

A First Look at the One Big Beautiful Bill Act: Key Federal Tax Changes

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GIBSON DUNN

Webinar Panelists:

- Eric Sloan
- Pamela Lawrence Endreny
- Matt Donnelly
- Kathryn Kelly

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Today's Gibson Dunn Panelists



Eric Sloan
Partner, Co-Chair of Tax Practice Group

[Eric Sloan](#) is a partner in the New York and Washington, D.C. offices of Gibson, Dunn & Crutcher and a Co-Chair of the firm's Tax Practice Group. With nearly 35 years of broad transactional and structuring experience, Mr. Sloan is a nationally recognized expert on the use of partnerships and limited liability companies in domestic and cross-border mergers and acquisitions, financing transactions, and restructurings and has a significant corporate M&A practice representing both financial and strategic investors. He also has developed substantial experience in spin-offs and initial public offerings, including advising on many "UP-C" IPOs in a range of industries.



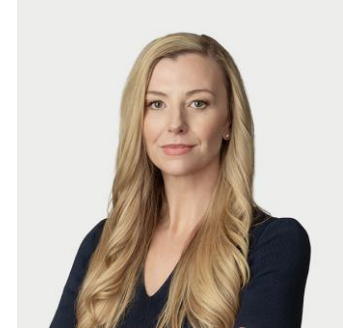
Pamela Lawrence Endreny
Partner, Co-Chair of Tax Practice Group

[Pamela Lawrence Endreny](#) is a partner in the New York office of Gibson, Dunn & Crutcher and a Co-Chair of the firm's Tax Practice Group. Ms. Endreny represents clients in a broad range of U.S. and international tax matters. Ms. Endreny's experience includes mergers and acquisitions, spin-offs, joint ventures, financings, restructurings and capital markets transactions. She has obtained private letter rulings from the Internal Revenue Service on tax-free spin-offs and other corporate transactions.



Matt Donnelly
Partner

[Matt Donnelly](#) is a partner in the New York and Washington, D.C. offices of Gibson Dunn & Crutcher and a member of the firm's Tax Practice Group. Mr. Donnelly represents public and private companies on a broad range of U.S. federal and state income tax matters, with a concentration on domestic and international mergers and acquisitions, dispositions, spin-offs, Reverse Morris Trust transactions, joint ventures, financing transactions, capital markets transactions, restructurings and internal reorganizations.



Kathryn Kelly
Partner

[Kathryn Kelly](#) is a partner in the New York office of Gibson Dunn & Crutcher and is a member of the firm's Tax Practice Group. Ms. Kelly represents clients in a broad range of tax matters, including public and private mergers and acquisitions, cross-border transactions, restructurings, and financing transactions. Ms. Kelly earned her Juris Doctor in 2010 from Columbia Law School, where she was a Harlan Fiske Stone Scholar and Executive Editor of the *Columbia Journal of Tax Law*.

Agenda

01 General Business Tax Provisions

02 Energy-Related Provisions

03 Restructured International Tax Rules

04 Real Estate Updates

05 Other Provisions

General Business Tax Provisions

01

Permanent Reinstatement of 100% Bonus Depreciation and R&E Expensing

Sections 168(k), 174 and 174A

- 100% bonus depreciation for eligible business property acquired after January 19, 2025.
- Full expensing had been added by the TCJA, subject to a phase down that started in 2023 and expiration after 2026.
- Elective expensing for qualifying domestic research and experimental expenditures with respect to amounts paid or incurred after December 31, 2024.
- TCJA had required any such expenditures to be capitalized and amortized over a five-year period for taxable years beginning after December 31, 2021.
- **Immediate refunds:** For certain small businesses, the amendment is retroactive (by taxpayer election) to amounts paid or incurred after December 31, 2021.
- **Accelerated deductions:** For other taxpayers, elective deduction of amounts capitalized in 2022-2024 (and unamortized) either in the first taxable year beginning after December 31, 2024 or ratably over the first two taxable years beginning after December 31, 2024.

Modifications to Business Interest Deductibility

Section 163(j)

- Relaxes the limitation on the deductibility of business interest by reverting to the limitation that was in effect between 2017 and 2022 (generally, 30 percent of EBITDA).
 - The change is effective taxable years beginning after 2024.
 - Unlike the TCJA, which introduced the cap (and its scheduled reduction to an EBIT-based cap in 2022), makes the more generous pre-2022 EBITDA-based limit permanent.
- Also introduces rules that extend the application of the deductibility cap to business interest that is required to be capitalized (among other changes that reduce the cap in certain circumstances).

Clarification of Rules Applicable to Partner-to- Partnership Transactions

Section 707(a)(2)

- “Clarifies” that section 707(a)(2) is now self-executing and applies even in the absence of regulations.
- Section 707(a)(2) has been in the Code since 1984 and provides for the recharacterization of certain transactions between one or more partners and a partnership (including recharacterization of certain transactions as so-called “disguised sales of partnership interests”).
- As enacted in 1984, the provision applied “under regulations prescribed by the Secretary.” Treasury and IRS have never issued final regulations contemplated by the 1984 statute.

