

OBBBA and Charitable Giving- Plunging Into the Weeds

Take-Away: Planning strategies for charitable deductions to optimize a donor's tax benefits going forward will turn on if the individual itemizes his/her tax deductions, or does not itemize his/her tax deductions, keeping in mind that about 90% of individuals do not itemize their income tax deductions.

Background: The One Big Beautiful Bill Act (*beauty* always being in the eye of the beholder) provides many new rules for philanthropy and claiming charitable deductions. A summary of some of those charitable giving deduction rules follow:

60% Adjusted Gross Income Limit: The OBBBA made permanent the 60% adjusted gross income (AGI) limit for **cash** gifts, starting with 2026. Charitable contributions disallowed may be carried forward for 5 years. Carry forwards are lost if the donor dies before the carry forwards are fully utilized.

\$1,000 Above-the-Line Deduction: A new \$1,000 above-the-line charitable deduction (\$2,000 if married, filing jointly) for **cash** contributions to a *qualifying* charity is available for non-itemizing individuals. This gift- opportunity starts in 2026. A *qualifying* charity is one that is described in IRC 170(b)(1)(A); notably, gifts to donor advised funds, supporting organizations, and charitable remainder trusts (CRTs) are **excluded**. Contributions of property will *not* qualify for this new charitable deduction that is available to non-itemizers. A charitable contribution carryforward from a prior year will *not* qualify for this new charitable deduction. Apparently, this new \$1,000 (\$2,000) charitable deduction is *not* subject to the new 0.5% floor (see below.)

Bunching Gifts: Prior advice concerning charitable deductions has been to *bunch* charitable gifts into one year above the standard deduction amount and elect to itemize those deductions [IRC 63(b).] In alternate years, the donor should then use the standard deduction and not itemize deductions. That may no longer be a tax effective strategy with the standard deduction amount now being indexed to inflation. Then again, bunching contributions to a donor advised fund in a single year can be an effective tax-savings strategy, but that is not always the case.

0.5% Floor on Itemized Deductions: This new rule starts in 2026. A donor who itemizes his/her charitable contribution deductions is allowed the itemized deduction only to the extent that the aggregate of such contributions exceeds 0.5% of his/her modified adjusted gross income (MAGI) for the tax year. Contributions disallowed by this 0.5% floor will qualify for carryforwards only from years in which the 0.5% limitation is exceeded, meaning after 2026.

Example: In 2026 Todd has MAGI of \$200,000. Todd made charitable contributions of \$10,000. The 0.5% limitation is thus \$1,000 [$\$200,000 \text{ MAGI} \times 0.5\% = \$1,000$.] Todd's itemized charitable contribution deduction will be \$9,000, i.e., \$10,000 less the \$1,000 0.5% 'floor.' Todd's charitable contribution carryover to 2027 is \$1,000 since the 0.5% limitation was exceeded. If Todd had made charitable contributions of \$1,000 or less, he would not be able to claim an itemized charitable contribution carryforward in 2027.

The 0.5% floor reduces both cash and property contributions to a charity. Some donors may lose property charitable contribution deductions due to the 0.5% floor. As such, a donor considering a property contribution to charity, e.g., Goodwill contributions, should consider moving those property gifts to 2025 if the donor would lose a 2026 charitable deduction due to the 0.5% floor. In contrast, a non-itemizer has nothing to lose by deferring a property contribution to charity until 2026.

Charitable Contribution Carryforwards: A charitable contribution that is disallowed due to the 0.5% 'floor'/limitation may be only carried forward for 5 years. The disallowance under the new 0.5% floor, as revised under IRC 170(b)(1)(l), will be applied in the following order:

1. 20% AGI for appreciated property contributed to a nonpublic charity;
2. 30% AGI for capital gain appreciated property contributed to a public charity;
3. 30% AGI for noncapital gain i.e., cash and other non-appreciated property, contributed to a nonpublic charity;
4. 50% or 100% of AGI for qualified conservation contributions;

5. 50% AGI for non-appreciated property contributed to a public charity; and
6. 60% AGI for cash contributed to a public charity.

