WINSTON & STRAWN LLP

CLIENT ALERT

One Big Beautiful Bill Becomes Law

JULY 7, 2025

On Friday, July 4, 2025, President Trump signed into law the One Big Beautiful Bill Act, making permanent many of the tax provisions enacted under the 2017 Tax Cuts and Jobs Act (TCJA). An initial draft of the legislation was passed by the U.S. House of Representatives on May 22, 2025 (the Original House Bill). Winston & Strawn's prior alert regarding key provisions of the Original House Bill can be found here. A revised version of the Original House Bill (the Final Bill) was passed by the U.S. Senate on July 1, 2025, and after overcoming opposition from certain members of the Republican Party, the House voted on July 3, 2025, along party lines, to send the Final Bill to President Trump for signature.

As compared to the Original House Bill, the Final Bill (1) includes several provisions that were not present in the Original House Bill, (at least one of which – regarding the scope of Section[1] 1202 – will be welcomed by start-ups and asset managers investing in smaller enterprises), (2) omits certain provisions that were present in the Original House Bill, and (3) retains the substance of many provisions of the Original House Bill, with occasional modifications.

NOTABLE INCLUSIONS

Revised Scope of Section 1202. Under current law, Section 1202 permits non-corporate taxpayers to exclude from gross income one hundred percent (100%) of the gain from the disposition of qualified small business stock held for more than five (5) years, up to a maximum of the greater of $10 million or ten (10) times the taxpayer's basis in such stock. Qualified small business stock is generally stock of a domestic C corporation, the aggregate gross assets of which immediately after the issuance of such stock does not exceed $50 million, provided certain other corporate-level and shareholder-level conditions are satisfied.

The Final Bill proposes three notable changes to this framework. First, the Final Bill would increase the aggregate gross asset threshold for a corporation to be treated as a qualified small business from $50 million to $75 million, which threshold would be further adjusted for inflation in $10,000 increments for taxable years beginning after 2026. Second, the Final Bill would phase in the gain exclusion provided by Section 1202, excluding 50% and 75% of applicable gain from the disposition of qualifying small business stock if such stock is held for three or four years, respectively; the Final Bill preserves exclusion of 100% of such gain for stock held for more than five years. Finally, the Final Bill would increase the applicable dollar limit in respect of the gain exclusion from $10 million to $15 million, which amount would be adjusted for inflation in $10,000 increments for taxable years beginning after 2026. These changes generally would be applicable to stock acquired after the date of enactment of the Final Bill.

Revised Cross-Border Tax Provisions. The Final Bill would revise numerous cross-border tax provisions, including without limitation:

- Reinstating the limitation on downward attribution but adding a new more targeted Section 951B. The Final Bill would reinstate Section 958(b)(4), which limitation was repealed by the TCJA. It simultaneously would create a new Section 951B, which would extend the application of certain portion of Subpart F to any "foreign controlled United States shareholder" of any "foreign controlled foreign corporation." For such purposes, the term "foreign controlled United States shareholder" generally means, with respect to any foreign corporation, any United States person which would be a United States shareholder with respect to such foreign corporation (1) determined under modified Section 951(b) rules, which apply if such shareholder's ownership exceeds 50 percent (by vote or value) of all classes of stock of such foreign corporation and (2) disregarding the Section 958(b)(4) limitation on downward attribution noted above. The term "foreign controlled foreign corporation" means a foreign corporation (other than a CFC), more than 50 percent of the stock of which (by vote or value) is owned directly, indirectly or constructively (but without regard to proposed Section 958(b)(4)) by a foreign controlled United States shareholder. Taken together, these provisions would reduce the number of entities subject to CFC reporting rules. New Section 951B would be effective for taxable years of foreign corporations beginning after December 31, 2025.
- Removing the exclusion for a 10-percent return on any qualified business asset investment in computing amounts includable in income under Section 951A (and generally changing references to Global Intangible Low-taxed Income (or GILTI) to "Net CFC Tested Income").
- Revising the manner in which foreign tax credits are calculated, including without limitation by (1) revising the degree to which deductions, interest expenses, and R&E expenses are allocated to GILTI, (2) increasing the amount of the deemed paid foreign tax credit provided by Section 960(d) from 80 percent to 90 percent, (3) disallowing 10 percent of foreign tax credits in respect of any inclusion in income of amounts previously taxed as GILTI in respect of any such inclusions, and (4) modifying certain sourcing rules in respect of gain on the sale or exchange of inventory produced within but sold outside of the United States and attributable to the non-U.S. branch of a U.S. person. These provisions would apply for taxable years beginning after December 31, 2025.

