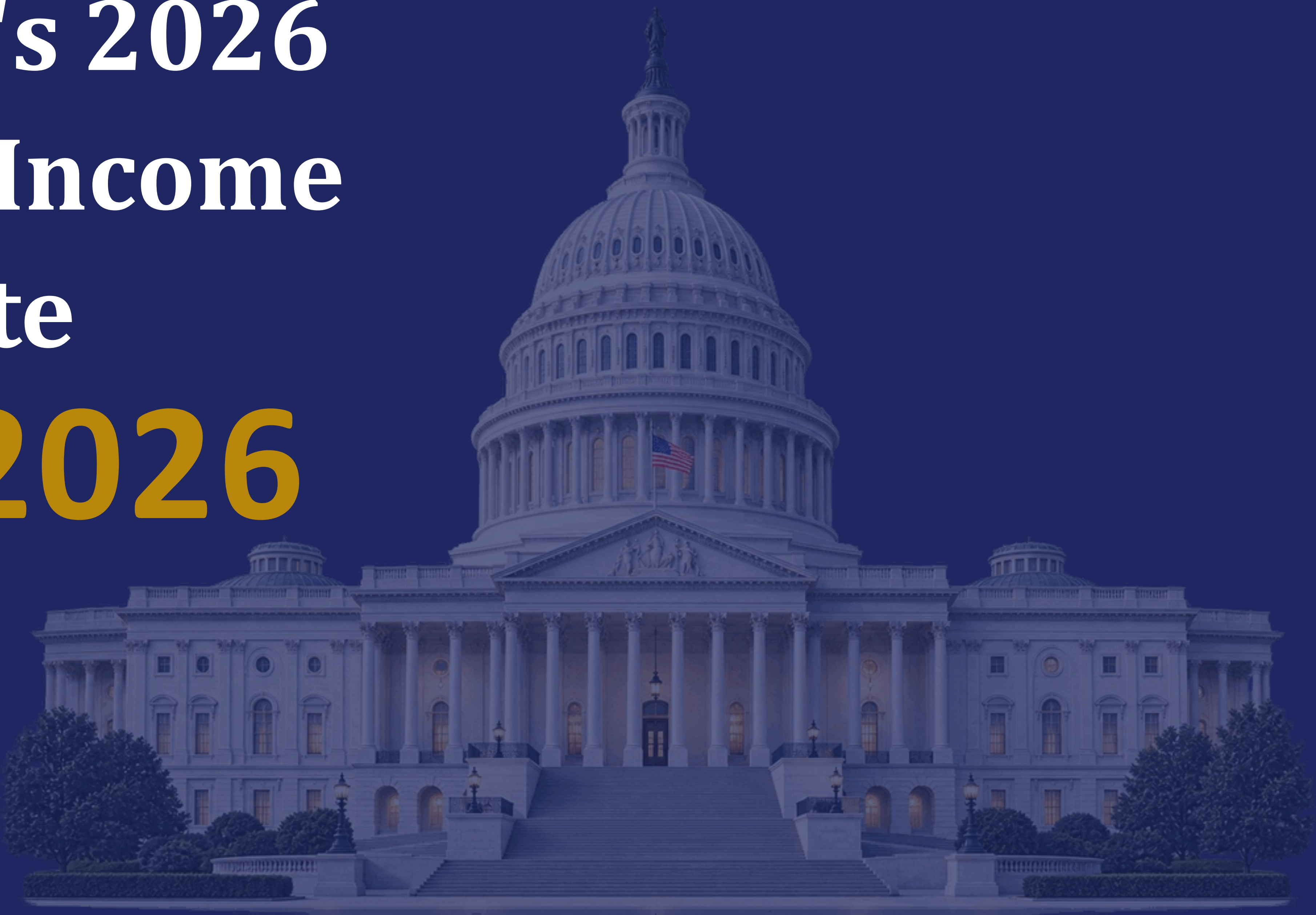
JJ the CPA's 2026 Business Income Tax Update

SEAS 2026



YOUR EDUCATOR

Joshua Jenson, CPA — “JJ the CPA”

JJ is a third-generation CPA and the founder of a tax practice with more than 30 years of managing his own CPA firm. He has completed 34 tax seasons and is licensed in Oklahoma and Texas. He is enjoying succession with his son, Cooper Jenson.

Beyond the tax practice, JJ is a national CPE educator and speaker, a five-time author, and the voice behind the JJ the CPA YouTube channel — over 100,000 subscribers and 8 million views — where he teaches CPAs and tax professionals nationwide. He's been recognized by the U.S. Chamber of Commerce as one of the “Top 10 Small Business Experts to Follow on Social Media.”

- **AMERICAN INSTITUTE OF CPAs & OKLAHOMA SOCIETY OF CPAs MEMBER**
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- **ABILENE CHRISTIAN UNIVERSITY – BBA in ACCOUNTING**
- **NAMED DISTINGUISHED CPA OF THE YEAR BY HIS OKLAHOMA PEERS**
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Information available as of 8/18/26
Updated for Additional Slides 8/25/26
Presented 8/26/26

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MINOR SLIDE UPDATES AS PRESENTED

Since Submission on 8/18/26

SEAS Business Tax Update

RAISE YOUR HAND

Be honest with yourself:

Do you have more clients than you or your firm have time for?

Everything today is about what gets waved through when there's no time to question it.

THE RIDDLE

WHO HAS TIME FOR EVERY SINGLE ONE OF YOUR CLIENTS?

Hold onto it. We'll answer it before the day is out.

SEAS 2026

6 Releases Just in August:

Two Major Ones in the last 14 Days

What's new just this month!

August 2026: IRS

1. **PFML Employer Credit — Notice 2026-28, Aug. 5**

   Guidance on the employer credit for paid family and medical leave under the Working Families Tax Cuts — relevant for any client claiming this credit.

2. **Overtime FAQ Updated — IR-2026-88, Aug. 6**

   The IRS refreshed the qualified overtime compensation FAQs — we'll cover the full mechanics later in today's overtime module, so just noting the update landed.

3. **Saver's Match On Deck — Notice 2026-48, Aug. 7**

   Treasury and the IRS announced intent to propose regs for the Saver's Match, a 2027 federal match for low- and moderate-income savers.

ADDED FOR PRESENTATION ONLY

August 2026: IRS (cont.)

4

Trump Accounts Employer Contributions — REG-101355-26, Aug. 11

Proposed regs on employer §128 contributions for employees and their dependents — the exclusion rules, more in today's Trump Accounts module.

5

Retirement Plan Rollovers — Notice 2026-49, Aug. 12

New standardized sample forms simplify direct rollovers between retirement plans and IRAs.

6

Sirius Rewritten — 5th Cir., Aug. 12

The Fifth Circuit withdrew its January limited-partner opinion and substituted a management-role test — the full story in today’s SE tax module.

ADDED FOR PRESENTATION ONLY

The Fifth Circuit Canceled Its Own January Opinion.

Withdrawn on rehearing — and replaced with the new test: a state-law limited partner escapes SE tax on the distributive share only if the partner plays

"no significant role in managing or running the business."

ADDED FOR PRESENTATION ONLY

2026 GEORGIA TAX LAW UPDATES

Georgia Tax Updates

3

GA State Income Tax Rate Cut

HB 463 cuts Georgia's flat income tax rate to **4.99%** for 2026. Business rate tied to individual rate.

Georgia's Corporate Rate Cut Rides on the Individual Rate

THE RULE

The entity rate isn't set on its own — O.C.G.A. § 48-7-21(a) locks it to the individual rate. Any future personal-rate cut carries through to corporations and pass-through entities automatically, with no separate legislation needed.

PLAIN ENGLISH

HB 463 cuts Georgia's corporate and pass-through entity income tax rate to 4.99% for 2026, alongside the personal rate cut — and ties future entity-rate reductions automatically to whatever the individual rate becomes.

GA Annual IRC Conformity

HB 1199's new IRC conformity date (the federal code as it existed on 1/1/2026) applies to **tax years beginning on or after January 1, 2025** — not just 2026 forward.

HB 1199 Conformity Reaches Back to 2025

THE RULE

HB 1199 updates Georgia's IRC conformity date to January 1, 2026 — and that date change applies to tax years beginning on or after January 1, 2025, not just 2026 forward.

PLAIN ENGLISH

This isn't a 2026-only update — it may reach 2025 Georgia returns already filed and extended right now. An extended 2025 return that has not yet been filed needs to reflect this conformity date.

HB 1199 Conformity Reaches Back to 2025 (cont.)

THE NUMBERS

1/1/2025

Earliest tax year reached by the new conformity date

1/1/2026

The federal IRC reference date Georgia now conforms to

RISK IF CHALLENGED

Some 2025 Georgia returns filed before HB 1199's March 20, 2026 signing may not reflect the new conformity date and could warrant a second look.

Note: This is not from Georgia DOR guidance directly. DOR has not itself published a statement on revisiting already-filed returns.

UPDATED: SEE NEXT SLIDE

HB 1199: Businesses - Conform or Decouple

- **R&D EXPENSING —** Georgia decouples from new federal § 174A and keeps pre-TCJA IRC § 174 - **immediate expensing** of research costs for Georgia purposes.
- **SECTION 179 —** Georgia conforms to the **increased** IRC § 179(b) expensing limit, but continues to exclude real property under ~~§ 179(e).~~ (§ 179(d)(1)(B)(ii)).
- **LOW-INCOME HOUSING —** The low-income housing tax credit is capped at **$100 million** per year for 2026-2028.

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- **LOW-INCOME HOUSING —** The low-income housing tax credit is capped at **$100 million** per year for 2026-2028.

What LIHTC Actually Applies To

1. **Rental housing, not owner-occupied —** new construction or rehab of apartment-style rentals with a share of units rent- and income-restricted for a required period. Never owner-occupied — single-family rentals can qualify.
2. **The developer/investor claims it, not the tenant —** a credit spread over 10 years, generally synced to investors in the deal. Nothing an individual renter puts on their own return.
3. **A capped, state-allocated pool —** states get an annual federal allocation and award it competitively to specific projects. HB 1199 caps Georgia's own allocation at $100 million/year for 2026–2028, on top of the federal pool.

2026 Georgia Tax Legislation

AUTHORITY

HB 463 (2026) — Georgia Economic Growth and Tax Relief Act

Rate cut, deduction, exemption, retirement, tips/OT

https://www.legis.ga.gov/legislation/70350

AUTHORITY

HB 1000 (2026) — Surplus Tax Refund

One-time refund, signed March 20, 2026

https://www.legis.ga.gov/legislation/72293

AUTHORITY

HB 1199 (2026) — Annual IRC Conformity

Conformity date, decoupling items, LIHTC cap

https://www.legis.ga.gov/legislation/72875

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LINKS TO THE AUTHORITY ON ALL MODULES

Business Tax Appendix

SALT Under OBBBA

The $40,000 Cap, the Phase-Down, and What Comes Back in 2030

What the Law Actually Says

The Cap Did Not Expire. It Got Bigger.

THE RULE

The SALT cap is now permanent — it no longer has a sunset date. For 2025 it is $40,000, stepping up 1% a year through 2029. Only the amount above the original $10,000 floor is temporary, guaranteed for five years.

IRC §164(b)(6)-(7). The cap steps up a flat 1% a year through 2029, then drops to $10,000.

The Cap Did Not Expire. It Got Bigger. (cont.)

THE NUMBERS

$40,400

2026 cap; $20,200 if MFS

$10,000

2030 forward — permanent; $5,000 if MFS

! RISK IF CHALLENGED

Telling a client the SALT cap “goes away” is wrong in both directions. The cap is now permanent. The relief is not — the elevated amount is a five-year exception running 2025 through 2029. Plan accordingly before it ends.

The Cap, Year by Year

YEAR	CAP (JOINT/SINGLE/HOH)
2025	$40,000
2026	$40,400
2027	$40,804
2028	$41,212
2029	$41,624
2030 and after	**$10,000 ($5,000 MFS)**

Key Takeaways

1. The $10,000 cap is now permanent. The elevated amount is a five-year exception that ends with tax years beginning after 2029.
2. One threshold — $505,000 in 2026; $252,500 MFS. Thirty cents of reduction per dollar above it, floor of $10,000 ($5,000 MFS).
3. Let the calculation tell you whether the deduction is of value based on all the facts and circumstances of your client.

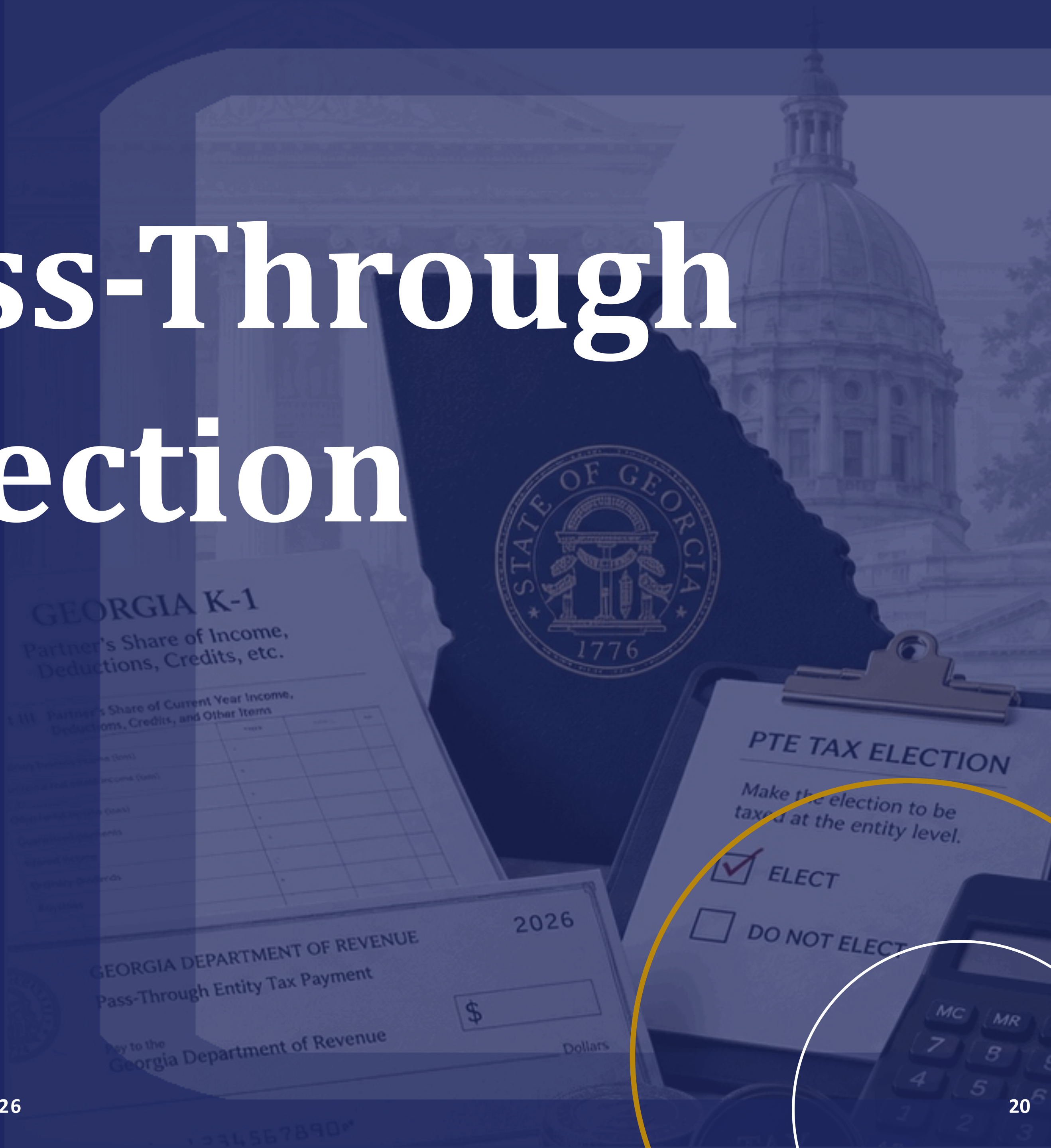
IF YOU REMEMBER ONE THING

The “cap” is permanent. The relief is not.

SEAS 2026

Georgia's Pass-Through Entity Tax Election

Who elects, what it costs, and what it is actually worth



Georgia Lets the Entity Pay the Tax

THE RULE

Each year, a Georgia partnership or S corporation can choose to have the entity pay Georgia income tax directly instead of the owners. That choice is fresh every year — once made for a year it cannot be undone for that year, but it does not carry forward or bind any future year. O.C.G.A. 48-7-23(b)(2); 48-7-21(b)(7)(C.1)(i).

PLAIN ENGLISH

The entity writes the check instead of the owners. That converts a personal, SALT-capped state income tax into an ordinary deduction of the trade or business under Notice 2020-75.

Georgia Lets the Entity Pay the Tax (cont.)

THE NUMBERS

2022

First tax year the election existed

4.99% **NEW FOR 2026**

Georgia entity rate for tax year 2026 (now the same as the individual rate; Georgia gives no separate entity-level deduction)

! RISK IF CHALLENGED

The election is made by the entity but the economics run owner by owner.

One election binds every owner, including the ones it makes worse off.

IF YOU REMEMBER ONE THING

The SALT increase doesn't remove the annual analysis

Trump account contributions can be tax-deductible — and can be pre-tax to the employee.

TRUE

FALSE

SEAS 2026

Trump Accounts: The Employer Side

IRC §128 — and the proposed regulations issued August 11, 2026

The Account Itself Is This Afternoon

SEE THE INDIVIDUAL SESSION

The employer side only. The account itself is covered this afternoon.

- Who can open one, and in what order
- Who can contribute — nearly anyone
- The two eligibility tests and the $1,000
- The growth period and what it restricts
- What creates basis and what does not

- What the account becomes at 18
- Ordinary income, and the 10% before 59½
- Trump account vs. Roth IRA vs. 529
- Form 4547 — and why I don’t prepare it
- Gift tax and Rev. Proc. 2026-25

August 11, 2026

IRS Notice 2026-49

Trump Accounts Employer Contributions — REG-101355-26, Aug. 11

Proposed regs on employer §128 contributions for employees and their dependents — the exclusion rules

ADDED FOR PRESENTATION ONLY

Nobody Saw This Coming

Three things are true at the same time. That combination is close to unheard of.

1

The EMPLOYER deducts it

Ordinary §162 compensation, up to $2,500 per employee. Subject to employer payroll taxes.

2

The EMPLOYEE never reports it for ordinary income tax purposes

Excluded from gross income under §128(a), up to the $2,500 limit. No income tax, no income-tax withholding. Subject to FICA taxes.

3

And the EMPLOYEE can deduct their OWN pay — pre-tax

Salary reduction through a §125 plan — into the dependent's account. Nothing else allows that. Subject to FICA taxes.

The contributions are not considered ORDINARY income. FICA/FUTA still apply.

The Deduction Nobody Expected

REG-101355-26, issued August 11, 2026 — the first rules ever written under §128.

1

The employer deducts it

§128 governs the employee's side and says nothing about the deduction — it is §162(a)(1) compensation, ordinary and necessary.

2

The employee excludes it — entirely

§128(a), up to $2,500. No partial inclusion, no phase-out, no deferral. The employee does not report it as taxable income — but Form W-2 Box 12 code TA reporting is still required.

3

And nobody picks it up — for income tax

No offsetting income inclusion for a qualifying contribution — but it stays FICA/FUTA wages, Code TA and Form 5498-TA still get filed, and excess amounts are taxable wages. That combination is genuinely rare on the books.

The Employer Contribution — How It Works

The first of the two things your client can offer. This one is the company's money.

1 **Up to $2,500 per employee, per year**

Per EMPLOYEE — not per child, and not per employer. §128(b), indexed after 2027.

2 **Deducted by the business**

Ordinary §162 compensation. Nothing in §128 or §530A denies the deduction.

3 **Paid to the account of an employee or their dependent**

§128(a). The employer cannot open the account — the beneficiary's account must already be established.

4 **Only under a written program**

No separate written plan means no exclusion, and every dollar becomes taxable wages.

Employees Can Fund It Too — Pre-Tax

A parent can fund their child's account with their OWN money, before tax, under a qualified employer plan only.

1. **Salary reduction under a §125 cafeteria plan**
   To a DEPENDENT'S account only. Direct employer §128 contributions can also fund an eligible EMPLOYEE'S own account — salary reduction cannot.

2. **It shares the same $2,500 ceiling**
   Employer money and employee money share the same $2,500. Contribute the full amount and no salary reduction room is left.

3. **Two documents, not one**
   The §128 program is a separate written plan; the cafeteria plan is amended to offer it as a qualified benefit under §125(f)(1).

Can the Owner Take It? By Entity

NO — EXCLUDED

- **Sole proprietor** §401(c)(1)
- **Partner** not an employee
- **>2% S shareholder** §1372(b)
- **Director as such** not employment
- **Spouse, S corp** §318 attribution

YES — ELIGIBLE

- **C corp shareholder-EE** if bona fide EE; testing applies
- **Common-law EE** §31.3401(c)-1
- **Spouse, non-S** if bona fide EE
- **Adult child, non-S** if bona fide EE
- **But testing** still applies

What is your client funding? A Trump Account for an employee’s dependent.

1. **It is a traditional IRA for a child under 18**
   §530A account, invested in broad U.S. equity index funds. The individual session covers the account in full.

2. **$5,000 per child per year — the regular-contribution limit**
   Your client’s $2,500 comes OUT of that $5,000, not on top of it. The employer has no duty to police that limit.

3. **The employer cannot open a Trump Account for the beneficiary**
   Only an authorized individual (parent, guardian, other adult) can, on Form 4547. Your client can only fund an existing, activated account.

Excluded From Income — Not From FICA

FORM W-2 — 2026, §128 CONTRIBUTION OF $2,500

1 Wages, tips, other comp Excluded	2 Federal income tax w/h No W/H	**3 Social security wages** **Included**	**5 Medicare wages** **Included**
12a Code TA — new for 2026 **$2,500**	12b Code TT — overtime —	12c Code TP — cash tips —	14 Other —

Every other fringe exclusion you know spares FICA too — §125, §127, §129, §106 all appear in §3121(a). §128 does not. It behaves like a traditional 401(k) deferral: out of Box 1, still in Boxes 3 and 5.

§§3121(a), 3306(b); 2026 W-2 Instructions

The $2,500 Is Per Employee

Three ways clients get this wrong, and the first one is nearly universal.

1

Not per child — per EMPLOYEE

Three children with accounts still means one $2,500 ceiling. It may be split among them; it cannot be multiplied.

2

Not per employer either

$2,500 across all of that employee's jobs for the year. A two-job household can exceed it with neither employer at fault.

3

And it costs more than $2,500 for the employer

Employer FICA of $191.25 rides on top. Grossing up so the employee pays nothing runs closer to $3,006.

Where the Money Actually Goes

Two sources, one ceiling, and it lands inside the child's limit — not on top of it.

