Recent Developments in Federal Income Taxation

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I. Accounting

Conmac Investments, Inc. v. Commissioner, 139 F.4th 723 (8th Cir. 6/6/25)
Outline: item A.1, page A-4

- The taxpayer leased land to tenant farmers.
- In tax years 2004, 2006 through 2008, and 2010 through 2013, the taxpayer acquired farmland that came with "base acre" rights.
  - These are rights to subsidies from the USDA payable to farmers for growing certain crops.
- Before 2009, the taxpayer did not allocate any of the purchase price of farmland to base acre rights associated with the farmland.
- Starting in 2009, the taxpayer began allocating part of the purchase price to base acre rights and taking 15-year amortization deductions.
- Issues:
  1. Was the change to amortizing base acre rights a change in method of accounting that required IRS consent under § 446(e)?
  2. If so, could the IRS impose a positive § 481 adjustment in 2013 for 2009-2012, which were closed years?
- Held:
  1. Yes. This was a timing change. There was no change in underlying facts.
  2. Yes. Section 481 allows adjustments for closed years.

II. Business Income and Deductions

Actavis Laboratories, FL, Inc. v. United States, 131 F.4th 1345 (Fed. Cir. 3/21/25)

Outline: item B.1.a, page A-7

- The taxpayer was a manufacturer of brand-name and generic drugs.
- The taxpayer sought FDA approval of generic drugs by submitting Abbreviated New Drug Applications (ANDAs).
- As required by statute (Hatch-Waxman Act) and the FDA's approval process, the taxpayer:
  - Certified to the FDA that existing patents on the drugs were invalid or would not be infringed by the sale or use of the generic version of the drug, and
  - Sent notice letters to the holders of the patents informing them of the certification.
- <u>Issue</u>: were legal fees incurred to defend patent infringement suits brought in response to the notice letters capital expenditures?
- <u>Held</u>: No. The legal fees were not costs incurred as part of the FDA approval process and therefore were not costs incurred to facilitate the acquisition of an intangible asset (an FDA-approved ANDA).

Section 174: Capitalization of Research or Experimental Expenditures

Outline: item B.2, page A-8

- The 2017 Tax Cuts and Jobs Act, § 13206, amended Code § 174 to require the capitalization and amortization of specified research or experimental expenditures.
  - The amortization period was 5 years (15 years for expenditures attributable to foreign research), beginning at the midpoint of the year in which the expenditures are paid or incurred.
  - Applied to amounts paid or incurred in TY years beginning after 2021.
- The 2025 One Big Beautiful Bill Act, § 70302, added new Code § 174A to restore the deduction for domestic research or experimental expenditures.
  - Applies to amounts paid or incurred in TY beginning after December 31, 2024.
  - Elective retroactive application to 2022-2024 for small businesses (average annual gross receipts of $31 million or less).
  - Taxpayers with unamortized expenditures from 2022-2024 can elect to deduct the unamortized balance in the first TY beginning after Dec. 31, 2024
  - Foreign expenditures still must be capitalized and amortized.
- **Note:** Rev. Proc. 2025-28 [not in outline]. Procedures for automatic consent to change in method of accounting relating to § 174 research or experimental expenditures.

Avery v. Commissioner, 134 A.F.T.R.2d 2024-6331 (10th Cir. 12/9/24)
Outline: item D.2, page A-9

- Facts
  - The taxpayer, an attorney licensed in Colorado, moved to Indiana and made efforts to establish a practice there.
  - To meet potential clients, he became involved in car-related activities, first by exhibiting collector cars and later by racing cars.
  - He attended a racing school, acquired and rebuilt a 2000 Dodge Viper, and later acquired a 2009 Dodge Viper that he raced in seven states.
  - The taxpayer’s name appeared on small areas above the driver’s window and the passenger window of his racing vehicle, and a decal for his law practice (the Avery Law Firm) appeared on the back tail of the car.
- Issue: could the taxpayer deduct his car-related expenses as advertising expenses that were ordinary and necessary business expenses under § 162?
- Held: No.
  - In determining whether a cost is a deductible business expense, the issue is the taxpayer’s primary motive in incurring the expense and whether there is a reasonably proximate relationship to the taxpayer’s business. Here, the taxpayer’s primary motive was personal.

Limit on Deducting Business Interest
2025 OBBBA § 70303
Outline: item D.3, page A-11

- The 2017 TCJA amended Code § 163(j) to limit the deduction of business interest expense
  - For 2025, businesses with average annual gross receipts of $31 million or less (over 3 years) are exempted
  - Real estate businesses can elect out, but become subject to alternative depreciation system.
- Limit is business interest income <u>plus</u> 30% of “adjusted taxable income” <u>plus</u> floor plan financing interest expense
  - ATI generally was earnings before interest, tax, depreciation and amortization (EBITDA) for 2018-2021, then earnings before interest and taxes (EBIT) for 2022 and later years.
- The OBBBA amended § 163(j) to again make ATI equivalent to EBITDA.
- Applies to TY beginning after December 31, 2024.
- Another change (for TY beginning <u>after</u> 12/31/25):
  - ATI does not include subpart F income or GILTI income. § 163(j)(8)(A)
  - Effect: lowers the limit on deducting business interest

Increased Limits Under § 179
2025 OBBBA § 70306
Outline: item E.2, page A-12

- Section 179 allows taxpayers to deduct the cost of "§ 179 property"
- Limits for 2025:
  - Basic limit: $ 2.5 million (increased from $1.25 million)
  - Phase-out threshold: $4 million (increased from $3.1 million)
  - Deduction cannot exceed taxable income from the trade or business
- Applies to property placed in service in TY beginning after 2024
- The $2.5 and $4 million figures will be adjusted for inflation for TY after 2025
- Limit for SUVs remains at $25,000 ($31,300 for 2025)
  - <u>Note</u>: such vehicles are eligible for 100% bonus depreciation in 2025
- No changes to definition of qualified real property (a/k/a "qualified improvement property").

Increased Limits Under § 179
2025 OBBBA § 70306
Outline: item E.2, page A-12

- Limits for 2025:
  - Basic limit: $ 2.5 million (increased from $1.25 million)
  - Phase-out threshold: $4 million (increased from $3.1 million)
  - Deduction cannot exceed taxable income from the trade or business
- Example:
  - Taxpayer places in service in 2025 depreciable equipment that cost $5 million with a recovery period of 20 years or less
  - If taxpayer elects to take the § 179 deduction:
    - Cost of equipment exceeds the $4 million threshold by $1 million
    - Section 179 deduction is limited to $1.5 million ($2.5 m - $1 m)
    - The $1.5 million § 179 deduction reduces basis from $5 m to $3.5 m
  - Taxpayer can deduct 100% of remaining $3.5 m basis as bonus depreciation.
  - If taxable income from the trade or business were $1 million, taxpayer's § 179 deduction would be limited to $1 million

Bonus Depreciation Under § 168(k)
2025 OBBBA § 70301
Outline: item E.3, page A-12

- Section 168(k) permits taxpayers to deduct a percentage of the cost of "qualified property" in the first year the property is placed in service
  - Qualified property generally is property with a recovery period of 20 yrs or less
- The 2017 TCJA allowed the following percentage of the cost to be deducted:
  - Sept. 28, 2017-Dec. 31, 2022: 100%
  - 2023: 80%
  - 2024: 60%
  - 2025: 40%
- The 2025 OBBBA <u>restores the 100% deduction</u> for property acquired after Jan. 19, 2025
  - This is a permanent change, i.e., percentage will not decline in future years
  - Taxpayers can elect not to deduct 100% and instead deduct the percentage that previously was in effect for their first TY ending after January 19, 2025.
- <u>Used</u> property continues to be eligible for bonus depreciation

100% Elective Depreciation for Qualified Production Property
Outline: item E.4, page A-13

- The 2025 OBBBA, § 70307, enacted new Code § 168(n), which allows taxpayers to elect to deduct 100% of the cost of “qualified production property” (QPP)
  - QPP is defined as nonresidential real property used by the taxpayer in a “qualified production activity” (QPA) within the United States
    - Original use of the property must begin with the taxpayer
    - After Jan. 19, 2025, and before Jan. 1, 2029, either:
      - Construction began or
      - Property was acquired by taxpayer and was not previously used in a QPA since Jan. 1, 2021.
    - Must be placed in service before Jan. 1, 2031
    - If taxpayer leases the property to someone else, the deduction is not available
    - QPP does not include property used for offices, parking, sales activities, or “other functions unrelated to the manufacturing, production or refining of tangible personal property.”

