

# New Legislation: Credit Updates in the OBBBA

# OBBBA Section 70302: Full Expensing of Domestic Research and Experimental Expenditures (IRC Section 174A)

**Domestic R&E Expensing:** Businesses can choose to immediately deduct domestic R&E costs in the year incurred or elect to amortize them over at least 60 months.

**Foreign R&E Amortization:** Foreign R&E costs continue to be amortized over 15 years

**Transition Rules (2022-2024 capitalized costs):** For domestic R&E costs capitalized under prior rules, taxpayers have options for the remaining balance starting in the first tax year after December 31, 2024. Example for calendar year taxpayers:

- 100% in 2025,
- 50% in 2025, 50% in 2026, or
- Continued amortization over the original period.

**Retroactive Application for Small Businesses:** Eligible small businesses can retroactively apply the new expensing rules to tax years beginning after December 31, 2021, by amending returns by July 6, 2026.

# Full Expensing of Domestic Research and Experimental Expenditures (Rev. Proc. 2025-28)

## Retroactive relief for small businesses and guidance for all taxpayers

- Small business taxpayers meeting Section 448(c) gross receipts test, will be permitted to **apply full domestic expensing retroactively** to tax years beginning after December 31, 2021.
- Businesses can file amended returns (or Administrative Adjustment Requests, or AARs, for partnerships) for the affected tax years (2022, 2023, and 2024) to deduct the R&E expenses in the year they were incurred.
- The deadline to file these amended returns is the earlier of July 6, 2026, or the normal statute of limitations for filing a claim for credit or refund.
- The guidance offers simplified accounting method changes. Instructions are included for allowing a statement on a tax return instead of Form 3115.

## Section 280C Interaction:

- Taxpayers choosing the retroactive application must also retroactively apply conforming amendments to Section 280C(c). This means they must either reduce their R&E deduction by the amount of their research credit or elect to claim a reduced research credit for those years, potentially affecting the net benefit.
- The procedure addresses coordination with the research credit (Section 280C), permitting eligible small businesses to make a late or revoked election for prior years.

# OBBBA Section 70401: Enhancement of Employer-Provided Child Care Credit (IRC Section 45F)

## Enhancements:

- Effective for qualified childcare expenses paid/incurred after December 31, 2025.
- Tax credit percentage increases from 25% to 40% for most employers.
- For eligible small businesses (EBS), the credit is increased further to 50% (EBS = meets the gross receipts test of I.R.C. Section 448(c) but substituting a 5-tax-year period).
- Maximum credit amount per tax year cannot exceed \$500,000 (\$600,000 for EBS) and adjusted yearly for inflation (up from \$150,000 previously).
- The provision expands eligibility by allowing the credit for payments made through third-party intermediaries and explicitly permits the credit for jointly owned or operated childcare facilities.

## Qualified Expenditures Include:

- Acquire, construct, rehabilitate, or expand property for a childcare facility.
- Operating costs of a childcare facility (e.g., training staff, scholarships, increased compensation for trained staff).

## Key Requirements:

- The childcare facility's principal use must be for childcare, or at least 30% of enrollees must be dependents of the employer's employees
- Enrollment and availability in the facility must be open to all employees (no discrimination in favor of highly compensated employees).

**Reporting:** File Form 8882 with annual return and credit carries forward for 20 years.

# OBBBA Section 70404: Enhancement of the Dependent Care Assistance Program (IRC Section 129)

The I.R.C. Section 129(a)(2)(A) dependent care assistance program contributions limits are increased from \$5,000 (\$2,500 MFS) to \$7,500 (\$3,750 MFS). The taxpayer can exclude these amounts from income. The amendment applies to tax years beginning after December 31, 2025.

# OBBBA Section 70421: Permanent Renewal and Enhancement of Opportunity Zones (IRC Sections 1400Z-1 and 1400Z-2)

Makes the Opportunity Zone (OZ) program permanent – **No Sunset**.

Effective for investments made **on or after Jan 1, 2027** (“OZ 2.0”).

**New penalties** for late or inaccurate filings.

New stronger fund reporting requirements.

Criteria for determination of low-income communities **is revised**.

## **Tax Benefits Enhancement:**

- **Deferral Period:** The deferral on capital gains tax is extended to **the earlier of 5 years or sale** (instead of the fixed 2026 deadline).
- **10% Step-Up in Basis:** For investments made after Jan 1, 2027, the 15% step-up is eliminated and replaced with a single 10% basis step-up after a five-year deferral period.
- New category: Qualified Rural Opportunity Fund (QROFs): step-up basis of **30%** after 5 years for rural OZ investments and reduced “substantial improvement” requirement from 100% to 50% for rural assets.
- **Capital Gains Exclusion:** After 10 years, capital gains on the appreciation of Qualified Opportunity Fund investments can be **completely excluded** from tax, incentivizing long-term commitment.

# Retirement Plans

## Small Employer Pension Plan Startup Credit

- **What It Is:** Tax credit to help small businesses offset costs of starting a retirement plan (e.g., 401(k), SIMPLE IRA, or SEP IRA).
- **Who Is Eligible:** Employers with **100 or fewer employees** who don't already offer a retirement plan.
- **Credit Amount:**
  - **100% of plan startup costs** (up to \$5,000) for businesses with fewer than 50 employees.
  - Phases out for businesses with 51-100 employees, providing a reduced credit.
- **Maximum Credit:** Up to **\$5,000 per year** for the first 3 years.

## Automatic Enrollment Credit

- **What It Is:** A credit to encourage employers to automatically enroll employees in retirement plans.
- **Who Is Eligible:** Employers who add automatic enrollment to their retirement plan.
- **Credit Amount:** Up to **\$500 per year** for the first 3 years the plan includes automatic enrollment.

# Retirement Plans

## Employer Contribution Credit for Small Employers

- What It Is:** A credit for employers who make contributions to employees' retirement accounts.
- Who Is Eligible:** Employers with fewer than **100 employees** who contribute to employees' plans, including matching contributions or profit-sharing.
- Credit Amount:** The credit is **100%** of employer contributions (up to \$1,000 per employee), with a maximum of \$50,000 for the business in total. The credit applies for the **first 3 years** the employer offers contributions.

## Small Employer 401(k) and SIMPLE IRA Plan Contribution Credit

- What It Is:** A new credit for employers who contribute to employees' retirement plans, specifically for small businesses that automatically enroll employees in a 401(k) or SIMPLE IRA.
- Who Is Eligible:** Small businesses (with fewer than 100 employees) that offer matching or nonelective contributions.
- Credit Amount:** Up to **\$1,000 per eligible employee** in employer contributions for the first 3 years.

# Work Opportunity Tax Credit (WOTC)

Unless congress takes action soon, the WOTC will expire December 31, 2025.

- Incentive based credit available to employers who hire individuals from certain target groups facing significant barriers to employment
- Employers can earn a tax credit from \$100 to \$9,600 per eligible employee, depending on the target group of the new employee and number of hours worked in the first year.
- 28 Day Rule! Taxpayer has 28 days from date of hire to submit to State Workforce Agency (SWA).

## Which Employees are Eligible?

- Qualified Veterans
- SNAP (food stamps) Recipients
- TANF Recipients (Long/Short term)
- Designated Community Residents
- SSI Recipients
- Ex-Felons
- Long-Term Unemployment
- Vocational Rehabilitation Referrals