EA Test Part 2 Review Notes

These are my review notes for the 2023-2024 (based on the 2022 tax year laws) EA test Part 2. This is a very abbreviated and concise summary of the information, so it's intended only for review after you have already learned the material from a training course.

See https://taxmodern.com/exams for the latest version and other notes. These notes are based on the https://www.passkeyonline.com/ EA exam training course, which I highly recommend (I'm not affiliated with them at all). I tried Gleim, FastForward, and some of the others but I think the PassKey videos are just more enjoyable to watch and easier to learn from. And it's also far cheaper than any of the other EA courses as well.

Dollar Amounts

$**5** - Per SF home office deduction up to 300 SF.
$**10** - 1099-MISC for royalties, 1099-DIV for C Corp dividends.
$**25** - Business gift expenses max.
$**75** - Evidence needed for travel expense (not lodging).

$**100** - Complex trust exemption.
$**200** - De minimis Election for Materials and Supplies
$**300** - Simple trust exemption.
$**400** - Unqualified employee award max
$**500** - In C corp tax, must make estimated payments. Also threshold for underpayment penalty.
$**600** - Rental 1099-NEC required. 1099-MISC for rents, prizes, crop insurance, attorney.
$**600** - SEP-IRA income to require offering.
$**600** - Estate income to require 1041 return.

$**1,000** - of unrelated business income for a tax exempt org requires 990-T
$**1,600** - Total qualified/unqualified employee awards/year.
$**2,500** - De minimis safe harbor election ($5000 with AFS)
$**4,400** - QDT exemption.
$**5,000** - Organization/startup costs deduction.
$**5,000** - Charity gross annual receipts file requirement form 1023 for recognition.
$**5,000** - SIMPLE plan - income to require participation.
$**5,000** - Dependent Care FSA per year/family ($2500 MFS)
$**5,250** - Employer educational program benefit
$**7,000** - FUTA tax on wages.

$**10,000** - Form 8300 - Report of Cash Transactions. FBAR for foreign accounts.
$**14,000** - SIMPLE plan - Max salary reduction contribution (+$3000 if 50+).
$**16,000** - Gift amount before from 709 required.
$**20,000** - 1099-K required (or 200 transactions).
$**25,000** - De minimis rule for form 3115 depreciation/amortization change in one year
$**25,000** - Real estate yearly passive loss allowance
$**27,000** - large SUV max for Section 179
$**50,000** - Startup/organization costs threshold to phase out startup deduction.

$**50,000** - Tax exempt can use 990-N (e-postcard)
$**50,000** - Max group term life insurance benefit to be untaxed.
$**61,000** - SEP-IRA max (up to 25% of compensation)

$**200,000** - Tax exempt can use 990-EZ (and assets < $500k).
$**245,000** - Defined benefit plan max contribution.
$**250,000 -** In C Corp assets / gross receipts -> must complete Sch M-1 and Sch L.
$**250,000** - Form 5500 required for SIMPLE / Qualified plan assets.
$**270,000** - Excess business loss limitation ($540k MFJ)

$**1,080,000** - Section 179 max.
$**2,700,000** - Section 179 total asset purchases phase out.
$**10,000,000** - In C Corp assets -> must e-file. C corp Sch. M-3 required.
$**12,060,000** - Gift tax exemption.
$**27,000,000** - Gross receipts (3 year average) to require accrual method. UNICAP rules.

Percents

1.45% - Employer/employee Medicare tax rate.
6% - FUTA tax
6.2% - Employer/employee SS tax.
21% - C Corp tax rate.

Annual Dates

(or the fiscal calendar equivalents)

1/15 - 4th ES payment. Farmer/fisherman regular filing ES due. W-2 deadline.
1/31 - 1099-DIV deadline
3/1 - Farmer/fisherman early filing ES due.
3/15 - S-corp election. S-corp Form 1120-S due. Form 1065 Partnership Return.
4/15 - 1st ES payment. Form 1041 Trust return. Form 1120 C-corp calendar year return.
5/15 - Tax Exempt org form 990 due.
6/15 - 2nd ES payment.
7/31 - SIMPLE / Qualified retirement plan form 5500 due.
9/15 - 3rd ES payment. Form 1065 Partnership Return extended deadline.
10/1 - SIMPLE plan setup deadline.
10/15 - Extended deadline for 1120 C-corp, 1041 Trust (not estates).
11/1 - SIMPLE plan termination deadline.
12/15 - Extended deadline living abroad request.

Time

14 days - Personal use of rental property (and > 10% of days). August Rule days.
15 days - Form 8300 - Report of Cash Payments $10k+.
30 days - Form 966 due after dissolving a C-corp.
45 days - 1031 identify property.
60 days - Accountable plan reimburse employee time

180 days - 1031 exchange completed (or extended return due date)

2 years - Partnership disguised sale taxable
2 years - New SIMPLE plan early withdrawal 25% penalty
2 years - Farmer NOL carryback.
2 years - Related party 1031 exchange or related party installment sale wait to dispose
3 years - C-corp *capital* loss carryback.
4 yeas - Employers to keep all employment tax records
5 years - Partnership hot assets taxable as LTCG instead of ordinary earnings.
5 years - C-corp *capital* loss max carry forward. C-corp charitable contribution excess of 10% income max carry forward.
5 years - S corp re-election wait.
5 years - Research and Experimental Expenses amortization.
7 years - Contributed property to a partnership distributed to a different partner taxable gain
15 years - Startup cost amortization
27.5 years - Residential rental depreciation

Forms

1040 / 1040X / 1040-SR / 1040-NR - Individual
1041 - Trust/Estate return
1120 - C-corp return
1120-S - S-corp return

Sch. J - Farm income averaging

SS-8 - Determine if a Worker is a Contractor vs. Employee

461 - Excess business loss limitation
940 - FUTA
966 - Dissolution of a C Corp

1023 - 501(c)(3) Application
1024 - 501(a) Application
1024-A - 501(c)(4) Application
1045 - Individual/Estate/Trust (Non-C-corp) NOL carryback (pre-2020)

1118 - Foreign Tax Credit for Corporations
1128 - Tax year change request
1139 - C Corp NOL carryback

2553 - S corp election

3115 - Change accounting method.
3468 - Investment Credit
3800 - General Business Credits

4466 - C corp Quick Refund of Overpayment of Estimated Tax

4562 - Depreciation and Amortization
4684 - Casualty/Theft Business Asset Deduction
4797 - Sale of Business Property
4835 - Sharecropping Land Rental

5305-SEP - SEP Setup
5884 - Work Opportunity Tax Credit

6198 - At-Risk Limitations
6252 - Installment Sale Income

7004 - Extension for an entity return
7203 - S Corporation Shareholder Stock and Debt Basis Limitations.

8300 - Report of Cash Payments
8594 - Asset Acquisition Statement.
8582 - Passive Activity Loss Limitations
8716 - Request tax year change for no good reason
8824 - 1031 exchange
8825 - Rental Income of a Partnership / S-corp
8829 - Business use of Home
8832 - C corp Entity Classification Election
8846 - FICA Tip Credit
8869 - Q-sub
8941 - Credit for Small Employer Health Insurance Premiums

Entities

- **Sole Proprietorships**: Schedule C.

- **Joint undertaking**: For a Schedule E rental with no "substantial services". Not a partnership, just splitting profit/loss on their own Schedule E's.

- **Qualified Joint Ventures** (Married Couple Businesses): MFJ only, with QJV election (otherwise they are automatically a general partnership!). Separate Schedule C & SE for each spouse. Can't be a MMLLC, unless in a community property state (then can have LLC and still report the income on Schedule C's). Can also elect it on a Schedule E.

- **Partnerships**: 2+ people/entities (corporation, etc.) splitting income/loss, unlimited partners, domestic or foreign. 1+ GPs responsible for debts and liabilities. Pass-through (even when buying/selling property), not taxed (except under audit). Partners taxed on their "distributive" share, whether or not it is actually distributed. Can be an LLC, but must be unincorporated. Partners aren't employees, no W-2s (generally). Schedule K-1s issued to partners. Can convert from an MMLLC, keeping same EIN.
    - **Can't be a partnership**: Joint stock company/association, insurance company, certain banks, a gov entity, certain foreign orgs, tax-exempt orgs, REITs, trust/estate.

