Tax Policy

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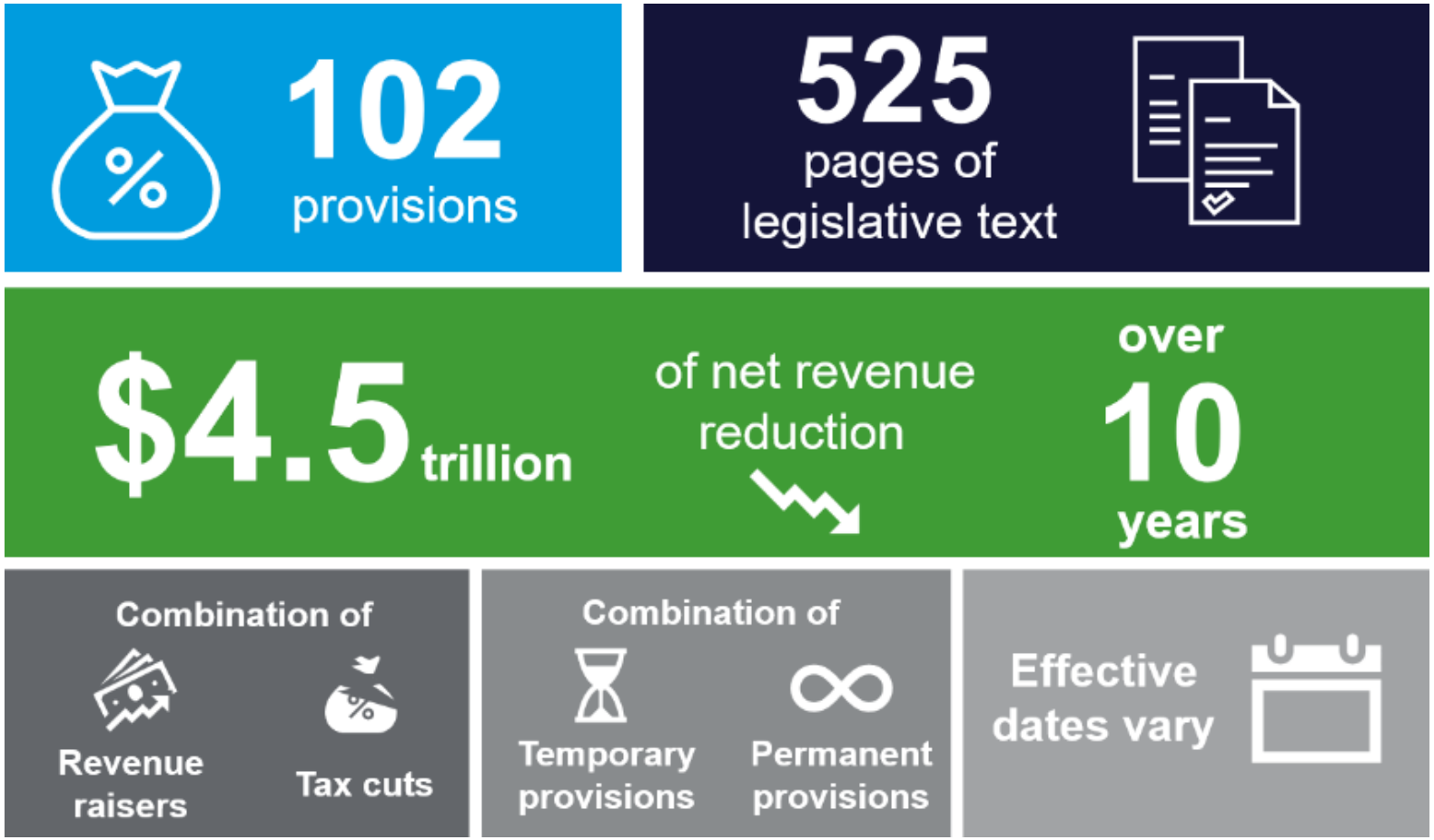
“The One Big Beautiful Bill Act” – Overview



