

**PRESENT LAW AND BACKGROUND REGARDING
THE FEDERAL INCOME TAXATION OF
SMALL BUSINESSES**

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of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Senate Committee on Finance and Senate Committee on Small Business and Entrepreneurship have scheduled a joint roundtable on June 7, 2023, titled “Tackling Tax Complexity: the Small Business Perspective.” This document,¹ prepared by the staff of the Joint Committee on Taxation, describes present law and data relating to selected Federal income tax provisions that affect small businesses.

¹ This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Regarding the Federal Income Taxation of Small Businesses* (JCX-10-23), June 5, 2023. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

I. PRESENT LAW: SELECTED TAX RULES AFFECTING SMALL BUSINESSES

A. Business Entities

1. Definition of “small business”

Many special rules throughout the Code² apply to businesses that satisfy certain requirements, which often take the form of limits related to size. There is no single definition of a “small business” entitled to such tax benefits. Rather, numerous definitions apply in different contexts, and rely on various criteria and thresholds. Examples of the criteria include a business’s gross assets,³ gross receipts,⁴ number of shareholders,⁵ and number of employees.⁶ For some purposes, the Code defines a small business in more than one way.⁷

Even when a criterion such as gross receipts is the same across definitions, the definitions still may use different thresholds. For example, one excise tax applies at a reduced rate to importers and manufacturers with gross receipts in the previous taxable year of less than \$500,000.⁸ In contrast, a construction firm with average annual gross receipts of \$25 million⁹ or less in its three previous taxable years generally is not required to use the percentage of completion method of accounting.¹⁰

A nonexhaustive list of tax provisions relating to small businesses is set forth in the Appendix at the end of this document.

² Unless otherwise stated, all references to the Code are to the Internal Revenue Code of 1986, as amended.

³ See, *e.g.*, sec. 1202(d)(1).

⁴ See, *e.g.*, sec. 474(c).

⁵ See, *e.g.*, sec. 1361(b)(1).

⁶ See, *e.g.*, sec. 41(b)(3)(D)(iii).

⁷ See, *e.g.*, section 44(b), which defines an “eligible small business” as any person which for the preceding year either (a) had gross receipts not in excess of \$1 million, or (b) did not employ more than 30 full-time employees.

⁸ Sec. 5801(b)(1).

⁹ This amount is indexed for inflation for taxable years beginning after 2018. For 2023, the applicable amount is \$29 million. See sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

¹⁰ Sec. 460(e)(1)(B)(ii).

2. Small business entities

Overview

In 2019, there were approximately 1.5 million C corporations, 4.9 million S corporations, and 3.8 million partnerships. The number of passthrough entities (S corporations and partnerships) surpassed the number of C corporations in 1987 and has more than tripled since then.¹¹

Sole proprietorships

The vast majority of businesses in the United States are classified for Federal tax purposes as sole proprietorships. In 2019, there were more than 27.8 million nonfarm sole proprietorships and 1.8 million farm sole proprietorships out of 39.9 million total business returns. Unlike a C corporation, partnership, or S corporation, a sole proprietorship typically is not an entity distinct from its individual owner.¹² Rather, the business owner is taxed directly on business income, and files Schedule C (sole proprietorships generally), Schedule E (rental real estate and royalties), or Schedule F (farms) with his or her individual tax return.

C corporations

A C corporation is subject to Federal income tax as an entity separate from its shareholders. A C corporation's income generally is taxed at the corporate level when earned and is taxed again to individual shareholders when distributed as dividends.¹³ Corporate deductions and credits reduce only corporate income (and corporate income taxes) and are not passed through to shareholders.

Corporate income that is not distributed to shareholders generally is subject to current tax at the corporate level only. To the extent that income retained at the corporate level is reflected in an increased share value, a shareholder may be taxed at capital gains rates upon sale or exchange (including certain redemptions) of the stock or upon liquidation of the corporation.¹⁴

¹¹ The portion of business entities that are passthroughs differs in other countries. See, for example, Joint Committee on Taxation, *Foreign Passthrough Entity Use In Five Selected Countries*, October 2013, Table 7.—Corporate and Individual Shares of Net Income from Business Activity in Selected Countries, page 11, available online at <https://www.jct.gov/publications/2013/foreign-passthrough-entity-use-in-five-selected-countries/>.

¹² A single-member unincorporated entity is treated as a disregarded entity for Federal tax purposes. Treas. Reg. sec. 301.7701-3(b)(1)(ii). Sole proprietorships often conduct business through such entities for nontax reasons.

¹³ Distributions with respect to stock that exceed current and accumulated corporate earnings and profits are not taxed as dividend income to shareholders but are treated as tax-free returns of capital that reduce the shareholder's basis in the stock. Distributions in excess of current and accumulated corporate earnings and profits that exceed a shareholder's basis in the stock are treated as amounts received in exchange for the stock, which generally are taxed to the shareholder at capital gains rates. Sec. 301(c).

¹⁴ If stock is held until the death of the shareholder, the heirs are given a fair market value basis in the stock at death, resulting in no shareholder level income tax on appreciation prior to death if the heirs sell the stock to

Foreign investors generally are exempt from U.S. income tax on capital gains, but are subject to withholding tax on dividends. Tax-exempt investors generally are not subject to tax on corporate distributions or on sales or exchanges of corporate stock.

The gain on appreciated corporate assets generally is subject to corporate level tax if the assets are distributed to the shareholders, yielding the same tax result as if the assets had been sold by the corporation and the proceeds distributed to the shareholders.¹⁵

S corporations

For Federal income tax purposes, an S corporation generally is not subject to tax at the corporate level.¹⁶ Pro rata shares of the items of income (including tax-exempt income), gain, loss, deduction, and credit of the S corporation are taken into account by the S corporation shareholders in computing their income tax liability (based on the S corporation's method of accounting and regardless of whether the income is distributed to the shareholders).

A shareholder's deduction for corporate losses is limited to the sum of the shareholder's adjusted basis in its S corporation stock and the indebtedness of the S corporation to such shareholder.¹⁷ Losses not allowed as a result of that limitation generally are carried forward to the next year.¹⁸ A shareholder's adjusted basis in the S corporation stock generally equals the sum of (1) the shareholder's capital contributions to the S corporation and (2) the shareholder's pro rata share of S corporation income, less (1) the shareholder's pro rata share of losses allowed as a deduction and certain nondeductible expenditures and (2) any S corporation distributions to the shareholder.¹⁹

a third party, or receive corporate distributions in the form of a redemption (*i.e.*, a sale of their stock to the corporation). Sec. 1015.

¹⁵ Sec. 311(b)(1).

¹⁶ Secs. 1363 and 1366.

¹⁷ Sec. 1366(d)(1).

¹⁸ Sec. 1366(d)(2).

¹⁹ Sec. 1367. If any amount that would reduce the adjusted basis of a shareholder's S corporation stock exceeds the amount that would reduce that basis to zero, the excess is applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder. If, after a reduction in the basis of such indebtedness, there is an event that would increase the adjusted basis of the shareholder's S corporation stock, such increase is instead first applied to restore the reduction in the basis of the shareholder's indebtedness. Sec. 1367(b)(2).

Unlike a partnership, but like a C corporation, gain realized on the distribution of built-in gain property by the S corporation to its shareholders is recognized by the S corporation.²⁰ The shareholders take their shares of such gain into account on their separate tax returns.

To be eligible to elect S corporation status, a corporation may not have more than 100 shareholders and may not have more than one class of stock.²¹ Only individuals (other than nonresident aliens), certain tax-exempt organizations, and certain trusts and estates are permitted shareholders of an S corporation. A corporation may elect S corporation status only with the consent of all its shareholders, and may terminate its election with the consent of shareholders holding more than 50 percent of the stock.²²

In general, an S corporation shareholder is not subject to tax on corporate distributions unless the distributions exceed the shareholder's basis in the stock of the corporation.²³

Partnerships

In general

Partnerships generally are treated for Federal income tax purposes as pass-through entities not subject to tax at the entity level.²⁴ Items of income (including tax-exempt income), gain, loss, deduction, and credit of the partnership are taken into account by the partners in computing their income tax liability (based on the partnership's method of accounting and regardless of whether the income is distributed to the partners).²⁵

A partner's deduction for partnership losses is limited to the partner's adjusted basis in its partnership interest.²⁶ Losses not allowed as a result of that limitation generally are carried forward to the next year. A partner's adjusted basis in the partnership interest generally equals the sum of (1) the partner's capital contributions to the partnership, (2) the partner's distributive share of partnership income, and (3) the partner's share of partnership liabilities, less (4) the partner's distributive share of losses allowed as a deduction and certain nondeductible

²⁰ Secs. 1371(a) and 311(b). However, an S corporation that was never a C corporation is not subject to the built-in gains tax. Sec. 1374(c)(1).

²¹ Sec. 1361. For this purpose, a husband and wife and all members of a family are treated as one shareholder. Sec. 1361(c)(1).

²² Sec. 1362.

²³ Sec. 1368.

²⁴ Sec. 701.

²⁵ Sec. 702(a).

²⁶ Sec. 704(d). In addition, passive loss and at-risk limitations limit the extent to which certain types of income can be offset by partnership deductions (sections 469 and 465). These limitations do not apply to corporate partners (except certain closely-held corporations) and may not be important to individual partners who have partner-level passive income from other investments.

expenditures, and (5) any partnership distributions to the partner.²⁷ Partners generally may receive distributions of partnership property without recognition of gain or loss, subject to some exceptions.²⁸

Unlike corporations, partnerships may allocate items of income, gain, loss, deduction, and credit among the partners. In general, if a partnership allocation does not have substantial economic effect, the partner's distributive share must be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances).²⁹ As implemented in regulations,³⁰ these rules generally permit both simple and complex allocation arrangements among partners to be provided in the partnership agreement.

Limited liability companies

While States have long permitted businesses to organize as partnerships and corporations, over the past few decades³¹ States have enacted laws providing for another form of entity, the limited liability company ("LLC"). LLCs are neither partnerships nor corporations under applicable State law, but they generally provide limited liability to their owners with respect to obligations of the business.

LLCs are generally treated as partnerships for Federal income tax purposes. Under regulations promulgated in 1996, any domestic nonpublicly traded unincorporated entity with two or more members generally is treated as a partnership, while any single-member domestic unincorporated entity generally is treated as disregarded (*i.e.*, treated as not separate from its owner).³² The regulations permit an LLC to elect to be treated as a corporation for Federal income tax purposes.³³ These regulations, known as the "check-the-box" regulations, were a response, in part, to the growth in popularity of LLCs as a form of doing business.

²⁷ Sec. 705.

²⁸ Sec. 731. Gain or loss may nevertheless be recognized, for example, on the distribution of money or marketable securities, distributions with respect to contributed property, or in the case of disproportionate distributions (which can result in ordinary income).

²⁹ Sec. 704(b)(2).

³⁰ Treas. Reg. sec. 1.704-1(b).

³¹ The first LLC statute was enacted in Wyoming in 1977. All States (and the District of Columbia) now have an LLC statute, though the tax treatment of LLCs for State tax purposes may differ.

³² Thus, where the single member is an individual, such a disregarded LLC is treated as a sole proprietorship. Where the single member is a corporation, the LLC is treated as a branch.

³³ Treas. Reg. sec. 301.7701-3.

B. Deduction for Qualified Business Income

Taxpayers (other than corporations) with qualified business income³⁴

For taxable years beginning after December 31, 2017, and before January 1, 2026, a taxpayer other than a corporation (*i.e.*, individuals, trusts, and estates) generally may deduct 20 percent of qualified business income from a partnership, S corporation, or sole proprietorship, as well as 20 percent of aggregate qualified real estate investment trust (“REIT”) dividends and qualified publicly traded partnership income.³⁵

The amount deductible may not exceed 20 percent of the taxpayer’s taxable income for the taxable year (reduced by net capital gain).³⁶

Limitations based on W-2 wages and capital investment phase in above a threshold amount of taxable income.³⁷ A disallowance of the deduction for income of specified service trades or businesses³⁸ also phases in above the threshold amount of taxable income. The threshold amount is \$182,100 for 2023 (200 percent of that amount, or \$364,200, in the case of a joint return) (together, the “threshold amount”).³⁹ The exclusion from the definition of a qualified trade or business for specified service trades or businesses is fully phased in for a taxpayer with taxable income in excess of the threshold amount plus \$50,000 (\$100,000 in the case of a joint return).⁴⁰

³⁴ Sec. 199A (section 199A, as originally enacted in 2017, is described in more detail in Joint Committee on Taxation, *General Explanation of Public Law 115-97* (JCS-1-18), December 2018, pages 11-38; for a description of changes to section 199A in 2018 (as still in effect), see Joint Committee on Taxation, *General Explanation of Certain Tax Legislation Enacted in the 115th Congress* (JCS-2-19), October 2019, pages 120-139).

³⁵ Sec. 199A. See also Treas. Reg. secs. 1.199A-1 through 1.199A-7.

³⁶ Sec. 199A(a). For this purpose, taxable income is computed without regard to the deduction allowable under the provision. Sec. 199A(e)(1).

³⁷ For a taxpayer with taxable income above the threshold amount, the taxpayer is allowed a deductible amount for each qualified trade or business equal to the lesser of (1) 20 percent of the qualified business income with respect to such trade or business, or (2) the greater of (a) 50 percent of the W-2 wages paid with respect to the qualified trade or business, or (b) the sum of 25 percent of the W-2 wages paid with respect to the qualified trade or business plus 2.5 percent of the unadjusted basis immediately after acquisition of all qualified property of the qualified trade or business. Sec. 199A(b)(2).

³⁸ A specified service trade or business means any trade or business 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 where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management, trading, or dealing in securities, partnership interests, or commodities. Sec. 199A(d)(2).

³⁹ The threshold amount is adjusted for inflation in taxable years beginning after 2018. Sec. 199A(e)(2).

⁴⁰ See sec. 199A(d)(3).

The taxpayer's deduction for qualified business income is not allowed in computing adjusted gross income; instead, the deduction is allowed in computing taxable income.⁴¹ The deduction is available to both individuals who do itemize their deductions and individuals who do not itemize their deductions.⁴²

Qualified business income

Qualified business income is determined for each qualified trade or business of the taxpayer. For any taxable year, qualified business income means the net amount of qualified items of income, gain, deduction, and loss with respect to the qualified trade or business of the taxpayer.⁴³ The determination of qualified items of income, gain, deduction, and loss takes into account such items only to the extent included or allowed in the determination of taxable income for the year. Items are treated as qualified items of income, gain, deduction, and loss only to the extent they are effectively connected with the conduct of a trade or business within the United States.⁴⁴

Certain items are not qualified items of income, gain, deduction, or loss.⁴⁵ Specifically, qualified items of income, gain, deduction, and loss do not include (1) any item taken into account in determining net capital gain or net capital loss, (2) dividends, income equivalent to a dividend, or payments in lieu of dividends, (3) interest income other than that which is properly allocable to a trade or business, (4) the excess of gain over loss from commodities transactions other than (i) those entered into in the normal course of the trade or business or (ii) with respect to stock in trade or property held primarily for sale to customers in the ordinary course of the trade or business, property used in the trade or business, or supplies regularly used or consumed in the trade or business, (5) the excess of foreign currency gains over foreign currency losses from section 988 transactions other than transactions directly related to the business needs of the business activity, (6) net income from notional principal contracts other than clearly identified hedging transactions that are treated as ordinary (*i.e.*, not treated as capital assets), and (7) any amount received from an annuity that is not received in connection with the trade or business. Qualified items do not include any item of deduction or loss properly allocable to any of the preceding items.

⁴¹ Sec. 62(a).

⁴² Sec. 63(b) and (d).

