



2025 Construction Industry Tax Update **OBBBA**

September 25, 2025

Agenda

1. Select Business Provisions
2. Select Individual Provisions
3. Select Compensation & Benefits Provisions
4. Select Energy Credit Provisions



01

Select Business Provisions



The Act

The Big “3”

Bonus Depreciation

In general

- Act permanently reinstates 100% bonus depreciation for most tangible personal property acquired after January 19, 2025
- Does not apply if a binding contract to acquire the property existed prior to January 20, 2025
- Election to use reduced bonus depreciation percentage in first taxable year ending after January 19, 2025

Bonus depreciation on new production facilities

- New 100% bonus depreciation for nonresidential real property meeting certain requirements used in the manufacturing, production, or refining of tangible personal property
- Applies to property if construction started after January 19, 2025, and before January 1, 2029, provided it is placed in service before January 1, 2031
- Manufacturing defined by reference to “substantial transformation” test of Section 954(d)

The Act

The Big “3”

Section 174 Research Costs

- TCJA required capitalization and five-year amortization of domestic R&E expenses beginning in 2022
- Under the Act, domestic R&E expenses are deductible when incurred for tax years beginning after December 31, 2024
- Foreign R&E expenses continue to be capitalized and amortized over 15 years
- Retroactive relief available:
 - Small businesses (generally gross receipts under \$31 million under a controlled group test) would be able to file amended returns for 2022, 2023, and 2024 tax years to recover previously capitalized domestic research costs
 - All taxpayers have the option to deduct previously capitalized domestic research costs in first tax year beginning after December 31, 2024, or alternatively take the deduction over the first two tax years beginning after December 31, 2024
 - Returns Section 280C mechanics to pre TCJA status
- Revenue Procedure 2025-28

The Act

The Big “3”

Section 163(j)

- Limitation currently based on 30% of tax basis EBIT
- Act permanently increases the limitation to 30% of tax basis EBITDA
- Change would be effective for tax years beginning after December 31, 2024
- Redefines roles of Section 163(j)'s interest limitation provisions with certain interest capitalization provisions to give the Sec. 163(j) limitation priority
 - For tax years beginning after 2025, provides that Sec. 163(j) limitation is calculated prior to the application of any interest capitalization rules, except for interest capitalized under Section 263(g) or 263A(f)
 - In so doing, certain ordering rules would require that you apply the Section 163(j) limit to amounts of interest which would be required to be capitalized and then any remainder would then be applied to amounts of interest that would be deducted
 - No portion of business interest carried forwards are to be treated as business interest expense to which an interest capitalization provision applies



The Act

Section 460 Changes

- Existing law provided an exception from Section 460 long term contract rules for:
 - Home construction contracts, or
 - Contracts entered into with a life of two years or less by small taxpayers (average annual gross receipts under \$31 million for the preceding 3 years)
- OBBB expanded the exemptions from long-term contract accounting for contracts entered into in taxable years beginning after July 4, 2025
 - Home construction contract replaced with broader residential contract exception:
 - Effectively opens up Section 460 exception to all contractors working on residential developments, apartment buildings and condominiums
 - Residential contract exception also available for AMT
 - Small contractor exception expanded to contracts of three years or less

The Act

Opportunity Zones

- Effective Jan 1, 2027
- Opportunity Zones made permanent
- Non-Rural Opportunity Funds
 - New 5-year rolling deferral period
 - If held at least 5 years – 10% basis adjustment (or 10% reduction on the original capital gain)
 - If held at least 10 years – Full original capital gain exclusion
 - If held beyond 30 years, additional growth after year 30 is taxable
 - Substantial improvement test – 100% of original purchase price of property
- Qualified Rural Opportunity Funds
 - If held at least 5 years – 30% basis adjustment
 - 10-year and 30-year holding period guidance same as non-rural opportunity funds
 - Substantial improvement test – 50% of original purchase price of property

The Act

Section 1202 Qualified Small Business Stock

Section 1202 changes effective for stock issued after July 4, 2025

- Asset threshold raised from \$50 million to \$75 million
- Gain eligible for exclusion increased to greater of 10 times basis or \$15 million (previously \$10 million)
- New scaled exclusion
 - 50% exclusion after three years
 - Taxable portion of gain is taxed at 28% rate with an effective tax rate on sale of 14%
 - 75% exclusion after four years
 - Taxable portion of gain is taxed at 28% rate with an effective tax rate on sale of 7%
 - 100% exclusion after 5 years
 - Once 5-year holding period is met, any taxable gain in excess of 1202 exclusion is taxed at 20%

The Act

Corporate Charitable Contribution

New 1% floor on charitable contributions

- Corporations generally allowed to deduct charitable contributions up to 10% of corporation's taxable income (contribution base)
- 1% floor for tax years beginning after December 31, 2025
 - If contributions less than 1% of contribution base, no deduction
 - If contributions are between 1% and 10%, deduction is actual contributions less 1% of contribution base
 - If contributions exceed 10% of contribution base, current year deduction is 9%
 - 5-year carryforward for:
 - Contributions in excess of 10% contribution base
 - The 1% floor for years in which the 10% limit was exceeded

