Charitable Giving Changes under OBBBA

Take-Away: Charitable giving just got a bit messier with the One Big Beautiful Bill Act.

Background: The One Big Beautiful Bill Act (OBBBA) created new charitable giving opportunities, along with some restrictions that might impede the impulse to give to charities. Those changes follow.

60% AGI Limit for Cash Gifts: A temporary provision under the prior law as made *permanent*. [IRC 170(b)(1)(G)(i).] OBBBA codified the 60% adjusted gross income (AGI) limit for cash gifts to public charities. An additional enhancement improves the mechanics of applying the 60% AGI limitation. Under the new framework, the 60% ceiling for cash gifts may be layered on top of deductions for noncash gifts to the same category of charitable donees, as long as the combined amount does not exceed 60% of the donor's AGI, aka *stacking.* This coordination will allow donors to maximize the use of both types of contributions without forfeiting deductibility under lower tier limitations.

Above the Line Deduction: OBBBA created a new above-the-line deduction for *non-itemizers* of up to $1,000 per individual, or $2,000 for joint filers, starting in 2026. [IRC 170(p).] These gifts must be made directly to public charities defined in IRC 170(b)(1)(A), but *donor advised funds are excluded,* along with private nonoperating foundations and supporting organizations. As with all charitable gifts, there is also the contemporaneous written acknowledgement requirement.[IRC 170(f)(8).]

0.5% AGI Floor: OBBBA introduced a 0.5% *floor* for itemized charitable deductions, starting in 2026. Thus, a donor who itemizes his/her tax deductions may claim a charitable contribution deduction only to the extent that the aggregate amount of his/her contribution for the year exceeds 0.5% of his/her AGI. [IRC 170(b)(1)(l).] This floor applies across all otherwise deductible contributions, regardless of the type of charitable done or the form of property that is contributed to the charity. This 0.5% floor operates independently of other AGI percentage limitations under the Tax Code.

Ordering Rules: Complicating matters even more is that there is also imposed a required order in which charitable contributions are applied against the 0.5% floor: (i) capital gains property to private nonoperating foundations (20% AGI limitation); (ii) capital gains property to 50% charities (30% AGI limitation); (iii) cash to 30% limit organizations (30% AGI limitation); (iv) qualified conservation easements (50% AGI limitation, or 100% in the case of a qualified farmer); (v) Noncash gifts to public charities (50% AGI limitation); and (vi) cash gifts to public charities (60% of AGI limitation.) The effect of these ordering rules allows the highest limitation charitable gifts to apply last, thus maximizing overall deductibility.

Carryforward of Disallowed Charitable Deductions: A donor may carry forward charitable contributions that are disallowed solely because they fall under the 0.5% AGI floor. [IRC 170(d)(1)(C).] These contributions can be carried forward to each of the five succeeding taxable years. However, consistent with current law, the current year charitable contributions are considered first, and deduction carry forwards may be deducted only if there is remaining 'room' under the applicable AGI percentage limitations.

1.0% Income Floor for Corporations: OBBBA adds a 1% *floor* for corporate charitable deductions, starting in 2026. [IRC 170(b)(2)(A).] This means that a corporation's deduction for charitable contributions will be denied if they do not exceed 1% of the corporation's taxable income. If charitable contributions fail to meet the 1% *floor*, those contributions are permanently nondeductible. The existing 10% ceiling for corporate charitable contributions remains unchanged, though carryforwards are permitted only for contributions that are disallowed because they exceed that ceiling. With this new *floor* corporations will have to be more strategic in their charitable giving.

Charitable Deduction Ceiling for High Earners: OBBBA imposes a limitation on the effective value of itemized deductions to 35% for high-income individuals, including charitable deductions. [IRC 68.] It functions much like the suspended Pease limitation on deductions. This limit applies only to those taxpayers who are in the 37% marginal federal income tax bracket. The rule effectively limits the maximum tax benefit of itemized deductions to 35% for income within the 37% federal income tax bracket. The impact of this limitation is that the value of deductions to the taxpayer in this tax bracket is reduced by 2/37 of the lesser of (i) total itemized deductions, or (ii) the excess of taxable income over the 37% threshold.

- **Example:** Beth has $800,000 of taxable income. Beth claims $120,000 in itemized deductions. If $180,000 of Beth's income is subject to the 37% federal income tax rate, the reduction to her itemized deductions is 2/37 x$120,000 = $6,486. Accordingly, Beth's allowable deduction becomes $113,514, not $120,000.

Scholarship Granting Organizations: OBBBA adds a nonrefundable *credit* for contributions to state-certified program scholarship granting organizations (SGOs). [IRC 25F.] SGO-awarded scholarships will be *excluded from gross income*. [IRC 139K.] The credit equals 100% of the contribution, up to $1,700 per individual, or $3,400 for joint filers. The donor must reside in a state that has submitted a certified list of eligible SBOs to the IRS. SGO's award scholarships to K-12 students from families that earn no more than 300% of the area median income, following the definitions and standards described in IRC 42. The credit is only available for cash gifts and is reduced by any state tax benefit that is received associated with the gift. To qualify, the SGO must be an IRC 501(c)(3) charity.

Conclusion: OBBBA provided a 'mixed bag' when it comes to philanthropy. It provides some incentives to charity giving, e.g., the opportunity for an above-the-line deduction for nonitemizers, but it also adds new floors, limits, and exclusions that will complicate planning and require greater attention to detail by donors and their advisors.

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