

2024 and Beyond: Ag Tax Update and the Corporate Transparency Act



11TH ANNUAL MID-SOUTH AGRICULTURAL & ENVIRONMENTAL LAW CONFERENCE

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CONTACT INFORMATION

Kristine Tidgren

Director and Adjunct Associate Professor
ISU Center for Agricultural Law and Taxation

Agricultural Education and Studies

ktidgren@iastate.edu

www.calt.iastate.edu



LATEST ON BENEFICIAL OWNERSHIP INFORMATION REPORTING

WHAT IS BENEFICIAL OWNERSHIP INFORMATION REPORTING?

- The Corporate Transparency Act (CTA), Pub. L. 116-283 § 6401, et seq., requires all non-exempted companies to report information about their company AND their beneficial owners to FinCEN, a federal agency, beginning in 2024.



Beneficial Ownership Information (BOI) Reporting

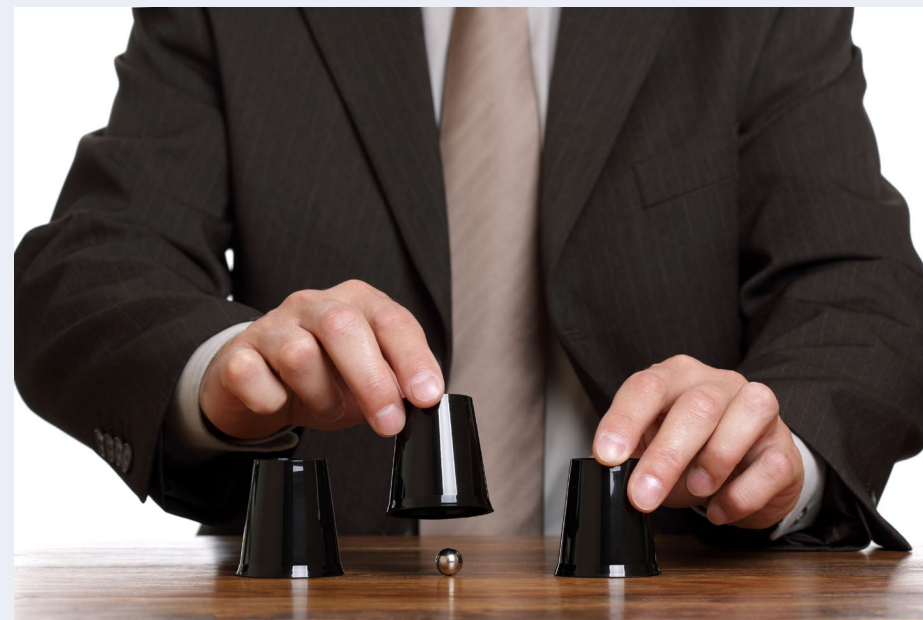
Need to file a BOIR? Click here!

[GET STARTED](#)

Who Owns or Controls This Entity?

IT WAS A LONG TIME IN THE MAKING

- Many in Congress had been attempting for many years to pass legislation to address the problem of shell corporations contributing to financial crimes: money laundering, tax fraud, human and drug trafficking, foreign corruption, etc.
- Both chambers passed this law in 2020, but it was vetoed by the President.
- Two-thirds of Congress voted to override the veto, and it was enacted January 1, 2021.



IMPACT OF BENEFICIAL OWNERSHIP INFORMATION REPORTING

- There was little fanfare at the time, but the impact of law is **seismic**.
 - States are responsible for business registrations. This law introduces **new federal requirements**.
- This law impacts SMALL businesses, not large entities.
- This law requires **more than 32 million businesses**, including small LLCs, corporations, and limited partnerships, to file reports to disclose their beneficial owners in 2024 (+ 5 million new).



WHO: DOMESTIC AND FOREIGN REPORTING COMPANIES

Entity Type	Reporting Entity (unless exempted)
LLC	Yes
SMLLC	Yes
General Partnership	No
Sole Proprietorship	Not unless corporation or LLC
Limited Partnership	Yes
S Corporation	Yes
C Corporation	Yes
Trust	Not unless required to file with Secretary of State, but trustees or beneficiaries may be beneficial owners of other reporting entities

ADMINISTERED BY FINCEN

- The CTA requires the Financial Crimes Enforcement Network (FinCEN) to establish and maintain a **national registry of beneficial owners of entities** that are otherwise not subject to disclosure regulations.
 - **FinCEN is a bureau of the U.S. Treasury.**
- Unauthorized use or disclosure of beneficial ownership information (BOI) may be subject to criminal and civil penalties.
 - **THIS IS NOT A TAX LAW. THE IRS IS NOT IN CHARGE.**



WHEN MUST REPORTS BE FILED?

- Reporting companies created or registered before January 1, 2024, have one year (**until January 1, 2025**) to file their initial reports.
- Reporting companies created or registered after January 1, 2024, but before January 1, 2025, have **90 days after creation to file their first report**.
- Reporting companies created on or after January 1, 2025, will have **30 days after creation or registration** to file their initial reports.
- Once the initial report has been filed, both existing and new reporting companies will have to **file updates within 30 days** of a change in their beneficial ownership information.
 - Any reporting company that no longer meets the requirements of an exemption from reporting shall file its report within 30 calendar days after it no longer qualifies for the exemption.

BUT WAIT...IS THIS LAW CONSTITUTIONAL?

- On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the **Corporate Transparency Act exceeds the Constitution's limits on Congress's power** and enjoining the Department of the Treasury and FinCEN from enforcing the CTA against the plaintiffs.
 - <https://cases.justia.com/federal/district-courts/alabama/alndce/5:2022cv01448/183445/51/0.pdf?ts=1709398196>
- Court said Congress did not possess the power to pass this law under:
 - Foreign Affairs Power
 - Commerce Clause OR
 - Taxing Power

NOTICE OF APPEAL FILED

- The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024.
- The Government says that the CTA is within Congress' broad powers to regulate commerce, oversee foreign affairs and national security, and impose taxes and related regulations.

