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November 10, 2025

Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224

U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Via electronic submission

RE: TEI Comments on OBBBA Implementation

Dear Sir or Madam:

President Trump signed the One Big Beautiful Bill Act ("OBBBA") into law on July 4, 2025.[1] The enclosed comments and recommendations address select corporate and international tax provisions in the OBBBA, including new section 174A; modified section 168(k), section 904(b), and section 205(b)(3); and reinstated section 958(b)(4).[2]

As the preeminent association of in-house tax professionals worldwide, Tax Executives Institute (TEI) represents a broad cross-section of the business community and is uniquely positioned to provide practical, consensus-based input on significant issues of corporate tax policy and administration. As the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS," and together with Treasury, the "Government") develop guidance implementing the OBBBA, we look forward to collaborating with you to help ensure that the OBBBA achieves its intended goals—maximizing economic growth while minimizing compliance burdens for taxpayers.

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[1] Pub. L. No. 119-21.

[2] Unless otherwise indicated, all "§" and "section" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §," "Temp. Treas. Reg. §," and "Prop. Treas. Reg. §" references are to the final, temporary, and proposed regulations, respectively, promulgated or proposed thereunder (the "Regulations"), as in effect as of the date of this document.

About TEI

TEI was founded in 1944 to serve the needs of business tax professionals.[3] Today, the organization has 55 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,800 of the leading companies around the world.

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the implementation of the OBBBA.

TEI Comments

I. Interaction Between the Corporate Alternative Minimum Tax and Section 174A

a. <u>Overview of the Issue</u>

Section 174 was substantially amended by 2017's Tax Cuts and Jobs Act ("TCJA"), requiring specified research or experimental ("R&E") expenditures paid or incurred in taxable years beginning after Dec. 31, 2021, to be capitalized and amortized over five years for domestic R&E expenses and 15 years for foreign R&E expenses.

The OBBBA enacted new section 174A, which permanently allows taxpayers to fully expense domestic R&E expenditures beginning in taxable years after December 31, 2024. The OBBBA creates a transition period for taxable years after December 31, 2024, where there is a doubling up of (1) current year R&E expenditures deducted as incurred and (2) the continued amortization of previously capitalized R&E expenditures ("Transitional Section 174 Amortization").[4] This creates a mismatch in the computation of the adjusted financial statement

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[3] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6). All "section" references are to the Internal Revenue Code of 1986, as amended (the "Code").

[4] Under OBBBA, taxpayers have three options for recovery: (1) continuing the previous 5-year recovery period, (2) section 481(a) in 2025, and (3) section 481(a) spread ratably over 2025 and 2026.

income ("AFSI") for purposes of the corporate alternative minimum tax ("CAMT") as R&E amortization reduces regular tax in post-2025 tax years while the related book R&E expense reduced AFSI in pre-2025 years. This doubling up of deductions as a result of the successive changes in tax law to (1) require capitalization of domestic R&E expenditures from 2022-2024 and then (2) permit immediate expensing of R&E expenditures starting in 2025 for the computation of regular taxable income can result in taxpayers paying CAMT that otherwise would not fall under the CAMT.

Guidance could mitigate the artificial differences between AFSI and regular taxable income created by the section 174 transition period. Treasury has the authority to implement such options pursuant to section 56A(e), which says, "The Secretary shall provide for such regulations and other guidance as necessary to carry out the purposes of this section...," and section 56A(c)(15), which provides, "The Secretary shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section, including adjustments to prevent the omission or duplication of any item…." Subjecting taxpayers to the CAMT due to differences between AFSI and regular taxable income created by the successive changes in tax law for the treatment of R&E expenditures is outside of the purposes of section 56A.[5]

TEI recommends the following solutions to address the challenges arising from the transition to the new regime and to ensure that Congress's goals of incentivizing R&D and job growth are effectively achieved.

b. *TEI Recommendations*

i. Option 1 – 174 AFSI Adjustment with Tax Benefit Limitation

TEI recommends the Government issue guidance providing taxpayers an election to reduce their post-2024 AFSI for Transitional Section 174 Amortization, adjusted as necessary to prevent double deductions. Applied here, an AFSI adjustment calculation would be appropriate when the CAMT previously applied to the taxpayer in the year the domestic R&E expenditures were paid or incurred.

2022 Amortization (No Limit): Because CAMT did not apply in 2022, amortization related to R&E expenses capitalized in 2022 should not impact a taxpayer's post-OBBBA CAMT

[5] See **Appendix** for detailed discussion of the statutory grant of regulatory authority in sections 56A(c)(15) And 56A(e).

calculation. Therefore, this proposal would provide for a full AFSI preference for post-OBBBA amortization expense relating to 2022 R&E capitalization.

<u>2023 – 2024 Amortization (Potential Limit):</u> The CAMT was effective in 2023 and 2024, and, thus, any AFSI preference for historical R&E expenses should take into account potential CAMT benefits derived by taxpayers in those years. For each year, a taxpayer determines the benefit, if any, from R&E expenses in AFSI by calculating whether the CAMT would have been due if all or a portion of R&E expenses are removed from AFSI. To avoid a double benefit, taxpayers cannot take an AFSI adjustment in later years if an R&E expenditure already reduced AFSI in 2023 or 2024 and directly resulted in the taxpayer not owing CAMT in those years.

Thus, AFSI adjustments for R&E amortization deductions in tax years 2025 - 2029 related to R&E capitalized in the 2023 and 2024 tax years are only available to the extent a taxpayer has CAMT cushion or headroom in the year incurred. A taxpayer's headroom before the CAMT would have been owed is determined as follows:

$$\text{CAMT Headroom} = \frac{\text{Regular Tax After FTCs, Plus BEAT} - \text{Original Tentative Minimum Tax}}{\text{15\% CAMT Tax Rate}}$$

If a taxpayer has CAMT headroom in 2023 or 2024, then the taxpayer can reduce AFSI in future years to the extent of this cushion, pro-rated over the 5-year recovery period. If taxpayers elect to deduct the remaining unamortized amount of unamortized domestic R&E expenditures over a one- or two-year period beginning with the taxpayer's first tax year beginning after December 31, 2024, Option 1 would provide for a reduction to AFSI to the extent of CAMT headroom from 2023 and 2024 over that same one- or two-year period when unamortized domestic R&E expenditures are deducted.