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Outline: item E.4, page A-13

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  - QPP is defined as nonresidential real property used by the taxpayer in a "qualified production activity" (QPA) within the United States
  - QPA is defined as the manufacturing, production, or refining of a "*qualified product*"
  - Qualified product: "any tangible personal property if such property is not a food or beverage prepared in the same building as a retail establishment in which such property is sold"
  - Substantial transformation: "The activities of any taxpayer do not constitute manufacturing, production, or refining of a qualified product unless the activities of such taxpayer result in a substantial transformation of the property comprising the product." § 168(n)(2)(D).

100% Elective Depreciation for Qualified Production Property
Outline: item E.4, page A-13

- The 2025 OBBBA, § 70307, enacted new Code § 168(n), which allows taxpayers to elect to deduct 100% of the cost of "qualified production property" (QPP)
  - AMT: The deduction is allowed for purposes of both the regular tax and the alternative minimum tax (AMT) imposed by § 55.
  - Recapture rule (§ 1245): applies as if there had been a disposition of the property if, during the 10-year period beginning on the date the property is placed in service:
    - The property ceases to be used in a QPA, and
    - Is used by the taxpayer in a productive use that is not a QPA.
  - Query: what result if taxpayer sells the property within or outside the 10-year period? The normal § 1250 recapture should apply:
    - Any gain would be ordinary income to the extent it is attributable to depreciation taken in excess of straight-line depreciation.
    - Any remaining gain attributable to depreciation would be "unrecaptured § 1250 gain" subject to tax at a 25% rate.

AbbVie Inc. v. Commissioner
164 T.C. No. 10 (6/17/25)
Outline: item H.1, page A-15

- The taxpayer, a domestic, publicly traded corporation, entered into several agreements with a foreign public limited company to accomplish a proposed combination of the parties.
  - One agreement ("Cooperation Agreement") set forth the steps each party would take to accomplish the combination.
  - The agreement required taxpayer to pay a $1.6 billion fee to the other party if taxpayer did not carry out its responsibilities and the proposed combination did not occur.
- Taxpayer's BOD did not recommend the transaction to shareholders due to adverse tax results resulting from Treasury/IRS guidance concerning the combination.
- Accordingly, taxpayer and foreign public limited company entered into a "termination agreement" relating to the proposed combination.
- Taxpayer paid the $1.6 billion fee under the termination agreement and treated the $1.6 billion payment as an ordinary loss.
- IRS contended that $1.6 billion fee should be treated as capital loss under § 1234A(a)(1).

AbbVie Inc. v. Commissioner
164 T.C. No. 10 (6/17/25)
Outline: item H.1, page A-15

- Issue: does § 1234A(a)(1) require the taxpayer to treat the loss as a capital loss?
  - § 1234A(a)(1): results in a deemed sale or exchange of a capital asset if a taxpayer's gain or loss is attributable to the cancellation, lapse, expiration, or termination of a right or obligation with respect to "property" that is a capital asset.
- Held: No. The taxpayer's loss is an ordinary loss. Section 1234A(a)(1) does not apply.
  - A right or obligation is "'with respect to property'" within the meaning of section 1234A [when it] is a right or obligation to exchange (i.e., to buy, sell, or otherwise transfer or receive) an interest in property."
  - Taxpayer's rights and obligations were fundamentally in the nature of services.

IV. Compensation Issues

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Addresses the income and employment tax treatment of contributions to and benefits paid from a state paid family and medical leave (PFML) program and related reporting requirements.
- The PFML program pays qualifying employees 80% of weekly wages for up to 12 weeks for qualifying leave.
- Employees can take qualifying leave for:
  1. Medical leave: the employee's own non-occupational injuries, illness, or medical conditions, or
  2. Family leave: to care for a family member due to the family member's serious health condition or other prescribed circumstance.
- Funded by both employer and employee contributions equal to 1% of the employees' wages.
  - Employer pays 40% of the contribution, and employee pays 60%
  - Employer can voluntarily fund either part or all of the employee's contribution.

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Tax treatment of contributions:
  - Facts of situation 1:
    - An employee has $104,000 in wages for the calendar year, and the employer remits 1%, or $1,040, to the state PFML fund.
    - Employer withholds 60% ($624) from the employee's paycheck and pays the remaining 40% ($416) out of its own funds
  - Conclusions:
    - <u>Employee contribution</u>: the employee must include in gross income as wages the $624 withheld and can deduct it as a tax under § 164 if employee itemizes.
    - <u>Employer contribution</u>: the employer can deduct the $416 as an excise tax under § 164. The employer contribution is not taxable to the employee (employer is satisfying its own tax liability).

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Tax treatment of contributions:
  - Facts of situation 2 (employer pick-up):
    - Same as situation 1 (employer remits $1,040 to state PFML program), except employer withholds only $350 (instead of $624) from employee's paycheck and pays the remaining $274 from its own funds as an employer pick-up (plus the $416 employer contribution).
  - Conclusions:
    - <u>Employee consequences</u>: the employee must include in gross income as wages both the $350 withheld and the $274 employer pick-up (*Old Colony Trust* (U.S. 1929)) and can deduct $624 ($350 + $274) as a tax under § 164 if employee itemizes.
    - <u>Employer consequences</u>: the employer can deduct the $274 employer pick-up as a business expense under § 162 and can deduct the $416 employer contribution as an excise tax under § 164. The $416 employer contribution is not taxable to the employee.

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Tax treatment of benefits:
  - Family leave benefits (situations 2 and 5):
    - Same as situation 1 (employer remits $1,040 to state PFML program), and the employee takes 12 weeks of family leave. The state pays the employee $19,200 (80% of weekly pay for 12 weeks) in family leave benefits.
  - Conclusions:
    - <u>Employee consequences</u>: the employee must include in gross income the $19,200 in family leave benefits because they are an accession to wealth and no exclusion applies, but they are not wages (no employment tax).
      - The exclusion of § 104(a)(3) (amounts received through accident or health insurance for personal injuries or sickness) does not apply because the benefits are paid for conditions unrelated to the employee’s own health condition.
    - <u>Reporting</u>: the state must issue Form 1099.
    - <u>Employer pick-up</u>: results are the same with the employer pick-up.

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Tax treatment of benefits:
  - Medical leave benefits (situations 3 and 6):
    - Same as situation 1 (employer remits $1,040 to state PFML program), and the employee takes 12 weeks of medical leave for employee's serious health condition. The state pays the employee $19,200 (80% of weekly pay for 12 weeks) in medical leave benefits.
  - Conclusions:
    - <u>Employee consequences</u>:
      - Can exclude from gross income under § 104(a)(3) portion of the benefits (60%) attributable to employee contributions.
      - Must include in gross income under § 105 as wages portion of the benefits (40%) attributable to employer contributions.
    - <u>Reporting</u>: the state must issue Form W-2 for the taxable amount of medical leave benefits. No income tax withholding. State pays FICA/FUTA unless it transfers liability for employer portion to employer
    - <u>Employer pick-up</u>: results are the same with the employer pick-up.

Rev. Rul. 2025-4
1025-7 I.R.B. 758 (1/16/25)
Outline: item A.1, page A-16

- Effective date and transition rule:
  - The revenue ruling is effective for payments made on or after January 1, 2025.
  - Calendar year 2025 is a transition year:
    - <u>Contributions</u>: an employer is not required to treat the employer pick-up (amounts the employer voluntarily pays from its own funds of any part of an employee's otherwise required contribution to a state PFML program) as wages for federal employment tax purposes under §§ 3121(a), 3306(b), and 3401(a).
    - <u>Medical leave benefits</u>: neither the state nor the employer will be liable for penalties for failure to report or withhold taxes. (Note that the state still must issue Form 1099 to report any family leave benefits.)

Changes to Employer Plan Catch-Up Contributions
Outline: item B.1, page A-21

- Individuals age 50 and older can contribute an <u>additional</u>:
  - $7,500 (2024 and 2025) to employer-sponsored retirement plans other than SIMPLE plans (e.g., 401(k), 403(b)),
  - $3,500 (2024 and 2025) to SIMPLE plans.
- SECURE 2.0:
  - <u>Increased catch-up contributions for those ages 60-63</u>. Effective in <u>2025</u>, provides a special catch-up contribution limit for participants ages 60 to 63 equal to:
    - the greater of $10,000 or 150% of the regular catch-up contribution amount for 2024 (non-SIMPLE plans),
    - the greater of $5,000 or 150% of the regular catch-up contribution limit for 2025 (SIMPLE plans).
  - <u>Note</u>: Accordingly, for <u>**2025**</u>, 150% of the 2024 $7,500 catch-up contribution limit is <u>**$11,250**</u> (non-SIMPLE plans) and 150% of the 2024 $3,500 catch-up contribution limit is <u>**$5,250**</u> (SIMPLE plans).
- Proposed regulations issued 1/13/25. [See item B.1.a page A-21]

Changes to Employer Plan Catch-Up Contributions
Outline: item B.2, page A-22

- SECURE 2.0 § 603:
  - Changes to employer plan catch-up contributions. Individuals age 50 and older can contribute an additional $7,500 (2024 and 2025) to an employer-sponsored retirement plan.
  - SECURE 2.0:
    - Catch-up contributions must be invested in Roth accounts for those with wages over $145,000. Provides that, beginning in 2024, if a participant has wages over $145,000 during the previous year, all catch-up contributions must be deposited into a Roth account. The $145,000 wage threshold will be adjusted annually for inflation.