**NATIONAL SMALL BUSINESS
UNITED, d/b/a the NATIONAL
SMALL BUSINESS
ASSOCIATION, *et al.*,**

Plaintiffs,

v.

**JANET YELLEN, in her official
capacity as Secretary of the
Treasury, *et al.*,**

Defendants.

Case No. 5:22-cv-1448-LCB

WHAT ARE THE CHANCES OF 11TH CIRCUIT AFFIRMING?

- It is unclear what will happen. Congress' power under the Commerce Clause is *very broad*.
- In modern times, few laws have been struck down using this argument.
- Congress could intervene and restructure the law to address some concerns.



ADDITIONAL LAWSUITS

- ***Boyle v. Yellen***, No. 2:24-cv-00081 (D. Maine) (Maine business owner seeking injunctive relief against the CTA, asserting his LLCs conduct only intrastate business)(argues the case violates federalism and the 9th and 10th Amendments).
- ***Gargasz v. Yellen***, No. 23-cv-02468 (N.D. Ohio) (licensed attorney and legal association seeking a nationwide injunction).
- ***Small Business Association of Michigan v. Yellen***, No. 1:24-cv-00314, (W.D. Mich.) (Arguing the law is unconstitutionally vague: the definition of beneficial owner includes anyone who “exercises substantial control over the entity,” whether “directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise.”)(injunction hearing has been held).

ADDITIONAL LAWSUITS

- ***NFIB v. Garland*, Filed May 28, 2024, in Eastern District of Texas**
 - CTA unconstitutionally compels speech
 - CTA violates Commerce Clause

HOW DOES LITIGATION IMPACT FILING REQUIREMENTS?

- While this litigation is ongoing, FinCEN will **continue to implement the Corporate Transparency Act as required by Congress**, while complying with the court's order.
- FinCEN has said that it **will not enforce the CTA against the plaintiffs** in that action:
 - Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024)(approximately 65,000 members).
 - **Only those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.**

HOW MIGHT PENDING LITIGATION IMPACT FILING DECISIONS?

- Newly formed entities **MUST file** within 90 days.
- Entities existing before January 1, 2024, **MAY** want to wait a bit before filing to see if any new developments arise.
 - Reports for these entities **MUST be filed** by January 1, 2025.
- Updates for reports that are filed **MUST be filed** within 30 days.

A FEW COMMON ISSUES



EXCEPTIONS TO REPORTING

- The FinCEN rule lists 23 types of entities that are specifically **excepted** from reporting requirements.
- These are generally excluded from the reporting requirements because other laws regulate these entities and separately require disclosure of BOI.
- Be very careful about looking just at categories. Devil is in the details.

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

EXCEPTIONS TO REPORTING – SOME EXAMPLES

- **Large Operating Companies** are exempt if:
 - They employ more than 20 full-time employees in the United States.
 - They have filed a Federal U.S. income tax return for the previous year that showed more than \$5,000,000 in gross receipts or sales.
 - They operate from physical premises in the United States.

L.4. If I own a group of related companies, can I consolidate employees across those companies to meet the criteria of a large operating company exemption from the reporting company definition?

No. The large operating company exemption requires that the entity itself employ more than 20 full-time employees in the United States and does not permit consolidation of this employee count across multiple entities.

FinCEN's [Small Entity Compliance Guide](#) includes a checklist for this exemption (see exemption #21).

[Issued November 16, 2023]

EXCEPTIONS TO REPORTING – INACTIVE ENTITIES

An entity qualifies for the inactive entity exemption if **all six** of the following criteria apply:

- (1) The entity was in existence on or before January 1, 2020.
- (2) The entity is not engaged in active business.
- (3) The entity is not owned by a *foreign person*, whether directly or indirectly, wholly or partially. “Foreign person” means a person who is not a United States person. A United States person is defined in section 7701(a)(30) of the [Internal Revenue Code of 1986](#) as a citizen or resident of the United States, domestic partnership and corporation, and other estates and trusts.
- (4) The entity has not experienced any change in ownership in the preceding twelve-month period.
- (5) The entity has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period.
- (6) The entity does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

EXCEPTIONS TO REPORTING – INACTIVE ENTITIES

- With respect to questions regarding the treatment of company termination or dissolution, “FinCEN does not expect a reporting company to file an updated report upon company termination or dissolution.”
- FinCEN retains Applicant and Beneficial Owner information on an ongoing basis for **at least five years after** the reporting company terminates. § 5336(c)(1).

WHO: BENEFICIAL OWNERS

- In general, **beneficial owners** are individuals who:
 1. directly or indirectly exercise “**substantial control**” over the reporting company, or
 2. directly or indirectly **own or control 25%** or more of the “ownership interests” of the reporting company.

WHAT: REPORTING DETAILS

- A **reporting company** must disclose:
 - its full legal name and any trade name or DBA;
 - a complete address, including the street address of the principal place of business for U.S. companies and primary U.S. location for other businesses;
 - the State, Tribal, or foreign jurisdiction in which it was formed or first registered, depending on whether it is a U.S. or foreign company; and
 - its Taxpayer Identification Number (TIN)(i.e., EIN)

WHAT: REPORTING DETAILS

- For each **beneficial owner** and each **company applicant** (if required), the company must provide the individual's:
 - full legal name
 - birthdate
 - a complete address
 - For company applicants who form or register an entity, this includes the street address of the company applicant. For all individuals, beneficial owners and applicants, the address must be the residential street address of the individual.
 - an identifying number from a non-expired driver's license, passport, or other approved document for each individual, **as well as an image** of the document from which the document was obtained

WHAT: FINCEN IDENTIFIER

- An individual (beneficial owner or company applicant) or reporting company may obtain a **FinCEN identifier** by submitting an application at or after the time that the reporting company submits its initial report.
- Each identifier is specific to the individual or reporting company.
- If an individual has obtained a FinCEN identifier, the reporting company may use that identifier in its report instead of listing all of the required information for the individual.
- **A reporting company uses its FinCEN identifier to submit updated reports, as required.**

HOW TO FILE

<https://boiefiling.fincen.gov>

File the Beneficial Ownership Information Report (BOIR)

Select the filing method that works best for you:



File PDF BOIR

- Adobe Reader is required
- Prepare report offline at your own pace, save as you go
- Reuse PDF BOIR when filing updates/corrections
- Download BOIR transcript upon submission

Prepare BOIR

Submit BOIR

UPDATING REPORTS

H. Updated Report

H.1. What should I do if previously reported information changes?