<u>Example 1: 174 AFSI Adjustment with Tax Benefit Limitation; No Limitation Applied</u>

In 2024, Taxpayer A had $1,000 of net AFSI, which included $100 of domestic R&E expenses. Taxpayer A also had $10 of CAMT foreign tax credits ("FTC"s). Taxpayer's Tentative Minimum Tax owed is $140 (i.e., $1,000 AFSI multiplied by 15%, or $150, less $10 of CAMT FTCs).

Taxpayer A owed $155 of regular tax ($160 regular income tax less $5 of regular tax FTCs), which included $10 of current-year R&E tax deductions under former section 174 ($100 total R&E expenses amortized over 5-year period beginning with the midpoint of 2024).

Taxpayer A's AFSI was reduced by $90 of R&E expenditures that did not reduce taxable income in 2024 (i.e., $100 minus $10). Under Option 1, Taxpayer A would be able to deduct $90 of R&E expenses from AFSI, starting in 2025, unless the limitation applies. Based on the CAMT headroom equation, Taxpayer A had CAMT headroom of $100, which is equal to [($155 regular tax liability) minus ($140 tentative minimum tax)] divided by 15%. Thus, the limitation does not apply (CAMT headroom of $100 exceeds $90 of R&E expenditures that also did not reduce taxable income in 2024). Taxpayer A should be allowed to reduce its 2025-2029 AFSI by $90, pro-rated over the amortization years.

Example 1: 174 AFSI Adjustment With Tax Benefit Limitation; No Limitation			2024
1	Income Tax Before FTCs	Form 1120, Schedule J, Line 1	160
2	Less: Regular FTCs	Form 1120, Schedule J, Line 5a	(5)
3	Regular Tax Liability Before GBCs		155
4	BEAT Liability	Form 1120, Schedule J, Line 2	-
5	Adjusted Regular Tax Liability		155
6	Less: Tentative Minimum Tax (TMT)	Form 4626, Part II, Line 9	140
7	Adjusted Regular Tax Less TMT		15
8	CAMT Tax Rate		÷ 15%
9	**CAMT Headroom**	**Line 7/15%**	**100**
10	R&E Reducing AFSI		100
11	R&E Reducing Regular Taxable Income		10
12	AFSI - Regular Taxable Income Difference	**Line 10 - Line 11**	90
13	**Limitation**	**Line 12 - Line 9 (not below 0)**	**-**
14	**Total AFSI Adjustment**	**(Line 12 - Line 13)**	**90**

	2025	2026	2027	2028	2029	Total
Total AFSI Adjustment: Pro-rated Over Amortization Years	**(20)**	**(20)**	**(20)**	**(20)**	**(10)**	**(90)**

<u>Example 2: 174 AFSI Adjustment with Tax Benefit Limitation; Limitation Applied</u>

In 2024, Taxpayer B had $1,000 of net AFSI, which included $200 of domestic R&E expenses. Taxpayer B also had $10 of CAMT FTCs. Taxpayer's Tentative Minimum Tax owed is $140 (i.e., $1,000 AFSI multiplied by 15%, or $150, less $10 of CAMT FTCs).

Taxpayer B owed $155 of regular tax ($160 regular income tax less $5 of regular tax FTCs), which included $20 of current-year R&E tax deductions under former section 174 ($200 total R&E expenses amortized over 5-year period beginning with the midpoint of 2024).

Taxpayer B's AFSI was reduced by $180 of R&E expenditures that also did not reduce taxable income in 2024 (i.e., $200 minus $20). Under Option 1, Taxpayer B would be able to deduct $180 of R&E expenses from AFSI, starting in 2025, unless the limitation applies. Based on the CAMT headroom equation, Taxpayer B had CAMT headroom of $100, which is equal to [($155 regular tax liability) minus ($140 tentative minimum tax)] divided by 15%. Taxpayer B's AFSI adjustment of $180 for 2024 R&E expenditures is limited to CAMT headroom of $100 that did not reduce taxable income in 2024. Taxpayer B should be allowed to reduce its 2025-2029 AFSI by $100 pro-rated over the amortization years.

Example 2: 174 AFSI Adjustment With Tax Benefit Limitation; Limitation Applied			2024
1	Income Tax Before FTCs	Form 1120, Schedule J, Line 1	160
2	Less: Regular FTCs	Form 1120, Schedule J, Line 5a	(5)
3	Regular Tax Liability Before GBCs		155
4	BEAT Liability	Form 1120, Schedule J, Line 2	-
5	Adjusted Regular Tax Liability		155
6	Less: Tentative Minimum Tax (TMT)	Form 4626, Part II, Line 9	140
7	Adjusted Regular Tax Less TMT		15
8	CAMT Tax Rate		÷ 15%
9	**CAMT Headroom**	**Line 7/15%**	**100**
10	R&E Reducing AFSI		200
11	R&E Reducing Regular Taxable Income		20
12	AFSI - Regular Taxable Income Differenc	**Line 10 - Line 11**	180
13	**Limitation**	**Line 12 - Line 9 (not below 0)**	**80**
14	**Total AFSI Adjustment**	**(Line 12 - Line 13)**	**100**

	2025	2026	2027	2028	2029	Total
Total AFSI Adjustment: Pro-rated Over Amortization Years	**(22)**	**(22)**	**(22)**	**(22)**	**(12)**	**(100)**

ii. Option 2 –15 Year Spread Election

In the alternative, if the Government does not adopt the prior recommendation, TEI recommends the Government provide guidance allowing taxpayers to elect to spread the Transitional Section 174 Amortization over a period not to exceed 15 years. The Government has already granted a similar election for changes in accounting principles in applicable financial statements. Prop. Treas. Reg. § 1.56A-17(c)(3) acknowledges that financial accounting principle changes may produce distortive results and provisions should be included in the CAMT rules to provide relief from these results. Accordingly, the proposed regulation includes an "adjustment spread period rule" that allows taxpayers the ability to spread adjustments in book income stemming from accounting principle changes when those adjustments produce a net duplication or omission for AFSI purposes.

