

Exploring Client Advisory Services: Quarterly Tax Update – Q2 2025

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By David Peters, CPA, MST, CLU, CPCU

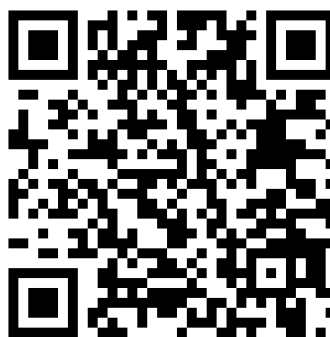
About your instructor



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Learning Objectives

- Recognize upcoming tax legislation changes.
- Identify common elements of disaster relief provisions.
- Recognize exemptions from BOI Reporting
- Identify the different tax treatments of foreign workers
- State filing requirements related to Form 1099-K and 1099-DA
- Recognize when software malfunctions may be used as reasonable cause for tax noncompliance.

What is on our mind?

- Upcoming Tax Legislation
- Disaster Relief (what does the new deadline apply to?)
- IRS Staff Cuts (might mean more automated notices!)
- Newer Information Reporting (1099-K, 1099-DA, BOI)
- Employee Issues (minimum wage changes, documentation, backup withholding)

I. Upcoming Tax Legislation

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Timeline

- Current tax bill has now advanced to the full House of Representatives – passed the full House on **5/22/25**.
- The bill passed the House Budget Committee, 17-16
- TCJA provisions expire at the end of 2025. If allowed to expire, provisions existing prior to 2018 would come back (example, personal exemptions and miscellaneous itemized deductions would return).

What will be the priorities?

Treasury Secretary Scott Bessent (April 2025) said:

- Eliminating taxes on tips, Social Security benefits, and overtime pay
- Deductibility for auto loans for American-made cars
- 100% immediate depreciation (bonus)
- Repeal the clean energy credits from the Inflation Reduction Act
- Lift the SALT Cap

What are the key business tax proposals?

- **QBI Deduction – 5 Changes:**

- Deduction is made permanent (no sunset) – including the deduction for REIT dividends, PTP income, and the deduction for income attributable to the domestic production activities of specified agricultural or horticultural cooperatives.
- Inflation adjusts the phaseout thresholds for taxable years after December 31, 2025.
- Makes the maximum deduction equal to 23% of QBI (instead of 20%).

What are the key business tax proposals?

- **QBI Deduction – 5 Changes:**

- *Adjusts the Phaseout for W-2 wages and UBI* - Unlike current law, however, there is no phase in of the W-2 wages and capital investment limitation over a fixed dollar phase-in range. Rather, the taxpayer compares the sum of the deductible amounts for each qualified trade or business in step one to a new phase-in rule in step two. Under step two, the taxpayer (1) takes 22 percent of qualified business income from all trades or businesses (including specified service trades or businesses) without regard to the W-2 wages and capital limitation and (2) reduces the amount in (1) by a limitation phase-in amount equal to 75 percent of the excess of taxable income over the threshold amount. The taxpayer then compares the aggregate deductible amounts under steps one and two, and includes the greater of the two amounts in combined qualified business income.

What are the key business tax proposals?

- **QBI Deduction – 5 Changes:**

- The fourth modification allows a taxpayer to include qualified BDC interest dividends in the aggregated qualified REIT dividends and qualified publicly-traded partnership income used to calculate the combined qualified business amount. The proposal defines a qualified BDC interest dividend as any dividend received from a business development company that has elected to be treated as a regulated investment company, to the extent that the dividend is attributable to that company's net interest income derived from a qualifying trade or business.

What are the key business tax proposals?



- **Bicycle Commuting Reimbursements** – The repeal of the exclusion for bicycle reimbursements is made permanent. This would mean that employers who continue to reimburse employees who bike to work would need to include this reimbursement in the taxable income of the employee.
- **Moving Expense Reimbursement** - The proposal would permanently repeal the qualified moving expense reimbursement exclusion except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station (Sec 217(g))
- **FICA Tip Credit Extended to Beauty Services** – The proposal extends the FICA Tip Credit to beauty services, which is defined to include barbering, hair care, nail care, esthetics, and body and spa treatments. The minimum wage limitation is revised with respect to beauty services to reference the minimum wage rate applicable under the FLSA for that month (rather than the rate applicable as of January 1, 2007).

What are the key business tax proposals?



Employer-Provided Child Care Credit – Effective starting in 2026, the proposal increases the employer-provided child care credit to 40 percent (rather than 25%) of qualified child care expenditures (50 percent for eligible small businesses) in addition to 10 percent of qualified referral expenses allowed under present law. The total credit limit is increased to \$500,000 (\$600,000 for small businesses), adjusted for inflation.

- An “eligible small business” is defined under Sec 448(c) – average of 5 previous years though.
- The definition of qualified child care expenditures is expanded to include amounts paid or incurred under a contract with a third-party that contracts with one or more qualified child care facilities to provide child care services.
- In addition, the definition of qualified child care facilities is expanded to allow for qualified child care facilities that are jointly owned or operated by the taxpayer and other entities or persons.

What are the key business tax proposals?