If there is ***any change*** to the required information about your company or its beneficial owners in a beneficial ownership information report that your company filed, your company must file an updated report no later than 30 days after the date of the change.

A reporting company is not required to file an updated report for any changes to previously reported information about a company applicant.

H.4. If a reporting company needs to update one piece of information on a BOI report, such as its legal name, does the reporting company have to fill out an entire new BOI report?

Updated BOI reports will require all fields to be submitted, including the updated pieces of information. For example, if a reporting company changes its legal name, the reporting company will need to file an updated BOI report to include the new legal name and the previously reported, unchanged information about the company, its beneficial owners, and, if required, its company applicants.

A reporting company that filed its prior BOI report using the fillable PDF version may update its saved copy and resubmit to FinCEN. If a reporting company used FinCEN's web-based application to submit the previous BOI report, it will need to submit a new report in its entirety by either accessing FinCEN's web-based application to complete and file the BOI report, or by using the PDF option to complete the BOI report and upload to the BOI e-Filing application.

[Issued December 12, 2023]



PENALTIES FOR NONCOMPLIANCE

PENALTIES FOR NONCOMPLIANCE

K.2. What penalties do individuals face for violating BOI reporting requirements?

As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. That person may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

[Issued December 12, 2023]

WHO IS RESPONSIBLE?

K.3. Who can be held liable for violating BOI reporting requirements?

Both individuals and corporate entities can be held liable for willful violations. This can include not only an individual who actually files (or attempts to file) false information with FinCEN, but also anyone who willfully provides the filer with false information to report. Both individuals and corporate entities may also be liable for willfully failing to report complete or updated beneficial ownership information; in such circumstances, individuals can be held liable if they either cause the failure or are a senior officer at the company at the time of the failure.

i. Can an individual who files a report on behalf of a reporting company be held liable?

Yes. An individual who willfully files a false or fraudulent beneficial ownership information report on a company's behalf may be subject to the same civil and criminal penalties as the reporting company and its senior officers.

SMALL BUSINESS COMPLIANCE GUIDE (BEST RESOURCE)

<https://www.fincen.gov/boi/small-entity-compliance-guide>

<https://fincen.gov/boi-faqs>

Small Entity Compliance Guide



PROFESSIONAL CONCERNS

- Attorneys who form entities for clients *MUST* stay on top of these requirements and advise clients with respect their obligations. Failure to do so may constitute a failure to advise.
 - Most will have multiple staff members who are company applicants.
- When professionals assist clients, they need to be clear about responsibilities to provide updates.
- Engagement letters should clearly set forth the responsibilities and obligations of the clients and the advisors.
- Professionals must work with professional liability insurers.
- Non-lawyer tax professionals may not be able to assist clients with CTA obligations without running afoul of unauthorized practice of law statutes.

PRACTICE OF LAW?

CTA and the unauthorized practice of law (“UPL”)

Like the Report of Foreign Bank and Financial Accounts (“FBAR”), CTA is administered by FinCEN. However, unlike FBAR, to date no grant of authority designating the IRS as an enforcement agent for CTA has been conferred.

Accountants have a limited grant to “interpret” tax law under Title 26 of the U.S. Code (Internal Revenue Code) via Treasury Circular 230 and state accountancy statutes. It is unclear whether interpretation of CTA statutes, which are under Title 31 of the U.S. Code (Money and Finance), is similarly permissible.



SCHEDULED SUNSET OF INCOME TAX PROVISIONS IN 2025

WHAT'S THE BIG DEAL?

- In 2017, Congress passed the most impactful tax bill in 30 years.
- The Tax Cuts & Jobs Act signed into law December 22, 2017, provided lower tax rates for individuals, a new 20 percent deduction for qualified pass-through business income, a 21 percent flat tax rate for corporate income, and changes impacting depreciation, expensing and losses.
- Because it was passed via the budget reconciliation process, it had a shelf life. That expiration date is December 31, 2025.
- It was estimated to cost \$1.9 trillion to implement (\$5.5 trillion in tax breaks and \$4 trillion in offsets). It is estimated to cost ~ \$5 trillion to extend it.

HIGHER INDIVIDUAL TAX RATES ARE SCHEDULED

- Most farm businesses are sole proprietorships, partnerships, or S Corporations. This means that business income passes through to the owners, who pay taxes based upon individual income tax rates.
- From 2018 to 2025, the TCJA lowered individual income tax rates across the board.



HIGHER INDIVIDUAL TAX RATES ARE SCHEDULED

- The graduated rates that apply to ordinary income were also restructured to include the following brackets: 10%, 12% (down from 15%), 22% (down from 25%), 24% (down from 28%), 32% (down from 33%), 35%, and 37% (down from 39.6%).
- Also changed the income tax brackets to make more income subject to lower tax rates.
- **On January 1, 2026, the tax rates and brackets will reset to pre-2018 levels.**

