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Contact us at: cpedgesupport@cerifi.com
844.245.5970

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TAX REPORT

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EXECUTIVE SUMMARY

PART 1. TAX PLANNING STRATEGIES FOR SMALL BUSINESSES

Small Business Tax Planning Strategies..... 3

This program provides a practical overview of tax planning strategies for small businesses with a strong focus on entity selection. It explains how sole proprietorships, partnerships/LLCs, S corporations, and C corporations differ in taxation, self-employment tax exposure, basis rules, and administrative requirements. The course emphasizes beginning with the end in mind—selecting an entity based on the owner's exit strategy and revisiting the decision as circumstances change. It also covers key planning topics such as reasonable compensation in S corporations, stock versus asset sale considerations, depreciation planning (Section 179 and bonus depreciation), and emerging opportunities under Section 1202 qualified small business stock rules. *[Running time: 1:36:38]*

Learning Objective:

Upon completion of this segment, the user should be able to:

- Evaluate tax and non-tax factors impacting choice of entity for small businesses, including exit strategy considerations, audit exposure, liability concerns, and administrative complexity.
- Differentiate the federal tax consequences of operating as a sole proprietorship (Schedule C), partnership/LLC, S corporation, and C corporation, including self-employment tax treatment, basis limitations, and distribution taxation.
- Apply entity-based tax planning strategies involving compensation planning, retirement plan contributions, depreciation elections (Section 179 and bonus depreciation), and exit structuring (stock vs. asset sale), including consideration of Section 1202 QSBS rules.

PART 2. CHARITABLE CONTRIBUTIONS: 2026 AND BEYOND

Charitable Contributions 65

This program provides a practical overview of new charitable contribution deduction rules beginning in 2026 and beyond. The webinar explains the reinstated below-the-line charitable deduction for standard deduction taxpayers, including eligibility requirements and restrictions for supporting organizations and donor advised funds. It also details the new 0.5% floor for individuals who itemize deductions and the 1% floor for C corporations, including how carryforwards work only in years involving excess contributions. In addition, the course discusses the overall limitation on itemized deductions for high-income taxpayers and reviews traditional charitable planning tools such as QCDs, appreciated securities, and bunching strategies. *[Running time: 50:48]*

Learning Objective:

Upon completion of this segment, the user should be able to:

- Apply the charitable contribution deduction changes effective in 2026 under the One Big Beautiful Bill Act (OBBBA), including the **0.5% floor for itemizing individuals** and the **1% floor for C corporations**.
- Determine when charitable contributions disallowed by the new floors are **lost vs. eligible for carryforward**, including the "carry both forward or carry nothing" concept tied to excess contributions.
- Formulate practical tax planning recommendations for standard deduction taxpayers, itemizers, and C corporations, including timing and "bunching" strategies and traditional charitable planning tools (e.g., QCDs, appreciated securities).

ABOUT THE SPEAKERS

Robert "Chris" Province, CPA, has over 20 years of experience in delivering, instructing and designing training courses. In addition to his speaking, Chris is currently a self-employed CPA specializing in taxation of high-net-worth individuals and closely held businesses with clients located in many states throughout the United States. Chris has also served as a tax partner and senior tax member for several local, regional, and national CPA firms. He was a member of the national AICPA S-Corporation Technical Resource Panel and the Qualifications Committee for the California Board of Accountancy. Chris is a licensed Certified Public Accountant in California, North Carolina, and Texas. Chris earned his Bachelor of Science degree in Accounting and Finance from the California State University, Northridge. He is a member of the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants.

Laurie A. Stillwell CPA, licensed in New York. Her firm, Laurie A. Stillwell, CPA, P.C., specializes in working with small businesses, professional practices, and their owners. In addition to her practice, Laurie teaches continuing professional education seminars and webinars on ethics, business, and individual income tax issues for CeriFi CPEdge. She is the author and editor of several continuing professional education texts and served as technical editor for Thomson Reuters Checkpoint's 1040 Quickfinder and Small Business Quickfinder Handbooks. Prior to forming her firm in 2001, Laurie spent more than a decade with local and regional accounting firms and specialized in providing tax and accounting services to closely-held businesses. She began her public accounting career with the international firm of Price Waterhouse, in Boston, Massachusetts.

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Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
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Advance preparation	None required
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—From a Declaration of Principles jointly adopted by a *Committee of the American Bar Association and Committee of Publishers and Association*

PART 1. TAX PLANNING STRATEGIES FOR SMALL BUSINESSES

Small Business Tax Planning Strategies

Welcome to this course on tax planning strategies for small businesses. In this session, you'll explore how entity choice affects taxes, owner compensation, and long-term exit outcomes. Through practical examples and current law considerations, you'll learn how to align business structure decisions with both compliance requirements and tax-saving opportunities.

Robert Province

Welcome, folks. It is absolutely a treat to be with you today. We are going to be talking about an incredibly important topic, a lot of clients that I am blessed to consult with are small businesses, right? So we're going to get into various tax planning strategies for small businesses as we go through our presentation here today.

What are some of our learning objectives that we are going to come in and tackle here today? Well, we want to first of all just identify and talk about the importance of choice of entity. What I tell folks all the time is you have to begin with the end in mind.

What is your exit strategy? And clients, when I have this conversation with them, they're like, Chris, we have not even started our business yet, and you're asking us how we're going to get out of this business down the road that we have not yet started. And I'm like, yes, I am. And the reason for that client is once I understand a little bit more, just your vision, of the life cycle of the business, then that will help determine how you should set up your business on the front end.

So we'll talk about just the importance of choice of entities. Spend a lot of time in that area. We'll talk about the advantages and disadvantages of various entities, including sole proprietorships. And with sole proprietorship Schedule C, that could include a single-member LLC disregarded.

We'll talk about C corporations. It is interesting. I find it interesting. C corporations, in my opinion, are starting to see a little bit of a renewed spotlight being shown on them. And a lot of that is because of some of the changes contained in the One Big Beautiful Bill Act, or as I call it, OB3, around Code Section 1202, qualified small business stock. There's been some positive changes there, some changes with the holding period requirements.

So we'll get into that. One of the questions that I am getting more and more frequently from clients and from seminar attendees is, Chris, is there a way that we can come in and take an existing corporation and do some sort of a recapitalization of that company, a reorganization of that company to have our clients be able to avail themselves of the more attractive changes with the 1202 to which my comment is, we're going to have to wait and see.

I know that there are folks out there that are willing to push the envelope a little bit more than I am with my clients. So folks that are more creative than I am for now, I'm kind of on the fence, just kind of wait and see what happens, but it is an area that more and more folks are talking about. So we see a renewed interest with C corporations.

Of course, we have that flat 21% tax rate that has been in existence since the Tax Cuts and Jobs Act. We'll also talk about flow through entities, including S corporations. Now with small businesses that I consult with, S corporations still are a very attractive entity, including with the qualified business income deduction.

If you're trying to maximize the benefit with the QBID, the entity where we have the most planning opportunities with compensation planning is with S corporations. And so we'll get into some of the planning opportunities around there as well, making sure that that compensation is set at an appropriate level to maximize the 199A deduction.

We'll talk about partnerships, including multiple member LLCs that go with the default classification to be taxed as a Form 1065 partnership return. And finally, we'll also come in and evaluate and describe just owner compensation and various exit strategies, depending on the entity type.

Do we structure it if it's a corporation as a stock sale? Do we structure it as an asset sale? What are some of the pros? What are some of the cons? What is some of the give and take here? When again, we're doing tax planning strategies for small businesses. One of my goals as we go through our presentation here today is to just give you as many examples as I can from my practice, from my 40 plus years in the accounting profession with my over 25 years teaching these seminars, learning from folks like you and other participants that have raised a lot of great questions, forced me to look at issues from various different viewpoints to just really better understand some of the issues that are at play here.

So that is where it is that we will be headed here. Now, as we get into the zone here, just some interesting facts from the Small Business Administration, sba.gov.

So when you go to the SBA website, how do they define small businesses? And again, remember the title of our course here is Tax Planning Strategies for Small Businesses. Well, according to the SBA, a small business is defined as an independent business with fewer than 500 employees. You look at my client list, mean, my clients that have 500 employees, I would put them in a category a little bit larger than my typical small business.

Now, when we come in and look at it here, look at the first two statistics here. If you just look at the number of large businesses, those would be with more than 500 employees. Nationwide, 17,700 large businesses. Number of small businesses far exceeds the number of large businesses, 28,200,000 small businesses compared with 17,700 large businesses.

When you look at those small businesses, the percent of small businesses with no employees, right? So to me, an employee I would define as somebody receiving a W-2. So if I'm self-employed, I cannot get a W-2, but certainly as a self-employed individual, no employees.

I would fall into this stat here, 75%. So percent with no employees. When you look here at the percent of private sector employment, it's right around that 50% mark, 49% here. And with these small businesses, the percent of failure within the first five years, right around 50%. So one half, this is according to the SBA, of all businesses that start, only half of them succeed.

Now, continuing here just with some of the background information to kind of set the tone here a little bit. So when we look at just the legal form of organization, when we look at that legal form of organization, right, we do see here that when you look at just the number of entities that have employees versus no employees, the columns again equaling that 100%; 21 % of entities are C corporations, 16% sole proprietorships, 11% partnerships, 45% S corporations. That's an interesting number to me, 45%, right? And then not-for-profit entities, those 5,500 type entities, 7%. Then when you come in and you look at just the column that has no employees, right?

Again, just trying to get to that 100%. Most of the businesses fall into that sole proprietorship category, 87%, right? So 87%. The C corporations with no employees, not surprising here, 1%. Partnerships, 7% of the total. And then the S corporations with no employees. This is a little bit curious to me, right? 5%. When I say a little bit curious to me, with the S corporation, one of the questions that I get often is from a planning perspective, how much of the money being paid out should be in the form of W-2 wages versus a distribution where we're playing a little bit of that beat the FICA tax game.

And when we come in here and we look, right, the percentages looking at here and that 5% to me, those are the folks that are probably being a little bit too aggressive and paying no wages to themselves and only taking distributions. I believe that is something that we need to be on the lookout for as well.

Now, continuing here, just moving forward. So our first area that we're going to target is just giving client recommendations as to how to set up their business. You got to begin with the end in mind.

This absolutely should be the first element in tax planning for a small business. Finding the entity that makes the most sense. Finding the entity where there is the most advantages to the client with the least number of disadvantages. And it's not a one and done type conversation. It's a conversation that should be revisited from time to time.

So for example, when we have clients that go in and set up LLCs, one of the wonderful things with an LLC is just the tremendous amount of flexibility that we have with an LLC. We have the check the box regs. And so with a LLC, if we're a single member, do we go with the default classification disregarded or do we file that check the box form to go in and elect to be taxed as a corporation C or S?

We have that opportunity. We have that option, right? If we are a multiple member LLC, do we go with the default classification partnership form 1065, or do we look at being taxed as a C-Corp or an S-Corp with the check of the box regs? Now, the one thing that I wish would get discussed more than it does is, yes, that check the box form, very easy. But if I go in and I elect for my LLC, single member or multiple member LLC, to be taxed as an S corporation, it is in my professional opinion, very important that we look at those formation documents, we look at those articles of organization, and more importantly, we look at that operating agreement.

Because very often, in just a standard run-of-the-mill entity formation, whoever set this up, if it's a do-it-yourself type of a person or if a person just went to a run-of-the-mill attorney, they probably use some standard boilerplate language for that operating agreement. And you've got to be careful there.

Because if that operating agreement comes in and says that you can do special allocations, you can do disproportionate distributions, and some of the standard language around partnership taxation, and you elect to be taxed as an S corporation, those governing documents are now not appropriate. And if push came to shove and the client were to get audited and IRS agent were to ask for some of these formation documents. I think that this could create a lot of problems.

So just make sure that with that flexibility, you come in with a broom and a dustpan you come in and prepared to cross those T's and the dot those I’s and make sure that the legal documents happen to be in line with the tax requirements for the various exit or for the various entity options that are available.

Now, the other thing, and I'll tell you, this happened to me once now a few years ago where it still stinks. I'm not saying it's only happened to me once, but when, in 2017 and 2018, they passed the Tax Cuts and Jobs Act, it was during that time that the qualified business income deduction, 199A, was introduced. And I had a client that I did not come in and discuss with my client as well as I should have the planning opportunities around 199A, which simply then presented an opportunity for somebody else to come in and do what I should have done. I ended up losing a client over that. So understand here that if this is not something that you periodically discuss with clients, then you run the risk of losing clients.

Some clients maybe you don't mind if you lose them. This was not a client that I minded losing. It still hurts a little bit. And you know what? Shame on me. Now, the other thing that we talk about here is consider a phased-in approach to choice of entity, which frankly is the beauty, I think, of an LLC is that with that LLC, you can start out single-member LLC disregard or file in a Schedule C.

And as that entity grows, you hit that fork in the road with that single member LLC. Do I go down the corporate road and I like to be taxed as a corporation C or S or do I bring on other equity owners and go down the partnership road? And what I would tell you is if at some point you look at and decide to take the client down the corporate road, be careful, please.

And what I mean when I say that is if I am, and I'll just give you an example, right? And again, I told you I would try and give you as many examples I could from my practice over the years. So I have a client up in Montana and this client, they acquired a piece of real property. They built a home on that property. Initially, it was just going to be a second home on a adjacent parcel to their existing land.

They lived on a hundred acres in Montana. They bought another 20-acre parcel that was right next to their parcel that they owned and where they lived. And they were going to build this home as a home, one, where when friends and family came to visit, the friends and family would have a separate place to stay because they lived in an old homestead house. But two, they also built that home in a manner that if there was a wildfire there up in the mountains of Montana, they build it where a bunch of the houses underground, it would be a place where they could come in and if need be, evacuate if there was a forest fire.

Well, as they were building this property, the general contractor's son happened to say to my client, wow, this kind of looks like a hobbit house. Well, the madness ensued. They did not set out for this home that they built to be a short-term vacation rental, but that's what it became, right? And when they made a short-term vacation rental out of it, they put it into an LLC filing a partnership return, multiple member LLC. Probably what I would have advised them to do as well. Well, a few years before I got involved with them, the then-tax person advised them to come in and make the 'yes' selection for that entity.

Like when I saw that, it was problematic on a lot of different levels. I mean, one, oftentimes real estate is debt financed. And when you have debt on real estate and in an S corporation, you do not get additional basis for entity debt like you do in a partnership or an LLC taxed as a partnership, right? But to me, the other issue that I identified when I saw this happening is, remember I told you that this client did not set out to build a home as a short-term vacation rental. It became that. And when they operated the home, the home basically cashflow was break even. They were covering their expenses, but they weren't getting rich off of it. And then when you factored in depreciation, it actually created a little bit of a loss that with some of the loss limitation rules, they were able to take a deduction for that.

Just with all the rules when you applied them. And when I met the client, I could tell they were starting to get a little bit up in age and this was some hard work for them. If at some point down the road, they decided we don't want to rent this property out anymore, and we just want to convert it back to what we intended it to be to begin with. And that was just a second home on our property to evacuate to in the case of a forest fire and for friends and family to come and stay in when they visit us.

If they made that decision, I would have advised them when they were an LLC filing a partnership return to dissolve the partnership, distribute the asset out and move on, right? Just own it outside of the entity. And when they put it into that S corporation, you distribute assets out of a corporation, you have to distribute those assets out at fair market value. And if there is a gain, that gain is taxable. And if there is a loss, you cannot deduct the loss because of the related party rules. And so to make a long story short, I explained this to the client and we were able to quickly come in and unwind that S election. And it was granted retroactively.

The point that I'm trying to make as I go through some of these examples is this is something that should be revisited every so often when maybe some of the facts and circumstances has changed a little bit and we need to just look at what their options are if they decide to exit the business, consider their exit strategy.

Now, when we come in here and we look, right, from a choice of entity perspective, here is the menu that our clients have to choose from. Are they going to be a Schedule C or a single member LLC disregarded filing a Schedule C? Are they going to be a partnership or a multiple member LLC filing a partnership return? Are they going to be a husband and wife partnership? Depending on the state that you're in, are you in a community property state or not, this can have ramifications and implications.

You can choose to be an S Corp with a lot of smaller businesses that I consult with for a variety of reasons. S corporation tends to be a entity choice that a lot of clients that I work with tend to gravitate towards. And maybe that is a little bit of my bias, right? And a little bit of that ability to play the beat the FICA tax game with proper compensation planning. And then C corporations, I'm telling you with the C corporations, a few years ago, there was discussion that the C corporation rate might go down. And I have clients that were saying, Chris, the C corporation tax rate, if it goes down, is going to be much lower than the individual tax rate. That's where we are today. The maximum C corporation tax rate is 21%. The maximum 1040 tax rate is 37%. That's almost a 50% reduction in the tax rate.

Now, corporations are still subject to double taxation but again, another example, I told you I try and give you as many examples I can. So I had a client out in California that they were not happy with their combined federal state tax rate north of 50 percent, right? When you've, I say north of 50 percent, I'm factoring in the half of the social security Medicare. But if you just take a 1040 tax rate, 37%, you take a California tax rate, 13.3%, that's right around 50%, a little bit north of 50%. And the clients like, Chris, the tax rate, our taxes is killing us. So client, one of the things that they're talking about doing is lowering the C corporation tax rate. If they lower the C corporation tax rate and don't lower the individual tax rate, maybe we revisit choice of entity. They were operating their businesses in S corporation.

Well, in 2017, with the Tax Cuts and Jobs Act came in 2018 effective year, that happened. The C Corporation tax rate went down, the individual tax rate essentially stayed the same. And the client's like, when are we going to do it? When are we going to revoke the S-Election? When are we going to get a C Corporation? And I said, client, before we rush out to do that, I need to understand a little bit more clearly what your exit strategy is, how you see yourself exiting this business.

And I could tell that the client was already getting a little bit fatigued, right? Running the business. It was it was a lot of pressure. And this client at that time had two young children. They actually had twins, right? And so if the client came to me and said, well, I see transitioning the business down the road to the kids and the kids taking over the business for mom and dad that would lead me in one direction and probably the direction of maybe we revoke the S-Election and go to the C-Corp.

Whereas if the client came to me and said, Chris, we're going to sell the business. I don't want my client to be a C-Corporation and sell that business, especially if they structure it as an asset sale because of double taxation. Now, if they could structure it as a stock sale, that's between the shareholder and the buyer, not the corporation and the buyer, right? And so you don't have the double taxation, but here's the problem.

Most buyers don't want to purchase the stock of a company. They want to purchase the assets of the company. And so we'll get to that in a little bit later. Understand here that when we look at the option here, often more than one entity is the best arrangement. For me, if I have that serial entrepreneurial client that has multiple businesses, I think a very effective just tool that we have in the toolbox is to have a client that with different businesses that they're involved with structure those businesses as different entity structure types.

Now, one of the items that we are not supposed to have factors into the equation of how to advise a client on choice of entity is chance of being audited, except you know what? My clients ask me this question all the time. What's my chance of getting audited? And so when you go to the IRS data book, right, and they come out with this annually with some of the more recent data in the IRS data book, your chance of being audited across the board, not all that high, less than 1%, a half of 1%, 0.5%. Individual returns, 0.6%. A schedule C between 100,000 and 200,000, 2.4%.

If we're above $200,000, 1.9%, the percentage actually drops in. And that to me is, I think, really on account of two things. Number one, as the client's business grows, then they have more bandwidth to bring on either an accounting department or bring on a bookkeeper, that sort of a thing. But also, as that entity business grows, then the other thing that we do see is very often they then gravitate to a different entity option, right?

Now, with the C-Corps, 0.9%, with the S-Corps, 0.2%, and S-Corps and partnerships around the same level, to me, I do think that for whatever reason, the S-Corporation tends to get picked on in various areas a little bit more frequently and has over the last decade or so. Now, when we come in, we, I am not an attorney, right? I am an accountant. And so as an accountant, I should not give my clients legal advice. But inevitably, the clients are going to want to understand that a little bit. And we have to have just a kind of a basic knowledge here.

So with asset protection and with limited liability, this is a legal issue. It is a issue that in the eyes of our clients can be a little bit, we say often overplayed. I'm not trying to downplay it. I think it's a concern. But certainly as I over the years have advised clients, I have a client, another one that I think of where this gentleman, he was a news broadcaster in Los Angeles. And he was considering setting up a corporation to then have the corporation be a firewall between him and his personal assets. So the studio would contract with him and then his corporation would hire him.

And I asked the client, he called me up and he wanted to know if I thought this would work. I said, client, number one, you dialed the wrong phone number. I'm your accountant, not your attorney. You should have called your attorney and asked this question. Number two, now that I have that disclaimer out of the way, I'm not so sure client that simply set on the corporation is going to get you the level of protection you desire. I said, you need to consult with your attorney. But the other thing, client, that I want you to consider and it's bullet point number three on the screen here, is just looking to see if there's some type of insurance that you can go out and get.

I said, doctors get malpractice insurance, accountants, homeowners and property and businesses get errors and admissions insurance. Do you have adequate insurance? I have a client in southern California that owns a lot of single-family homes that they converted into homes friendly to the elderly. I call them halfway homes, right. Every year my client, you're running the business and honing the property personally you may want to consult with your attorney and run the business through some sort of an asset protection entity like for example, an LLC. And every year the clients like Chris, we've met with our insurance person, we feel like we have adequate protection there, we don't want to complicate our lives with a bunch of additional tax filings and legal filings and all that stuff, right?

And when you're talking about just this liability protection, what assets are there to protect, right? Who should actually form the corporation and making sure that we form the corporation. We do everything with the stock issuance. We do everything with the corporate bylaws or the articles of organization, articles incorporation, the operating agreement. Just make an end once the business gets formed that we've annually file all of the annual form requirements, including that statement of information that can be filed with various states and their secretary of state, right?

And make sure that the client does not co-mingle funds. Again, these are all items that we should be looking at. We also have to look at just the bandwidth of the client. What is the client's capability, right? What is their competency? What is their discipline?

Do they have the ability to come in and keep proper books and records? Some of my clients have this ability. Some of my clients, they do not have that ability. You know who I'm talking about. Will business and personal transactions be commingled? This is something that we should be on the lookout for every year when we're sitting down and going through our clients' records to help them prepare their taxes or prepare the taxes for them. We don't help them prepare the taxes. We prepare their taxes and you know how that goes.

Will they take a regular paycheck? Will withholdings be deposited timely? Here, my recommendation, client goes down this road, get a payroll company involved to handle all these items. I used to do payroll, not anymore. I can't compete with Paychex and ADP and some of these other companies out there.

Do they have good exit or good record keeping ability? And then we said it already, but we say it again here, we have to consider the exit strategy. The end game, how you getting out, that's very important. So questions like how long will they be in business? Will they want to cash out? Will they leave the business to a family member? Will they sell it? If they sell it, how are they going to structure the sale? Are they going to have employees take over?

Should they be setting a stock option plan? Should they come in and have some equity-based compensation? And instead of an employee stock ownership plan, maybe a stock option plan. And more and more, I mentioned it earlier, will this business qualify for the exclusion of gain upon the shelf qualified small business stock? This is code section 1202.

We'll get into this in a little bit of additional detail as we continue. In one of the conversations that I was having with a lot of clients here at the end of the year, and I have it every year with clients at the end of the year, and frankly, throughout the year, it just gets a little bit more urgent when we get to year-end tax planning is code section 179, right? And so section 179, it's been around forever. And so on the screen here, what was it?

And then how did it change under what I call OB3, right? So, the One Big Beautiful Bill Act that was passed in July this past year. So, the Section 179 is available for up to $2.5 million of assets placed in service. And we don't begin to lose that 2.5 million until we go above 4 million in equipment purchased. These amounts are indexed for inflation. So, we have Code Section 179 as a tax planning tool, we also have code section 168K, bonus depreciation. And so with bonus depreciation before OB3, we were going to be at 40% in 2025 and 20% in 2026. What has happened is they brought back bonus depreciation at 100%. This is for assets placed into service after January 19, 2025.

And the provisions related to the bonus depreciation have been made permanent. Now, I always get a chuckle when I say “been made permanent.” Because what does “made permanent” mean when we're talking about tax law? It doesn't mean much, right? What “made permanent” means to me after, again, almost 40 years in the profession?

“Made permanent” means not scheduled to change yet. But we're always just one election cycle away from some tax law changes, right? And I say one election cycle, I'm saying that a little bit of tongue in cheek, but tax law is Washington, DC, and it involves politicians. And so the tax law can change from president to president and can change from midterm election to midterm.

We typically tend to see more drastic changes around changes in the White House than we do changes in Congress. But I mean, it could certainly happen in both situations. So the bonus depreciation. Now, the other thing that I think is really important to just put out here is a lot of our clients, they had the federal return, but they also have the state return. And there are states that do not have federal conformity in various areas.

So, for example, I’ll give you two examples, right? There's 50 states and I'm only picking on two out of 50, but California, they do not have section 179 conformity. So these bigger amounts that you can take on the federal return are much smaller amounts on the California return. I had the opportunity to work with a group up in Michigan just in the last several months. And the group shared with me in Michigan that when they're doing year-end tax planning and they're trying to decide between section 179 and bonus depreciation, Michigan has bonus depreciation conformity, I'm sorry, section 179 conformity, but not bonus depreciation conformity.

So when we're looking at some of these tax planning strategies for the smaller businesses and trying to choose between bonus depreciation and section 179, you cannot just look at the federal, you have to look at the state as well, right? The states that they'll be filing in.

Now, so I mean, these are some overriding premises. Now let's start to get into some specifics around different entity types. So the first entity type that we're going to come in and pick on is the Schedule C and the single member LLC, right? So who must file Schedule C? If it's a trader business with one owner that has not gone through the steps of formalizing that business as a corporation C or S or they're a single member LLC going with the default classification, they would file a Schedule C.