⁴³ Qualified business income does not include any qualified REIT dividends or qualified publicly traded partnership income. Sec. 199A(c)(1).

⁴⁴ For this purpose, section 864(c) is applied by substituting "qualified trade or business (within the meaning of section 199A)" for "nonresident alien individual or a foreign corporation" or for "a foreign corporation," each place they appear. Sec. 199A(c)(3)(A). In the case of an individual with qualified business income from sources within the Commonwealth of Puerto Rico, if all such income for the taxable year is taxable under section 1 (income tax rates for individuals), then the term "United States" is considered to include Puerto Rico for purposes of determining the individual's qualified business income. Sec. 199A(f)(1)(C).

⁴⁵ See sec. 199A(c)(3)(B).

Qualified business income also does not include any amount paid by an S corporation that is treated as reasonable compensation of the taxpayer.⁴⁶ Similarly, qualified business income does not include any guaranteed payment for services rendered with respect to the trade or business,⁴⁷ and, to the extent provided in regulations, does not include any amount paid or incurred by a partnership to a partner, acting other than in his or her capacity as a partner, for services.⁴⁸

If the net amount of qualified business income from all qualified trades or businesses during the taxable year is a loss, then such loss is carried forward and in the next taxable year is treated as a loss from a qualified trade or business.⁴⁹ Any deduction that would otherwise be allowed in a subsequent taxable year with respect to the taxpayer's qualified trades or businesses is reduced by 20 percent of any carryover qualified business loss.

Qualified trade or business

A qualified trade or business means any trade or business other than a specified service trade or business and other than the trade or business of performing services as an employee.⁵⁰

Partnerships and S corporations

In the case of a partnership or S corporation, the section 199A deduction is determined at the partner or shareholder level. Each partner in a partnership takes into account the partner's allocable share of each qualified item of income, gain, deduction, and loss, and is treated as having W-2 wages and unadjusted basis of qualified property for the taxable year equal to the partner's allocable share of W-2 wages and unadjusted basis of qualified property of the partnership. The partner's allocable share of W-2 wages and unadjusted basis of qualified property are required to be determined in the same manner as the partner's allocable share of wage expenses and depreciation, respectively. Similarly, each shareholder of an S corporation takes into account the shareholder's pro rata share of each qualified item of income, gain, deduction, and loss of the S corporation, and is treated as having W-2 wages and unadjusted basis of qualified property for the taxable year equal to the shareholder's pro rata share of W-2 wages and unadjusted basis of qualified property of the S corporation.⁵¹

⁴⁶ Sec. 199A(c)(4).

⁴⁷ Described in sec. 707(c).

⁴⁸ Described in sec. 707(a).

⁴⁹ Sec. 199A(c)(2).

⁵⁰ Sec. 199A(d)(1).

⁵¹ Sec. 199A(f)(1)(A).

Deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives

For taxable years beginning after December 31, 2017, and before January 1, 2026, a specified agricultural or horticultural cooperative generally may deduct nine percent of the lesser of the cooperative's qualified production activities income or taxable income (determined without regard to the cooperative's section 199A(g) deduction and reduced by certain payments or allocations to patrons) for the taxable year (the "section 199A(g) deduction").⁵² The cooperative's deduction is reduced in the case of oil related qualified production activities income.⁵³ In general, qualified production activities income is equal to domestic production gross receipts reduced by the sum of: (1) the cost of goods sold that are allocable to such receipts; and (2) other expenses, losses, or deductions that are properly allocable to such receipts.⁵⁴

The definition of specified agricultural or horticultural cooperative is limited to organizations to which part I of subchapter T applies that (1) manufacture, produce, grow, or extract in whole or significant part any agricultural or horticultural product, or (2) market any agricultural or horticultural product that their patrons have so manufactured, produced, grown, or extracted in whole or significant part.⁵⁵

Allocation of the cooperative's deduction to patrons

The deduction may instead be allocated to and deducted by the cooperative's patrons, limited to each patron's taxable income for the taxable year (determined without regard to such deduction but after taking into account the patron's other deductions under section 199A(a)).⁵⁶ The deduction is allowed for the taxable year in which such payment is received. The cooperative cannot reduce its income under section 1382 for any deduction allowable to its

⁵² Sec. 199A(g). See also Treas. Reg. secs. 1.199A-8 through 1.199A-12. The deduction is limited to 50 percent of W-2 wages that are paid by the cooperative during the calendar year that ends in such taxable year and are properly allocable to domestic production gross receipts. Sec. 199A(g)(1)(B).

⁵³ The section 199A(g) deduction is reduced by three percent of the least of the cooperative's oil related qualified production activities income, qualified production activities income, or taxable income (determined without regard to the cooperative's section 199A(g) deduction and reduced by certain payments or allocations to patrons) for the taxable year. Sec. 199A(g)(5)(E)(ii).

⁵⁴ In computing qualified production activities income, the section 199A(g) deduction itself is not an allocable deduction. Sec. 199A(g)(3)(A)(ii)(II). Domestic production gross receipts generally are gross receipts of the cooperative that are derived from any lease, rental, license, sale, exchange, or other disposition of any agricultural or horticultural product that was manufactured, produced, grown, or extracted by the cooperative in whole or in significant part within the United States. Sec. 199A(g)(3)(A)(i); Treas. Reg. sec. 1.199A-9.

⁵⁵ Sec. 199A(g)(4); Treas. Reg. sec. 1.199A-8(a)(4).

⁵⁶ See sec. 199A(g)(2). A qualified payment is any amount that (i) is described in paragraph (1) or (3) of section 1385(a) (*i.e.*, patronage dividends and per-unit retain allocations), (ii) is received by an eligible patron from a specified agricultural or horticultural cooperative, and (iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative. An eligible patron is (i) a taxpayer other than a corporation (excluding S corporations), or (ii) another specified agricultural or horticultural cooperative.

patrons under this rule (*i.e.*, the cooperative must reduce its deductions allowed for certain payments to its patrons in an amount equal to the section 199A(g) deduction allocated to its patrons).⁵⁷

⁵⁷ Sec. 199A(g)(2)(C).

C. Accounting Methods

1. In general

A taxpayer must compute its taxable income under a method of accounting on the basis of which the taxpayer regularly keeps its books so long as, in the opinion of the Secretary of the Treasury (the “Secretary”), such method clearly reflects the taxpayer's income.⁵⁸ Among the permissible methods of accounting are the cash receipts and disbursements method (the “cash method”), an accrual method, any other method permitted or required under the Code, or any hybrid method allowed under regulations.⁵⁹ A taxpayer may use a different method of accounting for each trade or business (*e.g.*, a separate legal entity or division within such legal entity).⁶⁰ A taxpayer may change its method of accounting with the consent of the Secretary,⁶¹ typically by filing a Form 3115, *Application for Change in Accounting Method*.⁶²

Special statutory rules allow farmers and small businesses to use accounting methods that are unavailable to large taxpayers. Many of these rules are designed to alleviate the tax accounting burdens of small businesses, while other rules are designed to provide a tax incentive. Some of these special rules are described below.

2. Cash and accrual methods

Taxpayers using the cash method generally recognize items of income when actually or constructively received and items of expense when paid.⁶³ The cash method is easier to comply with than an accrual method and provides the taxpayer flexibility in the timing of income and expense recognition. It is the method generally used by most small business taxpayers.

Taxpayers using an accrual method generally accrue items of income at the earlier of: (1) when all events have occurred that fix the right to receive such income and the amount of the income can be determined with reasonable accuracy (generally, the earlier of when the income is paid, due, or earned), or (2) when such income is taken into account as revenue in the taxpayer's applicable or other specified financial statement.⁶⁴ Taxpayers using an accrual method of accounting generally may not deduct items of expense prior to when all events have occurred that fix the obligation to pay the liability, the amount of the liability can be determined with

⁵⁸ Secs. 446(a) and (b).

⁵⁹ Sec. 446(c).

⁶⁰ Sec. 446(d).

⁶¹ Sec. 446(e).

⁶² See Rev. Proc. 2015-13, 2015-5 I.R.B. 419, and Rev. Proc. 2022-14, 2022-7 I.R.B. 502, or any successor, for the procedural rules for filing an accounting method change request.

⁶³ Treas. Reg. sec. 1.446-1(c)(1)(i).

⁶⁴ Sec. 451(b); Treas. Reg. secs. 1.446-1(c)(1)(ii)(A) and 1.451-3.

reasonable accuracy, and economic performance has occurred.⁶⁵ Accrual methods of accounting generally result in a more accurate measure of economic income than does the cash method. An accrual method is often used by large businesses for financial accounting and Federal tax purposes.

A C corporation, a partnership that has a C corporation as a partner, a tax shelter, or a tax-exempt trust or corporation with unrelated business income generally may not use the cash method.⁶⁶ Exceptions are made for farming businesses,⁶⁷ qualified personal service corporations,⁶⁸ and the aforementioned entities to the extent their average annual gross receipts does not exceed \$25 million for the three prior taxable year period (\$29 million for taxable years beginning in 2023) (the “gross receipts test”).⁶⁹

The Code defines a farming business as a trade or business of farming, including operating a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts, or other crops, timber, or ornamental trees.⁷⁰ Such farming businesses are not precluded from using the cash method regardless of whether they meet the gross receipts test,⁷¹ so long as the use of such method clearly reflects income.⁷²

A qualified personal service corporation is a corporation: (1) substantially all of whose activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and (2) substantially all of the stock of which is owned by current or former employees performing such services, their estates, or heirs.⁷³ Qualified personal service corporations are allowed to use the cash

⁶⁵ Sec. 461; Treas. Reg. sec. 1.446-1(c)(1)(ii)(A).

⁶⁶ Sec. 448(a) and (d)(6).

⁶⁷ Sec. 448(b)(1).

⁶⁸ Sec. 448(b)(2).

⁶⁹ The gross receipts test is indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). Sec. 448(c)(4) and sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

⁷⁰ Secs. 263A(e)(4) and 448(d)(1).

⁷¹ While section 447 generally requires a farming C corporation (and a farming partnership with a C corporation partner) to use an accrual method of accounting, it does not apply to nursery or sod farms, to the raising or harvesting of trees (other than fruit and nut trees), or to farming C corporations (or farming partnerships with a C corporation partner) that satisfy the gross receipts test (\$29 million in 2023).

⁷² The cash method generally may not be used by taxpayers, other than those that meet the gross receipts test (\$29 million in 2023), if the purchase, production, or sale of merchandise is an income producing factor. Treas. Reg. secs. 1.446-1(c)(2) and 1.471-1.

⁷³ Sec. 448(d)(2).

method without regard to whether they meet the gross receipts test,⁷⁴ so long as the use of such method clearly reflects income.⁷⁵

3. Uniform capitalization of inventory costs

Accounting for inventories

In general, taxpayers must account for inventories if the production, purchase, or sale of merchandise is a material income-producing factor to the taxpayer.⁷⁶ Treasury regulations also provide that in any case in which it is necessary to use inventory, the accrual method must be used with regard to purchases and sales.⁷⁷ However, an exception is provided for taxpayers who satisfy the gross receipts test (\$29 million in 2023).⁷⁸ Such taxpayers may either (1) account for inventory as non-incidental materials supplies and deduct such expenditures when they are first used or consumed in the taxpayer's operations (for example, as a raw material input in the production process), or (2) use a method that conforms to the taxpayer's financial accounting treatment of inventories.⁷⁹

In those circumstances in which a taxpayer is required to account for inventory, the taxpayer must maintain inventory records to determine the cost of goods sold during the taxable period.⁸⁰ Cost of goods sold generally is determined by adding the taxpayer's inventory at the beginning of the period to the purchases made during the period and subtracting from that sum the taxpayer's inventory at the end of the period.⁸¹

Because of the difficulty of accounting for inventory on an item-by-item basis, taxpayers often use conventions that assume certain item or cost flows. Among these conventions are the first-in, first-out ("FIFO") method, which assumes that the items in ending inventory are those most recently acquired by the taxpayer,⁸² and the last-in, first-out ("LIFO") method, which

⁷⁴ Sec. 448(b)(2).

⁷⁵ The cash method generally may not be used by taxpayers, other than those that meet the gross receipts test (\$29 million in 2023), if the purchase, production, or sale of merchandise is an income producing factor. Treas. Reg. secs. 1.446-1(c)(2) and 1.471-1.

⁷⁶ Sec. 471(a); Treas. Reg. sec. 1.471-1.

⁷⁷ Treas. Reg. sec. 1.446-1(c)(2).

⁷⁸ Sec. 471(c). See also sec. 448(c)(4) and sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

⁷⁹ Sec. 471(c)(1)(B); Treas. Reg. secs. 1.162-3(a)(1) and 1.471-1.

⁸⁰ Treas. Reg. sec. 1.471-2(e).

⁸¹ Treas. Reg. sec. 1.471-2(d).

⁸² *Ibid.*

assumes that the items in ending inventory are those earliest acquired by the taxpayer.⁸³ Taxpayers that value their inventory using LIFO generally adopt a dollar-value LIFO method where they group goods and products into dollar-value pools or classes of items.⁸⁴ Eligible small business taxpayers with average gross receipts in the three prior taxable years of \$5 million or less may use an administratively easier simplified dollar-value LIFO method.⁸⁵

Capitalization and inclusion of certain expenses in inventory costs

In general

The uniform capitalization (“UNICAP”) rules require certain direct and indirect costs allocable to real or tangible personal property produced or acquired for resale by the taxpayer to be either included in inventory or capitalized into the basis of such property.⁸⁶ This generally includes the direct and indirect costs of producing property in a farming business, including animals and plants without regard to the length of their preproductive period (discussed further below).⁸⁷

Direct costs are the costs directly attributable to producing or acquiring a good for resale (*i.e.*, the materials and labor applied to produce a good or the acquisition costs of property acquired for resale).⁸⁸ Indirect costs are those costs tangentially related to producing a good (*e.g.*, overhead and administrative costs).⁸⁹ In determining whether indirect costs are allocable to production or resale activities, taxpayers are allowed to use various methods so long as the method employed reasonably allocates indirect costs to production and resale activities.⁹⁰

Section 263A provides a number of exceptions to UNICAP. One such exception exists for taxpayers that satisfy the gross receipts test (\$29 million in 2023).⁹¹ Such taxpayers are not required to include additional section 263A costs in inventory costs. Freelance authors, photographers, and artists also are exempt from UNICAP for any qualified creative expenses.⁹² Qualified creative expenses are amounts paid or incurred by an individual in the trade or

⁸³ Sec. 472; Treas. Reg. sec. 1.472-1.

⁸⁴ Treas. Reg. sec. 1.472-8.

⁸⁵ Sec. 474(a) and (c).

⁸⁶ Sec. 263A(b)(1) and (2).

⁸⁷ Treas. Reg. sec. 1.263A-4(b)(1).

⁸⁸ Treas. Reg. sec. 1.263A-1(e)(2).

⁸⁹ Treas. Reg. sec. 1.263A-1(e)(3).

⁹⁰ Treas. Reg. sec. 1.263A-1(f).

⁹¹ Sec. 263A(i). See also sec. 448(c)(4) and sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

⁹² Sec. 263A(h)(1).

business of being a writer, photographer, or artist.⁹³ However, such term does not include any expense related to printing, photographic plates, motion picture files, video tapes, or similar items.⁹⁴

Special rules for farmers

Section 263A provides several exceptions to UNICAP for farmers. Taxpayers who raise, harvest, or grow trees (other than trees bearing fruit, nuts, or other crops, or ornamental trees) are not subject to UNICAP on such trees and any real property underlying such trees.⁹⁵ Similarly, the UNICAP rules do not apply to any plant having a preproductive period of two years or less or to any animal, which is produced by a taxpayer in a farming business (unless the taxpayer is a C corporation, partnership with a C corporation partner, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3)).⁹⁶ Hence, the UNICAP rules generally apply to the production of plants that have a preproductive period of more than two years, and to taxpayers required to use an accrual method of accounting.