Business Tax Provisions

Provisions – Business tax

Deductions

Provision	Prior law	OBBBA
 **Bonus depreciation**	60% bonus depreciation for 2024; 40% for 2025; 20% for 2026; and 0% beginning in 2027	• **Bonus depreciation:** 100% for certain property acquired beginning 1/20/25; made permanent • **Real property:** 100% for real property used as integral part of the manufacture of tangible personal property (for construction beginning after 1/19/25, before 1/1/29 and placed in service by 12/31/30)
 **Small business expensing (Sec. 179)**	Up to $1M expensing of tangible personal property, software and QIP placed in service each tax year	• Maximum expense amount increased from $1M to $2.5M, with phaseout threshold increased to $4M for property placed in service after 2024 • Amounts indexed for inflation starting 2026
 **R&D**	Capitalized and amortized over 5 years (US R&D) or 15 years (R&D outside US)	• **US R&D:** Immediate expensing made permanent (eff. 2025); ability to deduct post-2021 capitalized R&D over remaining period or 1 or 2 tax years • **Foreign R&D:** Remains at 15 years

Provisions – Business tax (cont.)

Deductions (cont.)

Provision	Prior law	OBBBA
 **Deduction for business interest**	Deduction limited to 30% of EBIT	• The EBIT-based computation is replaced with an EBITDA-based computation, allowing more interest to be deducted (eff. 2025) • Makes the EBITDA-based computation permanent • Modifies ordering rules for capitalization
 **Deduction for qualified business income**	20% deduction for qualified business income (exp. 12/31/25)	• Makes deduction permanent • Rate stays at 20% • Increases phase-in thresholds
 **Pass-through entity tax (PTET) elections**	Pass-through entities may deduct state and local taxes assessed at the entity level	• No change to PTET deduction rules

Provisions – Business tax (cont.)

Deductions (cont.)

Provision	Prior law	OBBBA
 **Charitable contribution deduction**	Limits C corporation deduction to 10% of taxable income	• Permits deduction to the extent it is >1% and ≤10% of taxable income • Carries forward amounts disallowed by 10% limit • Also carries forward amounts disallowed by 1% floor if taxpayer has carryforwards arising from the 10% limit
 **Excess business losses**	$305,000 individual limitation for 2024 (exp. 12/31/28) Treats disallowed excess business losses as net operating losses (NOLs) in following tax year	• Makes permanent
 **Corporate compensation for highly paid executives**	Sec. 162(m) limits corporate deduction to $1M for each covered employee of public filers Applies to corporate affiliated group	• Expands to include controlled groups

Provisions – Business tax (cont.)

Treatment of income

Provision	Prior law	OBBBA
 **Qualified opportunity zone investments**	Preferential capital gains treatment (exp. 12/31/25)	• Renews and modifies program • Designates new zones, starting on 1/1/27 on a rolling 10-year basis • Modifies eligibility, definitions and other requirements

 **Exclusions for small business stock**	100% exclusion of gain on the sale of qualified small business stock (QSBS) held more than 5 years
	
	75%/50% exclusion if stock was originally issued on or before certain dates before 2011
		• Adds partial exclusion for gain on stock held ≤5 years
		  • 50%: >3 yrs
		  • 75%: >4 years
		  • Remainder taxed at 28%
		• Increases per-shareholder/taxpayer exclusion ceiling from $10M to $15M
		• Increases corporate-level gross assets ceiling from $50M to $75M
		• Effective for stock issued after 7/4/2025

Provisions – Business tax (cont.)

Other provisions

Provision	Prior law	OBBBA

 **Employee retention tax credit (ERTC)**	No ERTC-specific penalty provisions or statute of limitations (SOL) for income tax returns
	
	Q3 and Q4 2021 payroll tax returns have a 5-year SOL
		• Limits Q3 and Q4 2021 ERTC refunds to claims filed by 1/31/24
		• Enhances and expands penalties
		• Extends SOL on assessment to 6 years for:
		  • ERC claims for Q3 and Q4 2021
		  • Corresponding ERC wage expense on income tax returns

 **Paid family and medical leave credit**	Nonrefundable credit ranging from 12.5% to 25% of wages paid to employees on leave (exp. 12/31/25) Minimum work requirement of 1 year	• Makes permanent • Expands to include 1) all states and 2) a portion of certain insurance premiums • Lowers work requirement
 **Employer-provided meals**	No deduction for certain meals provided to employees by employer (eff. 2026)	• Deduction disallowance does not apply to bona fide customer transactions for goods/services, including meals, at full value (eff. 2026)

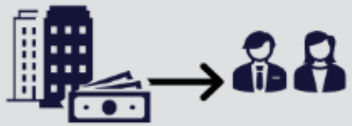
Provisions – Business tax (cont.)