Technically, you need to file a separate Schedule C for each separate business. There have been some court cases coming down in that regard. If I'm a single member LLC, the disregarded filing option is Schedule C.

And with a husband and wife joint venture, the issue that you have here is how do we come in and deal with the self-employment tax, right? And so there's been an evolution here just with what the software is allowed based on the interpretation of the tax law. I happen to use Lacerte. That's the software that I currently use, right? And there were, I had a client, I have a lot of clients out in California. California is a community property state, right? And so some of my clients that were operating businesses as a husband-wife business, you could go in in the good old days and just say, okay, I want to take that schedule C and I want to split it onto two schedule SEs, right? And so you could split the self-employment tax. And then they started to tighten down in that area.

And said, well, technically, if it's a husband and wife business, should be filing a partnership return. Except that they then came in and said, unless you're in a community property state, in which case you can summon and bifurcate. And so there's been a little bit of movement there. But I'll tell you, one of the issues at play here is as our clients grow older in their business, they also grow older for self-employment tax purposes and social security and Medicare purposes as well.

And so we'll get in some planning opportunities around there as well where we get to the S corporations, but there are absolutely planning opportunities here. So with the Schedule C, I mean, what are the advantages, disadvantages? One of the biggest advantages is this is simple. Keep it simple, stupid. Okay, the KISS principle, keep it simple, stupid. From a filing perspective, you're just providing the income statement to the government, not the balance sheet. It is absolutely easier to start and easier to stop doing business with sole proprietorship.

If you have no employees, you have no payroll reporting requirements. There is only one level of tax and the qualified business income deduction, which again was made permanent under OB3, is available for sole proprietorship. We may not be able to do for our higher income folks planning to get the maximum benefit. We'll get to that a little bit later.

So those would all be advantages. What are disadvantages? Well, you're making money. Whatever your net self-employment income is, is what you pay self-employment tax on. And from a asset protection perspective, you have no limit of liability as a sole proprietorship. If I am a single-member LLC, I can come in and maybe address a little bit the asset protection. But remember, that single-member LLC, If you do nothing, it's considered to be a tax nothing. It's considered to be disregarded. And from the IRS instructions to the Schedule C, you can see here, generally a single member of domestic LLC is not treated as a separate entity. It would file Schedule C if it's a trade or business, a Schedule E if it's rental property, a Schedule F if it is a farm, right?

Now, continuing here, just moving forward with our Schedule C discussion. So we've talked a little bit already about just the husband and wife joint venture. So assuming here that both husband and wife materially participate in the business, one, and that there are no other owners, what we can do with that entity, if it's a single member LLC or an LLC, is we can make an election by filing two separate Schedule Cs. Therefore, we then don't have to do the 1065.

When we do this, the last 1065 filed is considered to be final. And if you make this election with the husband and wife joint venture, once they're made, the election can be revoked only with IRS permission. Now again, from the Schedule C instructions, right, and I get this question a lot. So that's why I've included this in the presentation here. If you choose to come in and take that Schedule C and file two separate Schedule Cs and not file 1065, we come in and we divide all items of income gain or loss between the two Schedule Cs. You file two separate Schedule Cs, right?

Each of you may need to file a separate Schedule SE. If you're allocating it 50-50, you do, or however you spread it. The business was taxed as a partnership before you made the election. A partnership will be treated as terminating at the end of the year. And where you can go to get additional information here, I have cited. I cited it a IRS publication 541.

Now, another item that has come up a little bit more frequently, and we just kind of drill down on this a little bit here, is just code section 183, the hobby loss rules. So if you have a client running the business claim and the loss, right, the concern that we have now and the concern that the IRS has is this really truly a trade of business under code section 162 or is it something that they're running more like they would a hobby?

And to come in and be able to call it other than a hobby, you have to establish the criteria listed here. The taxpayer must have an honest objective of making a profit. Factors to consider include the manner of conducting the business, the expertise of the taxpayer, the time and effort devoted to the business, the success in other businesses, the history of income or loss, the financial status of the taxpayer. What elements of personal pleasure or recreation are there? It is presumed to be a business if profitable in three out of five years.

When I was early in the profession, this is something that the professors just impressed upon me and something that I learned early on in the profession. And it was that if the client has a loss for three years in a row, they're pretty much guaranteeing an audit in year four and what do you do to try and go on the offense versus the defense when it comes to defending in a situation like this? You'll look at the items here.

Now, we do cite a couple of court cases here in our material. The first one is the Mathis case. So if we come in and we look at the Mathis case here, just a high-level summary here.

So this was a court case from 2013, a TC Memo court case. It dealt with cutting horses. So a cutting horse is a specific type of horse designed to train to do a specific purpose, right? A little bit west of Fort Worth, Texas is the cutting horse capital of the world. I'm trying to remember the name of the town right now, but I have clients that live up there and it's kind of a big deal up there and done some training up there to banks and to accounting firms.

Now, when we come in and we look here with this particular fact pattern, was it a trader business, was it a hobby? And the courts determined that the taxpayer failed to prove a profit motive, that the taxpayer did not operate in a professional manner, they did not impose any penalties because they were able to demonstrate reasonable cause and good faith and they relied on a long-time CPA, but being able to deduct the losses was disallowed, right?

So that would be one case. Then we had a Heinbockel case, which we cite for you as well, another 2013 court case. These tend to come in in spurts. And so with the Heinbockel case, this was a taxpayer that had an airplane and had a vineyard. And so, they did a little bit of airplane chartering and the vineyard and both of them were spinning off losses. So, fact pattern here, client was a passionate flyer with one airplane. Year one, they had $4,000 of income, year two, $30,000 of income, year three, $6,000 of income, but look at their expenses. Somewhere between $45,000 and $100,000 each year, right? They never planted a single grapevine.

The farm losses were $49,000, $13,000, and $8,000 respectively. In this case here, number one, they came in and said, no, you can't deduct the loss. And two, they also came in and assessed penalties and interest as well. So, what is your position if spouses both work in a Schedule C but have one spouse as an employee and the other as the Schedule C owner?

You have to look at the ownership structure here. I mean, if the business is owned by one spouse and not both spouses, just in terms of how the business is owned, the ownership structure, then I think that that is okay. If the business is co-owned by both individuals, you just have to look at some of the formation documents and the DBAs, then I think here having a true husband and wife joint venture business where they're both partners in that business, I do not think it would be proper to have one spouse getting a W-2 if they're both equity owners.

Now, what are some tax planning opportunities with our Schedule C business? And this is not an all-inclusive list. If the client has younger children still living at home, put those kids on payroll if the kids do legitimate work for mom and dad's business. They have to do legitimate work. Don't get me wrong here. But if that child does legitimate work for mom and dad, that child gets a funky looking W-2. There are wages in box one, but there is no social security wages and Medicare wages in box three and box five, right?

When we come in and look at our social security wages or Medicare wages, right? Because box one is our wages. Box two is our federal tax withholding. Box three is our social security wages. Box five is our Medicare wages. And a benefit here at doing this is if the children do legitimate work, number one, it's a deduction on mom and dad's tax return who are probably in a higher tax rate than their children. Number two, it is earned income, so it's not subject to the kiddie tax rules. Number three, now that the child has earned income, guess what else the child can do? Put money into an IRA.

Now, I would probably recommend, depending on a child's income, that they look at a Roth IRA versus a traditional IRA. We're not really going for the deduction so much as we are that tax-free growth over that child's lifetime.

We could, and this kind of comes back to the question that was asked that we addressed already, put the spouse on payroll. But I would put the spouse on payroll where that business was just owned by one individual. So, for example, when my kids were much younger and I had an accounting firm, I ran my firm as a sole proprietorship at Schedule C.

I'm the CPA, my wife is not, my wife was not a co-owner in the business, but she helped me out in the business. So I then put my wife on payroll, right? And a benefit of doing that is now you can then take the medical insurance premiums on Schedule C instead of above the line on Schedule 1, right? And when my kids were old enough to help mom and dad out in the business, with various activities throughout the year, including that activity that accounting firms love to get involved with at the beginning of the filing season, and that's sending out those paper tax organizers, right?

I know a lot of firms have gotten away from the paper organizers and send out electronic organizers, but it's still a lot of work, right? Now, if we do put the spouse on payroll and we meet the criteria, we avoid two Schedule Cs.

We can't achieve desired allocation for self-employment tax purposes. I'm going to come back to that here in a little bit. We can't institute a 105 plan if there are no other employees. Other benefits here is maybe we take some of the tax prep fees on the schedule C. Not all of them.

Maybe we move some of the interest income to schedule B. With promotion, when my kids were younger, dad would promote and sponsor the Little League baseball team.

And so, and the Little League baseball team was a 501(c)3, but I get a little banner that they put in a Little League outfield promoting my business, right? And so, instead of taking on schedule A as a charitable contribution, I took it on schedule C. Maybe the spouse owns the, some personal property, some equipment, et cetera, that can be rented. And then certainly with that, sole proprietorship, if you're worried about some asset protection concerns, then that single member LLC would be an option as well. Now, so that would be Schedule C sole proprietorship.

How about corporations? Now, we start out here with corporations as talking generically about corporations in general. So not differentiating between a C-corp and an S-corp. Historically, the way that you got to 1120 or 1120S is you filed articles of incorporation with the state. Today, we can get there by also taking that LLC and electing to be taxed as a corporation C or S.

So the actual legal formation, that is a state-level concept, not a federal-level concept. So the corporations are chartered by the state in which they are formed. And every state other than the one in which they are chartered, they are considered foreign and must register with the Secretary of State in the state in which they're doing business.

So again, I pick on California a lot because that is professionally where I was raised, right? There would be advertisements on news radio. Don't form your corporation in California, form it in Nevada. And when you form it in Nevada, then you don't have to pay the $800 minimum franchise tax.

And when you form it in Nevada, you can automatically qualify for a $50,000 loan from a bank. That was basically the gist of the ads. Well, number one, banks, they're not just going to lend money to a new business. But number two, if I was a California business and I formed my corporation in Nevada and I did business in California, then I would have to register that Nevada corporation in California and still be subject to the minimum franchise tax. So that is not a game that can be played.

From a historic perspective, again, you come in and you file articles in corporation, you do the corporate bylaws. This is not something that I recommend that clients DIY, do it yourself, right? I recommend to my clients that they hire an attorney that knows what they're doing and then make sure they cross their T's and dot their I's.

Not for business purposes, but for insurance purposes, I just recently formed a Montana LLC. My wife and I live full time in an RV. And for insurance purposes, we had to have the tow vehicle, which I have a Volvo semi truck and the coach who I have a fifth wheel under the same ownership.

So, I set up an LLC or I had set up, I hired an attorney to set up a LLC for me in Montana. Could I have done that myself? Probably. But just knowing that the attorney did it and it was done right, it was worth the money in professional fees that I paid. And that's what I try and tell my clients as well.

Wo today, the other way that we can get the corporation is have an LLC that files articles of organization as an operating agreement and then files the check-the-box form to be taxed as a corporation C or S.

So there are a couple ways that we can get there. A C corporation is subchapter C and S corporation is subchapter S of the Internal Revenue Code. The one thing that is really important, I just, I feel strongly enough about it that I put a slide in here. Understand that when it comes to that corporation, we should not be setting up that corporation for our clients.

Tax practitioners are subject to circular 230, which expressly forbids unauthorized practice of law and setting up legal entities for our clients, setting up corporations, that would be the practice of law. Don't do it.

Now, with the corporation, again, just high level, it is a separate entity. It has its own legal life. It is continuity, right? It can provide a level of asset protection, but that's not the end all be all. We said that earlier. It's easy to change ownership because you just sell the stock. Continuity of existence we mentioned already.

With corporations in general, the distributions must be made in proportion to stock ownership. So we don't have some of the flexibility there, but we do have under current tax law that flat 21% tax rate that came in under the Tax Cuts and Jobs Act.

Now, when you form that corporation under code section 351, what code section 351 says is that no gain or loss shall be recognized if 80% or more of the ownership in the entity was by individuals contributing cash and or property. And so no gain or loss.

You never can recognize a loss because of the related party rules. So the question then becomes here is 80% or more ownership in the entity by individuals contributing cash and or property. So we have to come in and just definitionally say, okay, so what is property? What is persons? What is meant by solely in exchange for stock? What is meant by control? That's 80% or more. And is there a valid business purpose?

So when we come in here and we look, if we meet these criteria, that corporate formation should not be taxable. Now there may be certain situations where maybe you want it to be taxable, because maybe you have the clients in a low tax bracket year that year, maybe the client has some net operating losses, some capital loss carry forwards, you want to trigger some income and get a step up in basis. There can be a tax planning opportunity here as well.

Now, from an advantage and disadvantage perspective, and by the way, I'm getting one slide ahead of myself here. I mean, with the C corporations, again, remember, we have that flat 21% tax rate, but C corporations are subject to double taxation when we make that dividend distribution. A dividend distribution is a distribution either out of current year E and P, which is net income, or cumulative E and P, which is retained earnings as a corporation.

And remember, you cannot look at choice of entity in a vacuum and only look at the federal law and not look at the state law as well. Now, advantages and disadvantages. That's where I thought I was headed and I got ahead of myself just there for a second. So, C-Corps can get the dividend received deduction, right? Based on ownership, it starts out at 50%. It can go as high as 100%.

The stockholders can enjoy a reduced tax rate on qualified dividends because qualified dividends get taxed at long-term capital gains tax rates. With a C corporation, you don't have a limit on the number of shareholders. You can have different classes of stock, common and preferred.

You can typically, I mean, if you're considering at some point down the road an initial public offering, an IPO, then you gravitate towards the C corporation and entity type.

We can do a little bit of income splitting, meaning splitting income between the corporation and the individual. The second to last bullet point, this one is one that is becoming just a much more discussed pro of being a C corporation, and that's code section 1202. And again, we'll get into more detail on that here in a little bit.

If deductibility of fringe benefits to the owners is important, C corporation is where you get the most deductibility opportunity.

These would all be advantages. On the disadvantage side, double taxation. We can also have the accumulated earnings tax if the corporation is hoarding tax at the entity level. With the charity, you can only take charity to the extent that you have adjusted taxable income capped out at 10%.

We now also have that new 1% floor that we have to bust through for corporations. C corporations do not get long-term capital gains tax rates. You can only take capital losses against capital gains. And if you have more in excess losses than you do gains, then you only have eight years to absorb that excess capital loss, back three, forward five.

There is a cardinal rule with corporations and even more important with C-Corp than S-Corp, and that cardinal rule is wherever possible, do not put appreciating assets into a corporation because corporations do not get long-term capital gains tax rates and you have double taxation. And so, and a great example of an appreciating asset would be real estate, right? So if I have clients that have a business and they run the business out of some property that they own, my recommendation is don't have the operating business and the real estate in the same entity.

Put that operating business in the corporation C or S, put that real estate probably into a LLC, especially if that real estate is debt-financed. More on that a little bit later. Remember with distributions, when we take distribution data of a C corporation, we take out a current year E and P first or net income, is up to the double taxation. We take out a cumulative E and P second or retained earnings. We then have return of capital, that would be tax free. And then we have return on capital, that would be a long-term capital gain.

I mean the question that we have in a corporation is how do you get money out of the corporation?

We can do it with the wages. We can do it with fringe benefits. We can do it with dividends, the return of capital. We can do it with shareholder loans. We can do it with rent payments and royalties and then a liquidating distribution. These are all items that we have to look at when we're coming in and advising clients in this regard. And a C corporation, what we have to watch out for is compensation being too high. Is that compensation excessive? Now, there's not a bright line test here.

Right? There is, for public-trade companies, that million-dollar test, but there's no bright line here. When I get asked the question from clients and from practitioners, what's the magic number? There's not a magic number. The answer is, it depends. Right? And so, if the client, if the Internal Revenue Service believes those wages are too high, then the IRS reserves the right to come in and reclassify some of those excess wages as a dividend and subject it to double taxation.

Now, from an exit strategy perspective, what is our exit strategy? Are we going to sell that business? And if we're going to sell that business, are we going to sell the assets in the business or are we going to sell the stock? The owner, the person selling, most of the time, they're going to want to do a stock sale. Why? For two reasons. One, long-term capital gains. And two, they do not have, if they sell the stock, when the buyer buys the stock, they buy any liability concerns, whether known or not known.

Most educated buyers, they know this. So they're not going to want to buy the stock. They're going to want to buy the assets. They're going to want to buy the assets for two reasons. One, they get a step up in basis, right? And two, when they buy the assets, they don't buy the legal skeletons in the closet.

So that certainly becomes part of the negotiation, but it also is just part of the discussion on the front end of how do you set up the trade or business.

Now, I told you I'd get into some additional detail here.

So by the way, so C Corp is not a good place for long-term stock investments, correct? I absolutely agree with that for two reasons. Number one, you do not get long-term capital gains tax rates, right? That's probably the biggest reason. And two, just I'm assuming this is an appreciating asset. We have double taxation. So I would agree with that 100%.

Now coming back here to code section 1202. What I wanted to do is highlight here some of the positive changes that have come about with the qualified small business stock rules.

So old rules first, that's what you see here. So if it was a C Corp, this is for C Corps only, if the shareholder acquired that stock any time after August 10, 1993, held onto that stock for at least five years, right?

Now, depending on when you acquired that stock, it was a 50% gain exclusion that went to 75%, that went to 100%. So you have to look at the acquisition date. The taxpayer could exclude the greater of $10 million or 10 times stock basis. The $10 million is lifetime and the aggregate basis, 10 times stock basis is annual.

And to qualify, it has to be an operating trader business where the gross assets did not exceed at any time before issuance of the stock $50 million that schedule out of the balance sheet. Well, what happened to the rules under OB3 is what you see here on the screen next. So we still have 1202. And for stock acquired, after July 4, 2025. That was the data passage of the One Big, Beautiful Bill.

If you owned a stock only for three years, you get a 50% gain exclusion. If you own it for four years, 75% of gain exclusion. Once you hit five years or longer, 100% gain exclusion. And that $10 million gets adjusted to $15 million. And we see the gross asset limitation going from $50 million to $75 million.

So some positive changes here with QSBS and for clients that can position themselves to benefit from this provision, this would really be a no brainer to that client setting up their business as a C corporation.

Now, so certainly a big change there and we also highlight just some of the changes.

Now from a disposition perspective, if we come in and we have a liquidation of the corporation, and you sell the assets. If we sell the assets, we're going to trigger gain that's recognized at the corporate level. We're going have to deal with the depreciation recapture. We're not going to get ordinary tax rates. And then ultimately, we're going to have to distribute those assets out to the owner. If it were a stock sale, you're not going to have that concern. We talked about that a little bit earlier.

So this would be C corporations. Well, then let's move on to S-corps. So with S-corps, one level of tax, not two. The income passes through on a K1. How we become an S Corp is by making that a selection on the form 2553. But there are lot of limitations. You cannot have more than 100 shareholders. You cannot have any foreign investors. And the compensation has to be reasonable.

Now in a C Corp, we're worried about the compensation being too high. And in an S Corp, the IRS is worried about the salary being too low. So what are advantages of being an S Corporation? Well, you see here, number one, one level of tax. Number two, profits in excess of compensation are not subject self-employment tax. The beat, the FICA tax game is a game that most clients know and they like to play it to the maximum extent possible.

If you have basis and you take distributions, those distributions are tax free. If you have capital gains, those capital gains then pass through on a K-1 to get taxed at capital gains tax rates at the 1040 level. And S corporations can avail themselves of the 199A deduction, the qualified business income deduction. So these would all be advantages.

What are disadvantages? Well, when we come in and we look at the list of disadvantages, number one, so you can only have up to 100 shareholders. You can't have corporations or partnerships be shareholders. You can only have one class of stock. So it means you can't have common and preferred. Now you can have common voting and common non-voting. That's OK because it's common stock, but you can't have common and preferred.

The fringe benefit deductibility is a lot more limited in a S-Corp to the owners. Most S-Corporations have a December 31st year end. There is a lot less flexibility when it comes to disproportionate distributions and special allocations. You can't do that in an S-Corp. You can do it in a partnership or an LLC taxed as a partnership. If there is entity-level debt, you do not get additional basis for entity-level debt like you do in a partnership or an LLC file and a partnership return.

We have to be mindful of the built-in gains tax. This is a tax that comes up when a C-Corp converts to an S-Corp and sells off assets within the first five years. We also have to be concerned with the excess net passive income tax. This is a tax that you're only worried about if one, you have E&P from the C-Corp years and two, more than 25% of your income comes from net passive income type sources.

So it's not a problem that you see universally, but it is a problem that can come up from time to time with various entities that converted from a C Corp to an S Corp. In how we make the selection as we file that 2553, the reality is you only have two and a half months to file this form and a lot of clients, they don't tell us before two and a half months. Well, the good news is we have a revenue procedure under 2013-30 where we can come in and file that S election late and include a reasonable cause explanation and be granted that S election retroactive.

Now, when it comes to medical insurance premiums, this is incredibly important. To be able to take those medical insurance premiums above the line on schedule one, those medical insurance premiums must be included in box one of the W-2 from the S-Corp.

Now, as long as that plan does not discriminate, that medical insurance, it's not subject to social security and Medicare tax withholding, right, as long as it doesn't discriminate. And the guidance that we have here is contained in IRS Notice 2013-54 and 2015-17.

Now, with flow through entities, it is imperative that we track basis. And so by the way, just another question here, would paid in capital and an escort be construed by the IRS as a second class of stock?

Well, let's talk about this for a second. So when we put money into a corporation and we look at schedule A on the balance sheet, we have the additional paid in capital, and then we have just the common stock. And so whatever the par value is times the number of shared issues, that's the common stock line. And anything that we pay above par value is the additional paid in capital.

Paid in capital in an S-corp is not considered a second class of stock. That's just the amount that you come in and you pay for the stock above whatever the par value is. And par value tends to be just a rather just generic concept. It typically in most entities is a penny a share or a dollar a share or some very token amount and to the extent that you put in more money than just the par value, that would be the additional paid in value, additional paid in stock, right? Paid in capital, APIC, additional paid in capital. And so no, that is not considered to be a second class of stock.

Now, basis of stock. When we're talking about flow through entities, basis is important for three reasons, right? Basis is important for deductibility of losses, taxability of distributions, and gain or loss on sale. Those are the three items that you see listed here. Now, the IRS, now a few years ago, did come up with a new form. I think this is a great form if you've been doing your job as a practitioner where we report to the Internal Revenue Service what the shareholders' stock and debt basis are.

So part one is where we calculate stock basis. Part two is debt basis. And then part three, to me, this is the 8582 of basis where we say, okay, here's what my current year loss is. Here's what my basis is. Here's how much I can deduct. Here's how much carries forward to future years.

And so we do have this form. And when you look at the schedule E instructions, and we go to page two, you can see here, where that green arrow is on the screen. If you report a loss, receive a distribution, dispose of stock or receive a loan repayment, you must check the box in column E, right, basis computation is required and then we attach the form 7203.

The 7203 is where that basis is tracked and maintained. This is something that we should be doing for all of our clients. And if we have clients where we do not have basis, do not let a beginning, lack of a beginning number preclude you from tracking this on an ongoing basis. If you haven't had the client since day one and basis hasn't been tracked, go to that balance sheet, look at the equity section of the balance sheet, see if you can come up with a reasonable gain in number and start to track basis on a go-forward basis from that point forward. That would be my recommendation to you.

From a basis perspective, the money that we put in, that gives us basis, that initial contribution. We put in additional monies, that gives us additional basis. If we loan money to the corporation, that gives us debt basis, which is a separate bucket of money, stock basis and debt basis. You only get debt basis for money that the shareholder directly loans to the corporation. All items of income, whether taxable or not, give us basis. Distributions to the extent of basis, reduce basis. If that distribution is in excess of basis, that excess distribution is taxable, probably is a capital gain.

We then decrease by non-deductible expenses and finally deductible expenses. There is an election that can be made at the shareholder level, at the 1040 level, to flip-flop our deductible and our non-deductible expenses. There are some planning opportunities and potential there as well.

Now remember, in an S-Corp, the only way you get debt basis can is when you personally loan money to a corporation. If you personally guarantee a corporate loan from a bank, you do not get debt basis for personal guarantees.

There's a great court case out of Florida, all right, a tax court case. Tinsley, T-I-N-S-L-E-Y, Tinsley, William Tinsley. If you have any questions on basis and the importance of basis, just pull down that court case and read it, read the synopsis of it, the study of it. It is just an incredibly insightful case.

Now, if we come in and we sell an S-Corp stock like a C Corp, is it an asset sale or is it a stock sale? The only difference between a C Corp and an S Corp here is you don't have double taxation. But the seller is still going to prefer to sell the stock because of the liability concerns. The buyer is going to want to buy the assets. So we have those same levels. We just don't have two levels of tax. We only have one level of tax, which is what we talk about with the liquidation here. So that would be C Corp and S Corp.

Now, what about partnership LLC? Well, when we get into partnership LLC, right? Is it a general partnership? The problem with a general partnership is joint and several liability. Is it a limited partnership? Well, in a limited partnership, you have to have at least one general partner. Is it a limited liability partnership, an LLP, depending on the state that you're in?

For example, there are certain types of businesses like accounting firms that in California cannot organize as an LLC. And instead, they have to organize as an LLP. It's basically in California and you have to understand just the nuances of different states and different rules. But when you come in and you look, if it's an entity required to register with the Secretary of State and it's a new division in California now, but it used to be the Secretary of State, then you and Department of Consumer Affairs, it's under that area there, then.

