



# FEDERAL TAX WEEKLY

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## Streamlined Procedures Provided for Research and Experimental Expenditure Elections and Accounting Method Changes

*Rev. Proc. 2025-28*

Revenue Procedure 2025-28 instructs taxpayers on how to make various elections, file amended returns or change accounting methods for research or experimental expenditures as provided under the One Big Beautiful Bill Act (P.L. 119-21). The revenue procedure also provides transitional rules, modifies Rev. Proc. 2025-23, and grants an extension of time for partnerships, S corporations, C corporations, individuals, estates and trusts, and exempt organizations to file superseding 2024 federal income tax returns.

### Background

The Tax Cuts and Jobs Act (TCJA) required taxpayers to capitalize and amortize specified research or experimental expenditures over five years for domestic research or 15 years for foreign research, beginning with tax years after December 31, 2021. The OBBB Act, enacted July 4, significantly modified these rules by adding new Code Sec. 174A to allow immediate deduction of domestic research or experimental expenditures while retaining the capitalization and amortization requirements only for foreign research expenditures.

Code Sec. 174A provides that domestic research or experimental expenditures paid or incurred in tax years beginning after December 31, 2024, are generally deductible when paid or incurred. Alternatively, taxpayers may elect under Code Sec. 174A(c) to capitalize these expenditures and amortize them over at least 60 months, beginning when the taxpayer first realizes benefits from the expenditures.

The OBBB Act also provides transition relief, including retroactive application options for small business taxpayers and methods for recovering previously capitalized amounts.

### Code Sec. 280C(c)(2) Elections and Revocations

Eligible small business taxpayers may make late elections under Code Sec. 280C(c)(2) to reduce their research credit in lieu of reducing their deductible research expenditures or revoke prior Code Sec. 280C(c)(2) elections. These are available for applicable tax years if the original return was filed before September 15, 2025.

Elections are made by adjusting the research credit amount on amended returns, attaching amended Form 6765 marked with the appropriate revenue procedure reference, and including required declarations.

## Code Sec. 174A(c) Election Procedures

For domestic research or experimental expenditures paid or incurred in tax years beginning after December 31, 2024, taxpayers may elect to capitalize and amortize these expenditures under Code Sec. 174A(c). The election must be made by the due date of the return for the first applicable tax year by attaching a statement specifying the amortization period (not less than 60 months) and the month when benefits are first realized.

## Automatic Consent for Accounting Method Changes

Rev. Proc. 2025-28 modifies Rev. Proc. 2025-23 to provide automatic consent procedures for various accounting method changes related to research expenditures:

changes to comply with Code Sec. 174 for expenditures paid or incurred before January 1, 2025;

changes to implement the new Code Sec. 174A deduction or amortization methods for expenditures paid or incurred after December 31, 2024; and

changes to comply with modified Code Sec. 174 requirements for foreign research expenditures.

For the first tax year beginning after December 31, 2024, taxpayers may use statements in lieu of Form 3115 for certain accounting method changes, with simplified procedures and waived duplicate filing requirements.

## Small Business Retroactive Election

Small business taxpayers meeting the Code Sec. 448(c) gross receipts test (average annual gross receipts of \$31,000,000 or less for 2025) may elect to retroactively apply

## Fourth Quarter 2025 Interest Rates Remain Unchanged

The over and underpayment interest rates for the fourth quarter of 2025 remain unchanged. The fourth quarter begins on October 1, 2025. The rates will be:

- 7 percent for overpayments
- 6 percent for corporate overpayments
- 7 percent for underpayments, and
- 9 percent for large corporate underpayments.

The interest rate for the part of a corporate overpayment exceeding \$10,000 is 4.5 percent.

### Computation of Fourth Quarter 2025 Interest Rates

The IRS computes these interest rates quarterly. The fourth quarter rates are based on the federal short-term rate for August 1, 2025 which is 4 percent.

For noncorporate taxpayers:

- the overpayment rate is the short-term rate plus 3 percent, and
- the underpayment rate is the short-term rate plus 3 percent.

For corporate taxpayers:

- the underpayment rate is the short-term rate plus 3 percent
- the overpayment rate is the federal short-term rate plus 2 percent.
- the rate on the part of a corporate overpayment that exceeds \$10,000 for a tax period is the short-term rate plus 0.5.
- the underpayment rate for large corporations is the short-term rate plus 5 percent.

*Rev. Rul. 2025-18; IR-2025-87*

Code Sec. 174A to domestic research or experimental expenditures paid or incurred in tax years beginning after December 31, 2021. This election allows eligible taxpayers to either deduct these expenditures in the year paid or incurred or elect the Code Sec. 174A(c) amortization method.

The election is made by attaching a statement entitled "FILED PURSUANT TO SECTION 3.03 OF REV. PROC. 2025-28" to the taxpayer's original or amended federal income tax return for each applicable tax year. The statement must include the taxpayer's identification information, declarations regarding tax shelter status and gross receipts test compliance, and specification of the chosen method.

Elections made on amended returns must be filed by July 6, 2026, subject to the normal statute of limitations under Code Sec. 6511 for refund claims.