Qualified Small Business Stock Benefits

Section 1202

- Increases the gross asset value cap for QSBS issuers from \$50 million to **\$75 million** and introduces an inflation adjustment.
- Amends the formula for the per-issuer cap on the QSBS exclusion by increasing the dollar-based limit on excluded gain to **\$15 million** (also now adjusted for inflation), up from \$10 million under current law.
- Introduces a **50-percent exclusion** for gain recognized if the stock is held for three years, and a **75-percent exclusion** for gain recognized if the stock is held for four years.
 - The Act retains the 100-percent exclusion under current law if the stock is held for five years or more.
- The changes to the gross asset value cap apply to QSBS issued after July 4, 2025, and the other changes apply to taxable years beginning after July 4, 2025.

Qualified Business Income Deduction Extended

Section 199A

- **Permanently extends** the 20-percent deduction for qualified business income available to noncorporate taxpayers.
- Subject to limitations, the deduction generally is available with respect to business income (other than employee income or income from specified services) and certain passive income.
- Introduced in the TCJA and was scheduled to expire after 2025.
- Also **relaxes** the income-based phaseout of the deduction and includes other taxpayer-favorable changes.

Energy-Related Provisions

02

Wind and Solar Projects

Sections 45Y and 48E

- Qualifying projects that **begin construction after July 4, 2026** must be placed in service by December 31, 2027 to qualify for investment tax credits (ITCs) or production tax credits (PTCs).
- Placement-in-service deadline for projects that begin **construction before July 4, 2026** is currently subject to uncertainty. Under pre-OBBBA guidance, a wind or solar project that “began construction” in January 2026 could qualify for ITCs or PTCs if it was placed in service before December 31, 2030.
- **New executive** order calls for “strict enforcement” of beginning construction standard and “restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built.”
- Introduces a raft of new ITC and PTC eligibility requirements that target certain **foreign (e.g., China) ownership or influence** with respect to benefited projects and participation in supply chains.
 - Rules targeting such foreign ownership of or influence over ITC and PTC claimants apply to credits claimed for taxable years beginning after July 4, 2025, and rules targeting foreign participation in supply chains apply to projects that begin construction in 2026 and after.
- Backed up by a **new 10-year ITC recapture** regime and **increased penalties** on claimants and suppliers.

Fuel Cell and Nuclear Projects

Sections 45V, 45Y and 48E

- Qualifying fuel cell projects that begin construction after December 31, 2025 are now eligible for a **new 30-percent ITC** that exempts the projects from the IRA's prevailing wage and apprenticeship requirements and greenhouse gas emission requirements.
- Provides none of the bonus amounts made available under the IRA.
- Also moves up the commencement-of-construction deadline for the IRA's 10-year credit for the production of clean hydrogen from January 1, 2033 to January 1, 2028.
- Nuclear facilities claiming the 10-year PTC are eligible for a new location-based "**nuclear energy community**" bonus credit starting in 2026, based on the facility site's satisfying a threshold amount of local employment in the nuclear industry.

Clean Fuels and Carbon Capture Projects

Sections 45Q and 45Z

- **Clean fuels:** Extends the clean fuel PTC by **two years** (from December 31, 2027 to December 31, 2029).
- Partially **relaxes** the greenhouse gas emissions requirements under the clean fuel PTC for fuel produced and sold after 2025 and authorizes Treasury to confirm that (contrary to prior proposed guidance previewed by Treasury and the IRS) certain fuel sales to intermediaries qualify for the PTC.
- **Eliminates** the enhanced PTC rate for sustainable aviation fuel and introduces feedstock source requirements and a new cap on the credit for fuel produced after 2025.
- **CCUS:** Increases the carbon capture, utilization, and sequestration credit for qualified carbon oxide that is “utilized” (e.g., used in a commercial process) or used in enhanced oil or natural gas recovery to **equal the credit rate** for qualified carbon oxide that is stored in secure geological formations.
- For equipment placed in service after July 4, 2025.

New Publicly Traded Partnerships

Section 7704

- **Expands** the industries that can operate in publicly traded partnerships (without the partnership's being automatically classified as a corporation for tax purposes) by expanding the definition of "qualifying income" to include income derived from:
 - Qualifying hydrogen storage and transportation;
 - Electricity production from qualifying nuclear, hydropower, and geothermal facilities;
 - Carbon capture facilities, including electricity production from qualifying facilities with sufficient carbon capture; and
 - Thermal energy from hydropower and geothermal facilities.
- Effective for taxable years beginning after December 31, 2025.