You have to organize this as an LLP, not an LLC. Now, so partnerships, when we're talking about this here, yeah, partnerships file 1065, but is that 1065 a general partnership, a limited partnership, a limited liability company, a limited liability partnership? So these are just some of the options that we look at. What are some of the advantages and disadvantages of partnership LLC? All right.

Well, certainly, to me, the biggest advantage and disadvantage can be summarized in one word, and that's flexibility. We have flexibility with allocating gains. We have flexibility with distributions, allocating losses. There are, especially with just a general partnership, fewer formalities. With an LLC, you still have to file the articles of organization, and you should have an operating agreement. Like an S Corp, there's only one level of tax.

Big difference between S-Corp and Partnership LLC is in a partnership or an LLC tax of the partnership, you get to increase your basis by entity debt. And it does not matter if that debt is recourse debt, non-recourse debt, or qualified non-recourse debt. You get to increase your basis by all types of debt. Now, whether or not that increase in basis then results in an ability to come in and deduct losses is predicated on whether or not you have what is called at-risk basis.

And at-risk basis is code section 465, and it is IRS form 6198. So understand here to deduct losses, it's not enough to have basis. You have to be at risk for that basis. You do get 199A, but you cannot for our higher income clients, if we have higher income folks, then you look at the entity level wages and you say, okay, my entity level wages times 50% or 25% and 2.5 % of UBIA then determines the maximum I can claim and a partnership, guaranteed payments to owners do not count as wages.

If you're really trying to come in and maximize the benefit with the 199A, then you're going to want to be an S corporation.

The biggest disadvantage is it can be ridiculously complicated. And if it's a general partnership, then we have that unlimited liability. Now, so in a partnership, we should have a written partnership agreement. In a LLC, we should have a operating agreement. And the operating agreement of the partnership agreement should address all of the issues mentioned here.

If we want to do special allocations, that has to be addressed in that partnership agreement or operating agreement. See that special allocation has to have what is called substantial economic effect. And in order to do that, you have to have very specific language in that partnership agreement or operating agreement that deals with just either a DRO, a deficit restoration obligation, or a QIO, a qualified income offset obligation.

And a deficit restoration obligation says, we'll especially allocate to you. And if your capital account goes negative, then you have to cure that deficit. A qualified income offset clause says, will you allocate till your capital account is zero, and then you don't get special allocations after that. So it's just different ways of establishing substantial economic effect.

So again, it's a partnership agreement and a partnership. It's an operating agreement in an LLC. What are the ownership percentages, the compensation, the amount of timing and distributions, the fringe benefits, what happens on liquidation, and what happens when we expel a partner, when we admit a new partner, what are some of the criteria there? This should all be addressed in that partnership or operating agreement.

Now, LLCs, they got their start in the late 60s, early 70s, and the first state that had LLC statutes on the books was Wyoming, of all places, right? Today, all 50 states have LLC statutes. From state to state, they're not identical, so that can create some level of complication with LLCs.

If it's single member, default, disregarded. If it's multiple member, default, classification partnership, but with both the single member LLC and the multiple member LLC, you can come in and you can file that check the box form saying tax me as a C Corp tax me as an S Corp. So a tremendous amount of flexibility. But remember what I told you earlier, I think this lulls us into a little bit of sense of complacency. And especially if you're going to a LLC tax as an S corporation, you better make sure and that operating agreement is in line with subchapter S and talks about just various items that you can't do that would blow the selection.

Because if the operating agreement says, yeah, you can do special allocations, you can do disproportionate distributions, and it talks about that in the operating agreement, and you elect to be taxed as an S-Corp, the IRS gets their hands on that operating agreement and they're going to come in and they're going to say, nice try, but no, not going to happen.

Now, so to check the box rules, we did talk about, right, that is the form 8832. So as we come in here and we look, a big issue with the LLC is the self-employment tax, yes or no? And this is an issue that has really started to evolve more recently, including when we're looking at self-employment tax, a recent court case that court case being Soroban Capital Partners LP versus Commissioner.

So in this court case here, and we've seen a couple of other court cases come out since the Soroban case. This was the one that kind of started the whole scrutiny here.

Some background here first. So with self-employment, general rule, net income from any trade or business in a partnership type entity, we'd be subject to self-employment tax.

There is an exemption for limited partners. Now, a limited partner that is a behaving limited partner. And we'll talk a little bit more what I mean when I say that here in a second. But when you look at just the guidance, right, before we get to the court case, general rule is that a guaranteed payment to a general partner or a tax of self-employment income if the partnership is engaged in a trade or business.

Determining the existence of a trade or business is dependent on facts and circumstances. In other words, it depends. And limited partners, guaranteed payments for the use of capital are not sub-sale employment tax. If you look at that K1, and more recently, it used to be there was just one line item for guaranteed payment. Now it says guaranteed payment for services, guaranteed payment for use of capital, total guaranteed payment. There's three line items.

So that guaranteed payment for use of capital should not be subject to self-employment tax general rule. Now continuing here, moving forward, when you look at the Soroban case, with the Soroban case, it was a limited partnership. The partnership made guaranteed payments to it’s limited partners. The partnership included the guaranteed payments and the limited partner self-employment income. The partnership did not characterize the ordinary income as sub to self-employment income.

So they said box four equals box 14. They didn't say box one plus box four equals box 14. The court determined that the ordinary business income from limited partners and name only is not excluded from self-employment tax. So it's not your title. It's your behavior that determines self-employment tax. If I call myself a limited partner, but I'm involved day to day in operations of that business, the courts are saying, well, then it's not what you call yourself. It's how you behave.

This is a court case that came down November 28, 2023. And key takeaways that we have from the Soroban case are some of the items that we see listed here. So it is not enough to rely on the definition of a limited partner in the law because of the state where the entity was created.

To be exempt from self-employment taxation on limited partner income, one must actually function as a limited partner. For example, you're truly just an investor. You're not involved day to day. The true facts and circumstances, regardless of the state-defined title, govern the applicability of or the exemption from self-employment tax. There are a lot of just accounting firms and tax preparation firms that I'm blessed to work with that have created basically a firm best practice checklist from this court case here.

So if you don't have a best practice here, I would recommend that you look at this court case, the Soroban Capital Partner case, read it, understand it, and come up with your own firm policy as well when it comes to this.

Now, the IRS just recently also created a similar form to form 7203 for S-Corps with partnerships and forms 7217. We talk about that 7217 here. Now this form here, this 7217, is filed by any partner receiving a distribution of property from a partnership. Now if you only receive a cash distribution, this form is not required. If you receive a property distribution other than cash, this form is required. If you receive a property distribution and cash, this form is required. And you file a separate 7217 for each distribution that has occurred during the year.

So when you look at the form 7217, page one is just basic disclosure information. And then when we get to page two of the 7217, which you see on the screen here next, right, we have column A, a description of the property, column B, the partnership basis in distributed property, this would be inside basis. So column B is inside basis. What code section the distribution was made under? Was it under 732D, 732F, 734B, 743B, 734 and 743 are both under the umbrella 754. Column D, what is the fair market value distributed property? And then column E, the partners basis in distributive property, that would be outside basis. The column B, inside basis, the applicable code section, column D, fair market value, column E, outside basis.

Now, when we get in and we talk about just tax planning for various entities, another area that is really, really important is what options do we have around choices with setting up retirement plans, right? And before we get to just the retirement plans here quickly, which we start to get into in this chapter, if you're worried about asset protection and you're one owner, look at the single member LLC. If you're trying to manage SE tax, look at the S Election. If you want to avail yourself of the 1202 benefit, look at C-Corp, right?

If you have real estate, put that real estate in a separate entity, separate from the operating business. Consider an S corporation for the business, an LLC to own the real estate. If you are getting out of C Corp to S Corp, try and do it early enough to avoid that built-in gains tax. And with the short-term ventures, look at a multiple member LLC.

And then we get into pension plans, which is where I wanted to go next. So with pension plans, is it employee funded? Is it employer funded? So on a less complicated side, we have a SEP, we have a SIMPLE. The SEP is kind of like a profiteering plan. It's employer funded. The SIMPLE is more like a 401k plan. It's an elective deferral where most of the money going in the retirement plan is from the employee with an employer match.

But with, for example, SEPs, what you can contribute is a percentage of your self-employment income or W-2 wages. And so one of the things that I always look at with clients when it comes to choice of entity is, number one, do you have employees, yes or no? And if the answer is yes, can you afford to put money in for your employees too? And very often the answer is no.

So that leaves us with 401k or simple IRA. If you have no employees, if you're self-employed, whatever your net self-employment income is, you then have to multiply by 92.35% to take away the employer half. And then the maximum that you can contribute as a percentage of that number is 20%.

Well, if you take that same entity, and you elect to be taxed as an S-Corp or you form an S-Corp, whatever the W-2 wages are times 25% is what you can put into your retirement account. And so there's a tremendous amount of planning around retirement accounts and the type of business and the number of employees. And so there's just tremendous planning opportunities here as well, right? And understand that to be the case.

We also have with retirement plans, just some juiced up benefits with some of the credits that the employer can take for establishing qualified plans with the credit for startups. We also are concerned with fiduciary responsibilities, discrimination and top heavy rules as well. With the fringe benefits, we said this earlier, we dive into it in a little bit of additional detail, right?

If deductibility of fringe benefits is important, then we probably need to be a C-Corp. And so we talk a little bit about just the fringe benefits and sole providers. And the biggest fringe benefit is probably medical insurance. Medical insurance we can take above the line on Schedule C, but only to the extent of our net self-employment income. C-Corporations, that's where we get the most benefit with our fringe benefit deductibility, right?

S corporations, for S corporations, in order to be able to come in and deduct the medical insurance premiums, it has to be included on that W-2 of the greater than 2% owners in that S corporation. And again, if it's a plan that is non-discriminatory, then you only have to put it in box one, not box three and box five. If it does discriminate, you need to put it in box one, three and five.

We talked about that a little bit here as well. As long as you handle the medical insurance premium fine, you're probably going to cover most of your basis here in terms of what it is that we want to be talking about with the fringe benefits. And again, this impacts those greater than 2% owners in an S corporation.

With partnerships and LLCs, this largely follows the partnership, I mean, the S-corp tax law here. Most fringe benefits for partners are treated as a guaranteed payment. We see this disclosure on the Partnership K-1 and are therefore subject to self-employment tax. So that's a little bit of a downside. Partners are allowed to take the net self-employment insurance deduction if the policy is in the name of the partnership subject to meeting the other qualification requirements. With fringe benefits, the type of benefits that we're talking about here would be Code Section 79, the group term life insurance. Code Section 106, health insurance benefits. The Code Section 119, medical and lodging benefits. The 125 cafeteria plans, the 127 educational assistance program. The 129 dependent care.

And so more specifically, then we get into the code section 132 fringe benefits. And the 132 fringe benefits include the items that are listed here.

The qualified employee discounts, the working condition fringe benefits, the on-premise athletic facilities, the de minimis fringe benefits, the qualified transportation fringe benefits, the qualified moving expense reimbursements, and the qualified retirement planning services. These would all be considered to be Code Section 132 fringe benefits.

If it is an employer-provided vehicle, you have to look to see if the employee is a control employee, because if the employee is a control employee, then they must use the annual lease value method. If they're not a control employee, they can use the commuting value method. And the commuting value method, this is, it's a buck 50 each way, $3 round trip. The problem is you cannot be a control employee to use this with the cell phones, employer provided cell phones.

They're not considered listed property anymore, but you shouldn't be deducting 100 % of that phone if you're using part of it personal. That's just the smell test.

So folks, we're at the end of our presentation where we just sum up some of our learning objectives. We covered a ton of material today at a very high level, meaning we didn't get into the weeds, but we just brought up a lot of different concepts that are important to consider when you're advising small businesses' tax planning strategies.

Have a wonderful day. Thank you, folks.

CERIFI CPEdge

Webinar

Tax Planning Strategies for Small Businesses

Presented by Chris Province, CPA

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Chris Province, CPA

Robert "Chris" Province, CPA, has over 20 years of experience in delivering, instructing and designing training courses. In addition to his speaking, Chris is currently a self-employed CPA specializing in taxation of high-net-worth individuals and closely held businesses with clients located in many states throughout the United States.

Chris has also served as a tax partner and senior tax member for several local, regional, and national CPA firms. He was a member of the national AICPA S-Corporation Technical Resource Panel and the Qualifications Committee for the California Board of Accountancy. Chris is a licensed Certified Public Accountant in California, North Carolina, and Texas.

Chris earned his Bachelor of Science degree in Accounting and Finance from the California State University, Northridge. He is a member of the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants.

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Learning Objectives

Upon completion of this webinar, participants should be able to—

- Identify the importance of choice of entity
- Explain the advantages and disadvantages of each of the following and related tax planning opportunities:
  - Sole Proprietorships (including single member LLCs)
  - C Corporations
  - Pass-through entities, including:
    - S Corporations
    - Partnerships (including multi-member LLCs)
- Evaluate and describe owner compensation and exit strategies

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Interesting Facts – Source SBA

Small business is defined as an independent business with fewer than 500 employees

- Number of large businesses – 17,700
- Number of small businesses – 28,200,000
- Percent with no employees – 75%
- Percent of private sector employment – 49%
- Percent of failure within 5 years – 50%

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Interesting Facts – Source SBA

Legal form of organization

Entity Type	Employees	No employees
C Corporations	21%	1%
Sole Proprietorships	16%	87%
Partnerships	11%	7%
S Corporations	45%	5%
Nonprofit	7%	N/A
	100%	100%

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Choice of Entity

- This should be the first element in tax planning for small business
- A topic to be reviewed on a regular basis
- If you don't discuss this with your client someone else will
- Consider phased approach to choice of entity
  - Start as Sole Proprietorship and switch to another entity later
- Consider exit strategy

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Choice of Entity – The Menu

- Sole Proprietorships
- Single member LLC
- Partnerships
- Multi-member LLC
- Husband and wife partnerships
- S corporations
- C corporations

Often more than one entity is the best arrangement

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Chances of Being Audited

• All Tax Returns	.5%
• All individual returns	.6%
Schedule C $100K – $200K	2.4%
Schedule C $200K+	1.9%
• C Corporations	.9%
• S Corporations	.2%
• Partnerships	.2%

Source: IRS Data Book

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Limited Liability

- A legal issue
- Often overplayed
- Insurance may provide adequate protection
- What assets are there to protect
- Who should actually form the corporation
- Following rules essential to ensure limited liability

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Competency and Discipline

These issues also should be considered when choosing an entity:

- Will proper books and records be kept
- Will business and personal transactions be comingled
- Will owners take a regular paycheck
- Will withholdings be deposited timely
- Will the necessary payroll reporting be done
- Will statutory records be kept

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Consider Exit Strategy

The end game is an important consideration when choosing an entity

- How long will they be in business
- Will they want to cash out
- Will they leave business to family members
- Will the employees take over the business
- Will this business qualify for exclusion of gain upon sale of Qualified Small Business Stock (IRC Code Section 1202)

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Section 179

OLD LAW:

- §179 deduction was set in 2018 for up to $1,000,000 of assets placed in service during the year
- Phasing out dollar-for-dollar beginning at $2,500,000
- These amounts were indexed for inflation, which would have arrived at $1,250,000 and $3,130,000 in 2025

NEW LAW (OBBBA):

- The §179 deduction is available for up to $2,500,000 of assets placed in service during the year
- Phasing out dollar-for-dollar beginning at $4,000,000
- These amounts are indexed for inflation.

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Section 168(k) – Bonus Depreciation

OLD LAW:

- The provisions related to bonus depreciation were set to expire after 2026, with bonus depreciation rates of 40% in 2025 and 20% in 2026.

NEW LAW (OBBBA):

- The provisions related to bonus depreciation have been ***made permanent.***
- The phase-down of the bonus depreciation rate has been eliminated and replaced with 100% and is available for property acquired after 1/19/2025.
- Property acquired before Jan. 19, 2025, but placed in service later, may use the older, reduced bonus depreciation rates.
- No retroactive changes apply for 2023 or 2024.

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Who Must File Schedule C

- All trades or businesses with one owner
- Separate schedule C for each business
- Single Member LLC
- Husband and wife joint venture

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Schedule C

Advantages:

- Simplicity
- No balance sheet required
- Easy to start and easy to stop doing business
- No payroll reporting for owner
- Single level tax
- 199A – QBID *(made permanent under OBBBA)*

Disadvantages:

- All income subject to self-employment tax
- No limit of liability

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Single-Member LLC Disregarded

Single-member limited liability company (LLC). Generally, a single-member domestic LLC is not treated as a separate entity for federal income tax purposes. If you are the sole member of a domestic LLC, file Schedule C or C-EZ (or Schedule E or F, if applicable) unless you have elected to treat the domestic LLC as a corporation. See Form 8832 for details on making this election and for information about the tax treatment of a foreign LLC.

—IRS Instructions to Schedule C

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Husband and Wife Joint Venture

- Both materially participate in business
- No other owners
- Make an election by
- Filing two separate Schedule Cs
- Do not file another 1065
- Last 1065 filed is considered to be final
- Once made election can be revoked only with permission from IRS

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Making the Election

To make this election, divide all items of income, gain, loss, deduction, and credit attributable to the business between you and your spouse based on your interests in the business. Each of you must file a separate Schedule C, C-EZ, or F. Enter your share of the applicable income, deduction or (loss), on the appropriate lines of your separate Schedule C, C-EZ, or F. Each of you may also need to file a separate Schedule SE to pay self-employment tax. If the business was taxed as a partnership before you made the election, the partnership will be treated as terminating at the end of the preceding tax year. For information on how to report the termination of the partnership, see Pub. 541.

—IRS Instructions to Schedule C

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Hobby Loss Issues

- Taxpayers must have an honest objective of making a profit. Factors to consider include:
  - Manner of conducting business
  - Expertise of taxpayer
  - Time and effort devoted to business
  - Success in other business
  - History of income or loss
  - Financial status of taxpayer
  - Elements of personal pleasure or recreation
  - Presumed business if profitable three out of five years

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Hobby Loss Issues

***Travis A Mathis*, TC Memo 2013-294**

Cutting horse farm activity a hobby:

- Failed to prove profit motive
- Did not operate in professional manner
- "Did not take their activity seriously"

No penalties were imposed:

- Demonstrated reasonable cause/good faith
- They relied on longtime CPA

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Hobby Loss Issues

***Heinbockel,* TC Memo 2013-294**

Airplane chartering and vineyard a hobby:

- Passionate flyer with one airplane
- 3 year income $4k, $30k and $6k
- Expenses $45 – $100k each year
- Never planted a single grapevine
- Farm losses of $49k, $13k and $8k

Penalties imposed

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Tax Planning – Schedule C

Put kids on payroll

Put spouse on payroll

- Avoid two schedule Cs
- Achieve desired allocation for SE purposes
- Institute 105 Plan (If no other employees)

Allocate accounting fee to Schedule C

Move interest income to Schedule B

Charity vs advertising/promotion

Consider renting from spouse

Consider single member LLC

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Incorporation

- There is no federal law governing the formation of corporations
- Corporations are chartered by the state in which they are formed
- In every state other than the one in which they are chartered, they are considered "foreign" and must register with the secretary of state to do business
- Since most states require annual filings, the failure of a corporation to file an annual report or maintain its registration can result in revocation of its corporate status

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Incorporation

- Numerous steps are required when establishing a corporation.
- Included are:
  - Drafting the articles of incorporation and corporate bylaws
  - Filing proper documents with the state, and issuing corporate stock.
- The mechanics of setting up the corporation are governed by state law
- Compliance with the legal aspects of incorporation will help ensure the corporate status for tax purposes and for limit of liability

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Incorporation

- Tax practitioners are subject to Circular 230, which expressly forbids the unauthorized practice of law
- The formation of a corporation, or the maintenance of the corporate minute book, may be considered to be the practice of law in many jurisdictions
- If there is concern that the taxpayer is requesting legal advice or services, it is imperative that the tax preparer refrain and instead refer the matter to the taxpayer's corporate attorney

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Corporations Generally

- Exist as a separate entity from the owners
- File their own tax returns
- Provide limited liability protection for shareholders
- Provide ease to change ownership
- Provide continuity of existence
- Distributions must be made in proportion to stock ownership
- Flat 21% C corporation tax rate (TCJA)

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Tax-Free Incorporation

- The general rule under IRC Sec. 351 is that no gain shall be recognized if:
  - Property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation, and
  - Immediately after the exchange such person or persons are in control [as defined in IRC Sec. 368(c)] of the corporation for a business purpose
- A loss is never recognized in an incorporation.

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Definitions

- Property
- Persons
- Solely in exchange for stock
- Immediately after the exchange
- Control
- Business purpose

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C Corporations

- Taxed as a separate entity
- Corporate income tax rates ***(FLAT 21% created under TCJA)***
- Consideration should be given to the possibility of ultimate double taxation
- Payroll tax and state tax rates should be taken into account

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C Corporations – Advantages

- Can exclude dividends received from other C corporations up to 100% based on ownership percentage
- Stockholders enjoy a reduced tax rate on qualified dividends
- No limit on number of shareholders
- Different classes of stock are permitted
- Stock can be traded on stock exchange
- May be used to achieve income splitting
- Gain on sale of Qualified Small Business Stock may be excluded from income (QSBS or IRC 1202)
- The best for providing certain fringe benefits

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C Corporations – Disadvantages

- Distributions made to stockholders are taxed again at the stockholders' tax rates as dividends (double taxation)
- Accumulated earnings tax may apply
- Charitable contributions are limited to 10% of taxable income – but may be carried forward for 5 years
- No favorable tax rates for long-term capital gains
- No deduction for capital loss
- However these may be offset against capital gain and may carried back three years and forward for five years

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Distributions from a C Corporation

- Corporations are separate entities from their owners
- Corporate assets are not personal possessions of the shareholders
- Method of distribution determines the tax consequence
  - Wages,
  - Fringe benefits,
  - Dividends and return of capital,
  - Loans,
  - Rent payments or royalties
  - Liquidating distributions

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Excessive Compensation

- In many situations double taxation of corporate dividends may be more punishing than paying added employment taxes
- So, some entrepreneurs try to increase their wages to very high levels
- The IRS frowns upon "excessive wages" paid from a C-corporation
- The IRS can reclassify ultra-high salaries as dividends

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Sale of a C Corporation

Asset Sale:

- The assets sold are compared to their depreciated basis
- Difference is treated as ordinary income or loss to the C corp
- Any gain on sale of goodwill is also treated as ordinary income
- Distributions of the remaining funds to the shareholders taxed a second time at their long-term capital gains rate

Stock Sale:

- The stock is sold and there is no tax to the corporation
- Sales proceeds to the shareholders are taxed as capital gain (or loss)to the extent they exceed the basis in the stock
- Most buyers resist a stock sale

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Qualified Small Business Stock (QSBS) – C Corporation's ONLY

OLD LAW:

- Under IRC §1202, noncorporate taxpayers may exclude gain on the sale of qualified small business stock (QSBS) held for over five years.
- The exclusion is limited to the greater of $10 million ($5 million if married filing separately), reduced by prior §1202 exclusions for that corporation's stock, or 10 times the taxpayer's aggregate adjusted basis in the QSBS sold during the year.
- To qualify, the issuing corporation's total gross assets must not have exceeded $50 million at any time before or immediately after the stock issuance

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Qualified Small Business Stock (QSBS) – C Corporation's ONLY

NEW LAW (OBBBA):

General rule is still in effect, but a new rule for QSBS acquired after 7/4/2025 is in effect:

- up to 50% is excluded if held for over 3 years
- up to 75% is excluded if held for over 4 years
- up to 100% is excluded if held for over 5 years.

For QSBS acquired after 7/4/2025, the dollar limit per issuer is increased to $15,000,000 (or 10 times the aggregate adjusted base). This $15M is subject to inflation adjustments.

If a taxpayer should reach the maximum limit, then any future inflation adjustments will not increase that taxpayer's available limit. The gross asset limitation is increased to $75,000,000, which is subject to inflation adjustments.

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Liquidation of a C Corporation

At Corporate Level:

- The FMV of assets distributed are compared to their depreciated basis
- Difference is treated as ordinary income or loss to the C corp as if they had been sold
- Any value of goodwill is also treated as ordinary income

At Stockholder Level:

- The FMV of all assets received are considered to be the sales proceeds to the shareholders
- Gains (or losses) to the shareholders are taxed as capital gain (or loss) to the extent FMV of assets received exceed the basis in the stock
- The result is double taxation just as if the assets were sold and cash distributed to shareholders

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S Corporations

- Generally S corporations do not pay tax
- Profits, losses, and other items pass through to shareholders (K-1)
- Corporations become S corporations by filing Form 2553
- Every shareholder must sign Form 2553
- No more than 100 shareholders permitted
- All shareholders must be US citizens or residents
- Stockholders must receive reasonable compensation

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S Corporations – Advantages

- Single level tax
- Profits in excess of compensation are not subject to self-employment tax providing shareholders receive reasonable compensation
- Distributions are tax free as long as there is stock basis
- Capital gains maintain their character when passed out to the shareholders
- 199A – QBID

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S Corporations – Disadvantages

- No more than 100 shareholders
- Corporations and partnerships may not be shareholders
- Only one class of stock permitted
- Many of the fringe benefits for shareholders are includable as taxable compensation
- Must generally use the calendar year
- Less flexible than partnerships, as special allocations of income, loss and distributions are not allowed
- Debt incurred by the corporation (even if guaranteed by the shareholder) does not create basis
- May be subject to the Built-in Gain tax
- May be subject to tax on excess net passive income

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Making the S Election

- All corporations start out as C corporations
- Filing the S Election on Form 2553:
  - Once made, the S election remains in effect until it is voluntarily or involuntarily terminated
  - If made on or before the 15th day of the 3rd month of the taxable year, the election can be retroactive to the first day of the year, providing the corporation was eligible to elect S corporation status from the first day of the year
  - 100% Shareholders consent required
  - LLC may file Form 2553 electing to be taxed as an S corporation

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Invalid, Late, or Nonexistent Elections

- Previously, if an election was invalid, late filed or non-filed the IRS had no authority to grant S corporation status retroactively.
- Now a corporation will be treated as an S corporation if the following conditions are met:
  - IRS determines the circumstances resulting in the invalidity were inadvertent
  - Reasonable cause for failure to file on time
  - Within a reasonable period of time after discovering the circumstances, steps are taken to qualify the corporation or to get the necessary shareholder consents
  - The corporation and each shareholder agree to adjustments, which result from treating the corporation as an S corporation
- ***NEW – Revenue Procedure 2013-30.***

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Health Insurance Premiums

- The S corporation can deduct the premiums
- For a greater than 2% shareholder health insurance premiums must be included in Box 1 of Form W-2
- It is subject to income tax but not FICA and M 'care tax
- The shareholder then takes a deduction as an adjustment to income

NOTE: Refer to Notices 2013-54 and 2015-17 for application of the ACA provisions as it pertains to >2% S/H's in an S corporation.

