



Q3 2025 Update from the Washington National Tax Office

September 30, 2025

Agenda

1. Government Funding
2. Potential Second Reconciliation Bill
3. Tariffs
4. OB3 Updates
5. Notable Federal Tax Cases



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Government Funding



Government Funding

Continuing Resolution

- September 30, 2025, deadline
- Continuing resolution
 - Extends prior year funding levels
 - Targeted through November 21
 - Needs 60-votes in the Senate
 - Republicans want a “clean bill” with no policy riders
 - Democrats want, at a minimum, extension of enhanced Premium Tax Credit

Government Funding Recissions

- Recissions Act of 2025
 - Request made June 3, 2025, by President Trump under the Congressional Budget and Impoundment Control Act of 1974
 - Enacted July 24, 2025
 - \$9 billion over 10 years
 - Cuts primarily to foreign aid and public broadcasting
- “Pocket Recission” of \$5 billion
 - Congress had 45 days to act and did not
 - Federal judge required \$4 billion of the \$5 billion to be released
 - SCOTUS stayed the order and is considering Administration’s request to review

02

Potential Second Reconciliation Bill



Potential Second Reconciliation Bill

Political Dynamics & Timing

- White House has yet to weigh in
- How will fiscal conservatives react?
- Potential timing for one or possibly two more reconciliation bills
 - Q4 of 2025 calendar year
 - Q1 of 2026 calendar year
 - Q4 of 2026 calendar year (depends on election results)

Potential Second Reconciliation Bill

Potential Tax Relief Measures

Revisiting OB3

- Section 199A pass-through deduction increase to 23%
- 90% limit on wagering losses
- Individual and corporate floors on charitable contributions
- HSA expansion
- R&D interaction with CAMT and BEAT
- Extend temporary provisions (no tax on tips, overtime, etc.)

Potential Second Reconciliation Bill

Potential Tax Relief Measures

Other Tax Items

- Expiring tax credits
 - Enhanced Premium Tax Credit
 - Work Opportunity Tax Credit
- Recovery period for motorsports entertainment complexes
- Deduction for qualified film, television, or live theatrical production
- BEAT high tax exemption
- Capital gain exclusion on principal home sale
- Expanded child tax credit
- Extend semiconductor (section 48D) tax credit
- Digital asset tax

Potential Second Reconciliation Bill

Potential Revenue Sources

- Section 899 “revenge tax”
- Private foundation excise tax increase
- Sports franchise amortization
- Section 461(I) EBL recharacterization rule
- C-SALT deduction limit
- Third party litigation financing excise tax
- Increase stock buyback excise tax
- Section 162(m) limitation expansion
- Carried interest
- Millionaire’s tax