The Act

Withholding Provisions

- **Increased threshold for 1099-MISC and 1099-NEC Reporting**
 - Raises reporting threshold from \$600 to \$2,000 for payments made after December 31, 2025
 - Makes conforming changes to backup withholding rules
 - The \$2,000 threshold is indexed for inflation beginning in 2027
- **Remittance tax on foreign wire transfers**
 - 1% excise tax to be paid by sender and collected by remittance transfer
 - Exception for transfers made by a financial institution
 - Effective for remittances after December 31, 2025

The Act

Expiring Provisions Made Permanent

Provision	Description	Act
Employer Paid Family Leave Credit (Section 45S)	% of amount paid to qualifying employees during family or medical leave	Credit made permanent with modifications
New Markets Tax Credit (NMTC)	39% credit on investment in community development entities	Extended and made permanent
Opportunity Zone Credit	Program to encourage investment in economically distressed communities	Made permanent with modifications

02

Select Individual Provisions



The Act

Individual Provisions

Topic	Current State (2025)	Act
Section 199A – QBI	20% Deduction	Deduction made permanent with changes to phase in amounts
Estate & Gift Tax Exemption	\$13.99M per individual, \$27.98M per couple	Increased to \$15 million per individual for 2026, indexed for inflation and made permanent
Tax Rate Changes	Individual Top Rate: 37%	TCJA rate changes made permanent

The Act

Individual Provisions

Topic	Current State (2025)	Act
Personal Exemptions, Deductions, & Limitations	<ul style="list-style-type: none"> ○ \$30,000 standard deduction (MFJ) ○ \$0 Personal Exemptions ○ \$2,000 CTC 	<ul style="list-style-type: none"> ○ Standard Deduction increased to \$31,500 for married individuals filing joint, \$23,625 for head of household, and \$15,750 for all others beginning in 2025 ○ Personal exemptions permanently eliminated ○ Child tax credit increased to \$2,200 from 2025 through 2028 ○ \$6,000 additional standard deduction for 65 & older, phases out starting at \$150,000 MFJ beginning in 2025 ○ Benefit of itemized deductions capped at 35% beginning in 2026 ○ New .5% floor on charitable contributions beginning in 2026
Mortgage Interest Deductibility	<ul style="list-style-type: none"> ○ \$750,000 threshold (MFJ) ○ No deduction for home equity interest 	\$750,000 threshold and elimination of home equity interest deduction made permanent
Miscellaneous Itemized Deductions	Nondeductible	Permanently eliminated

The Act

SALT

CAP & PTET

- **SALT Cap & PTE Tax**

- The Act temporarily raises the SALT cap from 2025 through 2029
- \$40,000 in 2025
- In years 2026 through 2029, the cap increases by 1% per year
- In 2030 and thereafter, it reverts to \$10,000
- The Act also contains phaseouts for those with modified adjusted gross income above \$500,000
- This \$500,000 threshold increases by 1% per year from 2026 through 2029
- There are no changes to the treatment of pass-through entity taxes
- Consider AMT impact of increased itemized deduction for SALT

The Act

Car Loan Interest

No Tax on Car Loan Interest

- Individuals will get federal income tax deduction for qualified interest paid on a new car loan for 2025 through 2028
- Maximum deduction of \$10,000
- Must be a new car acquired after December 31, 2024
- Final assembly of the car must have been in the United States
- Deduction phases out for individuals with income starting at \$100,000 (\$200,000 for MFJ)
- Used cars do not qualify



The Act

Excess Business Losses

- Section 461(l) made permanent (originally scheduled to expire after 2028)
- Provides an annual limitation on net trade or business losses (\$626,000 for married filing jointly in 2025 and \$313,000 for all others). Losses in excess of that amount are carried forward as a NOL under current law

03

Select Compensation & Benefits Provisions



Individual “Above the Line” Deductions



No Tax on Tips

- Up to \$25,000 income tax deduction of Qualified Tips
- Payroll reporting and withholding still required (still subject to FICA taxes)
- Phase out starting at MAGI of \$150,000 (\$300,000 MFJ)
- Available from 2025–2028
- Other considerations
 - 2025 transition rule; 2026 guidance TBD
 - Tips must be voluntary, *e.g.*, automatic service fees do not count
 - State conformity is still a question



No Tax on Overtime

- Up to \$12,500 (\$25,000 MFJ) income tax deduction of Qualified Overtime
- Payroll reporting and withholding still required (still subject to FICA taxes)
- Phase out starting at MAGI of \$150,000 (\$300,000 MFJ)
- Available from 2025–2028
- Other considerations
 - State conformity is still a question

Employee Fringe Benefits – Taxable

Moving Expenses

- Prior to TCJA, individuals could deduct qualified moving expenses and exclude qualified moving expense reimbursements from gross income
- TCJA suspended the deduction and exclusion for all taxpayers (other than those serving in the Armed Forces) from 2018 through 2025
- The Act permanently suspends the deduction and exclusion for all except those serving in the Armed Forces