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Basis in Stock

It is necessary to track basis in stock for the following reasons:

- Distributions in excess of basis create taxable income
- Losses in excess of basis are suspended until basis is restored
- Basis is required to determine gain or loss upon sale of stock in an S corporation

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Form 7203, *S Corporation Shareholder Stock and Debt Basis Limitations*

Form **7203** (Rev. December 2022)
Department of the Treasury
Internal Revenue Service

S Corporation Shareholder Stock and Debt Basis Limitations

Attach to your tax return.
Go to www.irs.gov/Form7203 for instructions and the latest information.

OMB No. 1545-2062
Attachment Sequence No. **203**

Name of shareholder | Identifying number

A Name of S corporation | B Employer identification number

C Stock block (see instructions)
D Check applicable box(es) to indicate how stock was acquired: (1) ☐ Original shareholder (2) ☐ Purchased (3) ☐ Inherited (4) ☐ Gift (5) ☐ Other:
E Check if you have a Regulations section 1.1367-1(g) election in effect during the tax year for this S corporation ☐

Part I Shareholder Stock Basis

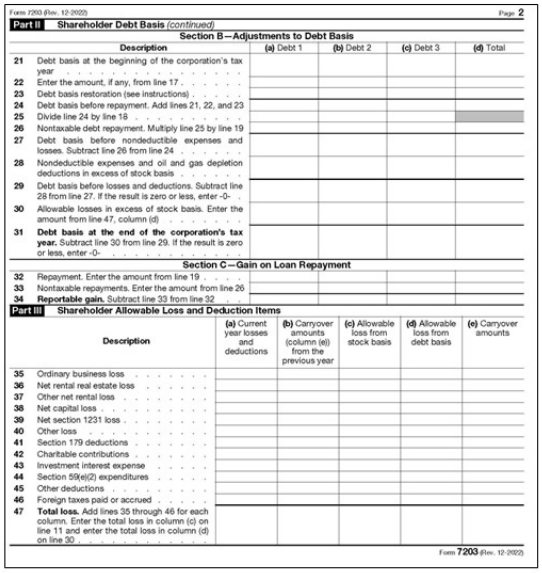
1	Stock basis at the beginning of the corporation's tax year		1
2	Basis from any capital contributions made or additional stock acquired during the tax year		2
3a	Ordinary business income (enter losses in Part II)	3a	
b	Net rental real estate income (enter losses in Part II)	3b	
c	Other net rental income (enter losses in Part II)	3c	
d	Interest income	3d	
e	Ordinary dividends	3e	
f	Royalties	3f	
g	Net capital gains (enter losses in Part II)	3g	
h	Net section 1231 gain (enter losses in Part II)	3h	
i	Other income (enter losses in Part II)	3i	
j	Excess depletion adjustment	3j	
k	Tax-exempt income	3k	
l	Recapture of business credits	3l	
m	Other items that increase stock basis	3m	
4	Add lines 3a through 3m		4
5	Stock basis before distributions. Add lines 1, 2, and 4		5
6	Distributions (excluding dividend distributions)		6
	Note: If line 6 is larger than line 5, subtract line 5 from line 6 and report the result as a capital gain on Form 8949 and Schedule D. See instructions.		
7	Stock basis after distributions. Subtract line 6 from line 5. If the result is zero or less, enter -0-; skip lines 8 through 14, and enter -0- on line 15		7
8a	Nondeductible expenses	8a	
b	Depletion for oil and gas	8b	
c	Business credits (sections 50(c)(1) and (5))	8c	
9	Add lines 8a through 8c		9
10	Stock basis before loss and deduction items. Subtract line 9 from line 7. If the result is zero or less, enter -0-, skip lines 11 through 14, and enter -0- on line 15		10
11	Allowable loss and deduction items. Enter the amount from line 47, column (c)		11
12	Debt basis restoration (see net increase in instructions for line 25)		12
13	Other items that decrease stock basis		13
14	Add lines 11, 12, and 13		14
15	**Stock basis at the end of the corporation's tax year.** Subtract line 14 from line 10. If the result is zero or less, enter -0-		15

Part II Shareholder Debt Basis

Section A—Amount of Debt (If more than three debts, see instructions.)

Description	(a) Debt 1 ☐ Formal note ☐ Open account	(b) Debt 2 ☐ Formal note ☐ Open account	(c) Debt 3 ☐ Formal note ☐ Open account	(d) Total
16 Loan balance at the beginning of the corporation's tax year				
17 Additional loans (see instructions)				
18 Loan balance before repayment. Add lines 16 and 17				
19 Principal portion of debt repayment (this line doesn't include interest)				
20 Loan balance at the end of the corporation's tax year. Subtract line 19 from line 18				

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 37809V Form **7203** (Rev. 12-2022)



Form 7203 (Rev. 12-2022) Page **2**

Part II Shareholder Debt Basis *(continued)*

Section B—Adjustments to Debt Basis

Description	(a) Debt 1	(b) Debt 2	(c) Debt 3	(d) Total
21 Debt basis at the beginning of the corporation's tax year				
22 Enter the amount, if any, from line 17				
23 Debt basis restoration (see instructions)				
24 Debt basis before repayment. Add lines 21, 22, and 23				
25 Divide line 24 by line 18				
26 Nontaxable debt repayment. Multiply line 25 by line 19				
27 Debt basis before nondeductible expenses and losses. Subtract line 26 from line 24				
28 Nondeductible expenses and oil and gas depletion deductions in excess of stock basis				
29 Debt basis before losses and deductions. Subtract line 28 from line 27. If the result is zero or less, enter -0-				
30 Allowable losses in excess of stock basis. Enter the amount from line 47, column (d)				
31 **Debt basis at the end of the corporation's tax year.** Subtract line 30 from line 29. If the result is zero or less, enter -0-				

Section C—Gain on Loan Repayment

32 Repayment. Enter the amount from line 19				
33 Nontaxable repayments. Enter the amount from line 26				
34 **Reportable gain.** Subtract line 33 from line 32				

Part III Shareholder Allowable Loss and Deduction Items

Description	(a) Current year losses and deductions	(b) Carryover amounts (column (a)) from the previous year	(c) Allowable loss from stock basis	(d) Allowable loss from debt basis	(e) Carryover amounts
35 Ordinary business loss					
36 Net rental real estate loss					
37 Other net rental loss					
38 Net capital loss					
39 Net section 1231 loss					
40 Other loss					
41 Section 179 deductions					
42 Charitable contributions					
43 Investment interest expense					
44 Section 59(e)(2) expenditures					
45 Other deductions					
46 Foreign taxes paid or accrued					
47 **Total loss.** Add lines 35 through 46 for each column. Enter the total loss in column (c) on line 11 and enter the total loss in column (d) on line 30					

Form **7203** (Rev. 12-2022)

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Form 7203, *S Corporation Shareholder Stock and Debt Basis Limitations*

- IRC Sec. 1366 determines the shareholder's tax liability from an S corporation.
- IRC Sec. 1367 details the adjustments to basis including the increase and decrease in basis, income items included in basis, the basis of indebtedness, and the basis of inherited stock.
- Shareholders will use **Form 7203** to calculate their stock and debt basis, ensuring the losses and deductions are accurately claimed.

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Form 7203, *S Corporation Shareholder Stock and Debt Basis Limitations*

Schedule E (Form 1040) 2020 Attachment Sequence No. **13** Page **2**

Name(s) shown on return. Do not enter name and social security number if shown on other side. | **Your social security number**

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II **Income or Loss From Partnerships and S Corporations** – **Note:** If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you **must** check the box in column **(e)** on line 28 and attach the required basis computation. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column **(f)** on line 28 and attach **Form 6198.** See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section . . . . . ☐ **Yes** ☐ **No**

28	**(a)** Name	**(b)** Enter **P** for partnership; **S** for S corporation	**(c)** Check if foreign partnership	**(d)** Employer identification number	**(e)** Check if basis computation is required	**(f)** Check if any amount is not at risk
A			☐		☐	☐
B			☐		☐	☐
C			☐		☐	☐
D			☐		☐	☐

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Annual Basis Adjustments – Order of Basis Adjustments

- Initial or beginning basis
- Increase for additional capital contributions
- Increase for loans made directly to corporation
- Increased for all income items
- Decreased for distributions
- Decreased for nondeductible expenses
- Decreased for all other loss items

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Basis From Debt

Losses and deductions can apply against debt basis:

- For loans made directly to the corporation by the shareholder
- Loan guarantees and other arrangements do not provide debt basis
- Repayment of debt used to deduct losses will result in income

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Sale of an S Corporation

Asset Sale:

- The assets sold are compared to their depreciated basis
- Gains or losses flow out to the shareholders on the K1
- Capital gain maintains its character
- Distributions of the remaining funds to the shareholders generally are not taxed to the shareholders since they should have basis
- Unlike a C corporation this does not result in double taxation

Stock Sale:

- The stock is sold and there is no tax to the corporation
- Sales proceeds to the shareholders are taxed as capital gain to the extent they exceed the basis in the stock
- Most buyers resist a stock sale

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Liquidation of an S Corporation

At Corporate Level:

- The FMV of assets distributed are compared to their depreciated basis
- Difference is treated as gain or loss to the corp as if they had been sold
- Gain or loss flows out to the shareholders and maintains its character

At Stockholder Level:

- The FMV of all assets received are considered to be the sales proceeds to the shareholders
- Sales proceeds to the shareholders are taxed as capital gain to the extent they exceed the basis in the stock
- It is unlikely that there will be a gain at the shareholder level
- The result is single taxation just as if the assets were sold and cash distributed to shareholders

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Partnerships

- The following are all variations of partnerships (they all file Form 1065):
- General partnership (no limited liability)
- Limited Partnership
- Limited Liability Partnership
- Limited Liability Company (More than one member)

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Partnerships – Advantages & Disadvantages

Advantages:

- Greater flexibility with allocating gains, losses or distributions
- Fewer formalities
- Generally, no tax on distributions or upon liquidation
- Only one level of tax
- Basis is increased by partners share of liabilities
- No limit on number of owners
- 199A – QBID

Disadvantages:

- May be complicated to deal with

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Partnership Agreements

Written agreements are not required but recommended for general partnerships

Required for special allocations

Operating agreement generally required for LLCs

Agreements would include following:

- Percentage ownership
- Compensation
- Amount and timing of distributions
- Fringe benefits
- Proceeds on liquidation
- Expelling and admitting of partners

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Limited Liability Companies

- LLCs may be taxed as follows:
  - Taxed as if it were the same entity as its owner (single members only)
  - Taxed as a partnership (default)
  - Taxed as a corporation (election required)
- If it is treated as a corporation, it can operate as a C corporation or elect S status, if eligible.
- Owners have limited personal liability for business debts even if they participate in management.

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Check-the-Box Election

- Default classification for taxing purposes
  - Single-member LLC is disregarded as an entity
    - Income reported on Schedule C or E (if rental) just as though a sole proprietorship existed
  - An LLC with two or more members will automatically be taxed as a partnership
- Eligible entity may elect to change its classification
  - Taxed as a corporation
    - Default C corp
    - File 2553 to be an S corp
  - Checking the Box on Form 8832, Entity Classification Election

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LLC Member Self-Employment Tax

- Uncertainty still remains as to whether members are subject to self-employment (SE) tax on their earnings
  - 1994 Proposed Regulation
  - 1997 Proposed Regulations Subject to SE tax if the member
    - Guarantees liabilities
    - Has authority to make contracts
    - Participates more than 500 hours
  - Consider guaranteed payments to set amount subject to SE tax
  - Single Member LLCs subject to SE tax

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COURT CASE: Soroban Capital Partners LP v. Commissioner

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Self Employment – General Rule

- Net income from any **trade or business** (including pass-throughs)
- General partners must include their share of the partnership's **trade or business** activity as self-employment income or loss
- §1402(a)(13) provides an exception for limited partners:
- Limited partners do not have to include their share of the partnership's **trade or business** activity as self-employment income or loss

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Guaranteed Payments – SE Taxes

- Reg §1.1402(a)-1(b) – The general rule is that a guaranteed payment to **general partners** are taxed as self-employment income if the partnership is engaged in a trade or business
- Determining the existence of a trade or business is dependent on a facts and circumstances approach
- **Limited Partner's** guaranteed payments for the use of capital are **not** subject to self-employment tax

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Soroban Capital Partners LP v. Commissioner

Case background:

- Soroban Capital Partners LP is a limited partnership
- The partnership made guaranteed payments to its limited partners (along with the limited partners' share of ordinary income)
- The partnership **included** the guaranteed payments in the limited partners' self-employment income
- The partnership **did not** characterize the limited partners' ordinary income as self-employment income since they were limited partners
- Tax Court determined that ordinary business income from limited partners "in name only" is **not** excluded from self-employment taxes
- This is the first time a Tax Court has addressed this issue
- Determination held on November 28, 2023

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Soroban Capital Partners LP v. Commissioner

Key Takeaways

It is not enough to rely on the definition of "limited partner" in the lawbooks of the state where the entity was created.

To be exempt from self-employment taxation on limited partner income, one must actually function as a limited partner (for example, an investor).

The true facts and circumstances, regardless of the state-defined title, govern the applicability of, or exemption from, self-employment taxation.

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Form 7217

Purpose of Form 7217

Filed by any partner receiving a distribution of property from a partnership in a non-liquidating or liquidating distribution to report the basis of the distributed property, including any basis adjustment to such property as required by section 732(a)(2) or (b).

Who Must File

- File with your annual tax return a separate Form 7217 for each date during the tax year that you actually (and not constructively) received distributed property subject to section 732.
- If you received distributed on different days, even if part of the same transaction, file a separate Form 7217 for each date that you received the properties.
- Do not file Form 7217 if the distribution consisted only of money or marketable securities treated as money.
- Do not file Form 7217 for payments to you for services other than in your capacity as a partner under section 707(a)(1) or for transfers that are treated as disguised sales under section 707(a)(2)(B).

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Form 7217, *Partner's Report of Property Distributed by a Partnership*

Form **7217** (December 2024)
Department of the Treasury Internal Revenue Service

Partner's Report of Property Distributed by a Partnership

Attach to your tax return.
Go to *www.irs.gov/Form7217* for instructions and the latest information.

OMB No. 1545-0123
Attachment Sequence No. **217**

Partner's name	Partner's TIN
Distributing partnership's name	Distributing partnership's EIN
Date property was distributed to partner	

Part I **Aggregate Basis of Distributed Property on Distribution Date.** File a separate form for each date a partner received distributed property.

1	Was this distribution in complete liquidation of the partner's interest in the partnership?	☐ Yes ☐ No
2	Was any part of the distribution treated as a sale or exchange under section 751(b)?	☐ Yes ☐ No
3	Partnership's aggregate basis in distributed property (taking into account any basis adjustments under section 732(d), 734(b), or 743(b)) immediately before the distribution. This line should equal the total of Part II, line B, column (b)	$
4	Adjusted basis of the partner's interest in the partnership immediately before the distribution	$
5a	Cash received in the distribution $	
b	Fair market value of marketable securities (as defined in section 731(c)) received in the distribution $	
c	Add lines 5a and 5b	$
6	Enter the smaller of line 4 or line 5c	$
7	Gain recognized. Subtract line 6 from line 5c. If zero, enter -0- and go to line 9	$
8	Is U.S. tax required to be paid on the gain entered on line 7?	☐ Yes ☐ No
9	Partner's basis in partnership interest reduced by cash received in the distribution. Subtract line 5a from line 4. If zero or less, enter -0-. See instructions if you recognized gain under section 737 as a result of the distribution	$
10	Aggregate basis to be allocated to the distributed property. For a non-liquidating distribution, enter the smaller of line 3 or line 9. For a liquidating distribution, enter the amount from line 9. Line 10 should equal the total of Part II, line B, column (e)	$

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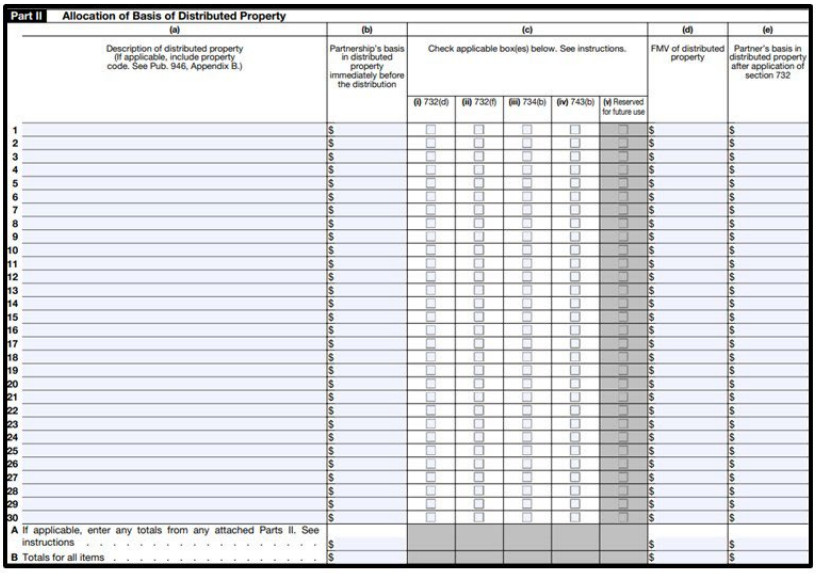
Form 7217, *Partner's Report of Property Distributed by a Partnership*



Part II Allocation of Basis of Distributed Property

	(a) Description of distributed property (If applicable, include property code. See Pub. 946, Appendix B.)	(b) Partnership's basis in distributed property immediately before the distribution	(c) Check applicable box(es) below. See instructions. (i) 732(d)	(ii) 732(f)	(iii) 734(b)	(iv) 743(b)	(v) Reserved for future use	(d) FMV of distributed property	(e) Partner's basis in distributed property after application of section 732
1		$						$	$
2		$						$	$
3		$						$	$
4		$						$	$
5		$						$	$
6		$						$	$
7		$						$	$
8		$						$	$
9		$						$	$
10		$						$	$
11		$						$	$
12		$						$	$
13		$						$	$
14		$						$	$
15		$						$	$
16		$						$	$
17		$						$	$
18		$						$	$
19		$						$	$
20		$						$	$
21		$						$	$
22		$						$	$
23		$						$	$
24		$						$	$
25		$						$	$
26		$						$	$
27		$						$	$
28		$						$	$
29		$						$	$
30		$						$	$
A	If applicable, enter any totals from any attached Parts II. See instructions	$						$	$
B	Totals for all items	$						$	$

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Tax Planning for Entities

- Consider Single Member LLC to provide limited liability to sole proprietor
- Consider S corporation to manage SE Tax
- Consider C corporation to take advantage of exclusion of gain on sale of qualified small business stock
- Consider S corporation to own the business but LLC to own real estate
- Consider making S election 5 years prior to selling appreciated assets
- Consider multi member LLC for short term ventures
- Consider pension plans and fringe benefits

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Pension and Profit-Sharing Plans

- Employers receive current tax deductions for contributions made to retirement plans
- Employees are not currently taxed on contributions made on their behalf
- Primary income tax advantage available from qualified plans for employees is tax deferral
- Income from a plan's assets accumulates tax deferred until it is distributed

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Small Business Retirement Planning

- Employers incur plan costs for establishing qualified plans, as well as for ongoing administration, operation, and compliance
- Credit for start-up costs
- Fiduciary responsibilities
- Discrimination and top-heavy concerns

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Fringe Benefits

- Nontaxable fringe benefits are plans that offer a tax deduction to the employer and tax-free benefits to the employee
- Fringe benefits are taxable to employees unless specifically exempted by another code section
- Special rules govern owner-employees, highly compensated, or key employees
- Most true fringe benefit plans are now excluded from the requirement to file Form 5500

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Fringe Benefits – Sole Proprietors

- Most fringe benefits for owners are not deductible on Schedule C
- No deduction on Schedule C for health insurance
- Instead deduct 100% as an adjustment to income
- A sole proprietorship can deduct premiums for coverage of the sole proprietor's spouse or dependent as long as the spouse or dependent is a bona fide employee of the sole proprietorship
- The policy may be in the name of the business or the individual

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Fringe Benefits – C Corporations

- C corporations receive complete deductibility, without taxable income to the employee shareholders, for most fringe benefits
- IRS examinations are focusing on taxable fringe benefits
- However, most benefits may not be offered on a discriminatory basis

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Fringe Benefits – S Corporations

- Although many of the fringe benefits discussed below are deductible on the S corporation's tax return, most must be included in compensation for shareholder-employees who own more than 2% of the corporate stock
- Taxable benefits should be included as wages on Form W-2
- The amounts added in as wages for accident and health insurance coverage are generally not subject to FICA or Medicare tax
- Other taxable benefits are subject to payroll taxes

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Fringe Benefits – More-than-2%-Owner

Benefits provided to a >2% shareholder who is **not** an employee, **are not deductible** on the Form 1120S, and are treated as distributions to the affected non-employee shareholders

These items must be separately stated on the Schedule K-1:

- Expenses for production of income (Schedule A—miscellaneous itemized deductions)
- Medical expenses
- Taxes and interest (Schedule A items)
- IRA contributions

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Fringe Benefits – Partnerships and LLCs

- Most fringe benefits for partners are treated as guaranteed payments to the individual partner (or member), and are, therefore, subject to self-employment tax
- Partners are allowed to take the self-employed health insurance deduction if the policy is in the name of the partnership, subject to meeting the other qualification requirements

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Fringe Benefits

- IRC Sec. 79 group term life insurance
- IRC Sec. 106 health insurance benefits
- IRC Sec. 119 meals and lodging benefits
- IRC Sec. 125 cafeteria plans
- IRC Sec. 127 qualified educational assistance program
- IRC Sec. 129 dependent care assistance programs
- Employer-provided vehicles
- Employer-provided cell phones – no longer listed property

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Fringe Benefits – IRC Sec. 132 Fringe Benefits

- No-additional-cost services
- Qualified employee discounts
- Working-condition fringe benefits
- On-premise athletic facilities
- *De minimis* fringes
- Qualified transportation fringe benefits
- Qualified moving expense reimbursements
- Qualified retirement planning services

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Fringe Benefits – Employer-Provided Vehicles

- Determining the value of personal use. As an alternative to valuing the employee's personal use of autos at FMV, three special valuation methods are provided in Reg. 1.61-21:
  - The annual lease value method
    - Vehicle cents per mile method
    - Commuting valuation method
- Employer-provided cell phones – Not considered listed property

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Learning Objectives

Participants should now be able to—

- Identify the importance of choice of entity
- Explain the advantages and disadvantages of each of the following and related tax planning opportunities:
  - Sole Proprietorships (including single member LLCs)
  - C Corporations
  - Pass-through entities, including:
    - S Corporations
    - Partnerships (including multi-member LLCs)
- Evaluate and describe owner compensation and exit strategies

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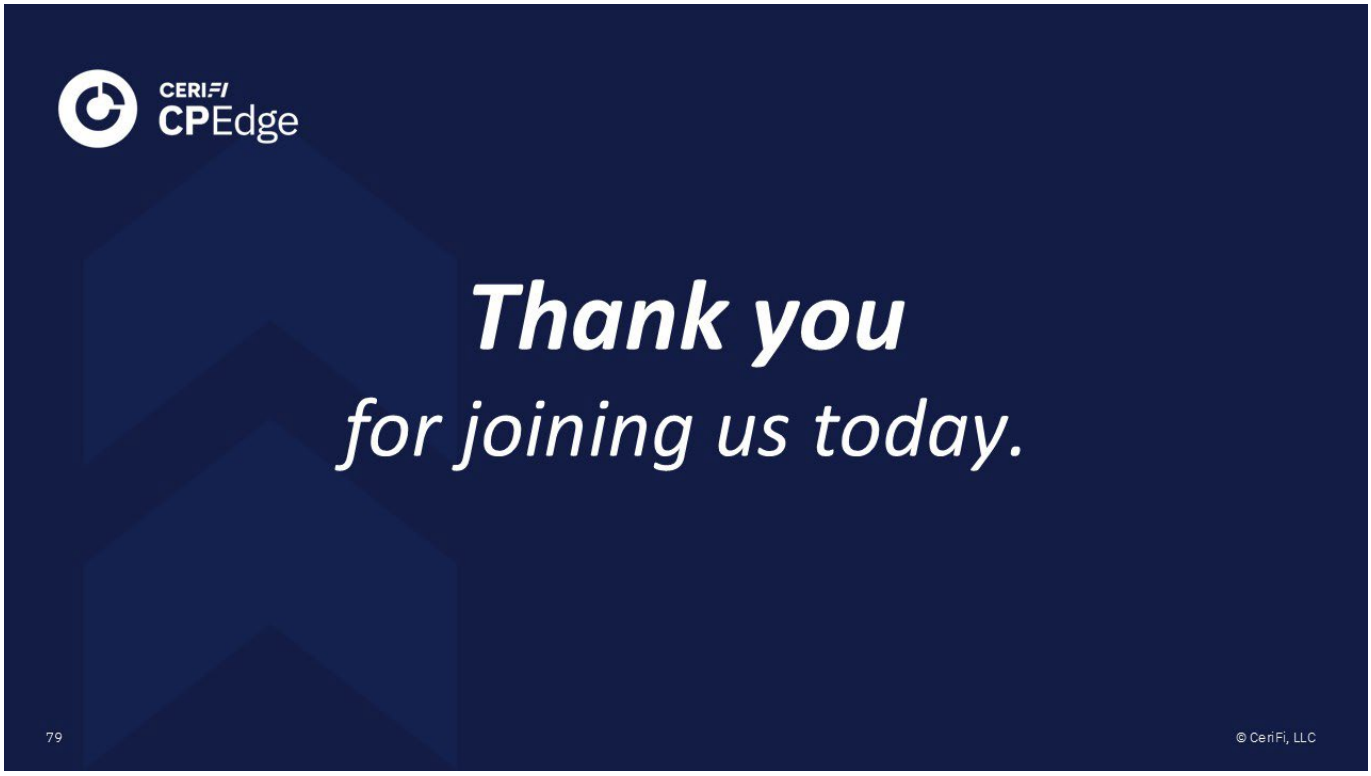

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A. Discussion Questions

1. Why is “begin with the end in mind” critical when advising a small business on choice of entity?

2. Discuss tax planning considerations around self-employment tax and compensation planning for small businesses.

3. How do depreciation elections (Section 179 and bonus depreciation) influence small business tax planning, and why must state conformity be considered?