Paid Family & Medical Leave Credit – Proposal would make the credit permanent and modify certain parts:

- The definition of qualified child care expenditures is expanded to include amounts paid or incurred under a contract with a third-party that contracts with one or more qualified child care facilities to provide child care services.
- The definition of qualified child care facilities is expanded to allow for qualified child care facilities that are jointly owned or operated by the taxpayer and other entities or persons.
- The proposal also includes an aggregation rule that provides that employers within the same controlled group are treated as a single employer under section 45S (meaning all members would need to have to comply with 45S to get the credit).
- The rate of payment is determined without regard to whether any qualifying employees were actually on family and medical leave during the taxable year.

What are the key business tax proposals?



Paid Family & Medical Leave Credit – Proposal would make the credit permanent and modify certain parts:

- Similar to the applicable percentage that applies in the case of wages paid to employees who are on leave, the applicable percentage in the case of an insurance policy is equal to 12.5 percent if the rate of payment under the policy is 50 percent of wages normally paid to an employee, and is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent of wages normally paid.
- Under the proposal, the employer elects whether to claim the credit based on wages paid or on premiums paid. (Thus, the credit cannot be claimed for both premiums paid on an insurance policy and wages paid under such insurance policy).
- Effective starting in 2026.

What are the key business tax proposals?

PTE Elections – IRS Notice 2020-75 is “abrogated.” In other words, the general rule is that there is no longer a deduction at the federal level for “specified income tax payments.” There are three exceptions:

- 1) foreign taxes described in section 164(a)(3)
- 2) property taxes described in section 164(a)(1) and (2) or section 216(a)(1) when paid or accrued in carrying on a trade or business or an activity described in section 212.
- 3) state, local, and foreign income taxes described in section 164(a)(3) that are paid or accrued by a “qualifying entity” carrying on a qualified trade or business within the meaning of section 199A

What are the key business tax proposals?

- “Qualifying Entity” - a partnership or S corporation for which at least 75 percent of the gross receipts of all trades or businesses under common control are derived in a qualified trade or business, as defined by section 199A(d).
- Sec 199A(d)(1): *“The term “qualified trade or business” means any trade or business other than - (A)a **specified service trade or business**, or (B)the trade or business of performing services as an employee.”*

What are the key business tax proposals?

- In other words, 199A eligible companies can generally still deduct “specified income tax payments.” **However, specified services trades or businesses cannot:**
- Section 199A(d)(2) (by referring to Sec 1202(e)(3)(A)) defines a specified service trade or business as involving the performance of services in the fields of health, law, **accounting**, actuarial science, performing arts, consulting, athletics, **financial services**, brokerage services, or any trade or business in which the principal asset is the reputation or skill of one or more of its employees or owners or that involves the performance of services.

What are the key business tax proposals?

- **Overall Limit on Business Losses** – Made permanent. Also, the limitation on excess farm losses (section 461(j)) does not apply for taxable years beginning after December 31, 2017.
- The rules around excess business losses are clarified. So that the loss for each year includes NOL carryforwards.

What are the key business tax proposals?

- For purposes of determining the excess business loss for a taxable year, the aggregate deductions attributable to trades or businesses of the taxpayer are increased by the portion of the allowable net operating loss carryover or carryback that is a specified loss.
- A specified loss means a disallowed excess business loss under the limitation set forth in section 461(l)(1) for a taxable year beginning after Dec 31, 2024.
- **This means that the full amount of the specified loss (not reduced by limitations of Sec 172(a)) attributable to an excess business loss disallowance must increase the subsequent taxable year aggregate deductions used in calculating the excess business loss under section 461(l)(1) for such subsequent taxable year.**
- Specified loss is treated as an NOL arising from the original tax year incurred.

What are the key business tax proposals?

Green Energy Credits:

- Clean electricity production tax credit (45Y), clean electricity investment tax credit (48E), and nuclear electricity production tax credit (45U) begin phasing out after 2028 and finish phasing out by the end of 2031
- Repeal hydrogen production credit (45V) for facilities beginning construction after 2025
- Phase out advanced manufacturing production credit (45x) for wind energy components after 2027, for all other eligible components after 2031
- Generally repeal transferability after the end of 2027 and further restrict credits based on involvement of foreign entities of concern.

What are the key business tax proposals?

Bonus Depreciation – Generally makes bonus depreciation once again 100%:

- The proposal extends and modifies the additional first-year depreciation deduction through 2029 (through 2030 for longer production period property and certain aircraft).
- **The allowance is increased to 100 percent for property acquired and placed in service after January 19, 2025, and before January 1, 2030 (January 1, 2031, for longer production period property and certain aircraft).**
- For specified plants planted or grafted after January 19, 2025, and before January 1, 2030.
- The proposal makes permanent the rules under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract.

What are the key business tax proposals?

Sec 163(j) Interest Deduction Limit:

- **The proposal reinstates the EBITDA limitation under section 163(j) for taxable years beginning after December 31, 2024, and before January 1, 2030.** Therefore, for purposes of the section 163(j) interest deduction limitation for these years, adjusted taxable income is computed without regard to the deduction for depreciation, amortization, or depletion.
- The proposal also modifies the definition of “motor vehicle,” for purposes of the floor plan financing interest and floor plan financing indebtedness definitions, to include any trailer or camper which is designed to provide temporary living quarters for recreational, camping, or seasonal use and is designed to be towed by, or affixed to, a motor vehicle.
- The proposal allows the Secretary of Treasury to provide such rules as are necessary or appropriate to provide for the application of the proposal for taxable years of less than 12 months that begin after the effective date and end before the date of enactment.

