Practice, procedure and administration tax provisions in “One Big Beautiful Bill Act”

KPMG analysis and observations

This report reflects the legislation signed into law by the president on July 4, 2025 (Pub. L. No. 119-21) and was last updated July 25, 2025.

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Introduction

The House of Representatives on May 22, 2025, passed H.R. 1 (House bill), the budget reconciliation bill known as the "One Big Beautiful Bill Act" (OBBBA) (read *TaxNewsFlash*). On July 1, 2025, the Senate passed its version of H.R. 1 (Senate bill), which made various amendments to the bill, including changes to the tax subtitle that was included in the House bill (read *TaxNewsFlash*). On July 3, 2025, the House passed the Senate bill without amendment, and the bill was signed into law by President Trump on July 4, 2025 (Pub. L. No. 119-21).[1]

This analysis of the legislation generally describes current law (meaning the law prior to enactment of the legislation), the House bill, and the amended Senate bill ultimately passed by the House and signed by the president.

Both the House and Senate bills would generally make permanent the tax provisions of the TCJA. Both bills also would temporarily provide for tax benefits promised by the president for tip income, overtime pay, and auto loan interest, and introduce a host of revenue-raising provisions. However, the enacted Senate bill differs from the House bill in several ways, as described below.

Among the important business provisions of the enacted Senate bill are provisions that:

- Reinstate and make permanent expensing of R&D costs, the higher EBITDA cap on the deduction for interest, and 100% bonus depreciation (the House bill would only extend these provisions for five years)
- Make permanent the section 199A deduction for passthrough business income (at the current 20% rate instead of the higher 23% rate of the House bill)
- Renew and reform the Opportunity Zone program
- Add a 100% first-year depreciation deduction for real property used in a production activity (the House bill included a similar proposal)

Note that the House bill included a proposed retaliatory tax on certain foreign corporations under new section 899 that was removed in the enacted Senate bill following the announcement of an agreement with the other G7 countries regarding the tax (read *TaxNewsFlash*).

The enacted Senate bill also includes revenue-raising provisions that:

- Repeal or phase out energy tax credits created by the Inflation Reduction Act (IRA) (though in some cases extending the credits further than the House bill)
- Make extensive reforms to the U.S. international tax regime, including to foreign-derived deduction eligible income (FDDEI), global intangible low-taxed income (GILT), and the base erosion anti-abuse tax (BEAT), and permanently extend the CFC look-through rule of 954(c)(6)

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[1] The Joint Committee on Taxation (JCT) has provided a number of documents estimating the revenue effects of the various versions of the bill:

- JCX-26-25R, which estimates the revenue effects of the provisions of the bill as passed by the House on May 22, 2025
- JCX-35-25, which estimates the Senate-approved bill using a present law baseline (the same baseline used for the estimates for the House bill provided above) that assumes that tax provisions of current law expire according to their terms
- JCX-34-25, which estimates the Senate-approved bill using a "current policy baseline" as adopted by the Senate, which assumes that tax policies currently in effect (such as the lower Tax Cuts and Jobs Act (TCJA) individual tax rates) are permanent and therefore extending those provisions has no revenue effect

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- Temporarily increase the $10,000 cap on the state and local tax (SALT) deduction to $40,000, with no significant changes to the treatment of passthrough entity taxes
- Impose a 1% tax on remittances to a recipient outside the United States (would have been 3.5% under the House bill)
- Increase taxes on college endowments (but at lower rates than those of the House bill and omitting a provision on private foundations)
- Bar the IRS from making payment on certain employee retention credit claims filed after January 31, 2024

This report includes initial analysis and observations regarding the provisions in the bill relating to tax practice, procedure, and administration. This is one of a series of reports that KPMG has prepared on the bill, which can all be found here.

Employee retention tax credit (ERTC) enforcement provisions

The bill as originally passed by the House on May 22, 2025, included the proposal described below. However, the proposal was subsequently removed by H. Res. 492, a resolution passed by the House on June 11, 2025, directing the Clerk of the House to make engrossment corrections to the bill, which are then considered part of the engrossed bill sent to the Senate.

The Senate proposal resurrects the House proposal, but with substantial modifications as discussed below.