B. Suggested Answers to Discussion Questions

1. Why is "begin with the end in mind" critical when advising a small business on choice of entity?

Entity selection should be made with the end goal of the business in mind because the exit strategy often determines the most favorable structure. Many entity choices look attractive during early years when the focus is on minimizing current-year taxes. However, the largest tax consequences frequently occur when the owner exits—through a sale, liquidation, gifting to family, or transferring the business to employees. For example, if the owner expects to sell the business, the structure of the sale becomes central. Sellers generally prefer stock sales because stock is typically taxed at capital gains rates and can reduce exposure to entity-level tax. Buyers often prefer asset purchases because they can receive a step-up in basis and avoid assuming unknown liabilities. If the entity is not aligned with these realities, the owner may face double taxation, unexpected gain recognition on distributions, or reduced negotiating leverage. In addition, businesses evolve: they may add owners, take on debt, expand to new states, or shift operations. A structure that works at formation may become inefficient later. Therefore, entity choice should be viewed as a strategic decision requiring periodic review rather than a one-time compliance decision.

2. Discuss tax planning considerations around self-employment tax and compensation planning for small businesses.

Self-employment tax is often one of the most significant costs for small business owners and can materially affect entity choice. Sole proprietors and many partners generally pay self-employment tax on net earnings from the business, which can produce substantial additional tax beyond income tax. Planning opportunities exist depending on entity type. S corporations are commonly used because they allow owners who provide services to receive compensation through W-2 wages and also receive shareholder distributions. When wages are set at a reasonable level, remaining profit distributed as dividends/distributions may avoid self-employment tax. However, this planning requires careful compliance because the IRS scrutinizes cases where shareholder-employee compensation is artificially low. Partnerships and LLCs present a different challenge. Partners may receive guaranteed payments for services, which are typically subject to self-employment tax, and certain partners may attempt to claim limited partner treatment. Recent enforcement trends and litigation highlight that exemption from self-employment tax depends on the partner's actual role and participation rather than title alone. The best planning outcome balances tax savings with defensible compensation practices, documentation, and a structure consistent with business operations and ownership economics.

3. How do depreciation elections (Section 179 and bonus depreciation) influence small business tax planning, and why must state conformity be considered?

Depreciation elections can significantly impact taxable income timing and cash flow. Section 179 allows immediate expensing of qualifying property up to annual thresholds, which is useful for businesses purchasing equipment, vehicles, or other eligible assets. Bonus depreciation under Section 168(k) may allow an even larger immediate deduction, depending on applicable law, placed-in-service dates, and asset type. Choosing between these methods is not simply a technical decision; it affects estimated tax payments, taxable income management, and long-term planning. For example, accelerating depreciation can reduce current-year tax but may increase taxable income in later years due to lower depreciation deductions. The decision also affects business valuation and financial reporting considerations. A critical planning element is state conformity. Many states do not follow federal depreciation rules in whole or in part, which can create mismatches between federal taxable income and state taxable income. As a result, an approach that maximizes federal savings may increase state tax or create complex addback and adjustment requirements. Therefore, depreciation planning should be done with a federal-and-state integrated approach, considering where the business files returns and how those states treat Section 179 and bonus depreciation.

PART 2. CHARITABLE CONTRIBUTIONS: 2026 AND BEYOND

Charitable Contributions

In this webinar, we examine major charitable contribution deduction changes effective in 2026 under the One Big Beautiful Bill Act. Participants will learn how the new 0.5% floor affects individuals who itemize deductions, how the new 1% floor applies to C corporations, and how the reinstated below-the-line deduction benefits standard deduction taxpayers. We also discuss planning strategies—such as timing, bunching, and traditional gifting tools—to maximize tax efficiency.

Laurie A. Stillwell

Welcome, ladies and gentlemen. We're going to talk and learn how to apply the 0.5%, that's individuals, and the 1%, that's C-Corporation floors on charitable contribution deductions. And also, as hopefully the title indicated, formulate tax planning recommendations, both for individual and C-Corporation taxpayers.

This was a pretty meaty piece of legislation. I think many of us have, like we spent the last handful or so of months getting more familiar with what I typically will call it the Reconciliation Act, OBBBA, the One Big Beautiful Bill Act. Lots of provisions in here potentially impacting charitable contribution deductions. Please note, we're going to see these five on the screen. They each have a section number.

Those are not, of course, internal revenue code sections. Those are the sections of the legislation itself. Now, the way that we're going to move through this conversation is largely by taking a deeper dive into what these changes are, who they impact, when they kick in. And then what we'll do is we'll move through the planning conversation. So I want to make sure first and foremost, we have an understanding of really what's going to be new and different although we will spend a little bit of time certainly as part of our planning conversation, talking about what I will refer to as traditional planning strategies.

Those are still very much valuable in 2026 and beyond, but we're going to look at the partial deduction for charitable contributions of our standard deduction taxpayers. Those are our non-itemizing taxpayers. Our itemizing taxpayers beginning in calendar year 2026 will face 0.5 % floor on the deduction of deductible contributions. In other words, a floor that pertains to our schedule A charitable gift deductions.

C corporations beginning in 2026 will have something like kind, but it's doubled. Of course, there is no adjusted gross income when we talk about a C corporation. So there, in addition to the 10% cap, we're also going to have a new 1% floor.

The overall limitation under section 70111 for our highest income 1040 taxpayers, their overall deduction on schedule A. And of course, anytime we're talking about an overall deduction, again, just for our highest income taxpayers on schedule A, that's going to have a direct negative impact on their overall deduction for charitable gifts.

We won't spend a lot of time on section 70411. That is out there in the future, tax credit for contributions to certain, what are called scholarship granting organizations. We're just starting to see guidance out of treasury that speak to that. But that guidance is at least to date, more structured along the lines of what states need to do and what organizations need to do to be able to identify as an organization and such. And you're going to see as we move through again, a little bit more often in the future than these other provisions, which we may wrangle with to a certain degree or did back in 2025 from a planning perspective and certainly need to be aware of for the 2026 tax year.

Let's start with section again of the bill 70424. This is a permanent and expanded reinstatement of a partial deduction for our standard deduction taxpayers. Now, when you see this word reinstatement, this really goes back to a couple of the pandemic tax years, 2020 and 2021. Do you recall, folks, that during one or both of those years, you may have had standard deduction taxpayers that made gifts and we're able to claim a very modest, the amounts differed between the two tax years and based on filing status, but a modest deduction reducing between AGI and taxable income, a below the line deduction.

This is essentially that revisited with higher dollar amounts. It is a permanent change. And what I mean by that, of course, we know tax law can certainly always change when the composition of Congress sitting in the White House when these things change over the years. But we use the word permanent here because there is currently no end date. So this is unless and until we have congressional action to the contrary, this will stay in the tax law.

It is a below the line deduction only for taxpayers that are standard deduction taxpayers. This is not a deduction that can also be claimed by taxpayers that are Schedule A taxpayers. So only standard deduction. You will not see it reflected on 2025 returns, but you will see it beginning tax year 2026 and beyond. These are going to be your dollar amounts. So we have $1,000 for single taxpayers, $2,000 for married filing joint taxpayers.

Now we're going to talk as part of the planning concept a bit more, but I'm just going to say they do need to still be charitable gifts and they need to fit into a relatively, what I will say, rigorous or restricted parameters. First of all, they are only cash contributions. That does not necessarily mean, ladies and gentlemen, a stack of 20s. In fact, more times than not, that's not at all what it means. But what that does mean is it's a money gift. It is not clothing. It is not household securities. It is not stock. These are money gifts, cash, check, credit card.

And it needs to be to a charitable organization generally described under code 170(b). However, there are two, just like there was back in 2020 and 2021, there are two restrictions. The contributions cannot be to what are called supporting organizations described in section 509(a)3. So there we want to give the gift to the hospital, not to the hospital supporting foundation. And the money cannot either establish or additionally fund what is called a DAF, a donor advice fund.

So they need to be good gifts and we'll talk a little bit more about that as we move through. They need to be money gifts, not stuff of any kind. And beginning in 2026, we need to keep in mind that supporting organization gifts or DAF gifts will not qualify.

Section 70425, this is an individual provision only. First thing that it does is good news for taxpayers.

You may recall that under the Tax Cuts and Jobs Act, the TCJA, for the period 2018 through 2025, money gifts to publicly supported charities received a boost in the AGI contribution limit that applied to said gifts for current deductibility purposes from 50% to 60%. That is now a permanent provision. So that's very generous for our taxpayers, either with more modest amounts of AGI and/or those with significant donative intent. That is now permanent. That's the good news in Section 70425.

But I have to tell you that there's some downsides. This is going to be something that we're going to need to begin from a planning perspective to deal with as we speak in 2026, this is a Schedule A individual 0.5% floor on charitable contributions for our itemizing taxpayers.

I will tell you that it may or may not be congressional intent, but it also appears that this floor will apply in the fiduciary or Form 1041 arena. We're a bit murky when you look at the language.

The editorial by and large has come down on the side of this is a floor that will impact both 1040 and 1041 taxpayers. But again, as to the latter, it's unknown if congressional intent is such that this would be a limitation for our fiduciary form 1041 taxpayers. So that's something we're kind of keeping our eye on to see if we see any type of clarification or potentially additional legislation in the form of a clarification or a technical correction.

So that's a bit of a stay tuned to see where we go there. But we know it impacts our 1040 taxpayers, 1-1-2026.

Under this new floor, the 1040 taxpayers contributions are allowable only for the portion that the aggregate contributions exceed 0.5% because there's your floor of what the code calls the taxpayer's contribution base for the tax year at issue.

Contribution base has a more technical definition. It's AGI computed without regard to any net operating loss carry forward or rather carry back to the taxable year. Well, that's essentially moot now. So when we talk about our contribution base and here the 0.5%, we're talking about a taxpayer's adjusted gross income.

In the case of a taxable year in which there is a quote, excess contribution, the 0.5% can actually be carried forward to the succeeding tax year. However, in a year where we don't have an excess contribution, the taxpayer loses the 0.5% floor and it is gone, it expires, it doesn't carry forward.

The way that I think about this is we either have everything carry forward or nothing. Let me just, I will give you more examples as we move through, but just a quick verbal one here. Let's say that in 2026, we have a taxpayer that makes a gift subject to the 0.5% floor as a Schedule A taxpayer but it's a relatively modest gift and they do not end up with what's called an excess contribution. What I mean by that is they're somewhat modest gift did not exceed whatever the appropriate modified or adjusted gross income threshold was, be it based on what they gave and who they gave it to, 20%, 30%, 50%, 60 % or even for some qualified conservation easement gifts by farmers and ranchers 100%.

Since they didn't tip over any of those quote unquote normal AGI thresholds, there's nothing to carry forward due to an excess contribution and they lose the 0.5%. But if they were to make, let's say a more robust gift such that it exceeded based on what they gave and who they gave it to the 20, the 30, the 50, the 60, the 100% of their AGI contribution base, then that excess contribution and the 0.5% floor carry forward.

And that will play a big role in how we plan our gifts in 2026 and beyond. The law also changed beginning in 2026, the order of disallowance. So we're going to lose first and then second and then third, fourth, fifth, and then last.

So beginning in 2026, the first thing in terms of an order of disallowance that will be impacted are those 20% gifts. Capital gain property contributed, let's say to a private non-operating foundation. Second ,will be 30% gifts here. That's appreciated property that has contributed to public charity. So that may be appreciated stock. 30% cash or non-appreciated property contributed to non-public charities. So again, perhaps a private non-operating foundation as an example, 50% or for ranchers and farmers, 100%. We then tap into disallowance of qualified conservation easement gifts. Our last two rows, non-appreciated property contributed to public charities.

And then this is the rate that has now been made permanent also under section 70425. That is the 60% contribution limit that applies to money gifts to public charities.

We have a like provision. It certainly couldn't be called identical because we just finished talking about 1040, 1041 taxpayers. Now we have to talk about C corporations. We don't bring in S corporations here and we don't bring in partnerships, nor do we bring in LLCs taxed as either S corporations or partnerships because those entities don't deduct per se charitable gifts, right? They flow out to the owners of that 1120S, they flow out to the owners of that 1065, and then at the owner level, we would apply the appropriate limitation at that taxpayer level.

But C corporations, of course, don't share their deductions as a pass-through entity does.

They, instead, would seek to deduct their charitable contributions on the 1120 itself. For C-Corporation taxable years, maybe calendar, but a lot of our C-Corporation taxpayers have fiscal years. These are taxable years beginning January 1st of 2026 and beyond. For those taxpayers, they're now going to have both a floor and a ceiling.

We've long known the ceiling, 10% of that C corporations taxable income. We don't work with AGI here because we're in the corporate environment. 10% of that C corporations taxable income without of course regard to the charitable contribution deduction. If we gift in excess of that 10 % then it carries forward. Well now tax years 1-1-2026 and thereafter. We also have to apply the floor.

It's not 0.5 % here, it's double. It's 1% of that C-Corporation's taxable income calculated again without regard to the charitable gift. So we have a 1% floor and a 10% ceiling for tax years beginning 1-1-2026 and beyond. Contributions in excess of that 10% limit, no change there.

They can continue to be carried forward to the subsequent five taxable years and are freed up and deducted on what's called the FIFO or first in first out basis. The 1% floor is going to work much as we said in the individual arena. And what I mean by that is if the C corporation makes charitable gifts beginning with the 2026 tax year, but they make a modest amount of gifts such that they are disallowed due to the 1% floor, but do not exceed the 10% limit.

Again, instead of an individual, we have different rates and of course different calculations, taxable income versus AGI, but the rules are like here in that that 1% disallowed amount only carries forward in tax years where we also exceed the 10%. We're either going to carry forward both or we're going to carry forward neither.

Section 70111, this is not specific per se to charitable gifts. However, for tax years 1-1-2026 and beyond, it's absolutely going to impact schedule A taxpayers that are our most high-income taxpayers. We did not receive what I will call a reinstatement of, do you recall this pre-TCJA? We had something called the Pease limitation. The Pease limitation was taken off the table by the TCJA for tax years 2018 through 2025. But prior to the TCJA, especially our highest income taxpayers could lose up to 80% of their overall itemized deductions. This is a bit different.

This is just going to impact taxpayers in the highest ordinary tax bracket of 37%. Now you'll note here impact again on fiduciary taxpayers. It appears that our 1041 fiduciary taxpayers are also going to be impacted by this. But as I mentioned earlier, that may or may not be congressional intent. So, we're keeping an eye out even as we speak for clarification potentially from the Treasury Department IRS or potentially even some type of technical correction if necessary.

But this is only going to impact these folks. Once they have income before we take into account itemized deductions that is subject to the 37% tax bracket, then this limitation is going to apply. The other way to look at that is if you have taxpayers who don't have enough taxable income, let's say for 2026, to reach into the 37% tax bracket, this will not impact them.

The takeaway essentially is this was a revenue raising component of the bill. For our highest income taxpayers, instead of garnering an itemized deduction that saves you 37 cents on the dollar, it will only under the limitation calculation, which we will look at together as we move through, save you one tax rate lower, 35 cents on the dollar. The reason why we're really not going to spend a lot of time here on section 70411 is twofold. We're in the infancy of guidance from Treasury in an IRS, and it's also out there on the calendar quite a bit. This is a brand new code section, code section 25 F codified by the Reconciliation Act titled Qualified Elementary and Secondary Education Scholarships. It creates a new non-refundable income tax credit for an individual that's a U.S. citizen or resident.

Could be up to $1,700, an amount equal to what are called qualified contributions to these scholarship granting organizations. It's not here yet. So, we're not quite ready to define this and plan for it as it doesn't impact taxpayers until 2027.

Just to give you a little bit of feedback, a qualified contribution, it's going to be money, doesn't need to be cash, that's just the word that the code uses. A money contribution made to a co-scholarship granting organization that uses that money, that pool of aggregate funds to fund scholarships for eligible students solely within the confines of, let's say, the state of Massachusetts as an example.

And where we are right now is getting guidance, kind of sifting through from Treasury as to how that's going to happen. How does the state of Massachusetts elect to participate. How do we identify scholarship granting organizations? So again, we're in the infancy. An eligible student will be an individual who's a member of a household with an income for that particular location, not greater than 300% of the area median's gross income. And that eligible individual is eligible to enroll in a public elementary or secondary school.

Let's assume that our taxpayers 2026, but that's when it kicks in, AGI is $100,000. So we have $100,000, that's our contribution base. We have to apply the 0.5% floor. That's $500.

That $500 is not allowed in the current year. The question goes on to ask, can I carry that $500 over? Not if that's the only gift that we made, because here's the thing. We only carry forward when we're carrying forward the floor and an excess contribution. In other words, that same taxpayer would have needed to have made gifts that are quote unquote excess contributions. That means they gave so much away that they exceeded either the 20, the 30, the 50, the 60, or the 100% contribution-based limitation that quote unquote normally applies.

If they made such gifts, then they will carry forward the gift under the normal rules and that 0.5 % gets to tag along and also be carried forward.

[23:10]

But for a lot of our taxpayers, they're just going to lose that $500. They're going to lose that 0.5%. I did begin teaching this title just towards the end of 2025. And we, again, can't go back and reopen calendar year 2025, but one slide and one slide only. One of the things that we were certainly talking with taxpayers prior to December 31st of 2025, was depending on who you are, what your 2025 gifting strategy should be.

So for example, for taxpayers that itemize, we often suggested that they accelerate charitable gifts into 2025 to avoid both the new 2026 .5 % floor and for our higher income taxpayers, the overall limitation on itemized deductions. Conversely, when we spoke with taxpayers that are standard deduction taxpayers, may not have been in the best interest of the charities. And for that, I apologize, but often suggested that they defer their gifts until at least January of 2026, when that below the line deduction of either $1,000 or $2,000, depending on their filing status became available.

And C corporations, again, they have the new floor, the 1%. So again, for tax year 2025, the thinking there was to accelerate the gifts into 2025. But now we're here in 2026. We have to think about based on these new rules, we're going to talk a little bit about what I will call traditional gifting strategies as well. Don't want you to think that we're going to overlook those entirely, but I do want to spend a bit of time here talking about the changes and what that means from a planning perspective.

For 2026 and beyond, let's look first at our non-itemizing individual taxpayers. Certainly, we're never going to tell folks that don't have donated intent that they should make a gift just to garner a tax deduction. But for those taxpayers and to the extent they have donated intent, we want them to be beginning in 2026, funding these money cash contributions. Again, not stuff, to a charitable organization and that excludes, we said, supporting organizations under 509, as well as donor advised funds.

You may have a client that wants to make a gift to a DAF. They would need to be an itemizing taxpayer to garner a benefit there. Ideally, we would maximize those gifts from a tax efficiency standpoint below the line deduction. What that means, below the line, it's not a component of calculating adjusted gross income or AGI.

But, of course, it is a reduction of AGI as we move to taxable income, $2,000 for married filing joint returns. We do need these to be good gifts. This was one of the things that I would say I found a little frustrating about the 2020 and 2021 tax years where we had, albeit at more modest amounts, a similar opportunity for deduction by non-itemizing taxpayers.

I would either have clients or frankly even tax practitioners saying to me, well, you how much can my client just deduct and get away with? Or my client saying to me, well, what's the amount I can just claim? These still need to be good gifts. The rules here are not different in terms of what is, from an overall perspective, a valid deductible charitable contribution.

That means first and foremost, from a planning perspective to protect those deductions, our taxpayers should both obtain and retain documentation required to substantiate the contributions. So that is typically going to, of course, at a minimum include proof of payment. Also, for gifts of $250 or more at any given time, so not in the aggregate, but at any given time, taxpayers also must obtain and retain what they call contemporaneous written acknowledgement of the gift from the charitable organization. So from the United Way or the House of Worship. Without, for these larger gifts, without that contemporaneous written acknowledgement, the taxpayer is simply not able to claim the deduction.

Bunching. This is going to be something that, you know, we may have considered, as I just said, for 2025 planning purposes, for our itemized deduction taxpayers or our C corporation taxpayers, but it's going to continue to be important. We may have taxpayers that, you know, have, I will say, you know, reasonable, you know, amounts of modified or adjusted gross income. And, you know, they give $1,700 a year away to a charity and either not have the donated intent and or the resources to do more than that. And that's fine.

The downside, of course, there will be if they are an itemizing taxpayer, then they will have the 0.5 % floor to wrangle with beginning in 2026. But for taxpayers with the donated intent and the means, be it in the individual sphere or in the C corporation sphere, what we're going to want to try to do is bunch those gifts. Because remember, on the 1040 side, these are what I have been calling your quote, normal AGI limitations. Now we also have the 0.5% floor. Beginning in 2026, we lose that 0.5% unless by making gifts that exceed, depending on what we gave away into whom one of those other AGI limits.

We gave away more than the 20, more than the 30, more than the 50, more than the 60, or for certain qualified conservation, easement gifts more than the 100. So we have an excess contribution because we exceeded one of those five limits. Now we carry not just that forward, but also the amount that would otherwise have been lost at the 0.5 % floor.

Similarly, on the C corporation side to the extent beginning with the 2026 tax year that we give away, we gift within the C corporation an amount or amounts that exceed 10% of the taxable income of that corporation determined without regard to the charitable deduction. Now we're going to carry both forward, the amount over the 10% and the 1%.

Timing is also going to be important, more so for individual taxpayers. We will want to prioritize high dollar value gifts for higher AGI tax years, which will maximize those AGI-based contribution-based limits. And for taxpayers maybe that have fluctuating business income or capital gain years, non-capital gain years, we would like to be able to plan to avoid gifting in tax years where they're going to be in that highest income tax bracket.

Because when they're in that highest income tax bracket beginning in 2026, that's where that overall limitation for our 37% ordinary income bracket taxpayers is going to kick in.

Let's look at a couple of examples here. We're going to start with variation one. And this is specifically an example on the itemized deduction limitation.

Let's assume for 2026, Jusef is single, it’s 2026, and he has AGI of $900,000. So that's his contribution base that we will apply the various percentages to. And let's assume that he has made 60% gifts. These are substantiated money gifts to public charities, and he's given away a substantial amount, $37,500. Well, he's a going to be impacted, of course, by the 0.5% floor. 0.5% times his AGI is $4,500. That $4,500 is a disallowance, which nets him a 2026 Schedule A charitable contribution deduction just on its own merits of $33,000. But he didn't take over the 20 or the 30 or the 50 or the 60 or the 100.

So we don't have an excess contribution carry forward, which means the $4,500 is simply lost. It just expires, does not carry forward. But let's stay with Jusef in variation two, but we're going to knock his AGI down to $100,000 and he's going to make 60% AGI limited gifts of $67,500.

Now he has two limitations that apply. First, since he gave cash away, money away to publicly supported charities, the now permanent 60% AGI limitation will apply, which means he cannot deduct the entire $67,500. He's going to have in the current year a disallowed $7,500 excess contribution and that's step one.

Step two, applying the current 2026 .5 % floor is going to further reduce his 2026 contribution gifts by $500. Same 100% of AGI times the half a percent floor. We started at 67.5, we knocked it down in step one for the overall AGI limitation by $7,500. Now we institute the floor netting Jusef for 2026 itemized deduction on schedule A of $59,500. But remember, we either carry both forward or we carry nothing forward, here, because we have a $7,500 excess contribution. We're also going to carry forward the $500.

Now let's look at Barbara and we're going to talk about the overall limitation on itemized deductions. So we can see how this impacts the charitable contribution component. We're going to assume in 2026, Barbara is single. She has adjusted gross income of $740,000 and taxable income of $712,000 without regard to itemized deductions.