TWO SOURCES

$2,500
Employer, max

$2,500
Employee salary reduction, max

ONE CEILING

$2,500
Combined, per employee, per calendar year. Not $5,000. §128(b).

AND IT REDUCES

$5,000
The child's annual limit — pilot, rollover, and qualified general amounts don't count. §530A(c)(2)(A).

So, an employer putting in the full $2,500 leaves the employee no salary reduction room — and leaves the family only $2,500 of the child's $5,000 for the year.
If the grandparents already funded $5,000, the employer's benefit is worth nothing to that child this year, and nobody will tell the employee why.

Why Every Employer Asks About Grossing Up

Free of income tax. Not free of payroll tax — and that part lands on the employee.

1. **The employee owes FICA on money they never see**

   \$2,500 × 7.65% = \$191.25 withheld from that period's check, for a contribution to their child's account.

2. **If the contribution IS the payroll, there is nothing to withhold from**

   §3102(a) requires collection from wages, and §3102(b) makes the employer liable either way.

3. **So the employer ends up asking the employee for a check**

   That conversation destroys the goodwill the benefit was meant to buy.

4. **Which is why most employers ask how to cover it**

   Covering the employee's share is itself taxable pay — so the number has to be grossed up.

Grossing Up: The Complete Math

THE RULE

To leave the employee a zero net check on a $2,500 contribution, the gross-up is $G = (2{,}500 \times 7.65\%) \div (1 - \text{federal rate} - \text{state rate} - 7.65\%)$. It converges because the gross-up's own FICA sits in the denominator.

PLAIN ENGLISH

At 22% federal and 4.99% Georgia: $191.25 ÷ 0.6536 ≈ $292.62. Employer cost runs about $3,006, versus $2,691 with no gross-up.

Using a 12% actual marginal rate instead of the flat 22% saves about $42 per employee.

Grossing Up: The Complete Math (cont.)

THE NUMBERS

$3,006

Grossed up per employee — includes the withholding and the employee's FICA

$2,691

Employer cost — employee absorbs their own FICA

! RISK IF CHALLENGED

The flat 22% rate requires regular-wage withholding in the current or prior year. And a 401(k) deferral election will break a net-zero check unless suppressed on that payroll.

UPDATED: SEE NEXT SLIDE

Grossing Up — Showing the Math

22% federal supplemental, 4.99% Georgia (2026), 7.65% FICA. Early in the year, so no wage base is used up.

G = \$191.25 ÷ (1 – 0.22 – 0.0499 – 0.0765) = \$191.25 ÷ 0.6536 ≈ \$292.62

Gross-up wages added (G)	$292.62
Less federal income tax — 22%	(64.38)
Less state income tax — 4.99%	(14.60)
Less Social Security and Medicare on G — 7.65%	(22.39)
Less FICA on the $2,500 contribution — 7.65%	(191.25)
Employee’s net check	**$0.00**

It converges because the gross-up’s own FICA sits inside the denominator. It is not circular in practice.

EMPLOYER Grossing Up — Showing the Math

22% federal supplemental, 4.99% Georgia (2026), 7.65% FICA. Early in the year, so no wage base is used up.

$$G = \$191.25 \div (1 - 0.22 - 0.0499 - 0.0765) = \$191.25 \div 0.6536 \approx \$292.62$$

Gross-up wages added (G)	$292.62
Less federal income tax on (G) only — 22%*	(64.38)
Less state income tax on (G) only [assumes GA conformity – see next slide**] — 4.99%*	(14.60)
Less Social Security and Medicare on (G) only — 7.65%*	(22.39)
Less FICA on the $2,500 contribution — 7.65%	(191.25)
Employee's net check	**$0.00**

*(G) ONLY APPLIED TO THE GROSS UP PORTION ABOVE THE $2,500. THE $2,500 IS NOT S/T TO FEDERAL INCOME TAX**

It converges because the gross-up's own FICA sits inside the denominator. It is not circular in practice.

**GEORGIA'S TREATMENT OF TRUMP ACCOUNTS: EMPLOYER & EMPLOYEE CONTRIBUTIONS

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

ASSUMPTION:

Georgia has not issued guidance on §128 — but Georgia starts from federal AGI and HB 1199 conformed to OBBBA without decoupling §128, so the $2,500 *should* follow the federal exclusion. Other states vary.

Georgia DOR has not commented.

Why Owners Are Out — Be Prepared

Prop. §1.128-1(b)(2) names them. Clients will not believe it, so know the reasoning.

1 **§129 includes the self-employed. §128 does not.**

§129(e)(3) expressly brings them in for dependent care. §128(c) borrows heavily from §129 and pointedly omits that provision.

2 **And §128 omits the owner concentration test**

§129(d)(4) caps owner benefits. You only need that rule if owners can receive benefits. Congress left it out.

3 **In an S corp it reaches the whole family**

§318(a)(1) attributes among spouses, children, grandchildren and parents. CCA 201912001 applied exactly this to fringe benefits.

The Spouse-on-Payroll Question

Clients will propose it. Here is where it lands, by entity.

1. **S corporation — dead on arrival**

   §1372(b) counts stock attributed under §318, and §318(a)(1) attributes between spouses. The spouse is excluded for the same reason the owner is.

2. **Partnership or sole proprietorship — closer**

   §401(c)(1) has no spousal attribution, so a bona fide spouse-employee IS an employee. The definition lets it through.

3. **But the testing shuts it down**

   The spouse is likely an HCE under §414(q) once attribution is applied, a one-name classification is not reasonable, and nondiscrimination testing can still fail depending on the full census.

UPDATED: SEE NEXT SLIDE

Who Does What — and In What Order

Not "call your adviser and write a check." Six moving parts, and the order matters.

1	PARENT	Opens the Trump account on Form 4547 and activates it — or another authorized individual does. Nothing is funded until this exists.
2	EMPLOYER	Adopts the separate written §128 program — and a §125 plan too, if employees will salary reduce.
3	EMPLOYER	Notifies all eligible employees of the program and its terms.
4	EMPLOYEE	Certifies the beneficiary and designates the account. No certification, no contribution.
5	EMPLOYER	Verifies the account is genuinely a Trump account — certification alone is not enough.
6	PAYROLL	Funds it, tells the trustee it is a §128 contribution, and reports Box 12 code TA.

Who Does What — and In What Order

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

Not "call your adviser and write a check." Six moving parts, and the order matters.

1. **PARENT** — Opens the Trump account on Form 4547 and activates it — or another authorized individual does. Nothing is funded until this exists.
2. **EMPLOYER** — Adopts the separate written §128 program — and a §125 plan too, if employees will salary reduce.
3. **EMPLOYER** — Notifies all eligible employees of the program and its terms.
4. **EMPLOYEE** — Certifies the beneficiary and designates the account. No certification, no contribution.
5. **EMPLOYER** — Verifies the account is genuinely a Trump account — certification alone is not enough.
6. **PAYROLL** — Funds it, tells the trustee it is a §128 contribution, and reports Box 12 code TA. Employer and pre-tax salary-reduction dollars alike: out of Box 1, in Boxes 3* & 5, combined under code TA — up to the $2,500 qualifying amount. *Social Security limits apply.

Following the Plan Is Part of the Plan

THE RULE

Prop. §1.128-2(c) provides that an arrangement is a Trump account contribution program only if the employer follows the terms of the written plan.

PLAIN ENGLISH

The document alone is not enough. An employer that writes a plan and then contributes outside its terms does not have a program.
An arrangement failing any program requirement is not a program at all, so nothing is excludable. Nondiscrimination is the exception.

What a Compliant Program Requires

There is no informal version. No written program means no exclusion for anyone.

1. **A separate written plan — six required elements**
   Eligible classes, contribution rules, account designation, certification and notice procedures, plan year, corrections. And it must be followed.

2. **Three nondiscrimination tests**
   Contributions and benefits, eligibility with a ratio percentage safe harbor, and a 55% average benefits test. No small employer exemption.

3. **Certification, verification, and trustee labeling**
   Employee certification is enough for eligibility — NOT for account validity. And the trustee must be told it is a §128 contribution.

The Six Required Plan Elements

Prop. §1.128-2(b) names six, in three pairs. Miss one and it is not a program.

A

Elements 1 and 2 — eligible classes and contribution rules

Which employees participate, how much is contributed, and whether salary reduction is allowed.

B

Elements 3 and 4 — account designation and procedures

How an employee designates the recipient account, plus the certification, notification and annual statement procedures under Prop. §1.128-2(d), (f) and (g).

C

Elements 5 and 6 — the plan year and correction procedures

Including how the employer fixes administrative failures and notifies employees and trustees when amounts turn out not to be excludable.

Talking to the Trustee

Prop. §1.128-2(h). Three obligations, and one of them runs on a clock.

1. **Identify the contribution when you make it**

   The employer must tell the trustee, at the time of contribution, that the amount is a §128 contribution. The trustee may rely on that.

2. **Adopt procedures to get it right**

   Procedures must ensure §128 contributions are properly identified, and that the trustee is told when one later turns out not to be.

3. **Corrective notice — 21 days is the safe harbor**

   If an amount later is not a §128 contribution, notify the trustee of the account, year and amount. 21 calendar days is deemed reasonable.

The Questions You Will Get

SEE NEXT SLIDE

Short question, short answer. Depth is in the deck and in December.

1

Is this ERISA? Do I file a Form 5500?

No to both. DOL Technical Release 2026-02, June 17, 2026 — not a Title I pension benefit plan where participation is voluntary. And §128 requires no plan return of any kind.

2

Then what does the employer actually file?

Only the Form W-2. Report it in Box 12, code TA — out of Box 1, in Boxes 3 and 5. That W-2 also satisfies the annual statement. The TRUSTEE files Form 5498-TA, not the employer.

3

Can I pick the trustee, like an HSA?

No. Prop. §1.128-2(d)(6) forbids steering — only one Trump account exists per beneficiary, so steering would shut parents out.

4

When can my client start?

Now. §128 applies to contributions on and after July 4, 2026, and the proposed regs may be relied on. Adopt the plan first, then fund.

SAME AS PRIOR SLIDE,
JUST ENLARGED ANSWERS

The Questions You Will Get

Short question, short answer. Depth is in the deck and in December.

1. **Is this ERISA? Do I file a Form 5500?**
   No to both.
2. **Then what does the employer actually file?**
   Only the Form W-2.
3. **Can I pick the trustee, like an HSA?**
   No.
4. **When can my client start?**
   Now.

SLIDE ADDED FOR PRESENTATION ONLY

Trump account contributions can be tax-deductible — and can be pre-tax to the employee.

TRUE

WRITE THIS DOWN

Trump contributions:
Deductible to the business.
Pre-tax to the employee.

FICA still applies.

§162 deduction · §128 exclusion up to $2,500 · salary reduction: dependent's account only.
Assumes all other prerequisites are in place.

Where the CPA's Engagement Ends

THE RULE

Advising on §128 is tax work. Drafting the plan, running the testing, configuring payroll, and verifying account validity are not, and none of them belong in a tax preparation engagement by default.

PLAIN ENGLISH

Say so in writing before filing season. Plan document to the attorney, testing to the third-party administrator, earnings-code setup and employee payroll calculations to the payroll provider. Form 4547 is its own filing — filing it initiates a financial account for a client's minor child.

Where the CPA's Engagement Ends (cont.)

THE NUMBERS

Advise

What the engagement covers

In writing

Where the position lives

RISK IF CHALLENGED

A firm with no written position decides case by case under pressure, and ends up doing it for the loudest client while declining for the quiet one. That inconsistency is the real exposure.

Key Takeaways

1 The employer deducts it, the employee excludes it, and nobody picks it up — but it is still FICA and FUTA wages.

2 $2,500 per EMPLOYEE — not per child, not per employer — and it comes out of the child's $5,000, not on top of it.

3 Owners are out unless the entity is a C corporation. In an S corp, §318 attribution reaches the whole family.

4 No separate written plan means no program at all, and every employee loses the exclusion — not just the owners.

The drafting is more dangerous than the testing. Spend the money on the document.

IF YOU REMEMBER ONE THING

2026 contributions are due December 31, 2026.

There is no prior-year window — §530A(c)(3) turns off §219(f)(3). And nothing can be funded until the written plan exists, so the plan has to come first.

JJ ★ THE CPA®

CPE SEMINARS

ALL OBBBA EFFECTIVE DATES

Complete OBBBA Effective Dates

SEAS 2026

No Tax on Overtime

IRC §225 — The Individual Side, Then the Employer Side

The Employee's Deduction

Note: Due to time constraints in the individual tax update presented this afternoon, both the employee and employer components of this topic are presented together in this session.

For "No Tax on Tips," the individual and employer provisions will both be covered in the individual seminar this afternoon.

IRC §225: The Deduction for Qualified Overtime

THE RULE

Section 225 allows a deduction for qualified overtime compensation received during the year and reported on a statement furnished under section 6051(a)(19) or 6041(d)(4).

PLAIN ENGLISH

Overtime is not exempt from tax. It stays in gross income, stays subject to withholding, and stays subject to Social Security and Medicare. What changed is that part of it comes back out as a deduction — available whether the client itemizes or not.

IRC §225: The Deduction for Qualified Overtime

THE NUMBERS

$12,500
Annual cap
Single and head of household

$25,000
Annual cap — joint return

MARRIED FILING SEPARATELY GETS ZERO DEDUCTION

! RISK IF CHALLENGED

Claiming the full paycheck instead of the FLSA premium overstates the deduction roughly three times — with interest, and the preparer owns it.

Only the Half Is Included

THE RULE

Qualified overtime is overtime pay required under FLSA section 7 that exceeds the regular rate at which the individual is employed — the “half” in time-and-a-half, and nothing more.

PLAIN ENGLISH

Not all of an overtime paycheck counts. Only the extra piece — the half added on top of the regular rate for those hours — is what qualifies. Everything paid at the regular rate, even for hours worked during overtime, does not.

Worked Example — The Facts

EMPLOYEE:	Maria, an hourly worker covered by FLSA
REGULAR RATE:	$30 per hour
OVERTIME RATE:	$45 per hour (time-and-a-half)
HOURS THIS WEEK:	50 hours worked, in a single FLSA workweek
OVERTIME HOURS:	10 hours — the hours over 40

Worked Example — The Math

Maria — 10 overtime hours, $30/hour regular rate, $45/hour overtime rate

1. THE OVERTIME PAY

Overtime hours **10**

× Overtime rate **$45**

= Overtime pay **$450**

2. ONLY THE HALF COUNTS

Overtime rate **$45**

− Regular rate **$30**

= Counts per hour **$15**

3. THE QUALIFIED AMOUNT

Overtime hours **10**

× Counts per hour **$15**

= Qualified overtime **$150**

**Shortcut some preparers use: total overtime pay ÷ 3 = $450 ÷ 3 = $150 — same answer, since the qualifying half is exactly one-third of time-and-a-half pay.*

Worked Example — The Result

THE RESULT

$450

10 OT hrs at $45/hr — pay received

$150

Only the half qualifies

! RISK IF CHALLENGED

The payroll register labels the entire $450 “overtime.” Reading that line as the deduction triples the number and creates an assessment the client cannot explain.

The Rule of the Fair Labor Standards Act (FLSA)

THE RULE

Under 29 U.S.C. §207 of the Fair Labor Standards Act, a covered, non-exempt employee must be paid at least one and one-half times their regular rate for every hour worked beyond 40 in a single workweek.

This is the law that is followed — period. There is no tax-law authority that redefines what federal wage-and-hour law already determines.

PLAIN ENGLISH

This is a federal wage-and-hour law, not a tax law. It sets the floor for what counts as overtime pay in the first place — before the tax deduction ever enters the picture.

FLSA Section 7 — and Nothing Else — Governs

Nothing else defines qualified overtime for this deduction — not the state, not the employer, not a union.

- A state law with a different overtime mandate does not count.
- An employer's own overtime policy does not count.
- A union contract's overtime terms do not count.
- If an employer voluntarily pays double time, only the FLSA-required half still qualifies.

CPA Warning: Legal Advice

Don't get caught giving legal advice.

Deciding whether a specific pay practice counts as FLSA overtime is not tax law — it is a wage-and-hour legal determination. Making that call for a client can be considered the practice of law, and it is outside a CPA's scope of engagement.

You can help calculate the deduction once overtime status is established. But when a client asks whether a specific pay practice qualifies, that question can call for an employment attorney, not a CPA.

CPA Warning — What This Means in Practice

- We address this in my engagement letter.
- Don’t accept your client’s invitation to save them legal fees — potentially putting you in hot water.
- Some overtime questions are obvious. Many are not — and “which one is this” is itself the judgment call.
- Build a qualification and referral process, and document it when a case is genuinely unclear.
- State the limits of this service in the engagement letter, and route ambiguous cases to employment counsel.

Your Judgment Extends Beyond the Employer (Your Client)

When a CPA makes a recommendation or a judgment call, it is treated as an expert opinion — whether you intend it that way or not.

- Advising an employer on what counts as overtime — and what does not — affects every employee who receives overtime pay.
- That advice and judgment extends to all of those employees, which can extend your exposure to all of them as well.
- Make sure your staff understands that only the owner or partner is authorized to make this judgment call.

IF YOU REMEMBER ONE THING

In December, you get all of my engagement letters.

My December Federal Tax Update includes every client engagement letter I use, in Word, ready for you to adapt for your own practice.

Who Qualifies — and What Does Not

WHO QUALIFIES

✓

1. Employees with FLSA-required overtime

No self-employed overtime deduction — unlike tips under §224.

✓

2. Only the one-half premium §207 requires

Pay double time and only the one-half portion §207 required is qualified.

WHAT DOES NOT

✕

1. State-law or union-contract overtime

Only the federal FLSA requirement counts — not state or union terms.

✕

2. Weekend, holiday, on-call — and qualified tips

Premium pay, but not the §207 premium. §225(c)(2) excludes qualified tips.

UPDATED: SEE NEXT SLIDE

The Statutory Conditions

1 **SSN and filing status**

An SSN valid for employment. No deduction if married filing separately.

2 **The cap and the phase-out**

$12,500 per return, $25,000 joint. Drops $100 per $1,000 of excess MAGI.

3 **Separate reporting on the wage statement**

§225(a) reaches only amounts furnished under §6051(a)(19) or §6041(d)(4).

4 **It is a federal deduction only (and now Georgia too!)**

Below the line — a state starting from federal AGI picks up nothing.

NEW: Georgia has a separate deduction, covered in the individual section.

The Statutory Conditions

1. **SSN and filing status**

   An SSN valid for employment. No deduction if married filing separately.

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   §225(a) reaches only amounts furnished under §6051(a)(19) or §6041(d)(4).

4. **It is a federal deduction only (*and now Georgia too!)**

   Below the line — a state starting from federal AGI picks up nothing.

   NEW: Georgia has a separate deduction, covered in the individual section.

   ***Different definitions, limits, and reporting apply. Review required.**

Does This Client's Overtime Qualify?

Is the worker covered by the FLSA?

NO → No qualified overtime compensation

YES ↓

Is the worker non-exempt from FLSA overtime?

NO → Exempt — nothing qualifies

YES ↓

Was the premium required by 29 USC §207?

NO → State law, CBA, or employer generosity

YES ↓

Separately reported — W-2 box 12, code TT?*

NO → Not deductible — request Form W-2c

YES ↓

Qualified — carry to Schedule 1-A, Part III, line 14a

**The statute and IRS guidance also contemplate 1099-reported qualified overtime for certain nonemployee payees.*

Example: The Hourly Employee

WHAT THE CLIENT BRINGS IN

- **$28.00 regular rate** FLSA non-exempt machine operator
- **8 overtime hours a week** 46 weeks of the year
- **$15,456 overtime pay** the payroll register total
- **MAGI $71,400** single return

WHAT §225 ALLOWS

- **$14.00 premium per hour** one-half the regular rate
- **× 8 hours × 46 weeks** workweek by workweek
- **$5,152 qualified** not $15,456
- **No cap, no phase-out** line 21 = $5,152

Schedule 1-A (Form 1040), Part III

1. **Lines 14a–14c — gather the qualified amount**

   14a from Form W-2 box 12, code TT (not box 1 wages, which doesn't isolate qualified overtime); 14b from Form 1099-NEC or 1099-MISC; 14c adds them.

2. **Line 15 — apply the cap**

   The smaller of line 14c or $12,500 ($25,000 on a joint return).

3. **Lines 16–20 — run the MAGI phase-out**

   $100 of deduction lost for every $1,000 of MAGI over the threshold.

4. **Line 21 — the deduction**

   Flows through line 38 to Form 1040, line 13b. Line 14a takes the full amount, not the cap.

UPDATED: SEE NEXT SLIDE

Common MISTAKE TO SAYs — The 1040 Side

MISTAKE TO SAY

"Overtime is tax-free under the new law."

CORRECT STATEMENT

It stays in gross income and stays subject to withholding and FICA. Only the FLSA premium ~~comes back out.~~

MISTAKE TO SAY

"I'm self-employed and I work overtime, so I qualify."

CORRECT STATEMENT

Your own extra hours in self-employment are not FLSA-required overtime, no deduction, unlike tips.

Common MISTAKE TO SAYs — The 1040 Side

MISTAKE TO SAY

“Overtime is tax-free under the new law.”

CORRECT STATEMENT

It stays in gross income and stays subject to withholding and FICA. Only the FLSA premium is eligible for the deduction.

MISTAKE TO SAY

“I'm self-employed and I work overtime, so I qualify.”

CORRECT STATEMENT

Your own extra hours in self-employment are not FLSA-required overtime, no deduction, unlike tips.

The Employer's Duty

What §225 Does to the Employer

THE RULE

OBBBA (P.L. 119-21) §70202 added IRC §225. It imposes no new employer tax. It creates a measurement and a reporting duty.

What §225 Does to the Employer (cont.)

PLAIN ENGLISH

Nothing about your client's payroll tax changes. The premium is still wages — still withheld on, still FICA, still FUTA. Overtime does not get its own version of the tip credit under §45B, and it has no effect — positive or negative — on an employer’s existing §45B tip credit either. What changed is that the employer must isolate one number inside those wages and report it.

What §225 Does to the Employer (cont.)

THE NUMBERS

$0

Employer tax saved by §225

Box 12 TT

The new required entry

§225 requires increased payroll reporting information.

! **RISK IF CHALLENGED**

If code TT is missing or wrong, the employer faces §6721 and §6722 penalties — and the deduction is not supportable from the uncorrected W-2. The fix is a corrected W-2c when available.

The Computation, Workweek by Workweek

THE RULE

Hours over 40 in the workweek × one-half × the FLSA regular rate. That product, summed across the year, is the code TT figure.

The Computation, Workweek by Workweek

PLAIN ENGLISH

Note what is not in that formula: the base hourly rate, the pay period, and the total overtime check. The FLSA measures a fixed 168-hour workweek, each one standing alone. And the regular rate is calculated fresh from that week's actual earnings — it is not a fixed number pulled from a pay table or a personnel file.