Changes to Employer Plan Catch-Up Contributions
Outline: item B.2.a, page A-22

- Notice 2023-62, 2023-37 I.R.B. 817 (8/25/23):
  - IRS announced a two-year "administrative transition period."
  - Specifically, until taxable years beginning <u>after December 31, 2025</u>:
    1. catch-up contributions will be treated as satisfying the requirements of section 414(v)(7)(A), even if the contributions are not designated as Roth contributions, and
    2. a plan that does not provide for designated Roth contributions will be treated as satisfying the requirements of section 414(v)(7)(B).

Changes to Employer Plan Catch-Up Contributions
Outline: item B.2.b, page A-23

- Proposed regulations, 90 F.R. 2645 (1/13/25):
  - Provide that those who do not have wages are not subject to the Roth-only rule
  - Provide guidance on employer plans maintained by more than one employer
    - If a plan is maintained by more than one employer (including a multiemployer plan), then a participant’s wages for the preceding calendar year from one participating employer are not aggregated with wages from another participating employer in determining whether participant’s wages for that year exceed $145,000.
  - Plan administrators and employers can treat employees who are subject to the Roth-only rule as having elected to make Roth contributions
  - If a participant subject to the Roth-only rule is allowed to make catch-up contributions to a Roth account, the plan must permit all 50+ employees to make catch-up contributions to a Roth account.

Automatic Enrollment of Employees in New Plans
Outline: item B.3, page A-24

- SECURE 2.0 Act § 101:
  - Automatic enrollment of employees in newly-created 401(k) and 403(b) plans. SECURE 2.0 provides that beginning in 2025, 401(k) and 403(b) plans established on or after December 29, 2022, must automatically enroll eligible participants.
  - Beginning in 2025, plans subject to this requirement must provide that:
    1. The percentage of compensation contributed by participants is at least 3% and not more than 10% in the first year of participation,
    2. Whatever the initial percentage of compensation contributed, the percentage is increased by 1 percentage point per year until the percentage contributed is at least 10% and not more than 15% of compensation.
  - Employees can opt out of participation or can elect to contribute a different amount.
  - Proposed regulations issued. 90 F.R. 3092 (1/14/25) *[item 3.a page 24].*

Automatic Enrollment of Employees in New Plans
Outline: item B.3, page A-24

- SECURE 2.0 Act § 101:
  - <u>Automatic enrollment of employees in newly-created 401(k) and 403(b) plans</u>. SECURE 2.0 provides that beginning in 2025, 401(k) and 403(b) plans <u>adopted on or after December 29, 2022</u>, must automatically enroll eligible participants. Participants can opt out of participation.
  - **<u>Exceptions</u>:**
    1. SIMPLE § 401(k) plans described in § 401(k)(11) and Reg. § 1.401(k)-4,
    2. Plans maintained by employers that have been in existence fewer than 3 years,
    3. Plans maintained by employers that normally employ 10 or fewer employees,
    4. Governmental plans (within the meaning of § 414(d)), and
    5. Church plans (within the meaning of § 414(e)).

Hubbard v. Commissioner, 132 F.4th 437 (6th Cir. 3/19/25)

Outline: item D.1, page A-26

- The taxpayer, a pharmacist in Kentucky, was criminally convicted of running a pill mill and sentenced to 30 years in prison.
- As part of the sentence, the court ordered him to forfeit the assets that had been funded through his criminal activity, including his SEP IRA.
- The government seized his IRA in 2017.
  - The IRA custodian issued Form 1099-R reporting a taxable distribution.
  - The taxpayer, who was incarcerated, did not file a return in 2017.
- The IRS issued a notice of deficiency asserting income tax, late-filing and late-payment penalties, an underpayment penalty, and a 10% early withdrawal penalty.
- Issue: did the taxpayer have to include the IRA distribution in gross income?
- Held: No. Tax Court reversed.
  - The forfeiture order transferred ownership of the IRA to the government.
  - Relation-back doctrine: gov't became the owner when the IRA was funded
  - The government withdrew its own money, and taxpayer was not the "payee or distributee" within the meaning of § 408(d)(1).

V. Personal Income and Deductions

Notice 2024-71
2024-44 I.R.B. 1026 (10/17/24)
Outline: item D.1, page A-27

- A taxpayer can use a health flexible spending arrangement (health FSA), Archer medical savings account (Archer MSA), health reimbursement arrangement (HRA), or health savings account (HSA), to pay for expenses that qualify as amounts paid for "medical care" within the meaning of § 213(d).
- Issue: are amounts paid for male condoms amounts paid for "medical care" within the meaning of § 213(d)?
- Conclusion: Yes.
  - Code § 213(d): "medical care" expenses are "amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body."
  - Reg. § 1.213-1(e)(1)(ii): deductions for medical care expenses under § 213 are limited to expenses "incurred primarily for the prevention or alleviation of a physical or mental defect or illness" and do not include deductions for expenses that are merely beneficial to an individual's general health.
  - Although amounts paid for male condoms might or might not be considered paid for "medical care," the Notice creates a "safe harbor" under which such amounts will be treated as paid for medical care.

Standard Deduction - 2025 OBBBA § 70102
Outline: item D.2, page A-28

- Permanently increased the standard deduction beginning in 2025:

Filing Status	2023	2024	2025 Before OBBBA	2025 After OBBBA
Single/MFS	$13,850	$14,600	$15,000	$15,750
Head-of-Household	$20,800	$21,900	$22,500	$23,625
MFJ/Surviving Spouses	$27,700	$29,200	$30,000	$31,500

- Dependents: 2025 standard deduction cannot exceed greater of $1,350 or the sum of $450 and the individual's earned income.
- Age 65 or older or legally blind: 2025 additional standard deduction is:
  - $2,000 for those with the filing status of single or head of household (and who are not surviving spouses), or
  - $1,600 for married taxpayers ($3,200 on a joint return if both spouses are age 65 or older).

Personal Exemption Deduction
2025 OBBBA § 70103
Outline: item D.3, page A-28

- Previously, the 2017 TCJA eliminated the personal exemption deduction for 2018-2025
- OBBBA <u>permanently</u> eliminated the personal exemption deduction
  - Still need to determine who is a dependent.
    - Filing status, earned income credit etc.
    - <u>Example</u>: a person can be a qualifying relative (and therefore a dependent) only if gross income does not exceed the "exemption amount" in § 151(d)(1)(B).
      - For 2025, the exemption amount for this purpose is $5,250.

New Deduction for Seniors
2025 OBBBA § 70103
Outline: item D.3, page A-28

- OBBBA added Code § 151(d)(5)(C), which provides a new deduction for seniors for 2025 through 2028.
- Available to a "qualified individual," defined as age 65 or older by the close of the tax year
- This deduction is <u>in addition to</u> the additional standard deduction for those age 65 or older or who are legally blind
- Deduction: $6,000 ($12,000 on joint return if both spouses age 65)
  - Phased out if MAGI exceeds $75,000 ($150,000 if MFJ)
  - Completely phased out when MAGI reaches $175,000 ($250,000 if MFJ)
- Must have a Social Security Number issued by due date of return
- If married, must file jointly to take the deduction

New Deduction for Seniors
2025 OBBBA § 70103
Outline: item D.3, page A-28

- Example:
  - Assume spouses are both age 65 or older and file jointly
  - Year is 2025

Deduction	Amount
Basic standard deduction	$31,500
Additional standard deduction (age 65 or legally blind)	$3,200
New deduction for seniors	$12,000
Total	**$46,700**

Deduction of Tip Income
2025 OBBBA § 70201
Outline: item D.4, page A-29

- New Code § 224(a) authorizes an individual to deduct the amount of "qualified tips" the individual receives.
  - Defined as the cash tips an individual receives in an occupation that "customarily and regularly received tips on or before December 31, 2024."
  - Proposed regs issued 9/22/25 (item a page A-30): IRS published list of qualifying occupations
  - Amounts received by owners and employees in a specified service trade or business as defined in § 199A(d)(2) don't qualify
  - Tips must be reported on a W-2 or 1099 or on Form 4137
- Limit: maximum deduction is $25,000
  - Phased out if MAGI exceeds $150,000 ($300,000 if MFJ)
  - Completely phased out when MAGI reaches $400,000 ($550,000 if MFJ)
- Available to those taking the standard deduction
- If married, must file jointly to take the deduction
- Effective for TY beginning after 12/31/2024. Ends after 2028.