03

Tariffs



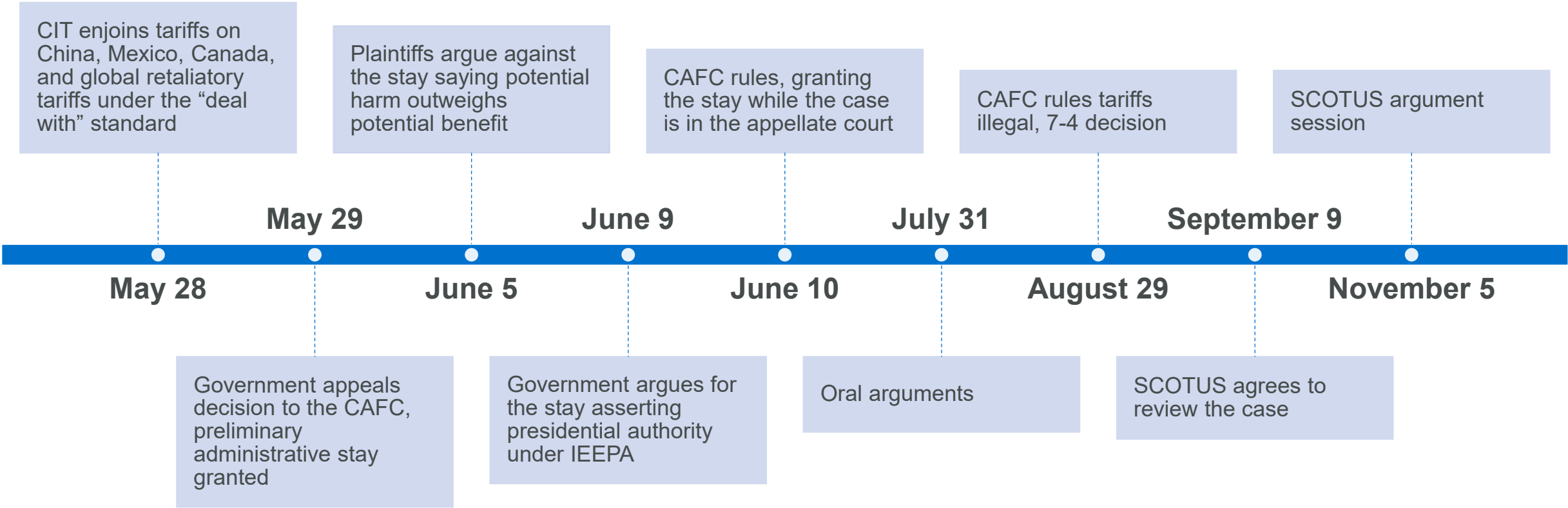
Tariffs

Varying Types

- General Rate of Duty (“MFN”) Duties
- Section 301 Tariffs
- Section 232 Tariffs
- IEEPA Emergency-Based Tariffs
 - Reciprocal Tariffs
 - Border Security-Related Tariffs
 - Fentanyl-Related Tariffs
 - “Secondary Tariffs”
- Remedial Duties
 - Antidumping Duties
 - Countervailing Duties

Tariffs

IEEPA Tariffs & the Supreme Court



Court of International Trade (CIT)
Court of Appeals for the Federal Circuit (CAFC)

Tariffs

IEEPA Tariffs & the Supreme Court

- The CAFC stated, “IEEPA provides that, after declaring a national emergency ... the President may ‘investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any ... importation or exportation of ... any property in which any foreign country or a national thereof has any interest.’ 50 U.S.C. § 1702(a)(1)(B). Notably, IEEPA does not use the words ‘tariffs’ or ‘duties,’ nor any similar terms like ‘customs,’ ‘taxes,’ or ‘imposts.’ IEEPA also does not have a residual clause granting the President powers beyond those which are explicitly listed.”
- The dissenting opinion stated, “IEEPA’s authorization of presidential action in this realm is not an unconstitutional delegation of legislative authority under the Supreme Court’s decisions, which have upheld broad grants of authority, including tariffing authority, in this foreign-affairs-related area.”

U.S. Tariffs

Objective	Date Announced	Tariff or Action	Form of Announcement	Implementation Date	Authority	Reasoning
Canada and Mexico	February 1, 2025	<ul style="list-style-type: none">25% on most products, 10% on Canadian energy and potash.For Canada, 25% tariff raised to 35% and 40% for transshipment.	Executive Orders	<ul style="list-style-type: none">Originally February 4, delayed to March 4.Exception announced March 6 for goods imported under the USMCA.New rates for Canada effective August 1.	Section 1702(a)(1)(B) of IEEPA	Drug smuggling and immigration
China	May 12, 2025	<ul style="list-style-type: none">30% on all products, set to expire on November 10May revert back to previous 145% tariff	Executive Order	<ul style="list-style-type: none">May 12 announced trade deal with ChinaExtension announced August 11	Section 1702(a)(1)(B) of IEEPA	Synthetic opioid supply chain in China
Steel and Aluminum Products and Derivatives	June 3, 2025	50% on HTS Chapter(s) 73 (steel), 76 (Aluminum)	Executive Order	June 4, 2025	Section 232	Impairment of national security due to large quantities being imported

U.S. Tariffs (Cont'd)

Objective	Date Announced	Tariff or Action	Form of Announcement	Implementation Date	Authority	Reasoning
Automobiles and certain Automobile Parts	March 26, 2025	<ul style="list-style-type: none"> 25% tariff, under USMCA only value of non-U.S. content Amended for non-stacking and an offset on MSRP of 3.75% until 4/30/26 and 2.5% until 4/30/27 	Proclamation	<ul style="list-style-type: none"> April 3 No later than May 3 for auto parts 	Section 232	Protect America's automobile industry and threats to industrial base and supply chains
Reciprocal Tariffs	April 2, 2025	<ul style="list-style-type: none"> April 9 announced 10% baseline tariff for 90 days, individualized tariffs in effect after, exceptions apply on various goods and Canada and Mexico August 7 rates went into effect ranging from 10% to 41% 	Executive Order	August 7	Section 1702(a)(1)(B) of IEEPA	National emergency to strengthen international economic position and protect workers
China de minimis	April 2, 2025	<ul style="list-style-type: none"> End duty-free de minimis (\$800) treatment for China, duty of 120% of value or \$100 per item increasing to \$200 per item after June 1 May 14 120% reduced to 54%, retained \$100 per item, removed \$200 increase June 1, 2025 	Executive Order	<ul style="list-style-type: none"> May 2 Update effective April 10 	Section 1702(a)(1)(B) of IEEPA	Health emergency by the illicit flow of synthetic opioids