What are the key business tax proposals?

Sec 162(m) – Executive Compensation limited to \$1M for publicly held corporations:

- The proposal adds an entity aggregation rule to section 162(m) for purposes of the deduction disallowance.
- The rule provides that in the case of any publicly held corporation which is a member of a controlled group, if any person which is a member of such controlled group provides applicable employee remuneration to an individual who is a specified covered employee of such controlled group and the aggregate amount of applicable employee remuneration provided by all such members with respect to such specified covered employee exceeds \$1,000,000 then the deduction allowed to such members of the controlled group for the applicable employee remuneration paid to such specified covered employee is limited to \$1,000,000.
- Controlled group means any group treated as a single employer under the rules used to treat related entities as a single employer for other employee benefit purposes

What are the key business tax proposals?

Sec 174 – Research & Experimental Expenditures

- **Domestic R&E Expenses:** Taxpayers may
 - (1) deduct domestic research or experimental expenditures,
 - (2) elect to capitalize and recover domestic research or experimental expenditures ratably over the useful life of the research (but in no case less than 60 months) beginning with the midpoint of the taxable year in which such expenditures are paid or incurred, or
 - (3) elect to capitalize and recover domestic research or experimental expenditures over 10 years beginning with the taxable year of the expenditure

What are the key business tax proposals?

Sec 174 – Research & Experimental Expenditures

- **Foreign R&E Expenses:** Taxpayers must continue to capitalize and amortize foreign research or experimental expenditures over 15 years⁵⁵¹ beginning with the midpoint of the taxable year in which they pay or incur the expenditures.

Disposition:

- **Domestic:** Taxpayers may recover domestic capitalized research or experimental expenditures upon the disposition, retirement, or abandonment with respect to which such expenditures are paid or incurred.
- **Foreign:** Taxpayers may not recover foreign capitalized research or experimental expenditures, either as a deduction or a reduction to the amount realized for any property disposed, retired, or abandoned after the date of introduction.

What are the key business tax proposals?



C-Corporation Charitable Contribution Limit:

- Effective in 2026, Corporations may only deduct charitable contributions up to 1% of taxable income (rather than the current 10%).
- Contributions in excess of the 10-percent limit may be carried forward to the subsequent five taxable years and are treated as allowed on a first-in, first-out basis. The amount of charitable contributions disallowed under the one-percent floor may be carried forward only from years in which the taxpayer's charitable contributions exceed the 10-percent limit.
- Any carryforward is applied after contributions made in the current taxable year for the purposes of the one-percent floor and 10-percent limit.

What are the key business tax proposals?

Modifications to the Sec 45K Clean Fuel Productions Credit:

- Extended through 2031
- The proposal requires that the fuel be derived exclusively from a feedstock produced or grown in the United States, Mexico, or Canada.
- The proposal requires that the lifecycle greenhouse gas emissions are to be adjusted as necessary to exclude any emissions attributed to indirect land use change.
- For transportation fuels that are derived from animal manure, the emission rates table prescribed by the Secretary is to provide a distinct emissions rate with respect to each specific feedstock used to produce such fuel, including dairy manure, swine manure, poultry manure and such other sources as are determined appropriate by the Secretary.

What are the key business tax proposals?

Modifications to the Sec 45K Clean Fuel Productions Credit:

- If the taxpayer is a specified foreign entity (as defined in section 7701(a)(51)(B)), no clean fuel production credit is allowed under section 38 for any taxable year beginning after the date of enactment.
- If the taxpayer is a foreign-influenced entity (as defined in section 7701(a)(51)(D)), no clean fuel production credit is allowed under section 38 for any taxable year beginning two years after the date of enactment.
- **Effective Date:** The prohibition on foreign feedstocks applies to transportation fuel sold after December 31, 2025. The changes with respect to the determination of emission rates applies to emission rates published for taxable years beginning after December 31, 2025. The extension of the clean fuel production credit is effective on the date of enactment. The restrictions relating to prohibited foreign entities apply to taxable years beginning after the date of enactment.

II. Disaster Relief

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Jan 1, 2025 to Apr 30, 2025 - Disaster Relief (IRS.gov)

- NC-2025-01, IRS further postpones various tax deadlines to **Sept. 25** for **North Carolina** storm victims
- TN-2025-02, IRS announces tax relief for **Tennessee** storm victims; various deadlines postponed to **Nov. 3**
- AR-2025-03, IRS announces tax relief for **Arkansas** storm victims; various deadlines postponed to **Nov. 3**
- IR-2025-49, IRS: All of **Arkansas** qualifies for disaster tax relief; various deadlines postponed to **Nov. 3**
- IR-2025-47, IRS: All of **Tennessee** qualifies for disaster tax relief; various deadlines postponed to **Nov. 3**

Jan 1, 2025 to Apr 30, 2025 - Disaster Relief (IRS.gov)



- IR-2025-34, IRS: **West Virginia** storm victims qualify for tax relief; various deadlines postponed to **Nov. 3**
- KY-2025-02 — IRS announces tax relief for taxpayers impacted by severe storms, straight-line winds, flooding, and landslides in **Kentucky**; various deadlines postponed to **Nov. 3**
- IR-2025-10, IRS: **California** wildfire victims qualify for tax relief; various deadlines postponed to **Oct. 15**
- IR-2025-01, IRS reminder to disaster area taxpayers with extensions: **All or parts of 14 states, 2 territories** need to file 2023 returns by **Feb. 3**; others have until May 1

IR-2025-10, Jan. 10, 2025 - CA wildfire victim tax relief



- The Internal Revenue Service announced today tax relief for individuals and businesses in **southern California** affected by wildfires and straight-line winds that began on Jan. 7, 2025. These taxpayers now have until **Oct. 15, 2025**, to file various federal individual and business tax returns and make tax payments.
- The IRS is offering relief to any area designated by the Federal Emergency Management Agency (FEMA). Currently, individuals and households that reside or have a business in Los Angeles County qualify for tax relief.
- The same relief will be available to any other counties added later to the disaster area. The current list of eligible localities is always available on the Tax relief in disaster situations page on IRS.gov.