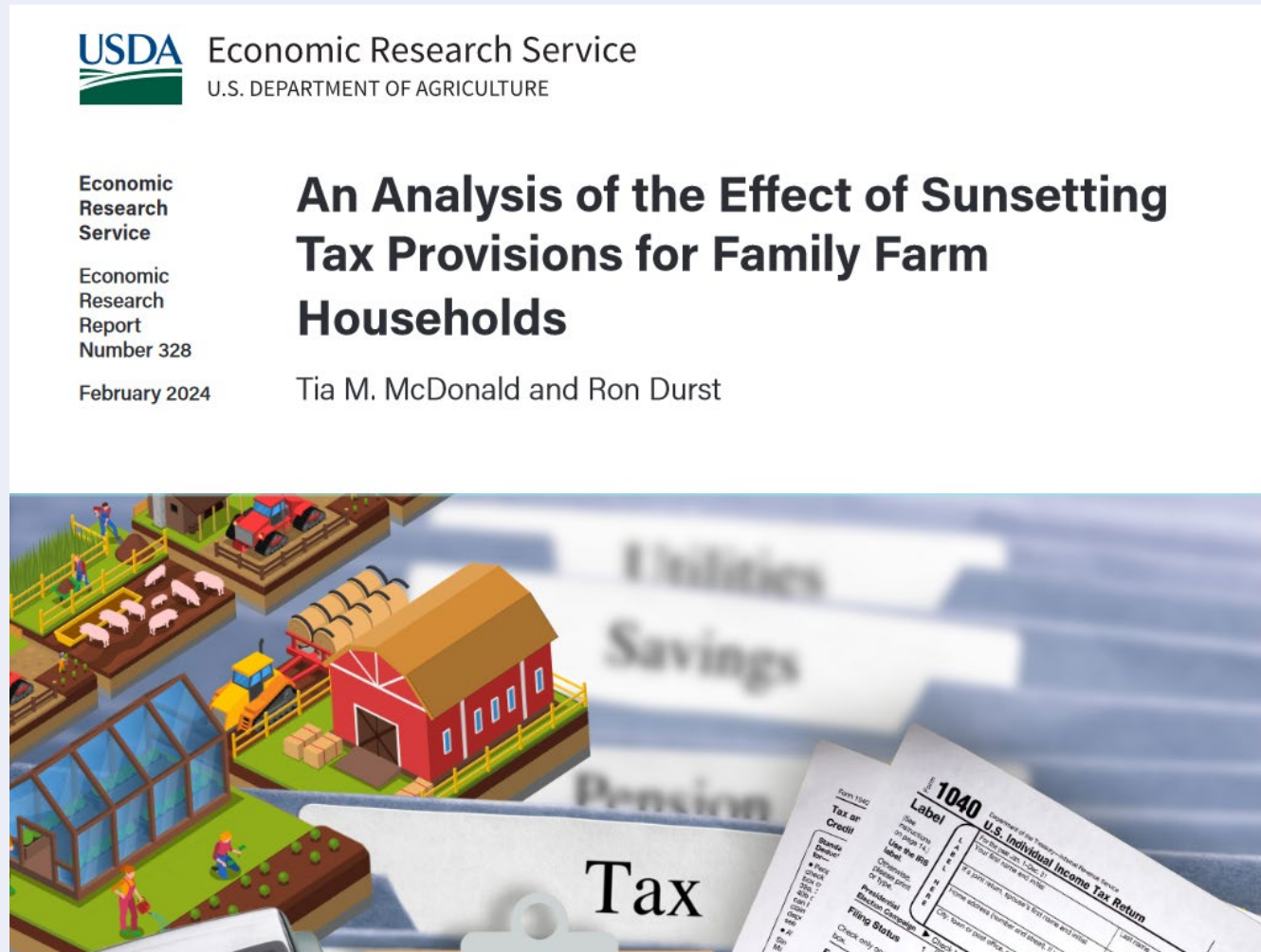
Tax Rate		Single		Married, Filing Jointly	
2024	2026	2024 Brackets*	2026 Brackets**	2024 Brackets*	2026 Brackets**
10%	10%	\$0-\$11,600	No change	\$0-\$23,200*	No change
12%	15%	\$11,601-\$47,150	No change	\$23,201-\$94,300	No change
22%	25%	\$47,151-\$100,525	\$47,151-\$114,200	\$94,301-\$201,050	\$94,301-\$190,325
24%	28%	\$100,526-\$191,950	\$114,201-\$238,250	\$201,051-\$383,900	\$190,326-\$290,050
32%	33%	\$191,051-\$243,725	\$238,251-\$517,875	\$383,901-\$487,450	\$290,051-\$517,875
35%	35%	\$243,726-\$609,350	\$517,876-\$520,025	\$487,451-\$731,200	\$517,876-\$585,050
37%	39.6%	Over \$609,350	Over \$520,025	Over \$731,200	Over \$585,050