Other provisions (cont.)

Provision	Prior law	OBBBA
 **Advanced manufacturing investment credit**	25% credit for qualified investment in advanced manufacturing facility (exp. 12/31/26)	• Credit increased to 35% for property placed in service after 12/31/25
 **Low-income housing credit**	To qualify, a taxpayer must receive 9% credits from the state or 4% credits if ≥50% of project financed with tax-exempt private activity bond	• Makes credit permanent • Increases state housing credit ceiling by 12% • Introduces a new 25% tax-exempt bond financing requirement
 **New markets credit**	Investors can claim 39% federal tax credit over 7 years for qualified equity investments (exp. 12/31/25)	• Makes credit permanent • 5-year limitation on carryforward

Provisions – Business tax (cont.)

Other provisions (cont.)

Provision	Prior law	OBBBA
 **Treatment of payments from partnerships to partners for property or services**	Treatment of payments to partners for property or services generally governed by regulations prescribed by the Treasury. In certain cases, no regulations have been issued	• Clarifies that statutory rules apply except to the extent provided for in regulations
 **Dependent care assistance program**	Employees can exclude up to $5,000 of employer-provided dependent care assistance from income	• Increases exclusion to $7,500 (MFJ)/$3,750 (S) (eff. 2026)
 **Employer student loan payment exclusion**	Exclusion from income for employer-paid student loan assistance up to $5,250 annually (exp. 12/31/25)	• Makes permanent • Adjusts the $5,250 cap for inflation beginning 2027

Provisions – Business tax (cont.)

Other provisions (cont.)

Provision	Prior law	OBBBA
 Moving expenses	Employers must include moving expense reimbursements in employees' wages (exp. 12/31/25)	• Makes permanent
 Qualified transportation fringe benefits	TCJA suspended the tax-free treatment of bicycle commuting reimbursements, though employers can still deduct them (exp. 12/31/25)	• Makes permanent
 1099-K reporting	Starting in 2026, businesses must file IRS Form 1099-K reporting payment card and third-party network transactions of $600 or more, regardless of transaction count (2025 threshold: $2,500)	• Increases reporting threshold to previous level of $20,000 and 200 transactions per calendar year (eff. 2025)

Provisions – Business tax (cont.)

Other provisions (cont.)

Provision	Prior law	OBBBA
 1099 reporting of payments to nonemployees	Businesses must report compensation for services and other miscellaneous payments of $600 or more paid to non-employees that are US persons on IRS Form 1099	• Increases payment threshold to $2,000 and indexes for inflation (eff. 2026)
 1099 reporting of interest on auto loans	No reporting of interest on auto loans	• Requires lenders receiving $600 or more in interest on auto loans originating after 12/31/24 to report the interest along with detailed loan and vehicle data to the IRS by Jan. 31 annually
 Tip reporting	Businesses must report and withhold income and employment taxes on tips paid to employees and non-employees	• Requires separate reporting on IRS Form W-2, 1099-NEC, or 1099-K of "qualified tips" over $25 paid to employees and nonemployees in occupations described in section 224(d)(1))