Restructured International Tax Rules

03

GILTI and FDII Modifications

Sections 904, 951A, 960, and 250

- Makes several adjustments to the TCJA's GILTI regime for the taxation of controlled foreign corporations (CFCs), including:
 - Revising its moniker to “net CFC tested income” or **NCTI**;
 - Raising the effective tax rate to **14 percent** (up from 13.125 percent);
 - **Eliminating** the deduction for a deemed 10-percent return on qualifying business assets; and
 - Limiting the **allocation and apportionment** of certain deductions (including all interest and research and experimental expenditures) to NCTI for foreign tax credit limitation purposes.
- Raises the effective tax rate under the TCJA's parallel FDII regime (restyled as “foreign-derived deduction eligible income” or **FDDEI**) to **14 percent** (up from 13.125 percent).
- The GILTI and FDII amendments are applicable to taxable years beginning after December 31, 2025.

Other CFC- Related Changes

Sections 951, 951B, 954, and 958

- Restores a taxpayer-favorable rule repealed by TCJA that had triggered burdensome (and likely unintended) **U.S. tax compliance obligations** for foreign-controlled enterprises with U.S. subsidiaries.
- Accompanied by a new rule (section 951B) that more narrowly addresses Congress's concerns with foreign-controlled U.S. shareholders of CFCs.
- Modifies the rules that determine which U.S. shareholder includes a CFC's subpart F income and NCTI upon a **mid-year transfer** of the CFC's shares.
- Makes permanent the oft-reenacted "**CFC look-through**" rule of section 954(c)(6).

BEAT Rate Revised

Section 59A

- Permanently sets the BEAT rate at **10.5 percent** for taxable years beginning after December 31, 2025.
- The rate for the BEAT was 10 percent for 2025 and, under the TCJA, was slated to increase to 12.5 percent in 2026.

Non-Enactment of Revenge Tax (and G-7 Understanding)

Proposed Section 899

- In recognition of an understanding reached by the United States and the Group of Seven, the Trump Administration and Congress **did not enact proposed section 899**.
- Proposed section 899 would have imposed higher tax rates on persons and entities associated with countries that impose “unfair foreign taxes.”
- Pursuant to the understanding reached with G-7 (which prompted President Trump and Congress to drop proposed section 899), U.S.-parented multinational enterprises would **not be subject to UTPRs and IIRs** contemplated by the OECD’s “Pillar 2” minimum tax system.
- Details of the G-7 understanding (including the mechanics for contemplated “side-by-side” system) are still to come.

Real Estate Updates

04

REIT TRS Test Restoration and Opportunity Zone Program Extension

Sections 856, 1400Z-1 and 1400Z-2

- **REITs:** Restores the taxable REIT subsidiary (TRS) threshold to **25 percent** (from 20 percent) of a REIT's assets for purposes of the REIT asset test, the Act r taxable years beginning after December 31, 2025.
- The threshold was previously 25 percent for taxable years beginning before 2018.
- **QOZ Program:** Permanently renews the TCJA's Opportunity Zone (OZ) regime, which provides for deferral and potential elimination of taxable gain recognized to the extent proceeds are timely reinvested in OZs.
 - Provides for a **re-identification** of qualifying OZs every 10 years and modifies other requirements for OZ designation.
 - Revises the deferral period to **five years** and caps the exclusion for future gains from the sale or exchange of an OZ investment held for at least 10 years to the gain that has accrued after **30 years**.
 - Introduces a **rural OZ program** that provides a larger permanent exclusion (30 percent for investments held for at least five years) than the regular OZ program (10 percent for such investments).
 - Adds new **OZ reporting requirements and related penalties**.
 - Applies to investments made after December 31, 2026.

Other Provisions

05

Changes to State and Local Tax Deductions

Section 164

- Raises the TCJA's cap on the deduction for state and local taxes from \$10,000 to **\$40,000** for taxable years **2025 through 2029** (with that cap increasing by 1 percent each year), then reverts to \$10,000 in 2030.
- Increase in the cap over \$10,000 for years 2025-2029 is subject to a **phasedown** for higher income households.
- Previous versions of the legislation included rules intended to eliminate state and local workarounds of the deductibility limit (including state and local passthrough entity tax, or "**PTET**," regimes), but these were **not included** in the final bill.

Endowment Excise Tax

Section 4968

- Adds two new graduated rates (**4 percent** and **8 percent**) to the TCJA's 1.4-percent university endowment excise tax, with the graduated rates based on the size of the endowment (measured on a per student basis).
- Exempts institutions with fewer than **3,000 students** from the tax (the TCJA threshold was 500) and expands the net investment income base of the tax but does not include an exemption for certain religiously affiliated institutions that appeared in earlier versions of the Act.
- Authorizes Treasury to promulgate guidance to prevent avoidance of the tax through the restructuring of endowment funds or other arrangements designed to reduce or eliminate the amount of net investment income or assets subject to the tax.
- The amendment is effective for taxable years beginning after December 31, 2025.

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