- **Family Partnerships**: If capital is a material income-producing factor, the family members must have acquired their interests in a bona fide transaction. If not, must have joined together in good faith to conduct a business.
- **Form 1065 Partnership Return**: Required if has *any* income/expenses for the year. Signed by any general partner. Lists names/addresses of partners. Due 3/15 (extended date 9/15 using form 7004), fiscal is the equivalent. Must e-file if > 100 partners ("large taxpayer"). Schedule K-1/K-2/K-3.
- **Partnership Agreement**: (optional) Flexible, can choose any way to divide proceeds/assets (unlike an S-corp). Loan and credit agreements, assumption agreements, indemnification agreements. Can be modified until the unextended due date for filing (3/15). If terminates, short year final return due 15th day of 3rd month after.
    - **Guaranteed payments**: Such as health insurance or payment for work done (even if is an LP). Whether cash or partnership interest, etc. Deducted on 1065 as an expense, reported on the partner's K-1. Partner's return: Ordinary income on Sch. E, SE tax, health insurance is deductible, but no QBI.
- **Centralized Partnership Audit Regime (CPAR)**: Can opt out if <= 100 partners and only eligible partners. An “eligible partner” includes C corp, S corps (but shareholders count adds to partner count). Does not include a disregarded SMLLC, trust, grantor trust, or a bankruptcy estate.

- **General Partnership**: No LPs, no paperwork to form, just handshake. All partners are liable for all debts.
- **Limited Partnership**: GPs + LPs, have to file a state-level entity (Certificate of Limited Partnership or Certificate of Formation). LPs don't pay SE tax on the income (unless is guaranteed payment).
- **Limited Liability Partnership (LLP)**: Parters actively participate in management, but has liability protection from actions of other parters (from debts, malpractice of other partners). Example: Attorneys, doctors, etc., some states may require it rather than an LLC for some professionals.

- **Separately Stated Items**: Other than ordinary income/loss, other amounts that flow to partners with specific character.
    - Net STCG, net LTCG, charitable contributions, dividends from a corporate partner, foreign taxes, US possession tax, section 1231 gains/loss, 1250 recapture, 179 deduction, bonus depreciation, tax exempt income / investment expenses, rental income/expenses, 199A wages paid to employees.
- **Unreimbursed Partnership Expenses (UPE)** - Schedule E write-in.
- **Contributions**: Usually not taxable. Property contributed retains same basis and long/short holding period.
    - **Taxable contributions**: Partnership would be an investment company if incorporated, **or** contributed property distributed to a different partner within 7 years (contributor recognizes gain/loss using FMV on date contributed), **or** one partner puts in cash/property and gets back different property/cash within 2 years (a disguised sale), **or** contribution of services (is a guaranteed payment).
- **Loss limitations**: (form 6198 - At-Risk Limitations) Partner can't deduct losses exceeding their partnership basis from their investment (at-risk limitation). Excess loss is carried forward until there is sufficient basis.
- **Partner's basis:** Money put in + recognized earnings not yet distributed + debt for the partnership with a personal guarantee.

- **Hot assets**: (section 751) Ordinary income assets in a partnership (inventory, accounts receivables). Taxed as ordinary income, or LTCG if held for 5 years.
- **Distributions**: Cash or property distribution. **Cash distribution** in excess of partner's basis results in capital gain. **Property distribution** exceeding partner's basis not capital gain, but partner's basis transferred into the asset received.
    - **Current distributions**: Partnership's current/prior year earnings, withdrawal in anticipation of current year earnings. Cannot recognize a loss.
    - **Liquidating distributions**: Complete withdrawal of a partner's interest, or complete liquidation of the partnership. May recognize a loss if basis just before distribution > cash + non-cash assets distributed, and only cash / hot assets distributed.
        - **Death of a partner**: Payments made to the estate are considered a distribution (not a guaranteed payment / distributive share). Final K-1, estate gets income owed to the date of death, inheritor may get ownership interest with basis as the FMV (unless **buy-sell agreement** to buyout the deceased partner's interest instead as a distribution to the estate).
        - **Payment of another partner's debt**: If insolvent partner, paying partner gets a bad debt deduction for the partner's portion.
- **Sale of partnership interest**: Normally cap gain/loss. Or some ordinary income if partnership holds hot assets. Gain/loss = (cash + property received + liability relief) - partner's basis before liquidation.

- **LLC**: Disregarded if 1 owner, partnership if 2+ owners (MMLLC), or corporation if elected.
    - **PLLC** (Professional Service Limited Liability Company): In some states. Just for doctors, lawyers, engineers, CPAs.

- **C Corporations**: Pay taxes on income on (and has double taxation. Losses never transfer to shareholders. Flat rate 21%. Domestic or foreign investors. Perpetual life. Limited liability.
    - **Automatically treated as C corps**: Business formed under fed/state law refers to it as a corporation or "join-stock company/association", insurance companies, banks, business owned by state/local gov, required by IRC (e.j. certain publicly traded partnerships), certain foreign businesses.
    - **Form 1120**: Due 4/15, or fiscal equivalent (except 6/30 fiscal which is 9/15 due date). But no penalty for late filing if no tax due. Always required regardless of income. Must e-file if > $10M in assets (as of 2022), or 250 returns of any type. Or 1120-F if foreign, form 990 if tax-exempt, etc.
        - **Sch. M-1** (required if gross receipts or total assets > $250k) / **Sch. M-3** (required if total assets > $10M): Reconcile book-to-tax differences.
        - **Sch. L**: Is the balance sheet. Required if gross receipts or total assets > $250k (recommended even if not required.
    - Information returns:
        - **1099-DIV**: To shareholder if distribution $10+ during the canceldar year, by 1/31. Or as early as 4/30.
    - **Requirements**: Articles of incorporation (filed with the state, start of existence), **tax election form 8832**, file a charter, issue stock, overseen by a board of directors, maintain list of all shareholders (with SSN, otherwise 24% backup withholding of dividends), shareholder meetings at least once/year.
    - **Liquidation**: Corp recognizes gain/loss on sale/distribution of assets, then shareholders recognize gain/loss on the surrender of stock to the corporation.
    - **Stock**: Multiple classes of common/preferred, various rights/voting/etc. Issuing stock has no tax impact.

- **Tax-free fringe benefits**: (C corp only) Health insurance, company car, etc. for employees are deductible corporate expenses.
- **Estimated tax payments**: If tax due >= $500. Must use EFTPS. 4/5, 6/15, 9/15, *12/15*. 100% of current year, or safe harbor 100% of last year (but only if > $0 and wasn't a short year). No penalty if underpayment < $500. Form 4466 Quick Refund of Overpayment of Estimated Tax (if at least 10% and at least $500).
- **Contributions of Capital to a Corporation**: Generally not taxable to the corp (whether for stock or not). Property given for nothing in return has $0 basis to the corp.
    - **Section 351 Nontaxable Corporate Transfers**: Contribution of property in exchange for stock, and then the TP controls 80+% of the corporation voting power and of the nonvoting stock, then the exchange isn't taxable.
    - **Stock Transfers to Satisfy a Debt**: To satisfy a debt of the corp using stock, then the corp recognizes income if the FMV of the stock is more than the debt.
- **Dividends**: Dividends paid to shareholders aren't a deductible expense (so double taxation), and dividends don't retain their character.
- **Accumulated Earnings Tax**: (only under audit, uncommon) 20% of excess. > $250k, or $150k for personal service corps. Unless "reasonable needs" such as specific feasible plans for expansion/acquiring/liability payments, or to redeem corporation's stock for a deceased shareholder's estate to pay estate/inheritance taxes/funeral admin expenses.
- **Capital gains**: Same rate. Losses can only offset capital gains.
    - **Losses carried to**: (required order) 3 years prior, 2 years prior, 1 year prior, then carried forward 5 years. Can't carryback to before it was a C corp.
- **At-risk**: Money and property contributed by the TP + money borrowed by the corp.
- **Charitable contributions**: Deduct as a business expense up to 10% of taxable income, excess carried forward up to 5 years. Same record keeping rules as individuals. If accrual, can deduct contributions that are unpaid but authorized by the board (with declaration statement attached to the return), must pay by original return due date.
- **Dividends-Received Deduction (DRD)**: (C corp only, not S) To avoid double taxation of parent/child corps. < 20% = 50% deduction (up to 50% of its income), 20-80% = 65% deduction (up to 65% of its income), > 80% = 100% deduction. Income calculated without DRD, NOL, loss carryback. Can't be from REIT, tax-exempt corp.
- **Related Party Transactions**: Same controlled group, > 50% ownership of a partnership / trust / S-corp / C-corp, employee-owner of a personal service corporation. Ownership is grouped by family (siblings, half-siblings, spouse, ancestors, descendants).
- **Closely-Held Corporations**: <= 5 owners own > 50%. Not a personal service corporation (PSC). At-risk amount is contributions + borrowed money + pledged property - cash/property withdrawals - nonrecourse loans where the corporation isn't liable. If at-risk < $0, suspended losses from previous years must be reduced.
- **Controlled Groups**: Group of corporations as **parent-subsidiary** (a corp owns 80+% of another), or **brother-sister** (<= 5 individuals/trusts together own 80+% of voting shares for multiple corps, and 50+% in the individual corps). Can't be a foreign corp. Related party transaction rules (can't sell to each other and recognize a loss). Can elect to file a consolidated return. Only one shared $250k Accumulated Earnings Tax credit. Employees in same pool for certain qualified plans.
- **Distributions**: Not an expense to the corp, no tax impact for the corp. Distributions are reduced if the shareholder takes on corporate debt/liability.
    - **Ordinary dividends**: Typical for current year earnings distributions.
    - **Capital gain distributions**:

        - **Nondividend distributions**: If the corporation distributes more than all accumulated earnings + profits. Is a return of their basis (return of capital), no tax for the shareholder up to their basis amount (any more is LTCG).
        - **Distributions of property**: Treated as a sale. Taxable to the corp if has gains, losses aren't deductible unless liquidating. Shareholder's basis is the FMV.
        - **Distributions of stock or stock rights**: If stock issued, market cap doesn't change but generally reduces the stock price. Not taxable to either party unless is treated as property distribution if: shareholder has the *option* to receive cash instead, is convertible preferred stock, some preferred with some common, paid based on ownership of preferred stock. Expenses related to stock dividends must be capitalized, not expensed.
    - **Stock redemption**: Corp buys back its own stock, which can then be canceled/retired/held. Can redeem all public shares to go private. Can't deduct related expenses. No tax effect if paying cash. If property, taxable if property and has a gain but can't recognize a loss unless is a complete liquidation, or redemption occurs on stock held by an estate.
        - **Qualified Stock Redemption**: Substantial reduction in stock ownership (shareholder retires, leaves, etc.) and others buy them out. Taxable like a stock sale to the shareholder. Reduces corp's profits, reducing amount of income taxable to the other shareholders but their basis remains the same.
    - **Expenses related to issuing stock**: IPS costs aren't deductible, treated as a deduction in the proceeds (can capitalize?).
    - **Constructive dividends/distributions**: Disallowed personal benefit to the shareholder. Such as below market rate loan (unless below $10k de minimis). Under audit it's disallowed deduction for the corp, and taxed as income to the shareholder.
    - **Liquidations (dissolution)**: Form 966. And state paperwork. Within 30 days of decision to dissolve. May take multiple years.
        - Property liquidated: Corp's tax: Taxed as if sold at FMV, so corp's gain/loss = FMV minus corp's basis. Shareholder's tax: Cap gain/loss = FMV of property minus shareholder's basis.
        - Final return due on 15th day of 4th month following close of its final short tax year. (Try to close on the 4th quarter to use the current year software.)

- **S Corporations**: "Formed" by electing LLC, LLP, etc. to be treated as an S Corp. Must be domestic. except buying/selling assets?. Is transferable. Less common, but can have passive shareholders not actively participating (like LPs).
    - **Formation**: Form 2553 election, must file by 2 months + 15 days after the start of the tax year (normally 3/15) to be effective for the whole year, or any time during the preceding year (entity must exist when filing). All shareholders must consent, also shareholders who held stock during the earlier part of the year. But can do S -> C conversion with just 50+% of shareholders.
    - **Tax year / method**: Must use calendar year, needs permission to use fiscal year for a bona fide business purpose. Cash or accrual.
    - **Shareholders**: 100 shareholders max (but family from a common ancestor, spouses, dead spouses can be considered 1, not ex-spouses), or else becomes a C corp. One class of stock, but can have differences in voting rights.
        - **Must be**: US citizens, US residents, some trusts/banks/estates, tax-exempt corps, SMLLC. **Not**: partnerships, corporations (except certain tax exempt corps), MMLLC. But S corps can own C corp stock.
        - **Qualified Subchapter S Subsidiary (QSSS / Q-Sub)**: S corp 100% owned by another S corp (subsidiary / parent). File for 8869. Then treated as one corp.

- **Form 1120-S**: Info only, usually no taxes due. Due 3/15 (or fiscal equivalent), or 6 month extension with form 7004. Always required even if no activity. Signed by a corporate officer/receiver/trustee/assignee (not necessarily be a shareholder).
    - **Taxation of S corps**: (not common) Excess net passive investment income, built-in gains (BIG), investment credit recapture, LIFO recapture. Only happens if was previously a C corp (except investment credit recapture). 21% rate.
    - **Sch. K-1**: Pass through income/deductions/credits to shareholders.
- **Income/expense Pass-through**: Profit/losses *must* pass through profit/loss by share percentage, no alternatives (taxed as allocated, even if not actually distributed). Members are only employees or investors, not self employed.
    - **TP reports** S corp income/loss on Sch E page 2: TP must keep track of their stock basis.
    - **Retain character**: Rental real estate, portfolio income/loss, cap gains/losses, section 1231 gain/loss, charitable contributions, section 179 deduction, foreign taxes, business credits, investment interest expense, adjustments to figure AMT, nonbusiness bad debts.
    - No DRD deduction (only C corps have that).
- **Shareholder's basis:** https://www.youtube.com/watch?v=rrcD7UxZukE Value of cash/property contributed to it when formed + stock purchase cost of shares + earnings + excess depletion - expenses - distributions - oil/gas depletion. Debt for the partnership with a personal guarantee doesn't add to their basis for an S corp (unlike a partnership), unless the shareholder is lending their own money.
    - **Form 7203 - S Corporation Shareholder Stock and Debt Basis Limitations**.- Required for shareholder if receives distribution, deduction for S corp loss, disposes of S corp stock, or loan repayment.
- **Distributions**: Distributions to all share holders must be on the same date, in proportion. Distributions aren't generally taxable, they just change the shareholder's basis.
    - **Distributions in excess of basis**: Taxed as capital gains (long or short depending on how long held the stock). Usually only happens if the S corp has debt.
    - **Property distributions**: Worst of both scenarios. No loss recognized if the FMV value of the property is less than the corp's basis. If increased in value, treated as a sale to the shareholder. Gain passes through to the shareholders and increases everyone's basis of their stock.
- **Responsible compensation**: Necessary if there are profits and someone is actively doing work for the S corp.
- **Termination of shareholder's interest**: Just like a regular stock sale reported on Sch. D. The S corp may elect to allocate income/expenses as two separate short tax years, based on the date of the shareholder's termination. All shareholders must agree to the section 1377 election (including terminating one).
- **Termination of S corp election**: Becomes a C corp, has two short tax years that year. Can't be an S corp again for 5 years (60 months).
    - **Intentional**: Or the majority of shareholders willingly revoke the S election (not a form, send a letter).
    - **Inadvertent**: Over 100 shareholders (on that date), or each of 3 consecutive tax years has accumulated earnings/profits (because it was a C corp in the past) and > 25% of gross receipts from passive income, or they create a second class of stock, or income was distributed non-proportionally.
        - **Termination relief**: Used to have to get a private letter ruling to fix it, now there is a procedure to fix most issues. Can use for: Multiple classes of stock, disproportionate distribution, form 2553/8869 error, missing acceptance letter for

the S corp / QSub, filing a retirn inconsistent with S election or QSub, correcting non-identical governing provisions.

EIN: Optional for sole proprietorships without employees. Required for corporations, exempt orgs, trust, estate, or partnerships. Or if employees (even nanny), excise tax, alcohol/tobacco/firearms, withholds taxes paid to a NR alien, establishes a pension/profit-sharing/retirement plan.

Forms:

- **Schedule K-1**: (partnership/s-corp/trust/estate) Name/address of each partner, and their distributive share of income/loss. (Reported on their Sch. E.)
    - **Schedule K-2 / K-3**: If any partners aren't domestic, or partnership has more than "minimal" foreign activity.