Deduction of Overtime Compensation
2025 OBBBA § 70202
Outline: item D.5, page A-30

- New Code § 225(a) authorizes an individual to deduct the amount of "qualified overtime compensation" received that is reported on certain statements, such as a W-2 or 1099 form.
  - Defined as "overtime compensation paid to an individual required under section 7 of the Fair Labor Standards Act of 1938 <u>that is in excess of the regular rate</u> … at which such individual is employed"
  - FLSA requires that non-exempt employees be paid at least 1.5 times their regular rate for hours worked over 40 hours during the week.
- Limit: maximum deduction is $12,500 ($25,000 If MFJ)
  - Phased out if MAGI exceeds $150,000 ($300,000 if MFJ)
  - Completely phased out when MAGI reaches $275,000 ($550,000 if MFJ)
- Available to those taking the standard deduction
- If married, must file jointly to take the deduction
- Effective for TY beginning after 12/31/2024. Ends after 2028.

Enhanced Child Tax Credit
2025 OBBBA § 70104
Outline: item D.6, page A-32

- Previously, the 2017 TCJA increased the child tax credit from $1,000 to $2,000 for 2018-2025
- OBBBA permanently increased the child tax credit beginning in 2025
- CTC in 2025: $2,200
  - Will be adjusted for inflation after 2025
- Refundable portion of credit (after adjustment for inflation) continues to be $1,700 in 2025
- The $500 nonrefundable credit for dependents other than a qualifying child also was made permanent with no changes
- Phase-out of the credits continues to begin at:
  - MFJ: MAGI of $400,000
  - All others: MAGI of $200,000
- To claim the credit, parent and child must have a SSN issued by due date of the return (at least one parent if MFJ)

Deduction of State and Local Taxes
2025 OBBBA § 70120
Outline: item D.7, page A-32

- Previously, the 2017 limited an individual's itemized deductions on Schedule A for state and local taxes to $10,000 for 2018-2025.
  - Applied to aggregate of property taxes, and sales or income taxes.
  - Same limit applied to both single individuals and MFJ
- The OBBBA increased the limit <u>beginning in 2025 through 2029</u>
  - Goes back to $10,000 in 2030
- Limit in 2025: $40,000
  - Phased out in 2025 if MAGI exceeds $500,000 ($250,000 if MFS)
  - Cannot be reduced below $10,000
  - Reduced to $10,000 when MAGI reaches $600,000 ($283,333 if MFS)
- Limit increases by 1% each year through 2029
  - Will be $40,400 in 2026

Deduction of Car Loan Interest
2025 OBBBA § 70203
Outline: item D.8, page A-34

- New Code § 163(h)(4) allows an individual to deduct a limited amount of "qualified passenger vehicle loan interest"
  - Defined as interest paid or accrued on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of an "applicable passenger vehicle" for personal use.
    - Includes a car, minivan, van, SUV, pickup truck, or motorcycle
  - Is available only for purchases of <u>new</u> vehicles
  - Interest on lease financing does not qualify
- Limit: maximum deduction is $10,000
  - Phased out if MAGI exceeds $100,000 ($200,000 if MFJ)
  - Completely phased out when MAGI reaches $150,000 ($250,000 if MFJ)
- Available to those taking the standard deduction
- Individuals will receive statement from lender (Form 1098-CAR??)
- Effective for TY beginning after 12/31/2024. Ends after 2028.

Changes to § 529 Accounts
2025 OBBBA § 70413
Outline: item F.1, page A-35

- Amends § 529(c)(7) relating to tax-free distributions to pay expenses "in connection with enrollment or attendance at an elementary or secondary public, private, or religious school."
  - Expanded definition of K-12 qualified higher education expenses for 2025 and future years, including:
    - (1) curriculum and curricular materials,
    - (2) books or other instructional materials,
    - (3) online educational materials,
    - (4) fees for a nationally standardized norm-referenced achievement test, an advanced placement examination, or any examinations related to college or university admission,
    - (5) fees for dual enrollment in an institution of higher education,
    - (6) educational therapies for students with disabilities provided by a licensed or accredited practitioner or provider, including occupational, behavioral, physical, and speech-language therapies, and
    - (7) tuition for tutoring or educational classes outside of the home, including at a tutoring facility, if certain requirements are met.
  - Increased limit on distributions for K-12 expenses <u>after</u> 2025: $20,000 per student (up from $10,000).
- Amends § 529(e)(3) and adds § 529(f) to expand definition of "qualified postsecondary credentialing expenses" (e.g., licensing/credentialing expenses for certain trades) [page A-36].

VI. Corporations

CF Headquarters Corp. v. Commissioner
164 T.C. No. 5 (3/4/25)
Outline: item H.2, page A-42

- The State of York's economic development plan made cash grants totaling approximately $3.1 million to a corporation in 2007.
  - The grants were incentives for the corporation to remain in Manhattan after the September 11, 2001, terrorist attack.
- <u>Issue</u>: are the cash grants nontaxable, nonshareholder contributions to capital (§118), gifts (§102), or qualified disaster relief payments (§139)?
- <u>Held</u>: No. The grants must be included in the corporation's income.
  - The grants are not nontaxable contributions to capital:
    - To be a contribution to capital, a payment must become a permanent part of the recipient's working capital structure.
    - This was not satisfied. The grants were not restricted to use as capital.
    - The corporation could have used the grants to pay operating expenses or dividends.
  - The grants are not gifts. NYS had no detached, disinterested generosity.
  - They are not QDRP because only individuals can exclude such payments.

CF Headquarters Corp. v. Commissioner
164 T.C. No. 5 (3/4/25)
Outline: item H.2, page A-42

- Section 13312 of the 2017 TCJA amended Code § 118.
- As amended, § 118(b)(2) provides:
  - Non-shareholder contributions to the capital of a corporation made after 12/22/17 by any *governmental entity or civic gr*oup are *not* excluded from the corporation's gross income.
- Thus, the result in this case would be the same after 2017, but for a different reason

VII. Partnerships

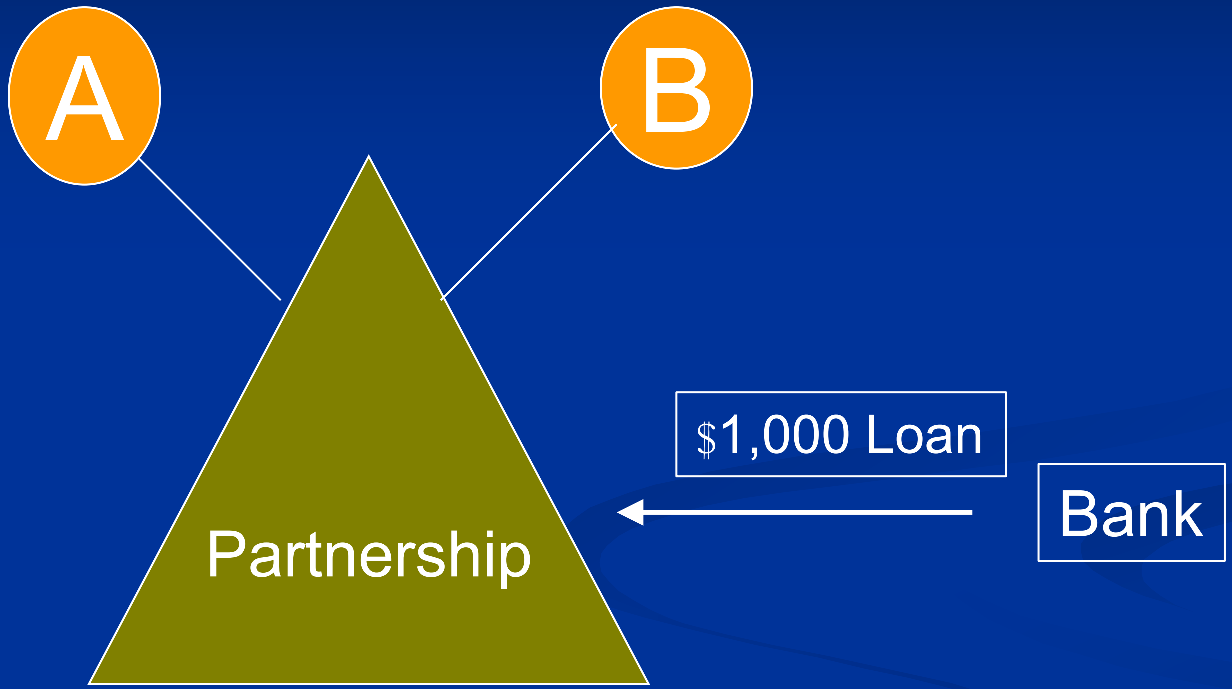
Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44

- Background:
  - A partner's basis in a partnership interest ("outside basis") is significant for several reasons.
  - Among other purposes, a partner's outside basis:
    - Is relevant in determining whether the partner realizes a gain or loss in selling the partnership interest.
    - Is a limit on the partner's ability to deduct their share of partnership losses. § 704(d).
  - A partner's share of partnership liabilities affects the partner's outside basis.
    - Section 752(a): an increase in a partner's share of partnership liabilities is treated as a contribution of money to the partnership by a partner, which increases the partner's outside basis.
    - Section 752(b): a decrease in a partner's share of partnership liabilities is treated as a distribution of money by the partnership to the partner, which decreases the partner's outside basis.

Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44

- Background:
  - To determine a partner's share of a partnership liability (and whether the share has increased or decreased), it is necessary to determine whether the liability is recourse or nonrecourse.
    - Reason: the rules for determining a partner's share of a recourse liability differ from those for determining a partner's share of a nonrecourse liability.
  - Recourse liability: one for which any partner (or related person) bears the economic risk of loss for the liability. Reg. § 1.752-1(a)(1).
  - Nonrecourse liability: one for which no partner or related person bears the economic risk of loss for the liability. Reg. § 1.752-1(a)(2).
  - Sharing of recourse liability:
    - If a partnership liability is a recourse liability, each partner's share is the portion of the liability for which the partner (or related person) bears the economic risk of loss. Reg. § 1.752-2(a)(1).

Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44



- The partnership liability is recourse if at least one partner (or related person) bears the economic risk of loss for it.
- If it's a recourse liability, each partner's share is the portion of the liability for which they bear the EROL.
- If they share the liability equally, each is treated as contributing $500.

Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44

- Key provisions of the final regulations
  - Situations in which a partner directly bears the economic risk of loss:
    - The final regulations provide a comprehensive list of situations in which a person directly bears the economic risk of loss for a partnership liability. Reg. § 1.752-2(a)(3).
    - A person directly bears the economic risk of loss for a partnership liability if that person:
      - Has a payment obligation (determined under Reg. § 1.752–2(b)): “atom bomb” test.
      - Is a lender (as provided in Reg. § 1.752–2(c).
      - Guarantees payment of interest on a partnership nonrecourse liability (as described in Reg. § 1.752–2(e)).
      - Pledges property as a security (as provided in Reg. § 1.752–2(h)).

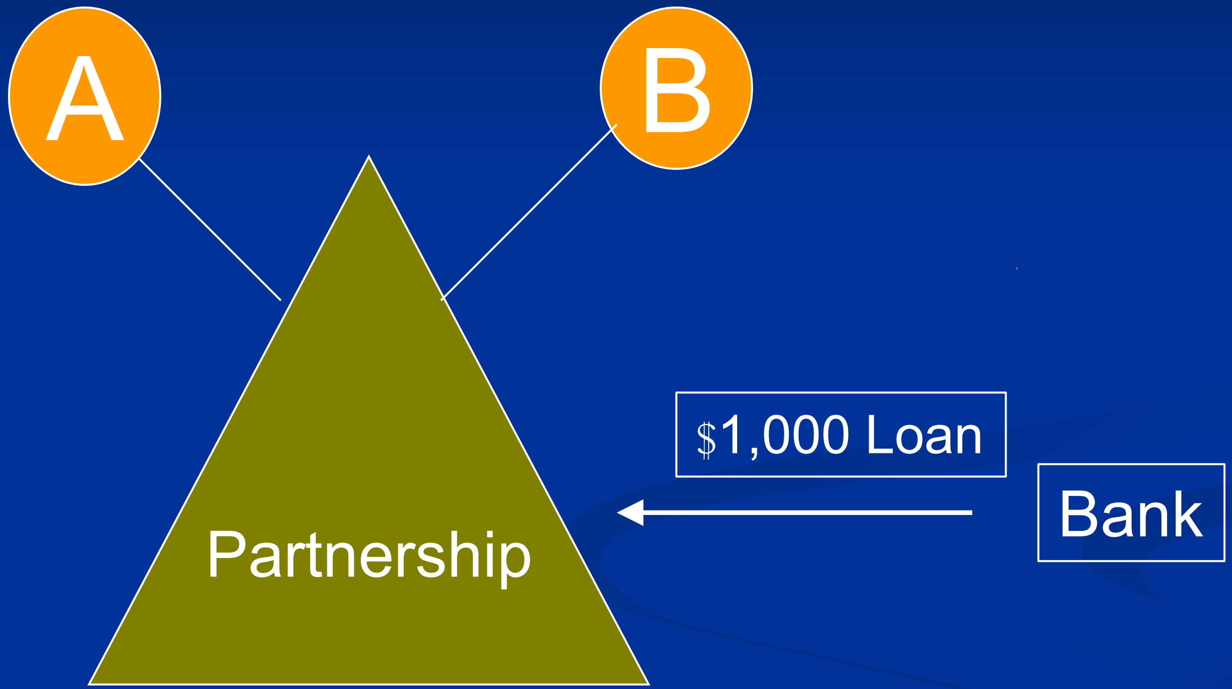
Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44

- Key provisions of the final regulations
  - Ordering rule:
    - The final regulations clarify the order in which various rules apply to allocate recourse liabilities among partners and related persons. Reg. § 1.752-4(e).
  - <u>First</u>, determine whether a person who owns (directly or indirectly) an interest in a partnership directly bears the EROL for the liability. Reg. § 1.752-4(b)(2).
    - If so, then other persons owning interests directly or indirectly in the partnership are not treated as related to that person for purposes of determining the economic risk of loss borne by each of them for the liability.
  - <u>Second</u>, if person directly bears the EROL for the partnership liability and is related to more than one partner, determine the portion of the liability for which each of those partners bears the EROL (generally, in accordance with share of profits). Reg. § 1.752-4(b)(3) .
  - <u>Third</u>, apply the proportionality rule of Reg. § 1.752-2(a)(2) to determine the amount of EROL that each partner is considered to bear when the total EROL borne by partners exceeds the amount of the partnership liability.

Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44

- Key provisions of the final regulations
  - Proportionality rule:
    - If the total amount of EROL borne by the partners exceeds the total amount of the liability, the final regulations use the following formula to determine the share of such liability allocated to each partner:
      - Multiply
        i. the total amount of the recourse liability by
        ii. a fraction determined by dividing
            a) the amount of a partner's EROL by
            b) the sum of EROL borne by all partners. Reg. § 1.752-2(a)(2).

Final Regulations on Partnership Recourse Liabilities
T.D. 10014, 89 F.R. 95108 (12/2/24)
Outline: item B.1, page A-44



Proportionality rule

- Assume A guarantees payment of all $1,000 of the liability and B guarantees payment of $500 of the liability (total of $1,500 guaranteed).
- A bears the EROL for $667 ($1,000 loan * $1,000/$1,500)
- B bears the EROL for $333 ($1,000 loan * $500/$1,500)

Notice 2025-2
2025-3 I.R.B. 418 (12/13/24)
Outline: item G.1, page 62

- This notice provides penalty relief under § 6722 (failure to furnish correct payee statements).
- The relief applies to partnerships that miss the January 31, 2025, deadline for providing a copy of the revised IRS Form 8308 (Report of a Sale or Exchange of Certain Partnership Interests) to the transferor and transferee of a "751(a) exchange" occurring during calendar year 2024.
- Section 751 exchange: "a sale or exchange of an interest in the partnership (or portion thereof) in which any money or other property received by a transferor from a transferee in exchange for all or part of the transferor's interest in the partnership is attributable to § 751 property."
  - Section 751 property: unrealized receivables and inventory.
- Form 8308 was revised in October of 2023.
  - New Part IV of Form 8308 requires a partnership to report, among other items, the partnership's and the transferor partner's share of § 751 gain and loss, collectibles gain under § 1(h)(5), and unrecaptured § 1250 gain under § 1(h)(6).

Notice 2025-2
2025-3 I.R.B. 418 (12/13/24)
Outline: item G.1, page A-52

Form **8308** (Rev. October 2024) Department of the Treasury Internal Revenue Service

Report of a Sale or Exchange of Certain Partnership Interests

Go to *www.irs.gov/Form8308* for instructions and the latest information.

