim is legal as opposed to equitable. This can be determined by whether the claim is legal or

[83] See *Smith v. Department of the Treasury*, — F.Supp.3d. —, 2025 WL 41924 (2025) (staying reporting effective date); *Texas Top Cop Shop, Inc. v. Garland*, — F.Supp.3d —, 2024 WL 5049220 (E.D. Tex. Dec. 5, 2024) (finding the CTA is likely unconstitutional); *Nat'l Small Bus. United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024) (finding the CTA is unconstitutional and granting a permanent injunction); *Firestone v. Yellen*, 2024 WL 4250192 (D. Or. Sept. 20, 2024) (finding the CTA is likely constitutional); *Cmty. Ass'ns Inst. v. Yellen*, 2024 WL 4571412 (E.D. Va. Oct. 24, 2024) (same); *Transcript of Oral Argument at 50, Small Bus. Ass'n of Mich. v. Yellen*, No. 1:24-cv-00314-RJJ-SJB (W.D. Mich. Apr. 29, 2024) (denying motion for preliminary injunction for lack of irreparable harm), ECF No. 25. See *Texas Top Cop Shop, Inc. v. Garland*, 2024 WL 5203138, at *3 (5th Cir. Dec. 23, 2024).

[84] 144 S.Ct. 2117 (2024).

equitable. This is based on the type of remedy involved. Money damages are considered a legal remedy—resulting in right to jury under the Seventh Amendment—if the money damages are meant to punish or deter the defendant. Money damages that only "restore the status quo" are an equitable remedy that does not trigger the constitutional right to a jury trial. Because the civil penalties served "to punish the defendant rather than to restore the victim," they were legal—not equitable—thus resulting in the Seventh Amendment right to trial by jury.

- Notice 2025-28, 2025-34 IRB 1, provides interim guidance to reduce the compliance burdens associated with applying the corporate alternative minimum tax to partnerships.

Subsequent to the bulk of this volume being prepared to go to press, Congress passed and President Trump signed (July 4, 2025) the One Big Beautiful Bill Act ("An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14"). This act makes extensive revisions to the Code. This is a short and noncomprehensive discussion of some of the revisions to the tax law. These extensive revisions include these revisions among many others:

- The One Big Beautiful Bill Act modifies partnership disguised sale rules to clarify that the statutory rules concerning payments for services performed or property transferred are self-executing and do not depend on the issuance of Treasury regulations. These disguised sale rules may be difficult to interpret in the absence of final regulations.
- The One Big Beautiful Bill Act permanently expands and extends many tax provisions of the 2017 Tax Cuts and Jobs Act.
- The One Big Beautiful Bill Act provides for permanent extension of individual tax rates under the 2017 Tax Cuts and Jobs Act. This leaves a 37 percent maximum individual tax rate in place. Tax rates for individuals are set at progressive rates: Set rates at 10 percent, 12 percent, 22 percent, 24 percent, 32 percent, 35 percent, and 37 percent.
- The One Big Beautiful Bill Act permanently reduces the corporate tax rate to 21 percent.
- The One Big Beautiful Bill Act makes various revisions to the alternative minimum tax. Various exemption amounts and phaseouts thresholds are made permanent. The One Big Beautiful Bill Act increases the alternative minimum tax exemption amounts introduced by the Tax Cuts and Jobs Act and makes the increased exemption amounts permanent. Various other changes that the One Big Beautiful Bill Act makes will affect computation of the alternative minimum tax.
- The 20 percent qualified business income deduction of Section 199A would have expired at the end of calendar year 2025. The One Big Beautiful Bill Act makes this provision permanent. Beginning in 2026, the One Big Beautiful Bill Act provides a $400 minimum deduction for businesses that have a minimum of $1,000 of qualified business income. The One Big Beautiful Bill Act increases the phase-in limitation range from $100,000 to $150,000 for taxpayers who file tax joint returns. The One Big Beautiful Bill Act increases the phase-in limitation range from $50,000 to $75,000 for taxpayers who do not file joint tax returns.
- The One Big Beautiful Bill Act revises the rules for tax rates imposed on sales of stock issued by a domestic C corporation qualifying as qualified small business stock.
- The One Big Beautiful Bill Act provides for full expensing under Section 174A of domestic research and experimental expenses for taxable years beginning after 2024. Eligible small businesses can apply this provision to taxable years beginning after December 31, 2021, by filing amended returns.