INCREASED STANDARD DEDUCTION SCHEDULED TO SUNSET

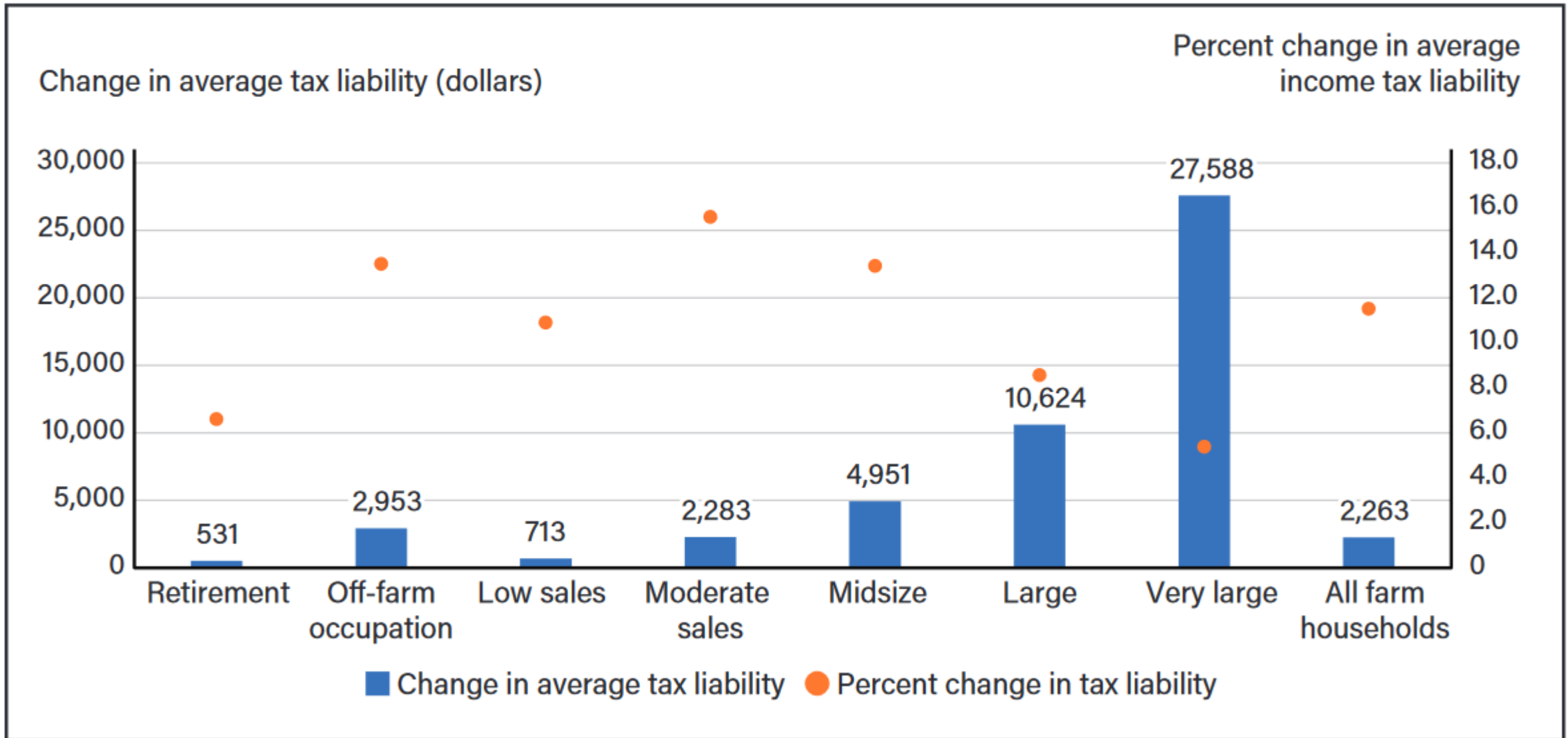
- Taxpayers only itemize deductions if the amount they can deduct on 1040, Schedule A, is more than their standard deduction. The TCJA has significantly decreased the number of taxpayers who itemize deductions by nearly doubling the standard deduction.
- In 2018, it increased the standard deduction from \$13,000 to \$24,000 for married filing jointly taxpayers and from \$6,500 to \$12,000 for single taxpayers. [I.R.C. § 63].
- For 2023 returns, these standard deduction amounts are \$27,700 for married filing jointly and \$13,850 for singles.
- **The increased standard deduction is in place through 2025 and will reset to prior levels, indexed for inflation, in 2026.**

IMPACT OF EXPIRING PROVISIONS ON FARMERS

<https://www.ers.usda.gov/webdocs/publications/108636/err-328.pdf?v=2901.3>



Increase in tax liabilities resulting from expiring Tax Cuts and Jobs Act (TCJA) provisions that would increase tax rates, decrease deductions, and restore personal exemptions



CHILD TAX CREDIT

- The TCJA raised the child tax credit from \$1,000 to \$2,000 per qualifying child for tax years 2018 through 2025. [I.R.C. § 24(h)(2)].
- Of this credit, \$1,400 per child is refundable.
- The TCJA also created a new \$500 nonrefundable credit for each dependent who does not qualify for the child tax credit, including those over the age of 16.
- **Note: During COVID, this CTC was increased to \$3,000 - \$3,600 per child, with no earned income required and full refundability!**

CHILD TAX CREDIT

- In addition to receiving a larger child tax credit, **many more families have qualified for the child tax credit** under the TCJA because the phase-out of the credit does not begin until a married filing jointly couple reaches an adjusted gross income of \$400,000 or a single taxpayer reaches an adjusted gross income of \$200,000.
- In 2026, the \$1,000 credit per child will begin to phase out when the married filing jointly couple has modified adjusted gross income above \$110,000 and the single taxpayer has modified adjusted gross income above \$75,000.

CHILD TAX CREDIT

	Pre-TCJA	TCJA	ARPA
Child tax credit amount	\$1,000	\$2,000	\$3,000 (\$3,600 for children under 6)
Eligible children	Children under age 17	Children under age 17	Children age 17 and under
Income limits	Full amount if MAGI is under \$110,000 on a joint return	Full amount if MAGI is under \$400,000 on a joint return	Full amount if MAGI is under \$150,000 on a joint return
Refundability	Up to \$1,000 but limited to 15 percent of earnings above \$3,000	Up to \$1,600 but limited to 15 percent of earnings above \$2,500	Fully refundable

TCJA = Tax Cuts and Jobs Act; ARPA = American Rescue Plan Act; MAGI = modified adjusted gross income.

Impact of expiring American Rescue Plan Act (ARPA) and Tax Cuts and Jobs Act (TCJA) child tax credit expansions on farm households

Farm typology	Percentage of farm households receiving child tax credit			Average child tax credit received (U.S. dollars)			Percentage change in child tax credit received	
	All 2021 tax provisions are active	Expired ARPA child tax credit expansion	Expired ARPA and TCJA child tax credit expansion	All 2021 tax provisions are active	Expired ARPA child tax credit expansion	Expired ARPA and TCJA child tax credit expansion	Expired ARPA expansion	Expired ARPA and TCJA expansions
Small								
Retirement	14.6	14.6	12.5	5,166	3,341	1,422	-35.3	-72.5
Off-farm occupation	42.4	42.4	29.5	6,026	4,107	1,342	-31.8	-77.7
Low sales	34.4	34.4	30.2	4,844	3,099	1,331	-36.0	-72.5
Moderate sales	43.3	43.3	30.4	6,472	4,325	1,588	-33.2	-75.5
Midsize	39.5	39.5	19.6	5,735	4,249	1,029	-25.9	-82.1
Large	27.3	27.3	12.9	5,698	4,348	981	-23.7	-82.8
Very large	17.7	17.7	10.2	5,599	4,017	1,159	-28.2	-79.3
All farm households	35.9	35.9	26.8	5,604	3,770	1,331	-32.7	-76.2

QUALIFIED BUSINESS INCOME DEDUCTION

- For tax years 2018 through 2025, the TCJA allows most individuals receiving income from a sole proprietorship or a pass-through business—including an S corporation or a partnership—to take a 20% qualified business income deduction (QBI deduction). [I.R.C. § 199A].
- Additionally, agricultural cooperatives are allowed to take a I.R.C. § 199A(g) deduction or pass that deduction through to their patrons, similar to the old domestic production activities deduction (DPAD) under I.R.C. § 199.
- **Impact = tax rate * 20 percent.**

QUALIFIED BUSINESS INCOME DEDUCTION

- Section 199A is set to expire in 2026. This will significantly impact small businesses, as well as agricultural cooperatives and their patrons.
- The DPAD deduction provided by I.R.C. § 199, was permanently repealed by the TCJA in 2018.

