ROUNDUP OF RECENT TAX DEVELOPMENTS

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I. CHANGES TO HEALTH SAVINGS ACCOUNTS

A. Notice 2026-5 provides guidance on changes to HSAs under the OBBBA. The OBBBA allows high-deductible health plans to cover telehealth and other remote care services before the deductible is met for plan years beginning January 1, 2025.

B. Beginning January 1, 2026, bronze and catastrophic plans available through an Exchange are considered HSA-compatible regardless of whether they satisfy the general definition of a high-deductible health plan. The guidance clarifies that these plans do not have to be purchased through an Exchange to qualify.

II. 100% BONUS DEPRECIATION

A. News Release IR-2026-06 and Notice 2026-11 contained interim guidance on the additional first-year depreciation deduction under Section 168(k).

B. The guidance implements the OBBBA changes establishing permanent 100% bonus depreciation for qualified property acquired and placed in service after January 19, 2025. The notice provides rules for determining whether depreciable property is eligible for the additional first-year deduction. It also provides guidance on several taxpayer elections, such as the election to claim a reduced 40% depreciation rate instead of 100% for property placed in service during the first year ending after January 19, 2025.

III. QUALIFIED PRODUCTION PROPERTY

A. Notice 2026-16 provides guidance on new Section 168(n) enacted by the OBBBA, which allows taxpayers to elect a depreciation deduction of up to 100% of the unadjusted depreciable basis of qualified production property placed in service during a tax year.

B. Qualified production property means non-residential real property used as an integral part of a qualified production activity such as manufacturing, chemical, agricultural, or refining.

C. To be eligible, property must be placed in service after July 4, 2025, and before January 1, 2031, with construction beginning after January 19, 2025, and before January 1, 2029.

IV. REFUND OPPORTUNITY FOR PANDEMIC-ERA INTEREST AND PENALTIES

A. The U.S. Court of Federal Claims ruled in *Kwong v United States*, No. 23-267 (Fed. Cl. 11/25/2025) that certain tax deadlines were automatically postponed for the entire COVID-19 disaster plus 60 days.

B. The court found that the suspension of underpayment interest and failure-to-file or failure-to-pay penalties was mandatory under Section 7508A(d) from January 20, 2020, through July 10, 2023.

C. This decision invalidates a Treasury Regulation that attempted to limit this mandatory postponement to one year and follows the 2024 Tax Court decision in *Abdo v Commissioner*.

D. This ruling creates a potential refund opportunity for taxpayers who paid interest and penalties related to tax deadlines that fell within this period.

V. QUALIFIED TIP DEDUCTION

A. Final regulations (TD 10044) provide guidance on the OBBBA income tax deduction for qualified tips.

B. The regulations identify over 70 occupations eligible to receive tips. To be deductible, a tip must be paid voluntarily. Required service charges are excluded unless the customer has an option to disregard or modify the amount. The deduction is limited to $25,000 per tax return and is subject to a phase-out for taxpayers with MAGI over $150,000 ($300,000 for joint filers).

C. Tips must be reported on an information return, such as Form W-2 or Form 1099, or on the taxpayer's Form 4137.

D. The rules include anti-abuse provisions to prevent income recharacterization.

VI. PARTNERSHIP INTEREST EXCHANGE REPORTING

A. Final regulations (TD 10048) modify the information reporting requirements under Section 751(a) for exchanges of partnership interests involving unrealized receivables or inventory.

B. The rules are aimed at concerns that partnerships often cannot furnish the information required in Part IV of Form 8308 by the January 31 deadline following the exchange. Under the regulations, partnerships must only furnish information for Parts I, II and III for Form 8308 by the required statement due date. The complete Form 8308, including Part IV, must still be filed with a partnership's Form 1065.

VII. QUALIFIED OPPORTUNITY ZONES

A. Notice 2026-40 announces the IRS' intent to issue proposed regulations and transitional guidance for Qualified Opportunity Zones following amendments to those rules by OBBBA.

B. For investments made by December 31, 2026, any deferred gain is recognized on December 31, 2026. For investments made on or after January 1, 2027, the gain deferral period is 5 years. Generally, property acquired after December 31, 2026, is only eligible if it is in a newly designated Qualified Opportunity Zone. However, the Notice provides transitional relief allowing previously designated property to qualify if it is acquired pursuant to a working capital safe harbor plan adopted by December 31, 2026, or if it is acquired in the ordinary course of business to replace or modernize existing equipment.

C. The Notice also provides safe harbors allowing entities to meet certain compliance tests by treating an expired Qualified Opportunity Zone as still in effect through December 31, 2047.

VIII. FUTURE INTEREST SAFE HARBOR FOR TRUMP ACCOUNTS

A. Rev. Proc. 2026-25 provides a gift tax reporting safe harbor for certain contributions to Trump Accounts. They address concerns that contributions could be treated as gifts of a future interest, which would not qualify for the annual gift tax exclusion and would require filing a gift tax return.

B. Under the safe harbor, a contribution to a Trump Account will be treated as a present-interest gift eligible for the annual exclusion. The annual exclusion for 2026 is $19,000. The safe harbor applies if the donor's total of gifts to the beneficiaries do not exceed the Annual Gift Tax Exclusion, the contribution creates no gift or generation-skipping transfer tax liability, and no gift tax return is otherwise required for the year.