Payment Forms

- **W-2**: Employee pay. Due 1/15.
- **1099-MISC**: Business payments only. Royalties $10+. $600+ for rents, prizes, awards, crop insurance, certain medical/health care, attornies (separate box). Not if recipient is a corporation (except attornies). Not if credit card or other payment network, then the network sends a 1099-K instead.
- **1099-K**: Credit card, third party network transactions, Amazon, Uber. To the recipient of money. If $20k in earnings, or 200 transactions (in 2022).
- **Form 8300 - Report of Cash Payments**: Business payments only (not personal transaction), receiving > $10,000 in cash / cashiers checks (**not** wire transfer, CC, ACH, personal check). Single, or sum of related transactions. File within 15 days. Also written statement to customer by 1/31.

Employees

- **Federal Unemployment (FUTA) Tax**: Business pays 6% (but credit up to 5.4% if paying unemployment to the state) on first $7000/employee pay. Reported on form 940, filed separately annually.
- **Trust Fund Recovery Penalty (TFRP)**: 100% penalty if business doesn't pay FICA, can be against *any* "responsible person" (owner, accountant, etc).

Worker Classification

- Independent contractor:

- **Employee**:
    - Child working for parent: If is a sole prop / partnership (and all partners are the parents), still has income tax withholding, but:
        - Child < 18: No FICA.
        - Child < 21: No FUTA.
    - Spouse employed by spouse: And is sole prop -> FICA but no FUTA. Also can't be corp or partnership with employing spouse is a partner (?).

- **Statutory employee**: Gets W-2 ("statutory employee" box 13 checked), but goes on Schedule C. Work on commission (full-time life insurance sales, traveling salesman, commission truck drivers, board members, certain home works). FICA taxes paid by the *employer* (so no SE form), but income taxes not withheld.

- **Statutory nonemployee**: Employees that are not treated as employees (just like normal contractor 1099-NEC -> Schedule C). Direct sellers, real estate agents, certain companion sitters. Works in sales, performed under a written contract that says not employees for taxation.

Account periods

Period types:

- **Calendar Tax Year**: All individuals (since a long time ago).
- **52/53-week tax year**: Rare.
- **Short Tax Year**: Can happen on first or last year of a business.

- **Fiscal Tax Year**: Can be used by...
    - **C corps**: Can be fiscal. Elect on first year, form 1128 to change it later.
    - Partnerships / S corps:
        - If **majority** owners (50%+ of interest) are fiscal (so generally C Corp partner/owners).
        - Or "**natural tax year**": for a legit business purpose (seasonal), use form 1128 to request.
        - Or **Section 444 Election** (form 8716): (rare) No business reason, just wants to request it. Not tiered, not elected before, not to defer revenue.

Accounting Methods

- **Cash**: (most) Expenses when paid, income when received. All businesses *gross* receipts < **$27M** (3 year average) can use it (except tax shelters).
    - **12 Month Rule**: Expenses *paid* more than a year in advance have to be capitalized (e.j. advanced rent).
- **Accrual**: (more "accurate") Expenses when incurred, income when earned. Tax shelters must use it. > $27M gross receipts, publicly-traded corporations, large nonprofits needing audited financial statements for government funding, or tax shelters.
    - **Advance payments for services**: Payment for future services past the current year. Can elect to defer reporting the income til the next year (only one year). Guarantees, service agreements, etc. Any portion for the current year still taxable the current year. *Not for rent, interest, and insurance premiums.*
- **Hybrid**: A combination. If an inventory is necessary to account for income, must use accrual for purchases and sales. Can use the cash method for all other items of income and expenses. If cash method for reporting income, must use cash method for reporting expenses and vice versa.
- Special methods for **farming** methods: Includes the **Crop Method**.

- Can use multiple methods if businesses are completely separate.
- **Rent, interest, and insurance premiums** income always is reported when received regardless of the accounting method.

- **Form 3115 - Change accounting method**:
    - Cash/accrual method: Need pre-approval to change cash/accrual method if not required by law (e.j. gross receipts go over $27M).
    - Inventory method change:
    - Depreciation/amortization method change: e.j. rental didn't claim appreciation. Allowed through section 481(a). De minimis rule permits taking the difference in the current year if < $25,000.

Inventory

- **Cost of Goods Sold (COGS)**: Beginning inventory + purchases/production/freight/labor - ending inventory.
    - Not deductible as an expense until the goods are sold.
    - **Uniform capitalization rules (UNICAP)**: Guidance for how to capitalize COGS. Mostly only large (> $27M) businesses are subject to UNICAP rules.
        - **Inventory includes**: merchandise, raw materials, supplies that become part of items for sale, purchased goods (has title, even if in transit), goods out on consignment or displayed away from the TP's place of business.
        - **Never included in inventory**: Advertising, old goods, goods consigned to the business but not owned by it (not paid for), goods for future delivery (not yet legal title), land/buildings/equipment (unless business is selling those things), livestock not raised for sale (draft, breeding, dairy, sporting purposes).

- Use **form 3115** to change inventory accounting method.

- **Casualty loss of inventory / theft / shrinkage**: Adjust COGS (easier for small amounts, not if exceeds inventory actually sold), **or** record separately as a casualty or theft loss (for larger amounts, entered separately on the return). Eliminate affected inventory from opening inventory amount (don't count the loss twice). Don't claim loss if reasonably expecting to claim it with insurance.

Business Income

- Muni bonds etc. are still tax-free.
- Deferral: 1031 exchange.

Income Types:

- **Active income**:

- **Passive active income**: No material participation, or real estate rental (except for REPs).
    - Passive activity rules apply to: individuals, estates, trusts (not grantor trusts), personal service corporations, and closely held corporations. The rules also apply to *owners of* grantor trusts, partners in a partnership, and shareholders of an S corporation (but not to the entities themselves).
    - **Form 8582 - Passive Activity Loss Limitations**: Losses not deductible against other income types (usually), but carry forward, unless completely disposing of the activity. Income not subject to SE tax.

    - **Dispositions**: If complete disposition of the activity to an unrelated party, carried forward losses can offset gain from the sale.
    - **Former passive activities**: If now active, can deduct previous years carried forward losses *up the amount of the current year income.*
    - **Grouping activities (section 469 grouping)**: For material participation, then only have to participate in the group as a whole. Irrevocable. If disposing, have to dispose of entire group to use the suspended passive losses.

- **Portfolio income**: Interest, dividends, capital gains.

NOT business income:

    - Issuances of stock (including the sale of stock) (for C corps).
    - Most business loans, sales tax collected, deferral from 1031 exchanges, gain from an involuntary conversion properly reinvested.

Business Expenses

- Must be ordinary and necessary.

Startup/Organizational Costs

- **Startup costs**: $5000 as an expense on the first tax return after business begins. Investigate whether to open it (or buy a business), creating a business, legal costs to purchase a business, training new employees. **Not**: Deductible interest, taxes, R&D. Not expansion costs if business is operational.
- **Organizational costs**: $5000 as an expense on the first tax return after business begins. To organize/register a corporation, partnership, or LLC. Contract legal fees, temporary directors, organizational meetings, etc. Separate from startup costs.
- If startup or organizational costs exceed **$50,000**, the deduction is reduced dollar for dollar (so have to amortize them instead).
- Otherwise **amortize startup/organizational costs over 15 years** on form 4562. Starting with the first month of business. If disposing of business, can deduct any remaining unamortized costs on the final tax return.
- If **never starts**:
    - (individual's) Costs **before deciding to purchase/start**: Costs are non-deductible.
    - (individual's) Costs in a bona-fide attempt to purchase/start a **specific business**: Capital cost loss on Schedule D (regular $3k/year limit).
    - **Corporation's** costs: Can deduct all investigatory costs.

Business Deductions

- **Deductible taxes**: real estate taxes (tax must be based on the value of the property). **Not**: Assessments for local benefits and improvements (for streets, sidewalks, etc., unless is just maintenance/repairs that aren't improvements) -> adds to the basis instead.

- **Business bad debts**: Can claim if was previously included in income (accrual method). Bad business loans (may be cash or accrual).
    - **Later recoveries**: Just include in current year income (don't have to amend past returns).

- **Insurance**: Business property insurance, malpractice, casualty, state unemployment fund (or as taxes), vehicle insurance (if not using standard rate as an individual), group-term life *for employees* (not self), group accident health/long-term care/workers-comp *for employees*.