U.S. Tariffs (Cont'd)

Objective	Date Announced	Tariff or Action	Form of Announcement	Implementation Date	Authority	Reasoning
De Minimis for All Countries	July 30, 2025	<ul style="list-style-type: none">Suspend duty-free de minimisGoods shipped through international postal network:<ul style="list-style-type: none">Duty equal to countries tariff rate or<16% tariff = \$80 per item16% to 25% tariff = \$160 per item>25% tariff = \$200 per item	Executive Order	August 29	Section 1702(a)(1)(B) of IEEPA	Unusual and extraordinary threats to national security, foreign policy, and economy
Copper	July 30, 2025	50% tariff on semi-finished copper products and intensive copper derivative products	Proclamation	August 1	Section 232	Impairment of national security due to large quantities being imported

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OB3 Updates



OB3 Updates

Research & Experimental Expenditure Guidance

Key Provisions of Rev. Proc. 2025-28

- Options to recover capitalized domestic R&E costs from 2022 – 2024 tax years
 - Keep amortizing over remainder of 60 month period
 - Deduct in 2025
 - Deduct in first two tax years beginning after December 31, 2024
- Options for domestic R&E incurred in 2025 tax year or later
 - Deduct as incurred
 - Capitalize and amortize over a period of not less than 60 months
- Allows for elections to be made on statement in 2025 return in lieu of a formal accounting method change on Form 3115
- Additional options are available for small businesses

OB3 Updates

No Tax on Overtime – Practical Considerations

- 2025 W-2 will not be updated to account for no tax on overtime
- Be prepared for 2026 withholding and W-2 reporting
- What should a business provide to employees to help them compute the deduction in 2025?
- Not all overtime counts – only incremental overtime pay mandated by FLSA is eligible

OB3 Updates

No Tax on Tips

REG-110032-25

- 2025 W-2 will not be updated to account for no tax on tips
- Be prepared for 2026 withholding and W-2 reporting
- Proposed Regs issued Sept. 19, 2025
- Defines tip
- Identifies occupations eligible for no tax on tips

OB3 Updates

No Tax on Tips

REG-110032-25

- Rules for specified service trades or businesses, which includes performing arts.

Examples assume all tips are properly included in income / reported on W-2s

- Self employed pianist plays piano in a restaurant bar. The pianist collects \$100 in a tip jar.

➡ The tips are not qualified tips

- Pianist is an employee of a restaurant and plays at the restaurant's bar. The pianist collects \$100 in a tip jar.

➡ The tips are qualified tips assuming they are reported on the pianist's W-2

- A pianist is an employee of a theater and plays at a performance by a singer. After the performance the singer tips the pianist \$100.

➡ The tip is not a qualified tip

OB3 Updates

Draft Forms Sch. 1-A, W-2, & W-4

- Draft 2025 Form
 - Schedule 1-A (Form 1040)
 - Includes no tax on tips, overtime, car loan interest, and enhanced senior deduction
- Draft 2026 Forms (IRS confirmed no changes will be made to 2025 forms IR-2025-82)
 - W-2
 - New box 12 codes for employer contributions to Trump accounts, tips, and overtime.
 - New box 14b to report the Treasury Tipped Occupation Code for occupations eligible for the tip income deduction
 - W-4
 - Includes lines for tips, overtime, new car loan interest, senior deductions, and itemized deductions

OB3 Updates

OECD Proposed Changes to Pillar Two

- Section 899 briefly introduced as part of OB3 but removed after G7 said U.S. companies would not be subject to global minimum tax measures
- “Side-by-side” tax system would qualify:
 - When it imposes a tax that exceeds an agreed upon rate
 - When it taxes income from controlled foreign corporations
 - When it provides a foreign tax credit or equivalent
- Would not be subject to income inclusion rules and the undertaxed profits rule