OMB No. 1545-0123

Name of partnership	Phone number	**Employer identification number**

Number, street, and room or suite no. If a P.O. box, see instructions.

City or town, state or province, country, and ZIP or foreign postal code

Check if this is an amended Form 8308 ☐ or filed in respect to an administrative adjustment request ☐

Part I **Transferor Information**
Beneficial owner of the partnership interest immediately before transferring that interest:

Name	**Identifying number**

Number and street (including apt. no.)

City or town, state or province, country, and ZIP or foreign postal code

Check if providing record holder information: ☐ Check if the transferor is foreign: ☐

Notice to Transferors: The information on this form has been supplied to the IRS. The transferor in a section 751(a) exchange is required to treat a portion of the gain realized from the exchange as ordinary income. For more details, see Pub. 541, Partnerships.

Statement by Transferor: The transferor in a section 751(a) exchange is required under Regulations section 1.751-1(a)(3) to attach a statement relating to the sale or exchange to their return. See the Instructions for Form 8308 for more details.

Part II **Transferee Information**
Beneficial owner of the partnership interest immediately after the transfer of that interest:

Name	**Identifying number**

Number and street (including apt. no.)

City or town, state or province, country, and ZIP or foreign postal code

Check if providing record holder information: ☐

Part III **Transfer of Partnership Interest**

1 Date of sale or exchange of partnership interest: / /

2 Type of partnership interest transferred:
A Capital ☐ **B** Preferred ☐ **C** Profits ☐ **D** Other ☐

Notice 2025-2
2025-3 I.R.B. 418 (12/13/24)
Outline: item G.1, page A-52

Part IV **Partner's Share of Gain (Loss) Required by Sections 751(a) and 1(h)(5) and (6)**
The amounts in column (c) should be reported to the selling partner on their Schedule K-1 in box 20 using the relevant code.

		(a) Partnership-level deemed sale gain (loss)	**(b1)** Percentage interest in the partnership transferred	**(b2)** Number of units in the partnership transferred	**(c)** Partner-level deemed sale gain (loss)	K-1 box 20 code
1	Section 751(a) gain (loss) . . .					AB
2	Section 1(h)(5) collectibles gain .					AC
3	Section 1(h)(6) unrecaptured section 1250 gain					AD

Sign here only if you are filing this form by itself and not with Form 1065.

Under penalties of perjury, I declare that I have examined this return, including accompanying attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of partnership representative or partner or limited liability company member

Date / /

For Paperwork Reduction Act Notice, see Instructions. Cat. No. 62503I Form **8308** (Rev. 10-2024)

Notice 2025-2
2025-3 I.R.B. 418 (12/13/24)
Outline: item G.1, page A-52

- For sales of partnerships occurring during 2024, relief from penalties applies only for a partnership's failure to furnish to the transferor and transferee partners Form 8308 with a completed Part IV by the due date (normally January 31, 2025).
- To be relieved of penalties, the partnership must:
  1. timely and correctly furnish to the transferor and transferee a copy of <u>Parts I, II, and III</u> of Form 8308 (or a statement that includes the same information) by the later of
     a) January 31, 2025, or
     b) 30 days after the partnership is notified of the § 751(a) exchange, <u>and</u>
  2. furnish to the transferor and transferee a copy of the complete Form 8308, <u>including Part IV</u> (or a statement that includes the same information), and any additional information required under Reg. § 1.6050K-1(c), by the later of
     a) the due date of the partnership's Form 1065 (including extensions), or
     b) 30 days after the partnership is notified of the § 751(a) exchange.

Proposed Regulations Adopt the Same Approach
90 F.R. 40269 (8/19/25)
Outline: item G.1.a, page A-53

- These proposed regulations would eliminate the requirement that partnerships furnish the information required in Part IV of the Form 8308 by January 31 of the year following the calendar year in which a § 751(a) exchange occurred.
- The effect of the proposed regulations (and the associated changes in the instructions to Form 8308) would be to require a partnership to:
  1. furnish the information reported on only Parts I, II, and III of Form 8308 (or a statement that includes the same information) to the transferor and transferee partners in a § 751(a) exchange by the later of
     a) January 31 of the year after the year in which the exchange occurs, or
     b) 30 days after the partnership is notified of the exchange, and
  2. file the completed Form 8308, including Part IV, as an attachment to its partnership return on Form 1065 for the taxable year of the partnership that includes the last day of the calendar year in which the § 751(a) exchange took place, and
  3. report the information required of the transferor in Reg. § 1.751-1(a)(3) to the transferor (including the information required in Part IV of the Form 8308), in the Schedule K–1 issued to the transferor partner.

IX. Exempt Organizations and Charitable Giving

Brooks v. Commissioner,
109 F.4th 205 (4th Cir. 7/15/24)
Outline: item B.1, page A-55

- Facts
  - The taxpayers, a married couple, controlled an LLC classified as a partnership.
  - The LLC bought 85 acres of land in Georgia in December 2006 for $1.35 million.
  - In December 2007, the taxpayer created a conservation easement on 41 of the 85 acres and claimed a charitable contribution deduction of $5.1 million.
  - Because of the limit on charitable contribution deductions, they could deduct only $750,000 in 2007 and carried the $4.35 million balance forward.
  - The IRS asserted the easement's value was only $470,000 and disallowed all deductions carried forward from 2007.
- Issue: were the taxpayers entitled to the charitable contribution deductions carried forward to 2010-2012?

Brooks v. Commissioner,
109 F.4th 205 (4th Cir. 7/15/24)
Outline: item B.1, page A-55

- Issue: were the taxpayers entitled to the charitable contribution deductions carried forward to 2010-2012?
- Held: No.
  1. The taxpayers failed to obtain a contemporaneous written acknowledgment of the contribution from the charity as required by § 170(f)(8).
  2. The taxpayers reserved the right to, e.g., construct a barn and harvest timber from the 41 acres and did not provide the charity with documentation of the initial condition of the property, as required by Reg. § 1.170A-14(g)(5).
  3. The taxpayers filed Form 8283 with their return, which requires taxpayers to report their basis in the contributed property, but the taxpayers' Form 8283 did not comply with this requirement because they reported their basis in the 41 acres as $1.35 million, the price they paid for the entire 85 acres.
  4. The taxpayers were subject to the 40% penalty for a gross valuation misstatement imposed by § 6662(h)(1).

X. Tax Procedure

Farhy v. Commissioner, 160 T.C. No. 6 (4/3/23)
Outline: item A.1, page A-58

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
  - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Section 6038(b)(1) imposes a penalty of $10,000 for each annual accounting period for which a person fails to provide the required information.
  - In addition, § 6038(b)(2) imposes a continuation penalty of $10,000 for each 30-day period that the failure continues up to a maximum continuation penalty of $50,000 per annual accounting period.
- <u>Issue</u>: can the IRS levy to collect the penalties imposed by § 6038(b)?
- <u>Held</u>: No. There is no statutory authority for the IRS to assess theses penalties. Because they cannot be assessed, the IRS cannot exercise its administrative collection powers to collect them.

Mukhi v. Commissioner,
162 T.C. No. 8 (4/8/24)
Outline: item A.1.a, page A-59

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
  - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Section 6048(a) and (b) require information reporting by a United States person regarding ownership of or transfers to a foreign trust.
  - Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
  - Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner
- Significant penalties apply for failure to file Forms 5471, 3520, and 3520-A.
- <u>Issues</u>:
  1. Can the IRS levy to collect the penalties imposed by § 6038?
  2. Do fines for failure to file Forms 3520 & 3520-A violate the 8th Amendment?
- <u>Held</u>: (1) No, under prior decision in *Farhy*, and (2) No. The penalties are not “fines” and cannot violate the Excessive Fines Clause of the 8th Amendment; even if they are fines, they are not disproportionate and are constitutional.

Farhy v. Commissioner,
100 F.4th 223 (D.C. Cir. 5/3/24)
Outline: item A.1.b, page A-60

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
  - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Section 6038(b)(1) imposes a penalty of $10,000 for each annual accounting period for which a person fails to provide the required information.
  - In addition, § 6038(b)(2) imposes a continuation penalty of $10,000 for each 30-day period that the failure continues up to a maximum continuation penalty of $50,000 per annual accounting period.
- <u>Issue</u>: can the IRS levy to collect the penalties imposed by § 6038(b)?
- <u>Held</u>: Yes. There <u>is</u> statutory authority for the IRS to assess theses penalties. Because they can be assessed, the IRS can exercise its administrative collection powers to collect them.
- **<u>Note</u>:** case reverses the U.S. Tax Court on this issue.