We do know that the 2026 37% bracket for a single taxpayer begins at $640,600. Before we apply the limitations, Barbara has $35,000 in income, state and local income and domestic real property taxes, $7,500 of mortgage interest on $300,000 of qualified acquisition indebtedness and $42,500 in gifts of cash money made to publicly supported charitable organizations, which means the 60% AGI limit will apply.

Got a lot of things going on here now in 2026. We have step one, she's not going to be able to take that $40,000 SALT deduction at her level of what for this purpose would be modified adjusted gross income. Her SALT deduction in 2026 is absolutely the minimum amount of $10,000.

Charitable contributions, step two. Charitable contributions of $42,500 are reduced by the 0.5% floor for a total reduction of $3,700. How did I come to that? That's $740,000 which was for AGI, times the 0.5% floor which is going to net her, at least on schedule A prior to the overall limitation application, a net contribution deduction of $38,800.

And then step three, before we apply the overall deduction on itemized deductions, or rather the overall limitation on itemized deductions, we're starting at $56,300. That's the 10 of SALT. We didn't need to reduce the $7,500.

And then there's the $38,800 that we just calculated for charitable gifts after the 0.5% floor. But at her income level, she has tipped into the 37% bracket. So that means the code section 68, now permanent overall limitation on itemized deductions now applies.

Now the way that this works, okay, I didn't lay out all the law. We wanted to cover it here in the example is that the law says, again, what it's trying to do here for the highest income taxpayers is it's forcing them to reduce the value of their dollar-for-dollar itemized deduction from 37 cents on the dollar to 35 cents on the dollar. And the way that it does this is math. Total itemized deductions for these 37% bracket taxpayers are reduced by whichever one is less what we just calculated with no limitation itemized deductions, or if less, taxable income in excess of the 37% bracket.

Here was our taxable income, again, without regard to itemized deductions, there's where the 37% bracket begins. So that's $71,400. Well, which is less here? Letter A, $56,300. The law says that we need to take that and multiply that times two divided by 37. It's just math again, reducing it from a 37 to a 35% benefit or an overall reduction of $3,043.

Barbara's otherwise allowable itemized deductions are reduced by that amount. So her total schedule A deduction has now been reduced to $57,257.

She did not have an excess contribution. She did not give enough away to go over the 20, the 30, the 50, the 60, or the 100% AGI limitation. So that $3,700 in charitable contribution, it's just lost.

In 2026 and beyond, couple of other things to keep in mind here is, again, we have just very early preliminary guidance on this new credit. This is, as I said, a non-refundable credit could be as much as $1,700 beginning in calendar year 2027. What we have from treasury, and we're not going to go through these in more detail at this juncture.

But what we have here is a recently issued notice. And this essentially is the opening salvo. It says, hey, we're going issue some proposed regs and, public, can you give us some feedback on things such as an annual certification process by the state as to identifying, publishing and such what are called scholarship granting organizations and also revenue procedure 2026-6 which provides the exclusion procedure for a state to make an election to be a covered state. So you can see from those early days, we're not yet into, what form is it going to be and how do we calculate it and how do we apply the necessary overlap between a state granted credit and the federal credit that is going to be well out, I would anticipate on the calendar in 2026.

What is a hundred percent charitable contribution limitation? It's not much what it is. Taxpayers that are, we won't be able to delve too deep into the definition, but essentially farmers and or ranchers that make what are called qualified conservation easement gifts. They get that very, you know, taxpayer advantageous 100% adjusted gross income limitation. But that's obviously a relatively small and very restricted subset of taxpayers. The vast majority of our taxpayers are instead based on what they give away and who they give it to you facing instead the 20, the 30, the 50 or the 60%. And, you know, again, it's not certainly the be all and end all, but I'll remind you that back on slide 10s, we were talking of course about the disallowance rules in 2026 and the ordering that takes place in 2026 and beyond, but it also is just a nice little screenshot of what those gifts by percentage apply to.

Now keep in mind, and this will be really what we'll round out our conversation with, that just because the law has changed in 2025 under the One Big Beautiful Bill Act, that does not necessarily in any way, shape or form take away from what I will call traditional charitable gifting strategies.

So for example, these are, I think underutilized. Now that's an editorial opinion. I certainly talk with my clients about them, but I have found that the number of times I raise it with, let's say a new client, I've certainly had this conversation with tax practitioners that just, one girl's opinion again, just too many times, it's not something that they're familiar with. These are very useful and tax efficient tools. Again, only for older taxpayers that truly have donated intent.

I'm never going to suggest that the taxpayer make a gift simply to garner a charitable contribution deduction. One of the things that I do want to point out is that the QCD rules not in terms of the date and age have not been impacted by the two secure acts. We had the Secure Act 1.0 back in 2019 and 2.0 in 2022. We know in both cases that what is called the applicable age for required minimum distributions went up. It used to be 70 and a half and then for a while it was 72, 73, and it's going to be 75 for some of us folks that are a little younger.

The QCD stayed 70 and a half. That did not change along with the RMD applicable age. So that means a taxpayer today for 2026, that is 70 and a half or older as December 31st to 2026 is eligible to use this planning mechanism.

There are monetary caps. There is a maximum gift of $108,000 that applied to 2025 if both spouses on a joint return. Make eligible QCD transfers, double that to $216,000. But each spouse kept its $108,000. Each spouse that rises to $111,000 for calendar year 2026, make that $222,000 if a married filing joint return, both spouses fund up to their maximum $111,000. We can't share the $222,000 however we would like between the spouses.

That is simply the maximum by adding each spouse's maximum that applies of the $111,000 together. This is a trustee-to-trustee IRA distribution made directly to a qualified 501(c)3 organization. And it can be funded from most IRA accounts, so traditional IRAs. We typically likely wouldn't do this from a Roth because it takes away from the efficiency. want to get rid of this, what would otherwise be a taxable distribution from a rollover IRA, from an inherited IRA, and from what they refer to as inactive SEP IRA accounts. That's not a fully exhaustive list, but it's an illustrative list.

Why is this good? Well, just so many reasons. First of all, if we are older than 70 and a half or we're subject to the old rules because we were 70 and a half before the Secure Acts change the applicable age rules, then when we do charitable contribution distributions, that helps and counts towards our required minimum distribution annual requirement. And then from a tax perspective, it's not includable in our AGI. It will be shown as a growth distribution.

What is that? I think line 4A on our 1040, but not in 4B, which would be taxable. Nor is it deducted on schedule A. Nor would it be deducted in 2026 and beyond as a below the line deduction. So for our itemizing taxpayers, this is especially efficient in 2026 and beyond because it evades the 0.5% that will now apply. And for our higher income taxpayers, it will also evade the overall limitation on gross receipts.

You do have just a heads up a one-time election that will allow a donor taxpayer to make a QCD up to $54,000. That was 2025, $55,000 for calendar year 2026 to what's called a split interest entity. So for example, a charitable remainder trust.

And I will just give you a heads up. It is optional for 2025, but required in 2026 that financial institutions that process these QCDs add a new code. It's code Y down in box seven of that 1099R. Again, it is optional for 2025. So, I can't guarantee that we will see it there, but for 2026 and beyond it's required.

Last couple of things here before we wrap. You can see again for 2025, it is optional. For 2026, it will be required that down in box seven of our 1099R, that's our distribution code, we will have to add these additional code wise along with what I will call the code we would normally use. So for example, let's assume it's a non-inherited, non-beneficiary normal distribution IRA. We would expect to see code 7Y.

Donating appreciated securities. Know, again, this is still good stuff, right? It generates a schedule A charitable contribution deduction.

Generally, election aside equal to the fair market value of the securities. Why is it tax efficient? Well, no one pays tax on that capital gain. That means no, whatever it is, 15 or 20%, no 3.8% net investment income tax. It can assist taxpayers in attaining diversification or portfolio rebalancing. And because we're essentially making such a tax efficient gift, that maximizes the gift to the selected charities. Oftentimes this is done through the use of a donor advice fund. So that's one thing to keep in mind. Now we said donor advice funds, gifts to those will not in 2026 be eligible for the below-the-line deduction, but for our itemizing taxpayers, oftentimes very tax efficient to fund those donor advice funds with appreciated capital gains securities.

You've garnered the deduction upon funding. And then once the securities and the assets are within the DAF, the donor advised fund, you can dole out the dollars over a year or multiple years to the charity or charities of your choice. If we're instead talking about depreciated securities, let's harvest those losses and donate the proceeds from the sale.

For taxpayers that are converting a tax deferred retirement account to a Roth. So we have a, you know, an increase in our taxable income as a result, consider timing our charitable contributions to offset some or all of the income from the conversion.

For our high income, high net worth taxpayers with donative intent, consider using, right, planning strategies, what's called a split interest vehicle. Maybe that's a charitable remainder trust or a charitable lead trust.

And last but not least, business taxpayer opportunities. Donations of apparently wholesome food inventory, whether that's a schedule C, an S corporation, a partnership or C corporation, we essentially can get a donation deduction for up to 15% of against trade or business income where that gift was made from.

Contributions of scientific property used for research. This is really more in the C corporation arena, S corporations, personal holding companies and what are called affiliated service organizations under 414 don't qualify, but enhanced charitable contribution deductions for qualifying gifts of scientific property.

And this is the first place that say we always look, we have a business taxpayer, is it really a charitable gift subject to these potential limitations that we've just completed our discussion of, or could we treat it as a fully deductible 162 advertising, marketing, promotion sponsorship deduction?

All right, folks, we are at the end of our time together.

CERIFI CPEdge

Webinar

Charitable Contributions - 2026 and Beyond

Presented by Laurie A. Stillwell, CPA

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Laurie A. Stillwell, CPA

Laurie A. Stillwell is a CPA licensed in New York. Her firm, Laurie A. Stillwell, CPA, P.C., specializes in working with small businesses, professional practices, and their owners.

In addition to her practice, Laurie teaches continuing professional education seminars and webinars on ethics, business, and individual income tax issues for CeriFi CPEdge. She is the author and editor of several continuing professional education texts and served as technical editor for Thomson Reuters Checkpoint's *1040 Quickfinder* and *Small Business Quickfinder Handbooks.*

Prior to forming her firm in 2001, Laurie spent more than a decade with local and regional accounting firms and specialized in providing tax and accounting services to closely-held businesses. She began her public accounting career with the international firm of Price Waterhouse, in Boston, Massachusetts.

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Learning Objectives

Upon completion of this webinar, participants should be able to—

- Apply the .5% or 1.0% floor on charitable contribution deductions
- Formulate tax planning recommendations for individual or C corporation taxpayers

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Impact of OBBBA on Charitable Giving

Sec. 70424
Partial deduction for charitable contributions of individuals who do not elect to itemize

Sec. 70425
.5% floor on deduction of charitable contributions made by individuals

Sec. 70426
1% floor on deduction of charitable contributions made by corporations

Sec. 70111
Limitation on tax benefit of itemized deductions

Sec. 70411
Tax credit for contributions of individuals to scholarship granting organizations

Smart Art created by Author to illustrate key provisions of OBBBA impacting charitable giving.

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Impact of OBBBA on Charitable Giving

- **Sec. 70424** – Permanent and expanded reinstatement of partial deduction for charitable contributions of individuals who do not elect to itemize.
  - The provision creates a permanent below-the-line deduction for taxpayers who do not elect to itemize.
  - This provision is effective for taxable years ending after December 31, 2025.

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Impact of OBBBA on Charitable Giving

- **Sec. 70424** – Permanent and expanded reinstatement of partial deduction for charitable contributions of individuals who do not elect to itemize.
  - Non-itemizers can claim a deduction of up to $1,000 for single filers ($2,000 for married filing jointly) for certain charitable contributions.
  - Contributions for this purpose include only contributions made in cash during the taxable year to a charitable organization described in IRC Sec. 170(b)(1)(A), other than contributions to (i) a supporting organization described in IRC Sec. 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund [as defined in IRC Sec. 4966(d)(2)].
  - Contributions of noncash property (e.g., clothing, household goods, securities) are **not** qualified contributions.

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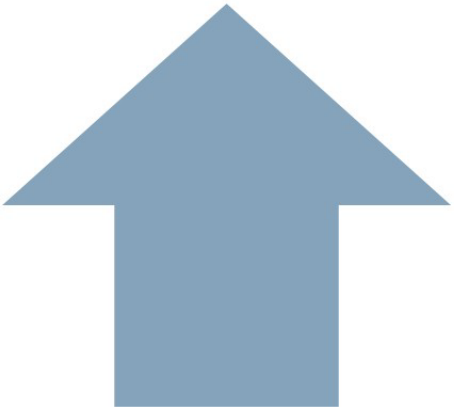
Impact of OBBBA on Charitable Giving

- **Sec. 70425** – .5% floor on deduction of charitable contributions made by individuals.
  - The provision permanently extends the increased contribution limitation for cash gifts made to qualified charities (50% to 60%).



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Impact of OBBBA on Charitable Giving

- **Sec. 70425** – .5% floor on deduction of charitable contributions made by individuals.
  - Additionally, this provision imposes a 0.5% floor on charitable contributions for taxpayers who elect to itemize for taxable years after December 31, 2025.
  - Under the floor, a taxpayer's contributions are allowable only for the portion of the aggregate contributions that exceeds 0.5% of the taxpayer's **contribution base** for the taxable year.
  - IRC Sec. 170(b)(1)(H) defines *contribution base* as adjusted gross income (AGI), computed without regard to any net operating loss carryback to the taxable year under IRC Sec. 172.

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Impact of OBBBA on Charitable Giving

- **Sec. 70425** – .5% floor on deduction of charitable contributions made by individuals.
  - In the case of a taxable year in which there is an *excess contribution*, the amount not allowed under the 0.5% floor may be carried over.
  - In other words, contributions disallowed by the .5% floor are carried forward (up to five tax years) only from years in which the contribution base limitation is exceeded.
  - IRC Sec. 170(b)(1)(I) provides ordering rules for amounts disallowed under the .5% floor.

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Impact of OBBBA on Charitable Giving

- **Sec. 70425** – .5% floor on deduction of charitable contributions made by individuals.

Order of Disallowance	IRC Sec.	AGI % Limit	Type of Gift
First	170(b)(1)(D)	20%	Capital gain property contributed to nonpublic charities
Second	170(b)(1)(C)	30%	Appreciated property contributed to public charities
Third	170(b)(1)(B)	30%	Cash or non-appreciated property contributed to nonpublic charities
Fourth	170(b)(1)(E)	50% or 100%	Qualified conservation easement gifts
Fifth	170(b)(1)(A)	50%	Non-appreciated property contributed to public charities
Sixth (last)	170(b)(1)(G)	60%	Cash gifts to public charities

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Impact of OBBBA on Charitable Giving

- **Sec. 70426** – 1% floor on deduction of charitable contributions made by corporations.
  - The provision allows a deduction for corporate charitable contributions only to the extent that the aggregate of corporate charitable contributions exceeds 1% of a taxpayer's taxable income and does not exceed 10% of the taxpayer's taxable income.
  - This limitation applies for taxable years beginning after December 31, 2025.

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Impact of OBBBA on Charitable Giving

- **Sec. 70426** – 1% floor on deduction of charitable contributions made by corporations.
  - Contributions in excess of the 10% limit may be carried forward to the subsequent five taxable years and are treated as allowed on a first-in, first-out (FIFO) basis.
  - Charitable contributions disallowed under the 1% floor may be carried forward only from years in which the taxpayer's charitable contributions exceed the 10% limit.
  - Any carryforward is applied after contributions made in the current taxable year for the purposes of applying both the 1% floor and 10% limit.

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Impact of OBBBA on Charitable Giving

- **Sec. 70111** – Limitation on tax benefit of itemized deductions.
  - The provision permanently repeals the Pease limitation and replaces it with a new overall limitation on the tax benefit of an individual's itemized deductions. The impact on fiduciary taxpayers (estates and trusts) is unclear.
  - For a taxpayer with taxable income that, before reduction for itemized deductions, exceeds the dollar amount at which the 37% tax rate bracket begins, the provision generally caps the tax-reducing value of each dollar of otherwise allowable itemized deductions at 35 cents.
  - This new limitation is effective for taxable years beginning after December 31, 2025.

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Impact of OBBBA on Charitable Giving

- **Sec. 70411** – Tax credit for contributions of individuals to scholarship granting organizations.
  - New IRC Sec. 25F, *Qualified elementary and secondary education scholarships.*
  - The provision creates a new nonrefundable income tax credit for an individual who is a U.S. citizen or resident in an amount equal to qualified contributions made during the taxable year up to $1,700 (reduced by the amount allowed as a credit on any state tax return of the taxpayer for qualified contributions during the taxable year).
  - This provision is effective for taxable years ending after December 31, 202**6.**

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Impact of OBBBA on Charitable Giving

- **Sec. 70411** – Tax credit for contributions of individuals to scholarship granting organizations.
  - A *qualified contribution* is a charitable contribution of cash made to a scholarship granting organization that uses the contribution to fund scholarships for eligible students solely within the state in which the organization is listed.
  - A state that elects to participate must provide to the Secretary a list of scholarship granting organizations that meet the requirements for such organizations and are located in the state.
  - An *eligible student* is an individual who is **(1)** a member of a household with an income not greater than 300% of the area median gross income and **(2)** eligible to enroll in a public elementary or secondary school.

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Planning Considerations – 2025

- For taxpayers who elect to itemize deductions (Form 1040, Schedule A), consider **accelerating** charitable contributions into calendar year 2025. This avoids both the new 2026 .5% floor and the reinstated limitation on overall itemized deductions.
- For taxpayers who plan to claim the standard deduction for 2025, **defer** making cash contributions to eligible charitable organizations until 2026, when the reinstated below-the-line $1,000 deduction ($2,000 MFJ) becomes available.
- For C corporation taxpayers, consider **accelerating** charitable contributions into calendar year 2025. This avoids the new 2026 1% floor.

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Planning Considerations – 2026 and Beyond

- Non-itemizing individual taxpayers.
  - To the extent of donative intent, fund cash contributions during the taxable year to a charitable organization described in IRC Sec. 170(b)(1)(A), other than contributions to a supporting organization or for the establishment of a new, or maintenance of an existing, donor advised fund (DAF).
  - Maximum below-the-line deduction of $1,000 ($2,000 for married filing joint returns).

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Planning Considerations – 2026 and Beyond

- Non-itemizing individual taxpayers.
  - Obtain and retain documentation required to substantiate the contributions.
  - This may include proof of payment, receipt or acknowledgement from the charitable organization, pay stubs, pledge cards, Form W-2, or another document furnished by an employer.
  - For gifts of $250 or more, taxpayers must obtain and retain contemporaneous written acknowledgement of the gift from the qualified organization.

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Planning Considerations – 2026 and Beyond

- Bunching. Both individual and C corporation taxpayers may benefit from bunching charitable gifts in a given tax year.
  - By exceeding the 20%, 30%, 50%, 60% or 100% of AGI (contribution base) limitation for individuals, the taxpayer retains and carries forward the amount of charitable deduction otherwise lost to the .5% floor.
  - By exceeding the 10% of taxable income limitation for C corporations, the taxpayer retains and carries forward the amount of charitable deduction otherwise lost to the 1% floor.

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Planning Considerations – 2026 and Beyond

- Timing – individual taxpayers.
  - Prioritize high dollar value gifts for higher AGI tax years, maximizing AGI-based contribution base limits.
  - For taxpayers with fluctuating income year-to-year, plan to avoid gifting in tax years subject to the reinstated IRC Sec. 68 limitation on tax benefit of itemized deductions.

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Example: Limitation on Charitable Gifts Itemized Deduction

Variation #1.

Jusef is single for tax year 2026 and has AGI of $900,000.

He made substantiated and otherwise allowable IRC Sec. 170 charitable gifts (cash, check and credit card to public charities) in 2026 of $37,500.

Applying the .5% floor limitation reduces his deductible gifts by $4,500 (.5% X $900,000), for a net charitable deduction of $33,000.

Jusef's gifts do not exceed his contribution base in 2026. Therefore, the $4,500 disallowed by the .5% floor is lost and does not carry forward.

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Example: Limitation on Charitable Gifts Itemized Deduction

Variation #2.

Jusef is single for tax year 2026 and has AGI of $100,000.

He made substantiated and otherwise allowable IRC Sec. 170 charitable gifts (cash, check and credit card to public charities) in 2026 of $67,500.

Two limitations now apply.

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Example: Limitation on Charitable Gifts Itemized Deduction

Variation #2.

Step one – Applying the applicable 60% contribution base limitation results in $7,500 in charitable contribution deduction being disallowed in 2026 ($67,500 – [$100,000 x 60%]).

Step two – Applying the .5% floor limitation further reduces his 2026 deductible gifts by $500 (.5% X $100,000).

Jusef's 2026 Schedule A contribution deduction totals $59,500.

However, both the $500 and the $7,500 disallowed amounts carry forward for up to five additional tax years.

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Example: Limitation on Itemized Deductions

Barbara is single. In 2026 she has AGI of $740,000 and taxable income of $712,000 (determined without regard to her itemized deductions).

The 2026 37% bracket for single taxpayers begins at $640,600.

Barbara's 2026 potential Schedule A itemized deductions are comprised of:

- $35,000 state and local taxes (income and domestic real property taxes)
- $ 7,500 mortgage interest (on $300,000 of qualified acquisition indebtedness)
- $42,500 charitable contributions subject to 60% AGI limit

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Example: Limitation on Itemized Deductions

Step one – Barbara's SALT deduction is reduced to $10,000 (MAGI phase-out applies).

Step two – Barbara's charitable contributions of $42,500 are reduced by the .5% floor, for a total reduction of $3,700 ($740,000 x .5%). Net contribution deduction is $38,800 ($42,500 – 3,700).

Step three – Before the overall limitation on itemized deductions is applied, Barbara's total itemized deductions are $56,300 ($10,000 SALT + $7,500 mortgage interest + $38,800 charitable contributions).

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Example: Limitation on Itemized Deductions

Step four – Apply reinstated IRC Sec. 68 overall limitation on itemized deductions.

Total itemized deductions are reduced by the lesser of: **(a)** $56,300 itemized deductions or **(b)** taxable income in excess of the 37% bracket ($712,000 – 640,600 = $71,400).

Lesser of above multiplied by 2/37: $56,300 x 2/37 = $3,043.

Barbara's otherwise allowable itemized deductions are reduced by $3,043, to $53,257.

The $3,700 in charitable contribution deductions disallowed due to the .5% floor is lost and does not carry forward to 2027.

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Planning Considerations – 2026 and Beyond

- Evaluate preliminary guidance on the new IRC Sec. 25F *(Qualified elementary and secondary education scholarships)* tax credit for contributions of individuals to scholarship granting organizations.
  - The provision creates a new nonrefundable income tax credit for an individual who is a U.S. citizen or resident in an amount equal to qualified contributions made during the taxable year up to $1,700 (reduced by the amount allowed as a credit on any state tax return of the taxpayer for qualified contributions during the taxable year).
  - This provision is effective for taxable years ending after December 31, 202**6.**
  - See **Notice 2025-70** (requests comments regarding issues on which guidance is most quickly needed, including issues relating to the annual certification by a state and scholarship granting organizations) and **Rev. Proc. 2026-6** (provides the exclusion procedure for a state to make an election to be a covered state) for preliminary guidance.

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Planning Considerations – Other

- Traditional charitable gifting strategies remain important tools to maximize a taxpayer's tax benefit.

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Planning Considerations – Other

- Qualified charitable distributions (QCDs).
  - Taxpayer age 70 ½ or older as of December 31.
  - Maximum gift of $108,000 for calendar year 2025 ($216,000 total if MFJ return and both spouses qualify and make eligible transfers).
  - Maximum gift of $111,000 for calendar year 2026 ($222,000 total if MFJ return and both spouses qualify and make eligible transfers).
  - IRA distribution made directly to a qualified IRC Sec. 501(c)(3) charitable organization.
  - May be funded from most IRA accounts, including (but not limited to) traditional IRA, rollover IRA, beneficiary (inherited) IRA and inactive SEP IRA accounts.

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Planning Considerations – Other

- Qualified charitable distributions (QCDs).
  - Counts toward required minimum distribution (RMD) annual requirement.
  - Not includible in AGI; not reported or deducted on Form 1040, Schedule A.
  - A one-time election allows a donor taxpayer to made a QCD of up to $54,000 (for calendar year 2025, increasing to $55,000 for calendar year 2026) to a split-interest entity (e.g., charitable remainder unitrust or CRUT).

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Planning Considerations – Other

- Qualified charitable distributions (QCDs).
  - Reported on Form 1099-R (per 2025 Form 1099-R instructions, new code Y indicates a QCD).

Qualified charitable distributions (QCDs). Generally, a QCD is a nontaxable distribution made directly by the trustee of your IRA to an organization eligible to receive tax-deductible contributions. See Qualified charitable distributions (QCDs) in Pub. 590-B for more information.

To report a QCD use code Y with:

- Code 7 for a QCD from a non-inherited (normal distribution) IRA,
- Code 4 for a QCD from an inherited (death distribution) IRA, or
- Code K for a QCD reporting distributions of traditional IRA assets not having a readily available FMV that are either from non-inherited or inherited IRAs.

Screenshot is an excerpt from 2025 instructions to Form 1099-R, available at https://www.irs.gov/instructions/i1099r#en_US_2025_publink1000147723.

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Planning Considerations – Other

- Donating appreciated securities.
  - Generates Schedule A charitable deduction equal to fair market value (FMV) of securities.
  - Avoids recognition of capital gain, saving income and IRC Sec. 1411 net investment income (NII) taxes.
  - Assists taxpayers in attaining portfolio rebalancing and diversification goals.
  - Maximizes gift to selected charity.