Current law

Under current law, an eligible employer was entitled to claim a refundable ERTC against applicable employment taxes for the second, third and fourth calendar quarters in 2020 and the first, second, third, and fourth quarters of 2021. If for any calendar quarter the amount of the credit claimed exceeds the employment taxes imposed on the eligible employer, the excess generally is treated as a refundable overpayment. An eligible employer may claim the ERTC on an original or amended employment tax return (Form 941 or 941-X). To claim a refund with respect to a quarter within tax year 2020, the claim was due by April 15, 2024; for tax year 2021, the claim was due by April 15, 2025. Under the American Rescue Plan Act, the statute of limitations for assessment of any amount attributable to an ERTC is extended from the normal three years to five years for calendar quarters beginning after June 30, 2021, and before January 1, 2022.

Since the ERTC was enacted, the IRS has received a significant number of ERTC claims, including claims of questionable merit. In light of the administrative burdens in processing these claims, the IRS has taken steps to guard against erroneous refunds being paid, including imposing a moratorium on the processing of ERTC claims and offering opportunities for voluntary withdrawal of certain claims. In the Tax Relief for American Families and Workers Act of 2024, the House passed legislation that would have imposed a deadline of January 31, 2024, to file any ERTC claims that had not been filed as of that date.

The Code imposes various penalties on tax return preparers and practitioners that assist taxpayers with filing returns, refund claims, and other documents related to tax liability with the IRS. Section 6701 imposes a penalty on any person who aids or assists in, or advises with respect to, the preparation or presentation of a return, affidavit, claim, or other document who knows that such filing would result in an understatement of the liability for tax of another person. The amount of the penalty under current section 6701 is $1,000, except in the case of a filing that relates to the tax liability of a corporation the penalty is $10,000.

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Section 6695(g) provides that any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining head of household status or eligibility to claim certain individual credits shall pay a penalty of $500 for each such failure.

Section 6111 provides each material advisor with respect to any reportable transaction shall make a return (Form 8918) setting forth information identifying and describing the transaction, information describing any potential tax benefits expected to result from the transaction, and such other information as the Secretary may prescribe. For this purpose, a material advisor is any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and who directly or indirectly derives gross income in excess of a certain threshold amount for such aid, assistance, or advice. Section 6112 provides that each material advisor with respect to any reportable transaction shall maintain a list identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and containing such other information as the Secretary may by regulations require.

Section 6707(a) imposes a penalty on any person who is required to file Form 8918 with respect to any reportable transaction and who either fails to file such return on or before the due date or files false or incomplete information with the IRS with respect to such transaction. The penalty imposed under section 6707(a) with respect to any reporting failure is generally $50,000. In the case of a listed transaction, however, the penalty increases to the greater of $200,000, or 50% of the gross income derived by the material advisor (75% in the case of an intentional failure) with respect to the aid, assistance, or advice provided with respect to the listed transaction.

Section 6708 imposes a penalty on any person who is required to maintain a list under section 6112 and who fails to make such list available upon written request by the IRS within 20 business days after the date of such request. The penalty amount is equal to $10,000 for each day such failure continues after that 20th day.

House bill

Borrowing from the 2024 tax relief bill, the proposal would bar the IRS from issuing any ERTC refunds claimed after January 31, 2024. Specifically, the proposal would provide that no credit or refund of a COVID-related ERTC is allowed after the date of enactment, unless a claim for such refund or credit was filed on or before January 31, 2024. If a claim filed on or before January 31, 2024, was later amended to reduce an otherwise excessive claim, the proposal would provide the amended claim is considered to be part of the timely submitted original claim. The term “COVID-related ERTC” would mean any credit under section 3134 or any credit under section 2301 of the CARES Act.

The proposal would extend the assessment period for any tax attributable to a COVID-related ERTC to six years after the latest of: (1) the date on which the original return for the relevant calendar quarter is filed, (2) the date on which the return is treated as filed under section 6501(b)(2), or (3) the date on which the claim for credit or refund with respect to the COVID-related ERTC is made.

The proposal would also provide that the period for claiming a refund or credit attributable to a deduction for improperly claimed COVID-related ERTC wages does not expire until the assessment period for the related ERTC expires. This provision would permit taxpayers to claim a refund based on a deduction for wages that did not result in a COVID-related ERTC because the IRS disallowed the COVID-related ERTC.

The statute of limitations proposals would be effective for assessments made after the date of enactment.