IR-2025-10, Jan. 10, 2025 - CA wildfire victim tax relief



- The tax relief postpones various tax filing and payment deadlines that occurred from **Jan. 7, 2025, through Oct. 15, 2025 (postponement period)**. As a result, affected individuals and businesses will have until **Oct. 15, 2025**, to file returns and pay any taxes that were originally due during this period.
- The Oct. 15, 2025, deadline will now apply to:
 - Individual income tax returns and payments normally due on April 15, 2025.
 - 2024 contributions to IRAs and health savings accounts for eligible taxpayers.
 - 2024 quarterly estimated income tax payments normally due on Jan. 15, 2025, and estimated tax payments normally due on April 15, June 16 and Sept. 15, 2025.
 - Quarterly payroll and excise tax returns normally due on Jan. 31, April 30 and July 31, 2025.
 - Calendar-year partnership and S corporation returns normally due on March 17, 2025.

IR-2025-10, Jan. 10, 2025 - CA wildfire victim tax relief



- The **Oct. 15, 2025**, deadline will now apply to:
 - Calendar-year corporation and fiduciary returns and payments normally due on April 15, 2025.
 - Calendar-year tax-exempt organization returns normally due on **May 15, 2025**.
 - In addition, penalties for failing to make payroll and excise tax deposits due on or after Jan. 7, 2025, and before Jan. 22, 2025, will be abated as long as the deposits are made by **Jan. 22, 2025**.
- The Disaster assistance and emergency relief for individuals and businesses page has details on other returns, payments and tax-related actions qualifying for relief during the postponement period.

IR-2025-10, Jan. 10, 2025 - CA wildfire victim tax relief



- The IRS automatically provides filing and penalty relief to any taxpayer with an IRS address of record located in the disaster area. **These taxpayers do not need to contact the agency to get this relief.**
- It is possible an affected taxpayer may not have an IRS address of record located in the disaster area, for example, because they moved to the disaster area after filing their return. In these kinds of unique circumstances, the affected taxpayer could receive a late filing or late payment penalty notice from the IRS for the postponement period. **The taxpayer should call the number on the notice to have the penalty abated.**
- In addition, the IRS will work with any taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. **Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.**

CAS Practitioner Tips

- Who is eligible is normally determined by FEMA.
- Disaster relief provisions generally are applied to each county. Therefore, you could have some people qualify and some not within the same state.
- There is often not a special election that needs to be made. The IRS goes by taxpayer address to determine who qualifies.

CAS Practitioner Tips

- If the taxpayer has records insider the disaster area, they normally also qualify for relief.
- There is normally a deferral period. If a deadline falls within the deferral period, it is pushed to the new due date.
- “Other Actions” as defined in the Regs are also normally pushed to the new due date.

What are “OTHER ACTIONS” extended? - Reg 301.7508A-1(c)(1) & Rev Proc 2018-58



If during the deferral period:

1. IRA contributions
2. Retirement plan contributions (including return of excess contributions, like 401k plans) normally required to be made by the extended due date of the tax return
3. Time-sensitive actions **listed in Rev Proc 2018-58** (not comprehensive):
 - 60-day Rollover Period for IRA Distributions
 - Making HSA And Archer MSA Contributions
 - 45-day Identification/180-day Exchange Period for Sec 1031 exchanges
 - Adoption, Election, or Retention of Accounting Methods and Periods
 - Amending Returns Or Petitioning Tax Court Where Statute Ran During Deferral Period
 - Election To Relinquish Carryback of NOL

Claiming Casualty Losses

- Since these areas are considered a federally declared disaster area, they are normally also eligible for a casualty loss deduction using Form 4684.
- Losses may be claimed in the disaster year or the prior year return. (Claiming in the prior year may allow for a faster refund.)
- To identify the loss as a federally declared disaster area, a FEMA disaster declaration number.

IV. Beneficial Ownership

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Where are we at?

- On March 21, 2025, FINCEN issued an Interim Final Rule that exempts all domestic reporting companies from reporting.
- Foreign reporting companies are still required to report either within 30 days of when the rule is published or the effective date of their US registration.
- US persons associated with foreign entities are also exempt from reporting.

Reporting Company – Original Rules



- A reporting company created or registered to do business before January 1, 2024, will have until **January 1, 2025** to file its initial beneficial ownership information report.
- A reporting company created or registered **on or after January 1, 2024**, will have 30 days to file its initial beneficial ownership information report.
- This 30-day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.

Two Types of Reporting Companies

1) “Domestic Reporting Companies” **(NOT REQUIRED TO REPORT)** which include:

- Corporations
- Limited Liability Companies
- Any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

2) “Foreign Reporting Companies” (MUST REPORT) which include:

- Corporation, limited liability company, or other entity formed under the law of a foreign country, which are “registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.”