A similar distortive result can arise from amendments to the tax laws, particularly when such amendments result in the acceleration of income or deferral of deductions but do not include corresponding changes to the CAMT. This proposed election aims to smooth out the distortive impact of Transitional Section 174 Amortization on the CAMT by providing taxpayers with an election to extend those unamortized costs over a period not to exceed 15 years.

Example 3: 15-Year Spread Election

In 2024, Taxpayer C incurred $200 of domestic R&E expenses that were capitalized and amortized over a 5-year period beginning with the midpoint of 2024. Taxpayer C amortizes $20 of R&E deductions in 2024. Taxpayer C makes an election to spread the difference between the computation of AFSI and regular taxable income ($200 of 2024 R&E expenses less $20 or R&E amortized in 2024, or $180) over a 15-year period. Under Option 2, Taxpayer C makes an adjustment to AFSI so that the $180 of remaining R&E amortization included in the computation of regular taxable income is spread over a 15-year period, resulting in a $12 difference ($180 divided by 15 years) between the computation of regular taxable income and AFSI for the 15-year period starting in 2025. Taxpayer C reduces AFSI in 2025 – 2028 by $28, reduces AFSI in 2029 by $8, and increases AFSI by $12 for the remainder of the 15-year spread period (from 2030-2039).

Example 3: 15 Year Spread Election		2024	2025	2026	2027	2028	2029	2030-2039	Total
1	R&E Amortization - Regular Taxable Income	180	(40)	(40)	(40)	(40)	(20)	-	-
2	Tax Basis at 12/31/2024 Over 15 years	-	12	12	12	12	12	12	180
3	AFSI Adjustment		(28)	(28)	(28)	(28)	(8)	12	-

II. Increased Optionality for Electing Out of Full Expensing under Section 168(k)

The TCJA introduced full, immediate expensing with respect to qualified property under section 168(k) ("full expensing"). Full expensing was available for property placed in service before January 1, 2023, and the benefit had been decreasing year over year, with a full phase-out slated for property placed in service starting in 2027. To incentivize continued additional investment in the U.S., the OBBBA permanently restores full expensing under section 168(k) for qualified property acquired and placed in service after January 19, 2025.

However, for many taxpayers, the interaction of section 168(k) with other provisions of OBBBA creates unexpected results where the intended benefits from full expensing may result in adverse outcomes due to the CAMT. One reason for these unintended results is the limited flexibility provided to taxpayers to elect out of full expensing. Many large taxpayers operate within a primary legal entity when operating within the U.S. The lack of optionality under current guidance for electing out of full expensing for only certain assets owned by a legal entity puts many taxpayers in a harmful "all or nothing" position when considering elections to realize the benefits Congress intended to provide by restoring full expensing.

Section 168(k)(7) provides that "if a taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, [sections 168(k)(1) and (k)(2)] shall not apply to any qualified property in such class placed in service during such taxable year." The current regulations in Treas. Reg. § 1.167(k)-2 provides that the election out of bonus is "made separately by each person owning qualified property," noting that each member of a consolidated group has a separate election that is made by the common parent.[6]

To provide relief from unintended outcomes resulting from the CAMT and other provisions after OBBBA, TEI recommends the following solutions to ensure that Congress' goals of incentivizing investments in the U.S. are effectively achieved. The solutions are not mutually exclusive.

First, TEI recommends the Government issue guidance permitting taxpayers to elect out of full expensing *for each particular asset* acquired by the taxpayer. Elections at the asset level would be consistent with guidance for changing the method of accounting for a particular asset. The section 168(k) regulations provide rules for determining when changes in depreciation or amortization are changes in methods of accounting. [7] For purposes of a change in depreciation or amortization, the change is generally the depreciation or amortization treatment of each individual depreciable or amortizable asset.[8] Alternatively, the Government could provide

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[6] Treas. Reg. § 1.168(k)-2(f)(1)(iii)(B).
[7] Treas. Reg. § 1.446-1(e)(2)(ii)(d)(2).
[8] Treas. Reg. § 1.446-1(e)(2)(ii)(d)(4).

taxpayers the ability to make an election out of full expensing with respect to any portion of an asset amount, i.e., it could designate an amount to elect out of full expensing similar to the election in Section 59(e)(4)(A).

Alternatively, if the Government does not adopt the first recommendation, we request guidance permitting taxpayers to elect out of full expensing *for each geographic location* where the taxpayer holds depreciable assets. Flexibility to elect out of full expensing by geographic location may be impactful for taxpayers operating in multi-jurisdictional tax regimes where elections for certain geographic locations could reduce adverse state and local income tax outcomes resulting from full expensing elections.

If the Government does not adopt either prior recommendation, we recommend guidance permitting taxpayers to elect out of full expensing *for each separate trade or business*. This is consistent with the general rule in section 446 for methods of accounting. Apart from the specific rules for depreciable assets discussed in the first recommendation, where a taxpayer has two or more separate and distinct trades or businesses, a different method of accounting may generally be used for each trade or business, provided the method used for each trade or business clearly reflects the income of that particular trade or business.[9]

III. International Provisions

a. Retroactive application of Section 958(b)(4)

Under prior law, section 958(b)(4) prohibited the attribution of stock ownership from a foreign person to a U.S. person under the constructive ownership rules of section 318 for purposes of determining (1) whether a foreign corporation was a controlled foreign corporation (CFC) and (2) whether a U.S. person was a U.S. shareholder of that corporation.