In addition, the House proposal would add a concept of “COVID-ERTC promoter” to expand the scope of existing penalties. Under the proposal, a COVID-ERTC promoter would be defined to mean any person

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that provides aid, assistance, or advice with respect to any return, affidavit, claim or other document relating to an ERTC or to the eligibility for, or the calculation or determination of the amount of the credit, if the person meets certain materiality or gross receipts tests. Under the materiality test, a person would be treated as a COVID-ERTC promoter if the person charges or receives a fee based on the amount of the refund or credit if the aggregate gross receipts of such person for aid, assistance, and advice with respect to the person's tax year in which the person provided the assistance or the preceding tax year with respect to all COVID-ERTC documents exceeds 20% of such person's gross receipts for such tax year. The gross receipts test would be met if either (1) the aggregate gross receipts for the relevant year from such aid, assistance, and advice exceeds half of the person's gross receipts for the relevant year, or (2) both (i) the aggregate gross receipts for the relevant year from such aid exceeds 20% of the person's gross receipts for the relevant year and (ii) the person's aggregate gross receipts from such aid exceeds $500,000. The proposal would specifically exclude, however, any certified professional employment organization (CPEO) as defined in section 7705.

The proposal would increase the penalty under section 6701 to the greater of $200,000 ($10,000 in the case of a COVID-ERTC promoter that is a natural person) or 75% of the gross income of the COVID-ERTC promoter from providing aid, assistance, or advice with respect to a return or claim for COVID-ERTC refund or a related document. The expanded penalty under section 6701 would be retroactive and therefore would apply to actions taken since the ERTC was enacted.

The proposal would also provide that the knowledge element under section 6701(a)(3) is met if the COVID-ERTC promoter fails to meet certain due diligence requirements imposed by the Secretary. Under the proposal, those due diligence requirements must be similar to the due diligence requirements imposed by section 6695(g), except as otherwise provided by the Secretary. The proposal would also impose a separate penalty of $1,000 for failing to meet the ERTC due diligence requirements established by the Secretary and would treat that penalty in the same manner as an assessable penalty under section 6695(g). The proposal would treat, for the purposes of sections 6111, 6112, 6707, and 6708, any COVID-related ERTC as a listed transaction (and therefore a reportable transaction) with respect to any COVID-ERTC promoter that provides any aid, assistance, or advice with respect to any COVID-ERTC document relating to such COVID-related ERTC. The proposal would treat any COVID-ERTC promoter as a material advisor with respect to such transaction. Under the proposal, the term ''COVID–ERTC document'' would mean any return, affidavit, claim or other document related to any COVID-related ERTC, including any document related to eligibility for or the calculation or determination of any amount directly related to any COVID-related ERTC. The term "COVID-related ERTC" would mean any credit under section 3134 or any credit under section 2301 of the CARES Act.

The proposals described above would be generally effective as of date of enactment, except as follows:

- The proposed penalty changes would be generally effective for aid, assistance, or advice provided after March 12, 2020.
- The proposal regarding the due diligence requirements would be effective for aid, assistance, or advice provided after the date of enactment.
- The requirement to file a Form 8918 and maintain the information required by section 6112 would not apply until 90 days after the date of enactment.

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Senate bill as enacted (sec. 70611)

The Senate proposal similarly would bar certain refunds after the date of enactment and would also make amendments to the statute of limitations; however, the Senate proposal is narrower than the House proposal. Under the Senate proposal, the IRS would only be barred from issuing a credit or refund of the credit under section 3134 after the date of enactment, unless a claim for such refund or credit was filed on or before January 31, 2024. Section 3134 applies to employment taxes for the third and fourth quarters of 2021. The House proposal would apply to any credit under section 3134 as well as to any credit or advance payment under section 2301 of the CARES Act, which would cover 2020 employment taxes and the first and second quarters of 2021. The proposed amendments to the statute of limitations under the Senate proposal similarly would only apply to taxes attributable to credits under section 3134, whereas the House proposal would apply to any COVID-related ERTC.

The Senate proposal substantially changes the House proposal regarding penalties. First, the Senate proposal would remove the proposed amendments to section 6701 regarding the penalty for providing aid, assistance, or advice with respect to a COVID-ERTC claim. The Senate proposal also would remove the proposed changes related to sections 6111, 6112, 6707, and 6708 regarding identifying COVID-ERTC claims as listed transactions and promoters of such claims as material advisors.

The Senate proposal generally would maintain the definition of a COVID-ERTC promoter as included in the House proposal, including the exclusion for any CPEO, but would limit the definition of a COVID-ERTC document to pertain only to claims, returns, and other documents related to the credit under section 3134. The House definition of COVID-ERTC document would apply to the credit under section 3134, as well as to the credit under section 2301 of the CARES Act. Although the Senate proposal would retain the due diligence requirements and associated $1,000 penalty for non-compliance, the Senate version only would apply to claims under section 3134.

The Senate proposal would amend section 6676 to extend that section to employment tax refund claims. This proposed change to section 6676 is not included in the House proposal.