Bicycle Commuting

- Prior to TCJA, taxpayers who regularly commuted to work using a bicycle could exclude up to \$20 of commuting reimbursements for each month the taxpayer utilized a bike for a substantial portion of their commute to work
- TCJA suspended the deduction for all taxpayers from 2018 through 2025
- The Act permanently suspends the deduction

Employee Fringe Benefits – Non-Taxable



Trump Accounts

- Newly-created
- Tax advantaged savings account for children born in the US between 1/1/2025 & 12/31/2028
- Grow tax deferred until withdrawn (not permitted until child beneficiary obtains age 18)
- \$1,000 one-time government contribution
- \$5,000 annual contribution limit in after-tax contributions
- \$2,500 may be contributed by employers per employee and excluded from employee gross income (applies towards \$5,000 annual limit) pursuant to §128



Educational assistance

- CARES Act expanded the definition of qualified educational assistance under §127 to include payments on principal and interest on qualified student loans
- Section 127 permits income exclusion of up to \$5,250 of educational assistance
- The expansion to include student loan payments was set to expire 1/1/2026 but has been made permanent and indexed for inflation

Child & Dependent Care



Employer-Provided Child Care Credit

- Income tax credit designed to incentivize employer investment in childcare for employees was greatly expanded
- Maximum credit increased from \$150,000 to \$500,000 (\$600,000 for small businesses)
- Percent of Qualified Child Care Expenditures covered increased from 25% to 40% (50% for small businesses)
 - Qualified childcare resource and referral expenditures remains capped at 10%
- Effective for tax years beginning after December 31, 2025



Dependent Care Assistance Program

- Pre-tax benefit plan allowing employees to pay for the care of qualifying dependents, typically through an FSA
- Maximum annual deduction increased from \$5,000 to \$7,500
- Effective for tax years beginning after December 31, 2025

Credits



Paid Family & Medical Leave Credit

- Tax credit for employers who paid family and medical leave to qualifying employees
- Established by TCJA, credit was set to expire on 12/31/2025
- Made permanent by the Act
- Expands credit by:
 - Increasing employer eligibility
 - Including qualifying insurance premiums
 - Reducing minimum employment period



Employee Retention Credit

- “Covid-ERTC Promoter” is defined
- Promoters are subjected to due diligence requirements and will be assessed a \$1,000 penalty for each failure to comply
- For credits claimed for the third and fourth quarters of 2021:
 - The statute of limitations is increased to six years
 - Unpaid claims filed after January 31, 2024 are invalidated

Executive Compensation



Aggregation for § 162(m)

- Aggregation rules for controlled groups are codified, requiring employers to consider their organizational structure when determining who is a covered employee
- Covered employees include PEO, PFO, and top three highest paid officers (not including PEO/PFO) and once covered, always covered
- **ARPA 5:** For tax years beginning after 12/31/2026, the term-covered employee is expanded to include the top five most highly paid *employees* (not including the PEO/PFO, and top three officers, resulting in a minimum of 10)
 - Only covered employee for that specific year



Expanded § 4960 Excise Tax

- Section 4960 levies a 21% excise tax on remuneration exceeding \$1 million paid by applicable tax-exempt organizations to any of their covered employees
- The term covered employee, previously limited to the top five most highly compensated employees, has been expanded to include all employees
- Licensed medical professionals remain excluded

04

Select Energy Credit Provisions



The Act

Clean Energy Credits

Credits Terminated

- **Sections 25E, 30D, and 45W**
 - Clean vehicle credits for new and used vehicles terminated if acquired after 9/30/2025
- **Section 30C**
 - Alternative fuel vehicle refueling property credit terminated for property placed in service after 6/30/26
- **Section 25C and 25D**
 - Home credits for energy efficient terminated for property placed in service after 12/31/25
- Section 179D deduction (not technically a credit) is also terminated for properties that begin construction after June 30, 2026

The Act

Clean Energy Credits

Section 45Y (Production Tax Credit) / Section 48E (Investment Tax Credit)

- **Solar and wind projects**
 - Projects that begin construction before 7/5/26 must be placed in service by 12/31/30
 - Projects that begin construction after 7/4/26 must be placed in service by 12/31/27
- **Other clean energy projects, e.g., biogas, waste energy recovery, eligible for credits longer**
 - Construction must begin before 1/1/34 to claim full credit
 - Phasedown of credit in 2034 and 2035 with complete elimination in 2036
- **Section 45X –Advanced manufacturing production credit**
 - Wind/solar components produced and sold after 12/31/27 not eligible
 - Phaseout for critical minerals begins in 2031
 - Metallurgical coal added to the list



The Act

Clean Energy Credits

- **Transferability allowed**
 - Cannot transfer to a foreign prohibited/specified entity
- **Foreign Entities of Concern (FEOC) Limitations**
 - No credit allowed for a project beginning construction after 12/31/25 receiving material assistance from a prohibited foreign entity
 - Prohibited foreign entities are not allowed a credit for tax years beginning after 7/4/25



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