The Computation, Workweek by Workweek

THE NUMBERS

168 HR WORKWEEK

Fixed and recurring, per FLSA

One-half

Applies to overtime pay only

! RISK IF CHALLENGED

Averaging hours across two workweeks to smooth a pay period misstates code TT and misstates the FLSA overtime actually owed. Both errors surface together.

Owners Usually Don’t Qualify

THE RULE

An owner who meets the FLSA executive exemption — paid on salary, whose main job is managing the business, with real authority over hiring and firing — is not covered by the overtime requirement in the first place.

PLAIN ENGLISH

If the owner is genuinely running the business and drawing a salary, there is usually nothing to deduct. No FLSA-required overtime means no §225 deduction — no matter what the pay records show.

What §6721 and §6722 Actually Cost

1. **The penalties stack**

   §6721 is the filing failure; §6722 is the furnishing failure. Never corrected: $680 per employee.

2. **Intentional disregard has no cap**

   At least $690 under each section — $1,380 per employee — with no annual maximum.

3. **Scale it for the client**

   A 200-employee manufacturer omitting code TT throughout faces roughly $136,000.

4. **Outsourcing does not shift it**

   The payroll company runs the file. The IRS assesses the employer.

Common Mistakes — The Payroll Side

MISTAKE TO SAY FOR 2026

Dividing total annual overtime pay by three to get code TT.

CORRECT STATEMENT FOR 2026

That is a 2025 individual reconstruction method — never an employer method. Bonuses and double time both break it.

MISTAKE TO SAY

Reporting the whole time-and-a-half check in box 12, code TT.

CORRECT STATEMENT

Only the excess over the regular rate — the half — is qualified overtime compensation.

IF YOU REMEMBER ONE THING

Overtime pay only includes the half. No Box 12 code TT on the W-2 equals no deduction* — unless corrected with a W-2c.

One number has to match on both sides. The employee can deduct only the FLSA premium, and only if the employer reported it in Box 12.

**The statute and IRS guidance also contemplate 1099-reported qualified overtime for certain nonemployee payees.*

What the December Federal Tax Update Goes Deeper On

Reference — not presented live. Taught in full on December 8, 9 and 10.

1. **Tipped employees — code TP and code TT together**
   The regular rate is the cash wage plus the tip credit claimed.

2. **The §207 alternatives — 8-and-80, 7(k), comp time**
   Hospitals, public safety and comp time each measure overtime differently.

3. **2025 reconstruction under Notice 2025-69**
   Extended and amended 2025 returns, and the ÷ 3 combined-line method.

4. **Retroactive bonuses, records and engagement scope**
   A March bonus allocated back raises code TT after the W-2s are filed.

SEAS 2026

Federal Bonus Depreciation & Section 179

The First-Year Capital Recovery Decision After OBBBA

Permanent 100% Bonus – After Jan. 19, 2025

THE RULE

OBBBA (P.L. 119-21) §70301 set the §168(k) applicable percentage at a permanent 100% for qualified property ACQUIRED after January 19, 2025.

PLAIN ENGLISH

The trigger is the acquisition date, not the placed-in-service date. Property acquired on or before January 19, 2025 stays on the TCJA phasedown — 40% in 2025, 20% in 2026. Both rates can appear on one 2026 return.

100% Bonus Depreciation

THE NUMBERS

100%

For 2026: Acquired after 1/19/2025

20%

For 2026: Acquired before 1/20/2025

! RISK IF CHALLENGED

Treating the in-service date as the trigger overstates first-year depreciation by up to 80% of basis on every pre-1/20/2025 asset in the file.

§179 in 2026 — The Numbers

THE RULE

OBBBA §70306 raised the §179(b)(1) limit to $2,500,000 and the §179(b)(2) phase-out threshold to $4,000,000, for property placed in service in tax years beginning after 2024.

PLAIN ENGLISH

Both are indexed for tax years beginning after 2025; Rev. Proc. 2025-32 sets the 2026 figures. The phase-out is dollar-for-dollar, so the deduction is fully gone at $6,650,000 of §179 property placed in service.

§179 in 2026 — The Numbers (cont.)

THE NUMBERS

$2,560,000
2026 §179(b)(1) limit

$4,090,000
2026 phase-out threshold

! RISK IF CHALLENGED

The phase-out counts ALL §179 property placed in service — not just the property elected. A high-capex year erases the limit before you choose any assets.

IF YOU REMEMBER ONE THING

Bonus election is per class life.
§179 is per asset.

SEAS 2026

Georgia
Bonus Depreciation & Section 179

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

What About Georgia?

BONUS — §168(k)

NEVER ADOPTED IN GEORGIA

Not 30%, not 50%, not 100% — and not OBBBA's permanent 100%. Add it back on the Georgia return and depreciate under regular MACRS — a second schedule and years of basis differences.

SECTION 179 EXPENSING

GEORGIA CONFORMS

Same as federal for §1245 tangible personal property — full \$2.5M / \$4M limits. Unlike federal: no §179 for qualified real property — QIP, roofs, HVAC, fire & security (§179(d)(1)(B)(ii)).

In Georgia, §179 is the expensing tool with exceptions.
Bonus is a federal-only answer — and a second depreciation schedule.

Ga. DOR, Income Tax Federal Tax Changes; HB 1199; Ga. Form 4562 instructions

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

THE RIDDLE

WHO HAS TIME FOR EVERY SINGLE ONE OF YOUR CLIENTS?

Hold onto it. We'll answer it before the day is out.

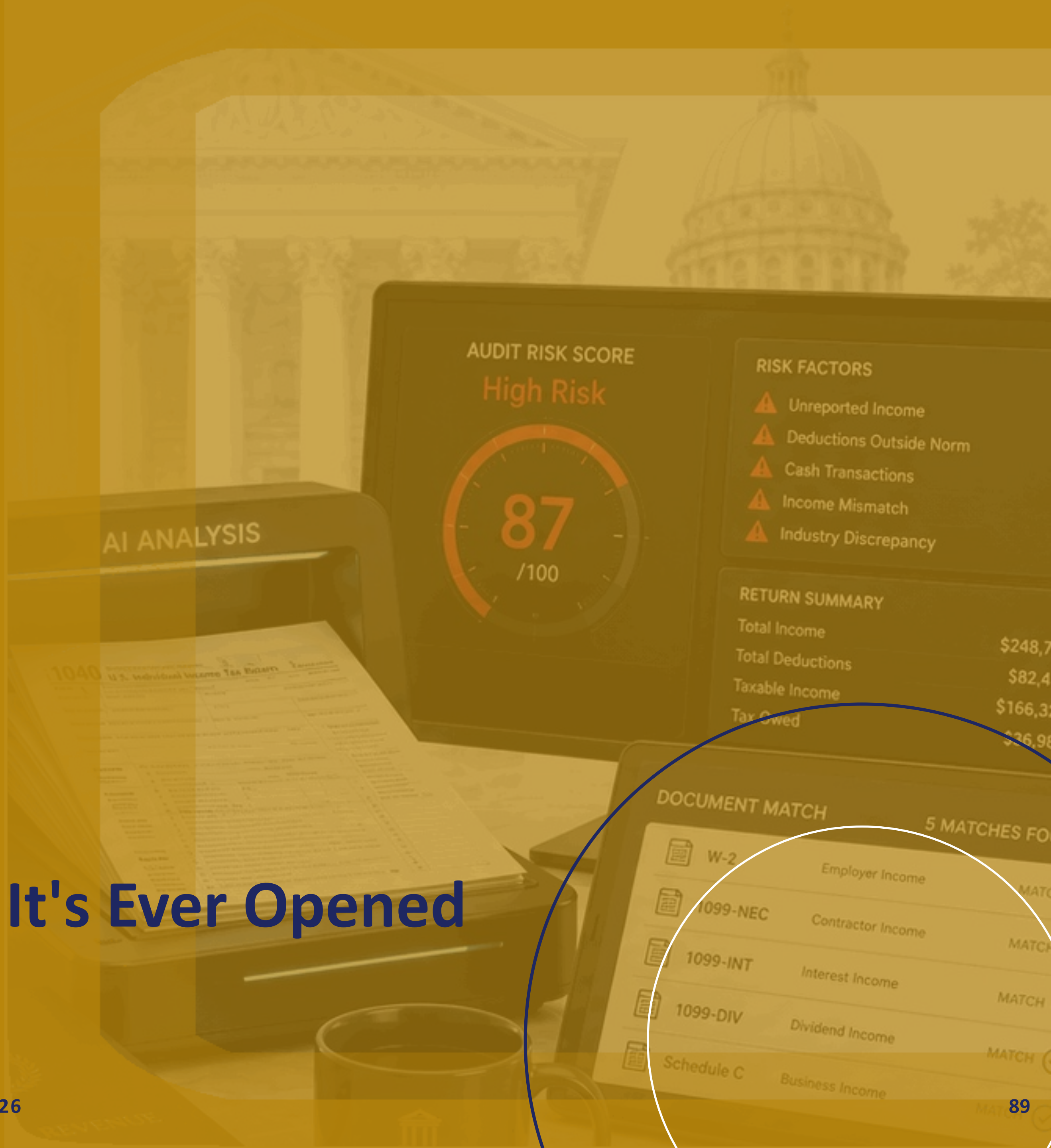
IRS AI HAS TIME

FOR EVERY SINGLE ONE OF YOUR CLIENTS

This is no longer a numbers game.

Those statistics measured people — and people aren't doing the reading anymore.

Where AI Meets IRS Risk



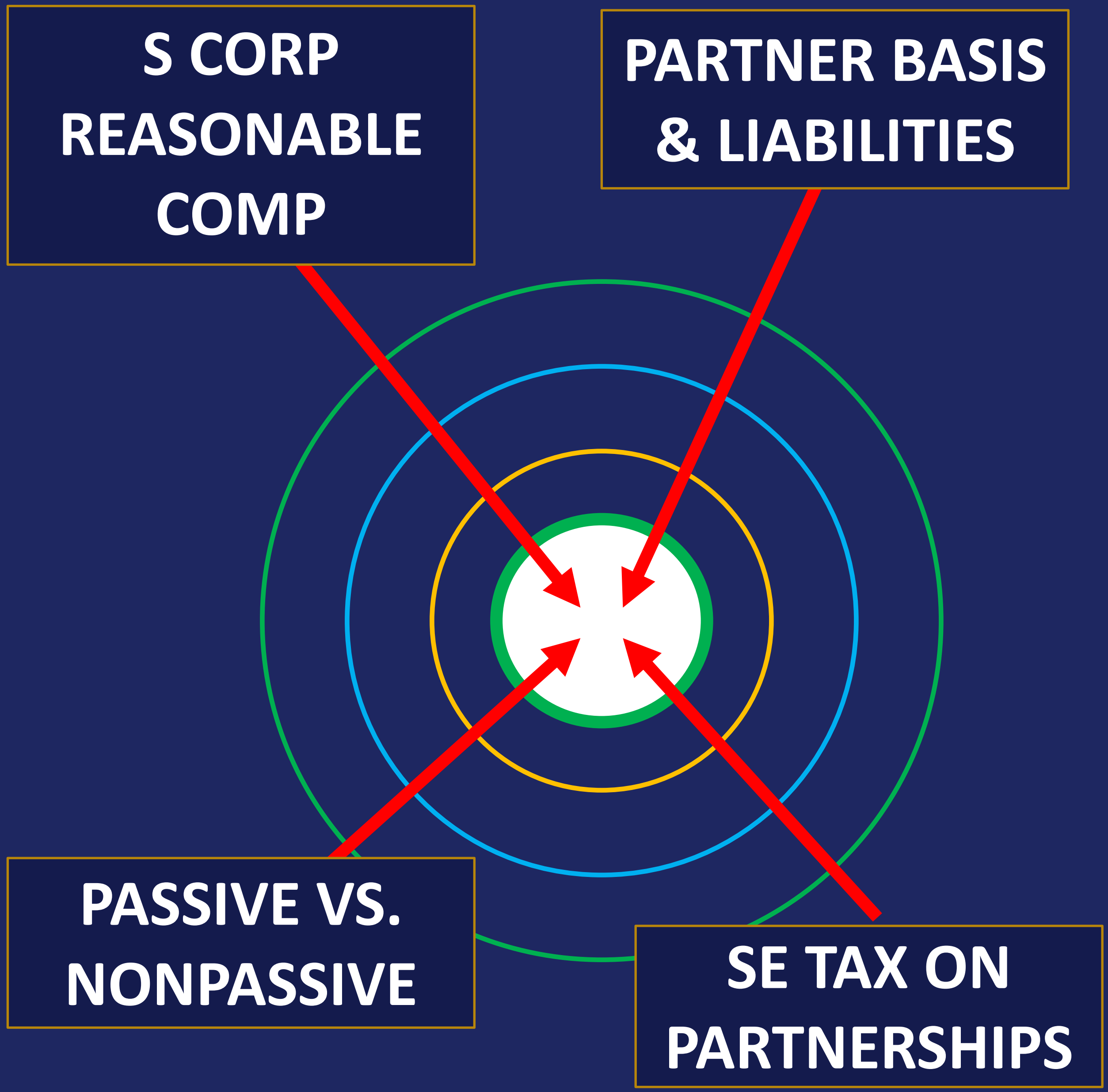
The Audit, Predicted — Before It's Ever Opened

WHY THESE SECTIONS MATTER

These Four Topics Are Already on the Return

AI doesn't need a summons or a sit-down. It just needs to read.

No agent required. Just a notice.



Artificial Intelligence Will Find It: It's Already Cross-Matched.

HYPOTHETICAL

Every data point below already sits on a filed return.

W-2, BOX 1 & 14
Wages Reported

SCHEDULE K-1
Distributions Paid

K-1, PART II
Liabilities & Basis

SCHEDULE E, PG 2
Passive / Nonpassive

BUSINESS CODE
Trade or Business

PRIOR-YEAR RETURN
Same Client, Last Year

AI

SAME-DAY CORRESPONDENCE AUDIT — NO AGENT REQUIRED

STOP AND THINK

What Do All Four Have in Common?

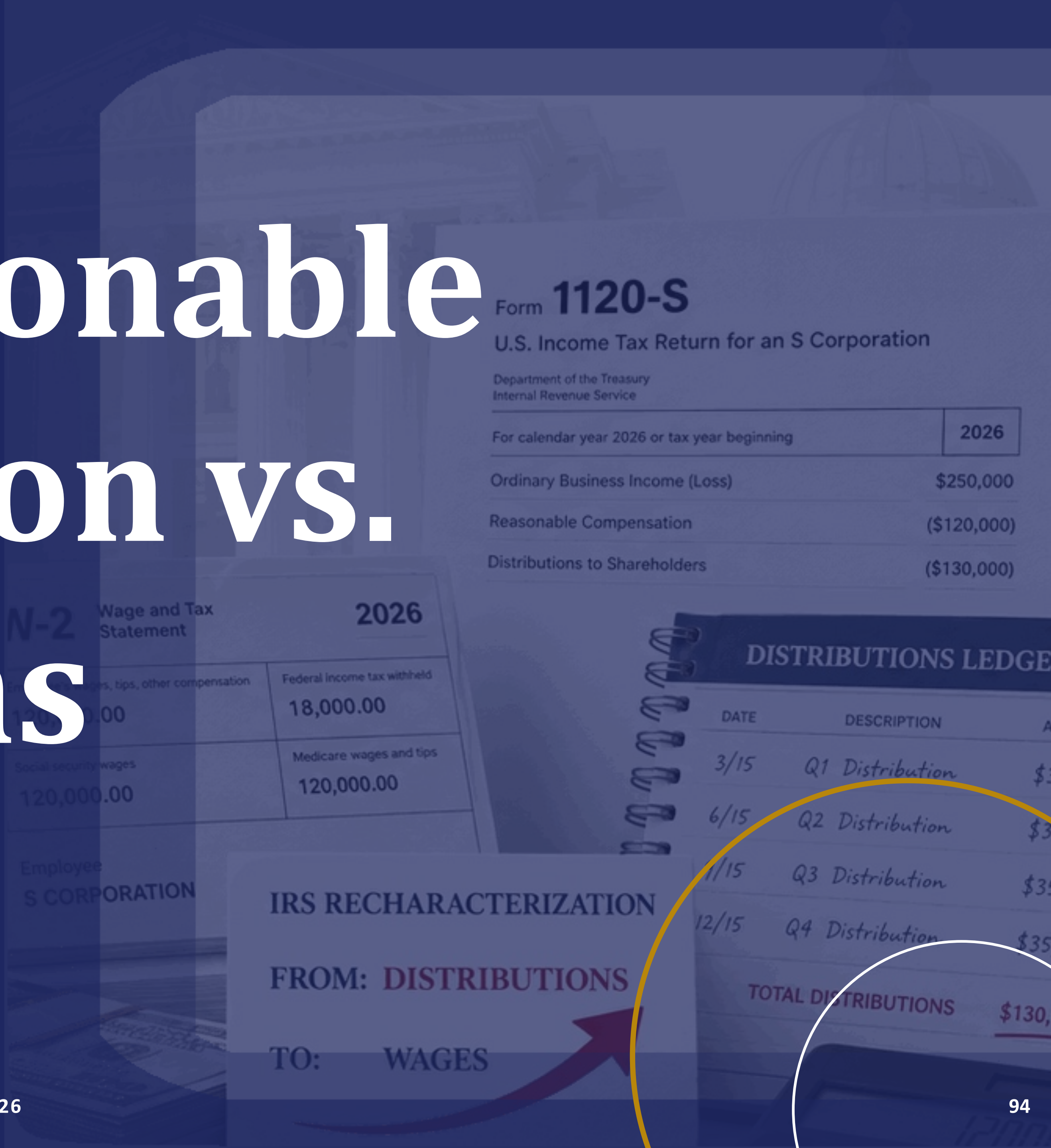
AI doesn't care which rule you broke. It only needs to find the weakest one.

THE REAL PATTERN

It's Not an Audit. It's Divide and Conquer.

Every battle is won before it's ever fought.

S-Corp Reasonable Compensation vs. Distributions



Reasonable Compensation is the Sheep.

S Corp Distributions are the Wolf.

Distributions get recharacterized to wages first.
Personal expenses get recharacterized too.

The Real Risk Is Recharacterization

THE RULE

Payments by an S corp to a shareholder-officer must be treated as wages to the extent they represent payment for services (Treas. Reg. §31.3121(d)-1(b); Rev. Rul. 74-44).

PLAIN ENGLISH

It doesn't matter what the payment was called on the books, or what the stated salary was. If money moved to an owner who performed services, the label doesn't control — the substance does. There is no statutory dollar test anywhere in the Code: nine factors, weighed, never a formula.

S-CORP IRS 2553 LETTER

Dear Taxpayer:

Thank you for your Forms 2553, Election by a Small Business Corporation, and 1120-S, U.S. Income Tax Return for an S Corporation.

We accepted your election to be treated as an S corporation with an accounting period ending Dec. 31, 2023, as of Jan. 01, 2023. Please keep this letter in your permanent records as proof of acceptance of your election. If we examine your return, we will verify this election is appropriate for your situation.

We'd also like to take this opportunity to remind you of your tax obligations for the payment of compensation to shareholder-employees of S corporations.

When a shareholder-employee of an S corporation provides services to the S corporation, the S corporation must reasonably compensate the shareholder-employee. This compensation is subject to employment taxes.

The IRS may re-characterize distributions as salary. This position has been supported by Revenue Ruling 74-44 and in numerous court decisions.

S corporation shareholders must also know their stock and debt basis. The S corporation should notify each individual of the basis in his/her S corporation stock and debt when:

Excerpt from an actual IRS S corporation election acceptance letter. Client identifying information redacted.

IRS S-CORP ACCEPTANCE LETTER

The IRS may re-characterize distributions as salary.

IRS FS-2008-25, August 2008

"Distributions and other payments by an S corporation to a corporate officer must be treated as wages to the extent the amounts are reasonable compensation for services rendered to the corporation."

! The amount of the compensation will never exceed the amount received by the shareholder either directly or indirectly.

The IRS's Nine Factors

From the IRS's own guidance, "Wage Compensation for S Corporation Officers" — irs.gov/newsroom.

1 Training and experience

Education, credentials, years doing this specific kind of work.

2 Duties and responsibilities

What the owner actually does day to day — not their title.

3 Time and effort devoted

Hours actually worked, not a full-time assumption by default.

4 Dividend history

Has the shareholder taken wages and distributions consistently over time?

5 Payments to non-shareholder employees

What the corp pays others doing comparable work.

6 Timing/manner of bonuses to key people

Whether bonus timing tracks profit like a disguised wage.

7 Comparable business pay

What an unrelated employer would pay someone else for this work.

8 Compensation agreements

Any written agreement setting pay — and whether it's followed.

9 Formula used to determine comp

Whether pay ties to a defensible calculation, or was just picked.

One Year of "Distributions" — Jan–Jun

Same S corp owner, one general ledger. Every line below is booked to Distributions.

Date	Method	Memo	Amount
1/3	ACH	Distribution	$3,000
1/15	Check #1042	Mortgage payment — personal	$3,400
1/22	Debit card	Distribution	$200
1/31	Cash withdrawal	ATM	$500
2/1	ACH	Distribution	$3,000
2/9	Debit card	Disneyland tickets — personal	$612
2/14	Debit card	Distribution	$200
2/15	Check #1049	Mortgage payment — personal	$3,400
2/26	Cash withdrawal	ATM	$400
3/1	ACH	Distribution	$3,000
3/14	Debit card	Distribution	$200
3/14	Debit card	Distribution	$200
3/15	Check #1053	Mortgage payment — personal	$3,400
3/28	Debit card	Orthodontist — personal	$285
4/1	ACH	Distribution	$3,000
4/15	Check #1058	Mortgage payment — personal	$3,400
4/19	Cash withdrawal	ATM	$600
5/1	ACH	Distribution	$3,000
5/2	Debit card	Amazon — personal	$340
5/15	Check #1064	Mortgage payment — personal	$3,400
5/30	Cash withdrawal	ATM	$800
6/1	ACH	Distribution	$3,000

One Year of "Distributions" — Jul–Dec

Continued. Not one entry ran through payroll.

Date	Method	Memo	Amount
6/15	Check #1068	Mortgage payment — personal	$3,400
6/21	Debit card	Distribution	$200
7/1	ACH	Distribution	$3,000
7/12	Check #1071	Mortgage payment — personal	$3,400
7/24	Cash withdrawal	ATM	$500
8/1	ACH	Distribution	$3,000
8/8	Debit card	Vacation — airfare, personal	$1,860
8/15	Check #1077	Mortgage payment — personal	$3,400
8/29	Debit card	Distribution	$200
9/1	ACH	Distribution	$3,000
9/15	Check #1082	Mortgage payment — personal	$3,400
9/27	Cash withdrawal	ATM	$700
10/1	ACH	Distribution	$3,000
10/15	Check #1088	Mortgage payment — personal	$3,400
10/30	Debit card	Country club dues — personal	$950
11/1	ACH	Distribution	$3,000
11/15	Check #1094	Mortgage payment — personal	$3,400
11/26	Cash withdrawal	ATM	$500
12/1	ACH	Distribution	$3,000
12/15	Check #1101	Mortgage payment — personal	$3,400
12/22	Debit card	Holiday gifts — personal	$1,240
12/31	Cash withdrawal	ATM	$600

KNOWLEDGE CHECK

HOW MANY SEE THIS EVERY DAY?