The TCJA repealed section 958(b)(4), effective for the last taxable year of a foreign corporation beginning before January 1, 2018. The repeal of this provision enabled downward attribution of stock ownership from foreign persons to U.S. persons, which significantly expanded the universe of foreign corporations treated as CFCs and, correspondingly, the number of U.S. persons treated as CFC shareholders.

The legislative history to the TCJA makes clear the repeal of section 958(b)(4) was intended to address certain "de-control" transactions. In these cases, a foreign corporation previously controlled by a U.S. subsidiary of a foreign parent could cease to be treated as a CFC if the foreign parent diluted its U.S. subsidiary's ownership interest (for example, by contributing

[9] Treas. Reg. § 1.446-1(d).

property to the foreign corporation in exchange for a controlling 51% interest). Congress intended the repeal to prevent such results. Importantly, however, the legislative history also reflects that Congress did not intend the repeal to cause a foreign corporation to be treated as a CFC with respect to a U.S. shareholder who was unrelated to the U.S. person to which ownership was attributed. Despite this stated intent, the enacted statutory language did not limit the reach of downward attribution. As a result, the repeal of section 958(b)(4) swept far more broadly than Congress appears to have intended, creating significant and often unintended compliance burdens for taxpayers and drawing in unrelated U.S. persons who were never the intended target of the rule change.

The OBBBA has now reinstated section 958(b)(4), effective for tax years of foreign corporations beginning after December 31, 2025. This reinstatement appropriately corrects the overbreadth of the TCJA repeal. However, the legislation as enacted does not provide for retroactive application to earlier years, leaving taxpayers to grapple with the unintended reach of the repeal for nearly a decade of intervening years. TEI respectfully requests that the Government consider providing administrative relief under its general authority—consistent with the approach taken in Rev. Proc. 2019-40[10]—to allow taxpayers to elect retroactive application of section 958(b)(4) for open tax years. Such an election would align the statute more closely with congressional intent, provide equitable relief to taxpayers who were subject to burdens never contemplated by Congress, and reduce unnecessary compliance complexity.

Because the TCJA's repeal of section 958(b)(4) arguably overshot its intended purpose—by applying downward attribution far more broadly than "de-control" transactions—retroactive application of the reinstated provision would better harmonize the law with legislative purpose while remaining administrable through an elective framework.

b. *Clarification of "directly allocable" language for purposes of determining the FTC limitation with respect to the NCTI category*

The OBBBA modified section 904(b) by adding a new limitation on the allocation of deductions with respect to Net Controlled Foreign Corporation Tested Income ("NCTI"). Specifically, new section 904(b)(5) provides only three categories of deductions may be allocable to NCTI: (1) the section 250 deduction relating to NCTI; (2) certain income taxes; and (3) other *directly allocable expenses*, excluding interest and R&E expenses.

TEI urges the Government to issue regulations clarifying the scope of "directly allocable expenses" under section 904(b)(5). Consistent with the policy objectives of the NCTI regime,

[10] 2019-43 I.R.B. 982.

such expenses should be limited to those incurred directly to generate NCTI income at the CFC level. Shareholder-level expenses otherwise subject to allocation under the section 861 regulations—such as stewardship expenses—should not be treated as "directly allocable" for purposes of section 904(b)(5). This interpretation ensures that only genuine costs of producing NCTI reduce the income subject to residual U.S. taxation.

The Government should further clarify losses not arising directly from a CFC's operations abroad are excluded from allocation to the section 951A separate basket. Specifically, overall domestic losses (within the meaning of section 904(g)), separate limitation losses (within the meaning of section 904(f)(5)), and section 986(c) currency losses should be excluded. Allocating such losses to NCTI would distort the U.S. residual tax base and undermine the congressional intent of the NCTI regime to tax only low-taxed foreign operations.

c. Clarification of new exclusion from FDDEI for intangible property and other transfers

The OBBBA amended section 250(b)(3) by introducing a new carve-out in section 250(b)(3)(VII). This provision excludes from foreign-derived deduction eligible income ("FDDEI") any gain or other income from dispositions of intangible property (as defined in section 367(d)) and any other property of a type subject to depreciation, amortization, or depletion by the seller (e.g., machinery previously used in the seller's business), for dispositions occurring after June 16, 2025.

TEI requests the Government clarify that the section 250(b)(3)(VII) carve-out does not apply to ordinary-course sales of inventory property to non-U.S. persons or customers, even if such property is of a type that, if retained and used differently by the seller, would otherwise have been depreciable. Applying the carve-out to routine sales of inventory would create unintended consequences by inappropriately narrowing the scope of FDDEI, contrary to the policy objectives of the updated FDDEI rules. Treasury retains express authority under section 250(c) to "prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of [section 250]." TEI urges the Government to exercise this authority to confirm that section 250(b)(3)(VII) is limited to extraordinary dispositions of intangible property and depreciable/amortizable business assets, and not to ordinary sales of inventory property in the normal course of business.

d. Clarification that stewardship expenses are not properly allocable to FDDEI

We recommend clarifying that stewardship expenses are not properly allocable to FDDEI for purposes of the section 250 computation. This proposed treatment aligns with Congress' intent that, for FDDEI, "properly allocable" is meant to encompass more limited expenses than what otherwise is allocable or apportionable under the section 861 regulations. TEI's recommendation also aligns treatment of stewardship expenses to FDDEI with the appropriate treatment of stewardship under the NCTI rules.

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TEI appreciates the opportunity to comment on the OBBBA implementation and welcomes any future opportunity to collaborate with the Government as it develops guidance on these provisions. TEI's comments were prepared under the aegis of the Tax Reform Task Force, whose Chair is Andreia Verissimo. Should you have any questions regarding TEI's comments, please do not hesitate to contact Andreia Verissimo at alveriss@amazon.com or TEI Tax Counsel Kelly Madigan at kmadigan@tei.org.