Plant farmers otherwise required to capitalize preproductive period costs may elect to deduct such costs currently, provided the alternative depreciation system described in section 168(g)(2) is used on all farm assets and the preproductive period costs are recaptured upon disposition of the product.⁹⁷ The election is not available to taxpayers required to use the accrual method of accounting.⁹⁸ Moreover, the election is not available with respect to certain costs attributable to planting, cultivating, maintaining, or developing citrus or almond groves.⁹⁹

Section 263A also does not apply to costs incurred in replanting edible crops for human consumption following loss or damage due to freezing temperatures, disease, drought, pests, or casualty.¹⁰⁰ The same type of crop as the lost or damaged crop must be replanted.¹⁰¹ However,

⁹³ Sec. 263A(h)(2).

⁹⁴ *Ibid.*

⁹⁵ Sec. 263A(c)(5).

⁹⁶ Sec. 263A(d).

⁹⁷ Secs. 263A(d)(3), (e)(1), and (e)(2).

⁹⁸ Sec. 263A(d)(3)(B).

⁹⁹ Sec. 263A(d)(3)(C).

¹⁰⁰ Sec. 263A(d)(2). Such replanting costs generally include costs attributable to the replanting, cultivating, maintaining, and developing of the plants that were lost or damaged that are incurred during the preproductive period. Treas. Reg. sec. 1.263A-4(e)(1). The acquisition costs of the replacement trees or seedlings must still be capitalized under section 263(a) (see, e.g., T.D. 8897, 65 FR 50638, Treas. Reg. sec. 1.263A-4(e)(3), Examples 1 - 3, and TAM 9547002 (July 18, 1995)), potentially subject to the special bonus depreciation deduction in the year of planting under section 168(k)(5).

¹⁰¹ Treas. Reg. sec. 1.263A-4(e)(1).

the exception to capitalization still applies if the replanting occurs on a parcel of land other than the land on which the damage occurred provided the acreage of the new land does not exceed that of the land to which the damage occurred and the new land is located in the United States.¹⁰² This exception may also apply to costs incurred by persons other than the taxpayer who incurred the loss or damage, provided (1) the taxpayer who incurred the loss or damage retains an equity interest of more than 50 percent in the property on which the loss or damage occurred at all times during the taxable year in which the replanting costs are paid or incurred, and (2) the person holding a minority equity interest and claiming the deduction materially participates in the planting, maintenance, cultivation, or development of the property during the taxable year in which the replanting costs are paid or incurred.¹⁰³

4. Accounting for long-term contracts

In general, taxable income from a long-term contract is determined under the percentage-of-completion method.¹⁰⁴ Under this method, the taxpayer must include in gross income for the taxable year an amount equal to the product of (1) the gross contract price and (2) the percentage of the contract completed during the taxable year.¹⁰⁵ The percentage of the contract completed during the taxable year is determined by comparing costs allocated to the contract and incurred before the end of the taxable year with the estimated total contract costs.¹⁰⁶ Costs allocated to the contract typically include all costs (including depreciation and research and experimental costs) that directly benefit or are incurred by reason of the taxpayer's long-term contract activities.¹⁰⁷ The allocation of costs to a contract is made in accordance with regulations.¹⁰⁸ Costs incurred with respect to the long-term contract are deductible in the year incurred, subject to general accrual method of accounting principles and limitations.¹⁰⁹

¹⁰² *Ibid.*

¹⁰³ Sec. 263A(d)(2)(B); Treas. Reg. sec. 1.263A-4(e)(2). Material participation for this purpose is determined in a similar manner as under section 2032A(e)(6) (relating to qualified use valuation of farm property upon death of the taxpayer).

¹⁰⁴ Sec. 460(a).

¹⁰⁵ Sec. 460(b)(1)(A); Treas. Reg. sec. 1.460-4(b). This calculation is done on a cumulative basis. Thus, the amount included in gross income in a particular year is that proportion of the expected contract price that the amount of costs incurred through the end of the taxable year bears to the total expected costs, reduced by the amounts of gross contract price included in gross income in previous taxable years.

¹⁰⁶ *Ibid.*

¹⁰⁷ Sec. 460(c).

¹⁰⁸ Treas. Reg. sec. 1.460-5.

¹⁰⁹ Treas. Reg. secs. 1.460-4(b)(2)(iv) and 1.460-1(b)(8).

Exceptions from the requirement to use the percentage-of-completion method are provided for any home construction contract¹¹⁰ or certain small construction contracts (“small construction contracts”). Small construction contracts include contracts for the construction or improvement of real property if the contract: (1) is expected (at the time such contract is entered into) to be completed within two years of commencement of the contract, and (2) is performed by a taxpayer that meets the gross receipts test (*i.e.*, \$29 million in 2023) for the taxable year in which the contract is entered into.¹¹¹ Thus, taxable income from home construction or small construction contracts must be reported consistently using the taxpayer’s exempt contract method. Permissible exempt contract methods include the completed contract method, the exempt-contract percentage-of-completion method, the percentage-of-completion method, or any other permissible method.¹¹² In general, the completed contract method is more favorable to taxpayers as it allows for income deferral until the contract is complete.¹¹³

¹¹⁰ Sec. 460(e)(1)(A). A home construction contract is any construction contract if 80 percent or more of the estimated total contract costs (as of the close of the taxable year in which the contract was entered into) are reasonably expected to be attributable to dwelling units contained in buildings containing four or fewer dwelling units, and improvements to real property directly related to such dwelling units. See sec. 460(e)(5)(A). Each townhouse or rowhouse is treated as a separate building for this purpose. See also Treas. Reg. sec. 1.460-3(b)(2).

¹¹¹ Sec. 460(e)(1)(B) and (e)(4); Treas. Reg. sec. 1.460-3(b). See also sec. 448(c)(4) and sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445. The exception for small construction contracts does not apply to a tax shelter prohibited from using the cash method of accounting under section 448(a).

¹¹² Treas. Reg. sec. 1.460-4(c)(1).

¹¹³ Treas. Reg. sec. 1.460-4(d)(1).

D. Start-Up and Organizational Expenditures

In the taxable year in which a taxpayer begins an active trade or business, the taxpayer may elect to deduct up to \$5,000 of start-up expenditures.¹¹⁴ In addition, a taxpayer that is a corporation or a partnership may separately elect to deduct up to \$5,000 of organizational expenditures in the taxable year in which the active trade or business begins.¹¹⁵ In each case, however, the \$5,000 amount is reduced (but not below zero) by the amount by which the cumulative cost of start-up expenditures (in the case of section 195) or organizational expenditures (in the case of sections 248 and 709) exceeds \$50,000.¹¹⁶ Any remaining start-up expenditures or organizational expenditures may be amortized ratably over a period of not less than 180 months, beginning with the month in which the active trade or business begins.¹¹⁷ A taxpayer is deemed to make an election to deduct and amortize start-up or organizational expenditures for the applicable taxable year, unless the taxpayer affirmatively elects to capitalize such amounts on a timely-filed (including extensions) Federal income tax return.¹¹⁸ Capitalized amounts are recovered when the business is sold, exchanged, or otherwise disposed of before the end of the 180-month amortization period.¹¹⁹

Start-up expenditures are amounts that would have been deductible as trade or business expenses had they not been paid or incurred before business began.¹²⁰ Organizational expenditures are expenditures that are incident to the creation of a corporation or the organization of a partnership, are chargeable to capital, and that would be eligible for amortization had they been paid or incurred in connection with the organization of a corporation or partnership with a limited or ascertainable life.¹²¹

¹¹⁴ Sec. 195(b)(1)(A).

¹¹⁵ Secs. 248(a)(1) and 709(b)(1)(A).

¹¹⁶ Secs. 195(b)(1)(A)(ii), 248(a)(1)(B) and 709(b)(1)(A)(ii). However, for taxable years beginning in 2010, the Small Business Jobs Act of 2010, Pub. L. No. 111-240, increased the amount of start-up expenditures a taxpayer could elect to deduct to \$10,000, with a phase-out threshold of \$60,000. Sec. 195(b)(3).

¹¹⁷ Secs. 195(b)(1)(B), 248(a)(2), and 709(b)(1)(B).

¹¹⁸ Treas. Reg. secs. 1.195-1(b), 1.248-1(c), and 1.709-1(b)(2).

¹¹⁹ Secs. 195(b)(2) and 709(b)(2). See also Treas. Reg. sec. 1.709-1(b)(3) and *Kingsford Co. v. Commissioner*, 41 T.C. 646 (1964).

¹²⁰ Sec. 195(c)(1).

¹²¹ Secs. 248(b) and 709(b)(3).

E. Expensing Depreciable Business Assets

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization.¹²² The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer.¹²³ Tangible property generally is depreciated under the modified accelerated cost recovery system (“MACRS”), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.¹²⁴

Election to expense certain depreciable business assets

Subject to certain limitations, a taxpayer may elect under section 179 to deduct (or “expense”) the cost of qualifying property, rather than to recover such costs through depreciation deductions.¹²⁵ The maximum amount a taxpayer may expense is \$1 million of the cost of qualifying property placed in service for the taxable year.¹²⁶ The \$1 million amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2.5 million.¹²⁷

The \$1 million and \$2.5 million amounts are indexed for inflation for taxable years beginning after 2018.¹²⁸ For taxable years beginning in 2023, the total amount that may be expensed is \$1.16 million, and the phase-out threshold amount is \$2.89 million.¹²⁹ For example, assume that during 2023 a calendar year taxpayer purchases and places in service \$4 million of section 179 property. The \$1.16 million section 179(b)(1) dollar amount for 2023 is reduced by

¹²² See secs. 263(a) and 167. In general, only the tax owner of property (*i.e.*, the taxpayer with the benefits and burdens of ownership) is entitled to claim tax benefits such as cost recovery deductions with respect to the property. In addition, where property is not used exclusively in a taxpayer’s business, the amount eligible for a deduction must be reduced by the amount related to personal use. See, *e.g.*, sec. 280A.

¹²³ See Treas. Reg. secs. 1.167(a)-10(b), -3, -14, and 1.197-2(f). See also Treas. Reg. sec. 1.167(a)-11(e)(1)(i).

¹²⁴ Sec. 168.

¹²⁵ In the case of property purchased and placed in service by a partnership (or S corporation), the determination of whether the property is section 179 property is made at the partnership (or corporate) level, and the election to expense is made by the partnership (or S corporation). Treas. Reg. sec. 1.179-1(h).

¹²⁶ Sec. 179(b)(1).

¹²⁷ Sec. 179(b)(2).

¹²⁸ Sec. 179(b)(6).

¹²⁹ Section 3.25 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

the excess section 179 property cost amount of \$1.11 million (\$4 million – \$2.89 million). The taxpayer’s 2023 section 179 expensing limitation is \$50,000 (\$1.16 million – \$1.11 million).¹³⁰

In general, qualifying property is defined as depreciable tangible personal property, off-the-shelf computer software, and qualified real property¹³¹ that is purchased for use in the active conduct of a trade or business.¹³² Qualifying property excludes any property described in section 50(b) (other than paragraph (2) thereof¹³³).¹³⁴

Qualified real property includes (1) qualified improvement property¹³⁵ and (2) any of the following improvements to nonresidential real property that are placed in service by the taxpayer after the date such nonresidential real property was first placed in service: roofs; heating, ventilation, and air-conditioning (“HVAC”) property;¹³⁶ fire protection and alarm systems; and security systems.¹³⁷

Passenger automobiles subject to the section 280F limitation are eligible for section 179 expensing only to the extent of the dollar limitations in section 280F.¹³⁸ For sport utility vehicles above the 6,000 pound weight rating and not more than the 14,000 pound weight rating, which are not subject to the limitation under section 280F, the maximum cost that may be expensed for

¹³⁰ The taxpayer’s remaining basis in the property may be eligible for bonus depreciation under section 168(k). See Treas. Reg. sec. 1.168(k)-1(a)(2)(iii).

¹³¹ At the election of the taxpayer. Sec. 179(d)(1)(B)(ii). See sec. 3.02 of Rev. Proc. 2019-08, 2019-03 I.R.B. 347, for guidance regarding the election to treat qualified real property as section 179 property.

¹³² Sec. 179(d)(1). If section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the end of its recovery period, recapture rules apply. See sec. 179(d)(10) and Treas. Reg. sec. 1.179-1(e).

¹³³ Thus, section 179 property includes certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging (e.g., beds and other furniture, refrigerators, ranges, and other equipment used in the living quarters of a lodging facility such as an apartment house, dormitory, or any other facility (or part of a facility) where sleeping accommodations are provided and let). See Treas. Reg. sec. 1.48-1(h).

¹³⁴ Sec. 179(d)(1) flush language. Property described in section 50(b) (other than paragraph (2) thereof) is generally property used outside the United States, property used by certain tax-exempt organizations, and property used by governmental units and foreign persons or entities (i.e., certain property not eligible for the investment tax credit).

¹³⁵ As defined in sec. 168(e)(6).

¹³⁶ HVAC property includes all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system, including motors, compressors, pipes and ducts. Treas. Reg. sec. 1.48-1(e)(2). See also sec. 3.01(1)(b)(iii)(B) of Rev. Proc. 2019-08, 2019-03 I.R.B. 347.

¹³⁷ Sec. 179(e).

¹³⁸ For a description of section 280F, see Joint Committee on Taxation, *General Explanation of Public Law 115-97* (JCS-1-18), December 2018, pp. 128-130. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

any taxable year under section 179 is \$25,000 (the “sport utility vehicle limitation”).¹³⁹ The \$25,000 amount is indexed for inflation for taxable years beginning after 2018. For taxable years beginning in 2023, the sport utility vehicle limitation is \$28,900.¹⁴⁰

The amount eligible to be expensed for a taxable year may not exceed the taxable income for such taxable year that is derived from the active conduct of a trade or business (determined without regard to section 179).¹⁴¹ Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to limitations). In the case of a partnership (or S corporation), the section 179 limitations are applied at the partnership (or corporate) and partner (or shareholder) levels.¹⁴²

Amounts expensed under section 179 are allowed for both regular tax and the alternative minimum tax.¹⁴³ However, no general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.¹⁴⁴ In addition, if a corporation makes an election under section 179 to deduct expenditures, the full amount of the deduction does not reduce earnings and profits. Rather, the expenditures that are deducted under section 179 reduce corporate earnings and profits ratably over a five-year period.¹⁴⁵

¹³⁹ Sec. 179(b)(5). For this purpose, a sport utility vehicle is defined to exclude any vehicle that: (1) is designed for more than nine individuals in seating rearward of the driver’s seat; (2) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least six feet in interior length; or (3) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

¹⁴⁰ Section 3.25 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.

¹⁴¹ Sec. 179(b)(3). See also Treas. Reg. sec. 1.179-2(c)(6)(iv) (wages, salaries, tips, and other compensation received by a taxpayer as an employee are included in the taxpayer’s aggregate amount of taxable income derived from the active conduct of a trade or business).

¹⁴² Sec. 179(d)(8). See also Treas. Reg. sec. 1.179-2(b)(2) and (3), and (c)(2) and (3).

¹⁴³ See the Senate Finance Committee Report to Accompany H.R. 3838, Tax Reform Act of 1986, S. Rep. No. 99-313, May 29, 1985, p. 522. See also the Instructions for Form 6251, *Alternative Minimum Tax - Individuals* (2022), p. 5.

¹⁴⁴ Sec. 179(d)(9).