NOTABLE OMISSIONS

No Elimination of Pass-Through Entity Tax Deductions or Credits for State and Local Taxes. The Original House Bill generally would have foreclosed the ability of individual partners or S corporation shareholders to utilize state law workarounds to the SALT Cap for any partnership or S corporation engaged in a "specified service trade or business" (e.g., by removing the benefit of "pass-through entity tax" elections). No such limitation appears in the Final Bill.

No Retaliation Against "Unfair Foreign Taxes." The Original House Bill would have added a new section to the Code, which would have permitted increases to statutory rates for certain income, withholding (including FDAP withholding on interest and dividends and FIRPTA withholding) and excise taxes applicable to residents of "discriminatory foreign countries" that are deemed to have imposed "unfair foreign taxes" on U.S. persons of foreign entities owned thereby. After a tentative agreement was reached with the G7 not to impose certain taxes on U.S. companies, no such proposal was included in the Final Bill.[2]

No Increase in Net Investment Income Tax for Certain Private Foundations. The Original House Bill would have increased the rate of the excise tax applicable to private foundations exempt from tax under Section 501(a) from 1.39 percent of their net investment income up to a rate of 10 percent. The Final Bill contains no similar provision.

RETAINED PROVISIONS

Provisions Affecting Individuals

Freezing TCJA Marginal Rates. The Final Bill, consistent with the Original House Bill, makes permanent the reduced marginal U.S. federal income tax rates introduced by the TCJA, which capped the top marginal personal income tax rate at 37 percent.

Deductibility of State and Local Taxes. The Original House Bill generally would increase the cap for state and local tax deductions to $40,400 for individual taxpayers ($20,200 for a married taxpayer filing separately) but phase down the deductibility of such taxes as the taxpayer's modified adjusted gross income increases. The Final Bill also includes a phase down based on income with a floor on such phase down equal to the TCJA's current cap of $10,000. The Final Bill limits the deduction for state and local taxes to $40,000 for the tax year ending 2025 and $40,400 for the tax year ending 2026. After 2026, the Final Bill increases the amount of such deduction by 101% per year for 2027 through 2029. Unlike the Original House Bill, the Senate Bill also restores the TCJA's $10,000 cap on deductibility for tax years beginning after December 31, 2029.

Itemized Deductions; Limitation on Miscellaneous Itemized Deductions. The Original House Bill removed the current limitation on itemized deductions and permanently eliminate the ability of taxpayers to claim miscellaneous itemized deductions (e.g., in respect of management fees). The Final Bill adopts a similar approach in respect of the limitation on itemized deductions but exempts from its application such deductions for purposes of determining a taxpayer's qualified business income under Section 199A. The Final Bill also narrows the scope of the repeal on miscellaneous itemized deductions by adding to the list of permitted deductions certain unreimbursed educator expenses.

Repeal of the Deduction for Personal Exemptions. The Original House Bill would permanently eliminate the ability of individuals to claim deductions for personal exemptions. The Final Bill includes a similar provision but provides temporary relief for taxpayers 65 years old or older for tax years 2025 through 2028 by permitting a $6,000 deduction, phasing out above certain income thresholds.

Restricted Deductions for Tips, Overtime, and Car Loan Interest. The Original House Bill would provide for above-the-line deductions of qualified tips earned by certain individuals in certain professions, qualified overtime pay, and up to $10,000 of interest on qualifying passenger vehicle loans, in each case provided the taxpayer's adjusted gross income does not exceed certain thresholds. The Final Bill provides for similar deductions but (1) caps the deduction for tips at $25,000, (2) caps the deduction for certain overtime compensation at $12,500 ($25,000 for taxpayers filing jointly), and (3) allows a deduction of up to $10,000 of interest on certain vehicle loans provided, among other things, that the final assembly of the vehicle occurred within the United States. Under the Final Bill, deductions in respect of qualified tips and qualified overtime pay phase out for taxpayers with adjusted gross income in excess of $150,000 ($300,000 for taxpayers filing jointly), while the deduction for certain vehicle loan interest phases down for taxpayers with adjusted gross income in excess of $100,000 ($200,000 for taxpayers filing jointly). The ability to claim all three deductions would terminate for taxable years beginning after December 31, 2028, under the Final Bill.

Expanding Estate and Gift Tax Exemption Amounts. The Original House Bill would make permanent the increased estate and lifetime gift tax exemption and would increase the basic exclusion amount from $5 million to $15 million. The Final Bill adopts a similar approach.

Restricting Deductibility of Excess Business Losses. Like the Original House Bill, the Final Bill would make permanent the TCJA's restriction on the deductibility of excess business losses.