Every dollar on those two ledger pages, sorted. All of it was booked to Distributions.

Distributions — ACH, 1st of the month	$3,000 each month × 12	**$36,000**
Mortgage payments — personal	12 checks × $3,400	**$40,800**
Distributions — debit card	6 charges, $200 each	**$1,200**
Cash withdrawals — ATM	8 withdrawals, $400–$800	**$4,600**
Personal expenses — debit card	6 charges — Disney, Amazon, club dues	**$5,287**
TOTAL BOOKED TO DISTRIBUTIONS		**$87,887**

AND HE DID RUN A PAYROLL

W-2 wages of $84,000/year, paid every other week —
26 consistent payrolls.

WOULDN'T THIS BE REASONABLE COMPENSATION?

W-2 wages of $84,000/year, paid every other week —

Part-time, *making sandwiches*

Income tax, Social Security and Medicare all withheld — he took home a net check each time. 401(k) elective deferrals withheld from those wages every pay period. Health premiums paid by the corp, added to W-2 Box 1 — not Boxes 3 or 5 (Rev. Rul. 91-26).

KNOWLEDGE CHECK

He paid himself $84,000 in real, routine wages all year, working part-time. Of the $87,887 booked to distributions, what would most likely be recharacterized as wages?

A All of it — $87,887

B Only the real personal expenses — $5,287

C Personal expenses + mortgage — $46,087

D None — he already paid $84,000 in wages for making sandwiches, part-time

WHAT'S THE ANSWER?

HYPOTHETICAL

Of the $87,887 booked to distributions, what would most likely be recharacterized?

?

WHAT CAN YOU DEFEND TO THE IRS?

WHAT WILL YOUR CLIENT SAY TO YOU?

AI AT IRS WILL FIND THE WOLF IN SHEEP'S CLOTHING

Does reasonable comp immunize everything else? The mortgage checks, ATM cash, and personal charges… are they really distributions even with actual W-2 reasonable wages present? What about $3,000 at the beginning of the month?

Common miss: Thinking a defensible wage number closes the question. It settles the wage line only.

Sean McAlary Ltd., Inc. v. Commissioner

T.C. Summary Opinion 2013-62 (2013) — real estate broker, sole shareholder

WAGES REPORTED	TOTAL PAYMENTS TAKEN
$0	**$185,842**
IRS PROPOSED	COURT DETERMINED
$100,755	**$83,200 wages**
REMAINED A DISTRIBUTION	2006 NET INCOME
$102,642	**$231,454**

WHAT HAPPENED

McAlary once agreed to a $24,000 salary on paper but never actually paid it — the court called it "forgotten, ignored, or mere window dressing." He never tried. The IRS's expert proposed $100,755 using California real estate broker wage data. The court didn't fully accept that number either — it built its own hourly rate ($40/hour, reflecting McAlary's actual workload running the brokerage single-handedly) and landed at $83,200.

$83,200 of $185,842 recharacterized as wages — 45% of everything he took.

Glass Blocks Unlimited v. Commissioner

T.C. Memo. 2013-180 (2013) — glass block manufacturer, sole president

WAGES REPORTED

$0

2007 PAYMENTS

$30,844 recharacterized

2008 PAYMENTS

$31,644 recharacterized

TOTAL RECHARACTERIZED

$62,488 (100%)

2007 PROFIT BEFORE ADJ.

$877

2007 RESULT AFTER ADJ.

Net loss of $3,410

WHAT HAPPENED

The company's president was its only full-time worker and generated all of its income, yet took $0 in wages — calling the money a mix of dividends and shareholder-loan repayments instead. The court found no documentation supporting a bona fide loan, and found that the company's payment of the president's personal insurance and utility bills was itself further evidence of compensation. Even though the recharacterization pushed a marginally profitable year into a loss, the court still required it in full.

100% of $62,488 recharacterized — even in years the company barely broke even.

Ward v. Commissioner

T.C. Memo. 2021-32 (Mar. 15, 2021) — attorney, sole owner of her law firm

2011 TREATMENT

Corp deducted it; she reported $0

2012 TREATMENT

Reported as income, not as wages

2013 TREATMENT

Corp reported $0 comp; she said wages

WAGES PAID

Inconsistent — no reliable total by year

HER EVIDENCE

Her own testimony only — no records

RESULT

100% of all payments, every year

WHAT HAPPENED

Not "she paid no wages" — she reported the same kind of payment three different ways in three straight years, and none of those years matched what the corporation itself claimed on its own return. At trial, the IRS argued that as sole officer performing all the services, every dollar she received was wages, none of it a dividend. Her only evidence otherwise was her own testimony — no board resolution, no contemporaneous record of what any payment was meant to be. The Tax Court put the burden of proof on her, and she could not meet it.

100% recharacterized — every year, every dollar, no exceptions.

Radtke v. United States

895 F.2d 1196 (7th Cir. 1990) — the case that started this whole line

CONTRACT BASE SALARY

Fixed at $0 by written agreement

1982 DIVIDENDS TAKEN

$18,225 — the only payment all year

WAGES REPORTED

$0

ROLE

Sole director, shareholder, full-time attorney

COURT

7th Circuit, per curiam, 1990

RESULT

$18,225 recharacterized — 100%

WHAT HAPPENED

Radtke ran his own law firm as its only full-time employee and its sole director — the one person in the building who could have voted himself a salary, and didn't. His employment contract fixed his base salary at $0, and he took the entire $18,225 for the year as "dividends" instead. The district court applied a substance-over-form test and found the payments were "clearly remuneration for services performed." The Seventh Circuit affirmed. This is the case nearly every later decision on this list cites first.

100% recharacterized — the original appellate win for this theory.

Davis v. United States — the Taxpayer Win

1994 U.S. Dist. LEXIS 10725 (D. Colo. 1994) — Mile High Calcium, 1987–1989

IRS SOUGHT

$39,221 in tax, interest, penalties

SHAREHOLDER CHALLENGED

Henry Adams, listed as president

ADAMS'S ACTUAL ROLE

Worked full-time elsewhere

FINAL ASSESSMENT

$647

WHAT HAPPENED

The IRS used the same blanket approach it used in every other case on this list — recharacterize every transfer as wages. But the facts here didn't support it. Adams held the title of president but worked full-time for other companies during these years, and the evidence showed he provided no substantial services to Mile High Calcium. The court called the government's position "arbitrary and capricious, and without any basis in law or fact."

Assessment cut from $39,221 to $647 — facts and circumstances cut both ways.

Five Cases. One Pattern.

None turned on what reasonable comp should have been. Every one turned on what actually left the company.

1. **Sean McAlary Ltd. (T.C. Summ. Op. 2013-62)**
   $0 wages. Took $185,842. Court set $83,200 — 45% became wages.
2. **Glass Blocks Unlimited (T.C. Memo. 2013-180)**
   $0 wages. Every dollar out — $62,488 — became wages. 100%.
3. **Ward (T.C. Memo. 2021-32)**
   Same payments treated 3 ways in 3 years. 100% became wages.
4. **Radtke (895 F.2d 1196, 7th Cir. 1990)**
   Salary fixed at $0 by contract. All $18,225 became wages.
5. **Davis (D. Colo. 1994) — the taxpayer win**
   No services performed. IRS's $39,221 cut to $647. He won.

Where the IRS Actually Aims

Practitioners argue the outer ring.
Every case above was decided in the center.

McAlary
$83,200 of $185,842 → wages

Glass Blocks
$62,488 → wages, 100%

Ward
Every dollar, every year → wages

Radtke
$18,225 → wages, 100%

Davis —
the only miss
No services performed.
$39,221 → $647

OUTER RING: what practitioners argue about. MIDDLE RING: what actually left the company. CENTER: what gets recharacterized.

You can win the outer ring and still lose the center.

Key Takeaways

1 The conversation starts with what's actually paid and available — not a theoretical reasonable-comp number applied in isolation.

2 Reasonable comp ties to actual hours and role, not a full-time assumption or a 60/40 formula. Part-time work means part-time pay.

3 The general ledger is the real test. Same-day-every-month withdrawals and personal expenses are wages, no matter the label.

The risk was never the salary line. It was everything the distribution was quietly carrying.

IF YOU REMEMBER ONE THING

IRS wage recharacterization will actually be the focus of the examination.

SEAS 2026

Partnership Share of Liabilities

Where Basis Comes From — and Where It Quietly Erodes

Recourse vs. Nonrecourse: The Basic Split

THE RULE

Recourse liabilities go to whoever bears the economic risk of loss (Treas. Reg. §1.752-2(a)). Nonrecourse liabilities follow the three-tier rule in §1.752-3.

PLAIN ENGLISH

Most practitioners think of basis as capital contributed. In a leveraged deal — real estate, an equipment-heavy business — debt is often the bigger basis driver. Get the liability allocation wrong and the loss on the return isn't actually supportable, whether or not the client ever notices.

Recourse vs. Nonrecourse: The Basic Split (cont.)

! RISK IF CHALLENGED

If the guarantee, tiered structure, or debt paydown isn't tested against these rules, the client's claimed basis — and the losses taken against it — may not survive examination.

Where Partners Lose the Basis

1 **Bottom-Dollar Guarantees Don't Count**

A guarantee for only the last slice of a loan isn't recognized as economic risk of loss under Treas. Reg. §1.752-2(b)(3), effective Oct. 9, 2019 (T.D. 9877).

2 **Lower-Tier Debt Flows Up**

An upper-tier partnership's share of lower-tier debt is treated as its own liability (Treas. Reg. §1.752-4(a)) — look through every tier.

3 **Reimbursable Guarantees Fail Too**

If the guarantor has a right of reimbursement, there's no real economic risk of loss — no basis, no matter what the paperwork says (Brand, 81 T.C. 821 (1983)).

PART 3 — CPA ACTION

What CPAs Need to Know

The Erosion Risk — Debt Paydown

THE RULE

A decrease in a partner's share of partnership liabilities — a payoff, a refinance, a shift to nonrecourse — is treated as a cash distribution under §752(b).

PLAIN ENGLISH

No cash moves, but the tax code doesn't care. A client who took distributions or losses against liability basis in a strong year can run out of basis a few years later purely because the debt got paid down — the return still has to reflect it.

The Erosion Risk — Debt Paydown (cont.)

! RISK IF CHALLENGED

- If the deemed distribution exceeds outside basis, gain is recognized under §731(a)(1).
- And if debt erosion drives the amount at risk below zero, §465(e) recaptures income — generally capped at the negative at-risk balance.

Not Every Guarantee Creates Basis

WHAT SOME BELIEVE

Practitioners see any personal guarantee on the loan documents and assume it automatically creates outside basis for the guaranteeing partner.

WHAT THE AUTHORITY SAYS

Only a genuine payer-of-last-resort obligation — unreimbursed and not a bottom-dollar slice — creates economic risk of loss under Treas. Reg. §1.752-2.

WHY IT MATTERS

Treas. Reg. §1.752-2(b)(3); Brand, 81 T.C. 821

A guarantee that's subordinated to a 'bottom slice,' or comes with a right of reimbursement from a related party, creates no basis at all under the final regulations. The client's loss deduction can be disallowed in full on exam — after it's already been taken.

Five Cases. One Pattern.

None turned on the guarantee's label.
Every one turned on who was really left holding the loss.

1. **Surk, LLC v. Commissioner (2024)**
   T.C. Memo. 2024-99 — old excess losses reduced current basis.
2. **Bordelon v. Commissioner (2020)**
   T.C. Memo. 2020-26 — genuine guarantee created real basis.
3. **IPO II v. Commissioner (2004)**
   122 T.C. 295 — direct EROL took the whole liability.
4. **Gefen v. Commissioner (1986)**
   87 T.C. 1471 — basis capped at the real pro rata amount.
5. **Brand v. Commissioner (1983)**
   81 T.C. 821 — reimbursement right meant no real risk.

Where the Basis Actually Sits

Practitioners argue the guarantee.
Every case above turned on who was really at risk.

Surk
Old losses still ate current basis

Bordelon
Real guarantee, real basis

IPO II
Direct EROL, whole liability

Gefen
Basis capped to the real amount

Brand — the miss
Reimbursement right, no real risk

OUTER RING: what the guarantee says. MIDDLE RING: who's really exposed to loss. CENTER: what gets basis.

You can sign the guarantee and still not get the basis.

Key Takeaways

1 Recourse liabilities follow economic risk of loss; nonrecourse liabilities follow the three-tier rule in §1.752-3.

2 Bottom-dollar and reimbursable guarantees create no basis — only a genuine payer-of-last-resort obligation does.

3 Lower-tier partnership debt flows up to the upper-tier partners under Treas. Reg. §1.752-4(a) — don't stop at one entity.

4 Paying down debt is a deemed distribution under §752(b) — basis and at-risk amounts erode even when no cash moves.

Track liability allocations every year — not just the year the loan closes.

IF YOU REMEMBER ONE THING

Debt gives basis only when someone is truly left holding the loss.

Bottom-dollar guarantees, reimbursement rights, and paid-down loans all take that basis back — often quietly, and often before the client notices.

SEAS 2026

Passive and Nonpassive

The K-1 You Signed

What This Module Covers

IN SCOPE

- **K-1 ownership** in an S corporation.
- **K-1 ownership** in a partnership or LLC.
- **Passive or nonpassive?** for the owner, every year.

OUT OF SCOPE

- **Rental real estate** and the self-rental rule.
- **Real estate professional** (REPS) status.
- **Sole proprietorships** (Schedule C) and SE tax.

§469 — What the PAL Rules Actually Do

THE RULE

IRC §469 sets up the Passive Activity Loss (PAL) rules: they disallow current deduction of passive losses against nonpassive income. A passive activity is a trade or business without material participation.

PLAIN ENGLISH

Passive losses don't disappear — they suspend, offsetting passive income, until a qualifying §469(g) disposition frees the rest.
The classification is tested at the taxpayer level, every activity, every year — never settled by the K-1.

§469 — What the PAL Rules Actually Do (cont.)

THE NUMBERS

IRC §469
Enacted 1986

Every Year
Retested annually

! RISK IF CHALLENGED

The IRS spots passive/nonpassive mismatches easily by comparing the K-1 to Schedule E. A loss claimed nonpassive with no support for current-year hours is a mechanically simple item to challenge.

Material Participation — 7 Tests at a Glance

Temp. Reg. §1.469-5T(a) — clearing any ONE test makes the activity nonpassive.

Hours-Based (Tests 1-4)

500+ hours; substantially all the participation; 100+ hours and no one else more; or 100-500 hours combined with other activities over 500.

Historical (Tests 5-6)

Materially participated 5 of the last 10 years, or in a personal service field for any 3 prior years.

Facts and Circumstances (Test 7)

Regular, continuous, substantial. Never met at 100 hours or less; management time is disregarded if another is paid to manage or manages more.

What CPAs Need to Know This Season

THE RULE

Before carrying forward last year's characterization on any K-1, ask what actually changed in the client's hours, role, and involvement this year — for every activity, every year.

PLAIN ENGLISH

Build a short annual question into the workup: did this activity's involvement change this year? On a close call, get the log now.
Before assuming a "limited partner" K-1 is limited to 3 tests, check the entity's operating agreement and state law — the box isn't the test.

How We Got Here

The case chain behind the 7 tests — three courts, ten years, one rule.

2009

U.S. COURT OF FEDERAL CLAIMS

Thompson v. U.S.

87 Fed. Cl. 728

An LLC interest isn't a state-law limited partnership. The label alone can't impose the 3-test restriction.

2009

U.S. TAX COURT

Garnett v. Comm'r

132 T.C. 368

Same result, a different court: actual state-law management rights decide it — not the K-1 box.

2019

U.S. TAX COURT

Barbara v. Comm'r

T.C. Memo. 2019-50

Once all 7 tests are open, hours worked away from the office still count under facts and circumstances.

THE RULE TODAY

The K-1 label never controlled. Your actual rights and hours do.

Three Ways In

Any one of the 7 tests opens the door — these three cases show how.

State-Law Rights

Nothing bars you from managing the entity — Thompson & Garnett.

Hours, However Logged

500+ hours, tracked and credible — the baseline test.

Remote Still Counts

Calls, email, oversight from anywhere — Barbara.

NONPASSIVE

Full use of the loss this year

Where the Courts Actually Look

Practitioners argue the K-1 box.
Every case below was decided by what you actually did.

Garnett (2009)

Tax Court: LLC members aren't automatic limited partners.

Thompson (2009)

Court of Federal Claims, same year, same holding.

Barbara (2019)

Tax Court: remote hours still count under facts & circumstances.

The Common Miss

“I'm a limited partner” starts the analysis. It doesn't end it.

What a Miss Looks Like

Illustrative, not a citation

40 hours reviewing financials. No test cleared. $85,000 loss disallowed against wages.

OUTER RING: what the K-1 box says. MIDDLE RING: what the entity's rules actually allow. CENTER: what the court actually tests.

You can win the label and still lose the center.

Note: Soroban and Sirius address a related but separate question (SE tax under §1402(a)(13)); the Fifth Circuit and the Tax Court now conflict there; 1st and 2nd Circuit appeals are pending. It doesn't change the §469 cases above.

Key Takeaways

1. Passive or nonpassive is tested by activity, at the taxpayer level, every single year.
2. The 7 tests apply to S corps and general partners; limited partners generally get tests 1, 5, and 6. Rental, self-rental, real estate pro, and Schedule C are outside this module.
3. A "limited partner" K-1 box doesn't settle the tests available — state-law rights control (Garnett).
4. A fully taxable disposition of the ENTIRE interest to an unrelated party — §469(g) — frees a suspended loss.

The K-1 tells you what the entity reported. Only the client's actual hours and rights tell you what to do.

IF YOU REMEMBER ONE THING

The boxes on the K-1 are where the analysis starts — not where it ends.

Test material participation on this year's actual facts, every activity, every year — and check state law before trusting the label.

§469 AND §1402

Two Doors, One Hallway

One set of client facts walks to both doors.
Each door has its own lock —
and its own case law.

§469

PASSIVE OR NONPASSIVE

THE LOCK: HOURS

§1402

SELF-EMPLOYMENT TAX

THE LOCK: FUNCTION

ONE HALLWAY OF FACTS

hours · role · the agreement · who runs it

Same Two Words. Two Different Doors.

"Limited partner" appears in two different Code sections — and each door has its own lock, its own test, and its own case law.

DOOR ONE — §469(h)(2) · JUST FINISHED

PASSIVE OR NONPASSIVE

"Did you work enough hours to use the loss as nonpassive?"

DOOR TWO — §1402(a)(13) · UP NEXT

SELF-EMPLOYMENT TAX

"Are you enough of an owner-operator to owe SE tax?"

Same hallway of facts —
the hours, the role, the agreement.
Winning one door may not be the win you thought.

The Fifth Circuit* Canceled Its Own January Opinion.

Withdrawn on rehearing — and replaced with the new test: a state-law limited partner escapes SE tax on the distributive share only if the partner plays

"no significant role in managing or running the business."

**5th Circuit (TX, LA, MS)*

Sirius Solutions: What Actually Happened

THE TIMELINE

In 2023, the Tax Court decided Soroban Capital Partners LP (161 T.C. 310): a “limited partner” under §1402(a)(13) means a passive investor, so the court runs a functional analysis of what the partner actually does. Sirius Solutions — a Texas consulting firm organized as a limited liability limited partnership — lost in the Tax Court under that precedent and appealed to the Fifth Circuit.

On January 16, 2026, the Fifth Circuit reversed, 2–1, and gave taxpayers a clean win: a “limited partner” is simply a state-law limited partner with limited liability. The label controls; no inquiry into hours or activity. That holding stood for 208 days, and most of the articles and firm alerts written this spring describe that version.

The IRS petitioned for rehearing on April 1, 2026. On August 12, 2026, the panel granted the petition, withdrew the January opinion in its entirety, and issued a substitute opinion in its place.

WHAT “WITHDRAWN” MEANS

The January opinion was withdrawn in its entirety and is no longer precedent. It was not modified or narrowed — it was replaced. Do not rely on it as authority; any position built on it now stands unsupported. The substitute opinion is the Fifth Circuit’s only word in the case.

Courts occasionally grant panel rehearing to fix an error or tighten a paragraph. What makes Sirius unusual is that the panel replaced its reasoning wholesale — the substitute opinion answers the same question with a different test.

Sirius Solutions: The Substitute Opinion

THE NEW HOLDING — A THIRD POSITION, NOT A RETREAT

1. It still rejects Soroban. The Fifth Circuit continues to hold that the Tax Court's "passive investor" functional analysis reads too much into the statute.
2. It abandons its own January bright line. Limited liability under state law is no longer the test either.
3. The new standard: a "limited partner" is a partner who plays no significant role in managing or running the business — drawn from what the term meant historically (the 1916 and 1976 uniform limited partnership acts, and period dictionaries and treatises, where a limited partner was an investor who stayed out of management).

WHERE THAT LEAVES PRACTITIONERS

Practically, the Fifth Circuit moved from "the paperwork decides" to "management and control decides." That is still friendlier than Soroban's broader passivity inquiry — but a partner actively running the shop can no longer hide behind an LP certificate even in Texas, Louisiana, or Mississippi.

The substitute opinion leaves new open questions: where the line sits between managerial and non-managerial activity, how dual-capacity partners (holding both GP and LP interests) are treated, and whether any of it extends to LLCs and LLPs. Meanwhile Soroban's own appeal is pending in the Second Circuit and Denham in the First — the split is alive, just with a different Fifth Circuit position in it.

THE SHORTHAND

Soroban asks: "Is this partner a passive investor?" The new Sirius asks: "Does this partner help run the business?" A narrower question, same practical instinct — function over label.

Soroban vs. Sirius

Same question, two courts — and the Fifth Circuit just changed its answer.

SOROBAN · U.S. TAX COURT, 2023

A "limited partner" avoids self-employment tax only if they're functionally a passive investor — not just by the state-law label.

SIRIUS · 5TH CIRCUIT — REVISED AUG. 12, 2026

Still rejects Soroban — but on rehearing withdrew its label-controls rule. New test: no significant role in managing or running the business.

WHAT IT MEANS FOR PRACTITIONERS

Even in TX, LA, and MS, the label alone no longer carries it.

Everywhere else, the Tax Court still applies Soroban's functional test.

Georgia — 11th Circuit

Does the Sirius win reach your client here? No!

11th Circuit

Georgia, Florida, Alabama

HAS THIS CIRCUIT RULED ON SIRIUS'S QUESTION?

No.