¹⁴⁵ Sec. 312(k)(3)(B).

An expensing election is made under rules prescribed by the Secretary.¹⁴⁶ In general, any election made under section 179, and any specification contained therein, may be revoked by the taxpayer with respect to any property without the consent of the Commissioner.¹⁴⁷ Such revocation, once made, is irrevocable.

¹⁴⁶ Sec. 179(c)(1). Such election may be made on an amended return. See sec. 3.02 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236; and sec. 3.02 of Rev. Proc. 2019-08, 2019-03 I.R.B. 347.

¹⁴⁷ Sec. 179(c)(2).

F. Small Business Research Credit Provisions

Research credit

General rule

A taxpayer may generally claim a research credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a taxable year exceed its base amount for that year (the "research credit").¹⁴⁸ Thus, the research credit is generally available with respect to incremental increases in qualified research. An alternative simplified credit (with a 14-percent rate and a different base amount) may be claimed in lieu of this credit.¹⁴⁹

A 20-percent research credit also is available with respect to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.¹⁵⁰ This separate credit computation commonly is referred to as the "basic research credit."

Finally, a 20-percent research credit is available for a taxpayer's expenditures on research undertaken by an energy research consortium for energy research.¹⁵¹ This separate credit computation commonly is referred to as the "energy research credit." Unlike the other research credits, the energy research credit applies to all qualified expenditures, not just those in excess of a base amount.

Relation to amortization deduction

If a taxpayer's research credit under section 41 for a taxable year beginning after 2021 exceeds the amount allowed as an amortization deduction under section 174 for such taxable year, the amount chargeable to capital account under section 174 for such taxable year must be reduced by that excess amount.¹⁵² A taxpayer may alternatively elect to claim a reduced research credit amount under section 41 in lieu of reducing its section 174 expenditures for the

¹⁴⁸ Sec. 41(a)(1).

¹⁴⁹ Sec. 41(c)(4).

¹⁵⁰ Sec. 41(a)(2) and (e). The base period for the basic research credit generally extends from 1981 through 1983.

¹⁵¹ Sec. 41(a)(3).

¹⁵² Sec. 280C(c)(1).

taxable year.¹⁵³ If such an election is made, the research credit is reduced by an amount equal to that credit multiplied by the highest corporate tax rate.¹⁵⁴

Research credit allowed against alternative minimum tax for eligible small businesses

In the case of an eligible small business,¹⁵⁵ the research credit determined under section 41 is a specified credit. Thus, the research credits of an eligible small business may offset both regular tax and alternative minimum tax liabilities. For this purpose, an eligible small business is, with respect to any taxable year, a corporation the stock of which was not publicly traded,¹⁵⁶ a partnership, or a sole proprietor,¹⁵⁷ if the average annual gross receipts does not exceed \$50 million.¹⁵⁸ A research credit determined with respect to a partnership or S corporation is not treated as a specified credit by a partner or shareholder unless the partner or shareholder meets the gross receipts test for the taxable year in which the research credit is treated as a current year business credit.¹⁵⁹

Payroll tax credit for qualified small businesses

FICA taxes

The Federal Insurance Contributions Act (“FICA”) imposes tax on employers and employees based on the amount of wages (as defined for FICA purposes) paid to an employee during the year, often referred to as “payroll” taxes.¹⁶⁰ The tax imposed on the employer and on the employee is each composed of two parts: (1) the Social Security or old age, survivors, and disability insurance (“OASDI”) tax equal to 6.2 percent of covered wages up to the taxable wage base (\$160,200 for 2023); and (2) the Medicare or hospital insurance (“HI”) tax equal to 1.45

¹⁵³ Sec. 280C(c)(2).

¹⁵⁴ Sec. 280C(c)(2)(B).

¹⁵⁵ Defined in section 38(c)(5)(A), after application of the rules of section 38(c)(5)(B).

¹⁵⁶ Large C corporations meeting certain requirements (“applicable corporations”) are subject to an alternative minimum tax that is based on adjusted financial statement income (“AFSI”). Secs. 55(b)(2)(A) and 56A. Generally, an applicable corporation is a corporation that exceeds \$1 billion in average annual AFSI in a taxable year ending after December 31, 2022. Sec. 59(k). Corporations that are not applicable corporations are not subject to the corporate alternative minimum tax. Sec. 55(b)(2)(B).

¹⁵⁷ An alternative minimum tax is imposed on an individual, estate, or trust in an amount by which the tentative minimum tax exceeds the regular income tax for the taxable year. Sec. 55. For a description of the alternative minimum tax applicable to noncorporate taxpayers, see Joint Committee on Taxation, *Overview of the Federal Tax System as in Effect for 2023* (JCX-9-23), May 11, 2023. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

¹⁵⁸ Sec. 38(c)(5)(A).

¹⁵⁹ Sec. 38(c)(5)(B).

¹⁶⁰ Secs. 3101-3128.

percent of all covered wages.¹⁶¹ The employee portion of the FICA tax generally must be withheld and remitted to the Federal government by the employer.

An employer generally files quarterly employment tax returns showing its liability for FICA taxes with respect to its employees' wages for the quarter, as well as the employee FICA taxes and income taxes withheld from the employees' wages.

Payroll tax credit

A qualified small business may elect for any taxable year to claim a certain amount of its research credit as a payroll tax credit against its employer OASDI liability, rather than against its income tax liability (the "payroll tax credit").¹⁶² If a taxpayer makes an election, the amount so elected is treated as a research credit for purposes of section 280C.¹⁶³

A qualified small business is defined, with respect to any taxable year, as a corporation (including an S corporation) or partnership (1) with gross receipts of less than \$5 million for the taxable year,¹⁶⁴ and (2) that did not have gross receipts for any taxable year before the five taxable year period ending with the taxable year. An individual carrying on one or more trades or businesses also may be considered a qualified small business if the individual meets the conditions set forth in (1) and (2), taking into account its aggregate gross receipts received with respect to all trades or businesses. A qualified small business does not include an organization exempt from income tax under section 501.

Public Law 117-169¹⁶⁵ modified the payroll tax credit for qualified small businesses for taxable years beginning after December 31, 2022. Sections 41(h) and 3111(f) as applicable to taxable years beginning before January 1, 2023, are described first below, followed by a description of such sections as applicable to taxable years beginning after December 31, 2022.

¹⁶¹ The employee portion of the HI tax under FICA (not the employer portion) is increased by an additional tax of 0.9 percent on wages received in excess of a threshold amount. The threshold amount is \$250,000 in the case of a joint return, \$125,000 in the case of a married individual filing a separate return, and \$200,000 in any other case.

¹⁶² Sec. 41(h), enacted by the Protecting Americans from Tax Hikes Act of 2015, Div. Q of Pub. L. No. 114-113 (December 18, 2015), effective for taxable years beginning after December 31, 2015.

¹⁶³ Thus, taxpayers either reduce their section 174 expenditures by the amount by which the research credit for the taxable year exceeds the section 174 amortization deduction for the taxable year, or elect a reduced research credit amount. The election is not taken into account for purposes of determining any amount allowable as a payroll tax deduction.

¹⁶⁴ For this purpose, gross receipts are determined under the rules of section 448(c)(3), without regard to subparagraph (A) thereof.

¹⁶⁵ Enacted August 16, 2022.

Taxable years beginning after December 31, 2015, and before January 1, 2023

For taxable years beginning after December 31, 2015, and before January 1, 2023, the payroll tax credit is the least of (1) an amount specified by the taxpayer that does not exceed \$250,000, (2) the research credit determined for the taxable year, or (3) in the case of a qualified small business other than a partnership or S corporation, the amount of the business credit carryforward under section 39 from the taxable year (determined before the application of this rule to the taxable year).¹⁶⁶

All members of the same controlled group or group under common control are treated as a single taxpayer.¹⁶⁷ The \$250,000 amount is allocated among the members in proportion to each member's expenses on which the research credit is based. Each member may separately elect the payroll tax credit, but not in excess of its allocated dollar amount.

A taxpayer may make an annual election under this section,¹⁶⁸ specifying the amount of its research credit not to exceed \$250,000 that may be used as a payroll tax credit, on or before the due date (including extensions) of its originally filed return.¹⁶⁹ A taxpayer may not make an election for a taxable year if it has made such an election for five or more preceding taxable years. An election to apply the research credit against OASDI liability may not be revoked without the consent of the Secretary. In the case of a partnership or S corporation, an election to apply the credit against its OASDI liability is made at the entity level.

The payroll tax portion of the research credit is allowed as a credit against the qualified small business's employer OASDI tax liability for the first calendar quarter beginning after the date on which the qualified small business files its income tax or information return for the taxable year.¹⁷⁰ The credit may not exceed the OASDI tax liability for a calendar quarter on the wages paid with respect to all employees of the qualified small business.¹⁷¹

¹⁶⁶ Sec. 41(h), prior to amendment by Pub. L. No. 117-169.

¹⁶⁷ For this purpose, all persons or entities treated as a single taxpayer under section 41(f)(1) are treated as a single person.

¹⁶⁸ See IRS Notice 2017-23, 2017-16 I.R.B. 1100, and IRS Form 6765, *Credit for Increasing Activities*, for guidance on making the election.

¹⁶⁹ In the case of a qualified small business that is a partnership, this is the return required to be filed under section 6031. In the case of a qualified small business that is an S corporation, this is the return required to be filed under section 6037. In the case of any other qualified small business, this is the return of tax for the taxable year.

¹⁷⁰ Sec. 3111(f)(1), prior to amendment by Pub. L. No. 117-169. See also IRS Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*, which must be completed and attached to the employment tax return.

¹⁷¹ Sec. 3111(f)(2), prior to amendment by Pub. L. No. 117-169. The credit does not apply against its employer HI liability or against the employee portion of FICA taxes the employer is required to withhold and remit to the government.

If the payroll tax portion of the credit exceeds the qualified small business's OASDI tax liability for a calendar quarter, the excess is allowed as a credit against the OASDI liability for the following calendar quarter.¹⁷²

Taxable years beginning after December 31, 2022

The amount of the research credit that a qualified small business may elect for any taxable year to claim against its payroll tax liability, rather than against its income tax liability, increased from \$250,000 to \$500,000 for taxable years beginning after December 31, 2022.¹⁷³ Thus, the payroll tax credit is the least of (1) an amount specified by the taxpayer that does not exceed \$500,000,¹⁷⁴ (2) the research credit determined for the taxable year, or (3) in the case of a qualified small business other than a partnership or S corporation, the amount of the business credit carryforward under section 39 from the taxable year (determined before the application of this rule to the taxable year).

As applicable to taxable years beginning before January 1, 2023, the payroll tax credit that is allowed against the qualified small business's employer OASDI tax liability for the applicable calendar quarter may not exceed \$250,000.¹⁷⁵ For taxable years beginning after December 31, 2022, the additional \$250,000 amount is allowed as a credit against the taxpayer's HI tax liability for the applicable calendar quarter.¹⁷⁶ Thus, a taxpayer may claim up to \$250,000 of its payroll tax credit against its employer OASDI liability, and any remaining amount of such credit against its employer HI liability, for the applicable calendar quarter.

In the case of members of the same controlled group or group under common control treated as a single taxpayer for purposes of section 41(h), each \$250,000 election limitation amount is allocated among members in proportion to each member's expenses on which the research credit is based.¹⁷⁷

¹⁷² Sec. 3111(f)(3), prior to amendment by Pub. L. No. 117-169.

¹⁷³ Sec. 41(h)(4)(B)(i)(II).

¹⁷⁴ Sec. 41(h)(4)(B)(i).

¹⁷⁵ Secs. 41(h)(4)(B)(i)(I) and 3111(f)(1)(A) and (f)(2).

¹⁷⁶ Secs. 41(h)(4)(B)(i)(II) and 3111(f)(1)(B) and (f)(2).

¹⁷⁷ Sec. 41(h)(5)(B)(ii).

If the payroll tax credit exceeds the qualified small business's employer share of the OASDI and HI tax liabilities for a calendar quarter, the excess is allowed as a credit against such taxpayer's employer share of OASDI and HI tax liabilities for the following calendar quarter (*i.e.*, the payroll tax credit is not refundable if it exceeds the taxpayer's employer share of the OASDI and HI tax liabilities for a calendar quarter, but such excess may be carried forward and applied against such liabilities in succeeding calendar quarters).¹⁷⁸

¹⁷⁸ Sec. 3111(f)(3).

II. DATA RELATING TO SMALL BUSINESSES

Size distribution of business entities

Present law does not impose a limit on the size of a business that is conducted in the form of a sole proprietorship, a partnership, an S corporation, or a C corporation, and there is no legal requirement of any correspondence between the size of the business and the form of business organization. While many small businesses are organized as sole proprietorships, partnerships, or S corporations, not all businesses organized in these forms are small, and not all businesses organized as C corporations are large. IRS Statistics of Income (“SOI”) data on assets and total receipts show how small businesses (under a chosen definition) are arrayed across the different forms of organization.

Tables 1 through 5 display 2019 SOI data on C corporations, S corporations, entities taxed as partnerships (which includes most LLCs), nonfarm sole proprietorships, and farm sole proprietorships. For the first three forms of organization, the tables classify all taxpayers by the size of assets and total receipts.¹⁷⁹ For sole proprietorships (Table 4) and farm sole proprietorships (Table 5), there is no tax data on assets, so the tables use only total receipts as a classifier. When businesses are classified by asset size, one can see that there are a significant number of C corporations of small size. More than 688,000 C corporations have assets under \$50,000, approximately 45 percent of the total number of C corporations. Approximately one-half of S corporations have assets under \$50,000.

The concentration of assets differs among the three entity forms. C corporations have the largest disparity in asset holdings. Firms with over \$100 million in assets, which represent approximately 1.6 percent of all C corporations, hold more than 97 percent of all assets owned by C corporations. By comparison, S corporations with \$100 million or more in assets constitute only 0.1 percent of all S corporations and account for nearly 39 percent of all assets owned by S corporations. Partnerships with \$100 million or more in assets constitute 1.98 percent of all entities classified for tax purposes as partnerships; these businesses own more than 77 percent of all assets owned by partnerships.

When businesses are classified by total receipts, a picture emerges that is similar to that seen in the asset data. There are a substantial number of relatively small C corporations: more than 415,000 C corporations report total receipts of \$25,000 or less, approximately 27 percent of the total number of C corporations. A slightly smaller percentage of S corporations also report total receipts of \$25,000 or less. However, across the other forms of organization there are higher percentages of businesses with small amounts of total receipts. For partnerships and

¹⁷⁹ Total receipts are used in lieu of business receipts to classify statistics for finance and insurance and management of companies (holding companies) sectors. Total receipts may be negative due to the addition of negative items (e.g., net capital losses) to business receipts. Total assets may also be negative if, for example, balance sheet assets reflect depreciation of assets held in a lower tier partnership. This could occur if the balance sheet were prepared using tax accounting rather than generally accepted accounting principles. For example, a partnership may hold an interest in a lower tier partnership that in turn holds leveraged assets that have been depreciated for Federal tax purposes. The depreciated basis of the assets may be less than debt encumbering the assets. In some cases this could be reflected as a negative asset value for the underlying partnership interest.

nonfarm sole proprietorships, the percentages of businesses with total receipts of \$25,000 or less are approximately 72 percent and 68 percent, respectively.

As with assets, the dispersion of total receipts across the classifications is more skewed for C corporations and partnerships than for S corporations. C corporations with over \$50 million in receipts, which represent approximately 1.45 percent of all C corporations, collect over 91 percent of total receipts of all C corporations. For partnerships, the approximately 0.33 percent of partnerships with total receipts over \$50 million report over 67 percent of all partnership receipts. For S corporations, the 0.42 percent of S corporations with total receipts in excess of \$50 million report almost 39 percent of all S corporation receipts. For nonfarm sole proprietorships, less than 0.002 percent of such businesses report total receipts in excess of \$50 million, and these businesses report less than five percent of all nonfarm sole proprietorship receipts.