- **Accident/Health insurance**:
    - Sole proprietor: For self on Sch 1 (only if business is profitable, otherwise it's lost).
    - Partnership: If pays for insurance for its partners, deduct as guaranteed payments to partners (which count it as income, but then can take the SE health insurance deduction on Sch 1).
    - S corp: If pays for insurance for its > 2% shareholders, added to the shareholder wages (and is subject to income tax withholding).
    - C corp: Can deduct it as an expense, even if creates a loss.

- **Business interest**: Interest paid/accrued on debts related to the business (regardless of property type securing it). Business interest, not investment interest.

- **Home office deduction**: Regularly and *exclusively*. Principal place of business **or** place to meet clients **or** separate structure not attached to the home.
    - **Simplified**: $5/sf up to 300 sf, can still claim the full amount of deductible interest, real estate taxes, casualty losses. No depreciation. Can switch back and forth any year.
    - **How**: Self-employed use form 8829. Partnership deduct as UPE. S corp reimburse under an accountable plan instead.

- **Entertainment**: Entertainment not deductible any more, except: business provides entertainment to the public **or** entertainment is central to the work **or** company-wide (not just HCE employees) (then whole event including food is deductible).
- **Meals**: 100% (only through 2022) if from a restaurant, including per-diem meals for employees. Other food is 50% deductible, including employee fringe benefits. Can separate meals from entertainment if listed separately.

- **Travel**: For business and "away from home" (longer than a regular day and need to sleep/rest). Adequate records (unless under $75 for non-lodging).
    - **Per diem**: (optional) Can use instead of saving receipts for actual expenses. Self-employed can only use it for meal costs. Reimbursed and not included in wages.

- **Transportation**: Actual cost or standard mileage.
    - **Standard mileage**: (plus parking fees & tolls) only for SE, but corporation can reimburse employee under an accountable plan using *their own car* using the standard rate. Can't if: operates 5+ cars at the same time, claimed depreciation using anything other than straight-line, claimed 179 deduction or bonus depreciation, claimed actual expenses on a car that was leased.

- **Business gifts**: $25 max (TP and spouse combined) to any person or their spouse, not including packing/shipping/engraving/etc which is deductible.
    - **Exceptions** (not limited):
        - **Promotional gifts**: Not limited. Item with business name < $4, display stuff for the business premises of the recipient.
        - **Employee gifts**: Nominal value stuff, but not cash, gift certs, tickets, vacations, meals, lodging, etc.

- **Charitable contributions**: Only C corps. Partnership / S corp contributions can pass through to the partners/shareholders.

- **Non-deductible:**
    - Political contributions, lobbying, country clubs, government penalties/fines.
    - **Research and Experimental Expenses**: After 2021 TCJA must amortize over 5 years with mid-year convention (foreign research over 15 years).

Farmers/Fishermen

- **Farms**: Beekeeping, cotton, silk worms, trees, fish farm, etc. **Not farms**: Breeding household pets, farm supplies sales/rentals, fishing, etc.
- **Not part of farm income**: farm employee wages, grain harvesting under contract with taxpayer machines/workers, gains from selling farm equipment, securities, passive rental income from farmland (unless materially participates, then is Sch F farming income).
    - **Form 4835 - Farm Rental Income**: Providing land for sharecropping (not just flat cash rental). Sharecropper's income goes on Sch F.
- **Schedule F**: if sole proprietor. Farm income/expenses only.
- **Return/taxes due dates:** Farmer/fishermen (>= 2/3 of gross income from farming/fishing) and not C corp: File by 3/1: no estimated tax payments. Otherwise can pay all estimated taxes by 1/15 (if not doing regular quarterly payments).
- **Accounting methods**: Cash, accrual, combination (hybrid), *crop method* (crops that take more than a year to harvest, with permission), other special methods.
- **Farming inventory**: Feed, seed, eggs hatching, harvested crops, parts of a physical product (wrappers, packaging, etc.), inventory storage costs.
    - **Not inventory (form 4797 assets)**: Farmland, equipment, livestock for draft/breeding/sport/dairy.
- **Depreciation**: *new* farm equipment depreciation shortened from 7 to 5 years. Used farm equipment still 7 years. SIngle purpose greenhouses etc. can get 179 or bonus depreciation. Fruit/nut trees can get bonus.
- **Postponing Gain Due to Weather Conditions**: More income because of fed disaster assistance area drought, flood, or other weather, can postpone reporting additional income until the following year. Requirements: principal business is farming, cash method. Separate amount by each type of animal. Attach statement.
- **Crop Insurance and Government Payments**: Less income because of drought, flood, or natural disaster, can postpone reporting insurance / gov payment income until the following year. Requirements: cash method, insurance received same year as damage, normally would have reported the income from crops harvested the nest year, not getting paid to not plant. Attach statement.
- **Farm/fisherman income averaging**: Schedule J. Average using prior 3 years.
- Misc:
    - **Car and truck expenses**: Can claim 75% of car or light truck business use without any records.
    - **Soil conservation**: Normally is land improving, but is deductible as business expenses.
    - **Excise tax credits**: Refund of fed excise taxes on fuel.

Tax Exempt Organizations

Nonprofits - 501(c)

- **501(c)(3) charities**: Tax deductible donations.

    - **Structure**: Must be a **corporation**, **trust**, or **unincorporated association** (less common).
    - Have an **exempt purpose**: charitable, educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals, or testing for public safety.
    - **Can't**: Political campaigns of candidates, avoid **political** campaign intervention. Lobbying must be "insubstantial" part of total activities. Can't endorse a campaign. Can't benefit **private interests**, such as founder or family. Primary purpose can't be to **run a business** unrelated to its exempt purpose.
    - **Creation**:
        - EIN
        - **Organizing Document** (defines charitable purpose, plans on how to dissolve by distributing assets to another charity).
        - **Form 1023** / 1023-EZ - Application for Recognition of Exemption: Not required if church, or < $5000 gross annual receipts but must within 90 days of first year that goes over. File online, takes a long time, but can operate while pending.
    - Types:
        - **Private foundation** (most): Most are private foundation by default. < 1/3 of donations are from the public. More scrutinized. Form 990-PF instead of 990.
        - **Public charity**: Churches, hospitals, medical research organizations, schools, colleges, and universities are public charities by default. > 1/3 donations are from the general public.

- **Other Tax Exempt 501 entities**: Donations aren't tax deductible. Tax exempt, but not charities. Social clubs, labor unions, nonprofit political orgs.
    - Creation:
        - **Form 1024** - for 501(a) frat societies, business leagues, chamber of commerce, farmers coop.
        - **Form 1024-A** - for 501(c)(4) social welfare, volunteer fire dept, community service clubs.

- **Form 990** return: Due May 15th (5/15) (!). No separate amended return form, just check the "amended return" box. Late filing / false return without reasonable cause: $20/day up to 5% of gross receipts. Status automatically revoked if not filed for 3 years.
    - **For public charities**:
        - **Not required:** Churches and gov agencies. But still payroll returns if employees, possibly 990-T.
        - **990-N**: ("E-postcard") Can if gross receipts under $50k.
        - **990-EZ**: Can if gross receipts < $200k and assets < $500k.
    - **For private foundations**:
        - **990-PF**: Private foundation. Must file every year, even if no activity.
    - **Additional**: Also **990-T** if unrelated business income $1000+.
- **Entity types**: corporations, trusts, or unincorporated associations (never sole proprietorships or partnerships).
- **Unrelated Business Income Tax (UBIT)**: Business regularly carried on and not substantially related to its exempt purpose. Must file 990-T if $1000+ unrelated income, and quarterly payments if tax $500+. 21% tax rate. Due with form 990.

Estates/Trusts

- **Gift Tax Return**: > $16,000 (per giver to any recipient) reported on form 709 (separate return, but same due date/extension). Reduces the Estate/Gift Exemption ($12.06M).
    - **Exceptions**: US citizen spouse. Tuition or medical expenses paid directly to the institution. Gifts to political orgs, charities, parent's support for a minor child.
    - **Future Interests**: Still reported when given even if there are strings attached.
    - **Gift Splitting**: Spouses can split a gift to give $32k total, but have to report it (form 709), but doesn't count against their estate limit. (Or could just write separate checks and not have to do the form.) Separate form for each spouse, or other spouse can sign to consent on the one form. Community property funds are deemed to be 50% each spouse.