Corporate Tax Rate Reduction Permanent

In contrast to the pass-through tax deduction, the TCJA provision lowering the top corporate tax rate from 35% to a flat tax rate of 21% was a permanent change.

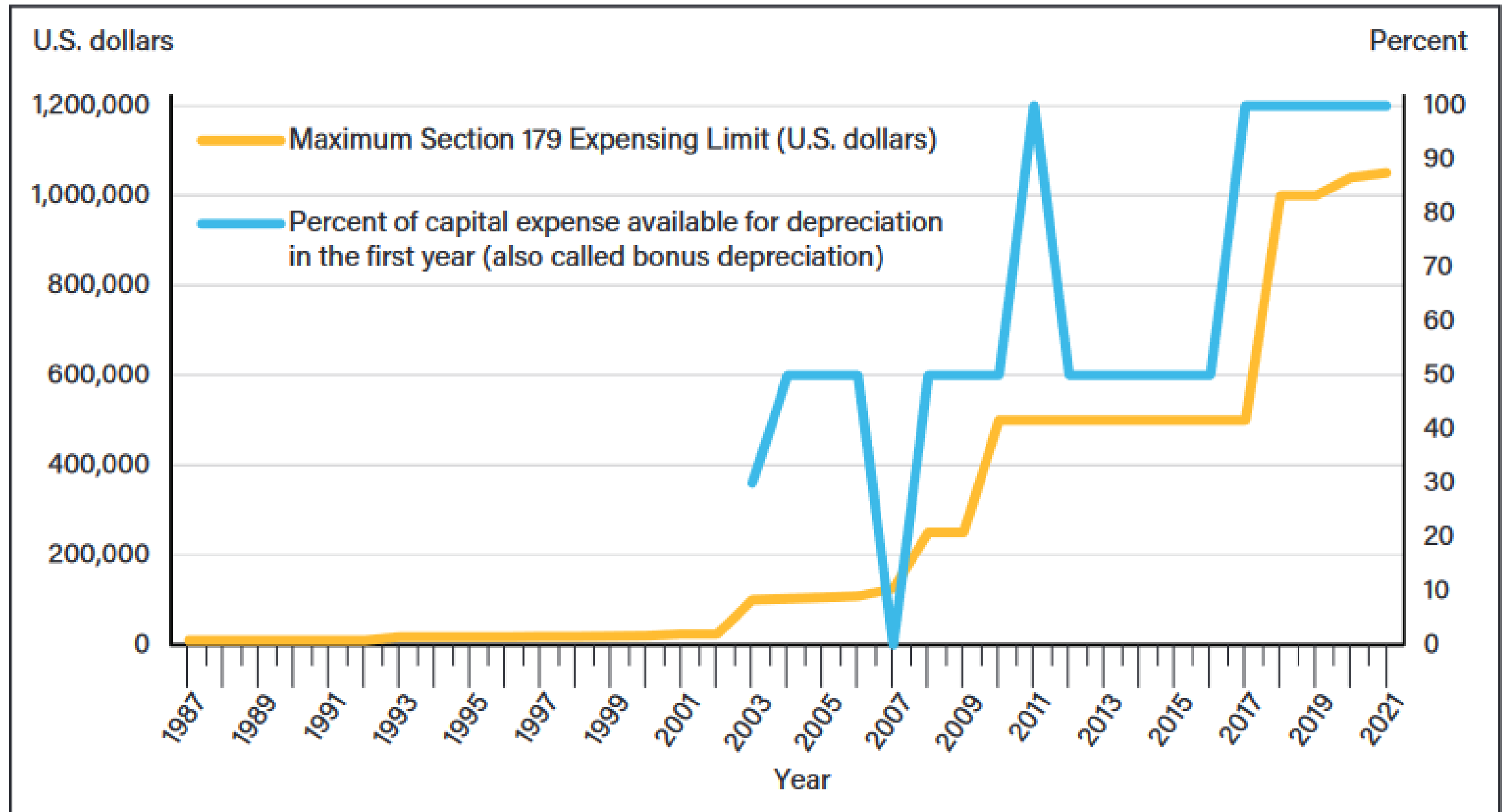
Percent of farm households that receive a qualified business income deduction (QBID) and the impact on average tax liability

	Percentage of farm households that received a QBID		For farm households affected by the expiration of a QBID			
	All 2021 tax provisions are active	Expired QBID	Average tax liability if all 2021 tax provisions are active (U.S. dollars)	Average tax liability if the QBID expired (U.S. dollars)	Change in average tax liability (U.S. dollars)	Percentage change in tax liability
Farm typology						
Retirement	43.4	0	10,111	10,962	851	8.4
Off-farm occupation	40.6	0	25,341	26,351	1,010	4.0
Low sales	39.1	0	7,868	8,579	711	9.0
Moderate sales	73.3	0	15,333	18,401	3,068	20.0
Midsize	76.0	0	40,508	46,186	5,678	14.0
Large	77.8	0	139,570	151,437	11,868	8.5
Very large	79.7	0	617,063	704,282	87,219	14.1
All farm households	45.3	0	27,354	29,818	2,464	9.0



ACCELERATED COST RECOVERY CHANGES

Historical Section 179 capital expensing and first-year bonus depreciation limits, 1987-2021



BONUS DEPRECIATION PHASE-OUT

- The scheduled phase-out is as follows:
 - **2023: 80 percent bonus**
 - **2024: 60 percent bonus**
 - 2025: 40 percent bonus
 - 2026: 20 percent bonus

SECTION 179

- A taxpayer may elect to treat the cost of any Section 179 property as an expense, deductible for the tax year in which the property is placed into service.
- The maximum I.R.C. § 179 deduction for 2023 is **\$1,160,000**, reduced \$1 for every \$1 over the **\$2,890,000 investment limit**.
- The limit in 2024 is **\$1,220,000**, with an investment limit of **\$3,050,000**.
- The SUV limit in 2023 is **\$28,080**. It jumps to 2024 in **\$30,500**.

