

HERRICK

THE “ONE BIG BEAUTIFUL BILL” ACT

Key Points for Herrick Clients and Professionals

July 22, 2025

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OVERVIEW

THE “BIG” PICTURE

Key Practice Points:

1. Expiring tax cuts are made permanent, including lower rate structure and estate tax exemption.
2. Enhanced write-offs for capital expenditures: asset expensing, bonus depreciation and qualified production property.
3. Enhanced tax incentives: qualified opportunity zones, small business stock exemption, qualified business income, LIHTCs and NMTCs.
4. Eliminated tax incentives: “green” tax credits.
5. Reduced personal deductions: SALT cap, mortgage interest, excess business losses, and miscellaneous itemized deductions.
6. Expanded excise tax on tax-exempt organizations.

WHAT'S NOT IN IT ...

Whew! The final OBBBA does NOT include several provisions from the original House bill:

1. The “revenge” tax.
2. Reduced “goodwill” deduction for sports franchises.
3. Elimination of “pass-through entity tax” (PTET) as SALT Cap work-around.

ENHANCED CAP EX WRITE-OFFS

ASSET EXPENSING

Increased Deduction. Immediate expense deduction for qualifying property is made permanent increases to \$2.5 million (up from \$1 million), adjusted annually for inflation.

- ***Qualifying Property.*** Most tangible property, off-the shelf software and certain nonresidential real property improvements (*e.g.*, HVAC, roofing, etc.).
- ***Phase-Out.*** Dollar-for-dollar phase-out when cost of qualifying property exceeds \$4 million, adjusted annually for inflation.
- ***Combo with “Bonus” Depreciation.*** Excess deduction over cap may be deductible as “bonus” depreciation, effectively creating an unlimited immediate expense deduction.
- ***Effective Date.*** Qualifying personal property placed in service for tax years beginning after 2024.

BONUS DEPRECIATION

No Expiration Date. “Bonus” 100-percent depreciation for qualifying personal property is made permanent.

- *Qualifying Property.* Most tangible property, off-the shelf software and certain nonresidential real property improvements (e.g., HVAC, roofing, etc.).
- *Phase-Out.* None.
- *Combo with Asset Expensing.* Remaining basis over asset expense cap may qualify for bonus depreciation, effectively creating an unlimited expense deduction.
- *Effective Date.* Qualifying property placed in service on or after January 19, 2025.

QUALIFIED PRODUCTION PROPERTY

New “Bonus” Depreciation for Real Estate. Immediate expense deduction for qualifying real estate that is “Qualified Production Property.”

- ***Qualified Production Property.*** Owner-occupied U.S. real estate if (1) used as an integral part of “qualified production activity,” (2) construction started between January 19, 2025 and January 1, 2029, and (3) placed in service before January 1, 2031.
- ***Qualified Production Activity.*** Refining, manufacturing, or other production activity that results in a substantial transformation of tangible personal property.
- ***Ineligible Property.*** Restaurants, lodging, parking, office buildings, and buildings used for administration, sales, research, software development or engineering.
- ***Change in Use.*** Deduction recapture if property used for non-qualifying purpose within 10 years.

ENHANCED TAX INCENTIVES

OPPORTUNITY ZONES

Permanent, Expanded Capital Gain Rollover. Capital gain can be deferred and even reduced through a qualifying “rollover” investment in a “qualified opportunity zone” (*i.e.*, depressed census tract). Future QOZ investment appreciation is tax-free.

- *Deferral.* Up to five-year tax deferral for original “rollover” gain re-invested in a QOZ investment.
- *Partial Exemption for Rollover Gain.* If QOZ investment is held for five years, 10 percent of original “rollover” gain becomes tax-exempt (30 percent for rural QOZ “rollover” investment).
- *Exemption for Appreciation.* If QOZ investment is held for 10 years, all gain on sale of QOZ investment is tax-exempt (capped at 30 years of appreciation).
- *Effective Date.* January 1, 2027. Until then, existing opportunity zone rules apply.

SMALL BUSINESS STOCK

Expanded Program. Capital gain on the sale of “small business stock” is eligible for tax-free treatment, capped at aggregate \$15 million capital gain (up from \$10 million) per issuer.