- **Estates/Trusts**:
    - **NIIT**: May be due if estate/trust earns over the (lower) threshold on undistributed net investment income. Form 8960. Doesn't apply to tax-exempt trusts or grantor trusts.

    - **Estates**: Two types: Decedent's estate (happens automatically on death), Bankruptcy estate (not covered here). Pub 559.
        - **Executor** (if there is a will -- testamentary probate proceedings), otherwise an administrator is appointed (intestate). IRS calls either "personal representative". Usually earns fees (reported on 1040 as other income if not in the business of being an executor). **Responsibilities**:
            - Get EIN, file form 56 to tell the IRS who the representative is, distribute the estate assets
            - **Form 1040** File final income tax for the decedent (or surviving spouse may sign it) - and any previous years. Same deductions etc, as if full year. Write "deceased" at top, may have to paper file. If surviving spouse remarried that year, deceased is MFS.
                - **Medical expenses**: Outstanding medical bills paid within a year of death can be deducted on the decedent's past tax returns (amend if already filed) for the date the costs were incurred (unusual tax treatment).
            - **Form 1041** fiduciary return for a domestic estate if it generates > $600 in income **or** if has any NR alien beneficiary while not done distributing assets (annually). Schedule K-1 issued to beneficiaries when distributing assets. Usually due April 15th (unless fiscal), but extension (form 7004) is **5.5 months**. May have to pay NIIT. Choose accounting period on first 1041.
                - Income can be taxed either to the estate or the beneficiaries. **Distributable Net Income (DNI)**: Income that is available for distribution, taxes on that paid by the beneficiaries, so the estate gets a Income Distribution Deduction (IDD).
                - **Final year (termination)**: Terminate when all assets/income distributed. Only in the final year of termination, can have a loss that is passed to the beneficiaries (reported on Schedule K-1), and they put the income on their Sch. E.
            - **Form 706** estate taxes if > $12.06M in assets **or** to claim the DSUE election **or** to choose alternate 6-month asset valuation date. Max tax rate is 40%. Due 9 months after death, 6 month extension allowed.
                - **Gross estate value includes:** FMV of assets, life insurance (if owned by the decedent or payable to the estate), annuities payable to heirs, IRA

etc, property transferred within 3 years of the death where a gift return wasn't filed but should have. Not: spouse's half of shared assets.
        - **Deductions from the gross estate**: Debts owed, funeral expenses paid out of the estate, admin expenses (if not deducted on 1041), marital deduction (surviving US *citizen*, not just green card resident, spouse gets assets tax-free), charitable deduction (donations in will), state death tax. **Not deductible**: fed taxes, alimony etc, property taxes only if accrued after death.
        - **Deceased Spousal Unused Exclusion (DSUE)**: Surviving spouse's election to take unused exclusion for later use for self, must elect it. Only US citizens (not just residents).
    - **Beneficiaries' taxes**: Only after those taxes paid/filed then can distribute to beneficiaries (or else executor could be held liable for the tax debt). IRA can be rolled into their own if it's a spouse, otherwise traditional IRA is taxable as income to the beneficiary (because the money wasn't taxed before). Basis of inherited assets is FMV on date of death (stepped up/down), or alternatively 6 months after date of death (or date of distribution if distributed < 6 months), or another alternate for farming / closely-held business.
    -
  - **Income in Respect of a Decedent (IRD)**: Earned while alive, but received after death (unpaid salary, accrued interest/rent, accounts receivable). May go on 1041, or may go directly to a survivor. Reported as same type as it would be for the decedent and they pay regular tax on it. Except wages / SE income -> subject to income tax withholding but FICA will be withheld during the year of death, if > $600 should be reported on box 3 of 1099-MISC. SE income: will include the decedent's distributive share of a partnership's income/loss through the of the month of the death. If IRD paid to a beneficiary and estate tax is due, estate tax is an itemized deduction on Sch A.
  - Beneficiaries inherit directly from the estate aren't taxed (unless the estate taxes weren't paid -- that's bad).

- **Trusts**: Need EIN if not Revocable grantor. Might pay tax, or might pass earnings to the beneficiary to have them pay the tax (either but not both).
  - **Grantor** (or settlor or trustor) -> (**trustee** or fiduciary) -> **beneficiary**.
  - Simple/Complex: (can vary year to year depending on if it has income or distributes principal that year)
    - **Simple trust**: Distributes all income, doesn't accumulate income year to year. No distributions of principal. No distributions to charity.
    - **Complex trust**: All non-simple trusts.
  - Revocable/Irrevocable:
    - **Revocable**: (disregarded entity, usually no form filing requirement) Treated as assets still belonging to grantor. Becomes irrevocable on death (so has a separate filing requirement), including "testamentary trust" formed by a will.
    - **Irrevocable**: Removes assets from the grantor's estate, is a separate entity. May still be taxed
  - Grantor/Non-grantor:
    - **Grantor Trusts (generally revocable)**: To avoid probate. Doesn't need an EIN, no form 1041 just on grantor's return because it's disregarded. Is "inter-vivos" (created during their life rather than testamentary). Still subject to estate taxes when it distributes assets.

                - Examples: To transfer assets and avoid probate, or to transfer assets to a child in a controlled way.
            - **Non-grantor Trusts (generally irrevocable)**: Grantor loses control of the assets. "Most deductions and credits allowed for individuals are also allowed to trusts"? Is generally taxable income to the beneficiaries (goes on Schedule E).
                - **Qualified Disability Trust (QDT)**: (complex) For the benefit of a disabled individual < age 65. Gets the regular exemption amount ($4400). Exempt from Kiddie Tax.
                - **Charitable Trusts**: Holds assets to benefit 501(c)(3) charities. Not subject to NIIT.
                - **Other irrevocable trusts**: Complete gift, subject to gift tax at the time assets are moved into it.
        - **Form 1041 filing**: (Generally only if irrevocable.) Trusts are usually calendar year. Return due 4/15. Report income/gaines/deductions/distributions/etc of the trust. Required if: any taxable income (after subtracting exemption), gross income of $600+ (regardless of whether the income is taxable), any beneficiary who is a NR alien. Filed by trustee (not grantor).
            - **Exemptions**: simple trust $300, qualified disability trust $4400 (original regular person exemption amount), any other complex trust is $100.
        - **Abusive trust arrangements**: To get deductions for personal expenses, stepped up basis for property, elimination of SE or gift tax. May be abusive if no one pays the tax (grantor/trust/beneficiary), other than the QDT exemption.
        - Foreign trusts: May be tax havens. Is foreign if a US fiduciary doesn't control all substantial decisions (or a US court supervises it). Many foreign trust treated as grantor trusts (taxable income taxable to the grantor). Have to file FBAR (if > $10k at any time).

Retirement Plans from Employers

https://webapps.dol.gov/elaws/ebsa/plans/final.asp
Always optional for all employers.

- **Simplified Employee Pension (SEP-IRA)**: Can setup for previous year by extended tax due date with Form 5305-SEP. If business has no other retirement plans. No Roth option (currently). Can contribute to SEP and other IRAs the same year. Not on W-2. Immediately vested.
    - Up to **25% of compensation or a maximum of $61,000**. Employer decides how much to contribute, **employees can't contribute**.
    - Must offer to all employees 21+, employed 3 of last 5 years, earning at least $600. Can exclude employees with a union agreement, NR alien employees.
    - Early withdrawals 10% penalty under 59 1/2.

- **SIMPLE IRA and SIMPLE 401(k)**: <= 100 employees (with 2 year grace period). Must offer to all employees $5000+ income in any prior 2 years (and expected same this year). If business has no other retirement plans (unless union-specific). Can setup any date 1/1 - 10/1 (or later if business established later). Only can be terminated at year end after notice by 11/1. Immediately vested.
    - **Employee**: optional salary reduction contribution up to $14k + $3k if 50+ (up to amount of salary).
    - **Employer**: must choose one of:

        - **Matching contributions**: Match up to 3% of compensation, can be reduced to 1% any 2 of 5 years (IRA only, not 401k).
        - **Nonelective contributions**: Contribute a flat 2% of employee's compensation. Must be for all employees.
    - Types:
        - **SIMPLE IRA**: Doesn't allow loans. No annual IRS filings.
        - **SIMPLE 401(k)**: Allows loans. Must file form 5500 annually. Compared to a regular 401k: lower contribution limits, doesn't require non-discrimination testing, no vesting schedule.
    - Early withdrawals 10% penalty under 59 1/2. 25% if withdrawn within 2 years of the beginning of participation in the plan.