- The One Big Beautiful Bill Act requires Form 1099-K reporting under Section 6050W for payments over $20,000 when the number of third-party network transactions exceeds 200.
- Under Section 6041(a), every person engaged in a trade or business is required to report [usually] on IRS Form 1099-MISC payments made in the ordinary course of a trade or business of fixed or determinable income if the aggregate of these payments to the other person equals or exceeds a specified threshold. Section 6041A(a) requires IRS Form 1099-NEC reporting where any service-recipient engaged in a trade or business that pays in the ordinary course of a trade or business remuneration for services. Reporting is required if aggregate of payments to the other person equals or exceeds a specified dollar threshold for the year. The One Big Beautiful Bill Act increases the dollar threshold for each of Section 6041(a) and Section 6041A(1) from $600 to $2,000 (subject to future inflation adjustment).
- Corresponding changes under Section 3406 apply to backup withholding.
- The deduction for miscellaneous itemized deductions is eliminated.
- The One Big Beautiful Bill Act adds Section 168(n). This provision permits taxpayers to deduct the cost of qualified production property—certain nonresidential real estate purchased for manufacturing, production, or refining purposes.
- The One Big Beautiful Bill Act made permanent the 100 percent bonus depreciation provision under Section 168(k) for qualifying property that is acquired and placed in service after January 19, 2025. The One Big Beautiful Bill Act provides a deduction for 100 percent of the cost of qualified property for the taxable year in which the qualified property is placed in service for qualified property acquired after January 19, 2025.
- The One Big Beautiful Bill Act allows immediate deduction of domestic research and development expenditures paid or incurred in taxable years beginning after December 31, 2024. Foreign research and development expenditures are capitalized and amortized over 15 years.
- The One Big Beautiful Bill Act permits expensing of Section 179 property placed in service during the taxable year. The One Big Beautiful Bill Act increases the maximum deduction to $2.5 million, reduced by the excess of cost of Section 179 property placed in service during the year over the phase-out threshold.
- The One Big Beautiful Bill Act increases the business interest deduction limitation under Section 163(j). The One Big Beautiful Bill Act amended Section 163(j) by changing the definition of "adjusted taxable income." Section 163(j) limits the deduction for business interest to 30 percent of the taxpayer's adjusted taxable income for the taxable year. Adjusted taxable income excludes subpart F income and net CFC tested income.
- The One Big Beautiful Bill Act increases the limitation on the deductibility of state and local taxes to $40,000 ($20,000 for married taxpayers who file separately) for 2025 and $40,400 for taxable year 2026. The limitation increases after 2025 and before 2030. The deduction amount is phased out for married individuals earning more than $500,000 per year ($250,000 for married individuals filing separate returns).
- The One Big Beautiful Bill Act increases the Section 48D Advanced Manufacturing Investment Credit. This credit applies to the manufacturing of semiconductors or semiconductor manufacturing equipment.
- The One Big Beautiful Bill Act provides for immediate expensing of the cost of qualifying property up to $2,500,000. This is subject to a phaseout threshold when costs exceed $4,000,000.
- The One Big Beautiful Bill Act extends the limitation on the deductibility of excess business losses for noncorporate taxpayers under Section 461(l). For

2025, the deduction threshold is $313,000 for single taxpayers and $626,000 for taxpayers filing jointly. These numbers are subject to annual inflation adjustments. Excess losses that are limited by the threshold are disallowed in the current year and. These excess losses are carried forward as net operating losses to future tax years. Net operating losses can be used to offset future income. Net operating losses are limited to 80% of taxable income.

- The One Big Beautiful Bill Act made permanent the increase each state's allocation of 12 percent for low-income housing credits. The One Big Beautiful Bill Act also expanded the tax-exempt bond financing provision.
- The One Big Beautiful Bill Act permanently extends the New Market Tax Credit program, which had been scheduled to terminate at the end of 2025.
- The One Big Beautiful Bill Act reduces incentives that apply to renewable energy and energy efficiency. The One Big Beautiful Bill Act substantially reduces energy tax credits. Among other changes, tax credits for wind and solar energy projects under Section 45Y (clean electricity production credit) and 48E (clean electricity investment credit) will phase out for projects placed in service after December 31, 2027. The One Big Beautiful Bill Act eliminates electric vehicle credits under Section 30D effective September 30, 2025. The One Big Beautiful Bill Act eliminates the Section 25E credit for previously owned clean vehicles effective September 30, 2025. The One Big Beautiful Bill Act eliminates the Section 45W credit for qualified commercial clean vehicles effective September 30, 2025. The One Big Beautiful Bill Act limits the Section 45V clean hydrogen production credit for producing qualified clean hydrogen. The One Big Beautiful Bill Act repeals the deduction under Section 179D for energy efficient commercial buildings after June 30, 2026. The One Big Beautiful Bill Act extends the Section 45Z clean fuel production credit until the end of 2029.
- The One Big Beautiful Bill Act makes the Section 1400Z qualified opportunity zone regime permanent.
- The One Big Beautiful Bill Act makes extensive changes in the area of international tax. These changes include:
  - Various changes to the tax rules concerning controlled foreign corporations, including changes to attribution rules.
  - Various changes to Global Intangible Low-Taxed Income provisions and Foreign-Derived Intangible Income provisions. Global Intangible Low-Taxed Income is renamed Net CFC Tested Income. Foreign-Derived Intangible Income is renamed Foreign-Derived Deduction Eligible Income. Among other things, Global Intangible Low-Taxed Income rate and Foreign-Derived Intangible Income provisions rate are 14%.
  - Permanently setting the Base Erosion and Anti-abuse Tax at 10.5 percent.
  - Additional changes concerning calculating foreign tax credits.
  - Changes concerning taxing foreign earnings.
  - Changes concerning cross-border transactions.