BOTTOM LINE FOR THIS CLIENT

Sirius doesn't reach them. Soroban still governs in the Tax Court.

An active “limited partner” client here still needs to clear the functional/passive-investor test to avoid SE tax on their distributive share — after August 12, the label alone doesn’t carry it even in the Fifth Circuit.

Watch the 1st and 2nd Circuits in 2026 — a ruling either way could change this.

Which is exactly why Golsen doesn't help here —
there's no conflicting circuit ruling for the Tax Court to defer to.

The Golsen Rule

Same facts, different taxpayers, different outcomes — because of geography.

THE CASE

Golsen v. Commissioner

54 T.C. 742 (1970), aff'd 445 F.2d 985 (10th Cir. 1971)

Jack Golsen tried to deduct payments on a specially structured insurance-financing plan as interest. The 5th Circuit had approved the same plan for other taxpayers. The 10th Circuit had rejected it. Golsen's own appeal would go to the 10th Circuit.

THE RULE IT ESTABLISHED

The Tax Court followed the 10th Circuit's rejection — not its own preferred view — because that's where this taxpayer's case would be appealed.

The Tax Court follows the circuit each case appeals to.

WHY THIS MATTERS FOR OKLAHOMA & GEORGIA

Same position, both states: neither the 10th nor the 11th Circuit has ruled on the Sirius question — so there's no circuit precedent to defer to. The Tax Court follows its own precedent: Soroban's functional test.

How a Ruling Becomes "Regional"

One national court. Twelve regional doors it can walk through on appeal.

U.S. TAX COURT — ONE NATIONAL COURT

Its rulings generally apply nationwide — the court follows its own precedent.

if appealed ↓

COURT OF APPEALS — 12 REGIONAL CIRCUITS

§7482(b) picks the circuit — residence or principal place of business — not where the entity was formed.

if that circuit rules ↓

THE TAX COURT FOLLOWS THAT CIRCUIT — ONLY THERE

Its ruling now controls cases appealable to that one circuit. Everywhere else, the Tax Court's original nationwide ruling still stands, untouched.

What This Means for Limited Partnerships in Georgia

You're not safe because of Sirius.

Here's what that actually means.

1 **Soroban applies to you.**

2 **The functional test applies to you.**

3 **Sirius is not a win in GA. Not yet.**

The 11th Circuit hasn't ruled — nothing is pending in the 11th Circuit. The Tax Court follows Soroban here — and Sirius itself was rewritten August 12.

The Litigation Map

Three circuits, three cases on the same question — none of them Georgia. Not yet.

REVISED

5th Circuit

Sirius Solutions

Jan. opinion withdrawn Aug. 12, 2026. New test: no significant management role.

STATES

Texas, Louisiana, Mississippi

PENDING

1st Circuit

Denham Capital

Appeal of T.C. Memo. 2024-114. Decision expected in 2026.

STATES

Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico

PENDING

2nd Circuit

Soroban Capital

Soroban's own appeal. Decision expected in 2026.

STATES

New York, Connecticut, Vermont

Which States Are In Which Circuit?

Georgia is 11th Circuit; Oklahoma is 10th Circuit — bound by neither.

1. **FIRST CIRCUIT — Denham (pending)**
   Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico.

2. **SECOND CIRCUIT — Soroban (pending)**
   New York, Connecticut, Vermont.

3. **FIFTH CIRCUIT — Sirius Solutions (revised)**
   Texas, Louisiana, Mississippi. Rewritten Aug. 12, 2026.

Scenario One: The 600-Hour Worker

THE FACTS

A state-law limited partner in a consulting LLLP works 600 hours a year, hands-on with clients — but has no management authority. Doesn't hire, doesn't fire, doesn't set strategy, doesn't sign.

DOOR ONE — §469: CAN THEY USE THE LOSS?

NONPASSIVE.

600 hours clears the 500-hour test. Nonpassive means §469 never suspends the loss — fully usable against other income. The K-1 box doesn't decide it; the hours do (Garnett, Thompson).

DOOR TWO — §1402: OWE SE TAX?

SOROBAN — EVERYWHERE BUT THE FIFTH

SE tax. 600 hours of services is not a "passive investor." Fails on the hours.

SIRIUS (REV. AUG. 12) — FIFTH CIRCUIT ONLY

A real argument to escape. She works IN the business but doesn't RUN it — no hiring, firing, strategy, or signing. Defensible — but this came out on Aug. 12, 2026

Nonpassive for the loss — and in the Fifth Circuit, arguably no SE tax. The doors answered differently.

Scenario Two: The 90-Hour Boss

THE FACTS

A state-law limited partner logs only 90 hours a year — but they're the wheelhouse: sets strategy, approves hires and fires, signs the bank loans. Others run the day-to-day.

DOOR ONE — §469: CAN THEY USE THE LOSS?

PASSIVE.

90 hours clears no test — under 100 hours, others participate more, no 5-of-10-year history. §469 suspends the loss until passive income or a full disposition.

DOOR TWO — §1402: OWE SE TAX?

SOROBAN — EVERYWHERE BUT THE FIFTH

SE tax. Strategy and the checkbook are not a "passive investor." Fails on the role, not the hours.

SIRIUS (REV. AUG. 12) — FIFTH CIRCUIT ONLY

SE tax here too. Strategy, hires, and loan signatures — that IS running the business. The test asks who's the boss — not the boss's hours. No escape, even in Texas.

Passive for the loss — and SE-taxable under both tests. The doors answered differently again.

SEAS 2026

Self-Employment Tax and Partnerships

Trade-or-business status, the circuit split, and the real K-1 answer

Trade or Business Comes First

THE RULE

Section 1402(a) starts with one threshold question: is this activity a trade or business? Whether this partner shows up has nothing to do with that question — but §1402(a)(13) can still exclude a true or functional limited partner's distributive share once you get past this gate.

PLAIN ENGLISH

You already accept this logic under Section 199A. A restaurant doesn't lose QBI eligibility because one owner never sets foot in the kitchen. SE tax starts the same way: what the business does, not this partner. Participation is a separate, later question.

Trade or Business Comes First (cont.)

RISK IF CHALLENGED

A silent partner in an active trade-or-business partnership can still owe SE tax on distributive share unless an exclusion like §1402(a)(13) applies. §469 participation didn't create the SE tax, and lack of it alone doesn't erase it.

Passive Status, and How Money Moves

THE RULE

Passive-activity status under §469 doesn't exempt a partner from SE tax under §1402 — separate tests. Once SE tax is in play, distributive share, guaranteed payments, and distributions each get their own answer.

PLAIN ENGLISH

A short-term rental with substantial services sits on Schedule C, even for a passive owner — passive status doesn't erase SE tax. General partners: distributive share and both GP types are SE income, no exception. Limited partners: distributive share and capital GPs generally excluded under §1402(a)(13) — but this depends on true/functional limited-partner status and jurisdiction, and services GPs always come back in.

Passive Status, and How Money Moves (cont.)

RISK IF CHALLENGED

A preparer sees 'passive' and assumes no SE tax — wrong test, answered separately. A preparer sees 'distribution' and assumes the same — right only if it's a genuine return of capital, not a relabeled guaranteed payment.

Decision Tree: Is This Income Subject to SE Tax?

Is the partnership engaged in a trade or business under Section 1402(a)?

NO → No SE tax on distributive share.

YES ↓

Is the partner a general partner (or unshielded LLC member)?

NO → Go to the limited-partner test.

YES ↓

Does the partner qualify as a §1402(a)(13) limited partner? (circuit-dep.)

NO → Share and GPs are SE income.

YES ↓

Is any payment a guaranteed payment for services?

NO → Share, capital GP excl.; services GP tax.

YES ↓

GPs for services are SE income for every partner — no exception applies.

The Courts Disagree — Right Now

THE RULE

Three federal circuit courts of appeals have this exact question, and the first to rule — the Fifth — rewrote its own answer on August 12, 2026. The answer still depends on which circuit covers your client's state.

PLAIN ENGLISH

Fifth Circuit (Sirius): the January label-controls opinion was withdrawn Aug. 12, 2026 — the substitute asks about a significant role in managing or running the business. Soroban (2d Cir.) and Denham (1st Cir.) remain pending. GA and OK are bound by neither.

The Courts Disagree — Right Now (cont.)

! **RISK IF CHALLENGED**

Getting this wrong cuts two ways: Box 1 income can be SE-taxable despite the label, depending on the §1402(a)(13) partner-status and function analysis; and a ‘distribution’ that is really compensation for services can also be SE-taxable.

SE TAX · LLCs

How Do Soroban and Sirius Apply to LLCs?

The statute never mentions them — the courts decide everything.

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

The Statute Never Met an LLC

§1402(a)(13) was written in 1977. Every answer since has come from the courts.

1977 — **§1402(a)(13)**
"Limited partner" — LLCs barely exist yet

1997 — **Prop. Regs**
Congress freezes them — never finalized

2011 — **Renkemeyer**
Functional test — service partners fail

2023 — **Soroban**
Same logic extends to state-law LPs

2026 — **K Alain (Sirius)**
5th Cir. only — LLCs untested

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

The LLC's Own Case Line

Three Tax Court answers — two ways to fail, one way to pass.

✕

Renkemeyer

136 T.C. 137 (2011)

Law-firm LLP partners performed the very services that earned the income.

SUBJECT TO SE TAX

✕

Castigliola

T.C. Memo. 2017-62

PLLC member-managers participated in managing the practice.

SUBJECT TO SE TAX

✓

Hardy

T.C. Memo. 2017-16

Surgeon held a passive minority stake in a surgery center he didn't manage.

NOT SUBJECT TO SE TAX

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

Same Question, Two Different Doorways

Who gets to stand inside §1402(a)(13) and argue?

THE LIMITED PARTNER

The statute names them: "limited partner, as such." They stand inside the words — the fight is only about function.

THE LLC MEMBER

The statute never mentions them. No final regs ever have. They must earn the exclusion — only genuine passivity earns entry.

K Alain construed a real limited partnership. Whether its management test reaches LLC members is untested — even in the Fifth Circuit.

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

IF YOU REMEMBER ONE THING

For LLCs, it’s Renkemeyer, not Soroban: Involved in the business? Box 1 is SE-taxable — the LLC label won’t save it.

Renkemeyer and Soroban agree. Only a truly passive member — capital in, no role (see Hardy case) — keeps Box 1 out of SE tax.

ADDED 8/25 — AFTER MATERIALS SUBMITTED · UPDATED DECK: jjthecpa.com/ga

PART 3-4

Forms & Practice

Where This Lands on the K-1

Schedule K-1 (Form 1065) — Part III

Box 1 Ordinary Income

SE-taxable for GPs/non-LPs; LPs need §1402(a)(13) analysis

Box 14 SE Earnings

Code A — turns on the LP test

Box 4a GP for Services

SE income — no exception

Box 19 Distributions

Genuine distributions aren't SE income

Box 4b GP for Capital

Excluded for a real LP

General partners: no exception, all SE income. LLC members: courts apply the functional test despite the state label. Limited partners: excluded only if genuinely limited.

IRC §1402(a); Soroban, 161 T.C. 310; Sirius (5th Cir., rev. 8/12/2026)

K-1 for an LLC Taxed as a Partnership

Schedule K-1 (Form 1065) — Part III

Box 1 Ordinary Income

SE-taxable unless §1402(a)(13) applies

Box 14 SE Earnings

Code A — depends on role

Box 4a GP for Services

SE income — no exception

Box 19 Distributions

Genuine distributions aren't SE income

Box 4b GP for Capital

Unsettled for LLC members

No statute settles whether an LLC member can claim the §1402(a)(13) exclusion — courts apply the functional test anyway, not just the manager label.

IRC §1402(a)(13); Renkemeyer v. Comm'r, 136 T.C. 137 (2011)

K-1 for a General Partnership

Schedule K-1 (Form 1065) — Part III

Box 1 Ordinary Income

Flows straight to SE earnings

Box 14 SE Earnings

Code A — Box 1 + both GP types

Box 4a GP for Services

SE income — no exception

Box 19 Distributions

Not SE income; rare for a GP

Box 4b GP for Capital

Also SE income for a GP

No services/capital split for a general partner. Distributive share and every GP — services or capital — land in SE earnings. Only a genuine distribution escapes SE tax.

IRC §1402(a); Partner's Instructions for Schedule K-1 (Form 1065)

Didn't Sirius Solutions Settle This?

WHAT PRACTITIONERS BELIEVE

Practitioners cite the Fifth Circuit's January Sirius Solutions win as if it settled the limited-partner question — everywhere, and for good.

WHAT THE AUTHORITY SAYS

The January opinion was withdrawn Aug. 12, 2026. The substitute asks whether the partner plays a significant role in managing or running the business — and Sirius still binds only the Fifth Circuit.

Sirius (5th Cir., rev. 8/12/2026); Soroban, 161 T.C. 310 (appeal pending, 2d Cir.)

WHY IT MATTERS

The Second Circuit panel deciding Soroban sounded skeptical of the taxpayer at the June 2026 argument. And relying on the withdrawn label-controls version of Sirius — anywhere, including Texas — now advises from an opinion that no longer exists.

Didn't Sirius Solutions Settle This?

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Updated for this later published citation

K Alain (f/k/a Sirius), No. 24-60240 (5th Cir. Aug. 12, 2026) (per curiam); Soroban, 161 T.C. 310 (appeal pending, 2d Cir.)

WHY IT MATTERS

The Second Circuit panel deciding Soroban sounded skeptical of the taxpayer at the June 2026 argument. And relying on the withdrawn label-controls version of Sirius — anywhere, including Texas — now advises from an opinion that no longer exists.

What Practitioners Need to Know

THE RULE

Test every partner against the Part 1 decision tree before signing — this isn't wait-and-see. Soroban was a genuine shift in tax practice, and it wasn't even an income tax case.

PLAIN ENGLISH

Pull the formation documents and check the role, not the title. Document hours and how the firm markets a claimed limited partner. For steady 'distributions,' ask if they're really GPs.* Watch the pending Soroban and Denham appeals.

**Risk: SE tax — 12.4% Social Security up to the wage base + 2.9% Medicare, plus 0.9% Add'l Medicare Tax above its threshold.*

Myth: Passive Means No Self-Employment Tax

WHAT PRACTITIONERS BELIEVE

Practitioners see zero hours or a 'passive' note in the file and assume SE tax doesn't apply, borrowing the Section 469 passive-activity framework.

WHAT THE AUTHORITY SAYS

Passive status and SE tax are different Code sections. A trade-or-business partnership's distributive share can be fully SE-taxable to a GP with zero participation.

WHY IT MATTERS

IRC §1402(a); §469 (separate test)

This is the Schedule C short-term-rental parallel: an activity is a trade or business because of what it is, not who's watching it. Treating 'passive' as a synonym for 'no SE tax' skips the actual §1402(a) test entirely.

Five Cases. One Pattern.

None turned on the state-law label. Everyone turned on what the partner actually did.

1 **Renkemeyer, Campbell & Weaver (2011)**
136 T.C. 137. 100% of distributive share became SE income.

2 **Riether v. United States (D.N.M. 2012)**
$76,986 called 'passive' — became SE income, 100%.

3 **Castigliola v. Comm'r (2017)**
The 'excess' above guaranteed pay got SE-taxed too.

4 **Soroban Capital Partners LP (2023)**
161 T.C. 310. Functional test formalized — SE income.

5 **Sirius Solutions — revised (2026)**
Aug. 12 rewrite: management role decides, not the label.

Where the IRS Actually Aims

Practitioners argue the label.
Every case above was decided on function.

Renkemeyer
100% became SE income

Riether
$76,986 'passive' pay → SE

Castigliola
Excess over GP → SE income

Soroban
Functional test → SE income

Sirius Solutions — revised
Aug. 12: management role decides

OUTER RING: what the paperwork says. MIDDLE RING: what the partner actually did. CENTER: what gets taxed.

You can win the label and still lose on function.

Key Takeaways

1 Trade-or-business status is the first gate. Then test partner status and function — §1402(a)(13) can exclude a true or functional limited partner's distributive share.

2 A limited-partner label alone decides nothing — a significant management role owes SE tax under Sirius and Soroban alike.

3 A payment for services, set without regard to partnership income, is a guaranteed payment — SE-taxable, no matter the label.

4 The conflict is unresolved — the 5th Circuit runs a management test; in the Tax Court, GA and OK stay on Soroban.

Trade or business? Functions like a GP? Paid for work or profit?

IF YOU REMEMBER ONE THING

Trade or business is the first gate. Limited-partner status and function decide the rest.

The business decides trade-or-business status. Partner status, function, and payment type — not §469 hour tests, and not passive-or-nonpassive labels — decide whether §1402(a)(13) applies.

YOU CAN'T FORGET ONE THING

LP | LLP | LLLP | LLC

Involved in the business?
Box 1 should be SE-taxable.*
The label won't save it.

** 5th Circuit (TX, LA, MS): narrower test after K Alain — no significant role in managing or running the business. Everywhere else, the Tax Court is the last word: Soroban and Renkemeyer.*

DON’T GET CAUGHT WATCHING THE PAINT DRY

Treating partnership K-1 Box 1 as nonpassive on Schedule E, page 2? The IRS — and the courts — will assume it should be subject to self-employment tax.

If not, be confident in your reasoning for the exclusion.

Not an absolute — a spouse’s hours count for §469 but never §1402; retired partners and other §1402(a) exclusions can apply. Again, just be able to name the exclusion if and when challenged.

WRITE THIS DOWN

Nonpassive = SE tax?

Losses = at-risk basis?

THE RIDDLE

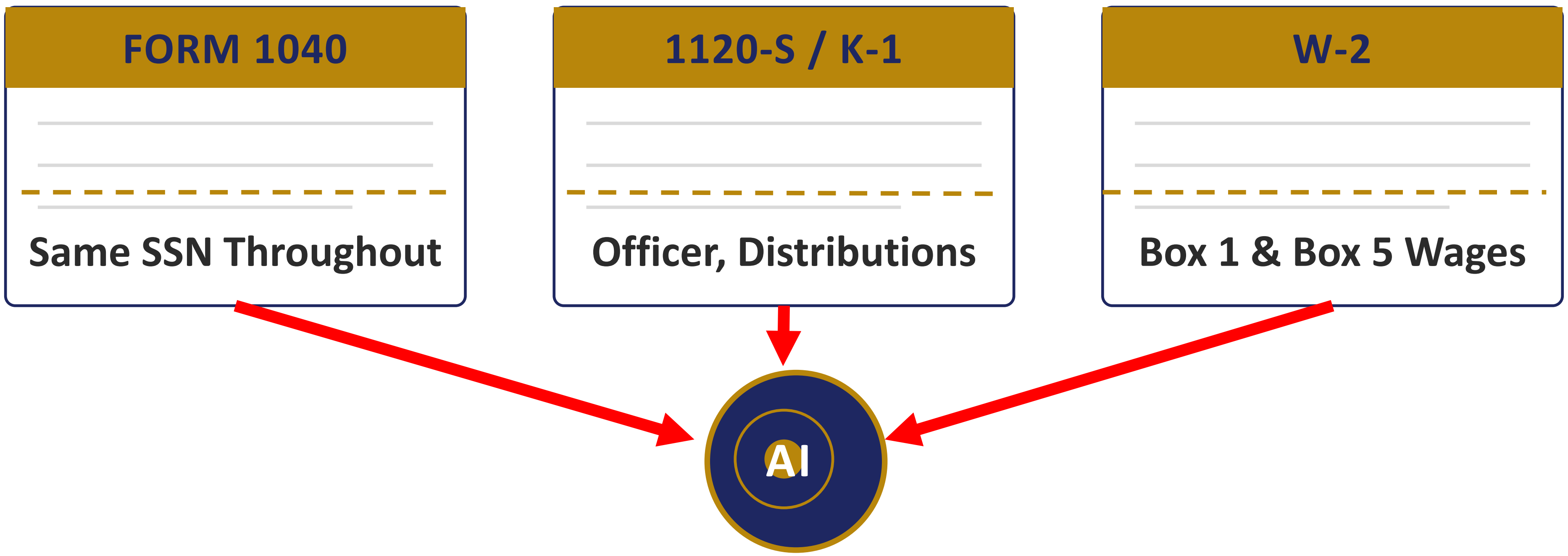
WHO HAS TIME FOR EVERY SINGLE ONE OF YOUR CLIENTS?

Hold onto it. We'll answer it before the day is out.

CASE ONE — IRS AI

HYPOTHETICAL

The S Corp Owner

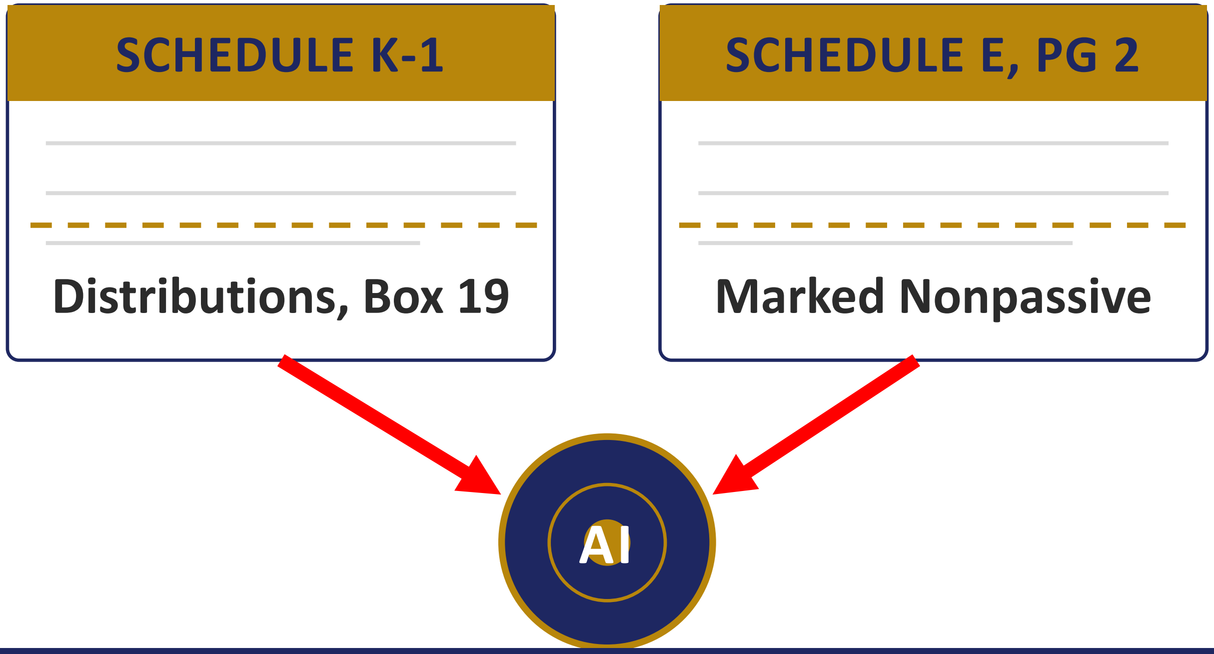


SEES: the 1040, the 1120-S K-1, and the W-2 — same SSN, same EIN.