It should be noted that only foreign companies which are registered to do business in the US are subject to the reporting requirement.

Beneficial Owners

- Reporting companies will be required to disclose “beneficial owners” which are any individual:
 - (1) who directly or indirectly exercises “substantial control” over the reporting company, or
 - (2) who directly or indirectly owns or controls 25 percent or more of the ownership interests of the reporting company. The term “ownership interests” appears to be all-encompassing, including stock ownership, ownership through more complex arrangements, and indirect ownership.
- “Substantial control” is based on the power that an individual has over the reporting entity. However, the FinCen website says that a senior officer of an entity will always be deemed to have substantial control. Also, anyone who directs, determines, or exercises substantial influence over, important decisions of the reporting entity is deemed to have substantial control.

For Each Beneficial Owner...

The following is reported:

- The individual's name, date of birth, and residential street address (not a business address);
- A unique identifying number from an acceptable identification document (like an unexpired driver's license or passport) along with an image of the document; and
- The name of the state or jurisdiction that issued the identification document.

Company Applicants

- In addition to providing information about beneficial owners, reporting companies that are created or registered on or after January 1, 2024 must also report the same information for “company applicants”, which include individuals who directly file the document that creates, or first registers, the reporting company; as well as individuals that are primarily responsible for directing or controlling the filing of the relevant document.
- If a company engages a business to file the formation papers (like a law firm), then a business address may be used (rather than the residential address of the paralegal or attorney).

Reported Company Information

- Legal name
- Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names
- Current street address of its principal place of business if that address is in the United States (for example, a domestic reporting company’s headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company’s U.S. headquarters)
- Its jurisdiction of formation or registration
- Its Taxpayer Identification Number
- Type of filing it is making (initial report, correction to a prior report, or an update)

V. Domestic & Foreign Worker Issues

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Minimum Wage

- The Federal Minimum Wage is generally **\$7.25 per hour**, but states can increase this amount.
- The minimum wage for federal contract workers as of March 14, 2025, is **\$13.30 per hour**.
- On March 14, 2025, President Trump rescinded Executive Order 14026. This did the following:
 - Kept the minimum wage at \$13.30 for federal workers.
 - Tipped workers under federal contracts must be paid a cash wage of at least \$9.30 per hour in 2025.

Foreign Employees

- All employees in the US must fill out a Form W-4, Form I-9, and any state withholding forms.
- Resident aliens are subject to the same withholding rules as US residents. They will receive a Form W-2.
- Nonresident aliens will also receive a Form W-2 reflecting their US wages, but they are subject to some additional rules.

Non-Resident Aliens – Form W-4



- A nonresident alien should follow the special instructions in Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, to complete Form W-4.
- A nonresident alien cannot write "exempt" on line 7 of Form W-4, Employee's Withholding Allowance Certificate.
- A nonresident alien may claim only "single" filing status on line 3 of Form W-4, even if he is married.
- With certain exceptions, a nonresident alien cannot claim more than one personal exemption on Form W-4.

Non-Resident Aliens – Form W-4



- Nonresident alien employees are required to fill out Form W-4 in the special way described at "Withholding Exemptions - Personal Exemptions - Form W-4".
- Some nonresident aliens are eligible for exemptions from federal income tax withholding on wages because of tax treaties. To claim the exemption they must file Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, with the employer.
- Nonresident aliens who fail to file, or file an invalid Form W-4, as required by IRS regulations shall have federal income taxes withheld at the rates pertaining to single status, zero exemptions.

Non-Resident Alien Contractors

- US Sourced Income paid to a foreign contractor is generally subject to 30% federal withholding (unless there is a tax treaty).
- Payments made to foreign persons that are US sourced must be reported on Form 1042 (and 1042-S)
- Personal service income is generally sourced where the services are performed – not where the customer is located (this may not be true on the state level though).

Form W-8BEN & W-8BEN-E

- Similar to a W-9 for US contractors, foreign contractors should fill out a Form W-8BEN (individuals) or W-8BEN-E (entities).
- Form W-8BENs should be updated every 3 calendar years
- Similar to the W-9, the Form W-8BEN is given to the withholding agent (the US company). It is NOT filed with the IRS. The form is used by the US company to complete the proper forms – Form 1042, 1042-S, 1042-T.

Situations where you do not file a Form W-8BEN



- You are a foreign entity documenting your foreign status, documenting your chapter 4 status, or claiming treaty benefits. Instead, use Form W-8BEN-E.
- You are a U.S. citizen (even if you reside outside the United States) or other U.S. person (including a resident alien individual). Instead, use Form W-9 to document your status as a U.S. person.
- You are acting as a foreign intermediary (that is, acting not for your own account, but for the account of others as an agent, nominee, or custodian). Instead, provide Form W-8IMY.
- You are a nonresident alien individual who claims exemption from withholding on compensation for independent or dependent personal services performed in the United States. Instead, provide Form 8233 or Form W-4.
- You are receiving income that is effectively connected with the conduct of a trade or business in the United States, unless it is allocable to you through a partnership. Instead, provide Form W-8ECI. If any of the income for which you have provided a Form W-8BEN becomes effectively connected, this is a change in circumstances and Form W-8BEN is no longer valid with respect to such income. You must file Form W-8ECI.
- You are the trustee of a foreign trust. Instead provide Form W-8BEN-E or Form W-8IMY for the trust.