Table 1.—Distribution of C Corporations by Asset Amounts and Total Receipts, 2019

Firms classified by assets	Number of Returns	Total Assets (millions)	Cumulative Percent	
			Returns	Total Assets
\$0 or less	329,996	0	21.52%	0.00%
\$1 to \$25,000	253,591	1,749	38.06%	0.00%
\$25,001 to \$50,000	104,978	3,477	44.90%	0.00%
\$50,001 to \$100,000	124,339	8,270	53.01%	0.01%
\$100,001 to \$250,000	183,565	28,494	64.98%	0.04%
\$250,001 to \$500,000	140,451	49,984	74.14%	0.08%
\$500,001 to \$1,000,000	123,538	88,233	82.20%	0.16%
\$1,000,001 to \$10,000,000	199,465	609,068	95.21%	0.72%
\$10,000,001 to \$50,000,000	39,745	875,587	97.80%	1.51%
\$50,000,001 to \$100,000,000	9,177	650,262	98.40%	2.10%
More than \$100,000,000	24,550	107,856,750	100.00%	100.00%
All Assets	1,533,396	110,171,875		
Cumulative Percent				
Firms classified by receipts	Number of Returns	Total Receipts (millions)	Returns	Total Receipts
\$0 or less	239,554	-4,705	15.62%	-0.02%
\$1 to \$2,500	44,396	43	18.52%	-0.02%
\$2,501 to \$5,000	21,827	83	19.94%	-0.02%
\$5,001 to \$10,000	32,034	241	22.03%	-0.02%
\$10,001 to \$25,000	79,983	1,388	27.25%	-0.01%
\$25,001 to \$50,000	99,220	3,606	33.72%	0.00%
\$50,001 to \$100,000	142,961	10,433	43.04%	0.04%
\$100,001 to \$250,000	213,825	35,888	56.98%	0.18%
\$250,001 to \$500,000	173,254	61,840	68.28%	0.42%
\$500,001 to \$1,000,000	153,493	108,795	78.29%	0.85%
\$1,000,001 to \$10,000,000	261,862	817,405	95.37%	4.03%
\$10,000,001 to \$50,000,000	48,823	1,037,717	98.55%	8.08%
More than \$50,000,000	22,164	23,587,214	100.00%	100.00%
All Receipts	1,533,396	25,659,947		

* Details may not add to totals due to rounding.
Source: JCT staff calculations using SOI data.

Table 2.–Distribution of S Corporations by Asset Amounts and Total Receipts, 2019

Firms classified by assets	Number of Returns	Total Assets (millions)	Cumulative Percent	
			Returns	Total Assets
\$0 or less	1,027,716	0	20.80%	0.00%
\$1 to \$25,000	1,043,449	7,861	41.92%	0.17%
\$25,001 to \$50,000	445,911	15,125	50.95%	0.49%
\$50,001 to \$100,000	538,107	36,554	61.84%	1.28%
\$100,001 to \$250,000	687,963	107,760	75.77%	3.58%
\$250,001 to \$500,000	444,934	160,226	84.77%	7.02%
\$500,001 to \$1,000,000	319,219	225,155	91.23%	11.84%
\$1,000,001 to \$10,000,000	377,579	1,060,126	98.88%	34.55%
\$10,000,001 to \$50,000,000	45,715	912,540	99.80%	54.09%
\$50,000,001 to \$100,000,000	5,002	347,061	99.90%	61.53%
More than \$100,000,000	4,757	1,796,138	100.00%	100.00%
All Assets	4,940,351	4,668,546		
Cumulative Percent				
Firms classified by receipts	Number of Returns	Total Receipts (millions)	Returns	Total Receipts
\$0 or less	625,212	-9,312	12.66%	-0.11%
\$1 to \$2,500	102,834	108	14.74%	-0.11%
\$2,501 to \$5,000	61,181	229	15.98%	-0.11%
\$5,001 to \$10,000	88,094	654	17.76%	-0.10%
\$10,001 to \$25,000	203,745	3,407	21.88%	-0.06%
\$25,001 to \$50,000	273,578	10,128	27.42%	0.06%
\$50,001 to \$100,000	479,525	35,375	37.13%	0.48%
\$100,001 to \$250,000	880,010	146,609	54.94%	2.22%
\$250,001 to \$500,000	674,772	243,210	68.60%	5.11%
\$500,001 to \$1,000,000	593,887	421,576	80.62%	10.11%
\$1,000,001 to \$10,000,000	840,379	2,334,191	97.63%	37.81%
\$10,000,001 to \$50,000,000	96,520	1,957,006	99.58%	61.03%
More than \$50,000,000	20,613	3,283,747	100.00%	100.00%
All Receipts	4,940,351	8,426,929		

* Details may not add to totals due to rounding.
Source: JCT staff calculations using SOI data.

Table 3.–Distribution of Partnerships by Asset Amounts and Total Receipts, 2019

Firms classified by assets	Number of Returns	Total Assets (millions)	Cumulative Percent	
			Returns	Total Assets
\$0 or less	1,000,698	-101,408	26.19%	-0.28%
\$1 to \$25,000	319,958	2,592	34.56%	-0.27%
\$25,001 to \$50,000	142,237	5,101	38.28%	-0.26%
\$50,001 to \$100,000	189,429	13,693	43.24%	-0.22%
\$100,001 to \$250,000	380,471	63,092	53.19%	-0.05%
\$250,001 to \$500,000	376,026	136,291	63.03%	0.33%
\$500,001 to \$1,000,000	362,891	261,099	72.53%	1.06%
\$1,000,001 to \$10,000,000	826,702	2,582,246	94.16%	8.22%
\$10,000,001 to \$50,000,000	158,788	3,363,306	98.32%	17.55%
\$50,000,001 to \$100,000,000	26,676	1,860,188	99.02%	22.71%
More than \$100,000,000	37,594	27,862,125	100.00%	100.00%
All Assets	3,821,470	36,048,324		
Cumulative Percent				
Firms classified by receipts	Number of Returns	Total Receipts (millions)	Returns	Total Receipts
\$0 or less	2,448,408	0	64.07%	0.00%
\$1 to \$2,500	63,883	63	65.74%	0.00%
\$2,501 to \$5,000	33,560	127	66.62%	0.00%
\$5,001 to \$10,000	66,689	496	68.36%	0.01%
\$10,001 to \$25,000	124,264	2,050	71.62%	0.05%
\$25,001 to \$50,000	124,407	4,569	74.87%	0.13%
\$50,001 to \$100,000	131,997	9,303	78.33%	0.30%
\$100,001 to \$250,000	223,751	37,756	84.18%	0.99%
\$250,001 to \$500,000	163,187	57,721	88.45%	2.03%
\$500,001 to \$1,000,000	146,094	103,309	92.27%	3.91%
\$1,000,001 to \$10,000,000	243,017	732,681	98.63%	17.20%
\$10,000,001 to \$50,000,000	39,647	828,982	99.67%	32.24%
More than \$50,000,000	12,566	3,734,360	100.00%	100.00%
All Receipts	3,821,470	5,511,417		

* Details may not add to totals due to rounding.
Source: JCT staff calculations using SOI data.

Table 4.—Distribution of Nonfarm Sole Proprietorships by Total Receipts, 2019

Firms classified by receipts	Number of Returns	Total Receipts (millions)	Returns	Total Receipts
\$0 or less	1,552,583	0	5.58%	0.00%
\$1 to \$2,500	5,423,188	6,376	25.08%	0.39%
\$2,501 to \$5,000	2,942,891	10,788	35.66%	1.06%
\$5,001 to \$10,000	3,374,867	24,659	47.79%	2.57%
\$10,001 to \$25,000	5,587,902	91,623	67.88%	8.21%
\$25,001 to \$50,000	3,510,547	124,996	80.50%	15.89%
\$50,001 to \$100,000	2,532,649	177,984	89.60%	26.84%
\$100,001 to \$250,000	1,796,177	277,107	96.06%	43.88%
\$250,001 to \$500,000	632,795	218,195	98.33%	57.30%
\$500,001 to \$1,000,000	286,167	196,345	99.36%	69.38%
\$1,000,001 to \$10,000,000	172,712	365,927	99.98%	91.88%
\$10,000,001 to \$50,000,000	4,299	75,566	100.00% ¹	96.53%
More than \$50,000,000	412	56,397	100.00%	100.00%
All Receipts	27,817,189	1,625,961		

* Details may not add to totals due to rounding.

¹ The actual figure is 99.9985 percent which rounds to 100.00 percent.

Source: JCT calculations using SOI data.

Table 5.—Distribution of Farm Sole Proprietorships by Gross Income, 2019

Farms classified by gross income	Number of Returns	Gross Income (millions)	Cumulative Percent	
			Returns	Gross Income
\$0 or less	279,725	-151	15.91%	-0.10%
\$1 to \$2,500	367,037	414	36.79%	0.17%
\$2,501 to \$5,000	170,152	636	46.47%	0.59%
\$5,001 to \$10,000	193,043	1,356	57.46%	1.47%
\$10,001 to \$25,000	218,190	3,559	69.87%	3.80%
\$25,001 to \$50,000	145,723	5,150	78.16%	7.16%
\$50,001 to \$100,000	111,397	7,775	84.49%	12.24%
\$100,001 to \$250,000	129,506	21,057	91.86%	26.00%
\$250,001 to \$500,000	74,477	26,381	96.10%	43.23%
\$500,001 to \$1,000,000	42,844	29,916	98.54%	62.77%
\$1,000,001 to \$5,000,000	24,567	42,193	99.93%	90.33%
\$5,000,001 to \$10,000,000	746	5,067	99.98%	93.64%
\$10,000,001 to \$15,000,000	190	2,310	99.99%	95.15%
\$15,000,001 to \$25,000,000	129	2,512	99.99%	96.79%
\$25,000,001 to \$50,000,000	71	2,499	100.00% ¹	98.42%
More than \$50,000,000	26	2,415	100.00%	100.00%
All Receipts	1,757,822	153,090		

* Details may not add to totals due to rounding.

¹ The actual figure is 99.9985 percent which rounds to 100.00 percent.

Source: JCT calculations using SOI data.

Use of section 179 expensing

Below are several tables that show the distribution of the section 179 deduction based on JCT staff calculations. These tables are broken down by the industry of the taxpayer, by size of the taxpayer's gross receipts, and by the form of the reporting entity. Included in the tables are several usage measures that provide a sector-by-sector estimate of the degree to which firms claim section 179 deductions.

Use of section 179 expensing by industry

Table 6 shows the distribution of section 179 deductions by industry using self-reported NAICS codes. The aggregate amount of section 179 expense deductions across all industries totaled \$55.8 billion in 2019. Construction, agriculture and related industries, wholesale and retail trade, manufacturing, and professional, scientific and technical services reported the largest share of section 179 deductions.

**Table 6.—Section 179 Expense Deduction, 2019
(Billions of Dollars)**

Sector	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Approximation of Sec. 179 Eligible Base	Sec. 179 Usage Index
Agriculture, Forestry, Fishing and Hunting.....	10.4	18.6%	87.6	11.9%
Mining.....	0.4	0.7%	67.2	0.6%
Utilities.....	0.1	0.3%	147.5	0.1%
Construction.....	11.0	19.6%	53.0	20.7%
Manufacturing.....	4.3	7.8%	274.6	1.6%
Wholesale and Retail Trade.....	6.3	11.3%	194.2	3.2%
Transportation and Warehousing.....	3.2	5.7%	123.7	2.6%
Information.....	0.5	1.0%	109.7	0.5%
Finance and Insurance.....	1.3	2.3%	64.3	2.0%
Real Estate and Rental and Leasing.....	2.4	4.4%	189.4	1.3%
Professional, Scientific, and Technical Services..	3.7	6.6%	34.8	10.6%
Management of Companies.....	0.4	0.7%	45.1	0.9%
Administrative and Support and Waste Management and Remediation Services.....	3.2	5.8%	22.2	14.5%
Education Services.....	0.3	0.5%	2.5	10.0%
Health Care and Social Assistance.....	3.0	5.3%	27.9	10.6%
Arts, Entertainment, and Recreation.....	1.0	1.7%	16.2	5.9%
Accommodation and Food Services.....	2.1	3.7%	41.4	5.0%
Other Services.....	2.3	4.0%	14.8	15.2%
Unclassified.....	0.0	0.0%	0.3	2.4%
TOTAL.....	55.8	100.0%	1,516.5	3.7%

Table 6 also shows a section 179 usage index. The reported “usage index” is the percentage of section 179 deductions divided by the Joint Committee staff’s estimate of the eligible base.¹⁸⁰ The usage index is higher when many firms within a particular sector claim many deductions, and lower when fewer firms claim fewer deductions. The eligible base for 2019 was approximately \$1.5 trillion and the usage index overall was 3.9 percent. Taxpayers that make substantial annual purchases of eligible assets are not eligible to expense those acquisitions under section 179 because of the phase-out threshold (\$2.55 million in 2019). Consequently, the usage index is high for sectors with heavy concentrations of small businesses such as agriculture, construction, and service industries, and the index is low for sectors with concentrations of larger or more capital intensive businesses such as utilities.

Use of section 179 expensing by size of gross receipts

Table 7 shows the distribution of section 179 deductions by size of the reporting entity’s gross business receipts. Due to the phase-out threshold, section 179 is limited to taxpayers with qualified investment below specified levels. Because businesses with higher gross receipts tend to have higher qualified investment levels, they have fewer section 179 deductions. As shown, \$44.9 billion of the total \$55.8 billion section 179 deductions, or approximately 80 percent of these deductions, are reported by businesses with less than \$10 million in total business receipts.

The overall measure of section 179 usage is 11.7 percent for businesses with less than \$10 million in gross business receipts. The section 179 usage index falls off to 4.8 percent for businesses with gross business receipts between \$10 million and \$250 million. Usage is negligible for businesses with gross business receipts in excess of \$250 million.

The 11.7 percent usage index for businesses with less than \$10 million in gross receipts is lower than one might expect given that as much as \$1.02 million of qualified property could be expensed in 2019. An important reason for this usage index may be the taxable income limitation of section 179 (*i.e.*, the amount eligible to be expensed under section 179 for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to section 179)).

¹⁸⁰ This eligible base is approximated by the sum of section 179 reported, bonus depreciation reported, and the remaining 3- through 20-year MACRS investment basis excluding listed property placed in service during 2019 tax year using the general depreciation system. Qualified real property that is eligible for section 179 expensing but otherwise has a 39-year life and not eligible for bonus depreciation are included in the eligible base only the extent a section 179 deduction was claimed for such property.