## Relief for Previously Filed Returns

Rev. Proc. 2025-28 grants automatic six-month extensions for eligible taxpayers to file superseding returns for 2024 tax years. This relief is available to taxpayers who filed returns before September 15, 2025, without extensions, and need to make elections or method changes provided by the revenue procedure.

The extension applies to partnerships, S corporations, C corporations,

### REFERENCE KEY

USTC references are to **U.S. Tax Cases**  
Dec references are to **Tax Court Reports**

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individuals, trusts, estates, and exempt organizations with 2024 tax years ending before September 15, 2025, if the original due date was before September 15, 2025.

## Effective Date

Most provisions of Rev. Proc. 2025-28 are effective August 28, 2025. The modified automatic change procedures apply to

Forms 3115 filed after August 28, 2025, with transition rules for taxpayers who properly filed duplicate copies before November 15, 2025.

## 90-Day Filing Deadline Nonjurisdictional; Tolling Analysis Pending

*N.Y. Oquendo, CA-6 2025-2 USTC ¶50,225*

An appeals court ruled that the 90-day petition-filing deadline under Code Sec. 6213(a) is a nonjurisdictional “ordinary filing deadline.” The provisions of Code Sec. 6213(a) relevant to the case lacked markers indicating a limit on subject matter jurisdiction. These provisions did not explicitly reference jurisdiction in connection with the petition-filing deadline, and there was no clear congressional intent to render the deadline jurisdictional.

In *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 202 (2015), the Supreme Court

held that a similar 30-day deadline under Code Sec. 6330(d)(1) did not constitute a clear statement of a jurisdictional rule.

The taxpayer alleged that the Tax Court erred by: (1) treating the deadline as jurisdictional; (2) failing to equitably toll the deadline; and (3) dismissing her petition for lack of jurisdiction.

## Equitable Tolling

The Tax Court did not conduct an inquiry into equitable tolling because it believed such relief was foreclosed by this court’s

precedent. Consequently, the matter was remanded to the Tax Court.

The Tax Court must now apply the five-factor test outlined in *Zappone v. United States*, 870 F.3d 551, 556 (6th Cir. 2017). This test includes considering the taxpayer’s (1) lack of actual notice of the petition-filing requirement; (2) lack of constructive knowledge of the requirement; and (3) reasonableness in disregarding Code Sec. 6213(a)’s petition-filing deadline.

Reversing and Remanding an unreported Tax Court opinion.

## IRS Improperly Denied Individual’s Whistleblower Award Claims

*Est. J.A. Insinga, CA-D.C. 2025-2 USTC ¶50,224*

A deceased individual’s estate was able to demonstrate that the IRS Whistleblower Office improperly denied whistleblower award claims relating to tax-avoidance transactions involving two corporations. The Tax Court had found that the IRS applied the correct “substantial contribution” standard and reasonably concluded

that the individual’s information did not meaningfully influence the IRS’s action. However, the Court of Appeals reversed and remanded, finding that the Whistleblower Office had used a legally incorrect and overly restrictive causation test based on a withdrawn proposed regulation.

The Court of Appeals further held that the Tax Court contravened the *Chenery* doctrine by applying the correct standard in the first instance instead of remanding

the matter to the agency. It also found that the administrative record was arbitrarily incomplete, excluding key evidence that indicated the whistleblower’s information led to the issuance of a summons and supported the IRS’s “no economic substance” theory.

Reversing and remanding the Tax Court, Dec. 61,942, 157 T.C. No. 8.

## Corporation Not Entitled to Foreign Tax Credit for Excess Stock Sale Gain

*Liberty Global, Inc., CA-10, 2025-2 USTC ¶50,223*

A corporation was not entitled to a foreign tax credit for the portion of gain exceeding

its overall foreign loss balance from the sale of a foreign subsidiary. The Tax Court determined and the Court of Appeals affirmed that only the portion of gain equal to the overall foreign loss balance could be

treated as foreign-sourced under Code Sec. 904(f)(3)(A)(i).

The corporation claimed the statute’s “notwithstanding” clause displaced background sourcing rules and that Reg.

§ 1.904(f)-2(d)(1)(ii) permitted all gain to be treated as foreign-source income. The Court of Appeals disagreed, holding that the clause applies only in the event of a direct conflict. Because the statute is silent on the sourcing of excess gain, the Court of Appeals applied Code Sec. 865(a), which sources gain from the sale of personal property by a U.S. resident to the United States.

The Court of Appeals further held that regulations must conform to statutory limits and cannot extend foreign-source treatment beyond what Code Sec. 904(f)(3)(A)(i) permits. The Tax Court had correctly concluded that the excess gain was U.S.-sourced, making the corporation ineligible for the foreign tax credit.

# Individual Not Entitled to Innocent Spouse Relief

L.M. Walsh, TC Memo. 2025-91,  
Dec. 62,709(M)

An individual was not entitled to innocent spouse relief under Code Sec. 6015 for the tax years at issue. The Tax Court held that relief under Code Sec. 6015(b), (c), and (f) was precluded by the doctrine of res judicata. A prior final decision involving the same tax years barred subsequent claims for relief. The Court found that the individual participated meaningfully in the earlier proceeding through legal representation and benefited from the outcome.