Respectfully submitted,

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APPENDIX

STATUTORY GRANT OF RULEMAKING AUTHORITY IN SECTIONS 56A(c)(15) AND 56A(e)

Section 56A(c)(15) provides a broad delegation of regulatory authority to the Secretary of Treasury, who "shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section," including adjustments "(A) to prevent the omission or duplication of any item, and (B) to carry out the principles of part II of subchapter C of this chapter (relating to corporate liquidations), part III of subchapter C of this chapter (relating to corporate organizations and reorganizations), and part II of subchapter K of this chapter (relating to partnership contributions and distributions)."[11]

1. Undefined Purpose: The statute does not define its purposes. Determining those purposes – and what adjustments are "necessary" to carry them out – is left to Treasury's expertise and discretion. In other words, Congress left space for Treasury to articulate and enforce the provision's underlying aims.

2. Examples of Necessary Adjustments: The statute's two included examples of allowed adjustments illustrate the delegation's wide scope.

    a. Adjustment "(A)" authorizes regulations "to prevent the omission or duplication of any item."

    b. Adjustment "(B)" instructs Treasury to adjust AFSI as needed "to carry out the principles" of specified parts of subchapter C (corporate liquidations, corporate reorganizations) and subchapter K (partnership contributions and distributions). These cross-references make clear that Treasury should reconcile the CAMT with tax policies underlying other Code provisions, such as the nonrecognition of gain in reorganizations, the repeal of the *General Utilities* doctrine, and partnership taxation. Notably, these policies are unrelated to the basic CAMT framework of taxing differences between accounting and regular tax earnings; rather, Congress indicated that the CAMT should defer to or coordinate with other tax policies. This is a strong indication that Treasury's authority under section 56A(c)(15) is

[11] Section 56A(e) also refers to the "purposes" of the section. Given that section 56A(c)(15) is the more specific grant of regulatory authority relating to AFSI adjustments, the discussion herein focuses on that provision.

not confined to book-income alignment alone but extends to harmonizing the CAMT with other tax policy goals.

The Purposes of the CAMT

Although section 56A itself does not define its purposes, the legislative history and contemporaneous statements by the provision's proponents illustrate them. The CAMT was enacted to ensure that large and profitable corporations cannot avoid paying a meaningful level of tax (i.e., their "fair share"). Congress was troubled that in 2020, for instance, 55 of the largest U.S. companies earned substantial profits yet paid $0 in federal income tax – in fact, some received net refunds.[12]

1. Lawmakers repeatedly emphasized the themes of "fair share" and "closing loopholes" when discussing the CAMT.

2. Senator Elizabeth Warren stated: "Giant corporations have been exploiting tax loopholes for too long, and it's about time they pay their fair share … The [15% minimum tax] would end corporate double dealing and ensure companies pay something in taxes when they report billions in profits to their shareholders."[13]

3. Senate Finance Committee Chair Ron Wyden stated: "The most profitable corporations in the country are often the worst offenders when it comes to paying their fair share. Year after year they report record profits to shareholders and pay little to no taxes. Our proposal would tackle the most egregious corporate tax dodging by ensuring the biggest companies pay a minimum tax."[14]

4. In a related context, Senator Wyden framed the "fair share" debate as follows: "A nurse or a firefighter living in Philomath, Oregon are [*sic*] required to pay taxes out of every paycheck. Working people don't get to play by the same rules as billionaires. They don't get to call up an army of high-priced lawyers and accountants every time they don't feel like paying their taxes."[15]

5. Senator Chris Van Hollen stated: "In 2020, 55 huge American corporations paid zero – zero in taxes, despite a combined $40.5 billion in profits... Small businesses across the country are paying their taxes while some of these big corporations are not. That is not

[12] Updated Proposal to be Included as a Pay-for in the Build Back Better Plan.
[13] *Id.*
[14] *Id.*
[15] Senate, "Proceedings and Debates of the 117th Congress, Second Session," Vol. 168, No. 133, Cong. Rec. S4051 (Aug. 6, 2022).

fair. It needs to change. That is why the Inflation Reduction Act includes the 15 percent minimum tax on profits of corporations that have over $1 billion in annual profits."[16]

6. Senator Bernie Sanders stated: "In terms of tax policy, this bill begins the work of making the wealthy and large corporations pay their fair share in taxes by imposing a 15% minimum tax on corporations. In America today, large corporations like AT&T, Nike, and Federal Express are able to make billions in profits and pay nothing in federal income taxes."[17]

7. This anti-avoidance purpose provides important context for Treasury's exercise of section 56A(c)(15) authority. The goal is not merely to tax "book income" for its own sake, but to ensure that large corporations cannot use aggressive tax planning to drive their tax bills to zero. Accordingly, Treasury has latitude to exercise its regulatory authority in line with the CAMT's core mission of closing tax loopholes.

8. The Joint Committee on Taxation Blue Book (the "Blue Book") provides an additional example of a potential adjustment under section 56A(c)(15), which is to ensure that income with respect to "derivative contracts used to manage business risks" is determined under regular tax and not accounting principles.[18] By conditioning this adjustment on managing "business risks," the Blue Book supports the notion that the CAMT is intended to police tax planning—as opposed to the tax effects of ordinary course business activities.

<u>Legislative Purposes for R&E Expensing</u>

Statements by members of Congress indicate that U.S. R&E expensing is intended to incentivize this valuable activity and its spillover effects. Lawmakers repeatedly emphasized that the United States should promote R&D and preserve full expensing so firms will continue to invest and compete.