**Table 7.—Section 179 Expense Deduction by Sector and Size of Business Receipts, 2019
(Billions of Dollars)**

Sector	Less than \$10 million			\$10 million to \$250 million			Over \$250 million		
	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index
Agriculture, Forestry, Fishing and Hunting.....	10.3	23.0%	12.6%	0.1	0.9%	2.6%	0.0	0.3%	0.0%
Mining.....	0.4	0.8%	6.5%	0.0	0.3%	0.0%	0.0	0.4%	0.0%
Utilities.....	0.1	0.3%	0.6%	0.0	0.2%	0.0%	0.0	0.7%	0.0%
Construction.....	8.5	19.0%	31.0%	2.4	22.2%	13.6%	0.0	13.5%	0.0%
Manufacturing.....	2.3	5.1%	13.1%	2.0	19.1%	5.1%	0.0	6.5%	0.0%
Wholesale and Retail Trade.....	3.3	7.4%	19.3%	2.8	26.6%	10.0%	0.1	51.9%	0.1%
Transportation and Warehousing.....	2.9	6.4%	13.2%	0.3	2.9%	1.1%	0.0	2.7%	0.0%
Information.....	0.4	0.9%	11.4%	0.1	1.2%	1.2%	0.0	1.7%	0.0%
Finance and Insurance.....	1.0	2.3%	11.4%	0.2	2.3%	2.6%	0.0	6.6%	0.0%
Real Estate and Rental and Leasing.....	2.3	5.1%	2.3%	0.2	1.6%	0.9%	0.0	0.6%	0.0%
Professional, Scientific, and Technical Services.....	2.8	6.2%	20.0%	0.9	8.2%	8.7%	0.0	9.6%	0.0%
Management of Companies.....	0.4	0.8%	20.0%	0.0	0.4%	0.0%	0.0	0.0%	0.0%
Administrative and Support and Waste Management and Remediation Services.....	2.8	6.3%	24.8%	0.4	3.5%	8.2%	0.0	2.5%	0.0%
Education Services.....	0.2	0.5%	15.4%	0.0	0.1%	0.0%	0.0	0.0%	0.0%
Health Care and Social Assistance.....	2.5	5.6%	19.5%	0.4	4.1%	7.3%	0.0	3.0%	0.0%
Arts, Entertainment, and Recreation.....	0.9	2.0%	10.6%	0.1	0.7%	3.0%	0.0	0.0%	0.0%
Accommodation and Food Services.....	1.6	3.6%	7.7%	0.5	4.3%	4.9%	0.0	0.0%	0.0%
Other Services.....	2.1	4.7%	17.8%	0.2	1.6%	12.5%	0.0	0.0%	0.0%
Unclassified.....	0.0	0.0%	0.0%	0.0	0.0%	n/a	0.0	0.0%	n/a
TOTAL.....	44.9	100.0%	11.7%	10.7	100.0%	4.8%	0.2	100.0%	0.0%

NOTE: Totals may not equal sum of components due to rounding.

Use of expensing by entity type

Table 8 presents the section 179 deductions and usage index measures broken down by the underlying reporting entity: sole proprietor and farm (grouped together), partnership, S corporation, and C corporation. As shown in Table 8, S corporations account for the largest amount of section 179 deductions at \$22.9 billion, followed by sole proprietorships and farms with \$18.3 billion, C corporations with \$7.7 billion, and partnerships with \$6.9 billion. In percentage terms, S corporations account for 41.1 percent of section 179 deductions, followed by sole proprietorships and farms with 32.8 percent, C corporations with 13.8 percent, and partnerships with approximately 12.3 percent.

The section 179 deduction usage for sole proprietorships and farms has the highest usage index at 15.5 percent. S corporations have the next highest usage index at 14.1 percent. Partnerships and C corporations have significantly lower usage index measures at 1.8 percent and 0.9 percent respectively.

**Table 8.—Section 179 Expense Deduction by Sector and Reporting Entity, 2019
(Billions of Dollars)**

Sector	Sole Prop & Farm			Partnerships			S Corporations			C Corporations		
	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index	Total Sec. 179 Deduction Reported	Percentage Distribution of Sec. 179 Reported	Sec. 179 Usage Index
Agriculture, Forestry, Fishing and Hunting.....	6.6	36.3%	11.1%	1.4	19.7%	10.4%	1.5	6.6%	15.7%	0.9	8.7%	16.7%
Mining.....	0.1	0.6%	8.5%	0.0	0.6%	0.1%	0.2	0.8%	4.9%	0.1	0.9%	0.2%
Utilities.....	0.0	0.1%	4.3%	0.0	0.6%	0.1%	0.1	0.3%	41.2%	0.0	0.3%	0.0%
Construction.....	2.7	14.6%	30.9%	0.9	12.5%	12.0%	6.1	26.5%	23.4%	1.3	17.3%	11.8%
Manufacturing.....	0.3	1.4%	16.4%	0.3	4.5%	1.0%	2.6	11.2%	10.4%	1.2	18.3%	0.6%
Wholesale and Retail Trade.....	1.1	5.9%	19.1%	0.5	7.9%	2.8%	3.4	14.8%	11.3%	1.3	18.1%	0.9%
Transportation and Warehousing.....	1.4	7.7%	17.2%	0.4	5.7%	0.8%	1.0	4.4%	6.4%	0.4	5.2%	0.7%
Information.....	0.2	0.9%	27.9%	0.1	0.8%	0.2%	0.1	0.4%	6.4%	0.2	2.3%	0.3%
Finance and Insurance.....	0.3	1.9%	19.7%	0.4	5.9%	3.1%	0.3	1.3%	15.4%	0.2	3.0%	0.5%
Real Estate and Rental and Leasing.....	0.5	3.0%	9.4%	0.9	13.4%	0.9%	0.8	3.3%	6.0%	0.2	3.1%	0.3%
Professional, Scientific, and Technical Services..	1.3	7.0%	23.2%	0.5	6.9%	6.3%	1.4	6.2%	20.9%	0.5	7.2%	3.5%
Management of Companies.....	0.0	0.0%	6.6%	0.1	0.8%	2.1%	0.2	0.7%	24.8%	0.2	2.7%	0.5%
Administrative and Support and Waste Management and Remediation Services.....	1.0	5.3%	35.7%	0.3	4.1%	8.8%	1.7	7.4%	22.5%	0.3	3.4%	3.9%
Education Services.....	0.1	0.8%	20.0%	0.0	0.4%	3.6%	0.1	0.2%	10.6%	0.0	0.3%	4.8%
Health Care and Social Assistance.....	0.7	3.7%	34.5%	0.4	5.7%	4.5%	1.6	7.2%	24.9%	0.3	3.3%	2.7%
Arts, Entertainment, and Recreation.....	0.5	2.7%	23.1%	0.2	2.5%	2.4%	0.2	0.8%	9.0%	0.1	1.2%	2.6%
Accommodation and Food Services.....	0.3	1.7%	16.1%	0.5	6.6%	2.5%	1.1	4.9%	12.8%	0.2	2.2%	1.6%
Other Services.....	1.2	6.3%	26.2%	0.1	1.4%	3.4%	0.7	3.2%	19.0%	0.3	2.7%	10.1%
Unclassified.....	0.0	0.0%	0.0%	0.0	0.0%	n/a	0.0	0.0%	n/a	0.0	0.0%	n/a
TOTAL.....	18.3	100.0%	15.5%	6.9	100.0%	1.8%	22.9	100.0%	14.1%	7.7	100.0%	0.9%

NOTE: Totals may not equal sum of components due to rounding

Use of cash method of accounting

Tables 9 and 10 report data on the usage of the cash method of accounting by industry and by type of business entity. Most sole proprietorships and farms¹⁸¹ by number of filers (97.3 percent) and by total receipts (89.9 percent) use the cash method of accounting. For each industrial sector more than 90 percent of these businesses use the cash method of accounting. A majority of business receipts in each sector is reported by firms using the cash method, except for the utilities sector. A similarly high percentage of personal service corporations also use the cash method of accounting. The 88.6 percent of personal service corporations using the cash method receive 72.1 percent of the business receipts of all personal service corporations.

While a majority of partnerships (74.3 percent) and S corporations (74.6 percent) also use the cash method of accounting, those that do represent a much smaller share of total receipts (17.6 percent and 30.1 percent, respectively) than sole proprietorships, farms, and personal service corporations that use the cash method. A majority of C corporations other than personal service corporations (51.3 percent) use the cash method of accounting. Only 1.7 percent of total receipts are attributable to C corporations that use the cash method, though this varies by industry. The agriculture, forestry, fishing, and hunting sector has the largest share (26.6 percent) of total receipts attributable to C Corporations that use the cash method.

Tables 11a, 11b, and 11c report data on the use of the cash method of accounting by reporting entity and by gross receipts (or, in the case of farm sole proprietorships, gross income) of the taxpayer. The first column of each panel reports the number of businesses of that entity type that use the cash method of accounting, by category of gross receipts. The second column reports the percentage of all business of each type that use the cash method of accounting. The third column reports the amount (in billions of dollars) of gross receipts reported by filers using the cash method of accounting. The fourth column reports the total receipts by filers using the cash method as a percentage of total receipts by all businesses within each sector.

Use of the cash method of accounting generally falls as gross receipts rise for all entity types of businesses. One exception is farm sole proprietorships, virtually all (99.5 percent) of which use the cash method, including 100 percent of farms with gross income of more than \$50 million. While a C corporation, a partnership that has a C corporation as a partner, or a tax-exempt trust or corporation with unrelated business income generally may not use the cash method if its average annual gross receipts exceed \$25 million (\$26 million for 2019), qualified personal service corporations are allowed to use the cash method without regard to whether they meet the gross receipts test. Indeed, more than 80 percent of personal service corporations with gross receipts in excess of \$26 million use the cash method of accounting. Exceptions to the gross receipts test also apply for farming businesses. It is likely that many of the 134 C corporations with gross receipts in excess of \$50 million that use the cash method are farming businesses.

¹⁸¹ For this purpose, farm sole proprietorships are measured solely by reference to those individuals who report income (or loss) on Schedule F of Form 1040. Other individuals engaged in agricultural enterprises may conduct their farm business through a separate legal entity. When this occurs, the data reported below report that entity among the totals for C corporations, S corporations, or partnerships.

**Table 9.—Use of Cash Method by Reporting Entity other than C Corporations, 2019
(Receipts in Billions of Dollars)**

Sector	Sole Prop & Farm				Partnerships				S Corporations			
	Number of Filers Using	Percentage of Filers Using	Receipts of Cash Method	Percentage of Total Receipts	Number of Filers Using	Percentage of Filers Using	Receipts of Cash Method	Percentage of Total Receipts	Number of Filers Using	Percentage of Filers Using	Receipts of Cash Method	Percentage of Total Receipts
	Cash Method	Cash Method	Filers		Cash Method	Cash Method	Filers		Cash Method	Cash Method	Filers	
Agriculture, Forestry, Fishing and Hunting.....	2,043,764	99.4%	141.41	96.9%	131,335	96.3%	12.49	34.2%	87,436	87.8%	69.07	55.6%
Mining.....	94,180	95.0%	7.85	83.6%	25,667	66.8%	11.30	6.2%	20,412	81.9%	19.97	39.4%
Utilities.....	17,946	99.1%	0.64	38.1%	4,098	51.7%	1.85	0.9%	2,572	84.5%	4.71	43.7%
Construction.....	2,961,277	97.3%	268.12	92.3%	100,865	73.1%	77.78	19.8%	467,256	73.4%	449.26	30.4%
Manufacturing.....	368,463	95.2%	21.64	68.2%	42,130	62.9%	18.07	2.7%	70,125	44.9%	70.64	7.9%
Wholesale and Retail Trade.....	2,548,394	95.6%	171.52	73.7%	151,443	65.3%	68.98	5.3%	328,504	48.1%	309.19	9.9%
Transportation and Warehousing.....	2,843,739	96.9%	137.42	94.5%	49,123	77.3%	34.63	14.1%	183,434	83.6%	138.88	49.0%
Information.....	348,488	97.6%	11.83	86.7%	32,295	76.4%	12.19	3.3%	68,937	76.6%	40.35	42.3%
Finance and Insurance.....	650,094	97.2%	82.81	95.2%	202,011	58.8%	115.88	13.3%	153,413	83.2%	75.52	55.4%
Real Estate and Rental and Leasing.....	1,330,824	97.6%	84.67	93.6%	1,490,098	76.8%	143.60	31.6%	443,254	78.6%	91.47	58.6%
Professional, Scientific, and Technical Services	3,590,227	98.0%	200.92	95.3%	213,038	83.6%	335.51	56.3%	695,803	86.5%	427.20	66.3%
Management of Companies.....	6,396	99.3%	0.52	91.1%	21,250	61.5%	12.27	14.4%	26,186	68.1%	4.92	50.2%
Administrative and Support and Waste Management and Remediation Services.....	2,691,196	97.5%	83.61	89.9%	70,537	79.5%	48.84	36.1%	182,364	78.8%	179.64	53.4%
Education Services.....	941,633	97.6%	13.88	94.6%	24,066	92.7%	5.40	42.9%	39,301	77.6%	14.33	52.0%
Health Care and Social Assistance.....	2,126,976	97.5%	114.62	94.9%	70,372	78.6%	143.37	42.9%	400,430	90.2%	355.83	84.1%
Arts, Entertainment, and Recreation.....	1,697,512	98.0%	47.80	90.8%	37,313	70.9%	11.92	13.4%	100,265	80.3%	56.63	61.8%
Accommodation and Food Services.....	562,620	94.6%	56.22	78.9%	80,915	51.4%	35.97	13.5%	159,644	61.1%	110.96	36.5%
Other Services.....	3,546,036	97.4%	114.34	92.5%	93,158	85.0%	20.92	43.7%	254,193	78.4%	100.91	55.6%
Unclassified.....	414,496	95.3%	5.11	97.0%	0	n/a	0.00	n/a	0	n/a	0.00	n/a
TOTAL.....	28,784,262	97.3%	1,564.92	89.9%	2,839,715	74.3%	1,110.95	17.6%	3,683,528	74.6%	2,519.47	30.1%

NOTE: Totals may not equal sum of components due to rounding.

**Table 10.—Use of Cash Method by C Corporations, 2019
(Receipts in Billions of Dollars)**

Sector	Personal Service Corporations (PSCs)				C Corporations (excluding PSCs)			
	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts
Agriculture, Forestry, Fishing and Hunting.....	*	*	*	*	35,912	79.2%	20.82	26.6%
Mining.....	*	*	*	*	4,548	48.8%	2.09	0.6%
Utilities.....	*	*	*	*	1,612	42.0%	0.43	0.1%
Construction.....	*	*	*	*	83,375	59.1%	65.72	10.6%
Manufacturing.....	*	*	*	*	18,169	23.1%	15.63	0.2%
Wholesale and Retail Trade.....	*	*	*	*	95,476	36.3%	73.67	1.0%
Transportation and Warehousing.....	*	*	*	*	51,696	71.4%	24.53	3.4%
Information.....	*	*	*	*	24,768	45.3%	9.80	0.7%
Finance and Insurance.....	*	*	*	*	23,592	34.7%	8.64	0.4%
Real Estate and Rental and Leasing.....	*	*	*	*	108,704	61.3%	16.90	7.5%
Professional, Scientific, and Technical Services..	26,369	87.5%	89.89	85.1%	87,520	57.0%	48.73	6.2%
Management of Companies.....	*	*	*	*	11,259	25.4%	0.25	0.1%
Administrative and Support and Waste Management and Remediation Services.....	*	*	*	*	40,873	63.0%	20.16	5.4%
Education Services.....	*	*	*	*	8,640	57.7%	3.67	12.3%
Health Care and Social Assistance.....	30,873	89.7%	82.29	61.9%	27,438	72.6%	25.39	4.4%
Arts, Entertainment, and Recreation.....	2,040	*	1.90	*	15,968	60.0%	4.64	6.9%
Accommodation and Food Services.....	*	*	*	*	39,361	57.2%	18.32	5.9%
Other Services.....	*	*	*	*	62,882	52.3%	15.97	16.9%
TOTAL.....	61,832	88.6%	175.22	72.1%	741,794	51.3%	375.37	1.7%

NOTE: Totals may not equal sum of components due to rounding.

* Data suppressed due to too few filers.

[1] Less than \$5 million.