OB3 Updates

FAQs on Clean Energy Credits

FS-2025-05

- Covers credits under 25C, 25D, 25E, 30C, 30D, 45L, 45W, and 179D
- Timeline of expiring credits and deductions
- Provides IRS' view on what “acquired” means and its effect under 25E, 30D, and 45W
- Transfer election for clean vehicle credit at time of acquisition
- Addresses what will happen to the Energy Credits Online portal
- Periodic written reports not required by qualified manufacturers under 25C
- 25D credit ineligibility in property installed after 12/31/25 but paid for before such date

OB3 Updates

“Beginning of Construction” for Clean Electricity Production and Investment Credits

Notice 2025-42

- Released pursuant to executive order 14315
- Generally, requires taxpayers to have begun physical work on qualifying projects
- Maintain a continuous program of construction
- Physical work must be of a significant nature and can include both off-site and on-site work
 - Examples of off-site work: the manufacture of components, mounting equipment, support structures, and power conditioning equipment
 - Examples of on-site work: may include foundation excavation or the pouring of concrete pads
 - For solar facilities, the installation of racks or other structures to affix photovoltaic panels may constitute physical work

OB3 Updates

State Tax Implications of Federal Changes

- Conformity
 - Three types:
 - Rolling
 - Fixed Date
 - Selective
- With many states seeing budget shortfalls, there could be significant decoupling from newly enacted federal deductions.

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Notable Federal Tax Cases



Notable Federal Tax Cases

State Charitable Deductions for SALT Credits

State of New Jersey, et. al. v. Bessent, 2nd Cir., No. 24-1499

- Second Circuit ruled against New Jersey's, New York's, and Connecticut's allowance of a taxpayer's charitable deductions to offset state and local tax (SALT) burdens.
- The court cited Internal Revenue Code Section 170 “and its implicit *quid pro quo* principle to allow the ... prohibition of a tax deduction where the taxpayer has received a corresponding tax credit from the recipient of a donation.”

Notable Federal Tax Cases

Breakup Fee Ordinary Deduction not Capital Loss

[AbbVie, Inc. v. Commissioner, T.C., No. 2597-23](#)

- Tax Court ruled in favor of AbbVie, Inc., deciding that a \$1.6 billion breakup fee paid to Shire PLC could be deducted as an ordinary expense rather than a capital loss.
- The payment was made after AbbVie's board of directors rescinded its recommendation to shareholders that the two companies merge.
- A key element of the decision allowing an ordinary deduction was that the Abbvie and Shire terminated the proposed combination prior to shareholder approval of the transaction.

Notable Federal Tax Cases

Transfer Pricing

Medtronic, Inc. v. Commissioner, 8th Cir., Nos. 23-3063 & 23-3281

- Eighth Circuit remanded case back to Tax Court
- Best method for determining an arm's length price for intangible property transferred between related parties
- Directed Tax Court to consider “sufficient similar[ities]” to proposed comparable companies, purported differences in asset bases, quantify product liability risk with comparable companies and evaluate materiality differences with respect to profits earned, and determine whether manufacturing the devices in a different facility or building a new facility was a realistic alternative.

Notable Federal Tax Cases

Transfer Pricing Continued

Medtronic, Inc. v. Commissioner, 8th Cir., Nos. 23-3063 & 23-3281

- IRS - comparable profits method (CPM), which “evaluates whether the amount charged in a controlled transaction is arm’s length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances” under Section 1.482-5(a).
- Medtronic - comparable uncontrolled transaction (CUT) method, which “evaluates whether the amount charged for a controlled transfer of intangible property was arm’s length by reference to the amount charged in a comparable uncontrolled transaction” under §1.482-4(c)(1).
- Not outright win for IRS but rejected CUT method for the facts and circumstances

Notable Federal Tax Cases

Foreign Tax Credit

[Liberty Global, Inc. v. Commissioner, 10th Cir., No. 24-9004](#)

- Tenth Circuit upheld Tax Court ruling characterizing gains from stock sale as U.S. source income
- The IRS issued a notice of deficiency, asserting that only the portion of gain applied against the overall foreign losses would be foreign sourced while the excess would be classified as U.S. sourced income under Internal Revenue Code Section 865(a).
- Section 904(f) governs the recapture of overall foreign losses and does not specifically designate the character of the excess gain.
- The court determined that the “notwithstanding any other provision of this chapter” clause (f) of this code section was misinterpreted by Liberty as meaning to override other code provisions, *i.e.*, §865(a), when they conflict.
- The court said that the silence of §904(f) in characterizing the excess gain “cannot possibly conflict with any other provisions ... There is no conflict through silence.” Therefore, §865(a) applies where §904(f) is silent, characterizing the excess gain as U.S. sourced.

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