- *Minimum Holding Period.* Three years - 50%, four years - 75%, and five years - 100%.
- *Small Business Stock.* Stock issued by “C” corporation with assets up to \$75 million (up from \$50 million). Some exclusions for non-qualified businesses apply.
- *Effective Date.* Small business stock acquired after July 4, 2025.

QUALIFIED BUSINESS INCOME

Permanent Program. To place pass-through entities on the same tax footing as “C” corporations, a non-corporate taxpayer can exclude 20 percent of any qualified business income, subject to phase-out based on wages/tax basis.

- Permanent deduction.
- Higher phase-out threshold.
- *Effective Date.* Tax years beginning after Dec. 31, 2025.

TAX CREDITS: LIHTC AND NMTC

Low-Income Housing Tax Credit (LIHTC). Additional low-income tax credits are available for allocation to affordable housing projects, created by:

- in the case of 4-percent LIHTC, permanent lowering of the proportion of development cost required to be financed by tax-exempt bonds from 50 percent to 25 percent, and
- in the case of the 9-percent LIHTC, increases to the population-based formula.

New Markets Tax Credit (NMTC). The NMTC program is made permanent at \$5 billion annual allocation.

ELIMINATED/REDUCED TAX INCENTIVES

ELIMINATED “GREEN” TAX CREDITS

Wind and Solar Projects. Wind and solar projects placed in service after December 31, 2027, no longer qualify for investment tax credits or accelerated depreciation, unless substantial construction began on or before July 4, 2026.

New FEOC Rules. Complex “foreign entity of concern” (FEOC) rules disallow certain tax credits for projects owned or controlled by or receiving “material assistance” from a “prohibited foreign entity” (PFE).

Other Green Credits. Various other “green” tax credits are subject to elimination or reduction, including the clean vehicle credits and residential energy credits.

\$1 MILLION COMPENSATION CAP

Old Rule. A public company cannot deduct compensation exceeding \$1 million paid to C-suite employees (generally, CEO, CFO and the three highest paid officers).

New Rule. Starting on January 1, 2026, identifying the relevant C-suite employees is done on a “control group” basis, which generally includes entities under 80% common control with or by a public company.

- **Example.** Investment fund owns 80% of a public company and 80% of a real estate partnership. Executive Y at the real estate partnership earns more than \$ 1 million and is the highest paid executive officer amongst all executive officers at the investment fund, the public company and the real estate partnership. Compensation paid to Executive Y is subject to \$ 1 million deduction cap, even though the real estate partnership is not a public company.

(MOSTLY) REDUCED PERSONAL DEDUCTIONS

SALT CAP

Deduction Cap on State and Local Taxes. On joint income tax return, the individual income tax deduction for state and local taxes (SALT) is capped as follows:

- 2025: \$40,000.
- 2026: \$40,400.
- 2026 – 2029: \$40,400 plus 1-percent annual increase.
- 2030 and beyond: \$10,000.

SALT. Taxes subject to SALT cap include state and local income taxes, property taxes and sales taxes.

Phase-Out for High Income Returns (2025 – 2029). “Excess” SALT cap (over \$10,000) is subject to phase out, starting at \$500,000 of “modified adjusted gross income.”

PTET Work-Around. Final legislation preserves PTET structure.

MORTGAGE INTEREST CAP

Bad News for Homeowners. Major limitations on the mortgage interest deduction:

- Deduction for interest on a purchase money mortgage is limited to the interest on the first \$750,000 of principal (\$375,000 on a separate return).
- No deduction at all is allowed for interest on non-purchase money mortgages (HELOCs).

EXCESS BUSINESS LOSS CAP

Restriction on Loss Deduction. The deduction limitation on an “excess business loss” is made permanent.

- *General Rule.* On individual returns, the use of business losses (*e.g.*, losses from a real estate partnership) against nonbusiness income (which includes investment income and salary) is capped.
- *Inflation-Adjusted Cap.* For 2025, the “excess business loss” cap is \$626,000 (\$313,000 for separate returns).
- *Carryforward.* Any disallowed excess business loss carries forward with no expiration.
- *Effective Date.* Tax years beginning after 2026

MISC ITEMIZED DEDUCTIONS

Some Bad News and Some Good News. The complete elimination of “miscellaneous itemized deductions” is made permanent.