KNOWS: exactly how much was paid as wages versus distributions.

ASKS: where's the general ledger that explains the gap?

The Partner



SEES: distributions on the K-1 and nonpassive on Schedule E.

ASKS: if it's nonpassive, where's the self-employment tax?

ASKS: if there are distributions, where are the guaranteed payments?

TRY THIS AT HOME

The S Corp Owner — Run It Yourself

1. Upload Form 1040
2. Upload the W-2
3. Upload the 1120-S
4. **Upload the general ledger detail of distributions**

SAY THIS TO CLAUDE, CHATGPT, OR YOUR AI TOOL OF CHOICE:

"You're an IRS examiner reviewing this taxpayer. Based on what you have, what issues do you see?"

TRY THIS AT HOME

The Partner Who Signed the K-1 — Run It Yourself

1. Upload the K-1
2. Upload Form 1040
3. Upload Schedule E, Page 2

SAY THIS TO CLAUDE, CHATGPT, OR YOUR AI TOOL OF CHOICE:

"You're an IRS examiner. Take a look at this. What issues do you see?"

Artificial Intelligence Will Find It: It's Already Cross-Matched.

HYPOTHETICAL

Every data point below already sits on a filed return.

~~W-2,~~ BOX 1 & 14
~~Wages~~ Reported

SCHEDULE K-1
Distributions Paid

K-1, PART II
Liabilities & Basis

SCHEDULE E, PG 2
Passive / Nonpassive

BUSINESS CODE
Trade or Business

PRIOR-YEAR RETURN
Same Client, Last Year

AI

SAME-DAY CORRESPONDENCE AUDIT — NO AGENT REQUIRED

Artificial Intelligence Will Find It: It's Already Cross-Matched.

HYPOTHETICAL

Every data point below already sits on a filed return.

K-1, BOX 1 & 14 K-1 Reported	**SCHEDULE K-1** Distributions Paid	**K-1, PART II** Liabilities & Basis
SCHEDULE E, PG 2 Passive / Nonpassive	**BUSINESS CODE** Trade or Business	**PRIOR-YEAR RETURN** Same Client, Last Year

AI

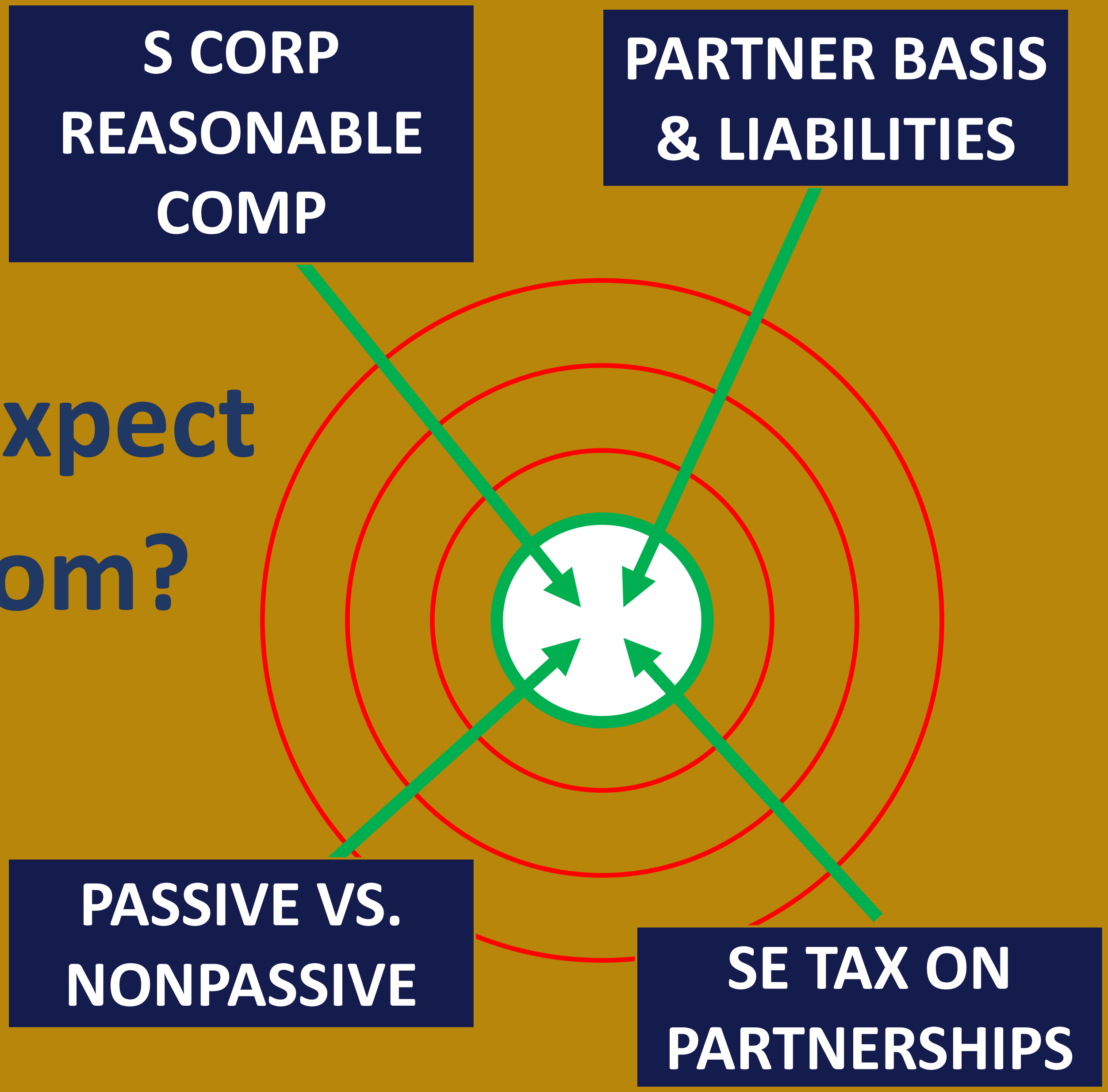
SAME-DAY CORRESPONDENCE AUDIT — NO AGENT REQUIRED

WHAT ARE YOUR RISKS?

You See This Risk Every Day

What do your clients expect you to protect them from?

NOW GET THERE FIRST



SEAS 2026

Engagement Letters

An Engagement Letter Protects Two People

1

Not Just the Firm

Most engagement letters are written to protect the preparer — what we are not doing, what we are not responsible for.

2

Also the Client

Mine also informs the client — what the law requires them to have on hand, and what specific terms actually mean.

3

Why It Matters in an Exam

An examining agent once asked for my engagement letter to determine my responsibilities versus my client's — a knowledgeable client has a better fighting chance.

An Example From One of My Engagement Letters

> "
>
> When your business pays for something, or when an expense is recorded in your accounting records or presented to us as a business expense, you are representing to us that the expenditure was incurred for business purposes. Unless you tell us otherwise, we will treat it as 100% a business expense. You are not representing that the expense is deductible, or that it is fully deductible — that determination is ours to make under the Internal Revenue Code.

— example clause, defining a business expense

IF YOU REMEMBER ONE THING

Your engagement letter should protect your client as much as it protects you.

If it only says what you won't do, it's only doing half its job.

ARTIFICIAL INTELLIGENCE:
TECHNICAL ADVANCES

How I Use AI in My Practice


IRS
AI AUDIT ANALYSIS
K-1
Form 1065
W-2
Wage and Tax Statement
SCHEDULE E
Supplemental Income and Loss
K-1 MATCH
W-2 MATCH
SCHEDULE E MATCH
IRS
AI
REVIEW
Income Mismatch
K-1 / 1040 Discrepancy
Schedule E Underreported

AI Only Works If You Define It

1. **Give It an Identity**

   In Claude, that's a skill. In ChatGPT, that's project instructions — either way, you tell it exactly who it is before you ask it anything.

2. **Confine the Sources**

   Left open, AI answers are unreliable. I limit mine to AICPA standards and IRS sources — nothing else.

3. **It Verifies, It Doesn't Replace**

   AI checks and organizes what I already know how to evaluate. It doesn't make the call for me.

Setting This Up Takes One Field, Not Code

1

In Claude

Customize → set up a skill with your instructions.

2

In ChatGPT

Projects → Project Settings → enter your instructions there.

What You Actually Tell It: Who, What, Why, How

1 **Who You Want It to Be**

Mine: a tax expert with 35 years in a practice, whose output goes to a client.

2 **What Its Role Is**

Mine: field questions from newer staff — gather every fact, clarify why it matters, and give the reasoning with the answer so staff learn the pattern.

3 **Why It's Doing It**

Mine: gather enough for a client-ready call, then produce a memo for the senior partner — facts, questions asked, the answer, and next steps, pending approval.

4 **How It's Sourced**

Mine: IRS forms, instructions, publications, notices, Q&As, rev. procs, rev. rulings, and Tax Court cases — ranked by authority, nothing outside that list.

The Second Way I Use It: Drafting Replies

1. **Suggested Reply Language**

   In our practice software, AI can draft a suggested reply to a client email before I ever hit send.

2. **Tone and Technical Detail**

   I can ask it to sound friendlier, or to include specific technical language — either way, it saves real time.

3. **I Still Hit Reply**

   AI drafts the language. I still review every word and send it myself — it's a starting point, not an autopilot.

IF YOU REMEMBER ONE THING

AI is only as good as the identity and the sources you give it.

Define who it is. Confine where it looks. Then let it save you real time — not replace your judgment.

TAX SEASON SURVIVAL

Reverse Thinking Required

I ASKED YOU EARLIER

Be honest with yourself:

Do you have more clients than you or your firm have time for?

Everything today is about what gets waved through when there's no time to question it.

Integrity Is the Weight You Can Carry

1. **Integrity Requires Capacity**

   Under AICPA standards, integrity and due care aren't separate — due care takes time, and time only exists if you have the capacity to give it.

2. **Too Many Clients Erodes Both**

   Too many clients means too little time, and too little time means due care quietly disappears, no matter how good your intentions are.

3. **The Real Obligation**

   Spend the time, gather the facts, make the right recommendation — so the client pays their fair share, no more and no less. Not being the CPA who always says yes.

The Surgeon Doesn't Do Every Surgery

1. **A Surgeon Picks a Specialty**
   Not brain surgery one day, then stitching a scraped knee, cutting hair, and operating on a cat the next.

2. **Outside the Specialty, They Refer**
   That's not a failure — it's the standard of care every patient is owed.

3. **We Owe Our Clients the Same Standard**
   Saying yes to everything isn't service — it's the fastest way to lose the time due care requires.

Filter Your Client List, In Order

1 **Expertise Match, First**

If a client's needs fall outside your expertise, that's dismissed immediately — due care requires the match.

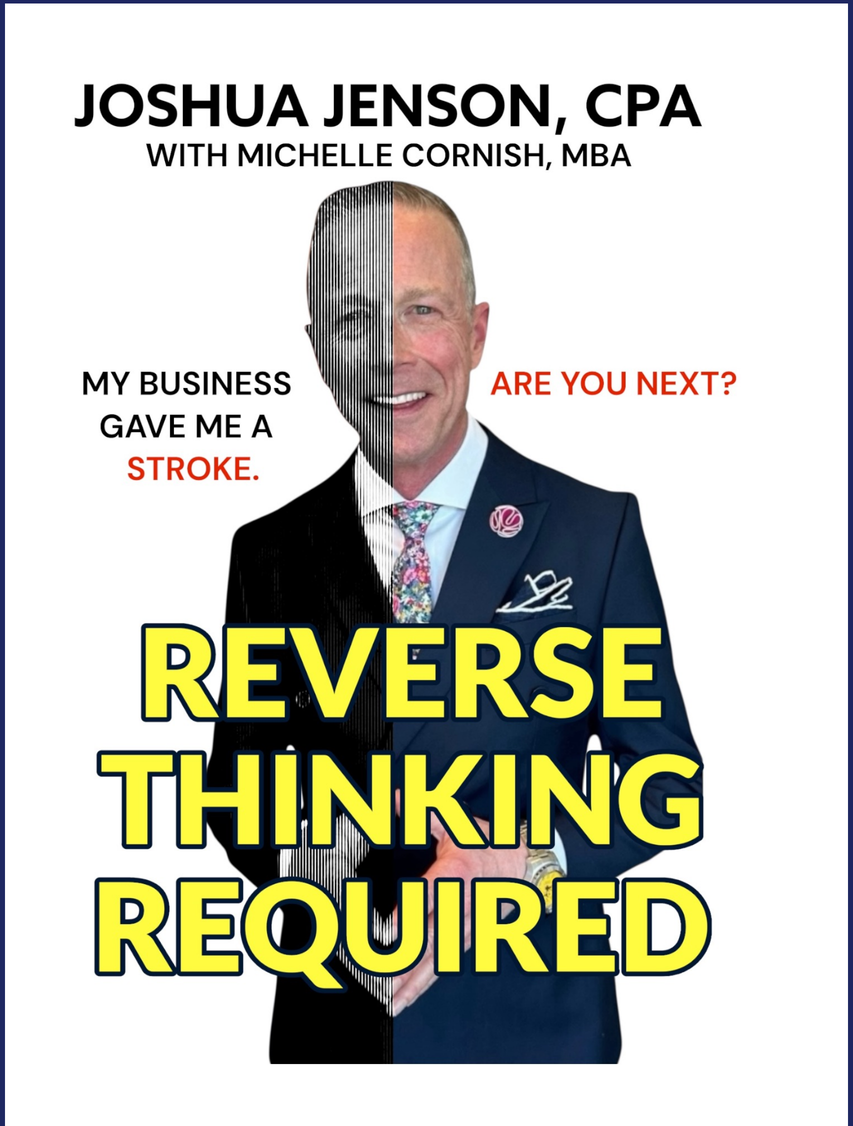
2 **Ideal-Client Fit, Second**

If you can't genuinely serve this client with integrity, that's the next filter — every time.

3 **Capacity, Last**

If you don't have time to serve them properly, they're dismissed — regardless of how the first two answers came out.

MY BOOK ON REBUILDING A PRACTICE



IF YOU REMEMBER ONE THING

Expertise, then fit, then capacity — in that order, every time.

A client who fails any one of the three gets let go, not managed around.

WHERE WE GO NEXT

What December Covers

GSCPA · DECEMBER 8, 9 & 10, 2026

JJ the CPA's 2026 Federal Tax Update December

Rebuilt from the ground up, every provision re-verified.

Every Subject: Eight Parts

1 **THE RULE**

The provision, the numbers, eligibility, a Yes/No qualification decision tree, and a knowledge check.

2 **WORKED EXAMPLES**

Case studies, a comparison at a threshold or phase-out, the gray areas, and a knowledge check.

3 **Forms & Reporting**

This year vs. next year — new boxes and schedules — and a knowledge check.

4 **What CPAs Need to Know**

What to do right now, what to prepare for next season, and an applied case study.

Every Subject: Eight Parts

5 **Common Mistakes**

The misconception, paired directly with the correct position.

6 **Key Takeaways**

If You Remember One Thing — the closer, stated in one line.

7 **The Tax Desk: Glossary & Reference**

Every term defined in practitioner language.

8 **Appendix**

Every source behind the section, tagged and hyperlinked to IRS.gov and primary sources.

You Leave With Real Assets for Tax Season

Included with registration at no additional cost — Resource Center access through April 30, 2027.

1 **THE POWERPOINT**

Live links straight to the statute, regulation, notice, form, or instruction behind each position. No hunting.

2 **ONE REFERENCE GUIDE PDF**

Every source from the course, extracted out of the deck into a single hyperlinked document.

3 **THE PRIVATE ONLINE RESOURCE CENTER**

Click a subject, land on its page: refresher video, essentials summary, reminders, and that topic's source links.

2026 Federal Business Tax Update — Full Subject List

1. AI in Tax Practice
2. Engagement Letters
3. Tax Practice Management — Reverse Thinking Required
4. Tax Court & Case Law Roundup
5. The 2026 Numbers
6. Year-End Business Planning
7. Getting Ready for Next Season
8. 100% Bonus Depreciation, Now Permanent
9. Section 179 Expansion
10. Qualified Production Property
11. Section 174 R&D Expensing Restored
12. Business Interest Limitation Back to EBITDA (§163(j))
13. QBI/§199A Made Permanent
14. No Tax on Tips, Employer Side
15. No Tax on Overtime, Employer Side
16. Trump Accounts, Employer Contributions
17. SALT Cap / PTET Interplay
18. S Corp Distributions
19. Partnership Share of Liabilities
20. Passive and Nonpassive
21. Depreciation by Asset
22. Self-Employment Tax and Partnerships
23. Auto Deduction
24. LLC Taxed as an S Corp — Operating Agreement Fixes
25. Rental Real Estate
26. Bonus Depreciation & Land Improvements
27. Georgia PTE Elections
28. Scholarship Tax Credit, Corporate Donor Angle

Working copy — not necessarily in the order to be presented. Additional subjects may be added based on new IRS guidance between now and the December delivery.

2026 FEDERAL INDIVIDUAL MAJOR ITEMS

2026 Federal Individual Tax Update — Full Subject List

1. AI in Tax Practice
2. Engagement Letters
3. Tax Practice Management — Reverse Thinking Required
4. Tax Court & Case Law Roundup
5. The 2026 Numbers
6. Year-End Individual Planning
7. Getting Ready for Next Season
8. SALT Cap Jump to $40,000
9. No Tax on Tips
10. No Tax on Overtime
11. Senior Deduction
12. Auto Loan Interest Deduction
13. Charitable Giving Overhaul
14. Schedule 1-A
15. Trump Accounts
16. Wagering / Gambling Loss Limitation
17. Standard Deduction / CTC Bumps
18. Estate & Gift Exemption to $15M
19. ECCA Scholarship Tax Credit
20. W-2 Home Office Disallowance, Now Permanent
21. Hobby Loss Deduction Elimination, Now Permanent
22. Georgia: The Second Set of Math
23. Saver's Match
24. Adoption Credit
25. Itemized Deductions 2026 and Forward

Working copy — not necessarily in the order to be presented. Additional subjects may be added based on new IRS guidance between now and the December delivery.

IF YOU REMEMBER ONE THING

Invest two days in yourself. Get back an entire tax season.

December 8, 9 & 10 — JJ the CPA's 2026 Federal Tax Update.

Thank You!

Hope to see you in December.

Wait! Did we have time?

Hope to see you in December.

Business Quick Hits Summary: Slides Following Not Presented Due to Time Constraints

1. QBI Is Permanent Now — §199A
2. PFML Credit — §45S, Now Permanent
3. Employer Childcare Credit — §45F
4. Keeping Stock QSBS-Eligible — §1202
5. Student Loans & Education — §127
6. 100% of Startup Costs — §45E
7. A Credit for Funding the Plan
8. S Corp Operating Agreement Scrutiny
9. SIMPLE IRA Deadline — Quick Reminder
10. Misclassification — What It Costs
11. Accountable Plans — Reminder
12. Business Tax Account (BTA)

SEAS Business Quick Hits

Practice management, entity mechanics, and the credits people forget

How This Round Works

Full inclusion, not full depth — every subject below is in the deck.

1. **EVERY SUBJECT GETS ITS OWN SLIDES**

   3–6 slides each: the rule and numbers, reporting and the common mistake, and sourced references — occasionally a worked example.

2. **PACE IS LIVE-JUDGMENT, COVERAGE IS NOT**

   Some get thirty seconds live and a pointer to the slide; others get the full walk-through. Either way, it's in the record.

3. **TIPS AND OVERTIME LIVE IN THEIR OWN SESSIONS**

   Full overtime coverage is taught in this Business session; tips coverage is taught in the Individual session. Each side gets a brief pointer to the other.

QBI Is Permanent Now

§199A no longer sunsets — the 20% deduction is here to stay

§199A/QBI — The Rule & the Numbers

1 **THE 20% DEDUCTION SURVIVES PAST 2025**

OBBBA made §199A permanent — it was set to expire after 2025 under the original TCJA sunset. No more year-to-year uncertainty for pass-through clients.

2 **THE THRESHOLDS MOVED WITH IT**

The 2026 taxable-income thresholds for the SSTB and W-2-wage/UBIA limitations are indexed for inflation, same structure as before, just permanent now.

3 **A NEW MINIMUM DEDUCTION FOR SMALL QBI AMOUNTS**

OBBBA added a minimum $400 deduction (indexed) for taxpayers with at least $1,000 of QBI from active trades or businesses in which they materially participate.

§199A/QBI — Reporting & the Fix

1

WHERE IT REPORTS

Form 8995 or 8995-A, depending on taxable income relative to the threshold — flows to Form 1040 as a below-the-line deduction.

2

COMMON MISTAKE

Still planning around a 2025 sunset that no longer exists — multi-year entity-structure decisions can now be made without racing a deadline.

3

WHAT TO DO NOW

Revisit any client who delayed an entity or compensation decision specifically because of QBI's expected expiration — that urgency is gone.

§199A/QBI Permanence — Sources

AUTHORITY

IRC §199A, as amended by OBBBA

Permanent 20% QBI deduction, minimum deduction floor

https://uscode.house.gov/view.xhtml?req=%28title%3A26+section%3A199A+edition%3Aprelim%29

IF YOU REMEMBER ONE THING

QBI did not sunset.

The 20% deduction is permanent — no more year-to-year uncertainty for pass-through clients.

Paid Family & Medical Leave (PFML)

Notice 2026-28 (Aug. 5, 2026) — §45S made permanent

What Is PFML?

1 **A CREDIT FOR PAYING EMPLOYEES DURING FAMILY/MEDICAL**

§45S rewards an employer that voluntarily pays an employee's wages during qualifying family or medical leave — think parental leave, a serious health condition, caring for a sick family member.

2 **THE PART THAT TRIPS PEOPLE UP: IT'S FOR PAY THE EMPLOYER WASN'T ALREADY OBLIGATED TO PROVIDE**

This only applies when the employer pays the employee an amount it wasn't otherwise obligated to pay — not simply using earned PTO or vacation time the employee had already accrued.

PFML Credit — The Rule & the Numbers

1. ## §45S IS PERMANENT NOW — NO MORE EXPIRE-AND-RENEW

   The credit started as a two-year pilot and was extended piecemeal through 2025. OBBBA made it permanent, and Notice 2026-28 provides the implementing guidance.

2. ## TWO WAYS TO COMPUTE IT NOW

   The existing wage method: 12.5%–25% of wages paid during leave, up to 12 weeks. New for 2026: a premium method, a percentage of PFML insurance premiums paid.

3. ## ELIGIBILITY WIDENED TOO

   Employers may elect a six-month service period (instead of one year); qualifying employees must customarily work at least 20 hours per week.