- **Qualified Retirement Plans**: Employee Retirement Income Security Act (ERISA) requirements/reporting requirements.
    - Types:
        - **Defined contribution plans** (401k/403b/457): Employee and/or employer can contribute. Funding certified by an actuary. $20,500 max employee deferral (+$7500 if 50+). .
        - **Defined benefit plans** (traditional pension): Employer funds it. Minimum funding requirements required by ERISA. Expensive, but very high limits. Self employed TPs may contribute up to 100% of compensation. Up to $245k (up to average compensation of the employee in the 3 highest years). Protection from creditors in a bankruptcy.

    - **Form 5500**: For Qualified plans or SIMPLE 401k when plan's assets exceed $250k. Due annually by 7/31 (or plan year's equivalent). Not filing penalty $250/day up to $150k. 5000-EZ option if just self/spouse.

Employee Compensation

- **Nondiscrimination rules**: Can't give highly **compensated employees (HCEs)**, family (includes spouse, parents, children, grandparents, but not siblings, grandkids, etc), or > 5% owners more benefits. 100+ employees have to yearly review, if failed the benefits become taxable.

Not taxed to the employee, and **deductible** expense for the employer:

- **Cafeteria plan (section 125)**: Employee has option to choose a non-taxable benefit and taxable (such as cash). Daycare FSA, healthcare FSA, etc. Employees can contribute a portion of their salary pre-tax.
    - **May include**: Accident/health benefits, adoption assistance, group term life insurance (only up to $50k is excludable from taxable income + < $2k for spouse/dependents).
- **HSA**: Employer's contribution must be comparable for all employees who have comparable health plans, otherwise excise tax of 35%, but can give non-HCEs more.
- **FSA**: Flexible Spending Arrangements - Withheld from paychecks, tax-free payment for medical expenses. Use it or lose it (forfeited back to the employer), may have limited carryover or 2.5 month grace period.
    - **Dependent Care FSA**: $5000/year/family ($2500 MFS). Qualified person's care for parents can work. < 13, disabled spouse, or dependent parent in eldercare.
    - **Health Care FSA**.

- **QSEHRA - Qualified Small Employer Health Reimbursement Arrangements**: Employees get reimbursed for getting their own health insurance. < 50 full-time employees. Only funded by employer. Annual limit (a max that employers can offer less than).
- **Working Condition Fringe Benefits**: Misc expenses covered. Company car (partially taxable if used for non-work use, unless ambulance etc), professional memberships, equipment, cell phone (substantial business reason).
- **Accountable Plans**: Incurred expenses while performing work services as an employee, adequately account for expenses, provide documentary evidence of travel/mileage/etc, employee returns excess to employer within a period of time. Can even be used for single-member S or C corp. Written plan. *Safe harbor (recommended)*: reimburse employee within 60 days of expense, or employee return pre-paid amounts within 120 days.
    - **Nonaccountable Plans**: Taxed as wages. Can be anything, documentary evidence not needed.
- **Employee Awards**: Excluded from wages if tangible personal property (not cash). Such as length of service or safety achievement. "Qualified plan awards" written plan that does not favor HCE. $400/employee/year for not qualified, $1600 total of qualified/unqualified.
- **Athletic Facilities**: Only nontaxable if it's on premises.
- **Meals for Employees**: If on premises and/or for the employer's convenience, nontaxable to the employee but only ***50% deductible*** to the employer. Including break room snacks.
- **Lodging for Employees**: Lodging for employee, spouse, and dependents is nontaxable and 100% deductible. *Exception*: No deduction if offering any option to take cash instead.
- **Edu assistance**:
    - **Job-related education**: (section 132) Nontaxable, 100% deductible. Must maintain/improve skills for the current job **or** required by the employer or by law.
    - **Non job-related education**: (section 127) "Educational Assistance Program" or "employer educational program" (EAP). Written plan, non-discrimination, $5,250/year limit (additional taxed as wages). Tuition, fees, books, supplies, **or** pay for student loans (CARES act). Not: meals, lodging, or transportation.
- **Employee discounts**: Up to 20% on services (or more if the service doesn't cost the business anything), or for merchandise the price without profit (I think ?). Must offer to all employees, no for real estate or investments such as stock.

Not taxed to the employee, but **not deductible** to the employer:

- **Transportation**: Parking, mass transit.

Taxable to the employee, and **not deductible** to the employer:

- **Moving expenses**: (because of TCJA)
- **Personal use of a company vehicle**: except situations where it is for the employee's safety, or for commuting and is public safety (police car).
- **Other:** off-site health club, concerts, vacation, employer provided life insurance over $50,000. gift card etc (except if occasional meal money/transportation to allow an employee to work beyond normal hours). entertainment (except occasional entertainment that includes all staff).

ACA

- **Applicable Large Employer (ALE)**: >= 50 full-time employees (FTE) (30 hours/week and 130 hours/month), or part time equivalent. If offers any, must offer to all full-time employees. Part time coverage is optional, but if offering it, must be for all. Employee can decline (get it in writing).
    - **Penalties**: "Employer Shared Responsibility Payments", Lien and levy actions.
        - **4980H(a) Penalty: Failure to Offer Minimum Essential Coverage**: Not offering to 95% of employees and anyone receives Premium Tax Credit. $2750 / full-time employee without coverage minus the first 30.
        - **4980H(b) Penalty: Failure to Offer Coverage that is Affordable and Provides Minimum Value**: Offering insurance but it's not MEC and anyone receives Premium Tax Credit, just those employees count for $4120 each penalty.

- **Minimum Essential Coverage (MEC)**: >= 60% of total cost, substantial coverage of physician/inpatient hospital services. Dependents < 26, excluding stepchildren and foster children.

Business Losses

- **Net Operating Loss (NOL)**: (same for individuals / C corps)
    - **2018-2020**: 5 year carryback (CARES Act), unlimited forward 100% (if timely filed return).
        - **Carrybacks**: C corp carryback by filing form 1139. Individuals, estates, and trusts my apply by filing form 1045. By 12/31 of the year after the NOL. Have to carryback to the earliest year with income first. Reduces income tax only, not SE tax or fines.
    - **2021-current**: No longer option to carryback, only forward (indefinitely, but only until death). Carry forward cannot exceed 80% of taxable income (unless was generated before 2018 it's 100%). Cannot increase an NOL with a carry forward/back (C corp only?).
    - **Farmers**: 2 year carryback (default), unlimited 80% carry forward election (permanent election, can't change). Carrybacks by amending return or a special form. Have to carryback to the earliest year with income first.
    - **Casualty insurance companies**: 2 year carryback, carry forward 100%, limited to 20 years.

- **Excess business loss limitation**: (Form 461) Non-corporate TPs only (sole, partnerships, etc.) with business losses of > $270k ($540k MFJ), indexed for inflation. Excess carries forward.

Business Credits

- **General Business Credit (GBC)**: Various credits. Specific forms -> flow to form 3800 General Business Credits. Non-refundable, doesn't offset employment/payroll taxes. Carryback 1 year, forward up to 20 years. FIFO basis.

- **Investment Credits**: (form 3468) Property can't be: outside the US, used by a gov unit or foreign entity, used by a tax exempt org, lodging, already took section 179.
    - **Rehabilitation credit**: older/historic building rehab. 20% credit rehab costs, ratably over 5 years from date placed in service.
    - **Energy credit**: Solar, or geothermal energy and shale oil production.
    - **Qualifying advanced coal project credit**: Coal, while still reducing carbon dioxide emissions.
    - **Qualifying gasification project credit**: Synthetic gas natural, while reducing carbon dioxide emissions.
    - **Qualifying advanced energy project credit**: 30% credit for renewable energy resources.

- **Work Opportunity Tax Credit**: (form 5884) Must be when hiring. Unemployed vets, food stamp recipients, empowerment zone residents, vocational rehab, ex-felons, SSI people, summer youth program, long term unemployment recipient. Tax exempt can use it towards employer half of FICA. Amount depends on the group.

- **Disabled Access Credit**: To provide access to disabled for ADA. 50% of expenditures over $250, not to exceed $10,250, for a max benefit of $5,000. < $1M gross receipts, <= 30 employees. Must reduce the deduction by the amount received for the credit.