Foreign Contractor Living Outside US

- If a US company pays a foreign contractor and personal services are performed outside the United States, then the income is sourced outside the United States.
- There would generally be no reporting required, because there is no US source income.
- The foreign contractor would pay taxes on the income in his/her country of residence – where the services were performed.

Foreign Contractor Living in the US



- This could happen in the situation where a contractor is in the US with a visa.
- Income would be US-sourced and subject to 30% withholding (unless there is a treaty).
- US business would need to file a Form 1042 and 1042-S (and 1042-T Summary Form)

US Contractor Living Outside the US



- A US Citizen that is getting paid by a US company is generally subject to the same rules whether they are working inside or outside the US.
- Payments to the US contractor are reported on Form 1099.
- No withholding is generally required (unless no W-9 is provided, then they are subject to backup withholding)

Form W-9

- Best practice is to get a W-9 from all vendors who you work with before paying them the first time.
- The IRS website offers TIN Matching e-services for certain payers to validate name and TIN combinations
- If no W-9 is provided, the payer (employer) must begin backup withholding (currently, at a rate of 24%). If the payer does not withhold from payee, the payer becomes liable for the backup withholding that should have been collected.

Form W-9

- The payee can put “Applied For” in Part I, if they do not have a TIN.
- If they do not supply the TIN to the payer within 60 days, then the payer must begin backup withholding.
- Certain payees and certain payments are exempt from backup withholding.

Exempt from Backup Withholding

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions, agencies, or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities;
5. A corporation;
6. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession;

Exempt from Backup Withholding

7. A futures commission merchant registered with the Commodity Futures Trading Commission;
8. A real estate investment trust;
9. An entity registered at all times during the tax year under the Investment Company Act of 1940;
10. A common trust fund operated by a bank under section 584(a);
11. A financial institution;
12. A middleman known in the investment community as a nominee or custodian; or
13. A trust exempt from tax under section 664 or described in section 4947.

Key Payments Exempt from Backup Withholding

- Interest and dividend payments -All listed payees are exempt except the payee in item 7.
- Broker transactions - All payees listed in items 1 through 4 and 6 through 11 are exempt. Also, C corporations are exempt. A person registered under the Investment Advisers Act of 1940 who regularly acts as a broker also is exempt.
- Barter exchange transactions and patronage dividends - Only payees listed in items 1 through 4 are exempt.

Key Payments Exempt from Backup Withholding

- **Payments reportable under sections 6041 and 6041A** - Payees listed in items 1 through 5 generally are exempt.
- **Payments made in settlement of payment card or third-party network transactions** - Only payees listed in items 1 through 4 are exempt.
- If a payment is NOT subject to information reporting, then it is not subject to backup withholding (ex: expense reimbursements)

Foreign Contractor Not in the US Legally

- This is where the employer can really get in trouble!
- Unless there is a tax treaty of some type, the employer needs to make sure this issue is resolved before they hire the worker.
 - There are some exceptions that exist for Canadian and Mexican workers administering professional services.
- US Immigration and Customs Enforcement can administer penalties against the employer.

Exceptions to Federal Tax Withholding



A) Wages or Nonemployee Compensation are exempt from withholding of federal income tax if: (Sec. 861(a)(3) & 864(b)(1)):

1. The nonresident alien performing services is present in the U.S. for a total not exceeding 90 days in a taxable year;
2. The compensation for such services does not exceed \$3,000; and
3. The nonresident alien performs the services as an employee of, or under contract with, a nonresident alien individual, a foreign corporation, or a foreign partnership not engaged in a trade or business in the U.S. or the foreign office of a U.S. citizen or resident alien individual, a U.S. corporation, or a U.S. partnership (including from within a U.S. possession).

Exceptions to Federal Tax Withholding

B) Wages or Nonemployee Compensation are exempt from withholding of federal income tax if (Sec 872(b)(3)):

1. The nonresident alien is present in the U.S. in F, J, M, or Q nonimmigrant status; and
2. The compensation for services is paid by a nonresident alien individual, a foreign corporation, or a foreign partnership or the foreign office of a U.S. citizen or resident alien individual, a U.S. corporation, or a U.S. partnership (including from within a U.S. possession).

Form 1042 - Annual Withholding Tax Return for U.S. Source Income of Foreign Persons



- Used to report:
 - The tax withheld under chapter 3 on certain income of foreign persons, including nonresident aliens, foreign partnerships, foreign corps, foreign estates, & foreign trusts.
 - The tax withheld under chapter 4 on withholdable payments.
 - The tax withheld pursuant to section 5000C on specified federal procurement payments.
 - Payments that are reported on Form 1042-S under chapters 3 or 4.
- Form 1042 is generally due on March 15th (for the prior tax year)
- Tax liability is listed out by week in Section 1 of the form.

Form 1042-S & 1042-T

- Form 1042-S is like a Form 1099. It is given to a foreign recipient of US source income that is subject to US withholding (a copy is also supplied to the IRS).
- Form 1042-T is a transmittal form – very similar conceptually to a Form 1096.
- Due date is also March 15th for the prior tax year. (A 30-day extension is available by filing Form 8809).

VI. Information Returns

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What is a 1099-K?