KPMG observation

The Senate proposal would significantly scale back the enforcement effects of the House proposal by eliminating most penalties and disclosure requirements that are included in the House bill. The Senate proposal also carves out ERTC claims made under section 2301 of the CARES Act, with the effect that ERTC claims related to 2020 employment taxes would not be affected by the enforcement provisions proposed by the Senate.

Form 1099-K reporting relief

Current law

Section 6050W requires a third party settlement organization (TPSO) to file Form 1099-K, *Payment Card and Third Party Network Transactions*, for payments made to participating payees with respect to transactions for the sale of goods or services that are settled through a third party payment network. As originally enacted, section 6050W provided a de minimis reporting threshold that permitted a TPSO to exclude payments to a participating payee unless the gross amount paid exceeds $20,000 and the number of transactions exceeds 200 for the calendar year.

Section 6050W was amended by the American Rescue Plan Act of 2021 to lower the reporting threshold to payments totaling $600 for the calendar year, regardless of the number of transactions. This lower

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reporting threshold was delayed by the IRS, due to the complexity of the change, and currently is being phased-in to take full effect starting with calendar year 2026.

House bill (sec. 111104)

The proposal would revert the reporting threshold to the original de minimis threshold of more than $20,000 and more than 200 transactions during the calendar year.

The proposal also would make a conforming change to the backup withholding dollar threshold under section 3406 to align with the restoration of the original de minimis reporting threshold described above. However, the de minimis threshold would not apply to payments to a participating payee if payments made in the preceding calendar year were subject to Form 1099-K reporting.

The proposal to revert to the original de minimis reporting threshold would apply retroactively to Forms 1099-K for calendar years beginning after December 31, 2021. The proposal with respect to the application of the de minimis rule to backup withhold on payments made by TPSOs would apply to calendar years beginning after December 31, 2024.

Senate bill as enacted (sec. 70432)

The Senate proposal is substantially similar to the House proposal.

KPMG observation

This provision would provide welcome relief to TPSOs that are struggling to update their systems and documentation in time to perform the requisite reporting applicable to calendar year 2026. The provision also would be welcomed by low-volume sellers of goods and services on their web-based platforms that otherwise would receive Forms 1099-K for the first time for 2026 transactions.

Form 1099 reporting threshold increase

Current law

Section 6041 requires all persons engaged in a trade or business and making certain specified payments in the course of such trade or business to file an information return (generally a return in the Form 1099 series) and to furnish a statement to the payee reflecting the identifying information of the payee, the amount of the payment, and other information required by regulations or forms and instructions. Section 6041A provides that if any service-recipient engaged in a trade or business pays in the course of such trade or business remuneration for services, and the aggregate of such remuneration is $600 or more, then the service-recipient shall file an information return and furnish a statement to the payee reflecting the identifying information of the payee, the amount of the remuneration, and other information required by regulations or forms and instructions.

House bill (sec. 111105)

The proposal would increase the reporting threshold under sections 6041 and 6041A from $600 to $2,000, with the threshold to be indexed annually for inflation beginning with calendar year 2027. Among the items of income subject to this increased reporting threshold, which are reportable on Forms 1099-MISC, *Miscellaneous Information*, and 1099-NEC, *Nonemployee Compensation*, are compensation paid to independent contractors, rent, prizes, and awards.

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A conforming change would also be made to the backup withholding dollar threshold to align with the $2,000 reporting threshold. Thus, the proposal would increase the information reporting threshold and the backup withholding threshold to payments that equal or exceed $2,000 for the calendar year, indexed for inflation.

The proposal would apply to payments made after December 31, 2025.

Senate bill as enacted (sec. 70433)

The Senate proposal is substantially similar to the House proposal.

> **KPMG observation**
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> The higher dollar threshold, annually adjusted for inflation, would provide welcome relief to Form 1099 filers as the $600 threshold has been in place since 1954.

Task force on the replacement of direct file

Current law

The Inflation Reduction Act of 2022 allocated up to $15 million for the IRS to convene a task force and, within nine months, report to Congress on the projected costs, taxpayer feedback, and overall feasibility of a government-run electronic return filing tool. After delivering its IRA-mandated study in 2023 the IRS offered a limited Direct File pilot during the 2024 filing season, providing taxpayers in 12 states with a no-cost, IRS-operated e-file alternative in addition to the existing Free File and Modernized e-File programs. Upon concluding the pilot in April 2024, the IRS signaled its intention to launch Direct File as an e-file option to taxpayers in 24 states beginning with the 2025 filing season.