IX. ABUSIVE CRAT SCHEME

A. TD 10051 and News Release IR-2026-82 contain final regulations identifying certain abusive Charitable Remainder Annuity Trust ("CRAT") transactions as listed transactions.

B. The scheme that is targeted by the regulations involves a taxpayer transferring appreciated property to a CRAT, which then sells the property and uses the proceeds to purchase a single premium immediate annuity. By incorrectly applying the rules under Section 72 and Section 664, the taxpayer incorrectly claims that the CRAT annuity distributions are taxable only to the extent of the annuity's income. As a result, no taxes are paid on the capital gains.

C. Notwithstanding the foregoing, a charitable organization serving solely as the remainderman of the CRAT is not considered to be a participant in the scheme and is not subject to the disclosure requirements that otherwise apply to listed transactions.

X. EXPANDED FAMILY AND MEDICAL LEAVE CREDIT

A. Notice 2026-28 and News Release IR-2026-86 provide guidance on the employer credit for paid family and medical leave under Section 45S following the permanent expansion of this credit by the OBBBA.

B. Notice 2026-28 provides an optional premium method for calculating the credit which allows employers to use insurance premiums paid for family and medical leave coverage as an alternative to the existing wage-based calculation. The guidance discusses how to allocate premiums when a policy covers both creditable and non-creditable leave.

C. OBBBA also expands credit eligibility by reducing the employee service requirement to 6 months and including employees who customarily work 20 or more hours per week.

XI. SAVER'S MATCH PROGRAM

A. Notice 2026-48 and News Release IR-2026-89 provide initial guidance on the new Saver's Match under the SECURE 2.0 Act. This program replaces the non-refundable Saver's Credit and provides a direct government matching contribution to an eligible individual's retirement account.

B. The match is 50% of the first $2,000 of qualified retirement savings contributions up to a maximum of $1,000. It phases out based on MAGI.

XII. EMPLOYER CONTRIBUTIONS TO TRUMP ACCOUNTS

A. Proposed regulations (REG-101355-26) and News Release IR-2026-90 involve employer contributions to Trump Accounts.

B. Employers may establish a written plan for tax-free contributions up to $2,500 annually to an employee's (or their dependent's) account. The regulations outline the non-discrimination rules that must be satisfied and provide guidance on employee notification and Form W-2 reporting.

XIII. TRUSTS WITH PASSTHROUGH CHARITABLE DEDUCTIONS

A. New proposed regulations (REG-109082-25) exempt certain trusts from filing Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts.

B. The proposed regulations apply to trusts whose only claimed charitable contribution deduction under Section 642(c) results from contributions made by a passthrough entity in which the trust holds an interest. The intent is to reduce the reporting burden on trustees since the underlying charitable contribution information is already reported to the IRS by the passthrough entity.

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XIV. TEMPORARY REGULATIONS ISSUED ON TRUMP ACCOUNTS

A. On September 30, 2026, Treasury issued temporary regulations (TD 10056) and notice of proposed rulemaking (CC-00226466-26) providing general requirements for Trump Accounts, rules for establishing an initial Trump Account, and rules for qualified general contributions, including contributions of qualified stock. Importantly, the proposed regulations published on March 9, 2026 (REG-117270-25) are withdrawn.

B. The temporary regulations provide for broad automatic enrollment. The Secretary of the Treasury will make an election to establish a Trump Account (referred to as an "auto account") for each eligible individual for whom no prior election has been made. Assets of auto accounts will be invested collectively through a master group trust established by the Secretary.

XV. CAR LOAN INTEREST DEDUCTION AND REPORTING

A. Final regulations (TD 10054) implement the OBBBA provisions regarding qualified passenger vehicle loan interest. Under these rules, taxpayers can deduct up to $10,000 of interest for taxable years beginning after December 31, 2024, and before January 1, 2029.

B. Any person engaged in a trade or business who receives $600 or more in interest during the calendar year must file an information return and furnish a written payee statement to the borrower. Lenders required to file 10 or more returns must file them electronically. The regulations specify penalties for failure to file correct information returns or furnish payee statements.

XVI. LIMITED PARTNER EXCEPTION

A. The Fifth Circuit has issued a decision providing that in order for a person to be a limited partner, the person must be a limited partner under state law and someone who "plays no significant role in managing or running a business." *Sirius Solutions LLLP v. Commissioner* (Reissued as *K. Alain, LLLP v. Commissioner*). This follows the Second Circuit's decision in *Soroban Partners LP v. Commissioner* holding that a person must be a limited partner under state law and not "run, manage, or otherwise exert control or managerial authority over the partnership." A third case, *Denham Capital Management LP v. Commissioner*, is still pending on appeal before the First Circuit.

B. The limited partnership exception under Section 1402(a)(13) excludes the limited partner's distributive share of partnership income from self-employment tax. The Second and Fifth Circuits would exclude a partner's distributive share of partnership income from self-employment tax if the partner is a limited partner under state law and has no role in running or managing the business, although the partner can perform some work for the partnership. Outside these circuits, the IRS may continue to assert the argument that a partner who performs work for the partnership may not be able to use the limited partner exception, even though they are not involved in management activities.