PFML, Worked

THE FACT PATTERN

EMPLOYEE:	12 weeks of qualifying medical leave
PAY DURING LEAVE:	Full regular wages, $1,200/week — $14,400 total
WAGE CREDIT RATE:	25% (maximum tier — 100% wage replacement; scale runs 12.5% at 50% replacement up to 25% at 100%)

PFML, Worked (cont.)

APPLYING THE RULE

The employer paid the employee's full regular wages during leave — 100% wage replacement, which is what puts this at the top of the §45S scale rather than the 12.5% floor.

Credit: 25% × $14,400 = $3,600.

It exists only because this pay was voluntary, not owed — the rate scales with wage replacement, not leave length.

PFML Credit — Reporting & the Fix

1 **WHERE IT REPORTS**

Form 8994, flowing to Form 3800 as part of the general business credit.

2 **COMMON MISTAKE**

Claiming credit on leave required by a state or local mandate — that leave counts toward employee eligibility but not toward the credit calculation itself.

3 **WHAT TO DO NOW**

For any client already paying PFML insurance premiums, compare the new premium method against the wage method — the premium method is far less recordkeeping.

IF YOU REMEMBER ONE THING

This credit is only for pay the employer didn't already owe.

If the employee had the time coming to them anyway, paying it out doesn't generate this credit.

Employer Childcare Credit Expanded

Employer Childcare Credit — Cap Up to 4×.

Employer Childcare Credit — The Rule & the Cap

1

THE RATE JUMPED, AND SO DID THE CAP

For amounts paid after 12/31/2025, the credit rate rises from 25% to 40% (50% for an eligible small business). The annual cap rises too — generally $500,000, and $600,000 for an eligible small business.

2

YOU DON'T NEED TO OWN A FACILITY

Contracting with a qualified third-party provider already qualified; 2026 adds shared and pooled small-business arrangements — not just building your own.

3

SMALL BUSINESS MEANS THE §448(c) TEST

Eligible small business uses the §448(c) gross-receipts threshold—$32 million for 2026—but §45F specifically substitutes a five-taxable-year average for the normal three-year test.

Employer Childcare Credit — Reporting & the Fix

1 **WHERE IT REPORTS**

Form 8882, flowing to Form 3800 as part of the general business credit. Unused credit carries back one year, forward twenty.

2 **COMMON MISTAKE**

Assuming this credit requires building or operating a daycare facility — it never did; contracting qualified before, and 2026 adds shared arrangements.

3 **WHAT TO DO NOW**

Revisit this credit for any client who dismissed it years ago under the old $150,000 cap — the math changed enough to be worth a second look.

IF YOU REMEMBER ONE THING

You don't need to own a daycare to claim this — and never did.

Contracting with a provider already qualified — shared small-business facilities now do too.

Keeping the Stock QSBS-Eligible

What the issuing corporation has to track — the entity side of §1202

QSBS Entity Qualification — The Rule & the Traps

1. **THE $75M ASSET TEST IS A CORPORATE-LEVEL TRIPWIRE**

   For stock issued after 7/4/2025, the corporation's aggregate gross assets can't exceed $75 million at and immediately after issuance — this is tested at the ENTITY level

2. **THE ACTIVE-BUSINESS TEST RUNS WITH THE HOLDING PERIOD**

   At least 80% of assets must be used in an active qualified trade or business during substantially all of the holding period — not just at issuance.

3. **DOMESTIC C CORPORATION, NO EXCEPTIONS**

   An S corporation cannot issue QSBS. If a client is converting an LLC or S corp to a C corp for this purpose, the clock starts at conversion — it does not reach back to cover the entity's pre-conversion history.

QSBS Entity Qualification — Reporting & the Fix

1 **WHERE IT REPORTS**

Not a return-line item for the corporation itself — this is a recordkeeping discipline that supports the shareholders' eventual Form 8949 exclusion claims.

2 **COMMON MISTAKE**

Treating the $75M test as a one-time issuance check. A later capital raise or asset acquisition can push the corporation over the threshold for STOCK ISSUED AFTER that point

3 **WHAT TO DO NOW**

For any C corp client planning to issue new equity, run the $75M asset test before each issuance, and document the active-business percentage annually — not just at formation.

IF YOU REMEMBER ONE THING

The $75M test runs at every issuance, not just the first one.

A later raise can disqualify NEW stock without touching what was already issued.

Student Loans & Education Benefits

§127 is permanent — but it does not reach an employee's dependents

Employer Educational Assistance

1 **§127 IS PERMANENT, $5,250, INDEXED FROM 2027**

The exclusion — tuition, fees, books, AND employer payment of student loan principal or interest — is permanent under OBBBA, indexed for years after 12/31/2026.

2 **IT COVERS THE EMPLOYEE ONLY — NOT DEPENDENTS**

§127(a) excludes assistance for the EMPLOYEE's own education or student loans. It has never covered a spouse or children — a different, more limited benefit category.

3 **STUDENT LOAN PAYMENTS AND TUITION SHARE ONE $5,250 CAP**

Loan-payment assistance and traditional tuition assistance are NOT separate buckets — together they can't exceed $5,250 per employee per year under the same exclusion.

Employer Educational Assistance

1 **WHERE IT REPORTS**

Excluded entirely from the employee's W-2 Box 1 wages — never appears on the employee's individual return at all when handled through a written §127 plan.

2 **COMMON MISTAKE**

Assuming a family-friendly benefits program can route dependent tuition through §127. It can't — that would be taxable compensation to the employee, not an exclusion.

3 **WHAT TO DO NOW**

For any client budgeting a combined tuition-plus-loan-assistance benefit, confirm the total against the single $5,250 cap before promising employees a bigger number.

IF YOU REMEMBER ONE THING

§127 covers the employee. It has never covered dependents.

And tuition assistance plus loan-payment assistance share one $5,250 cap — not two.

100% of Startup Costs

§45E — the small-employer plan startup credit, and its dollar cap

§45E Startup Credit — The Two Tiers

1 **1-50 EMPLOYEES — 100% OF STARTUP COSTS**

SECURE 2.0 raised the credit to 100% of qualified startup costs for employers with 50 or fewer employees.

2 **51-100 EMPLOYEES — 50% OF STARTUP COSTS**

The credit drops back to the original 50% rate for employers in this band. Above 100 employees, no credit at all.

3 **THE DOLLAR CAP — DON'T SKIP THIS PART**

Capped at the GREATER of $500, or the LESSER of ($250 × eligible non-highly-compensated employees) or $5,000.

§45E Startup Credit — What Counts as "New"

1

AVAILABLE FOR THREE YEARS

The credit runs for the first credit year plus the following two years — employers can elect to start the first credit year in the year before the plan takes effect.

2

NO SUBSTANTIALLY SIMILAR PRIOR PLAN

An employer is NOT eligible if, in the 3 tax years before the first credit year, it maintained a qualified plan covering substantially the same employees — a provider switch doesn't reset this.

§45E Startup Credit — Reporting & the Fix

1

WHERE IT REPORTS

Form 8881, Part I, flowing to Form 3800 as part of the general business credit.

2

COMMON MISTAKE

Assuming a plan redesign or provider switch counts as "new." If substantially the same employees were covered by a prior plan in the look-back window, it isn't.

3

WHAT TO DO NOW

Confirm the 3-year look-back before promising this credit to a client who is really just replacing an existing plan rather than starting one.

IF YOU REMEMBER ONE THING

A provider switch is not a new plan. The 3-year look-back decides it.

And the dollar cap is $250 per eligible employee, capped at $5,000 — not a flat number.

A Tax Credit for Funding the Plan

§45E employer contribution credit — separate from the startup credit

Employer Retirement Contribution Credit

1 **UP TO $1,000 PER EMPLOYEE, PER YEAR, FOR FIVE YEARS**

A separate §45E credit rewards the employer's actual CONTRIBUTIONS to the plan (not the employee's own elective deferral) — up to $1,000 per employee earning $110,000 or less (2026)

2 **IT PHASES DOWN BY EMPLOYER SIZE**

Full credit for employers with 50 or fewer employees; for 51-100 employees, the applicable percentage is reduced 2% for each employee over 50. No credit above 100 employees.

3 **STARTUP AND CONTRIBUTION CREDITS ARE SEPARATE AND STACK**

A qualifying employer can claim both the startup-cost credit AND the contribution credit in the same year — they aren't alternatives to each other. The $1,000 figure is also year-by-year: 100% in years 1-2, 75% in year 3, 50% in year 4, 25% in year 5, then it ends.

The Contribution Credit, Worked

THE FACT PATTERN

EMPLOYER:	12 employees, all earning under $100,000
EMPLOYER MATCH PAID:	$1,500 average per employee
CREDIT CAP:	$1,000 per employee, not the full match

The Contribution Credit, Worked (cont.)

APPLYING THE RULE

The credit is capped at $1,000 per employee, regardless of the actual $1,500 average contribution.

12 employees × $1,000 = $12,000 credit.

The $500 per employee above the cap ($6,000 total) still costs the employer real money — it just isn't creditable.

$12,000 credit on contributions that cost $18,000 to fund.

Employer Retirement Contribution Credit

1 **WHERE IT REPORTS**

Form 8881, Part I, alongside the startup-cost credit — both flow to Form 3800.

2 **COMMON MISTAKE**

Claiming the full employer match as the credit base. The credit is capped at $1,000 per employee even if the actual contribution was larger.

3 **WHAT TO DO NOW**

For any client establishing a new plan, model both credits together — the combined total is often dramatically larger than either credit alone suggests.

IF YOU REMEMBER ONE THING

Two separate credits, same form, both stackable.

S Corp Operating Agreement Scrutiny

1 **A BOILERPLATE OA IS OFTEN WRITTEN FOR A PARTNERSHIP**

Many LLC operating agreements are drafted from a generic multi-member template built for partnership taxation — even when the LLC has elected S corp status.

2 **THREE TERMS TO SCAN FOR**

A "Partnership Election" clause; a "Tax Matters Partner" designation; and allocations described as each member's "distributive share" rather than tied to stock ownership.

3 **WHY IT MATTERS — THE ONE-CLASS-OF-STOCK RULE**

Disproportionate or special allocations that don't match ownership percentages can violate the S corp one-class-of-stock requirement and put the election itself at risk.

SIMPLE IRA Deadline — Quick Reminder

1

THIS IS THE DEADLINE TO ESTABLISH THE PLAN, NOT FUND IT

October 1 is generally the last day to ESTABLISH a new SIMPLE IRA effective for the current calendar year; employee notices run on their own timetable.

2

MISS IT, AND THE EARLIEST START IS NEXT JANUARY

There's no partial-year fix. A SIMPLE IRA set up after October 1 can't be effective until January 1 of the following year.

3

ONE EXCEPTION — A BUSINESS THAT'S BRAND NEW

An employer that comes into existence after October 1 can establish the plan as soon as administratively feasible after formation — the only carve-out to the hard deadline.

Misclassification:
What It Actually Costs

It's tiered, not a flat number — and willful removes every safety net

What Are We Talking About Here?

1

A CONTRACTOR WHO TURNS OUT TO HAVE BEEN AN EMPLOYEE

An employer pays someone as an independent contractor and issues a 1099-NEC (nonemployee compensation). Later, that worker is determined to have actually been an employee all along.

2

WE'RE NOT COVERING HOW THAT DETERMINATION GETS MADE

This isn't about the worker-classification test itself — just what happens, dollar for dollar, once the reclassification is determined.

Misclassification Penalty — Reporting & the Fix

1

WHERE IT REPORTS

Assessed via examination, typically after a worker files Form SS-8 or a state agency reclassifies the relationship — not something a business proactively files.

2

COMMON MISTAKE

Assuming filing the 1099-NEC protects the business entirely. It reduces the rate — it doesn't eliminate the exposure, and never touches the employer's own FICA share.

3

WHAT TO DO NOW

For a client leaning heavily on contractors, the Voluntary Classification Settlement Program (Form 8952) offers a self-report path — generally 10% of one year's employment-tax liability at reduced §3509 rates

The Three Tiers, Side by Side

UNINTENTIONAL (§3509)

- 1099-NEC filed: 1.5% of wages + 20% of employee FICA share
- No 1099 filed: 3% of wages + 40% of employee FICA share
- Employer FICA share: 100%, either way

WILLFUL / INTENTIONAL

- §3509 protection is gone entirely
- Full withholding tax owed, no reduction
- 100% of both FICA shares

Misclassification Penalty — Reporting & the Fix

1 **WHERE IT REPORTS**

Assessed via examination, typically after a worker files Form SS-8 or a state agency reclassifies the relationship — not something a business proactively files.

2 **COMMON MISTAKE**

Assuming filing the 1099-NEC protects the business entirely. It reduces the rate — it doesn't eliminate the exposure, and never touches the employer's own FICA share.

3 **WHAT TO DO NOW**

For a client leaning heavily on contractors, the Voluntary Classification Settlement Program (Form 8952) offers a self-report path

IF YOU REMEMBER ONE THING

Willful means full withholding, plus both FICA shares (15.3%*)

**Simplified for illustration — Social Security has a wage-base cap, and Medicare adds 0.9% above certain income levels.*

Accountable Plans —Reminder

1. **THIS COMES UP IN EVERY SESSION FOR A REASON**

   The home office fix, per diem, meals, mileage — nearly every reimbursement conversation this year runs back to the same fix: a properly operated accountable plan (best practice: in writing).

2. **THE THREE REQUIREMENTS ARE SIMPLE, BUT OFTEN SKIPPED**

   Business connection, substantiation within a reasonable time, and returning any excess advance — miss any one of the three and the whole reimbursement becomes taxable wages.

3. **A TEMPLATE IS AVAILABLE — DON'T BUILD FROM SCRATCH**

   AICPA provides a sample accountable plan document and policy template for members — a practical starting point rather than drafting one from nothing for every client.

Business Tax Account (BTA)

IRS Pub. 5084/5904 — new summer 2026 features worth knowing

What Is BTA?

1

THE BUSINESS-SIDE ONLINE ACCOUNT

Business Tax Account is the IRS's self-service portal for entities — view balances, make payments, pull transcripts, and manage notices online, without a phone call for basic access.

2

NEW THIS SUMMER — WORTH A SECOND LOOK

The IRS added meaningful new features in summer 2026: more digital notices, a downloadable EIN verification letter, and Offer in Compromise payment submission.

BTA — Who Can Use It, What It Does

1 **WHO QUALIFIES**

Sole proprietors with an EIN; individual partners/shareholders with an SSN/ITIN and a K-1 on file; S corps; C corps; tax-exempt orgs; government and tribal entities.

2 **WHAT'S NEW FOR SUMMER 2026**

A downloadable EIN verification notice (CP575) that may satisfy many bank documentation requests in place of waiting on Letter 147C — check the bank's specific requirements; expanded digital notices; and Offer in Compromise payments submitted directly.

3 **WHAT IT'S ALREADY BEEN ABLE TO DO**

Pay balances, schedule payments up to a year out, store bank accounts in a payment "wallet," pull payroll/income/excise transcripts, and grant employee access.

BTA — Reporting & the Fix

1 **WHERE IT REPORTS**

Not a return-line item — it's an account management tool. Access is at IRS.gov/bta.

2 **COMMON MISTAKE**

Assuming a client already checked this out and found it useless — most looked before this summer's features landed. Worth revisiting.

3 **WHAT TO DO NOW**

For any client opening a new bank account or refinancing, point them to the CP575 download in BTA before they wait on a mailed 147C.

IF YOU REMEMBER ONE THING

The downloadable EIN letter alone is worth a second look at BTA.

IRS says it can be used in place of the mailed Letter 147C — a real time-saver, though a bank can still set its own requirements.

Additional Business Quick Hits Summary: Slides Following Not Presented Due to Time Constraints

1. Home Office Fix — Accountable Plans
2. 1099 Issuance — New $2,000 Threshold
3. The E-File 10-Return Rule
4. Practice Landscape — WISP & W-12
5. Voluntary Disclosure — The Overhaul
6. Whistleblower Form 211 Goes Digital
7. Practitioner Priority Service
8. Employer Meals Go to Zero
9. R&D Expensing Is Back — §174A
10. §163(j) Interest Limit — More Generous
11. Hiring Credits Expired — WOTC & EZ
12. SS Wage Base — One Number, 3 Calcs
13. SECURE 2.0 — What's Live Now
14. ERC — What Can Still Be Paid
15. The New Floor on Corporate Giving
16. Does Your Coverage Block the PTC?
17. Automatic Enrollment — New Plans

SEAS 2026

Business Quick Hits — Reference

Not presented live — issues to be aware of, due to time constraints

Thank You!

Hope to see you in December.

The Home Office Fix Is Yours to Make

There's no employee-side deduction — the accountable plan is the fix.

The Accountable Plan — The Rule & the Numbers

1 **THE EMPLOYEE-SIDE DEDUCTION IS PERMANENTLY GONE**

§67(h) permanently disallows miscellaneous itemized deductions. A shareholder-employee's home office has no route on their personal return — full stop.

2 **THE FIX LIVES ON THE ENTITY'S BOOKS, NOT THE 1040**

Under a written accountable plan, the entity reimburses the shareholder-employee for substantiated costs, deducts it under §162, and excludes it from wages under §62(c).

3 **REIMBURSEMENT MEANS AN ACTUAL PAYMENT**

This only works if the entity actually pays the shareholder-employee — a real transfer of money (check, ACH, or payroll) against a substantiated expense report. It is not a journal entry.

The Accountable Plan — Reporting & the Fix

1 **WHERE IT REPORTS**

The reimbursement is a deductible business expense on the entity return, excluded from the shareholder-employee's W-2 under the accountable plan rules of Treas. Reg. §1.62-2.

2 **COMMON MISTAKE — THREE WRONG MOVES**

Putting it on Schedule E page 2 (that's for a partner, not an S corp shareholder-employee); making a journal entry instead of a real payment; or reclassing an existing distribution instead of running an actual reimbursement

3 **WHAT TO DO NOW**

Every owner-employee working from home who wants the tax-free reimbursement needs an accountable plan (written is best practice) and an actual payment before year-end — not a plan to fix it later.

IF YOU REMEMBER ONE THING

If the shareholder wants the deduction, a real payment — check, ACH, or payroll — has to be made.

Schedule E page 2, a bookkeeping entry, and a reclassed distribution are all the wrong fix.

Do I Have to Issue a 1099?

The payer-side threshold — $2,000, not $600, starting 2026

1099 Issuance — The Rule & the Numbers

1

THE THRESHOLD ROSE TO $2,000

OBBBA §70433 raised the §6041/§6041A reporting threshold to $2,000 per payee for payments made after 12/31/2025 — up from $600 — indexed for inflation starting 2027.

2

THIS IS THE PAYER'S QUESTION, NOT THE RECEIVER'S

This threshold controls whether YOUR business has to issue a 1099-NEC or 1099-MISC to a contractor or vendor you paid

3

IT DOESN'T TOUCH FORM 1099-K

This is the NEC/MISC threshold only. The 1099-K threshold ($20,000 + 200 transactions) is a separate statute and did not move with this change.

1099 Issuance — Reporting & the Fix

1

WHERE IT REPORTS

Form 1099-NEC for services: filed by January 31.
Form 1099-MISC for rents, prizes, and other payments: filed by end of Feb/March (paper vs. e-file).

2

COMMON MISTAKE

Assuming the higher threshold means less paperwork overall — it only affects payments under $2,000. Get a W-9 before the first payment regardless of the threshold.

3

WHAT TO DO NOW

Update the vendor-payment checklist to the $2,000 figure for 2026 forward. Payments made in 2025 are still governed by the old $600 threshold.

IF YOU REMEMBER ONE THING

$2,000 is the NEC/MISC threshold. It is not the 1099-K threshold.

Two different statutes, two different numbers — don't let a client conflate them.

The E-File 10-Return Rule

What actually counts toward the ten — and what doesn't

The 10-Return Threshold — The Rule & the Numbers

1. **AGGREGATE ACROSS FORM TYPES, PER FILER**

   T.D. 9972: anyone required to file 10 or more information returns in aggregate during the calendar year must e-file all of them — down from the old 250-per-form-type rule

2. **941 AND 940 ARE NOT IN THE COUNT AT ALL**

   The aggregation rule applies only to INFORMATION returns — W-2, 1099 series, 1098 series, W-2G, 1042-S, and similar.

3. **EACH RECIPIENT COUNTS SEPARATELY, NOT EACH BATCH**

   Every individual W-2 or 1099 counts on its own — regardless of how many print on one page or route through one transmittal (Form W-3 or 1096 never count as their own return).

The Math, Worked

WHAT COUNTS

- Form W-2
- Form 1099-NEC
- Form 1099-MISC (e.g., rent)
- Form 1099-INT (if interest paid)

WHAT DOESN'T COUNT

- All quarterly Form 941s
- Form 940
- Form W-3
- Form 1096 (transmittal)

The 10-Return Threshold — Reporting & the Fix

1 **WHERE IT REPORTS**

IRS information returns (1099 series) e-file through IRIS or a commercial provider once the 10-return aggregate is reached; W-2s e-file with the SSA, not the IRS.

2 **COMMON MISTAKE**

Believing four quarterly 941s equal four returns toward the count, or that a large partnership return (Form 1065) is part of this same aggregate

3 **WHAT TO DO NOW**

Count W-2s and 1099s together across every type before assuming a small client is exempt — 3 W-2s plus 8 1099s is 11, not 3.

IF YOU REMEMBER ONE THING

Count every W-2 and 1099 together. Don't count a single 941.

Employment tax returns are outside this rule entirely — every quarter.

The Practice Landscape in 2026

Data security, credentials, and how you actually reach the IRS now

Practice Landscape — The Rule & the Numbers

1 **THE WISP IS NOT AN IRS SUGGESTION**

The written information security plan requirement comes from GLBA and the FTC Safeguards Rule (16 CFR Part 314) — every paid preparer with a PTIN is inside it

2 **FORM W-12 MAKES YOU ACKNOWLEDGE IT**

PTIN renewal requires acknowledging that preparers must maintain a data security plan — a statement to a federal agency, not a checkbox.

3 **CLIENT REFUNDS AND IRS PAYMENTS MOVE ELECTRONICALLY NOW**

Under EO 14247, paper refund checks to CLIENTS phased out starting 9/30/2025, and client payments to the IRS are moving the same direction.

Practice Landscape — Common Mistake & Fix

1

COMMON MISTAKE

Downloading IRS Publication 5708's sample WISP template and saving it as-is. It has to actually describe your firm's real systems and vendors

2

WHAT TO DO NOW

Tie the WISP's annual review to PTIN renewal season, and get client bank information into the organizer — it's now the highest-value field on the intake form.

IF YOU REMEMBER ONE THING

WISP is not optional. It must be documented, maintained, and reviewed.

Every paid preparer with a PTIN is inside this requirement, whether the firm is one person or fifty.

Voluntary Disclosure: The Overhaul

Comments closed 3/22/2026 — these are PROPOSED terms, not final

What Is Voluntary Disclosure?