House bill (sec. 112207)

The House proposal would mandate the elimination of the IRS Direct File as soon as practicable and no later than 30 days after enactment. The proposal would commit $15 million (through Sept 30, 2026) to create a Task Force charged with delivering within 90 days of enactment: (1) the projected cost for covering up to 70% of taxpayers in a new public-private free-file arrangement; (2) findings on taxpayer preference between a government-operated service and private free offerings; and (3) a feasibility study outlining consistent user experience, necessary features, and an advertising budget for the successor to Free File and any IRS direct-file platform.

The proposal would be effective upon enactment.

Senate bill as enacted (sec. 70608)

The Senate proposal would not mandate the elimination of the IRS Direct File. Rather, the Senate proposal would mandate a report on the feasibility of replacing IRS Direct File. The report would be required to be delivered to Congress within 90 days of enactment and would need to address issues similar to those described by the House proposal, with the addition of addressing the cost of developing and running a free direct e-file tax return system, including costs to build and administer each release of that system.

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KPMG observation

The Senate proposal would leave open the possibility that IRS Direct File survives, though it could be that the program looks very different (or is completely eliminated) after the Congress has received the mandated report and considers the costs of retaining IRS Direct File (or a similar type of free file program).

Increase in penalties for unauthorized disclosures of taxpayer information

Current law

Section 7213(a)(1) makes it unlawful for any officer or employee of the United States, or any person described in section 6103(n) (or any current or former officer or employee of such person), to willfully disclose to any person any return or return information except as authorized by the Code. A violation of section 7213(a) is a felony punishable by a fine not exceeding $5,000, imprisonment of not more than five years, or both, along with the costs of prosecution. Similarly, section 7213(a)(2)–(5) makes unlawful any willful disclosure of return or return information by state government and other employees who receive such information under a provision of section 6103; willful printing or publishing of returns or return information without authorization; solicitation of return or return information in exchange for an item of material value or acceptance of such solicitation; and willful disclosure by shareholders granted access to corporate returns or return information.

House bill (sec. 112208)

The proposal would amend section 7213(a)(1)-(5) to increase the maximum criminal penalty for a violation of any those paragraphs from the current "$5,000, or imprisonment of not more than 5 years" to **"$250,000, or imprisonment of not more than 10 years."**

The proposal also would add a new paragraph (6) to section 7213(a) to provide that for purposes of section 7213(a), "a separate violation occurs with respect to each taxpayer whose return or return information is disclosed in violation of this subsection'' Consequently, under the proposal a single willful act that divulges the return information of five individuals may be prosecuted as five distinct section 7213(a) violations rather than a unified count, thereby enhancing the potential criminal exposure and increasing potential monetary penalties.

The proposal would apply to disclosures made after the date of enactment.

Senate bill as enacted

This proposal is unique to the House bill.

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Restriction on regulation of contingency fees with respect to tax returns, etc.

Current law

Pursuant to current 31 C.F.R. § 10.27, Circular 230 prohibits tax practitioners from charging contingent fees for services rendered in matters before the IRS, except in narrowly defined circumstances. A "contingent fee" includes any fee arrangement that depends, in whole or in part, on the outcome of a tax position, such as a percentage of a refund or taxes saved. Exceptions to the general prohibition include where the practitioner renders services in connection with an IRS examination of an original return or an amended return or refund claim filed within 120 days of receiving notice of examination. Additional exceptions permit contingent fees in cases involving only statutory interest or penalties, services rendered in connection with judicial proceedings under the Code, or cases relating to whistleblower claims.

House bill (sec. 112209)

The proposal would bar the Secretary from regulating, prohibiting, or restricting contingent fees in connection with tax returns, claims for refund, or related documentation.

The proposal would take effect upon the date of enactment.

Senate bill as enacted

This proposal is unique to the House bill.

KPMG observation

The House proposal would signal a departure from longstanding Circular 230 rules. If enacted, the House proposal would seemingly enable tax practitioners to charge outcome-based fees in contexts where such arrangements are currently impermissible, namely, the preparation and filing of original returns and refund claims—although other state law and professional standards may limit such arrangements.

In December 2024, the Treasury Department and the IRS issued proposed regulations that would amend Circular 230 by removing 31 CFR § 10.27. The proposed regulations instead would establish that contingent fee arrangements for services in connection with preparing an original tax return, amended tax return, or claim for refund constitute disreputable conduct subject to sanction under Circular 230. The fate of those proposed regulations would appear to be in serious doubt if the proposal were enacted.

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