1. In introducing OBBBA, the House Committee on Ways and Means stated: "Immediate expensing for R&D helps American businesses, particularly manufacturers, discover innovations that will make them more productive, efficient, and competitive."[19]

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[16] https://www.vanhollen.senate.gov/news/press-releases/video-van-hollen-delivers-floor-speech-ahead-of-senate-consideration-of-inflation-reduction-act

[17] https://www.sanders.senate.gov/bernie-buzz/the-good-and-the-bad-of-the-inflation-reduction-act/

[18] JCS 1-23 at 171, n. 772.

[19] https://waysandmeans.house.gov/2025/06/09/the-one-big-beautiful-bill-made-in-america-becomes-the-norm-not-a-novelty/

2. Senator Maggie Hassan stated: "This bipartisan legislation cuts taxes for small businesses that invest in innovation…[and will] help the United States continue to outcompete our adversaries like China."[20]

3. Senator Todd Young stated: "Our legislation would incentivize job-creating R&D activity in the United States… strengthen international competitiveness, and protect our national security."[21]

4. Representative Ron Estes stated: "Research and development is critical for our American economy…businesses and manufacturers in our districts and across the country need immediate R&D expensing and we're joined by a number of our colleagues on both sides of the aisle that want to see this bill passed."[22]

5. Representative John Larson warned: "If we do not act to fix the R&D tax deduction, there will be serious repercussions on jobs and our economy."[23]

6. Representative Roger Williams stated: "Not allowing for full expensing would devastate small businesses…. Resulting in layoffs and increased debt."[24]

Section 56A(c)(15) Examples in the Proposed Regulations

Treasury has already begun exercising this flexibility in the proposed CAMT regulations, using section 56A(c)(15) authority to make targeted adjustments that carry out Code principles or prevent distortions – even where those adjustments cause AFSI to deviate from unadjusted GAAP net income. For example:

1. Eliminating Purchase Accounting Adjustments – When one corporation acquires another, purchase accounting records the acquired assets at fair value, thereby ensuring that the acquiror's accounting profits solely reflect post-acquisition results. The proposed regulations rely on section 56A(c)(15) to disregard certain purchase accounting and "push-down" accounting adjustments in the AFSI computation in order to carry out the policies of *General Utilities* repeal.[25]

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[20] https://www.hassan.senate.gov/news/press-releases/03/17/2023/senators-hassan-young-introduce-bipartisan-bill-to-support-innovative-businesses-and-startups-research-and-development.
[21] *Id.*
[22] https://estes.house.gov/news/documentsingle.aspx?DocumentID=3888.
[23] *Id.*
[24] Congressional Record Volume 170, January 11, 2024.
[25] Prop. Treas. Reg. §§ 1.56A-4(d)(4) and -18(c)(3). 89 Fed. Reg. 75062 (Sep. 13, 2024) ("[E]liminating purchase accounting and push-down accounting (and thereby preserving two-levels of tax—one at the

2. Related-Party Transactions and Section 482 Principles: Proposed Treas. Reg. § 1.56A-26(d) imposes an arm's-length standard for certain intra-group transactions when computing AFSI. Under U.S. GAAP, transfers between commonly controlled entities can often be recorded at book value (with no gain recognized in consolidated financial statements). The purpose of this rule is not explained in the preamble to the proposed regulations, but the rule does cause AFSI to diverge from U.S. GAAP accounting profits.

3. Crucially, these uses of regulatory authority confirm that Treasury may employ section 56A(c)(15) in a dynamic, policy-driven manner. The CAMT's design is not a rigid formula frozen in the statute; it is meant to be administered in light of its anti-avoidance purpose and in harmony with the rest of the Code. As the Supreme Court has recognized, when Congress lays down broad principles and goals, it expects agencies to "bring to their work the expert's familiarity with industry conditions which members of the delegating legislature cannot be expected to possess."[26]

<u>Judicial Standards for Purpose-Based Delegations: Mourning and its Progeny</u>

1. Treasury's broad power under section 56A(c)(15) is buttressed by a long history of judicial deference to agencies exercising purpose-based regulatory authority. The Supreme Court has consistently upheld regulations issued under statutes that, like section 56A, authorize rules "necessary or proper to carry out" a statute's purposes, so long as the regulations are "reasonably related to the purposes of the enabling legislation."[27]

2. Furthermore, courts give agencies substantial leeway in choosing *how* to achieve the statutory purpose. The Supreme Court has noted that when an agency is tasked with designing remedial measures, "where reasonable minds may differ as to which of several remedial measures should be chosen, courts should defer to the informed experience and judgment of the agency to whom Congress delegated appropriate authority."[28]

3. Of course, purpose-based authority is not unlimited. The case law suggests two main potential constraints:

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corporate level, and another at the shareholder level) is consistent with the principles of parts II and III of subchapter C.").

[26] *Mourning v. Family Publications Svc., Inc.*, 411 U.S. 356 (1973).

[27] *Id.*

[28] *Id.*

a. Regulations that are arbitrary, capricious or manifestly incompatible with the statute.

b. Major Questions Doctrine: In recent years, the Supreme Court has signaled that for issues of vast economic and political significance, it expects a clear congressional statement before an agency can act.[29] However, the CAMT regulations would not be expected to trigger the major questions doctrine, as it is hard to envision a minimum tax that was predicted to apply to 100-200 large corporations and collect $222 billion over ten years to be of "vast economic and political significance."[30]

4. The Post-*Loper Bright* Landscape: Deference to Explicit Delegations

a. The Supreme Court's decision in Loper Bright Enterprises v. Raimondo overruled the *Chevron* doctrine of deference to agency interpretations of ambiguous statutes.[31] In doing so, the Court fundamentally altered how courts approach statutory silences or ambiguities; judges may no longer simply assume Congress implicitly delegated gap-filling power to an agency via ambiguity. However, Loper Bright did not erode agency authority where Congress has explicitly delegated it. To the contrary, the Court took care to distinguish express delegations, reaffirming that when Congress does confer power in clear terms, courts generally must uphold agency actions within that grant.

b. Chief Justice Roberts's majority opinion noted that *Chevron* had mistakenly "forced courts to pretend that ambiguities are necessarily delegations," but clarified that real delegations do exist when Congress affirmatively provides them. The Court cited examples of statutes that empower agencies to "prescribe rules to 'fill up the details' of a statutory scheme" or to regulate pursuant to terms like "appropriate" or "reasonable" – in such cases, courts should "identify and respect such delegations of authority," while "polic[ing] the outer statutory boundaries of those delegations" and ensuring the agency's actions are consistent with the Administrative Procedure Act (APA). In short, Loper Bright

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[29] *See the West Virginia v. EPA* line of cases.