1

A WAY TO COME CLEAN BEFORE THE IRS FINDS YOU FIRST

The IRS's Voluntary Disclosure Practice lets a taxpayer with WILLFUL past noncompliance — unreported income, unfiled returns — proactively disclose it, in exchange for reduced criminal exposure and a structured path to get current.

2

WHY THIS IS IN THE NEWS RIGHT NOW

The IRS proposed a full overhaul of the process in December 2025 — new forms, a compressed timeline, harder deadlines. Comments closed in March 2026; the final version isn't out yet.

Voluntary Disclosure — The Rule & the Numbers

1 **PRECLEARANCE, THEN A THREE-MONTH CLOCK**

Form 14457 would be submitted electronically identifying every year of noncompliance. Conditional approval starts a proposed three-month window.

2 **FILE, PAY IN FULL, SIGN — IN THAT WINDOW**

File amended or delinquent returns and FBARs; pay all tax, penalties and interest; sign the closing agreements — all within the three months.

3 **MISS THE TERMS AND APPROVAL CAN BE PULLED**

Conditional approval can be rescinded, leaving the taxpayer exposed to full examination and every civil and criminal penalty — after admitting the noncompliance.

Voluntary Disclosure — Reporting & the Fix

1

WHERE IT REPORTS

Form 14457, not the 1040. This is for WILLFUL noncompliance — non-willful taxpayers use amended/delinquent-return paths (Streamlined if offshore).

2

COMMON MISTAKE

Running a disclosure inside ordinary prep work. Preparation is not representation — willfulness belongs with counsel, via a Kovel arrangement, not an engagement-letter amendment.

3

WHAT TO DO NOW

Watch for the final version. Comments closed 3/22/2026 and final guidance is expected months after publication — don't quote the proposed terms as settled to a client.

IF YOU REMEMBER ONE THING

If it's willful, that's a referral — not a return you fix yourself.

The common mistake is treating this like ordinary prep work — willfulness belongs with counsel.

Form 211 Goes Digital

IR-2025-123 (Dec. 19, 2025)

What Is a Whistleblower, and What's Form 211?

1 **SOMEONE WHO REPORTS TAX FRAUD TO THE IRS FOR A REWARD**

A whistleblower gives the IRS specific, credible information about someone else's tax underpayment or fraud — an employee, a business partner, an ex-spouse — and can be paid a share of what the IRS actually collects as a result.

2 **FORM 211 IS HOW THAT REPORT GETS FILED**

It's the IRS's official application to submit that information and claim an award. As of December 2025, it can be filed electronically instead of only on paper.

Whistleblower Form 211 — The Rule & the Numbers

1 **ELECTRONIC SUBMISSION, WET INK DROPPED**

Form 211, Application for Award for Original Information, can now be submitted electronically from a phone or laptop. Paper is still accepted but discouraged.

2 **$1.4 BILLION AWARDED SINCE 2007**

Awards have exceeded $1.4 billion on more than $7.86 billion collected. A qualifying award generally runs 15% to 30% of what the IRS collects.

3 **THE PRACTITIONER ANGLE IS EXPOSURE, NOT OPPORTUNITY**

A lower-friction intake means a disgruntled bookkeeper, ex-spouse, or former partner can file in minutes. Specific, credible information is what actually gets worked.

Whistleblower Form 211 — Reporting & the Fix

1

WHERE IT REPORTS

Form 211, filed with the IRS Whistleblower Office directly — not a return-preparation issue at all.

2

COMMON MISTAKE

Treating this as obscure with low practice relevance. The digital intake lowers the friction for exactly the kind of insider report most practitioners never see coming.

3

WHAT TO DO NOW

Keep client files and workpapers in the shape that would hold up if a disgruntled insider ever pointed the IRS at them — this is a WISP-adjacent discipline, not a separate concern.

IF YOU REMEMBER ONE THING

Digital filing means it's easier for a disgruntled insider to report you.

Keep client files in shape for that scrutiny — this is exposure, not just an obscure IRS program.

Practitioner Priority Service

PPS in 2026 — getting through, and what it can actually do

What Is PPS?

1

PRACTITIONER PRIORITY SERVICE — THE IRS PHONE LINE FOR PROFESSIONALS

PPS is the IRS's dedicated toll-free line for tax professionals with a valid authorization on file (Form 2848, 8821, or 8655) — a faster, more direct route than the general public phone lines.

2

IT'S ALSO NOW THE ONLY DOOR TO CERTAIN TRANSCRIPTS

Since 2024, some transcript deliveries only happen through a PPS call — general IRS phone lines no longer offer that option.

PPS — The Rule & the Numbers

1

PPS IS THE ONLY ROUTE TO THE SOR

Since April 8, 2024, transcripts are deposited into the Secure Object Repository only via a PPS call — other IRS toll-free lines no longer offer SOR delivery.

2

FIVE CLIENTS PER CALL

A single PPS call can cover up to five clients, with transcript requests capped per client. Have the CAF number, PTIN, and client data ready before dialing.

3

KNOW YOUR SHORT ID BEFORE YOU CALL

You must verify an 8-to-10 character Short ID, visible when you log into e-Services SOR. Fail it and transcripts go to the address of record instead.

PPS — Reporting & the Fix

1 **WHERE IT REPORTS**

866-860-4259, weekdays, for practitioners holding a valid Form 2848, 8821, or 8655 — not a return-line item.

2 **COMMON MISTAKE**

Calling before pulling the transcript first. Account, wage-and-income, and record-of-account transcripts answer most questions without a call at all.

3 **WHAT TO DO NOW**

Take the callback feature when offered rather than holding, and keep CAF authorizations current so the call isn't lost to an authorization problem.

IF YOU REMEMBER ONE THING

The best PPS call is the one you didn't have to make.

Pull the transcript first — account, wage-and-income, and record-of-account answer most questions.

Employer Meals Go to Zero

§274(o) in 2026 — and what stays fully deductible

Employer-Provided Meals — The Rule & the Numbers

1

§274(o) HITS EMPLOYER-PROVIDED MEALS IN 2026

Beginning in 2026, most employer-provided meals — the office kitchen, meals for convenience of the employer — lose their deduction entirely, with narrow exceptions.

2

THE NARROW EXCEPTIONS STAY AT 100%

Meals sold to customers, meals included in employee compensation (added to W-2 wages), and meals for certain crews keep full deductibility.

3

CLIENT AND TRAVEL MEALS ARE A SEPARATE RULE, UNCHANGED

Ordinary business meals with clients and while traveling remain at the standard 50% limitation under §274(n) — that rule did not move.

Three Buckets, One Simple Example

GOES TO ZERO

- Free office kitchen snacks/coffee
- Employer-bought lunch, no charge, no comp
- Overtime-shift meals "for convenience"

STAYS AT 100% (NARROW) / 50%

- 100%: meals sold to customers at a cafe/restaurant
- 100%: meals added to an employee's W-2 as pay
- 50%: a client dinner or a travel meal

Employer-Provided Meals — Reporting & the Fix

1 **WHERE IT REPORTS**

Meals ride on the business return, not Schedule A. Reimbursement under an accountable plan keeps a legitimate business meal off the employee's W-2.

2 **COMMON MISTAKE**

Lumping employer-provided meals (now nondeductible) into the same chart-of-accounts bucket as 50%-deductible client meals and 100%-deductible crew/comp meals.

3 **WHAT TO DO NOW**

Split meals accounts before year-end into three buckets: 50% client meals, 100% narrow-exception items, and nondeductible employer-provided meals.

IF YOU REMEMBER ONE THING

Client meals stay at 50%. Comp/customer meals stay at 100%.

Three different rules living in the same account code — split them before year-end.

R&D Expensing Is Back

§174A restores immediate deduction; small businesses can amend

§174 R&D Expensing — The Rule & the Numbers

1 **DOMESTIC R&E IS IMMEDIATELY DEDUCTIBLE AGAIN**

New §174A restores current-year deduction for domestic research and experimental costs for tax years beginning after 12/31/2024 — permanent, no sunset.

2 **SMALL BUSINESSES COULD AMEND PRIOR RETURNS**

Businesses with 3-year average gross receipts of $31 million or less could amend already-FILED 2022–2024 returns for retroactive full expensing — that window closed July 6, 2026

3 **LARGER BUSINESSES ACCELERATE INSTEAD**

Above the $31M threshold, no amending — but the remaining unamortized 2022-2024 balance can be deducted entirely in 2025, or split across 2025-2026.

§174 R&D Expensing — Reporting & the Fix

1
WHERE IT REPORTS

Current-year R&E deducts directly on the business return. The 2022–2024 unamortized balance comes back through a Rev. Proc. 2025-28 method-change statement — no Form 3115 required.

2
COMMON MISTAKE

Treating July 6, 2026 as the end of all prior-year relief. That date closed only the small-business amended-return election for 2022–2024. The catch-up deduction is a method change — it did not expire.

3
WHAT TO DO NOW

For any client still amortizing 2022–2024 domestic R&E, take the remaining balance on the 2025 return — in full, or ratably over 2025 and 2026 — and re-run the §41 credit alongside it.

IF YOU REMEMBER ONE THING

The amend-back window closed July 6. The catch-up deduction did not.

Amended 2022–2024 returns are done. The unamortized balance still deducts — in full in 2025, or over 2025–2026. Rev. Proc. 2025-28.

§163(j) Interest Limit Got More Generous

EBITDA-based ATI is back, permanently

§163(j) — Who Does This Even Apply To?

1

GENERALLY, ONLY BUSINESSES ABOVE THE §448(c) GROSS RECEIPTS TEST

§163(j) only reaches taxpayers with average annual gross receipts over $31 million for 2025 — $32 million for 2026, subject to aggregation and tax-shelter rules. Below that, the small-business exemption generally applies.

2

AND ONLY IF THE BUSINESS ACTUALLY HAS BUSINESS INTEREST

No debt, no leverage, no interest expense — no reason to run the computation at all, regardless of size.

§163(j) — The Rule & the Numbers

1

ATI IS COMPUTED ON EBITDA AGAIN

OBBBA permanently restores the EBITDA-based adjusted taxable income computation for the §163(j) 30%-of-ATI business interest limitation

2

DEPRECIATION AND AMORTIZATION ADD BACK AGAIN

Adding depreciation and amortization back into ATI raises the interest-deduction ceiling for capital-intensive businesses — the single biggest practical change here.

3

THE SMALL-BUSINESS EXEMPTION IS UNCHANGED

Taxpayers meeting the §448(c) gross receipts test are still fully exempt from the §163(j) limitation regardless of this change.

§163(j) — Reporting & the Fix

1

WHERE IT REPORTS

Form 8990 computes the limitation; disallowed interest carries forward indefinitely to future years.

2

COMMON MISTAKE

Modeling 2026 interest capacity off a 2023-2025 EBIT-based computation. The EBITDA add-back can materially increase how much interest is currently deductible.

3

WHAT TO DO NOW

Re-run the §163(j) computation for any leveraged, depreciation-heavy client above the $32M (2026) threshold before assuming last year's carryforward still applies the same way.

IF YOU REMEMBER ONE THING

Businesses above ~$32M just got real new interest-deduction room.

Depreciation and amortization add back into ATI again, permanently. Re-run the computation.

Two Hiring Credits Expired Together

WOTC and the Empowerment Zone credit — both lapsed 12/31/2025

WOTC & Empowerment Zone — The Rule & the Numbers

1

BOTH EXPIRED AT YEAR-END 2025 — SEPARATELY FROM OBBBA

The Work Opportunity Tax Credit and the Empowerment Zone Employment Credit are unrelated temporary tax-extender provisions, both lapsing for wages paid after 12/31/2025.

2

WOTC WAS UP TO $2,400–$9,600 PER HIRE

40% of up to $6,000 of first-year wages (up to $2,400) for most target groups; higher caps applied for certain veteran categories, up to $9,600.

3

EMPOWERMENT ZONE WAS UP TO $3,000 PER EMPLOYEE

20% of the first $15,000 of qualified zone wages, for an employee who both works and lives in a designated zone — renewable each year the employee stays.

WOTC & Empowerment Zone — Reporting & the Fix

1

WHERE IT REPORTS

WOTC: Form 5884 (or 5884-C for tax-exempt veteran hires), flowing to Form 3800. Empowerment Zone: Form 8844, also flowing to Form 3800.

2

COMMON MISTAKE

Telling a client the credits are gone for good. Both have lapsed and been retroactively reauthorized before — but no extension has been enacted, and none is guaranteed.

3

WHAT TO DO NOW

Keep screening and documenting new hires against target-group criteria during the hiatus — a retroactive extension would otherwise leave undocumented hires unable to claim it.

IF YOU REMEMBER ONE THING

Both credits lapsed — keep screening anyway.

History favors a retroactive renewal. Undocumented hires during the hiatus can't be fixed after the fact.

One Number, Three Calculations

The 2026 Social Security wage base, and the S-corp question

Social Security Wage Base — The Rule & the Numbers

1 **$184,500 FOR 2026, UP FROM $176,100**

Employee Social Security tax tops out at $11,439 (6.2%), matched by the employer. A self-employed taxpayer's SE tax tops out at $22,878 (12.4%) on the same base.

2 **MEDICARE HAS NO CAP**

The 2.9% Medicare rate applies to all wages and net earnings, plus a 0.9% additional Medicare tax above $200,000 single / $250,000 joint / $125,000 MFS

3 **THE SE BASE IS 92.35% OF NET EARNINGS**

Self-employment tax applies to 92.35% of net earnings, so the wage base is effectively reached around $199,784 of Schedule C profit. Half of SE tax is deductible.

Social Security Wage Base — What CPAs Need to Know

1

WHERE IT REPORTS

Excess Social Security withheld by two or more employers is a credit on Schedule 3. A single employer's over-withholding is fixed by that employer, not the return.

2

COMMON MISTAKE

Ignoring the additional Medicare tax reconciliation. A joint return can be over- or under-withheld on the 0.9% — reconcile on Form 8959, don't assume payroll got it right.

3

WHAT TO DO NOW

As the base rises, so does the case for the S-corp reasonable-compensation conversation for a profitable sole proprietor — model it, don't convert on the tax alone.

IF YOU REMEMBER ONE THING

As the wage base rises, so does the S-corp conversation.

Model it — don't convert on the tax number alone.

SECURE 2.0: What's Live Now

Several provisions finally took effect in 2025 and 2026

SECURE 2.0 Provisions — The Rule & the Numbers

1 **CATCH-UP CONTRIBUTIONS FOR AGES 60-63 — LIVE FOR 2025**

Employees 60-63 get a higher catch-up limit than the standard 50+ catch-up — a separate, larger figure for that narrow four-year age band, indexed annually.

2 **LONG-TERM PART-TIME EMPLOYEE RULE TIGHTENED FOR 2025**

SECURE 1.0 required plans to admit part-timers after three consecutive years of 500+ hours. SECURE 2.0 cut that to TWO consecutive years, effective 2025.

3 **THE ROTH CATCH-UP MANDATE FOR HIGH EARNERS**

The rule requiring catch-up contributions from employees with prior-year wages over $150,000 to be Roth-only applies now that the transition period ended after 2025. Final regulations generally apply starting in 2027, with 2026 as a good-faith implementation year to monitor.

SECURE 2.0 Provisions — Reporting & the Fix

1 **WHERE IT REPORTS**

Plan-level provisions — not something that shows on a business return, but plan documents need amendment to reflect the current rules.

2 **COMMON MISTAKE**

Building payroll systems around the Roth catch-up mandate before it's actually effective — several vendors built for it early and are now unwinding that work.

3 **WHAT TO DO NOW**

Confirm plan documents reflect the two-year long-term part-time rule and the 60-63 catch-up band before year-end testing.

IF YOU REMEMBER ONE THING

The Roth catch-up mandate for high earners applies now — final regs phase in for 2027

Some vendors assumed an extended delay and are now catching up on 2026 implementation.

ERC: What Can Still Be Paid

The date that matters is January 31, 2024 — not 2025

ERC Update — The Rule & the Numbers

1 **THE CUTOFF IS 1/31/2024, FOR Q3 AND Q4 2021 ONLY**

OBBBA §70605(d) blocks the IRS from paying ERC claims for Q3/Q4 2021 that were FILED after 1/31/2024.

2 **EVERYTHING ELSE WAS UNTOUCHED**

ERC claims for 2020 and the first two quarters of 2021 are entirely unaffected by this provision — the limitation reaches only Q3/Q4 2021 claims filed late.

3 **THE STATUTE OF LIMITATIONS EXTENDED TO SIX YEARS**

For Q3/Q4 2021 claims specifically, OBBBA extended the assessment window from five years to six — the IRS can examine those claims until as late as January 31, 2030.

ERC Update — Reporting & the Fix

1 **WHERE IT REPORTS**

Claims run through amended Forms 941-X — this provision doesn't change the filing mechanism, only whether the IRS is permitted to pay a late-filed Q3/Q4 2021 claim.

2 **COMMON MISTAKE**

Telling a client with a pending Q3/Q4 2021 claim filed after 1/31/2024 that it's dead. It's blocked from payment under this provision

3 **WHAT TO DO NOW**

For any client with an outstanding ERC claim, confirm the exact quarter and the postmark/submission date — the 1/31/2024 line, not 1/31/2025, is what decides it.

IF YOU REMEMBER ONE THING

January 31, 2024 — not 2025. That one-year difference decides the claim.

Confirm the actual filing date before telling any client their claim is dead.

The New Floor on Corporate Giving

A 1% floor now sits under the existing 10% cap, starting 2026

Corporate Charitable Limit — The Rule & the Floor

1. **A NEW 1% FLOOR, ON TOP OF THE EXISTING 10% CAP**

   OBBBA amended §170(b)(2)(A): for tax years beginning after 12/31/2025, a corporation may deduct charitable contributions only to the extent they EXCEED 1% of taxable income

2. **SMALL, ROUTINE GIVING CAN LOSE ITS BENEFIT ENTIRELY**

   A corporation whose annual giving falls below the 1% floor gets NO current deduction for it at all — not a reduced one, none.

3. **CARRYFORWARD RULES GOT MORE COMPLICATED TOO**

   Amounts disallowed by the 1% floor can carry forward up to five years, but only to a future year where TOTAL contributions that year exceed the 10% cap.

Corporate Charitable Limit — Reporting & the Fix

1 **WHERE IT REPORTS**

Schedule C of Form 1120 — the deduction is now computed net of the 1% floor before applying the 10% cap.

2 **COMMON MISTAKE**

Assuming any donation the corporation makes is deductible up to 10% of income, same as before. The floor can zero out modest giving entirely, not just reduce it.

3 **WHAT TO DO NOW**

For clients with modest annual giving, consider bunching multiple years of contributions into one year to clear the 1% floor

IF YOU REMEMBER ONE THING

Below the 1% floor, a corporate donation is generous but not deductible.

Consider bunching modest annual giving into fewer, larger years to clear the floor.

Does Your Coverage Block the PTC?

Premium Tax Credit (PTC) — did this go away?

What Is the Premium Tax Credit?

1 **IT NEVER WENT AWAY — PEOPLE JUST THINK IT DID**

The PTC is the ACA marketplace subsidy that's existed since 2014, for household income between 100%-400% of the federal poverty line buying individual coverage on the Marketplace.

2 **WHAT ACTUALLY EXPIRED WAS THE ENHANCEMENT**

ARPA/IRA temporarily removed the 400% income cap and made the credit larger. THAT enhancement expired after 2025 — the original, permanent PTC underneath it did not.

3 **WHY IT'S A BUSINESS TOPIC AT ALL**

An employer's own health coverage offer can determine whether an employee is even eligible to shop for a PTC on the Marketplace in the first place.

Employer Coverage & PTC — The Rule & the Numbers

1 **AN AFFORDABLE OFFER BLOCKS THE EMPLOYEE'S PTC**

If an employer's lowest-cost, minimum-value plan is 'affordable' under the ACA test, the employee (and often their family) is ineligible for a Marketplace premium tax credit

2 **THE 2026 AFFORDABILITY THRESHOLD ROSE TO 9.96%**

Up from 9.02% for 2025. This is the maximum share of household income an employee can be required to pay for self-only coverage before the offer is 'unaffordable.'

3 **FAMILY MEMBERS ARE TESTED SEPARATELY**

Even if the employee's own self-only coverage is affordable, the family's coverage cost is tested on its own

Employer Coverage & PTC — Reporting & the Fix

1 **WHERE IT REPORTS**

Applicable large employers report offer-of-coverage and affordability data on Forms 1094-C/1095-C — this is what the IRS matches against employee PTC claims.

2 **COMMON MISTAKE**

Testing only the employee's self-only premium and assuming the whole family is covered by that answer. Family affordability is a separate calculation.

3 **WHAT TO DO NOW**

With the enhanced PTC subsidy expired and marketplace premiums rising sharply for 2026, more employees may ask about opting out

IF YOU REMEMBER ONE THING

The PTC didn't expire. The enhanced version of it did.

Your affordable coverage offer is still what decides whether an employee can shop the Marketplace at all.

Automatic Enrollment

Plans established 12/29/2022+ — what it really means

Who Does This Really Apply To?

1

401(k) AND 403(b) PLANS ONLY — NOT SIMPLE IRAS

The EACA mandate reaches 401(k) and 403(b) plans specifically. SIMPLE IRAs, defined benefit plans, and governmental/church plans are outside this rule entirely — not just exempt

2

TWO DATES, TWO DIFFERENT JOBS

The plan must have been ESTABLISHED on or after 12/29/2022 to be in scope at all. The requirement itself became mandatory for plan years beginning on or after 1/1/2025

3

NOT LITERALLY EVERY EMPLOYER

Three exemptions cover most small clients — see the next slide. If a client's plan predates 12/29/2022, this doesn't touch them regardless of size.

Automatic Enrollment — The Rule & the Numbers

1. **MANDATORY FOR PLANS ESTABLISHED ON OR AFTER 12/29/2022**

   Any 401(k) or 403(b) plan established on or after SECURE 2.0's enactment date must include an eligible automatic contribution arrangement (EACA)

2. **THE DEFAULT RATE STRUCTURE IS SPECIFIC**

   Initial default deferral between 3% and 10% of compensation, automatically increasing 1 point per year until reaching at least 10% (cap 15%)

3. **THREE EXEMPTIONS COVER MOST SMALL CLIENTS**

   Businesses with 10 or fewer employees, businesses less than 3 years old, and church or governmental plans are exempt from the mandate entirely.

Automatic Enrollment — Reporting & the Fix

1 **WHERE IT REPORTS**

Plan documents and the required EACA participant notice — not a return-line item, but a compliance failure can jeopardize the plan's qualified status.

2 **COMMON MISTAKE**

Assuming an existing plan is grandfathered just because the business itself predates 2022. The test is when the PLAN was established, not the business.

3 **WHAT TO DO NOW**

For any client establishing a first 401(k) or 403(b) plan, confirm the EACA default-rate structure is built in before the first payroll cycle

IF YOU REMEMBER ONE THING

The test is when the PLAN was established — not when the business was.

A new plan at an old business still has to comply. SIMPLE IRAs aren't touched by this rule at all.