May 29, 2025

The Honorable Mike Crapo, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden, Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jason Smith, Chairman
House Committee on Ways & Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal, Ranking Member
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

RE: Tax Provisions in the *One Big Beautiful Bill Act*

Dear Chairmen Crapo and Smith and Ranking Members Wyden and Neal:

As the Senate Finance Committee considers the *One Big Beautiful Bill Act,* passed by the House of Representatives on May 22, 2025, the American Institute of CPAs (AICPA) urges you to modify several tax proposals which, if enacted as currently drafted, would damage certain pass-through entities that are the backbone of the American economy.

We are sensitive to the challenges in drafting a budget reconciliation bill that permanently extends tax provisions, enhances tax administrability, and balances the interests of individual and business taxpayers. While we support portions of the legislation, we do have significant concerns regarding several provisions in the bill, including one which threatens to severely limit the deductibility of state and local tax (SALT) by certain businesses. This outcome is contrary to the intentions of the *One Big Beautiful Bill Act*, which is to strengthen small businesses and enhance small business relief.

Specifically, the AICPA provides the following recommendations for your consideration for inclusion in the bill to ensure that the Senate version would not needlessly disadvantage certain taxpayers, but would protect taxpayers and tax professionals, and promote tax administrability:

- Retain entity level deductibility of state and local taxes for ***all*** pass-through entities
- Strike the contingency fee provision
- Allow excess business loss carryforwards to offset business and nonbusiness income

Retain the deductibility of state and local taxes for all pass-through entities

The AICPA urges Congress to retain the entity level deductibility of SALT for all pass-through entities (PTEs), as originally intended by the Tax Cuts and Jobs Act of 2017 (TCJA), approved by the Internal Revenue Service (IRS), and currently in effect. The *One Big Beautiful Bill Act* as passed by the House of Representatives, unfairly targets specified service trades or businesses (SSTBs)[1] by severely limiting their ability to deduct SALT while allowing the deduction for non-

[1] As defined under section 199A(d)(3) of the Internal Revenue Code.

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SSTBs. Therefore, SSTBs would be unfairly economically disadvantaged simply by existing as a certain type of business and the parity gap among (i) SSTBs and (ii) non-SSTBs and C corporations would widen.[2]

Under current (and pre-TCJA) tax law, C corporations may deduct SALT in determining their federal taxable income. Prior to the TCJA, owners of PTEs (and sole-proprietorships that itemized deductions) were also permitted to deduct SALT on income earned by the PTE (or sole-proprietorship). However, the TCJA placed a limitation on the individual SALT deduction. In response, 36 states (of the 41 that have a state income tax) enacted or proposed various approaches to mitigate the individual SALT limitation by shifting the SALT liability on PTE income from the owner to the PTE.[3] This approach restored parity among businesses and was approved by the IRS through Notice 2020-75, by allowing PTEs to deduct PTE taxes paid to domestic jurisdictions in computing the entity's federal non-separately stated income or loss. Under this approved approach, the PTE tax does not count against partners'/owners' individual federal SALT deduction limit. Rather, the PTE pays the SALT, and the partners/owners fully deduct the amount of their distributive share of the state taxes paid by the PTE for federal income tax purposes.

Parity among similarly situated taxpayers is paramount. Among the advantages that C corporations have over PTEs are an unlimited SALT deduction, a 21% corporate tax rate, a lower tax rate on dividends for owners, and the ability for owners to defer income. However, many SSTBs are restricted from organizing as a C corporation, leaving them with no option to escape the harsh results of the SSTB distinction and limiting their SALT deduction. In addition, non-SSTBs are entitled to an unfettered qualified business income (QBI) deduction under Internal Revenue Code section 199A, while SSTBs are subject to harsh limitations on their ability to claim a QBI deduction. The *One Big Beautiful Bill Act* would further entrench the parity gulf between (i) C Corporations and non-SSTBs, and (ii) SSTBs, including accountants, who are critical to our tax administration system.[4]

Additionally, the House-passed Act introduces significant complexity and uncertainty for all pass-throughs. Pass-through entities would be required to perform complex calculations and analysis to determine if they are eligible for any SALT deduction. To determine eligibility for state and local income taxes, non-SSTBs would need to perform a gross receipts calculation. To determine eligibility for all other state and local taxes, pass-through entities would need to determine eligibility under the substitute payments provision (another complex set of calculations).[5]

Our laws should not discourage the formation of critical service-based businesses and, therefore, disincentivize professionals from entering such trades and businesses. Therefore, we urge Congress to allow all business entities, including SSTBs, to deduct state and local taxes paid or accrued in carrying on a trade or business.

Strike the contingency fee provision

The *One Big Beautiful Bill Act* would allow contingency fee arrangements for all tax preparation

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[2] AICPA resource, "One Big Beautiful Bill Act PTET SALT Deduction: Fact or Fiction?"
[3] AICPA resource, "Specified Service Trade or Business List – SSTBS."
[4] AICPA resource, "State and Local Tax Deduction Chart."
[5] AICPA resource, "Impact to Proposed Changes to PTET SALT Deduction."

activities, including those involving the submission of an original return. The preparation of an original return on a contingent fee basis could be an incentive to prepare questionable returns, which would result in an open invitation to unscrupulous tax preparers to engage in fraudulent preparation activities that takes advantage of both the U.S. tax system and taxpayers. Unknowing taxpayers would ultimately bear the cost of these fee arrangements, since they will have remitted the fee to the preparer, long before an assessment is made upon the examination of the return.