- **Form 1099-K is a report of payments you got for goods or services during the year from:**
 - Credit, debit or stored value cards such as gift cards (payment cards)
 - Payment apps or online marketplaces, also called third party settlement organizations or TPSOs
- These organizations are required to fill out Form 1099K and send copies to the IRS and to you.
- Payments you got from family and friends should not be reported on Form 1099-K.

When do I need to file a 1099-K?



- **Prior to 2022:** Third-party settlement organizations were not required to file Form 1099-K where:
 1. the payee had 200 or fewer otherwise reportable transactions during the calendar year and
 2. the gross amount of such transactions during the calendar year was \$20,000 or less.
- **There is no longer a transaction threshold.**
- **2024:** \$5,000
- **2025:** \$2,500
- **2026:** \$600

Use Form 1099-MISC to report...

- **At least \$10 in royalties (Box 2) or broker payments in lieu of dividends or tax-exempt interest (Box 8).**
- **At least \$600 in:**
 - Rents (box 1);
 - Prizes and awards (box 3);
 - Other income payments (box 3);
 - Generally, the cash paid from a notional principal contract to an individual, partnership, or estate (box 3);
 - Any fishing boat proceeds (box 5);
 - Medical and health care payments (box 6);
 - Crop insurance proceeds (box 9);
 - Gross proceeds paid to an attorney (box 10);
 - Section 409A deferrals (box 12); or
 - Nonqualified deferred compensation (box 15).

What about other things?

- Use 1099-NEC to report non-employee compensation that is not reported on Form 1099-MISC.
- You may either file Form 1099-MISC (box 7) or Form 1099-NEC (box 2) to report sales totaling \$5,000 or more of consumer products to a person on a buy-sell, a deposit-commission, or other commission basis for resale.
- Personal payments are not reported on a 1099 – only payments made in the course of a trade or business.

Dual-Reported Payments

- If a payment is reported on a 1099-K, it does not need to be reported again on a 1099-MISC or a 1099-NEC.
- Contractor payments (outside of the ones mentioned earlier) are not reported on a 1099-MISC. Therefore, there should be no duplicate payments reported on a 1099-MISC & 1099-NEC either.
- If a payment is reported twice, it is best practice to report the income and then back out anything that has been reported twice.

What is the Form 1099-DA used for?



- Starting in the 2025 tax year
- Does not replace W-2 or 1099-NEC reporting. Used only for other situations where a digital asset is received by a payee.
- Practitioners should be on the look out for potential duplicate reporting.

☐ CORRECTED (if checked)

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		Applicable checkbox on Form 8949		OMB No. 1545-2330 2025 Form 1099-DA		Digital Asset Proceeds From Broker Transactions	
		1a Code for digital asset				Copy 2 To be filed with recipient's state income tax return, when required.	
FILER'S TIN		RECIPIENT'S TIN		1b Name of digital asset			
RECIPIENT'S name		1c Number of units					
Street address (including apt. no.)		1d Date acquired		1e Date sold or disposed			
City or town, state or province, country, and ZIP or foreign postal code		1f Proceeds \$		1g Cost or other basis \$			
Account number		1h Accrued market discount \$		1i Wash sales loss disallowed \$			
CUSIP number		2 Check if basis reported to IRS <input type="checkbox"/>		3a Reported to IRS: <input type="checkbox"/> Gross proceeds <input type="checkbox"/> Net proceeds			
5 Check if loss is not allowed based on amount in 1f <input type="checkbox"/>		6 Gain or loss: <input type="checkbox"/> Short-term <input type="checkbox"/> Long-term <input type="checkbox"/> Ordinary		3b Check if proceeds from: <input type="checkbox"/> Reserved for future use <input type="checkbox"/> QOF		4 Federal income tax withheld \$	
9 Check if digital asset is a noncovered security <input type="checkbox"/>		10		7 Check if 1f is only cash <input type="checkbox"/>		8 Check if broker relied on customer-provided acquisition information <input type="checkbox"/>	
11b If 11a checked, number of transactions		11c For aggregate reporting of specified NFTs, aggregate gross proceeds reported in 1f that are attributable to first sales by creator or minter \$		12a Number of units transferred in		11a Check if gross proceeds reported in 1f is an aggregate amount for: <input type="checkbox"/> Qualifying stablecoins <input type="checkbox"/> Specified NFTs	
14 State name		15 State identification no.		12b If transferred in, provide transfer-in date		13	
16 State tax withheld \$							

Form **1099-DA**

www.irs.gov/Form1099DA

Department of the Treasury - Internal Revenue Service



Reporting on Form 1099-DA



- Broker type involved in transaction - **Indicates if the filer is a Kiosk Operator, Digital Asset Payment Processor, Hosted Wallet Provider, Unhosted Wallet Provider, or Other digital asset filer.**
- The transaction identification (transaction ID or transaction hash) associated with the digital asset sale, if any;
- **BOX 1i – WASH SALES LOSSES DISALLOWED**
- The digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any; and
- Whether the consideration received was cash, different digital assets, other property, or services.
- Date and time acquired and date and time sold

Sec 1091

(a) DISALLOWANCE OF LOSS DEDUCTION

In the case of any loss claimed to have been sustained from any sale or other disposition of **shares of stock or securities** where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, **substantially identical stock or securities**, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term “stock or securities” shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

Draft Instructions – 1099-DA



Box 1i. Wash Sales Loss Disallowed Wash sales.

