

Lingering One Big Beautiful Bill Act Questions

Quick-Take: Some provisions of the One Big Beautiful Bill Act are getting some attention, but not the kind of attention that many in Congress want, optics being the ‘name of the game’ in Congress these days.

Background: The One Big Beautiful Bill Act (OB3) was passed with such haste and secrecy in the dead of night (but with a lot of fanfare the following day) that it is only natural that many mistakes were made when the bill was signed into law on July 4, 2025. Some of those mistakes, or oversights, are now coming to light, prompting many questions directed at the Department of Treasury. Recently the American College of Trust and Estates Counsel (ACTEC) submitted ‘comments’ (kindly avoiding the word ‘criticisms’) to Treasury. Those ‘comments’ follow.

Trump Accounts: The OB3 created Trump Accounts to encourage children to save. [IRC 530A, close to, but different from, an IRC 529 qualified higher education account.] Briefly, a Trump Account can be opened for a child under the age 18, to which the donor can make gifts of up to \$5,000 a year. However, to qualify for the federal gift tax annual exclusion (\$19,000) the gift must be a *present interest*. The same *present interest* requirement applies to the generation skipping transfer tax (GSTT) annual exclusion. Gifts to 529 accounts are protected (or excluded) from the *present interest* requirement by statute. However, there is no similar exclusion from the *present interest* condition for gifts made to a Trump Account.

Concern: A donor who funds a Trump Account, which can be done only after July 4, 2026, will have to file a federal gift tax return [Form 709] and possibly use some of the donor’s then available applicable exemption amount for federal gift and GST taxes regarding any transfers to a Trump Account.

Limitation on Itemized Deductions: The OB3 revived, but also limited, some itemized income tax deductions. Starting in 2026 itemized income tax deductions for individuals will be reduced by 2/37th of the lesser of (i) the individual’s itemized deductions, or (ii) the excess of the individual’s taxable income (without considering any itemized deductions) over the income threshold for the 37% income tax bracket. Consequently, this provision

caps the benefit of itemized deductions for individuals in the 37% marginal federal income tax bracket to a 35% benefit. This 2/37th deduction-reduction, however, is not limited to individuals who have income that is subject to the 37% tax rate. The limitation could also be applied to individuals with long-term capital gains or qualified dividends taxable at a 20% rate that exceeds the dollar threshold for the 37% income tax bracket. The Senate Finance Committee statement also suggests that this limitation applies only to individuals, but the statute and the Tax Code would make the limitation automatically apply to trusts and estates as well. Thus, there is some confusion if this same deduction limitation applies to trusts and estates which find themselves in the 37% income tax bracket when their taxable income exceeds \$16,000 in 2026.

Example: A trust makes a distribution to its beneficiary. The trust generally serves as a conduit- the trust receives a deduction for the distribution to the beneficiary, and the beneficiary picks up the income on the beneficiary's personal income tax return. If the trust, which is at the 37% marginal income tax bracket, is limited in its distribution deduction, the trust will generally pay income tax on 2/37th of the distribution, and the beneficiary will pay income tax on the entire income distributed to him or her, which results in *double taxation* on a portion of the trust's distribution.

Due to this OB3 change, an estate or trust that pays all of its assets to charity would still owe an income tax.

Small Business Stock: IRC 1202 provides for the exclusion of tax on the sale proceeds of stock of some C corporations, up to the greater for \$10 million or 10 times the adjusted basis of the stock. To qualify for this gain exclusion, one requirement is that the corporation could not have more than \$50 million in aggregate gross assets. One of the OB3 changes raised the \$50 million aggregate gross asset limitation to \$75 million, adjusted for inflation beginning in 2027, but this new regime generally only applies to stock that is issued on or after July 5, 2025, and the changes are generally effective for tax years beginning after that date. What is not clear from the OB3 is whether a corporation that exceeded the \$50 million threshold prior to the Act but did not exceed the \$75 million limitation may still qualify as qualified small business stock that is issued on or after July 5, 2025. The OB3 is also not clear regarding the determination of the 'acquisition date' for purposes of applying another OB3 change which creates holding tiers for the exclusion before the normal 5-year holding period; the OB3 permits a 50% gain exclusion if the stock is held for 3 years, and a 75%

exclusion if the stock is held for 4 years prior to its sale. What stock that is sold can qualify for the gain exclusion is not yet clear.

Conclusion: It is to be expected that Treasury will be very busy over the next year or so cleaning up the confusion caused by many of the OB3's massive provisions that apparently came into law without much thought, i.e., the 'law of unintended consequences' at work.

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