Provisions Affecting Businesses

Expanding Bonus Depreciation. The Original House Bill would eliminate the current phase-out for the expensing of certain qualified property and permit taxpayers to immediately expense 100 percent of the cost of certain qualified property (which includes most equipment and machinery) acquired or placed in service on or after January 20, 2025 and before January 1, 2030. The Final Bill would go further, making permanent the ability to immediately expense 100 percent of the cost of certain qualified property acquired after January 19, 2025. The Final Bill would also permit the immediate expensing of 100% of the cost of certain nonresidential real property, the construction of which begins after January 19, 2025 and before January 1, 2029, and which is placed in service before January 1, 2031.

Expensing of Research and Experimental (R&E) Expenditures. The Original House Bill would restore the ability of taxpayers to immediately deduct 100% of certain domestic R&E expenditures incurred in tax years beginning after December 31, 2024, and before January 1, 2030. The Final Bill would add a new section to the Code, which would make permanent a taxpayer's ability to immediately expense certain domestic R&E expenditures (including certain expenditures arising in connection with software development but excluding certain expenditures arising in connection with mineral, oil and gas exploration). Under the Final Bill, like the Original House Bill, non-U.S. R&E expenditures would generally be amortizable over a fifteen-year period.

Revised Limitations on Deductibility of Business Interest Expense. The Original House Bill would permit taxpayers to calculate their income in respect of which the limit on deductibility is based (i.e., their "adjusted taxable income") without reference to depreciation and amortization deductions for taxpayer years beginning after December 31, 2024, and before January 1, 2030. The Final Bill would make permanent the ability of taxpayers to compute their adjusted taxable income without reference to depreciation and amortization deductions. However, the Final Bill would generally require taxpayers to compute their adjusted taxable income without reference to certain inclusions under Subpart F of the Code. The Final Bill also (1) provides that, in calculating the amount of deductible business interest expense, the Section 163(j) limitation applies regardless of whether a taxpayer may deduct or is required to capitalize such expense, (2) requires that the amount allowed as a deduction after applying the Section 163(j) limitation be first applied to interest that would otherwise be capitalized before being applied to interest that would otherwise be deducted and (3) provides that disallowed deductions will not be treated as interest subject to capitalization rules in the year to which such interest is carried forward; interest capitalized pursuant to Sections 263(g) or 263A(f) is not treated as interest that is required to be capitalized for purposes of the foregoing rule.

Section 250 Deduction Percentages. The Original House Bill would reduce the deduction permitted under Section 250 of the Code to 49.2 percent and 36.5 percent in respect to GILTI and FDII, respectively. The Final Bill would further reduce such deductions to 40 percent and 33.34 percent, respectively.

Base Erosion and Anti-abuse Tax Percentage. The Original House Bill would freeze the rate of tax applicable to certain base erosion payments under Section 59A of the Code at 10.1 percent, up from 10 percent (increasing to 12.5 percent for taxable years beginning after December 31, 2025). The Final Bill would increase the rate proposed by the Original House Bill to 10.5 percent.

Employee Retention Tax Credit (ERTC) Scrutiny. Both the Original House Bill and the Final Bill would impose a penalty of $1,000 per failure to satisfy certain due diligence requirements pertaining to ERTCs. However, while the Original House Bill would also impose penalties under Section 6701 on certain ERTC promotors in an amount equal to the greater of $200,000 or 75 percent of the gross income derived by such promotor, the Final Bill contains no similar penalty.

Similar Limits on Charitable Deductions for Corporate Taxpayers. The Original House Bill would permit corporate taxpayers to deduct charitable contributions in an amount greater than 1 percent but not exceeding 10 percent of the taxpayer's taxable income, with deductions in excess of such 10 percent ceiling carrying forward up to five years. The Final Bill largely retains this framework.

Treatment of Qualified Opportunity Zones. The Original House Bill would have extended the period for investing in qualified opportunity zones through December 31, 2033, and would have permitted the designation of new zones while narrowing the eligibility requirements for such new designations. The Final Bill retains much of the framework of the Original House Bill, including with respect to tax return and reporting requirements. However, unlike the Original House Bill, the Final Bill makes Qualified Opportunity Zones a permanent feature of the Code, and designated zones would be designated every ten years and remain in effect for a ten-year period. In addition, the Final Bill permits the deferral of certain gains related to opportunity zone property to until the earlier of the date on which such property is disposed or five years following the taxpayer's investment, Whereas the Original House Bill would have permitted taxpayers to defer to December 31, 2033, gains on amounts invested after December 31, 2026, and before January 1, 2034.