**Table 11a.—Use of Cash Method by Proprietorships by Gross Receipts
(Receipts/Gross Income in Billions of Dollars)**

Gross Receipts (Gross Income for Farms)	Sole Props				Farms			
	Number of Filers Using	Percentage of Filers Using	Receipts of Cash Method	Percentage of Total Receipts	Number of Filers Using	Percentage of Filers Using	Gross Income of Cash Method	Percentage of Total Gross Income
	Cash Method	Cash Method	Filers		Cash Method	Cash Method	Filers	
\$0 or less.....	1,508,015	95.8%	-0.21	99.1%	278,650	99.6%	-0.14	93.8%
\$1 to \$2,500.....	5,300,592	97.8%	6.24	98.1%	364,893	99.4%	0.41	99.4%
\$2,501 to \$5,000.....	2,872,974	97.4%	10.53	97.4%	170,087	100.0%	0.64	100.0%
\$5,001 to \$10,000.....	3,292,666	97.6%	24.04	97.6%	193,009	100.0%	1.36	100.0%
\$10,001 to \$25,000.....	5,450,540	97.6%	89.39	97.6%	218,184	100.0%	3.56	100.0%
\$25,001 to \$50,000.....	3,406,638	97.2%	121.23	97.2%	143,982	98.8%	5.09	98.9%
\$50,001 to \$100,000.....	2,466,105	97.3%	173.22	97.2%	110,073	98.8%	7.69	98.9%
\$100,001 to \$250,000.....	1,730,020	96.7%	266.39	96.5%	127,509	98.5%	20.76	98.6%
\$250,001 to \$500,000.....	595,029	94.4%	204.14	94.1%	74,095	99.5%	26.28	99.6%
\$500,001 to \$1,000,000.....	263,515	92.6%	181.54	92.5%	42,560	99.3%	29.67	99.2%
\$1,000,001 to \$5,000,000.....	140,278	87.2%	252.77	85.7%	24,248	98.7%	41.62	98.6%
\$5,000,001 to \$10,000,000.....	6,709	72.2%	44.90	71.7%	725	97.1%	4.92	97.0%
\$10,000,001 to \$15,000,000.....	1,433	59.8%	17.36	59.1%	184	96.8%	2.23	96.6%
\$15,000,001 to \$25,000,000.....	867	56.1%	16.37	56.2%	128	99.2%	2.50	99.4%
\$25,000,001 to \$50,000,000.....	277	44.8%	9.23	43.4%	67	94.4%	2.36	94.4%
More than \$50,000,000.....	187	46.3%	26.30	48.3%	26	100.0%	2.41	100.0%
TOTAL.....	27,035,843	97.1%	1,443.43	89.3%	1,748,420	99.5%	151.36	98.9%

* Data suppressed due to too few filers.

NOTE: Totals may not equal sum of components due to rounding.

[1] Less than \$5 million.

**Table 11b.—Use of Cash Method by Partnerships and S Corporations by Gross Receipts
(Receipts in Billions of Dollars)**

Gross Receipts (Gross Income for Farms)	Partnerships				S Corporations			
	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts
	\$0 or less.....	784,784	77.1%	0.00	n/a	464,061	71.6%	0.00
\$1 to \$2,500.....	271,001	76.6%	0.19	82.9%	84,521	84.4%	0.09	83.5%
\$2,501 to \$5,000.....	133,214	84.1%	0.50	83.5%	47,705	81.6%	0.18	81.5%
\$5,001 to \$10,000.....	139,227	89.0%	1.01	89.7%	71,831	83.1%	0.54	83.9%
\$10,001 to \$25,000.....	286,401	85.0%	4.71	85.8%	170,755	84.6%	2.87	84.8%
\$25,001 to \$50,000.....	239,483	79.5%	8.65	80.0%	221,482	81.5%	8.21	81.5%
\$50,001 to \$100,000.....	233,029	78.8%	16.72	78.3%	415,283	86.7%	30.73	86.9%
\$100,001 to \$250,000.....	297,841	75.9%	49.55	76.1%	737,413	84.1%	122.05	83.5%
\$250,001 to \$500,000.....	177,860	70.3%	61.90	69.4%	517,612	77.1%	186.33	77.0%
\$500,001 to \$1,000,000.....	124,314	63.4%	87.39	63.2%	435,531	73.5%	307.73	73.2%
\$1,000,001 to \$5,000,000.....	123,677	49.4%	264.82	47.9%	441,888	61.4%	877.41	58.2%
\$5,000,001 to \$10,000,000.....	16,325	34.7%	113.68	34.4%	49,963	42.5%	345.85	42.3%
\$10,000,001 to \$15,000,000.....	5,236	28.8%	64.41	28.8%	12,872	32.7%	158.34	33.0%
\$15,000,001 to \$25,000,000.....	3,979	24.1%	73.93	23.4%	7,429	23.1%	144.54	23.4%
\$25,000,001 to \$50,000,000.....	2,068	15.3%	69.22	14.7%	3,415	14.1%	115.14	13.6%
More than \$50,000,000.....	1,278	8.6%	294.27	7.2%	1,768	8.6%	219.46	6.7%
TOTAL.....	2,839,715	74.3%	1,110.95	17.6%	3,683,528	74.6%	2,519.47	30.1%

* Data suppressed due to too few filers.

NOTE: Totals may not equal sum of components due to rounding.

[1] Less than \$5 million.

**Table 11c.—Use of Cash Method by C Corporations by Gross Receipts
(Receipts in Billions of Dollars)**

Gross Receipts (Gross Income for Farms)	Personal Service Corporations (PSCs)				C Corporations (excluding PSCs)			
	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts	Number of Filers Using Cash Method	Percentage of Filers Using Cash Method	Receipts of Cash Method Filers	Percentage of Total Receipts
	\$0 or less.....	3,635	84.3%	0.00	n/a	130,679	46.0%	0.00
\$1 to \$2,500.....	*	*	*	*	21,865	65.9%	0.02	67.6%
\$2,501 to \$5,000.....	*	*	*	*	13,587	75.3%	0.05	73.5%
\$5,001 to \$10,000.....	*	*	*	*	18,886	67.3%	0.14	67.1%
\$10,001 to \$25,000.....	4,502	*	0.07	*	48,001	69.5%	0.84	70.2%
\$25,001 to \$50,000.....	*	*	*	*	66,357	72.5%	2.41	72.5%
\$50,001 to \$100,000.....	4,447	*	0.33	*	89,924	68.4%	6.58	68.6%
\$100,001 to \$250,000.....	9,981	*	1.83	*	118,765	61.0%	19.81	60.7%
\$250,001 to \$500,000.....	7,405	*	2.61	*	89,013	55.7%	31.67	55.5%
\$500,001 to \$1,000,000.....	12,442	91.0%	9.02	91.9%	63,317	46.3%	44.44	45.9%
\$1,000,001 to \$5,000,000.....	10,706	90.8%	26.48	91.1%	70,295	35.9%	144.57	33.1%
\$5,000,001 to \$10,000,000.....	2,223	76.5%	14.89	75.6%	7,923	18.6%	53.89	18.2%
\$10,000,001 to \$15,000,000.....	1,379	95.4%	16.70	95.4%	1,478	9.5%	18.27	9.6%
\$15,000,001 to \$25,000,000.....	956	91.6%	17.76	91.7%	1,081	8.2%	21.22	8.3%
\$25,000,001 to \$50,000,000.....	305	66.0%	10.00	64.6%	489	4.0%	16.20	3.8%
More than \$50,000,000.....	479	63.9%	75.47	59.6%	134	0.7%	15.25	0.1%
TOTAL.....	61,832	88.6%	175.22	72.1%	741,794	51.3%	375.37	1.7%

* Data suppressed due to too few filers.

NOTE: Totals may not equal sum of components due to rounding.

[1] Less than \$5 million.

Distributional analysis of the tax expenditure for section 199A

Table 12 presents a distributional analysis of the tax expenditure for section 199A in calendar year 2019. The estimated total decrease in tax liability is approximately \$43.6 billion in 2019. Taxpayers classified with the highest amount of annual income, defined as greater than \$819,672 or more, account for almost \$21.9 billion, or 50 percent, of the estimated total decrease in tax liability.

**Table 12.—Distribution of Tax Expenditure
for Section 199A in 2019**

Income Category¹ (Dollars)	Decrease in Federal Taxes² (Millions of Dollars)
Less than \$12,295	0
\$12,295 to \$24,590	65
\$24,590 to \$32,787	96
\$32,787 to \$40,984	144
\$40,984 to \$49,180	178
\$49,180 to \$65,574	499
\$65,574 to \$81,967	667
\$81,967 to \$122,951	1,669
\$122,951 to \$163,934	2,438
\$163,934 to \$409,836	9,969
\$409,836 to \$819,672	6,006
\$819,672 and over	21,895
TOTAL, ALL TAXPAYERS	43,625

* Details may not add to totals due to rounding.

¹ The income concept used to place tax returns into income categories is adjusted gross income (“AGI”) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] workers’ compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, [8] individual share of business taxes, and [9] excluded income of U.S. citizens living abroad. Categories are measured at 2019 levels.

² Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), excise taxes (attributed to consumers), and corporate income taxes. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis. Does not include indirect effects.

Source: JCT staff calculations.

Select small business tax expenditures

Table 13 contains tax expenditure estimates for select tax provisions related to small businesses.¹⁸² Estimates are shown for the total tax expenditure for fiscal years 2022-2026.¹⁸³ The largest tax expenditure is the 20-percent deduction for qualified business income under section 199A with a tax expenditure estimate of \$258 billion. The next largest item, expensing of depreciable business property under section 179, is less than one-fifth as large at \$33.7 billion. The permitted use of the cash method of accounting for businesses other than agriculture businesses is the third largest item at \$15.6 billion.

**Table 13.—Select Small Business Tax Expenditures,
Fiscal Years 2022-2026**

Tax Expenditure	Total Amount (Billions of Dollars)
20-percent deduction for qualified business income	258.0
Expensing under section 179 of depreciable business property	33.7
Cash accounting, other than agriculture	15.6
Exclusion for gain from certain small business stock	10.0
Completed contract rules	4.5
Tax-exempt status and election to be taxed only on investment income for certain small property and casualty insurance companies	9.2
Amortization of business startup costs	1.2
Cash accounting for agriculture	0.1

¹⁸² A tax expenditure estimate is not the same as a revenue estimate for the repeal of the tax expenditure provision. First, unlike revenue estimates, tax expenditure estimates do not incorporate the effects of the behavioral changes that are anticipated to occur in response to the repeal of a tax expenditure provision, other than simple additions or deletions in filing tax forms, what the Joint Committee staff refers to as “tax form behavior.” Second, tax expenditure calculations are concerned with changes in the reported tax liabilities of taxpayers without concern for the short-term timing of tax payments, whereas revenue estimates are concerned with changes in Federal government tax receipts that are affected by the timing of all tax payments. Third, tax expenditure estimates reflect only the income tax effects of provisions. A revenue estimate would consider interactions between the income tax and other Federal taxes such as payroll, excise, and the estate and gift taxes.

¹⁸³ Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2022-2026* (JCX-22-22), December 22, 2022.

APPENDIX: SELECTED DEFINITIONS OF SMALL BUSINESS IN THE INTERNAL REVENUE CODE

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Certain credits of eligible small business allowed against alternative minimum tax (sec. 38(c)(5))	<ul style="list-style-type: none"> • Non-publicly traded corporation, • Partnership, or • Sole proprietorship 		Average annual gross receipts for immediately preceding three-taxable-year period does not exceed \$50 million			
Small agri-biodiesel producer credit (sec. 40A)	Any person who is an eligible agri-biodiesel producer					Agri-biodiesel production capacity does not exceed 60 million gallons at all times during the taxable year
100 percent of qualified contract energy research expenses paid to eligible small business included in calculation of research credit (sec. 41(b)(3)(D))				Small business has annual average of 500 or fewer employees during either of the two preceding calendar years	With respect to a small business, taxpayer cannot own 50 percent or more of— <ul style="list-style-type: none"> • If a corporation, the outstanding stock of the corporation (either by vote or value), or • If not a corporation, the capital and profits interests of the small business 	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Research credit allowed against payroll tax for qualified small business (secs. 41(h) and 3111(f))	Any qualified small business other than an organization which is exempt from tax under section 501		Gross receipts for the taxable year are less than \$5 million and such person did not have gross receipts for any taxable year preceding the five-taxable-year period ending with such taxable year (in the case of a person that is not a corporation or a partnership, taking into account all trades and businesses of the person)			
Tax credit for eligible small business for expenditures to provide access to disabled individuals (sec. 44)			Gross receipts of \$1 million or less during the preceding taxable year OR	30 or fewer full-time employees during the preceding taxable year		
New markets tax credit for payments to specialized small business investment company (sec. 45D(c)(2), by reference to sec. 1044(c)(3)¹)	Partnership or corporation licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993)					

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Tax credit for small employer pension plan start-up costs (sec. 45E(c)(1), by reference to sec. 408(p)(2)(C)(i))				100 or fewer employees who received at least \$5,000 of compensation from the employer for the preceding year		
Tax credit for small business refiner for production of low sulfur diesel fuel (sec. 45H(c)(1))				1,500 or fewer individuals engaged in the refinery operations of the business on any day during such taxable year		Average daily domestic refinery run or average retained production of all the taxpayer's facilities for the one-year period ending on Dec. 31, 2002, did not exceed 205,000 barrels
Tax credit for employee health insurance expenses of eligible small employer (sec. 45R(d)(1))				<ul style="list-style-type: none"> • 25 or fewer full-time equivalent employees for the taxable year with average annual wages of \$50,000 or less, indexed for inflation after 2013, and • Contribution arrangement in effect 		
Retirement auto-enrollment credit for small employers (sec. 45T(c), by reference to sec. 408(p)(2)(C)(i))				100 or fewer employees who received at least \$5,000 of compensation from the employer for the preceding year		

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Military spouse retirement plan eligibility credit for small employers (sec. 45AA(c), by reference to sec. 408(p)(2)(C)(i))				100 or fewer employees who received at least \$5,000 of compensation from the employer for the preceding year		
Energy credit for qualified small wind energy property (sec. 48(c)(4))						Property that uses a wind turbine of 100 kilowatts of rated capacity or less to generate electricity
Exemption from corporate alternative minimum tax (secs. 55(b)(2)(B) and 59(k))	Any corporation that is not an applicable corporation		Generally, an applicable corporation is a corporation (other than an S corporation, a regulated investment company ("RIC"), or a real estate investment trust ("REIT")) with average annual adjusted financial statement income ("AFSI") for the three-taxable year period ending with the relevant taxable year that exceeds \$1 billion			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exemption from the base erosion minimum tax (sec. 59A(e))	Any taxpayer that is not an applicable taxpayer		Generally, an applicable taxpayer is a corporation (other than an S corporation, a RIC, or a REIT) with average annual gross receipts for the three-taxable year period ending with the preceding taxable year of \$500 million or more			
Simplified rules for cafeteria plans available to an eligible employer (sec. 125(j)(1), (5))				Average of 100 or fewer employees on business days during either of the two preceding years		
Exception for small institutions from disallowance of deduction for FDIC premiums paid or incurred (sec. 162(r)(2))		Total consolidated assets (as of the close of the taxable year) do not exceed \$10 billion				
Exemption from limitation on business interest for certain small businesses (sec. 163(j)(3), by reference to sec. 448(c))			Average annual gross receipts for the three-taxable year period ending with the taxable year which precedes such taxable year of \$25 million ² or less			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
24-month amortization of geological and geophysical expenditures incurred by independent producers and smaller integrated oil companies (sec. 167(h))	Taxpayer other than a major integrated oil company		Gross receipts of \$1 billion or less for the last taxable year ending during calendar year 2005		Ownership interest in a crude oil refiner of less than 15 percent	Average daily worldwide production of crude oil of less than 500,000 barrels for the taxable year
Five-year MACRS recovery period for a qualified biomass property (sec. 168(e)(3)(B)(vi)(II))						Property with a power production capacity of not greater than 80 megawatts that also qualifies as certain biomass property (as described in sec. 48(l)(15) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)
Expensing of certain depreciable business assets (sec. 179)		Not phased out if \$2.5 million ³ or less of eligible assets placed in service during the taxable year				Up to \$1 million ⁴ may be expensed, subject to phase-out