- “Miscellaneous itemized deductions” include investment-related expenses, such as legal fees, investment management fees, and accounting/tax expenses.
- “Silver lining ...” The permanent elimination presents an opportunity to market “family office” office planning (“Lenders Bagels”) to clients – which is a work-around for the deduction elimination.

TRUMP ACCOUNT

Trump Account: A new tax-advantaged savings account for children (age 17 and under).

- Starting on January 1, 2026, anyone can contribute up to \$5,000 per year to a Trump Account for a child (related or unrelated) until the child's 18th birthday.
 - ✓ No distributions permitted before age 18.
 - ✓ No tax until earnings are distributed to the beneficiary.
 - ✓ No deduction for contribution (*i.e.*, after-tax dollars).
- Beneficiary born during 2025-28: one-time \$1,000 government contribution.
- Employer contribution to a Trump account for an employee or employee dependent (up to \$2,500 per beneficiary per year) - deductible by employer and tax free to employee/beneficiary.
- Investments limited to mutual funds/ETFs tracking U.S.- only equity indices.

TAX CREDIT: PRIVATE TUITION

Charitable Contributions to SGOs. An individual can claim an annual tax credit for contributions to a “scholarship granting organization” (SGO), capped at \$1,700 per year with a 5-year carryforward for excess contributions.

- *State Opt-In.* No credit is allowed, unless state of residence opts in and publishes a list of in-state SGOs.
- *SGO.* A tax-exempt organization that uses at least 90 percent of its income to provide scholarships for qualified education expenses to at least 10 “eligible” students at an “unaffiliated” school (*i.e.*, no “friends of” organizations).
- *Eligible student.* Household income less than 3X “area median gross income” (\$435,000 for NYC family).
- *No Earmarks.* A contribution cannot be designated for any student.
- *Better Than Deduction.* Tax credit is more valuable than charitable deduction.
- *Effective Date.* Contributions made on or after January 1, 2027.

NO TAX ON TIPS OR OVERTIME

Tips: For tax years 2025 through 2028, no tax on \$25,000 of “qualified” tips.

- *Qualified Tips.* Tips received in an occupation that traditionally and customarily received tips on or before December 31, 2024 (e.g., waiters, taxi drivers, *etc.*)
- *Phase-Out.* Exemption phases out, starting at adjusted gross income of \$150,000 (\$300,000 for joint returns).

Overtime: For tax years 2025 through 2028, no tax on \$12,500 for “qualified” overtime compensation (\$25,000 for joint returns).

- *Qualified Overtime.* Overtime compensation paid to a non-exempt employee above employee’s regular compensation rate.
- *Phase-Out.* Exemption phases out, starting at adjusted gross income of \$150,000 (\$300,000 for joint returns).

NO TAX ON CAR LOAN INTEREST

New Deduction: Effective for 2025 through 2028, an individuals can deduct interest (up to \$10,000) on a loan (not lease) to purchase a “qualified” new vehicle for personal use (no used cars).

- ***Qualified Vehicle.*** Car, minivan, van, SUV, pick-up truck or motorcycle, if it has gross vehicle weight rating of less than 14,000 pounds and undergone final assembly in the United States.
- ***Phase-Out.*** Deduction phases, beginning at modified adjusted gross income over \$100,000 (\$200,000 for joint filers).

TAX-EXEMPT ORGANIZATIONS

EXPANDED EXCISE TAX

Old Rule. Prior to the OBBBA, a tax-exempt organization was subject to an excise tax (equal to the corporate tax rate (currently 21%)) of the compensation paid in excess of \$1 million to its top five highest compensated employees.

New Rule. Under the OBBBA, beginning in 2026, the excise tax applies to all employees of a tax-exempt organization with compensation over \$ 1 million, not just the top five.

ESTATE AND GIFT TAX

ESTATE AND GIFT TAX EXEMPTION

No Expiration Date. Estate and gift tax exemption is made permanent at \$15 million (individual) and \$30 million (married), indexed for inflation.

- ***Effective Date.*** Estates established and gifts made after December 31, 2025.
- ***Preserved Portability.*** A married decedent may transfer any unused exemption to surviving spouse.
- ***Basis Step-Up.*** No changes to at-death basis step-up or annual gift tax exclusion (\$19,000 per donee, indexed annually for inflation).
- ***Permanent.*** No “sunset.”

Q&A

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THANK YOU

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