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Planning Considerations – Other

- Other opportunities.
  - Use of a donor advised fund (DAF).
  - For depreciated securities, harvest losses and donate proceeds from sale. Individual taxpayers will garner a capital loss (offset capital gain and up to $3,000 in ordinary income annually) and a charitable contribution deduction.
  - For taxpayers converting a tax-deferred retirement account to a Roth IRA, consider timing charitable contributions to offset some or all of the income from the conversion.
  - For high-income, high net-worth taxpayers consider use of a split-interest vehicle such as a charitable remainder trust (CRT) or charitable lead trust (CLT).

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Planning Considerations – Other

- Business taxpayer opportunities.
  - Donations of apparently wholesome food inventory – IRC Sec. 170(e)(3)(C) allows a charitable donation of up to 15% of the taxpayer's net income from all trades or businesses from which the contributions were made (15% of a C corporation's taxable income).
  - Contributions of scientific property used for research – IRC Sec. 170(e)(4) allows certain corporations to claim an enhanced charitable deduction for qualifying gifts of scientific property. S corporations, personal holding companies, and service organizations [see IRC Sec. 414(m)(3)] do not qualify.
  - Proper classification of expenditures (e.g., sponsorship with company recognition) as advertising or marketing expense.

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A. Discussion Questions

1. How do the new 0.5% floor rules for individual itemizers change charitable contribution planning beginning in 2026?

2. What planning opportunities are created by the reinstated below-the-line charitable deduction for standard deduction taxpayers beginning in 2026?

3. Describe how charitable giving strategy differs for C corporations beginning in 2026 compared to prior years.

B. Suggested Answers to Discussion Questions

1. How do the new 0.5% floor rules for individual itemizers change charitable contribution planning beginning in 2026?

Beginning in 2026, individual taxpayers who itemize deductions must apply a new limitation: charitable contributions are deductible only to the extent they exceed **0.5% of the taxpayer's contribution base**, generally defined as AGI. This floor creates a new "lost deduction" risk, particularly for taxpayers with high AGI and modest charitable giving. For example, if a taxpayer's charitable gifts do not exceed any of the traditional AGI percentage limits (20%, 30%, 50%, 60%, or 100% for certain conservation easements), the amount disallowed by the 0.5% floor is **lost** and does not carry forward. However, if the taxpayer's gifts exceed an applicable AGI limitation and create an "excess contribution," then the taxpayer may carry forward both the excess contribution and the amount disallowed by the 0.5% floor. This rule leads to the planning theme emphasized in the program: "carry both forward or carry nothing." In practice, planning may involve **bunching** gifts into one year to intentionally exceed the AGI limit, preserving carryforward treatment and avoiding permanent loss of the floor amount. Taxpayers may also prioritize large gifts in high-income years while avoiding gifting years subject to additional high-income itemized deduction limitations.

2. What planning opportunities are created by the reinstated below-the-line charitable deduction for standard deduction taxpayers beginning in 2026?

Beginning in tax year 2026, standard deduction taxpayers may claim a reinstated and expanded **below-the-line deduction** for certain charitable contributions. This provision is significant because it creates a tax benefit for non-itemizers who otherwise would receive no federal income tax deduction for charitable giving. The maximum deduction is **$1,000 for single filers** and **$2,000 for married filing jointly**, and it is limited to **cash contributions** (money gifts such as cash, check, or credit card) made to qualifying charitable organizations. The program stresses that this deduction is not available for noncash gifts (e.g., clothing, household goods, securities), and it specifically excludes contributions to **supporting organizations** under IRC Sec. 509(a)(3) and gifts that establish or fund a **donor advised fund (DAF)**. From a planning standpoint, practitioners should help clients identify whether they will itemize or claim the standard deduction, because the below-the-line charitable deduction is only available to non-itemizers. For eligible clients with donative intent, the reinstated deduction may support "timing" recommendations—such as deferring eligible cash gifts into 2026 to secure the deduction. Documentation remains critical; taxpayers should retain proof of payment and contemporaneous written acknowledgments for gifts of $250 or more.

3. Describe how charitable giving strategy differs for C corporations beginning in 2026 compared to prior years.

For C corporations beginning in tax years after December 31, 2025, charitable contributions are subject to both a **floor** and a **ceiling**. Corporations have long been limited by the 10% ceiling: deductible charitable contributions generally may not exceed **10% of taxable income** (computed without regard to the charitable deduction), with excess contributions eligible for a five-year carryforward. OBBBA adds a new **1% floor**, meaning that charitable contributions are deductible only to the extent they exceed **1% of taxable income**. This change is particularly impactful for corporations that historically make smaller annual charitable gifts, because amounts disallowed under the floor may be permanently lost unless carryforward treatment applies. Similar to the individual rule, the program explains that charitable contributions disallowed by the 1% floor may be carried forward only from years in which the corporation also exceeds the 10% limitation. This reinforces the "carry both forward or carry nothing" concept. From a planning perspective, corporations may benefit from **bunching** contributions into a year where the corporation expects sufficient taxable income and intends to exceed the 10% cap, thereby preserving the ability to carry forward both the excess contributions and the floor-disallowed amount. Additionally, corporations should evaluate whether expenditures may be properly classified as deductible advertising/marketing rather than charitable contributions, depending on the facts and circumstances.

GLOSSARY

Check-the-Box Election (Form 8832)—Election allowing an eligible entity (often an LLC) to change its federal tax classification (e.g., to corporation).

Choice of Entity—The selection of business structure (e.g., sole proprietorship, partnership, S corp, C corp) that affects taxation, liability, and exit planning.

Contribution Base—Adjusted gross income (AGI) used to apply charitable contribution limits and the 0.5% floor for individual itemizers.

Double Taxation—C corporation earnings may be taxed once at the corporate level and again when distributed as dividends.

Excess Contribution—Charitable contributions that exceed the applicable AGI (or taxable income) percentage limitation and therefore are carried forward (and may allow the floor-disallowed amount to carry forward).

Exit Strategy—The planned method for an owner to leave the business (sale, liquidation, succession), which should drive entity selection.

Guaranteed Payment (Partnership)—Payment to a partner for services or capital use; may be subject to self-employment tax depending on type and facts.

Qualified Business Income Deduction (QBID) / §199A—Deduction for certain pass-through business income, with planning considerations depending on entity and wages.

Qualified Charitable Distribution (QCD)—A trustee-to-trustee IRA distribution made directly to a qualified charity by a taxpayer age 70½ or older, excluded from AGI and not deducted on Schedule A.

Qualified Small Business Stock (QSBS) / §1202—Gain exclusion available only for qualifying C corporation stock held for required periods, subject to limitations.

Reasonable Compensation—Required wage level for S corp shareholder-employees to prevent improper avoidance of employment taxes.

Schedule C—IRS form used to report income/loss from a sole proprietorship (including a disregarded single-member LLC).

Stock and Debt Basis (S corporation)—Measurement used to determine deductibility of losses and taxability of distributions; reported using Form 7203.

Choose the best response and record your answer in the space provided on the answer sheet.

1. Which of the following best explains why an S corporation shareholder must receive "reasonable compensation"?

   A. To avoid excessive wage reclassification as dividends
   B. To ensure distributions qualify for the dividend received deduction
   C. To prevent shareholders from avoiding employment taxes by taking distributions instead of wages
   D. To qualify for QSBS exclusion under IRC §1202

2. Which of the following entity types is identified as being eligible for the **Qualified Small Business Stock (QSBS)** exclusion under IRC §1202?

   A. Partnership
   B. S corporation
   C. Sole proprietorship
   D. C corporation

3. Under the "new law" changes discussed for bonus depreciation, which statement is correct?

   A. Bonus depreciation is 100% for property acquired after 1/19/2025 and is made permanent
   B. Bonus depreciation is eliminated after 2026
   C. Bonus depreciation is 40% in 2025 and 20% in 2026 with no changes
   D. Bonus depreciation changes apply retroactively to 2023 and 2024

4. A taxpayer has a husband-and-wife business. They want to avoid filing Form 1065. Under the course materials, which approach may be used (if requirements are met)?

   A. File a single Schedule C and split self-employment tax on two Schedule SEs
   B. File two separate Schedule Cs and treat the partnership as terminating
   C. File Form 2553 and elect S status without payroll
   D. File Form 8832 and elect corporate status but report on Schedule C

5. Which of the following is a key disadvantage of an S corporation compared with a partnership, as emphasized in the course?

   A. S corporations are subject to double taxation
   B. S corporations do not allow basis increases for entity-level debt
   C. S corporations cannot have any shareholders
   D. S corporations cannot pass through capital gains

Continued on next page

6. A client is considering placing appreciating real estate into a corporation. According to the course, what is the recommended approach?

   A. Place the real estate into the corporation to maximize depreciation deductions
   B. Place the real estate into the operating S corporation to simplify reporting
   C. Avoid placing appreciating assets in a corporation; consider separating real estate from operations
   D. Place the real estate into a C corporation to benefit from long-term capital gains rates

7. Which of the following best describes the primary tax disadvantage of a C corporation upon an **asset sale** followed by distribution of proceeds to shareholders?

   A. Built-in gains tax and excess net passive income tax
   B. Double taxation at corporate and shareholder levels
   C. Self-employment tax on all net income
   D. Disallowed deduction for shareholder wages

8. Under the course discussion of audit risk, which return type was presented as having a higher audit rate than S corporations and partnerships?

   A. Schedule C with $100K–$200K of income
   B. S corporation return
   C. Partnership return
   D. All tax returns overall

9. Which statement best reflects the Soroban Capital Partners LP v. Commissioner takeaway as presented?

   A. A limited partner is always exempt from SE tax under state law
   B. Guaranteed payments are never subject to SE tax
   C. Limited partners “in name only” may still have ordinary income subject to SE tax depending on facts and circumstances
   D. Only general partners are subject to SE tax, regardless of participation

10. A shareholder in an S corporation wants to deduct losses passed through on Schedule K-1. Which is a key reason basis must be tracked?

    A. Losses in excess of basis are suspended until basis is restored
    B. Losses in excess of basis are deductible but taxed at ordinary rates
    C. Losses in excess of basis create AMT income
    D. Basis is irrelevant for pass-through losses

Continued on next page

11. Under OBBBA Section 70425, the 0.5% charitable contribution floor applies beginning in 2026 to:

    A. All taxpayers regardless of whether they itemize
    B. Individual taxpayers who itemize deductions
    C. Only taxpayers who claim the standard deduction
    D. Only taxpayers with income in the 37% bracket

12. For 2026, the below-the-line charitable deduction for non-itemizers is limited to which type of contribution?

    A. Noncash property contributions to IRC 170(b) organizations
    B. Cash contributions to supporting organizations under IRC 509(a)(3)
    C. Cash contributions to qualifying charitable organizations excluding supporting organizations and donor advised funds
    D. Any contribution to a donor advised fund (DAF)

13. In the individual context, amounts disallowed by the 0.5% floor may be carried forward only when:

    A. The taxpayer's charitable contributions exceed the standard deduction
    B. The taxpayer has an excess contribution due to exceeding an AGI limitation
    C. The taxpayer is in the 37% bracket
    D. The taxpayer gives only to public charities

14. For C corporations beginning in 2026, charitable contributions disallowed by the 1% floor may be carried forward only when:

    A. The corporation exceeds the 10% limitation
    B. The corporation exceeds the 1% floor
    C. The corporation has negative taxable income
    D. The corporation contributes only cash

15. The new overall limitation on itemized deductions under IRC Sec. 68 (as described in the program) generally:

    A. Eliminates charitable deductions for taxpayers in the 37% bracket
    B. Caps the tax benefit of each dollar of itemized deductions at 35 cents for certain high-income taxpayers
    C. Restores the Pease limitation as it existed pre-TCJA
    D. Applies only to corporations

CeriFi CPE Network
Tax Report
Volume 39, Issue 02 **February 2026**

SUBSCRIBER SURVEY

Evaluation Form

Please take a few minutes to complete this survey related to the **CeriFi CPE Network Tax Report** and with your quizzer or group attendance sheet to CeriFi, LLC. All responses will be kept confidential. Comments in addition to the answers to these questions are also welcome. Please send comments to **grading-cpedge@cerifi.com**.

How would you rate the topics covered in the February 2026 issue of **CeriFi CPE Network Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Segment 1						
Segment 2						

Which segment of this issue of **CeriFi CPE Network Tax Report** did you like the most, and why?

Which segment of this issue of **CeriFi CPE Network Tax Report** did you like the least, and why?

What would you like to see included or changed in future issues of **CeriFi CPE Network Tax Report**?

Are there any other ways in which we can improve **CeriFi CPE Network Tax Report**?

How would you rate the effectiveness of the speakers in this issue of **CeriFi CPE Network Tax Report?** Rate each speaker on a scale of 1–5 (5 highest):

	Overall	**Knowledge of Topic**	**Presentation Skills**
Mr. Robert Province	|_____|	|_____|	|_____|
Ms. Laurie A. Stillwell	|_____|	|_____|	|_____|

Are you using **CeriFi CPE Network Tax Report** for: CPE Credit ☐ Information ☐ Both ☐

Were the stated learning objectives met? Yes ☐ No ☐ _____

If applicable, were prerequisite requirements appropriate? Yes ☐ No ☐ _____

Were program materials accurate? Yes ☐ No ☐ _____

Were program materials relevant and contribute to the achievement of the learning objectives? Yes ☐ No ☐ _____

Were the time allocations for the program appropriate? Yes ☐ No ☐ _____

Were the supplemental reading materials satisfactory? Yes ☐ No ☐ _____

Were the discussion questions and answers satisfactory? Yes ☐ No ☐ _____

Specific Comments:

_____

_____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

Once Again, Thank You…
Your Input Can Have a Direct Influence on Future Issues!

CeriFi CPE Network

CPE Group Attendance Sheet

Firm/Company Name: _____

Account #: _____

Location: _____

Program Title: CPE Network Tax Report, February 2026 Date: _____

Name	Email	Total Hrs	IRS PTIN ID (if applicable Tax only)	Sign In	Sign Out

I certify that the above individuals viewed and were participants in the group discussion with this issue/segment of the CeriFi CPE Network newsletter, and earned the number of hours shown.

Instructor Name: _____ Date: _____

E-mail address: _____

License State and Number: _____

grading-cpedge@cerifi.com

CeriFi CPE Network/Webinar Delivery Tracking Report

Course Title	
Course Date:	
Start Time:	
End Time:	
Moderator Name, Credentials, and Signature Attestation of Attendance:	
Delivery Method:	Group Internet Based
Total CPE Credit:	3.0
Instructions:	During the webinar, the moderator must verify student presence a minimum of 3 times per CPE hour. This is achieved via polling questions. Sponsors must have a report which documents the responses from each student. The timing of the polling questions should be random and not made known to students prior to delivery of the course. Record the polling question responses below. Refer to the CeriFi CPE Network User Guide for more instructions. Partial credit will not be issued for students who do not respond to at least 3 polling questions per CPE hour.
Brief Description of Method of Polling	Example: Zoom: During this webinar, moderator asked students to raise their hands 3 times per CPE hour. The instructor then noted the hands that were raised in the columns below.

			First CPE Hour			CPE Hour 2			CPE Hour 3			FOR CeriFi USE ONLY
First Name	**Last Name**	**Student Email**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Certificate Issued?**

CERIFI CPE NETWORK USER GUIDE

REVISED August 2025

Welcome to CeriFi CPE Network!

CeriFi CPE Network programs enable you to deliver training programs to those in your firm in a manageable way. You can choose how you want to deliver the training in a way that suits your firm's needs: in the classroom, virtual, or self-study. You must review and understand the requirements of each of these delivery methods before conducting your training to ensure you meet (and document) all the requirements.

This User Guide has the following sections:

- **"Group Live" Format:** The instructor and all the participants are gathered into a common area, such as a conference room or training room at a location of your choice.
- **"Group Internet Based" Format:** Deliver your training over the internet via Zoom, Teams, Webex, or other application that allows the instructor to present materials that all the participants can view at the same time.
- **"Self-Study" Format:** Each participant can take the self-study version of the CeriFi CPE Network program on their own computers at a time and place of their convenience. No instructor is required for self-study.
- **What Does It Mean to Be a CPE Sponsor?:** Should you decide to vary from any of the requirements in the 3 methods noted above (for example, provide less than 3 full CPE credits, alter subject areas, offer hybrid or variations to the methods described above), CeriFi CPE Network will not be the sponsor and will not issue certificates. In this scenario, your firm will become the sponsor and must issue its own certificates of completion. This section outlines the sponsor's responsibilities that you must adhere to if you choose not to follow the requirements for the delivery methods.
- **Getting Help:** Refer to this section to get your questions answered.

IMPORTANT: This User Guide outlines in detail what is required for the formats above. Additionally, because you will be delivering the training within your firm, you should review the Sponsor Responsibilities section as well. To get certificates of completion for your participants following your training, you must submit all the required documentation. (This is noted at the end of each section.) CeriFi CPE Network will review your training documentation for completeness and adherence to all requirements. If all your materials are received and complete, certificates of completion will be issued for the participants attending your training. Failure to submit the required completed documentation will result in delays and/or denial of certificates.

IMPORTANT: If you vary from the instructions noted above, your firm will become the sponsor of the training event and you will have to create your own certificates of completions for your participants. In this case, you do not need to submit any documentation back to CeriFi, LLC.

If you have any questions on this documentation or requirements, refer to the "Getting Help" section at the end of this User Guide **BEFORE** you conduct your training.

We are happy that you chose CeriFi CPE Network for your training solutions.

Thank you for your business and HAPPY LEARNING!

Copyrighted Materials

CeriFi CPE Network program materials are copyrighted and may not be reproduced in another document or manuscript in any form without the permission of the publisher. As a subscriber of the **CeriFi CPE Network Series,** you may reproduce the necessary number of participant manuals needed to conduct your group study session.

“Group Live” Format

CPE Credit

All CeriFi CPE Network products are developed and intended to be delivered as 3 CPE credits. You should allocate sufficient time in your delivery so that there is no less than 2.5 clock hours:

50 minutes per CPE credit TIMES 3 credits = 150 minutes = 2.5 clock hours

If you wish to have a break during your training session, you should increase the length of the training beyond 2.5 hours as necessary. For example, you may wish to schedule your training from 9 AM to 12 PM and provide a ½ hour break from 10:15 to 10:45.

***Effective November 1, 2018:** CeriFi CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by CeriFi CPE Network. CeriFi CPE Network will not issue certificates for
“group live” deliveries of less than 3 CPE credits (unless the course was delivered as 3 credits and there are partial credit exceptions (such as late arrivals and early departures). Therefore, if you decide to deliver the “group live” session with less than 3 CPE credits, your firm will be the sponsor as CeriFi CPE Network will not issue certificates to your participants.

Advertising / Promotional Page

Create a promotion page (use the template after the executive summary of the transcript). You should circulate (e.g., email) to potential participants prior to training day. You will need to submit a copy of this page when you request certificates.

Monitoring Attendance

You must monitor individual participant attendance at “group live” programs to assign the correct number of CPE credits. A participant’s self-certification of attendance alone is not sufficient.

Use the **attendance sheet.** This lists the instructor(s) name and credentials, as well as the first and last name of each participant attending the seminar. The participant is expected to initial the sheet for their morning attendance and provide their signature for their afternoon attendance. If a participant arrives late, leaves early, or is a “no show,” the actual hours they attended should be documented on the sign-in sheet and will be reflected on the participant’s CPE certificate.

Real Time Instructor During Program Presentation

"Group live" programs must have a **qualified, real time instructor while the program is being presented.** Program participants must be able to interact with the instructor while the course is in progress (including the opportunity to ask questions and receive answers during the presentation).

Elements of Engagement

A "group live" program must include at least one element of engagement related to course content during each credit of CPE (for example, group discussion, polling questions, instructor-posed question with time for participant reflection, or use of a case study with different engagement elements throughout the program).

Make-Up Sessions

Individuals who are unable to attend the group study session may use the program materials for self-study online.

- If the emailed materials are used, the user should read the materials, watch the video, and answer the quizzer questions on the CPE Quizzer Answer Sheet. Send the answer sheet and course evaluation to the email address listed on the answer sheet and the CPE certificate will be mailed or emailed to the user. Detailed instructions are provided on Network Program Self-Study Options.
- If the online materials are used, the user should log on to her/his individual CeriFi account to read the materials, watch the interviews, and answer the quizzer questions. The user will be able to print her/his/their CPE certificate upon completion of the quizzer. (If you need help setting up individual user accounts, please contact your firm administrator or customer service.)

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded by CeriFi CPE Network after the "group live" documentation is received (and providing the course is delivered as 3 CPE credits). The certificate of completion will reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early.

Subscriber Survey Evaluation Forms

Use the evaluation form. You must include a means for evaluating quality. At the conclusion of the "group live" session, evaluations should be distributed and any that are completed are collected from participants. Those evaluations that are completed by participants should be returned to CeriFi CPE Network along with the other course materials. While it is required that you circulate the evaluation form to all participants, it is NOT required that the participants fill it out. A preprinted evaluation form is included in the transcript each month for your convenience.

Retention of Records

Regardless of whether CeriFi CPE Network is the sponsor for the "group live" session, it is required that the firm hosting the "group live" session retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (Group Study Attendance sheets; indicating any late arrivals and/or early departures)
- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name and credentials
- Results of program evaluations.

Finding the Transcript

The entire transcript is available as a pdf via the link in the email sent to administrators.

Requesting Participant CPE Certificates

When delivered as 3 CPE credits, documentation of your "group live" session should be sent to CeriFi CPE Network by the following means:

Email: grading-cpedge@cerifi.com

When sending your package to CeriFi, you must include ALL of the following items:

Form Name	Included?	Notes
Advertising / Promotional Page		Complete this form and circulate to your audience before the training event.
Attendance Sheet		Use this form to track attendance during your training session.
Subscriber Survey Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

All CeriFi CPE Network products are developed and intended to be delivered as 3 CPE credits. You should allocate sufficient time in your delivery so that there is no less than 2.5 clock hours:

50 minutes per CPE credit TIMES 3 credits = 150 minutes = 2.5 clock hours

If you wish to have a break during your training session, you should increase the length of the training beyond 2.5 hours as necessary. For example, you may wish to schedule your training from 9 AM to 12 PM and provide a ½ hour break from 10:15 to 10:45.

***Effective November 1, 2018:** CeriFi CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by CeriFi CPE Network. CeriFi CPE Network will not issue certificates for “group live” deliveries of less than 3 CPE credits (unless the course was delivered as 3 credits and there are partial credit exceptions (such as late arrivals and early departures. Therefore, if you decide to deliver the “group live” session with less than 3 CPE credits, your firm will be the sponsor as CeriFi CPE Network will not issue certificates to your participants.

Advertising / Promotional Page

Create a promotion page (use the template following the executive summary in the transcript. You should circulate (e.g., email to potential participants prior to training day. You will need to submit a copy of this page when you request certificates.

Monitoring Attendance in a Webinar

You must monitor individual participant attendance at “group internet based” programs to assign the correct number of CPE credits. A participant’s self-certification of attendance alone is not sufficient.

Use the **Webinar Delivery Tracking Report.** This form lists the moderator(s name and credentials, as well as the first and last name of each participant attending the seminar. During a webinar you must set up a monitoring mechanism (or polling mechanism to periodically check the participants’ engagement throughout the delivery of the program. Participants’ two-way video should remain on during the entire presentation.

In order for CPE credit to be granted, you must confirm the presence of each participant **3 times per CPE hour and the participant must reply to the polling question**. Participants that respond to less than 3 polling questions in a CPE hour will not be granted CPE credit. For example, if a participant only replies to 2 of the 3 polling questions in the first CPE hour, credit for the first CPE hour will not be granted. (Refer to the Webinar Delivery Tracking Report for examples.)

Examples of polling questions:

1. You are using **Zoom** for your webinar. The moderator pauses approximately every 15 minutes and asks that participants confirm their attendance by using the "raise hands" feature. Once the participants raise their hands, the moderator records the participants who have their hands up in the **webinar delivery tracking report** by putting a YES in the webinar delivery tracking report. After documenting in the spreadsheet, the instructor (or moderator) drops everyone's hands and continues the training.
2. You are using **Teams** for your webinar. The moderator will pause approximately every 15 minutes and ask that participants confirm their attendance by typing "Present" into the Teams chat box. The moderator records the participants who have entered "Present" into the chat box into the **webinar delivery tracking report**. After documenting in the spreadsheet, the instructor (or moderator) continues the training.
3. If you are using an application that has a way to automatically send out polling questions to the participants, you can use that application/mechanism. However, following the event, you should create a **webinar delivery tracking report** from your app's report.

Additional Notes on Monitoring Mechanisms:

1. The monitoring mechanism does not have to be "content specific." Rather, the intention is to ensure that the remote participants are present and paying attention to the training.
2. You should only give a minute or so for each participant to reply to the prompt. If, after a minute, a participant does not reply to the prompt, you should put a NO in the webinar delivery tracking report.
3. While this process may seem unwieldy at first, it is a required element that sponsors must adhere to. And after some practice, it should not cause any significant disruption to the training session.
4. **You must include the Webinar Delivery Tracking report with your course submission if you are requesting certificates of completion for a "group internet based" delivery format.**

Real Time Moderator During Program Presentation

"Group internet based" programs must have a **qualified, real time moderator while the program is being presented.** Program participants must be able to interact with the moderator while the course is in progress (including the opportunity to ask questions and receive answers during the presentation). This can be achieved via the webinar chat box, and/or by unmuting participants and allowing them to speak directly to the moderator.