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Deduction for small business refiner for capital costs incurred in complying with Environmental Protection Agency sulfur regulations (sec. 179B(a), by reference to sec. 45H(c)(1))				1,500 or fewer individuals engaged in the refinery operations of the business on any day during such taxable year		Average daily domestic refinery run or average retained production of all of the taxpayer's facilities for the one-year period ending on Dec. 31, 2002, did not exceed 205,000 barrels
Expensing and amortization of start-up expenditures (sec. 195)		Not phased out if \$50,000 or less of start-up expenditures incurred				<ul style="list-style-type: none"> • Up to \$5,000 may be expensed, subject to phase-out • Remainder amortized over 180 months
Exemption from specified service trade or business, W-2 wage, and unadjusted basis in qualified property limitations for purposes of determining the qualified business income deduction for taxpayers other than a corporation with taxable income at or below the threshold (sec. 199A(b)(3), (d)(3), and (e)(2))	Individual taxpayers and some trusts and estates with qualified business income from a trade or business, including income from a pass-through entity, but not from a C corporation		Taxable income before the section 199A deduction of less than or equal to \$157,500 (\$315,000 if married filing jointly) ⁵			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Small employer defined for Archer MSA purposes (sec. 220(c)(4))				Average of 50 or fewer employees on business days during either of the two preceding calendar years		
100 percent deduction for dividends received by small business investment company (sec. 243(a)(2))	Small business investment company operating under the Small Business Investment Act of 1958					
Exception for small businesses on limitation for dividends received deduction on debt-financed portfolio stock (sec. 246A(b))	Small business investment company operating under the Small Business Investment Act of 1958					
Expensing and amortization of organizational expenditures (sec. 248)	Corporation	Not phased out if \$50,000 or less of organizational expenditures incurred				<ul style="list-style-type: none"> • Up to \$5,000 may be expensed, subject to phase-out • Remainder amortized over 180 months
Exemption from capitalization and inclusion in inventory costs of certain expenses for certain small businesses (sec. 263A(i), by reference to sec. 448(c))			Average annual gross receipts for the three-taxable year period ending with the taxable year which precedes such taxable year of \$25 million ⁶ or less			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exemption for small business corporations from golden parachute payment rules (sec. 280G(b)(5), by reference to sec. 1361(b) (but without regard to (1)(C)))	Domestic corporation, not including: <ul style="list-style-type: none"> • A financial institution which uses the reserve method of accounting for bad debts described in sec. 585, • An insurance company subject to tax under subchapter L, or • A domestic international sales corporation (“DISC”) or former DISC 				<ul style="list-style-type: none"> • One class of stock • 100 or fewer shareholders • Does not have as a shareholder a person who is not an individual, other than an estate, certain trusts, or certain exempt organizations 	
Simple retirement account treatment limited to eligible employers (sec. 408(p)(2)(C)(i))				100 or fewer employees received at least \$5,000 of compensation for the preceding year		
Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements maintained by small employers (sec. 414(x)(2), by reference to sec. 4980D(d)(2))				Average of at least two but not more than 500 employees on business days during the preceding calendar year		

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exemption from automatic enrollment requirements for certain retirement plans for small businesses (sec. 414A(c)(4)(B))⁷				10 or fewer employees normally employed		
Exception for small plans from valuation date requirements for plan assets and liabilities (sec. 430(g)(2)(B))				100 or fewer participants in plan on each day during the preceding plan year		
Small plan not treated as at-risk for plan year (sec. 430(i)(6))				500 or fewer participants in plan on each day during the preceding plan year		
Exception from required use of accrual method of accounting for farming corporations (sec. 447(c), by reference to sec. 448(c))	Corporation or partnership with a corporate partner engaged in the business of farming, other than the operation of a nursery or sod farm or the raising or harvesting of trees (other than fruit and nut trees)		Average annual gross receipts for the three-taxable year period ending with the taxable year which precedes such taxable year of \$25 million ⁸ ⁸ or less			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exception from required use of accrual method of accounting for non-farming corporations (sec. 448(b)(3), (c))	Corporation or partnership with a corporate partner (other than a tax shelter)		Average annual gross receipts for the three-taxable year period ending with the taxable year which precedes such taxable year of \$25 million ⁹ or less			
Exception from percentage of completion method for certain long-term construction contracts completed within two years (sec. 460(e), by reference to sec. 448(c))			Average annual gross receipts for the three taxable years preceding the taxable year in which such contract is entered into of \$25 million ¹⁰ or less			
Exemption from limitation on excess business losses of noncorporate taxpayers (sec. 461(l)(3))	Taxpayer other than a corporation		Net losses from all trades or businesses are \$250,000 or less (\$500,000 or less if married filing jointly) ¹¹			
Deduction of up to \$25,000 of losses from rental real estate activities in which the taxpayer actively participates (sec. 469(i))	Any natural person		Adjusted gross income of \$100,000 or less (\$50,000 or less for married individuals filing separately)			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exemption from requirement to maintain inventories for certain small businesses (sec. 471(c), by reference to sec. 448(c))			Average annual gross receipts for the three-taxable year period ending with the taxable year which precedes such taxable year of \$25 million ¹² or less			
Small business eligible for simplified dollar-value LIFO method (sec. 474(a), (c))			Average annual gross receipts of the taxpayer for the three preceding taxable years of \$5 million or less			
Tax exemption for certain small insurance companies (sec. 501(c)(15))	Insurance companies (other than life insurance companies)		Gross receipts for the taxable year do not exceed \$600,000 and more than 50 percent of such gross receipts consist of premiums (\$150,000 and 35 percent, respectively, for a mutual insurance company), aggregating members of a controlled group			

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Exclusion of certain indebtedness incurred by a small business investment company from unrelated debt-financed income (sec. 514(c)(6))	Small business investment company licensed after October 22, 2004, under the Small Business Investment Act of 1958					Indebtedness is evidenced by a debenture (i) issued by such company under section 303(a) of the Small Business Investment Act of 1958, and (ii) held or guaranteed by the Small Business Administration.
Personal holding company defined (sec. 542(a)(2), (c)(7))	Domestic corporation, with several exceptions, among which are any life insurance company, certain lending or finance companies, and any small business investment company licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 which is actively engaged in the business of providing funds to small business concerns under that Act				At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Reserve method of accounting for bad debts allowed for any bank other than a large bank (secs. 581 and 585(c))	<ul style="list-style-type: none"> • A corporation a substantial part of whose business is receiving deposits and making loans and discounts or exercising certain fiduciary powers • Generally includes domestic building and loan associations, mutual stock or savings banks, and certain cooperative banks that are commonly referred to as thrifts 	Average adjusted basis of all of the bank's assets (or the assets of the controlled group of which it is a member) is \$500 million or less				
Percentage depletion of oil and gas properties limited to independent producers and royalty owners (sec. 613A(c) and (d))	Any producer that is not a retailer or refiner		Combined gross receipts of the taxpayer and all related persons from the retail sale of oil, natural gas, or any product derived therefrom do not exceed \$5 million for the taxable year			<ul style="list-style-type: none"> • Refiner of crude oil with an average daily refinery run of 75,000 barrels or less during the taxable year • Percentage depletion limited to 1000 barrels of average daily production

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Tax imposed on electing small business trust holding S corporation stock (sec. 641(c)(5), by reference to sec. 1361(e)(1))	Trust				Trust does not have as a beneficiary any person other than <ul style="list-style-type: none"> • an individual, • an estate, • an organization described in section 170(c)(2), (3), (4), or (5), or • an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary 	
Expensing and amortization of organizational expenditures (sec. 709)	Partnership	Not phased out if incur \$50,000 or less of organizational expenditures				<ul style="list-style-type: none"> • Up to \$5,000 may be expensed, subject to phase-out • Remainder amortized over 180 months
Exception from partnership treatment for qualified joint venture (sec. 761(f))	Joint venture conducting a trade or business				The only members are a husband and wife who file a joint return, both of whom (i) materially participate in the trade or business, and (ii) elect the application of the provision	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Alternative tax for small insurance companies (sec. 831(b))	Insurance company (other than a life insurance company)	20 percent or less of the net written premiums (or, if greater, direct written premiums) of such company for the taxable year are attributable to any one policyholder OR (see ownership restrictions)	Net written premiums (or, if greater, direct written premiums) for the taxable year of \$2.2 million or less		If asset restriction not met, no specified holder of an interest in such insurance company holds a percentage of the entire interests in such insurance company that exceeds the specified holder's percentage of interests in the specified assets of the insurance company by more than a <i>de minimis</i> amount.	
Rollover of gain from qualified small business stock to newly-purchased qualified small business stock (sec. 1045(a), (b)(1), by reference to sec. 1202(c))	Domestic corporation which is a C corporation	Aggregate gross assets \$50 million or less (before and after issuance)				
Exclusion of gain from sale or exchange of certain qualified small business stock (sec. 1202(a)(1), (d))	Domestic corporation which is a C corporation	Aggregate gross assets \$50 million or less (before and after issuance)				
Ordinary loss on certain small business investment company stock (sec. 1242)	Small business investment company operating under the Small Business Investment Act of 1958					

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Ordinary loss on small business investment company stock received pursuant to conversion of certain convertible debt (sec. 1243)	Small business investment company operating under the Small Business Investment Act of 1958					
Ordinary loss on sale or exchange of certain small business corporation stock (sec. 1244(c)(3))	Domestic corporation				Aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, of \$1 million or less (as determined at the time of issuance including amounts received for such stock)	
Special rule for debt instruments arising from the sale or exchange of a farm by a small business corporation (sec. 1274(c)(3)(A)(i)(II), by reference to sec. 1244(c)(3))	Domestic corporation				Aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, of \$1 million or less (as determined at the time of issuance, but including amounts received for such stock)	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
S corporation defined (sec. 1361(b))	Domestic corporation, not including: <ul style="list-style-type: none"> • A financial institution which uses the reserve method of accounting for bad debts described in sec. 585, • An insurance company subject to tax under subchapter L, or • A DISC or former DISC 				<ul style="list-style-type: none"> • One class of stock • 100 or fewer shareholders • Does not have as a shareholder: <ul style="list-style-type: none"> ○ A person who is not an individual, other than an estate, certain trusts, or certain exempt organizations, or ○ A nonresident alien 	
Electing small business trust allowed as eligible S corporation shareholder (sec. 1361(e)(1); see also sec. 641(c))	Trust				Trust does not have as a beneficiary any person other than <ul style="list-style-type: none"> • an individual, • an estate, • an organization described in section 170(c)(2), (3), (4), or (5), or • an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary 	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Recovery startup business eligible for the employee retention credit for wages paid in the fourth quarter of 2021 (sec. 3134(c)(5) and (n))¹³	Any employer which began carrying on any trade or business after February 15, 2020		Average annual gross receipts for the three-taxable-year period ending with the taxable year which precedes the calendar quarter for which the credit is determined does not exceed \$1 million			
Advance payments to small employers of employee retention credit for employers subject to closure due to COVID-19 (sec. 3134(j)(2))¹⁴				Average number of full-time employees (employed on average at least 30 hours per week) employed by such eligible employer during 2019 (during 2020 if employer was not in existence in 2019) was not greater than 500.		
Exception from tax for failure to satisfy COBRA continuation coverage requirements for group health plans (sec. 4980B(d)(1))				All employers maintaining the plan during the preceding calendar year normally employed fewer than 20 employees on a typical business day		
Small employer exception from tax for failure to offer minimum essential coverage (sec. 4980H(a), (b), (c)(2))				Average of less than 50 full-time employees on business days during the preceding calendar year		

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Small employer exception from tax for failure to meet certain group health plan requirements (sec. 4980D(d))				Average of at least two but not more than 50 employees on business days during the preceding calendar year		
Reduced rate of excise tax for certain domestic production of beer (sec. 5051(a)(2))						Domestic brewer with production of not more than 2 million barrels of beer per calendar year
Reduced rate of excise tax for small importers and manufacturers (sec. 5801(b))			Gross receipts for the previous taxable year are less than \$500,000			
Election out of the centralized partnership audit regime (sec. 6221(b))	Partnership				<ul style="list-style-type: none"> • 100 or fewer partners during the taxable year • All partners must be eligible partners (<i>i.e.</i>, an individual, a C corporation, any foreign entity that would be treated as a C corporation if domestic, or an estate of a deceased partner) 	

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Permission to use prior year's tax return in calculating corporate estimated tax payments (sec. 6655(d)(2) and (g)(2))	Corporation		Taxable income of less than \$1 million during any of the three immediately preceding taxable years			
Lower penalty limits for failure to file correct information returns (sec. 6721(d))			Average annual gross receipts of \$5 million or less for the most recent three taxable years			
Lower penalty limits for failure to furnish correct payee statements (sec. 6722(d))			Average annual gross receipts of \$5 million or less for the most recent three taxable years			
Exemption from requirement of parity in mental health and substance use disorder benefits for small employer (sec. 9812(c)(1))				Average of at least two (or one in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year		

Code Section	Type of Entity	Assets	Gross Receipts/ Income	Number of Employees/ Participants	Number of Shareholders/ Ownership Restrictions	Outlays/ Output
Small employer eligible to offer qualified small employer health reimbursement arrangement (sec. 9831(d)(3)(B)(i), by reference to sec. 4980H(c)(2))				Average of less than 50 full-time employees on business days during the preceding calendar year		

Notes:

- ¹ Section 1044 (providing an election to roll over tax-free capital gain realized on the sale of publicly-traded securities) was repealed by Pub. L. No. 115-97, sec. 13313, December 22, 2017, effective for sales after December 31, 2017.
- ² Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). Sec. 448(c)(4); sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445
- ³ Indexed for inflation for taxable years beginning after 2018 (\$2.89 million for taxable years beginning in 2023). Sec. 179(b)(6); sec. 3.25 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ⁴ Indexed for inflation for taxable years beginning after 2018 (\$1.16 million for taxable years beginning in 2023). *Ibid.*
- ⁵ Indexed for inflation for taxable years beginning after 2018 (\$182,100 and \$364,200, respectively, for taxable years beginning in 2023). Sec. 199A(e)(2)(B); sec. 3.27 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ⁶ Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). Sec. 448(c)(4); sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ⁷ Effective for plan years beginning after December 31, 2024.
- ⁸ Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). Sec. 448(c)(4); sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ⁹ Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). *Ibid.*
- ¹⁰ Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). *Ibid.*

- ¹¹ Indexed for inflation for taxable years beginning after 2018 (\$289,000 and \$578,000, respectively, for taxable years beginning in 2023). Sec. 461(l)(3)(C); sec. 3.32 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ¹² Indexed for inflation for taxable years beginning after 2018 (\$29 million for taxable years beginning in 2023). Sec. 448(c)(4); sec. 3.31 of Rev. Proc. 2022-38, 2022-45 I.R.B. 445.
- ¹³ The employee retention credit is not available for wages paid after September 30, 2021, except in the case of an eligible employer that is a recovery startup business, in which case the employee retention credit is available for wages paid after September 30, 2021 and before January 1, 2022.
- ¹⁴ The last day to request an advance payment of the employee retention credit (via the filing of IRS Form 7200, *Advance Payment of Employer Credits Due to COVID-19*) was January 31, 2022.