The effect of the expiring bonus depreciation on farm households

	Percentage of farm households with bonus depreciation		Bonus depreciation for eligible farm households			
	All 2021 tax provisions are active	Expiration of bonus depreciation	Average tax liability if all 2021 tax provisions are active (U.S. dollars)	Average tax liability if bonus depreciation expired (U.S. dollars)	Change in average tax liability (U.S. dollars)	Percentage change in tax liability
Farm typology						
Retirement	0.0	0	0	0	0	0
Off-farm occupation	0.0	0	0	0	0	0
Low sales	0.0	0	0	0	0	0
Moderate sales	0.1	0	0	0	0	0
Midsize	0.2	0	0	0	0	0
Large	1.2	0	50,908	75,703	24,796	48.7
Very large	9.9	0	523,591	722,904	199,312	38.1
All	0.1	0	224,236	311,813	87,577	39.1

COULD WE STILL HAVE TAX LEGISLATION *THIS YEAR?*

- On January 31, 2024, the House passed the “Tax Relief for American Families and Workers Act of 2024,” with a **vote of 357 to 70**.
- It looked like it would pass, but then hit a roadblock in the Senate.
- **May 17 Update:** Wyden, the Senate’s top tax writer told a group of corporate and tax executives that if the Senate can’t pass a \$79 billion bipartisan bill, it doesn’t bode well for negotiations on a \$4.6 trillion package in 2025. **We’re going to win on this because we’re doing what Congress has promised.**



BUSINESS PROPOSALS

- Restoring 100 percent bonus depreciation through 2025.
- Slightly increasing Section 179 beginning in 2024.
- Restoring the ability of taxpayers to presently deduct domestic R&E expenditures incurred in 2022 through 2025.
- For purposes of the business interest deduction limit, calculating adjusted taxable income without including depreciation, amortization, and depreciation through the end of 2025.

CHILD TAX CREDIT PROPOSAL

- The proposal would allow tax filers to multiply the amount calculated for the additional child tax credit by the number of children before applying the limit, beginning with the 2023 tax year.
- Additionally, the refundability limit of the credit would be increased to \$1,800 per child for 2023, \$1,900 per child for 2024, and \$2,000 per child in 2025.
- The proposal would also apply inflation adjustments to the \$2,000 credit, beginning in 2024.
- Finally, the proposal would allow tax filers to use their earned income from the current or prior year (whichever is greater) when calculating the 2024 and 2025 credit.

JUST A STOP GAP UNTIL 2025



CONSIDER SCHEDULED TAX INCREASES

- No one can predict what Congress will look like or do in 2025, but consider scheduled sunset when making depreciation, expensing, and other decisions now. Chances are high that tax rates are going up, not down!





SUNSET OF INCREASED ESTATE AND GIFT TAX EXEMPTION

ESTATE AND GIFT TAX

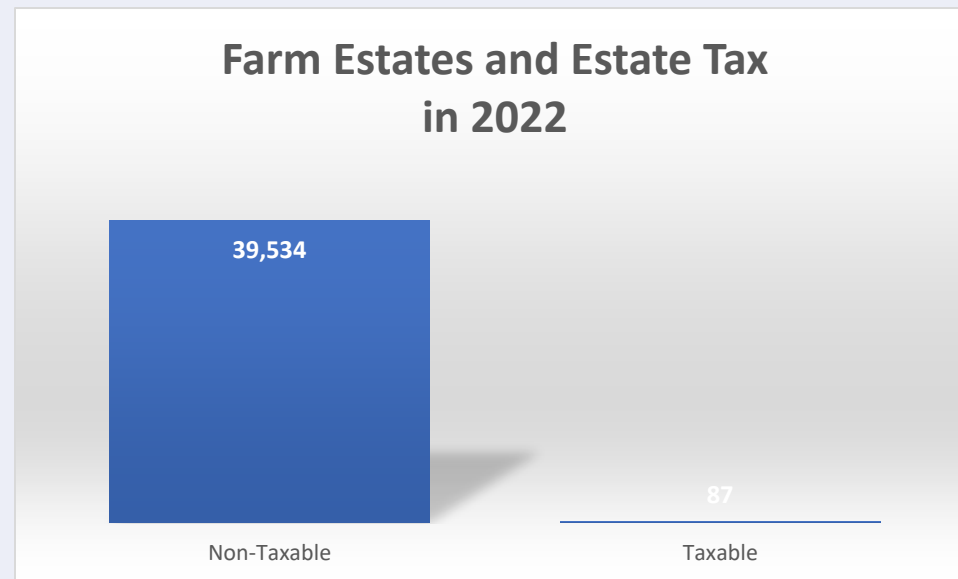
- Estate tax is based upon estate appraisal at fair market value at date of death or six months later.
- Exceptions include:
 - “Special Use Valuation” based on a capitalization rate (up to **\$1,310,000 discount in 2023, \$1,380,000 in 2024**)
 - Discounts for “minority shareholders”
 - “Qualifying Conservation Easements”
- Each person has their own **unified credit** (for estate and gift tax).
 - The unified credit results in everyone have a standard exemption (basic exclusion amount) from estate and gift tax.