Mukhi v. Commissioner, 163 T.C. No. 8 (11/18/24)
Outline: item A.1.c, page A-61

- Section 6038(a) requires every United States person to provide information with respect to any foreign business entity the person controls
  - Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
- Significant penalties apply for failure to file Form 5471.
- In light of the D.C. Circuit's opinion in *Farhy*, the IRS moved for reconsideration of the Tax Court's decision in *Mukhi v. Commissioner*, 162 T.C. No. 8 (4/8/24).
- <u>Issue</u>: Can the IRS levy to collect the penalties imposed by § 6038(b)?
- <u>Held (reviewed (16-0-1)</u>: No.
  - Section 6201(a), which authorizes the IRS to assess "all taxes (including interest, additional amounts, additions to the tax, and assessable penalties)," does not authorize assessment of the § 6038(b) penalty.
  - The legislative history of § 6038 does not dictate a contrary result.
  - The IRS's ability not to impose the penalty for reasonable cause does not mean that the penalty is assessable. The IRS could determine there is reasonable cause before assessment.

United States v. Page, 116 F.4th 822 (9th Cir. 9/12/24)

Outline: item E.2, page A-68

- Facts
  - The IRS issued to the taxpayer a refund check in the amount of $491,104, but the refund should have been only $3,463.
  - After the government demanded the return of the erroneous refund, the taxpayer returned $210,000 but kept the remaining $277,641.
  - Under § 7405(d) and § 6532(b), a suit to recover an erroneous refund is allowed if it is "begun within 2 years after the making of such refund."
  - May 5, 2017: refund check mailed
  - Unknown date: refund check received by taxpayer
  - April 5, 2018: refund check cashed
  - March 31, 2020: government brought legal action
- Issue: was the government's action to recover the refund timely filed?
- Held: Yes. District Court's grant of summary judgment to taxpayer reversed.
  - The Ninth Circuit joined the First and Seventh Circuits in holding that a refund is "made" for purposes of § 7405(d) and § 6532(b) on the date the check clears the Federal Reserve.

Zuch v. Commissioner,
605 U.S. 422 (6/12/25)
Outline: item F.1.a, page A-72

- Facts:
  - Taxpayer and her then-husband filed separate returns for 2010.
  - They made estimated tax payments for 2010 of $50,000. IRS applied these to her husband's account.
  - Taxpayer amended her 2010 return, which resulted in tax liability of $28,000.
  - The IRS issued a notice of intent to levy, and the taxpayer requested a collection due process (CDP) hearing with an IRS Appeals Officer.
    - She argued that the IRS should have applied the $50,000 to her account.
    - IRS Appeals issued a notice of determination upholding the levy.
  - Taxpayer filed a petition in the Tax Court seeking review of the determination.
  - While the case was pending, IRS offset her refunds for later years and reduced her tax liability for 2010 to zero.
  - IRS moved to dismiss the case as moot.
- Issue: did the Tax Court retain jurisdiction to review the IRS's determination when taxpayer's liability was zero and the IRS therefore no longer pursued a levy?

Zuch v. Commissioner,
605 U.S. 422 (6/12/25)
<u>Outline: item F.1.a, page A-72</u>

- <u>Issue:</u> did the Tax Court retain jurisdiction to review the IRS's determination when taxpayer's liability was zero and the IRS therefore no longer pursued a levy?
- <u>Held</u>: No (8-1 decision). The Tax Court properly dismissed the case.
  - The Tax Court is a court of limited jurisdiction.
  - Section 6330(d)(1) gives the Tax Court jurisdiction to review a "determination" by the IRS following a CDP hearing.
  - A "determination" under § 6330(d)(1) refers to "the binary decision whether a levy may proceed." 605 U.S. at 429.
  - Without an underlying levy, the "determination" no longer exists for the Tax Court to review under its limited § 6330(d)(1) jurisdiction.
  - Taxpayer's only recourse is to file an administrative claim for refund and, if that is denied, to file a refund action in U.S. District Court or U.S. Court of Federal Claims.
- <u>Dissent by Justice Gorsuch</u>: "Nothing in the statute before us suggests that the IRS can deprive the Tax Court of jurisdiction simply by withdrawing a levy."

Jenner v. Commissioner, 163 T.C. No. 7 (10/22/24)
Outline: item F.2, page A-75

- Facts
  - The IRS assessed penalties against the petitioners, a married couple, for their failure to file foreign bank account reports (FBARs).
  - Each petitioner received a letter from the Treasury Department's Bureau of the Fiscal Service (BFS) informing them that the Treasury Offset Program would withhold funds from their monthly Social Security benefits.
  - The petitioners requested a collection due process (CDP) hearing by submitting Forms 12153 to the Debt Management Servicing Center.
  - Subsequently, the IRS informed the petitioners by letter that they did not qualify for a CDP hearing because the FBAR penalties that had been assessed were not "taxes."
- Issue: were petitioners entitled to a CDP hearing to challenge the proposed offset of their Social Security benefits to pay FBAR penalties?
- Held: No.
  - Section 6330(a)(1) requires the government to issue a notice before levying for the taxable period to which the "unpaid tax" relates. FBAR penalties are not taxes. The Tax Court has no jurisdiction to hear their case.

Form 1099-K
2025 OBBBA § 70432
Outline: item H.7, page A-94

- Background:
  - In 2008, Congress added § 6050W to the Code.
  - Section 6050W became effective for the 2011 tax year.
  - Requires payment card companies and online marketplaces (aka third-party settlement organizations) to report on Form 1099-K payments processed for goods and services.
    - Payment cards include credit, debit, and stored value cards
    - Third-party settlement organizations include eBay, gig-worker platforms like Uber and Lyft, and payment apps such as Venmo and Cash App (but not Zelle).

Form 1099-K
2025 OBBBA § 70432
Outline: item H.7, page A-94

- De minimis exceptions:
  - Payment cards. There has never been a de minimis exception for payment card transactions, i.e., a payment card company must report all transactions processed for a participating payee
  - Third-party settlement organizations. As enacted, § 6050W(e) required third-party settlement organizations (TPSOs) to issue Forms 1099-K only when gross payments to a participating payee for goods and services during the calendar year exceeded $20,000 and there were more than 200 transactions
    - The American Rescue Plan (March 2021) lowered the de minimis exception for third-party settlement organizations to $600 with no minimum number of transactions, effective in 2022.

Form 1099-K
2025 OBBBA § 70432
Outline: item H.7, page A-94

- De minimis exceptions:
  - The American Rescue Plan (March 2021) lowered the de minimis exception for third-party settlement organizations to $600 with no minimum number of transactions, effective in 2022
  - In Notice 2023-10, the IRS announced that 2022 would be a transition period for implementation of the reduced reporting threshold, i.e., the reduced threshold did not apply for 2022.
  - In Notice 2023-74, the IRS announced that 2023 would be a transition period for implementation of the reduced reporting threshold, i.e., the reduced threshold did not apply for 2023.
  - In Notice 2024-85, the IRS announced that, for 2024, a TPSO was not required to report payments in settlement of third-party network transactions with a participating payee unless the gross amount of aggregate payments to be reported exceeds $2,500, regardless of the number of such transactions

Form 1099-K
2025 OBBBA § 70432
Outline: item H.7, page A-94

- De minimis exceptions:
  - The OBBBA retroactively repealed the reduced reporting threshold enacted by the American Rescue Plan (March 2021)
  - Result: TPSOs are not required to issue Form 1099-K for 2025 and future years unless gross payments to a participating payee for goods and services during the calendar year exceed $20,000 and there are more than 200 transactions

XI. Withholding and Excise Taxes

Background on Self-Employment Tax

- <u>Net earnings from self-employment</u>:
  - Section 1402(a): "net earnings from self-employment" means:
    - the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed … which are attributable to such trade or business, <u>plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member</u>;
  - Section 1402(a)(13): "net earnings from self-employment" does <u>not</u> include:
    - "the distributive share of any item of income or loss <u>of a limited partner, as such</u>, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership …"
    - Commonly referred to as the "limited partner exception"
- <u>Issue</u>: who is a "limited partner, as such" within the meaning of the § 1402(a)(13) limited partner exception?

