

Charitable Provisions

The One Big Beautiful Bill Act (OBBBA) was signed on July 4, 2025. Part I of this article covered many of the major provisions that impact individual taxpayers. Part II will analyze the charitable provisions that are of substantial importance to donors and nonprofits.

Nonitemizer Deduction — For 2020 and 2021, Congress passed provisions to encourage charitable giving during the COVID-19 pandemic. It allowed an "above-the-line" deduction of \$300 for an individual taxpayer or \$600 for a married couple. The deduction was created in part as a recognition of the decline in cash donations that resulted from the dramatic increase in the standard deduction under the Tax Cuts and Jobs Act (TCJA).

With the large increase in the standard deduction, the number of itemizers declined from approximately 30% in 2017 to about 10% by 2020. The decline in itemizing was accompanied by a decline in cash gifts.

OBBBA reinstated the above-the-line charitable deduction for a gift of cash to a qualified nonprofit in 2026 and subsequent years. The above-the-line deduction is not available for gifts to donor advised funds (DAF) or supporting organizations (SO). This permanent non-itemizer deduction may be taken in addition to the standard deduction. Gifts over \$250 must meet the contemporaneous written acknowledgement rules of Sec. 170(f)(8). The new limit is \$1,000 for an individual or \$2,000 for a married couple filing jointly.

Floor of 0.5% on Gift Deductions — Congress frequently pairs a benefit with an offsetting provision. Because the non-itemizer deduction will result in reduced tax revenue, an offset to the nonitemizer deduction is a new 0.5% floor on charitable deductions for gifts beginning in 2026. The taxpayer will not be able to deduct charitable gifts for the first 0.5% of the contribution base.

The contribution base for most taxpayers is their adjusted gross income (AGI). The gifts excluded by the 0.5% floor are subject to a specific order. The excluded Sec. 170 gifts are to a private foundation ((b)(1)(D)), appreciated gifts to a private foundation ((b)(1)(C)), capital gain gifts to public charities ((b)(1)(B)), conservation easement gifts ((b)(1)(E)), cash gifts to 50% limit organizations ((b)(1)(A)) and cash gifts to 60% limit organizations ((b)(1)(G)) of the contribution base. The excluded-gift ordering is generally reversed from the order for the deductible portion of a charitable gift. If a portion is not deductible under the 0.5% floor, the statute attempts to create a "carryover rule" that may allow a deduction of this amount in the future. However, all future deductions would also be subject to a new 0.5% floor in that year. The Treasury Secretary will need to publish regulations with examples to assist tax return preparers.

Charitable Deduction Limit of 60% — TCJA increased the cash deduction limit from 50% to 60% in Section 170(b)(1)(G). OBBBA makes the 60% increase permanent. Because subparagraph (G) specified 60% for cash gifts and was not clear on the deduction percentage for part cash and part appreciated property gifts, the American Institute of CPAs (AICPA) requested a technical correction to TCJA to determine if the legislative intent was for an individual to be able to deduct 30% cash and 30% appreciated gifts in the same year. OBBBA creates complex

language that may be intended to respond to AICPA's technical correction request. OBBBA modifies Section 170(b)(1)(G) and Section 170(b)(1)(B), which define limits for appreciated property charitable deductions. The amended subparagraph (B) is shared below. While it is not certain, until guidance is received from the IRS or Joint Committee on Taxation (JCT), subparagraphs (B)(ii)(I) and (II) appear to permit 30% cash and 30% appreciated gifts to be deducted in one year. The IRS or JCT guidance will hopefully include examples that clarify the math for layered or combined gift deductions.

Sec. 170(b)(1)(B) Other contributions (as amended by OBBBA Sec. 70425(b)(2)(B))

Any charitable contribution other than a charitable contribution to which subparagraph (A) or (G) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of -

- (i) 30 percent of the taxpayer's contribution base for the taxable year, or
- (ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over-
 - (I) the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)) and subparagraph (G), reduced by
 - (II) so much of the contribution taken into account under subparagraph (G) as does not exceed 10 percent of the taxpayer's contribution base.

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) or (G) does not apply) in each of the 5 succeeding taxable years in order of time.

Scholarship Granting Organizations — New provisions establish a charitable credit of up to \$1,700 for gifts to a scholarship granting organization (SGO). The SGO credit is permanent and available starting in 2027. The public charity SGO must give a minimum of 10 scholarships per year to eligible students, spend 90% of the organization's income on scholarships, award scholarships only for qualified elementary or secondary education expenses and award only recipients whose families do not earn more than 300% of the area median gross income. The SGO must also verify the student's household is below the 300% limit. A student may be given priority if they have received a scholarship the previous year or have a sibling who has received a scholarship. The gifts may not be set aside for scholarships for a particular student. The credit is not limited or capped by a federal dollar limit. States must elect to participate in the program. On January 1 of each calendar year, the state must provide a list to the Treasury Secretary of qualified SGOs.

Private College and University Excise Tax — OBBBA increased the excise tax on the net investment income (NII) for certain private colleges and universities. The law imposes a 1.4%

NII tax if the student adjusted endowment is from \$500,000 to \$750,000. The NII tax is 4% if the student adjusted endowment is from \$751,000 to \$2 million. Finally, an NII tax of 8% if the student adjusted endowment is over \$2 million. The tax applies to a college or university with at least 3,000 tuition-paying students if over 50% of the students are in the United States. It does not apply to state colleges and universities. The student adjusted endowment may exclude assets that are used to carry out the educational exempt purpose. The 3,000-student number is the "daily average number of full-time students." There are specific definitions for what is included and excluded in NII. For example, interest income from student loans and royalties from patents or copyrights subsidized with federal funds are included. The definition of NII may include "related organizations" if they are controlled by the parent entity.

Excess Compensation — OBBBA expands the application of tax on excess compensation for tax-exempt organizations. Under Section 4960, there is a 21% excise tax on nonprofits with executives paid over \$1 million per year. OBBBA changes the group covered to include current and former employees earning over \$1 million. A "covered employee" is an individual who was employed during any taxable year after December 31, 2016. The tax on excess compensation under Section 4960(c)(2) is potentially expanded in its coverage.

Floor of 1% on Gifts by Corporations — Corporations have a charitable deduction limit under Section 170(b)(2)(A) of 10% of their taxable income. A five-year carryforward is allowed for any amount more than this 10% limit. OBBBA creates a new 1% floor on these deductions. The language intends to allow the 1% reduction to be carried forward into a future year. However, all future years will be subject to the 1% floor on the deductions at that time.

Alaska Native Village Deductions — The charitable deduction limit for support of native Alaskan subsistence whaling is increased from \$10,000 to \$50,000. The provision is intended to support traditional food sources in Alaska.

Editor's Note: After OBBBA, the charitable giving strategy that may be popular with donors is "bunching" charitable deductions and gifts to donor advised funds (DAF) in one year. A donor may give twice their usual annual gift every second year and itemize those gifts while taking the standard deduction in alternate years. This strategy may be particularly attractive for donors over age 65 who benefit from the standard deduction, the added senior amount and the \$6,000 Senior Deduction. During the noncontribution year, donors can make grants from their DAFs to support charitable causes.



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