EXEMPTIONS OVER TIME

1997 = \$600,000
1998 = \$625,000
1999 = \$650,000
2000 and 2001 = \$675,000
2002-2009 = \$1.0 million
2010 = \$5 million or opt out with no step up
2011 = \$5.0 million
2012 = \$5.12 million
2016 = \$5.45 million
2017 = \$5.49 million
2018 = \$11.2 million
2019 = \$11.4 million
2020 = \$11.58 million
2021 = \$11.7 million
2022 = \$12.06 million
2023 = \$12.92 million
2024 = \$13.61 million

ALMOST NO ONE PAYS IT TODAY

- The USDA-ERS recently estimated that of the projected 39,534 estates created from principal farm operator deaths in 2022, only 305 (0.77 percent) will be required to file an estate tax return, and only 87 (0.22 percent) will likely owe Federal estate tax.



BUT HIGHER EXEMPTION IS ENDING SOON...

- Increased exemption amount was created by the TCJA.
 - It was only temporary, through December 31, 2025.
- **In 2026, the exemption resets to \$5 million, indexed for inflation (~\$7 million).**



ESTATE AND GIFT TAX RATE

- Although estate and gift tax rates are graduated, transfers in excess of the exemption are currently taxed at **40%** because the present exclusion exceeds the top rate threshold of \$1 million.

A 3D graphic of the text "40%" in a bright red color. The characters are thick and blocky, with a slight shadow underneath, giving them a three-dimensional appearance. The percentage sign is stylized with a vertical bar on the right side.

PORTABILITY

- Unused exclusion amount of spouse dying after 12/31/2010 may be used by surviving spouse
- Only available if election made on timely filed estate tax return (**Form 706**) of predeceased spouse – whether or not estate tax return is otherwise required.
- Spouses could apply up to \$27.22 exemption in 2024.

PLANNING FOR THE LOWER EXEMPTION

- No one can predict what Congress will do, but if an estate is above \$5 million, planners should be working with clients on strategies.



GENERALLY, NO CLAWBACK FOR PRE-2026 GIFTS

- In T.D. 9884 (2019), IRS said there would be no clawback for lifetime gifts made before the exemption declines.
- Existing regulations would also apply DSUE in place at time of first spouse to die.
 - **This makes portability election more, not less, important.**
 - Would (in the absence of contrary future guidance) lock in the higher amount of exclusion for future years, even if exclusion decreases.

EXAMPLE – LIFETIME GIFT

- Leeland made a \$12 million lifetime gift in 2023.
- He filed Form 709. Leeland dies in 2026, after the exemption has reset to ~\$7 million.
- **Under T.D. 9884, Leeland's full gift remains sheltered by the exemption in place in 2023.**

EXAMPLE – LIFETIME GIFT

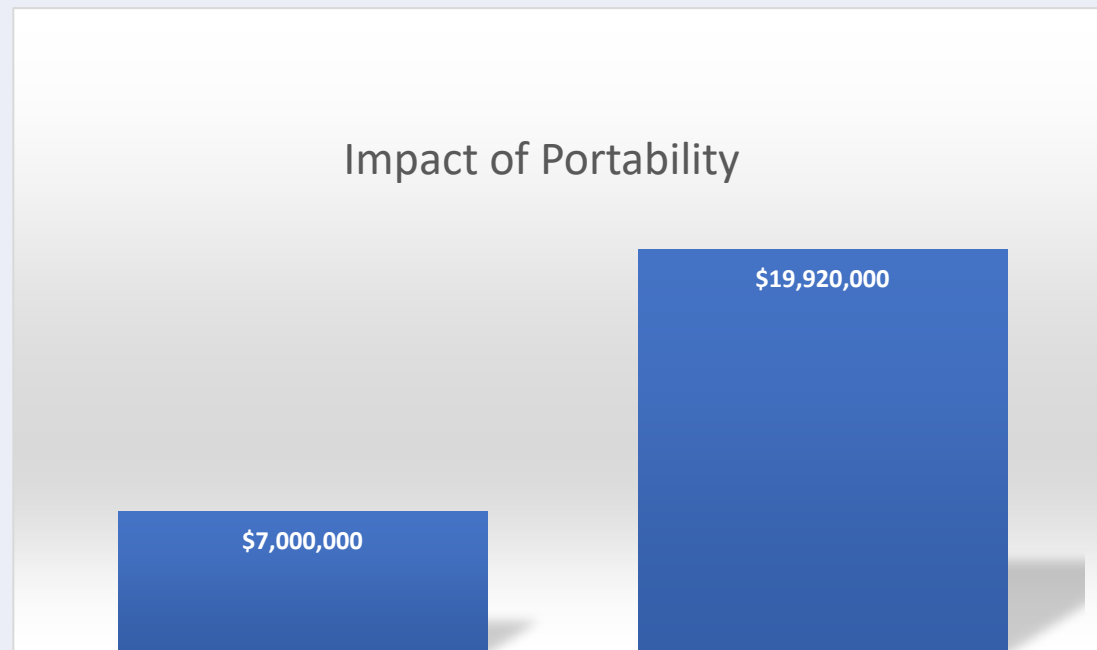
- Laurie gave a \$7 million gift in 2023. She filed Form 709.
- Laurie dies in 2026 after the exemption resets to ~\$7 million.
- Although Laurie could have gifted up to \$12.92 million in 2023, she has no exclusion remaining at her death.
- **Any property passed to her heirs at death will be subject to a 40% estate tax.**

EXAMPLE – PORTABILITY

- Lucy died in 2023, leaving a \$12.92 million deceased spouse unused exclusion.
- Lucy's surviving spouse, Syd, elected portability as the executor.
- Syd dies in 2026 after the exemption resets to ~\$7 million.
- **Current regulations would allow Lucy's \$12.92 million DSUE to apply to Syd's estate.**
- Syd would therefore have **~\$19.92 million exemption.**

EXAMPLE – PORTABILITY

- If Syd had not elected portability when Lucy died, Syd would have **only a ~\$7 million exemption** at his death.



LATE PORTABILITY ELECTION EXTENDED TO FIVE YEARS

- Rev. Proc. 2022-32

- Under the recent procedure, which supersedes Rev. Proc. 2017-34, an extension request must be made **on or before the fifth anniversary of the decedent's death.**
- This simplified method, which doesn't require a user fee, should be used in lieu of the letter ruling process.