International Tax Provisions

Provisions – International tax

Provision	Prior law	OBBBA
 FDII	37.5% of deduction rate, scheduled to reduce to 21.875% after 12/31/25 Effective tax rate (ETR) of 13.125% increasing to 16.4% after 12/31/25	• Permanently decreases deduction to 33.34% (eff. 2026), leading to ETR of 14% • Renames FDII to FDDEI; removes deemed tangible income return (DTIR) from calculation • Excludes from deduction eligible income (DEI) gain or other income from the sale or disposition (including deemed dispositions under section 367(d)) from intangible, depreciable, or depletable property • Interest expense and R&E are not allocable to DEI
 GILTI	50% of deduction rate, scheduled to reduce to 37.5% after 12/31/25 Effective tax rate of 10.5% increasing to 13.125% after 12/31/25	• Permanently decreases deduction to 40%, leading to ETR of 14% • Renames GILTI to “net CFC tested income” (NCTI) • Removes net DTIR from calculation • Limits expenses allocable to foreign-source income in NCTI category
 BEAT	Effective tax rate of 10% increasing to 12.5% after 12/31/25 Certain credits would not reduce BEAT regular tax liabilities	• Permanently changes rate to 10.5% (eff. 2026) • Repeals BEAT changes that had been scheduled for post-2025, preserving favorable treatment for certain credits (e.g., R&D and low-income credits)

Provisions – International tax (cont.)

Provision	Prior law	OBBBA
 **Foreign tax credit (FTC)**	Income from inventory produced in the US is partly US-sourced and partly foreign-sourced US shareholders may claim a portion of foreign taxes paid by CFCs under attribution rules When previously taxed earnings (PTEP) from GILTI is distributed, FTC for foreign taxes paid by the CFC on that income could be allowed	• Income from US-made inventory sold via a foreign office can be treated as foreign-sourced if tied to foreign sales activities, up to 50% of such income • Increases the GILTI (now NCTI) allowance to 90% • Disallows 10% of the deemed paid FTC that would otherwise be allowed on PTEP distributions from GILTI (now NCTI) income
 **Remittance transfer tax**	N/A	• Establishes a 1% collected federal excise tax on certain electronic transfers of money sent from within the US to a foreign country where the sender provides cash, money order, cashier's check or other similar physical instruments

Provisions – International tax (cont.)

Provision	Prior law	OBBBA
 **One-month deferral in determining taxable year**	A specified foreign corporation (SFC) may elect a tax year starting one month before its majority US shareholder's year-end	• Repeals the election for 1-month deferral in determination of taxable year of SFC
 **Pro rata share rules**	US shareholders include income if: • The foreign corporation is a CFC at any time during the year, **and** • The shareholder owns stock on the last day it is a CFC	• Subpart F income inclusion applies to any US shareholder who owned shares at any point during the year while the corporation was a CFC, irrespective of ownership at end of taxable year
 **CFC "look-through rule"**	Certain dividends, interest, rents, and royalties that one CFC receives or accrues from a related CFC are not treated as foreign personal holding company income. (exp. 12/31/25)	• Makes permanent

Provisions – International tax (cont.)

Provision	Prior law	OBBBA
 Downward attribution	Since repeal of Sec. 958(b)(4), stock owned by a foreign person can be attributed downward to a US person, potentially making foreign corporations CFCs	• Restores limitation on downward attribution (formerly Sec. 958(b)(4)) and creates new Sec. 951B to apply CFC rules to certain foreign-controlled US shareholders

OBBBA … and Beyond

The Filibuster

The Filibuster

- Senators – unlike House members – have an unlimited right of debate
- A filibuster uses this right to debate to “talk a bill to death”
- That is, a filibuster allows a senator to debate a particular bill until the sponsors of the bill give up and move on to other business

Cloture

A cloture vote – requiring ____ votes in the Senate – forces a filibuster to stop.

Trump on the Filibuster

https://www.youtube.com/watch?v=BdFZK0oAJjQ (starting at 0:30, until 1:30)

- 'WE HAVE TO GET RID OF FILIBUSTER RULE!" President Trump speaks at Phoenix Rally

New Senate Majority Leader

Senator John Thune (R, South Dakota)

THE WALL STREET JOURNAL.