[30] *See* Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions of Title I — Committee on Finance, of an Amendment in the Nature of a Substitute to H.R. 5376, 'An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, as Passed by the Senate on August 7, 2022, and Scheduled for Consideration by the House of Representatives on August 12, 2022,'" JCX-18-22 (Aug. 9, 2022).

[31] 603 U.S. 369 (2024).

directs judges to enforce express delegations as written. As Justice Roberts wrote: "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it."

c. The court in *Duffus v. MaineHealth* applied *Loper Bright* to a Health and Human Services ("HHS") regulation that modified the criteria for "stabilization" under the Emergency Medical Treatment and Active Labor Act ("EMTALA).[32] Congress had granted HHS both broad and specific delegations of authority to administer EMTALA, but the statute itself defined "stabilized" and set out the hospital's stabilization duty.[33] Although courts had previously split on whether inpatient admission alone satisfied that duty, the regulation attempted to impose a presumption that admission ends EMTALA's stabilization requirement.[34]

In addressing the validity of this regulation, the court explained that *Loper Bright* envisions a sliding scale of agency authority:

> When Congress delegates narrow authority to an agency, the agency can wield it with maximum power. On the other end of the spectrum, when Congress does not authorize *any* agency action, an unauthorized regulation is ultra vires and violates the Administrative Procedure Act… Towards the center of the spectrum are statutes where Congress generally authorizes an agency to implement a statute but provides no specifics. These are the "fill up the details" types of statutory authority.[35]

Finding that EMTALA fell within the third, "fill up the details" category, the court held that the existing statutory definition of "stabilized," coupled with the absence of any specific delegation empowering HHS to alter that definition, meant the agency lacked authority to adopt a contrary rule; accordingly, the regulation exceeded the scope of the delegation.[36]

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[32] No. 2:24-CV-00268-SDN, 2025 WL 1928339 (D. Me. July 14, 2025).
[33] *Id.* at *4–5.
[34] *Id.* at *5–8.
[35] *Id.* at *10–11.
[36] *Id.* at *11–15.

Yet as the court explained, narrow delegations of authority can be wielded with maximum power, limited only by the APA's "reasoned decision making" standard, discussed below.[37]

d. One nuance from *Loper Bright* (and some recent lower court cases) is that courts might read even an express delegation in a limited way if context suggests the agency's authority was not as sweeping as the text alone implies. For instance, Loper Bright itself involved a statute that allowed the agency to require fishing vessels to carry federal observers. The agency inferred it could also make industry pay the observers' salaries, but the Court disagreed—it found no indication Congress meant to delegate the funding decision to the agency and viewed silence on who pays as mere silence (not an invitation for the agency to decide). In another recent case, a court read the Federal Trade Commission's general rulemaking provision ("make rules to carry out the provisions of this subchapter") narrowly, ruling it was a procedural or housekeeping delegation rather than one allowing substantive rules on unfair competition.[38] The lesson is that courts post-*Loper Bright* will scrutinize the statutory context and history to ensure the agency is not overreading its mandate.

e. The application of the new *Loper Bright* framework in the context of Treasury regulations is demonstrated in *State v. Bessent*, where the Second Circuit confronted whether the IRS's 2019 Final Rule disallowing charitable deductions to the extent they produced state tax credits exceeded its statutory authority under section 170.[39] The district court had upheld the rule under *Chevron*, reasoning that section 170 was ambiguous and that the IRS's construction was reasonable.[40] Under the new *Loper Bright* analysis, the court stressed that interpretation is "a question of law, and accordingly, it is the court, and not the administrative agency, that determines its meaning." Furthermore, the court remarked that agency interpretations are relevant only insofar as they are persuasive under *Skidmore*.[41] Applying this framework, the Second Circuit noted a lack of statutory definitions or legislative history and instead used the plain text and prior judicial constructions of the statute to determine that Congress

[37] *Id.* at 10.
[38] *Ryan, LLC v. Fed. Trade Comm'n*, 746 F. Supp. 3d 369 (N.D. Tex. 2024).
[39] *State v. Bessent*, No. 24-1499-CV, 2025 WL 2327237 (2d Cir. Aug. 13, 2025).
[40] *Id.* at *9.
[41] *Id.* at *9–10.

intended to limit charitable deductions to genuine "gifts," not payments that return a substantial benefit.[42] Thus, while the IRS's interpretation was no longer owed deference, it represented the best reading of the statute and fit within the bounds of delegated authority.[43]

f. An even broader view of a delegation was taken in *McGowan v. United States*, where the Sixth Circuit applied *Loper Bright's* framework to evaluate Treasury's split-dollar regulation.[44] With *Chevron* deference off the table, the court undertook its own analysis of statutory authority.[45] It found that the intentionally broad language in section 61(a) defining gross income to include "[e]xcept as otherwise provided… all income from whatever source derived" was intended, and had been consistently interpreted, to capture "any accession to wealth."[46] The court found this broad enough to sustain Treasury's rule without resort to implied deference, stating "the statutory authority behind the split-dollar regulation is readily apparent… with only the capacious language of § 61(a) at issue, the split-dollar regulation falls within that provision."[47]

g. Applied to section 56A(c)(15), the context here strongly supports a broad reading of the delegation. Congress created a novel minimum tax and armed Treasury with open-ended authority to "iron out the kinks." Section 56A(c)(15) is not a generic "housekeeping" delegation.