Revised Statutory Language Regarding Treatment of Payments From Partnerships to Partners. Section 707(a)(2) currently provides that, "under regulations prescribed by the Secretary," certain transactions between a partner and a partnership will be treated as transactions occurring between the partnership and a person that is not a partner.

Both the Original House Bill and the Final Bill would revise the language of Section 707(a)(2) so that it would apply "except as provided" by the Secretary.

Taxable Reit Subsidiary Asset Test. Both the Original House Bill and the Final Bill would increase the percentage of REIT assets consisting of one or more taxable REIT subsidiaries from 20 percent to 25 percent.

Provisions Affecting Certain Tax-Exempt Entities

Revised Excise Tax on Certain Private Colleges and Universities. The Original House Bill would revise the rate of tax applicable to certain educational institutions under Section 4968 from a flat 1.4 percent for all institutions to 1.4 percent, 7 percent, 14 percent, and 21 percent if such institution's student adjusted endowment is less than $750,000, between $750,000 and $1,250,000, between $1,250,000 and $2,000,000, and $2,000,000 or greater, respectively. The Final Bill would modify the rates proposed in the Original House Bill to 1.4 percent, 4 percent, and 8 percent for institutions with student adjustment endowments of between $500,000 and $750,000, above $750,000 up to $2,000,000, and above $2,000,000, respectively.

Provisions Affecting Certain Clean Energy Tax Credits

The Final Bill accelerates the phase-out of certain clean energy tax credits to a greater degree than provided for in the Original House Bill. Specifically, while the Original House Bill proposed phasing out credits under Section 25E (previously owned clean vehicle credit), Section 30D (clean vehicle credit) and Section 45W (qualified commercial clean vehicles credit) by December 31, 2025, the Final Bill would accelerate phase-out of such credits to September 30, 2025. Conversely, while the Original House Bill would phase out the credit under Section 30C (alternative fuel vehicle refueling property credit) by December 31, 2025, the Final Bill would extend the same to June 30, 2026. The December 31, 2025 phase-out of credits under Section 25C (energy efficient home improvement credit) and Section 25D residential clean energy credit) proposed by the Original House Bill remains unchanged in the Final Bill.

As with the Original House Bill, the Final Bill would generally phase out or eliminate credits under Section 45Y (clean energy production credit) and Section 48E (clean electricity investment credit).[3] Notably, the Final Bill provides that the credits under these Sections for wind and solar projects would be repealed and terminated for projects that are not placed in service by December 31, 2027. The Final Bill does include a provision that makes the general termination of these credits for wind and solar projects only applicable to projects that begin construction after the date that is 12 months after the date of final enactment of the Act, which provides some additional time for projects to take advantage of these credits. These special, more restrictive timing rules would not be applicable to battery and energy storage projects. Similar to the Original House Bill, the Final Bill includes various prohibitions and restrictions on these credits for projects that involve foreign entities of concern. The Final Bill does provide a limited grandfathering-out rule of the foreign entity of concern rules for binding written contracts that are entered into on or before June 16, 2025 for wind and solar projects, and December 31, 2025 for other projects (e.g., battery and energy storage projects). In addition to needing to have entered into the contract timely, wind and solar deals will need to be placed in service before January 1, 2028. Other projects (e.g., battery and energy storage projects) will need to be placed in service before January 1, 2030.

The Section 6418 transferability for tax credits regime generally remains the same, except credits cannot be transferred to foreign entities of concern and related entities.

The phase-out for credits under Section 45U (zero-emission nuclear power production credit) proposed in the Original House Bill finds no analogue in the Final Bill. Overall, as with the Original House Bill, the Final Bill is expected to significantly reduce the availability of energy-related tax credits.

Miscellaneous Provisions

Certain IRS Form 1099 Reporting Requirements. The Original House Bill would increase the dollar threshold for reporting obligations under Section 6050W for third-party settlement organizations from $600 to $20,000 and increase the number of transactions triggering such reporting obligation from one to 200. The Final Bill generally preserves this framework.

Increased Debt Ceiling. The Original House Bill would have increased the debt ceiling by $4 trillion. The Final Bill goes farther, proposing an increase of $5 trillion.

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Please reach out to any member of the Winston Tax Team with questions, including the authors below.

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[1] Unless otherwise stated, the term "Section" refers to a section of the Internal Revenue Code of 1986, as amended.

[2] Our prior blog post announcing this development can be found here.

[3] The differences between the Original House Bill and the Final Bill in respect of these credits exceed the scope of this Alert.
10+ Min Read

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