Contingent fee arrangements were associated with a myriad of abuses in the Employee Retention Credit program, in both original and amended return filings. Allowing contingent fee arrangements to be used in the preparation of the annual original income tax returns is an open invitation to abuse the tax system and leaves the IRS unable to sufficiently address this problem.

Congress should strike the contingent fee provision from the tax bill. If Congress wants to include a provision on contingency fees, we recommend that Congress provide that where contingent fees are permitted for amended returns and claims for refund, a paid return preparer is required to disclose that the return or claim is prepared under a contingent fee agreement. Disclosure of a contingent fee arrangement deters potential abuse, helps ensure the integrity of the tax preparation process, and ensures compliance with regulatory and ethical standards.

Allow excess business loss carryforwards to offset business and nonbusiness income

The *One Big Beautiful Bill Act* amends section 461(l)(2) to provide that any excess business loss carries over as an excess business loss, rather than a net operating loss (NOL). This amendment would effectively provide for a permanent disallowance of any business losses unless or until the taxpayer has other business income. For example, a taxpayer that sells a business and recognizes a large ordinary loss in that year would be limited in each carryover year indefinitely, during which time the taxpayer is unlikely to have any additional business income.

The bill should be amended to remove this provision and to retain the treatment of excess business loss carryforwards under current law, which is that the excess business loss carries over as a net operating loss (at which point it is no longer subject to section 461(l) in the carryforward year).

Positions supported by the AICPA

Despite the significant concerns raised, the AICPA appreciates the inclusion of many provisions that would alleviate the tax administrative burdens imposed on individuals, businesses, and tax professionals, and would enhance tax certainty for expiring tax provisions. The AICPA supports the following tax provisions in the *One Big Beautiful Bill Act* that passed the House of Representatives, many of which we have previously advocated for:

- Allow section 529 plan funds to be used for post-secondary credential expenses.[6]
- Provide tax relief for individuals and businesses affected by natural disasters, albeit not permanent.[7]

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[6] AICPA letter, "Freedom to Invest in Tomorrow's Workforce Act (H.R. 1477)," April 11, 2023.
[7] AICPA letter, "Permanent, Consistent, and Clear Disaster Relief Tax Legislation," March 3, 2025.

- Make permanent the QBI deduction, increase the QBI deduction percentage, and expand the QBI deduction limit phase-in range.[8]
- Create new section 174A for expensing of domestic research and experimental expenditures and suspend required capitalization of such expenditures.[9]
- Retain the current increased individual Alternative Minimum Tax exemption amounts.[10]
- Preserve the cash method of accounting for tax purposes.[11]
- Increase the Form 1099-K reporting threshold for third-party payment platforms.[12]
- Make permanent the paid family leave tax credit.
- Make permanent extensions of international tax rates for foreign-derived intangible income (FDII), base erosion and anti-abuse tax (BEAT), and global intangible low-taxed income (GILTI).
- Exclude from GILTI certain income derived from services performed in the Virgin Islands.
- Provide greater certainty and clarity via permanent tax provisions, rather than sunset tax provisions.

In addition to these priorities, we are pleased to share our full list of AICPA endorsed tax bills from the 118th Congress, our guiding principles of good tax policy, and our 2025 Tax Legislative Compendium, which contains 69 proposals that are non-controversial simplification and technical changes to provisions in the Internal Revenue Code. We understand the challenges Congress faces as it tackles the complex issues inherent in drafting tax legislation and appreciate your diligence in trying to remove unnecessary burdens that current tax law imposes on families, individuals, and businesses. However, we request that you consider our concerns and recommendations rooted in the Guiding Principles of Good Tax Policy.

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The AICPA is the world's largest member association representing the accounting profession, with more than 397,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA urges you to consider the recommendations discussed above and welcomes the opportunity to discuss these comments on the reconciliation legislation. If you would like to discuss any of these proposals in more depth or have any questions, please contact Todd Sloves, Director – Congressional & Political Affairs, at (202) 434-9269 or todd.sloves@aicpa-cima.com, Kate Kiley, Director - Congressional & Political Affairs, at (202) 434-9219 or kate.kiley@aicpa-cima.com; Melanie Lauridsen, Vice President – Tax Policy & Advocacy, at (202) 434 – 9235 or

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[8] AICPA letter, "AICPA Recommendation to Amend Qualified Business Income Deduction," Feb. 13, 2025.
[9] We also note that it would be helpful to include transitional rules on taxpayers switching from the capitalization provisions back to immediate expensing of domestic research and experimental spending in 2025 and clarify that such method change can be filed via a statement in lieu of a Form 3115, *Application for Change in Accounting Method*.
[10] AICPA letter, "Conference of the House and Senate-passed versions of the Tax Cuts and Jobs Act," Dec. 8, 2017.
[11] AICPA letter, "Tax Cuts and Jobs Act," Nov. 13, 2017.
[12] AICPA letter, "S. 1761, the Red Tape Reduction Act," June 6, 2023.

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Sincerely,

Cheri H. Freeh

Cheri H. Freeh, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable Michael Faulkender, Deputy Secretary of the Treasury, Treasury Department, and Acting Commissioner, Internal Revenue Service
Ms. Shelley Leonard, Acting Assistant Secretary for Tax Policy, Treasury Department
Ms. Sarah Ritchey Haradon, Acting Deputy Tax Legislative Counsel, Treasury Department
Mr. Andrew De Mello, Acting Chief Counsel, Internal Revenue Service
Ms. Erin Collins, National Taxpayer Advocate, Internal Revenue Service