Where individual participants log into a group live program they are required to enable two-way video to participate in a virtual face-to-face setting (with cameras on), elements of engagement are required (such as group discussion, polling questions, instructor posed questions with time for reflection, or a case study with engagement throughout the presentation) in order to award CPE credits to the participants. Participation in the two-way video conference must be monitored and documented by the instructor or attendance monitor in order to authenticate attendance for program duration. The participant-to-attendance monitor ratio must not exceed 25:1, unless there is a dedicated attendance monitor in which case the participant-to-attendance monitor ratio must not exceed 100:1.

Make-Up Sessions

Individuals who are unable to attend the "group internet based" session may use the program materials for self-study either in print or online.

- If emailed materials are used, the user should read the materials, watch the video, and answer the quizzer questions on the CPE Quizzer Answer Sheet. Send the answer sheet and course evaluation to the email address listed on the answer sheet and the CPE certificate will be mailed or emailed to the user. Detailed instructions are provided on Network Program Self-Study Options.
- If the online materials are used, the user should log on to her/his individual CeriFi CPE account to read the materials, watch the interviews, and answer the quizzer questions. The user will be able to print her/his CPE certificate upon completion of the quizzer. (If you need help setting up individual user accounts, please contact your firm administrator or customer service.)

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded by CeriFi CPE Network after the "group internet based" documentation is received (and providing the course is delivered as 3 CPE credits). The certificate of completion will reflect the credit hours earned by the individual, with special calculation of credits for those who may not have answered the required amount of polling questions.

Subscriber Survey Evaluation Forms

Use the evaluation form. You must include a means for evaluating quality. At the conclusion of the "group live" session, evaluations should be distributed and any that are completed are collected from participants. Those evaluations that are completed by participants should be returned to CeriFi CPE Network along with the other course materials. While it is required that you circulate the evaluation form to all participants, it is NOT required that the participants fill it out. A preprinted evaluation form is included in the transcript each month for your convenience.

Retention of Records

Regardless of whether CeriFi CPE Network is the sponsor for the "group internet based" session, it is required that the firm hosting the session retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (Webinar Delivery Tracking Report)
- Copy of the program materials
- Timed agenda with topics covered
- Date and location (which would be "virtual") of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name and credentials
- Results of program evaluations

Finding the Transcript

The email sent to administrators each month has a link to the pdf for the newsletter. The email may be forwarded to participants who may download the materials or print them as needed.

Requesting Participant CPE Certificates

When delivered as 3 CPE credits, documentation of your "group internet based" session should be sent to CeriFi CPE Network by the following means:

Email: grading-cpedge@cerifi.com

When sending your package to CeriFi, you must include ALL the following items:

Advertising /		Complete this form and circulate to your audience
Webinar Delivery		Use this form to track the attendance (i.e., polling
Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to

Incomplete submissions will be returned to you.

“Self-Study” Format

If you are unable to attend the live group study session, we offer two options for you to complete your Network Report program.

Self-Study—Email

Follow these simple steps to use the printed transcript and video:

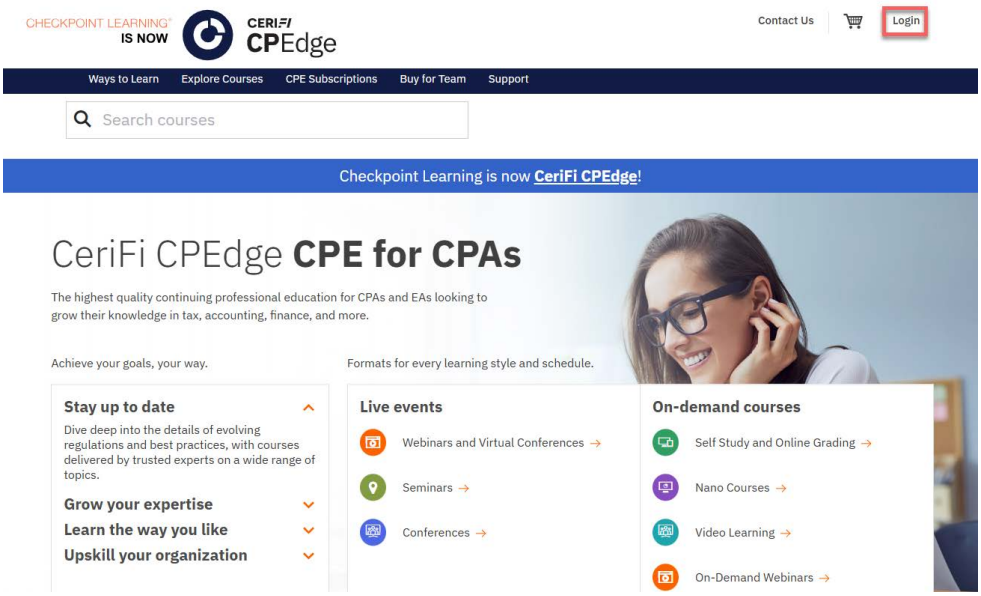
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.
- E-mail your completed quizzer and survey to:

  grading-cpedge@cerifi.com

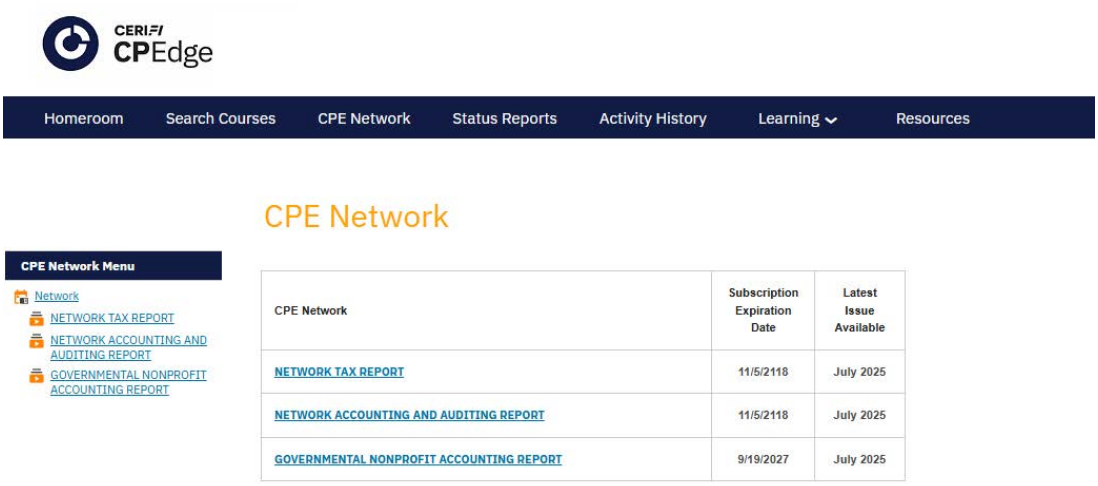
Self-Study—Online

Follow these simple steps to use the online program:

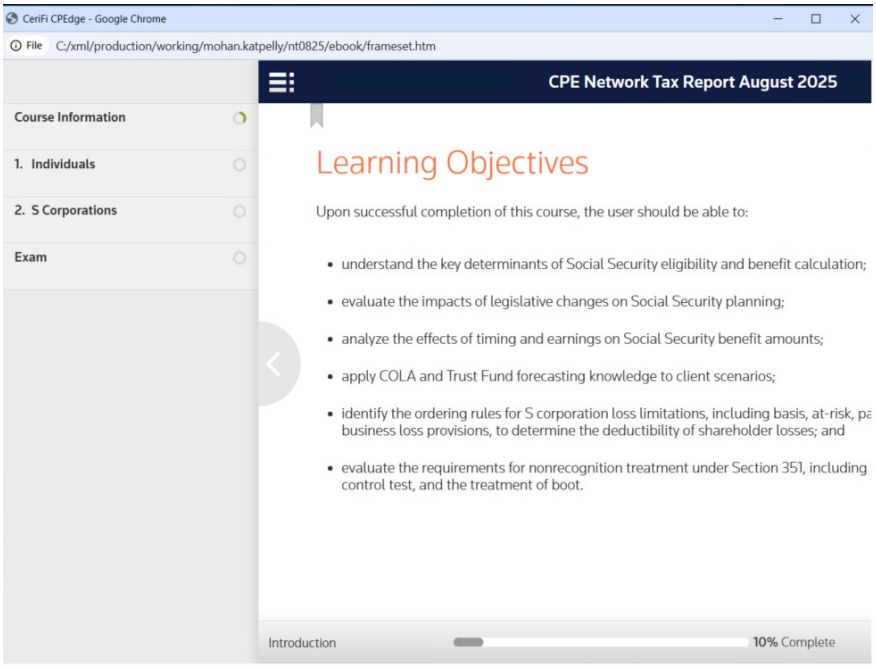
- Go to **https://cerificpedge.com/**.
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



- In the **CeriFi CPE Network** tab, select the desired Network Report and then the appropriate edition.

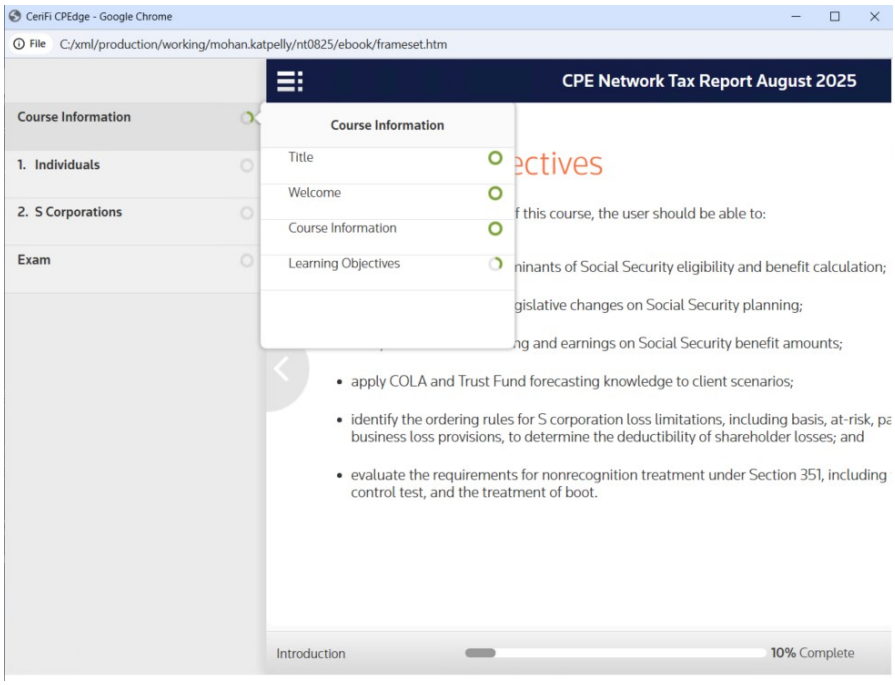


The Chapter Menu is in the gray bar at the left of your screen:



Click down to access the dropdown menu and move between the program Chapters.

- **Course Information** is the course Overview, including information about the authors and the program learning objectives

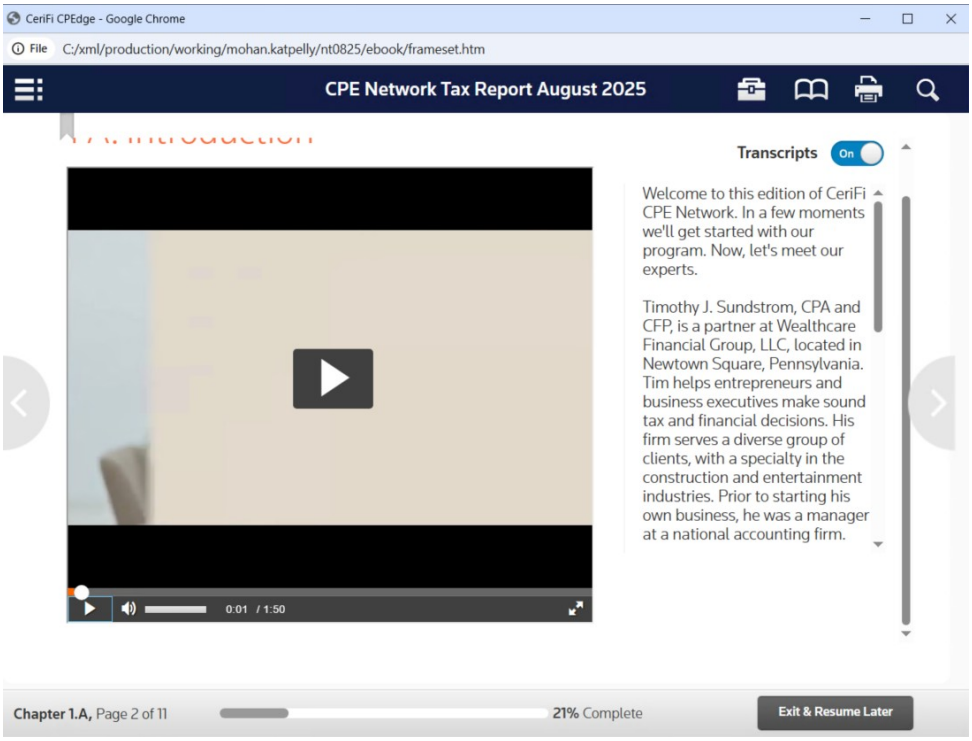


- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the self-study questions. This streamlined approach allows administrators and users to more easily access the related materials.

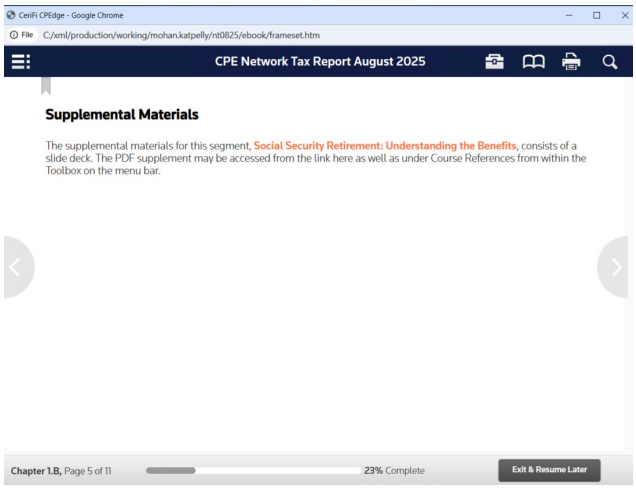
Video segments may be downloaded from the player by clicking on the download button. *Tip: you may need to scroll down to see the download button.*

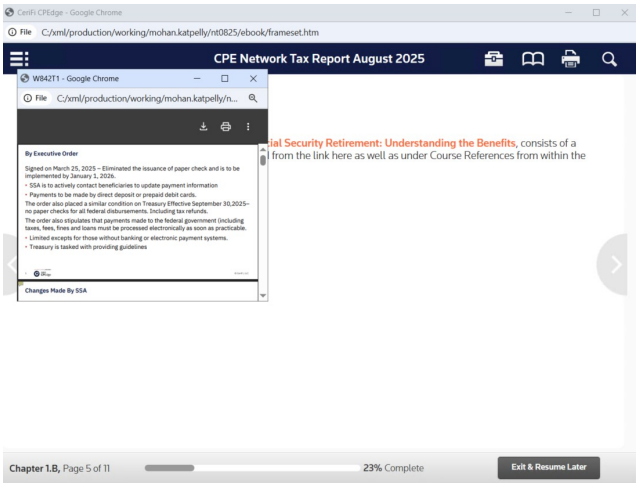
Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts**

Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material.

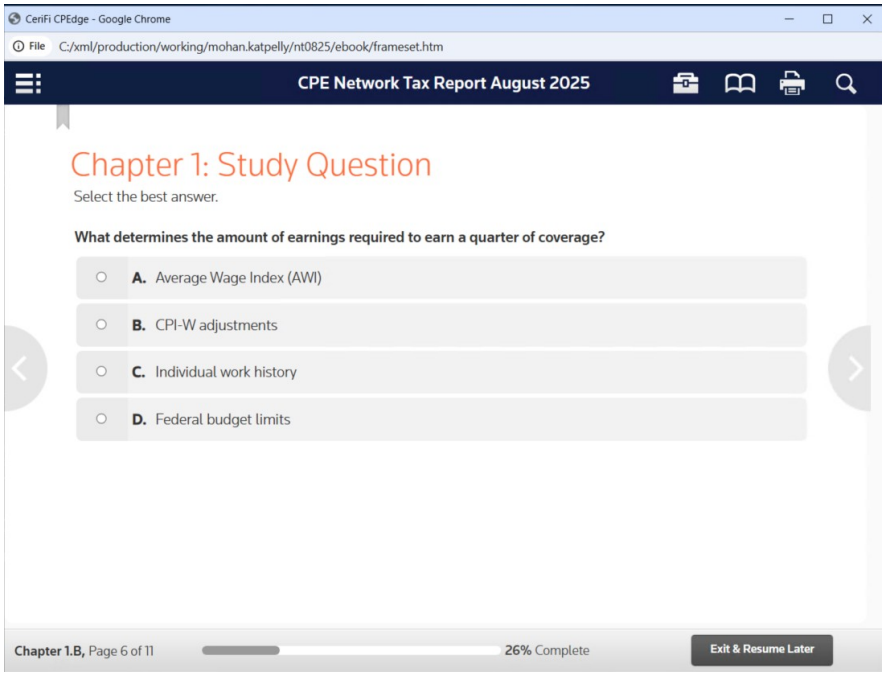


The supplemental materials are available via the toolbox and the link will pop up the pdf version in a separate window.



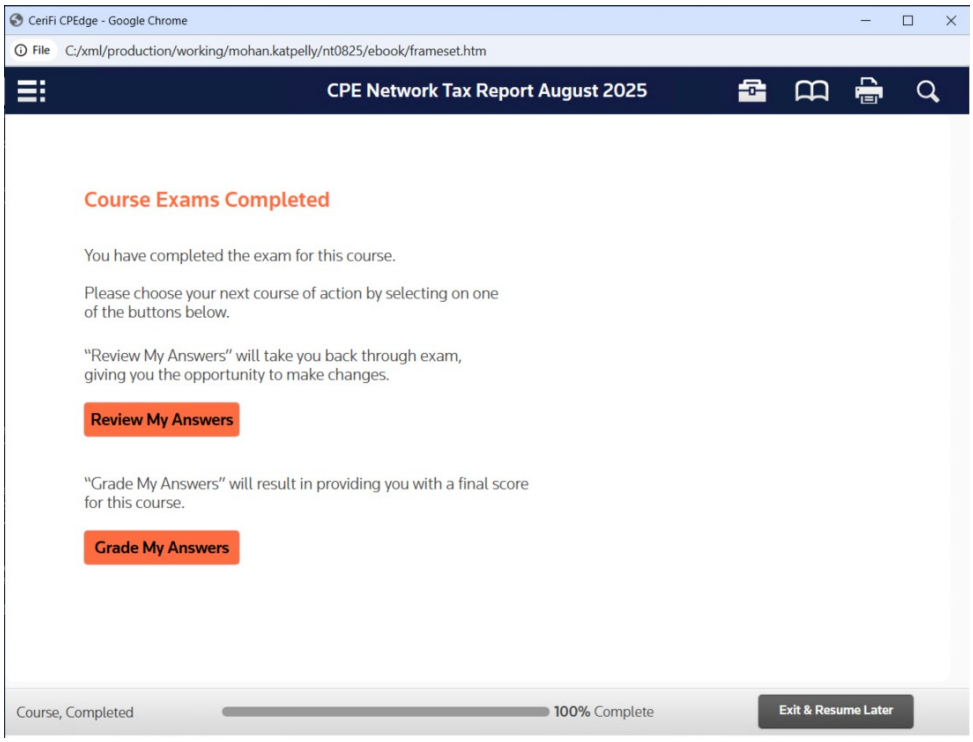


Continuing to click the arrow to the right side of the screen will bring the user to the self-study questions related to the segment.



The **Exam** is accessed by clicking the last gray bar on the menu at the left of the screen or clicking through to it. Click the orange button to begin.

When you have completed the quizzer, click the button labeled **Grade or the Review button**.



- Click the button labeled **Certificate** to print your CPE certificate.
- The final quizzer grade is displayed and you may view the graded answers by clicking the button labeled **view graded answer**.

Additional Features Search

CeriFi CPE offers powerful search options. Click the **magnifying glass** at the upper right of the screen to begin your search. Enter your choice in the **Search For:** box.

Search Results are displayed with the number of hits.

Print

To display the print menu, click the printer icon in the upper bar of your screen. You can print the entire course, the transcript, the glossary, all resources, or selected portions of the course. Click your choice and click the orange **Print**.

What Does It Mean to Be a CPE Sponsor?

If your organization chooses to vary from the instructions outlined in this User Guide, your firm will become the CPE Sponsor for this monthly series. The sponsor rules and requirements noted below are only highlights and reflect those of NASBA, the national body that sets guidance for development, presentation, and documentation for CPE programs. **For any specific questions about state sponsor requirements, please contact your state board. They are the final authority regarding CPE Sponsor requirements.** Generally, the following responsibilities are required of the sponsor:

- Arrange for a location for the presentation
- Advertise the course to your anticipated participants and disclose significant features of the program in advance
- Set the start time
- Establish participant sign-in procedures
- Coordinate audio-visual requirements with the facilitator
- Arrange appropriate breaks
- Have a real-time instructor during program presentation
- Ensure that the instructor delivers and documents elements of engagement
- Monitor participant attendance (make notations of late arrivals, early departures, and “no shows”)
- Solicit course evaluations from participants
- Award CPE credit and issue certificates of completion
- Retain records for five years

The following information includes instructions and generic forms to assist you in fulfilling your responsibilities as program sponsor.

CPE Sponsor Requirements

Determining CPE Credit Increments

Sponsored seminars are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned. Sponsors must monitor the program length and the participants’ attendance in order to award the appropriate number of CPE credits.

Program Presentation

CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. CPE program sponsors must make the following information available in advance:

- Learning objectives.
- Instructional delivery methods.
- Recommended CPE credit and recommended field of study.
- Prerequisites.
- Program level.
- Advance preparation.
- Program description.
- Course registration and, where applicable, attendance requirements.
- Refund policy for courses sold for a fee/cancellation policy.
- Complaint resolution policy.
- Official NASBA sponsor statement, if an approved NASBA sponsor (explaining final authority of acceptance of CPE credits**).**

Disclose Significant Features of Program in Advance

For potential participants to effectively plan their CPE, the program sponsor must disclose the significant features of the program in advance (e.g., through the use of brochures, website, electronic notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants must receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration and attendance policies and procedures must be formalized, published, and made available to participants and include refund/cancellation policies as well as complaint resolution policies.

Monitor Attendance

While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must maintain a process to monitor individual attendance at group programs to assign the correct number of CPE credits. A participant's self-certification of attendance alone is not sufficient. The sign-in sheet should list the names of each instructor and her/his credentials, as well as the name of each participant attending the seminar. The participant is expected to initial the sheet for their morning attendance and provide their signature for their afternoon attendance. If a participant leaves early, the hours they attended should be documented on the sign-in sheet and on the participant's CPE certificate.

Real Time Instructor During Program Presentation

"Group live" programs must have a qualified, real-time instructor while the program is being presented. Program participants must be able to interact with the real time instructor while the course is in progress (including the opportunity to ask questions and receive answers during the presentation).

Elements of Engagement

A "group live" program must include at least one element of engagement related to course content during each credit of CPE (for example, group discussion, polling questions, instructor-posed question with time for participant reflection, or use of a case study with different engagement elements throughout the program).

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded at the conclusion of the seminar. It should reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early.

CFP credit is available if the firm registers with the CFP board as a sponsor and meets the CFP board requirements. IRS credit is available only if the firm registers with the IRS as a sponsor and satisfies their requirements.

Seminar Quality Evaluations for Firm Sponsor

NASBA requires the seminar to include a means for evaluating quality. At the seminar conclusion, evaluations should be solicited from participants and retained by the sponsor for five years. The following statements are required on the evaluation and are used to determine whether:

1. Stated learning objectives were met.
2. Prerequisite requirements were appropriate (if any).
3. Program materials were accurate.
4. Program materials were relevant and contributed to the achievement of the learning objectives.
5. Time allotted to the learning activity was appropriate.
6. Individual instructors were effective.
7. Facilities and/or technological equipment were appropriate.
8. Handout or advance preparation materials were satisfactory.
9. Audio and video materials were effective.

You may use the enclosed preprinted evaluation forms for your convenience.

Retention of Records

The seminar sponsor is required to retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (the original sign-in sheets, now in an editable, electronic signable format)
- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name(s) and credentials
- Results of program evaluations

Appendix: Forms

Here are the forms noted above and how to get access to them.

Delivery Method	Form Name	Location	Notes
"Group Live" / "Group Internet Based"	Advertising / Promotional Page	Transcript	Complete this form and circulate to your audience before the training event.
"Group Live"	Attendance Sheet	Transcript	Use this form to track attendance during your training session.
"Group Internet Based"	Webinar Delivery Tracking Report	Transcript	Use this form to track the 'polling questions' which are required to monitor attendance during your webinar.
"Group Live" / "Group Internet Based"	Evaluation Form	Transcript	Circulate the evaluation form at the end of your training session so that participants can review and comment on the training.
Self Study	CPE Quizzer Answer Sheet	Transcript	Use this form to record your answers to the quiz.

Getting Help

Should you need support or assistance with your account, please see below:

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	844.245.5970	cpedgesupport@cerifi.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	844.245.5970	cpedgesupport@cerifi.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	844.245.5970	cpedgesupport@cerifi.com	• Billing • Existing orders • Cancellations • Webinars • Certificates