After allowing disallowed deductions in this order, the carryforward re: that exceeded the AGI limit, will increase accordingly.

The 2/37th Limit Applied in Addition to Other Limits: The OBBBA, effective for tax years starting in 2026, permanently repeals the Pease limitation on itemized deductions and replaces it with a new overall limitation on itemized tax deductions. Arguably, this new limitation is more favorable than the ‘old’ Pease limitation for taxpayers. In general, itemized deductions otherwise allowable for a year are reduced by up to 2/37th, or 5.4%.

A high-income individual will keep almost all (35/37th) or 94.6% of his/her itemized deductions. For itemized deductions, the OBBBA caps the value of each dollar of itemized deductions at \$0.35 and it applies only to those individuals who are in the highest marginal individual income tax bracket.

For non-SALT itemized deductions, this new limit creates a 39% effective income tax rate for itemized deductions in excess of the 37% tax bracket threshold, e.g., \$693,751 for married filing jointly and \$578,125 for an unmarried individual. The SALT deduction is subject to its own high-income phaseout limits reduced, first, then the new 2/37th rule is applied to further limit it.

For charitable contribution deductions, the 0.5% ‘floor’ applies first, and only then does the 2/37th rule apply to further limit the deduction.

Example: Ken and Barbara file as married, filing jointly. In 2026, they have \$1.0 million in taxable income, and \$100,000 in itemized tax deductions. Their itemized deductions have already been reduced by both the SALT phaseout and the 0.5% charitable deduction floor. The most that the remaining itemized deductions may be lost under the 2/37th rule is \$5,400, i.e., $\$100,000 \times 5.4\% = \$5,400$. The 37% income tax bracket begins at \$751,601. The amount of Ken and Barbara’s income that exceeds the 37% tax bracket exceeds their

amount of itemized deductions. For Ken and Barbara's income, the lesser of such excess amount or itemized deductions is their available itemized deductions. Accordingly, their \$100,000 itemized deductions times 2/37th results in \$5,400 itemized deductions are lost due to the OBBBA's new 2/37th rule. \$94,600 is retained by Ken and Barbara as their itemized deduction amount in 2026.

C Corporations: The OBBBA creates a floor equal to 1% of taxable income for the deductibility of a C corporation's deductible charitable contributions. C corporations are only permitted to deduct up to 10% of the corporation's taxable income in a year. Only the portion of corporation's charitable contributions that exceeds 1% is deductible by the corporation. Starting in 2026, the 9% spread (between 1% floor and 10% ceiling of the corporation's taxable income) is the only amount that is currently deductible by the corporation. Charitable contributions by the corporation disallowed by the 1% floor may only be carried over to the subsequent year if the 10% ceiling in the year of the charitable contribution is also exceeded. C corporation contributions in excess of the 10% ceiling may be carried forward to the corporation's subsequent 5 tax years and those carried forward amounts are treated as allowed on a first-in, first-out basis. Any carry forward amount is applied after charitable contributions are made in the current taxable year by the corporation for purposes of the 1% floor and the 10% ceiling.

Trusts and Estates: A non-grantor trust and an estate are also subject to the 2/37th rule [IRC 68(f).]

Example: John Smith's estate is entirely payable to the United Way. His estate's only asset is John's traditional IRA which is valued at \$370,000. What is unclear under OBBBA is whether John estate realizes income of \$370,000, but after application of the 2/37th rule, the estate only gets to claim a charitable income tax deduction of \$350,000.

Conclusion: Inasmuch as these new OBBBA charitable giving rules start in 2026, 2025 might be a good time to make charitable gifts. Bunching contributions to charity, like a donor advised fund, might be a good move in 2025. In addition, when making charitable gifts subject to AGI limitations, it will be important to pay attention to the 5-year carryover rules. Finally, CPAs will be very busy giving lots of advice and 'crunching' numbers on when to give, what to give, and how to give, when their clients wish to engage in philanthropy.

If you would like to read additional missives, [click here](#).