For subsequent tax years, the Court found the individual ineligible for streamlined or equitable relief. Although eligibility thresholds were met, the individual failed to establish economic hardship. Reported income significantly exceeded the federal poverty guidelines, and no credible evidence showed an inability to meet basic living expenses.

## Applicable Federal Rates Issued for September 2025

Rev. Rul. 2025-17

The IRS has released the short-term, mid-term, and long-term applicable interest rates for September 2025.

### Applicable Federal Rates (AFR) for September 2025

	Annual	Semiannual	Quarterly	Monthly
<b>Short-Term</b>				
AFR	4.00%	3.96%	3.94%	3.93%
110% AFR	4.41%	4.36%	4.34%	4.32%
120% AFR	4.81%	4.75%	4.72%	4.70%
130% AFR	5.22%	5.15%	5.12%	5.10%
<b>Mid-Term</b>				
AFR	4.04%	4.00%	3.98%	3.97%
110% AFR	4.45%	4.40%	4.38%	4.36%
120% AFR	4.86%	4.80%	4.77%	4.75%
130% AFR	5.27%	5.20%	5.17%	5.14%
150% AFR	6.09%	6.00%	5.96%	5.93%
175% AFR	7.12%	7.00%	6.94%	6.90%
<b>Long-Term</b>				
AFR	4.83%	4.77%	4.74%	4.72%
110% AFR	5.32%	5.25%	5.22%	5.19%
120% AFR	5.80%	5.72%	5.68%	5.65%
130% AFR	6.30%	6.20%	6.15%	6.12%

### Adjusted AFRs for September 2025

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	3.03%	3.01%	3.00%	2.99%
Mid-term adjusted AFR	3.06%	3.04%	3.03%	3.02%
Long-term adjusted AFR	3.65%	3.62%	3.60%	3.59%

The Code Sec. 382 adjusted federal long-term rate is 3.65%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 3.71%; the Code Sec. 42(b)(1) appropriate percentages for the 70% and 30% present value low-income housing credit are 8.03% and 3.44%, respectively, however, under Code Sec. 42(b)(2), the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 4.80%.

The Court also found knowledge or reason to know of the unpaid tax liabilities, significant benefit from nonpayment, and ongoing noncompliance with federal tax obligations after the relevant years. The individual failed to file timely returns,

underreported income, and accrued additional liabilities. Only the individual's divorced status favored relief. Weighing all factors, the Court concluded that equitable relief was not appropriate.

# IRS Urges Tax Pros To Strengthen Identity Theft Protections As Awareness Series Concludes

IR-2025-88

The IRS and Security Summit partners concluded the final week of the “Protect Your Clients; Protect Yourself” campaign by urging tax professionals to reinforce security practices to protect client data. Nearly 300 data breaches in the first half of 2025 affected about 250,000 clients. The summer campaign aligned with the IRS Nationwide Tax Forum, held across five U.S. cities, including upcoming events in Baltimore and San Diego.

Tax professionals face ongoing threats, including phishing emails, fake new client scams, and misleading social media posts. Warning signs include unauthorized IRS online account activity, rejected returns due to duplicate Social Security numbers and suspicious IRS notices. The Service recommends using the “Security Six”—anti-virus software, firewalls, backup systems, encryption, multi-factor authentication, and VPNs. A Written Information Security Plan, required by

law, can be developed using Publication 5708.

In the event of a breach, professionals must report it to a local IRS Stakeholder Liaison and notify their state tax agency via the Federation of Tax Administrators. Affected clients should obtain an Identity Protection PIN or file Form 14039. Additional resources are available in IRS Publications 4557, 5293, and 5709, and on Identity Theft Central.

## TAX BRIEFS

### *Collections*

The IRS did not abuse its discretion in upholding a proposed levy following a Collection Due Process hearing. The Tax Court determined that the requirements of Code Sec. 6330 were satisfied and that the taxpayer was barred from disputing the underlying liability due to the prior issuance of a statutory Notice of Deficiency.

*Sullivan, TC, Dec. 62,710(M)*

### *Confidentiality*

The plaintiff failed to plead that the defendant belonged to any of the enumerated

categories in Code Sec. 6103(a) or 6104(c). These prohibit certain individuals from disclosing tax return information. The district court did not err in dismissing the plaintiff's complaint on the basis that he failed to state a claim under Code Sec. 7431.

*Winenger, CA-11, 2025-2 ustc ¶150,226*

### *Disaster Relief*

A July 16, 2025, notice granting relief to victims of severe storms, flooding, and landslides that began on June 23, 2025, in parts of New Mexico was updated by the

IRS on August 21, 2025, to include Dona Ana County.

*New Mexico Disaster Relief Notice (NM-2025-03)*

### *Tax Court Jurisdiction*

The Tax Court lacked jurisdiction in an individual's challenge to restitution-based assessments because the IRS had not issued a notice of deficiency or made a worker classification determination.

*Williams, TC, Dec. 62,708(M)*