Background on Self-Employment Tax

- Earlier Tax Court cases addressing the § 1402(a)(13) limited partner exception:
  - Renkemeyer, Campbell & Weaver, LLP v. Commissioner, 136 T.C. 137 (2011)
    - Partners in a tax law firm organized as a Kansas limited liability partnership (LLP)
    - Held: the partners were not limited partners under § 1402(a)(13)
      - Their distributive shares of income arose from their provision of legal services rather than as a return on investment
  - Hardy v. Commissioner, T.C. Memo. 2017-16
    - Plastic surgeon who was a member of an LLC classified as a partnership that owned a surgical center
    - Held: the surgeon was a limited partner under § 1402(a)(13)
    - His distributive share of income arose from facility fees paid by patients
  - Castigliola v. Commissioner, T.C. Memo. 2017-62
    - Members of a law firm organized as a Mississippi professional limited liability company (PLLC) classified as a partnership
    - Held: the partners were not limited partners under § 1402(a)(13)

Soroban Capital Partners v. Commissioner, 161 T.C. 310 (11/28/23)
Outline: item B.1, page A-104

- Facts
  - The petitioner, Soroban Capital Partners LP (Soroban), is a limited partnership subject to the former TEFRA unified audit and litigation procedures.
  - Soroban had one general partner (a limited liability company) and three individual limited partners.
  - On its partnership tax returns for 2016 and 2017, Soroban included in net earnings from self-employment the guaranteed payments received by the three limited partners and the general partner's distributive share of the partnership's ordinary business income.
  - Soroban excluded from net earnings from self-employment the limited partners' distributive shares of the partnership's ordinary business income.
- Issue: were the limited partners' shares of the partnership's ordinary business income automatically excluded from net earnings from self-employment?
- Held: No. Although § 1402(a)(13) excludes from net earnings from self-employment "the distributive share of any item of income or loss of a limited partner, as such …," an analysis of the limited partners' functions and roles is required. Motion for summary judgment by petitioner denied.

Denham Capital Management LP v. Commissioner, T.C. Memo. 2024-114 (12/23/24)
Outline: item B.1.a, page A-104

- Facts
  - The petitioner, Denham Capital Management LP, was a limited partnership
    - It provided investment advisory and management services to affiliated private equity funds that invested in the energy sector.
  - Denham had one general partner (an LLC) and five individual limited partners.
    - The limited partners were required to (and did) devote substantially all of their time to the business affairs of the partnership.
    - All were actively involved in Denham's business in various ways.
    - Only one limited partner made a capital contribution ($ 8 million). The others received their partnership interests as profits interests.
- Issue: were limited partners' shares of partnership's ordinary business income excluded from net earnings from self-employment under § 1402(a)(13)?
- Held: No.
  - The partnership's income for 2016 and 2017 ($130 million combined) consisted solely of fees received in exchange for services. The limited partners' time, skills, and judgment were essential to the provision of these services.

Denham Capital Management LP v. Commissioner, T.C. Memo. 2024-114 (12/23/24)

Outline: item B.1.a, page A-104

Partner	*Capital Contributions Since Inception*	*2016 and 2017 Distributive Share*	*2016 and 2017 Guaranteed Payments*	*2016 and 2017 Distributions*
Stuart Porter	$8,000,000	$16,581,463	$810,137	$15,814,809
Carl Tricoli	—	$13,822,459	$740,453	$12,972,886
Scott Mackin	—	$6,653,979	$421,269	$5,949,589
Riaz Siddiqi	—	$3,870,352	$429,995	$3,518,137
Jordan Marye	—	$9,467,801	$710,325	$7,756,881

Soroban Capital Partners v. Commissioner, T.C. Memo. 2025-52 (5/28/25)
Outline: item B.1.b, page A-106

- In its earlier opinion (161 T.C. No. 12 (11/28/23)), the court denied the taxpayer's motion for summary judgment.
- Later, the case was submitted for decision without a trial.
- Held:
  - For largely the same reasons as in *Denham Capital Management*, the limited partners are not limited partners.
  - "Soroban's limited partners were limited partners in name only. They were essential to generating the business's income, they oversaw day-to-day management, they worked for the business full time, and they were held out to the public as essential to the business. Their capital accounts make clear that their earnings were not of an investment nature. They are not limited partners within the meaning of section 1402(a)(13), and their earnings constitute net earnings from self-employment for the years in issue."

Lessons Learned from Judicial Decisions

- The same analysis applies regardless of whether the business is organized as an LLC, LLP, or state law limited partnership
- Factors that suggest a person is <u>not</u> a limited partner under § 1402(a)(13):
  - The partner provides a significant level of services in a service partnership (Renkemeyer, Castigliola, Denham, Soroban)
  - The partner's reputation and skills are important to the partnership's provision of services (Denham, Soroban)
  - The partner has not contributed capital to the partnership (Denham) or shares of ordinary income are disproportionate to capital contributed (Soroban)
- Factors that suggest a person <u>is</u> a limited partner under § 1402(a)(13):
  - The partner has made a significant capital contribution (Hardy)
  - The partner is not actively involved in the partnership's business operations (Hardy)
  - If the partner provides services in connection with the partnership's business:
    - The partner's economic relationship with the partnership sufficiently indicates it is generally one of passive investment (Denham), and
    - Guaranteed payments represent adequate compensation for services provided by the partner.

Texas Truck Parts & Tire, Inc. v. United States
118 F.4th 687 (5th Cir. 10/8/24)
Outline: item C.1, page A-107

- The taxpayer, a wholesaler and retailer of truck parts and tires based in Houston, purchased tires from Chinese manufacturers from 2012 to 2017.
- The Chinese manufacturers arranged for the tires to be transported from China to the United States, clear U.S. Customs, and be delivered to taxpayer.
- Code § 4071(a) imposes an excise tax "on taxable tires sold by the manufacturer, producer, or importer thereof."
- The taxpayer neither filed quarterly excise tax returns on Form 720 nor paid any excise tax on the tires.
- <u>Issue</u>: was taxpayer the importer of the tires within the meaning of § 4071?
- <u>Held</u>: Yes.
  - Under Reg. § 48.0-2(a)(4)(i), an importer is "any person who brings such an article into the United States from a source outside the United States" <u>or</u> the beneficial owner "if the nominal importer of a taxable article is not its beneficial owner."
  - Taxpayer did not bring the tires into the U.S., but it is the beneficial owner.
  - Agrees with *Terry Haggerty Tire Co., Inc. v. United States*, 899 F.2d 1199 (Fed. Cir. 1990).

Other Effects of OBBBA, Generally After 2025

Other Effects of the 2025 OBBBA

- **Other OBBBA provisions that take generally take effect <u>after 2025</u>:**
  - Makes permanent TCJA's **<u>reduction of individual income tax rates</u>**
  - Itemized deduction changes:
    - Mortgage interest – after 2025, OBBBA permanently:
      - Reduces acquisition indebtedness cap from $1 million to $750k
      - Eliminates deduction for interest on home equity indebtedness
      - Allows deduction of private mortgage insurance premiums (PMI)
    - K-12 teachers can deduct all classroom expenses as an itemized deduction ($300 above-the-line deduction remains in place)
    - Permanently disallows miscellaneous itemized deductions
    - Permanently repeals the overall limit on itemized deductions (Pease limitation) and replaces it with a modified limit
  - Individual AMT:
    - Permanently extends increase in AMT exemption amounts
    - Permanently extends increases in thresholds for phase-out of AMT exemption amounts

Other Effects of the 2025 OBBBA

- **Other OBBBA provisions that take generally take effect <u>after 2025</u>:**
  - Permanently extends deduction of 20% of qualified business income (§ 199A) after 2025.
    - Provides minimum deduction of $400 if active QBI is at least $1,000
  - Permanently extends the increased estate and gift tax exemption
    - Increases exemption in 2026 to $15 million for single filers ($30 million for MFJ), and indexes exemption for inflation after 2026.
  - Charitable contributions (all effective after 2025):
    - For those taking the standard deduction, an above-the-line deduction of $1,000 ($2,000 if MFJ) for cash contributions to public charities
    - For individuals itemizing deductions:
      - Charitable contributions are deductible only to the extent they exceed .5% of AGI
      - Caps the benefit of charitable contribution deductions at 35%
    - For corporations, charitable contributions are deductible only to the extent they exceed 1% of taxable income

Other Effects of the 2025 OBBBA

- **Other OBBBA provisions that take generally take effect after 2025:**
  - 529 accounts [see Outline: item F.1, page A-35]:
    - For K-12 expenses:
      - Can withdraw $20,000 tax-free annually (up from $10,000) <u>after 2025</u>
      - More expenses are qualified expenses, including books/supplies, tutoring, and fees for standardized exams, <u>beginning July 5, 2025</u>
    - Non-degree programs, such as work training or certificate programs (e.g., HVAC training) meeting certain requirements are qualifying expenses <u>beginning July 5, 2025</u>
  - Exclusion for qualified small business stock (§ 1202) – after 2025:
    - Shortens holding period from 3 to 5 years, increases to $75 million the size of businesses eligible to issue QSBS, and increases cap on exclusion to $15 million.
  - Terminates residential energy credit (after 2025) and clean vehicle credits (after September 30, 2025)