To Save the Senate Filibuster, Elect Republicans

(Oct. 17, 2024)

Reconciliation

- Congressional Budget and Impoundment Control Act of 1974

- Major legislative exception to filibuster
- A bill passed pursuant to reconciliation instructions from the Budget Committee only needs a simple majority (i.e., 51 votes)

Robert Byrd

- US Senator (D, W. Va., 1959-2010)
- Senate Historian
- Concerned with Senate Procedure

Byrd Rule

- Puts limits on Reconciliation

- The Byrd Rule prevents Reconciliation from being overly used as a workaround the Filibuster
  - Byrd Bath
  - 2 USC sec. 644(b)(1):

    a provision [of a reconciliation bill] shall be considered to be **extraneous** if

    (A) It does not change outlays or revenues

    (B) It is inconsistent with the reconciliation instructions from the Budget Committee

    (C) The committee of jurisdiction did not receive reconciliation instructions

    (D) The change to revenues is “merely incidental” to the non-budgetary aspects

    (E) It increases the deficit after the ten-year window

    OR

    (F) It changes Social Security OASDI

Baseline

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  - Not just for ten years

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- What is the baseline for measuring whether there's a decrease in revenues?

Baseline

- OBBBA extended much of TCJA tax cuts **permanently**
  - Not just for ten years
  - **Why wasn't that a Byrd Rule violation?**
- What is the baseline for measuring whether there's a decrease in revenues?
- I.e. – did OBBBA's tax-cut extension decrease revenues ***as compared to what***?
  - Current Law vs. Current Policy

Baseline: Current Law or Current Policy?

- Two different baselines

- Who decides the baseline?
  - Senate Parliamentarian?
    - (Elizabeth MacDonough)
  - Budget Committee Chairman?

Budget Committee Chairman Made the Baseline Call

- Senator Lindsey Graham (R, South Carolina)
- Senate Budget Committee Chairman
- Will Republicans rue the day?

OBBBA extended most, but not all …

Provisions set to expire in 2025
Premium assistance credit enhancements (sec. 36B(b)(3)(A)(iii) and (c)(1)(E))
Work opportunity credit (sec. 51(c)(4))
Exclusion from gross income of discharge of indebtedness on principal residence (sec. 108(a)(1)(E))
Seven-year recovery period for motorsports entertainment complexes (sec. 168(e)(3)(C)(ii) and (i)(15)(D))
Special expensing rules for certain film, television, live theatrical productions, and live theatrical productions (sec. 181(h))
Empowerment zone tax incentives: a. Designation of an empowerment zone and of additional empowerment zones (sec. 1391(d)(1)(A)(i) and (h)(2)) b. Empowerment zone tax-exempt bonds (secs. 1394 and 1391(d)(1)(A)(i)) c. Empowerment zone employment credit (secs. 1396 and 1391(d)(1)(A)(i))
Oil Spill Liability Trust Fund financing rate (sec. 4611(f)(2))

What's this Government Shutdown all About?!

- Two types of spending:
  - Mandatory
    - Today, a majority of Federal government spending is mandatory
  - Discretionary

- Mandatory Spending Examples:
  - Social Security
  - Medicare & Medicaid
  - Interest Payments
  - Veterans Benefits & Federal Employee Retirement Benefits

- Discretionary Spending Examples:
  - Defense
  - Education
  - National Parks
  - Transportation

Government Shutdown (cont'd)

- Discretionary Spending – Two-Step Process:
  - Authorization by Congress
  - Appropriation by Congress (usually limited period of time)

- The government shutdown is because the appropriations for most discretionary spending ran out September 30

- Why doesn't Congress just re-appropriate?
- Republicans control the House, the Senate, and the White House – why can't they just do their job?

Government Shutdown (cont'd)

- Republicans Only Have 52 seats in the Senate
- Therefore, Senate Democrats can filibuster
- Senate Democrats are using their filibuster leverage to attempt to extract a permanent extension of section 36B ACA (Obamacare) health premium tax credit enhancements

Government Shutdown (cont'd)

- Section 36B enhancements
  - Makes insurance premiums affordable for working class / middle class?
  - OR
  - Propping up the dysfunctional Obamacare, which is in a death spiral?

- Shutting down the government
  - A reasonable use of the filibuster to force an extension of a needed healthcare subsidy for working Americans?
  - OR
  - Outrageous to ask for $450 Billion of subsidies for a mere seven weeks of funding to keep the government open?

Thank you

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