<u>Arbitrary and Capricious Review under the APA</u>

a. Once a court has applied *Loper Bright* to determine that an agency acted within the bounds of delegated authority, it is to judge the validity of the agency action under the Administrative Procedure Act (**"APA"**)'s arbitrary and capricious standard. This standard of review under the APA is highly deferential and remains unchanged in the post-*Loper Bright* landscape. As succinctly summarized by the Supreme Court in a post-*Loper Bright* opinion:

> The APA requires a reviewing court to hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of

[42] *Id.* at *9–14.
[43] *Id.*
[44] *McGowan v. United States*, 143 F.4th 686 (6th Cir. 2025).
[45] *Id.* at 700–701.
[46] *Id.* at 701.
[47] *Id.*

> discretion, or otherwise not in accordance with law. Our well-worn arbitrary-and-capricious standard ensures that an administrative agency examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made. The scope of this review is narrow, and reviewing courts must exercise appropriate deference to agency decision making and not substitute their own judgment for that of the agency.[48]

b. In *Bessent*, after using the *Loper Bright* framework to determine that Treasury's action was within the bounds of delegated authority, the Second Circuit undertook the analysis required by the APA, explaining:

> Unlike our review of an agency's interpretation of a statute, under which the agency is accorded no deference, our review of agency action under the arbitrary and capricious standard of review is narrow and particularly deferential. An agency action survives arbitrary-and-capricious review so long as the agency "examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[49]

c. Courts have generally found APA violations only in relatively rare circumstances. An agency rule can violate the arbitrary and capricious standard "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[50] Still, courts should "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned."[51]

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[48] *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 567, 145 S. Ct. 898, 916–17, 221 L. Ed. 2d 436 (2025) (internal citations omitted).
[49] No. 24-1499-CV, 2025 WL 2327237 at *15 (internal quotations omitted).
[50] *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).
[51] *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286, 95 S. Ct. 438, 442, 42 L. Ed. 2d 447 (1974).

d. Successful challenges under the APA typically concern cases where the agency's stated rationale is shown to be pretextual[52] or where the agency has ignored critical evidence or offered reasoning that runs counter to the record.[53] In such cases, courts emphasize that the defect is not mere policy disagreement, but a fundamental failure of reasoned decision making that prevents the action from surviving even the APA's deferential standard. The courts still maintain that "a reviewing court may not set aside an agency rule that is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute."[54]

Conclusion of Specific Request for Regulatory Guidance under the CAMT

1. The OBBBA permits taxpayers to expense certain previously capitalized R&E costs that were incurred in taxable years beginning after 2021 and before 2025 during the first taxable year beginning after 2024 or the first two taxable years beginning after 2024. Most taxpayers would have expensed these amounts for accounting purposes, while capitalizing them for tax, resulting in a deferred tax expense. By choosing to accelerate these deductions under the OBBBA, taxpayers reverse the deferred tax asset as a result of the tax deduction. In effect, taxable income catches up to U.S. GAAP income.

2. Although not explicitly stated in the statutory text or legislative history, the expensing of R&E expenses is intended to encourage research activities, which are viewed as providing socially efficient positive externalities (or "spillover" effects).[55]

3. By choosing to accelerate the tax deduction and significantly reduce taxable income, many taxpayers face the CAMT liability. This outcome will induce many taxpayers to defer R&E deductions into future years, thereby interfering with one of the significant policy goals of the OBBBA (incentivizing domestic R&E).

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[52] *See, e.g.*, *Dep't of Commerce v. New York*, 588 U.S. 752, 780–85 (2019) (remanding for further proceedings when agency's stated justification was contrived and pretextual; there was "a significant mismatch between the decision the Secretary made and the rationale he provided.").

[53] *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (vacating rescission of passive-restraint requirement because agency "failed to present an adequate basis and explanation" and disregarded evidence); *California v. Bernhardt*, 472 F. Supp. 3d 573, 614 (N.D. Cal. 2020). ("An agency simply cannot construct a model that confirms a preordained outcome while ignoring a model that reflects the best science available.")

[54] *Id.*

[55] Stephen E. Shay, J. Clifton Fleming, Jr. & Robert J. Peroni, R&D Tax Incentives–Growth Panacea or Budget Trojan Horse?, 69 Tax L. Rev. 419, n.1 (2016); Asa Hansson & Cecile Brokelind, Tax Incentives, Tax Expenditures Theories in R&D: The Case of Sweden, 6 World Tax J. 168, 175-76 (2014).

4. Treasury should therefore exercise its authority under section 56A to provide an adjustment to AFSI that substitutes the amount and timing of the deductions allowed for regular tax purposes under sections 174 and 174A for the financial statement expense for R&E.[56]

5. This proposal is consistent with the purposes of the CAMT because:

    i. The accelerated deductions causing the CAMT liability are the result of congressional action – not aggressive tax planning.

    ii. The tax treatment of deferred R&E under the TCJA was less favorable than for accounting purposes (i.e., it tended to inflate taxable income relative to accounting income). The change introduced by the OBBBA merely reintroduced book-tax parity through a catch-up deduction. Remedying a taxpayer-unfavorable timing difference is not a tax loophole in any sense.

    iii. Applying the CAMT to R&E expense will interfere with congressional goals of incentivizing domestic R&E, and – as discussed above – section 56A(c)(15) acknowledges that AFSI may be adjusted to accommodate the policies of other Code provisions.

6. In the alternative, if the prior recommendation is not adopted, TEI recommends Treasury provide guidance allowing taxpayers the option to elect to spread the Transitional Section 174 Amortization over a period not to exceed 15 years.

[56] As noted above, this proposal could be conditioned on a taxpayer demonstrating that it would not have owed the CAMT in prior years had AFSI deductions for R&E matched the regular tax deduction.