Losses from wash sales of tokenized securities must be reported. See Regulations section 1.6045-1(c)(8)(i)(D)(1). For such tokenized securities treated as stock or securities under section 1091, report wash sale loss amount disallowed. You must report any loss disallowed under section 1091 if both the sale and purchase transactions occur in the same account with respect to such digital assets with the same CUSIP number. **You are permitted, but are not required, to report in box 1i all loss disallowed under section 1091.** For example, you may report a disallowed loss even though a digital asset that is also a stock or security is sold in one account and repurchased in a different account. Increase the adjusted basis of the acquired digital asset by the amount of the disallowed loss reported in box 1i.

New Section 83(b) election form – Nov 7, 2024



- The IRS has created a new form for taxpayers to claim an IRC Section 83(b) election, which allows taxpayers receiving unvested property in connection with the performance of services to elect taxation upon transfer rather than vesting - Form 15620, Section 83(b) Election.
- It is available for immediate use, although taxpayers are **not required to use it.** Like taxpayer-created elections, it can be signed electronically.
- An IRC Section 83(b) election, which is generally irrevocable, must be made no later than 30 days following the transfer date.
- Historically, there was no IRS form for making this election — tax professionals typically drafted the election themselves using the relevant text from Treas. Reg. Section 1.83-2 or Revenue Procedure 2012-29 and submitted it by mail.
- Electronic filing is expected to be available in the future if taxpayers use Form 15620. In the meantime, Form 15620 must be filed by mail, consistent with existing IRC Section 83(b) filing procedures.

Form 15620 (April 2025)	Department of the Treasury - Internal Revenue Service Section 83(b) Election	OMB Number 1545-0074
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The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the property described below over the amount paid for the property.

1. The taxpayer's name, taxpayer identification number (TIN), and address:

Taxpayer's name	Taxpayer's TIN		
Address (number and street)			
City	State or province	ZIP or postal code	Country

2. The property subject to this election is (describe property and quantity below)

3. The date the property is transferred

4. Taxable year for which the election is being made (taxable year that includes the date the property is transferred as reported in Box 3)

5. The property is subject to the following restrictions (describe applicable restrictions below)

6. The total fair market value of the property at the time of transfer is

a. Value per item		b. Quantity		c. Total fair market value
	x		=	



7. The total amount paid for the property is

a. Price paid per item

b. Quantity

c. Total price paid

x =

8. The total amount to include in gross income for the taxable year is *(the result of the amount reported in Box 6(c) minus the amount reported in Box 7(c))*

9. Name, TIN, and address of the person for whom the taxpayer is providing services in connection with the transfer of property *(optional)*

Name

TIN

Address *(number and street)*

City

State or province

ZIP or postal code

Country

The undersigned taxpayer is the person performing the services in connection with which the property is transferred. The undersigned taxpayer agrees to provide a copy of the election to (i) the person for whom the services are performed and (ii) the transferee of the property, if the taxpayer and the transferee of the property are not the same person.

Under penalties of perjury, the undersigned taxpayer declares that, to the best of undersigned taxpayer's knowledge and belief, the information entered on this Form 15620 is true, correct, and complete.

Taxpayer signature

Date signed

VII. Software Usage by Tax Preparers

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Use of Technology

- AICPA Statements on Standards for Tax Services (SSTS) 1.4 says that tools (like software) may be used by a professional to enhance his/her understanding of an issue or increase efficiency – but it may NOT replace the practitioner's professional judgement.
- Similarly, technology may not be used to excuse non-compliance with the tax law as demonstrated in a recent court case.

Dealers Auto Auction of Southwest LLC v. Commissioner, TC 2025-38



- Taxpayer was assessed penalties for noncompliance with Form 8300 reporting (reporting of cash receipts over \$10,000).
- Taxpayer argued that the software did not work as intended, therefore, they should be entitled to reasonable cause.
- Surprisingly, according to the memo, software malfunctions “can qualify as a failure beyond the filer’s control when it is shown the filer used the software correctly.”

Dealers Auto Auction of Southwest LLC v. Commissioner, TC 2025-38



- Memo: “The instructions for the software suggest that the software prepared Forms 8300 for printing, but Dealers Auto asserts that the software files the forms on the user’s behalf.... It is unclear whether the supposed failure was a failure to create the required forms or a failure to file them.”
- Taxpayer was not shown to have acted reasonably in the circumstances. No reasonable cause was given.

CAS Practitioner Tips

- Software has limitations. People are still generally responsible for meeting their tax obligations.
- Taxpayers must act reasonably in the circumstances.
- Practitioners should never just rely on the result from the program. Think critically about the output and ask questions!

Upcoming Quarterly Live Webinars

Each event runs 1pm-4:30pm EST & offers 4.0 NASBA CPE Credits

Keeping Up with the Tax Code – Quarterly Federal Tax Update for Businesses

- June 26, 2025
- September 25, 2025
- December 18, 2025

Keeping Up with the Tax Code – Quarterly Federal Tax Update for Individuals

- July 24, 2025
- October 23, 2025
- January 22, 2026

Quarterly Practice & Regulatory Update for Financial Advisors

- August 28, 2025
- November 20, 2025

Exploring Client Advisory Services: Quarterly Tax Update

- June 10, 2025
- September 9, 2025
- December 4, 2025

**LEARN MORE
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Thank you!



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