- **Employer Social Security and Medicare Taxes on Employee Tips**: (form 8846) "FICA Tip Credit". Restaurants/food places. Covers employer's part of FICA on tips for food/beverages, except tips to meet fed minimum wage ($5.15).

- **Credit for Small Employer Health Insurance Premiums**: (form 8941) Refundable (!) credit max 50% of employer's contribution towards employees' health insurance, only for 2 years. Must have < 25 FTE employees, employer pays >= 50% of employee's premiums (35% if tax exempt), low/moderate average income (phases out), coverage through SHOP Marketplace. Smaller employers, or paying less wages, get more.

- **Foreign Tax Credit for Corporations**: (form 1118) Nonrefundable, for corporations. If foreign taxes exceed the credit amount, can carry back 1 year, then carried forward 10 years. There's also a deduction, but the credit is usually better. For taxes actually owed.

- **Employer Credit for Paid Family and Medical Leave (FMLA Leave)**

QBI 199A Qualified Business Income Deduction

- **QBI** 20%. Does not reduce SE tax, etc., is income tax only. 2019-2025. Domestic income, domestic sources, even if person is foreign. On taxable income. QBI loss carries forward and reduces QBI in future years.
- **Income limit** (before QBI): (don't have to memorize) MFJ $340k-$440k, all other $170k-$220k. *If AGI above limits:*
    - **Specified Service Trade or Business (SSTB) Limitation**: Can't get QBI over income range. (type of business, specified service trade or business). Business is: Health pros, law, accounting (not billing), actuarial services, performing arts, consulting, athletics, financial services, security brokerages, reputation/skill. Not architecture/engineering. Ok if < $25M and < 10% of business is SSTB, or > $25M and < 5% (de minimis rule).
    - **Wage and Property Limitation**: Greater of 50% of W-2 wages/retirement **or** 25% of W-2 wages plus 2.5% of UBIA (Unadjusted Basis Immediately After Acquisition, before bonus/179) of all *tangible depreciable* property (held 1+ years, not land), still depreciating, < 10 years.
- **Pass-through businesses**: sole proprietors, partners, LLC, beneficial owners of trusts/estates, S corp shareholders, REIT, PTP Publicly Traded Partnership. Even if not materially participating. **Not**: C corps, cap gains, hobby income, guaranteed payments from a partnership (is like a service payment).
- **Rentals**:
    - (optional) "250 hour" Safe Harbor - 250 hours per year per property any 3 of past 5 years. Can group properties (but separate from material participation grouping). Separate books/records. Time logs of hours. Not NNN lease. Not part of home. Attach statement. Not required if rental satisfies the usual tests for a "qualified business".

- **Schedule K-1**: Reports QBI info and them claimed by shareholders/partners.

Rental/Royalty Income

- **Advance rent** taxable when received (regardless of accounting method).
- **Partnership/S-corp uses form 8825**. But passive rentals can be co-owned and split everything without being a partnership.
- **Sharecrop (paid with percent of crop)** - Form 4835.
- **$25,000 loss allowance** if active participation, 10% ownership, phase out AGI $100k-$150k. MFS from $50k only if didn't live with spouse at all during the year.
- **Personal use**: "Residence" if using for personal use (self or close family) > 10% of the total days (at least 14 days).
    - **Less than fair market rent:** Including family or anyone using it at less than fair market, even charity. Pub 527 -> "Not Rented for Profit" -> Then report income on Schedule 1 line 8j, and expenses deductible on Schedule A (no longer deductible currently?). Safe harbor if income more than expenses for 3 of 5 years.
- **Augusta Rule** - Can rent any residential property for up to 14 days and not pay tax on it.
- **No profit motive**: Rented below fair market rent. Like hobby activity. No expenses are deductible, just reported as income on 1040.
- **Personal property renting**: Schedule C if business. Unless sporadic, then income on 1040 and losses on Sch. 1 line 22 (limited to the amount of income).
- **Royalty income:** Schedule E. Reported on 1099-MISC (if > $10).
    - Actively participates?
        - Not active: on Sch E, but isn't passive income, is portfolio income.
        - Active: (including self created works, but not if inherited) On Sch C. (But to avoid irs notice, can also report on sch E, negate it with an expense.)

1031 Exchange

- Basis remains the same (plus or minus any boot).
- "Like-kind", real property only (TCJA change), rental/business use (but not developer inventory), not foreign real estate.
- Qualified intermediary if not simultaneous actual exchange (can't have receipt of funds). Identify property in writing within **45 days**. Exchange received by **180th day** after the original sale **or due date** of the year's tax return including extensions.
- File **form 8824** Like-Kind Exchanges (and next two years if related-party exchange).
- **Cash boot:** Increases basis if paid. Taxable if received (minus qualified costs). FMV doesn't matter for taxes.
- **Related-party exchanges**: (siblings, half-siblings, spouses, ancestors, descendants, entity > 50% ownership, executor or beneficiary of an estate, or both exchangers fiduciary/beneficiary of same trust) If either party disposes with 2 years after exchange, exchange is disqualified. Exceptions: a party dies, involuntary exchange, can be established it wasn't done for tax purposes. Not related: ex-spouse, cousins, step-siblings, etc.

1033 Involuntary Conversions

- **Any** type of property (personal/real/business). Theft, fire, etc, condemnation or threat of condemnation.
- Defer gain from insurance if later invest in similar property. **No forms**, don't have to report anything.
- Can combine with section 121 exclusion for main home.

- Cannot be from a **related party**.
- **Deadlines**: business real estate (3 years), livestock weather damage (4 years), main home in federally declared disaster (4-5 years), all else (2 years). Deadline is that many years from the end of the tax year after the date they actually receive the money. Don't have to pay cap gains if they plan to defer it.
- If no conversion by deadline, have to **amend** original return and pay the cap gains.
- **Basic increased** if paying additional costs of acquiring the property (put in own money).
- Didn't reinvest all of the payout money? Capital gains if payout was more than the original basis.

Assets/Depreciation

Basis

- **Original basis**: Sales tax, freight, installation, legal fees for defending the title, recording fees, real estate taxes if assumed by the buyer, assumption of liabilities.
    - **Building real property**: Construction labor, architect fees, permits, rental of construction equipment, etc.

- **Adjusted basis**: Events during ownership.
    - **Increases**: Improvements, assessments for local improvements (sidewalks, etc.). Demolition: Added to the basis of the *land*, not the building.
        - Improvements (not repairs): "Betterment, restoration, rehabilitation, adaptation".
    - **Decreases**: Depreciation, casualty/theft, rebates, exclusion of income from subsidies for energy conservation, vehicle credits, 179 deduction, nontaxable corporate distributions.

Elections

- **De minimis safe harbor election**: (just add it to all returns, no reason not to, must choose each year) Not land.
    - (#1) $5000 (big corps with auditing) if applicable financial statement (AFS) may use this safe harbor to deduct amounts paid for tangible property, up to $5,000 per invoice or item. Must have written capitalization policy.
    - (#2) $2500 (applies to most) Up to $2500 value.
    - https://support.taxslayerpro.com/hc/en-us/articles/360009301893-Safe-Harbor-Election-for-Tangible-Property -> "Explanations" -> "Election Explanation" -> Enter the title "Sec 1.263(a)-1(f) de minimis safe harbor election"
        - Include in a single line the following information:
            - [taxpayer's name], [address], SSN # [] elects the de minimis safe harbor under Treas. Reg. 1.263(a)-1(f) for its tax year ending December 31, [year]".

- **Small Taxpayer Safe Harbor for Real Property**: (just add it to all returns, no reason not to) Gross receipts < $10M. Building basis of < $1M. Can deduct repairs/improvements up to 2% of building basis (up to $10K). Any De Minimis Safe Harbor expenses have to be included. Irrevocable (for that year), but have to do it each year.

- **Routine Maintenance Safe Harbor**: Anything that has to be done more than once in a 10 year period, or more than once in the applicable life period of non-building properties. Don't need to elect it, automatic. No $ limit.

- **De minimis Election for Materials and Supplies**: (automatic but optional, could instead depreciate). Not for inventory.
    - **<= $200 property**
    - **<= 12-month property life**
    - **Acquired components**: This includes things like spare parts, air filters, or other components acquired to maintain or repair a unit of property.
    - I**ncidental materials and supplies**: items that are not part of inventory, used in the business, and generally not tracked (e.g., pencils, pens, copy paper, staplers, toner, trash baskets).
    - **Consumables**: Costs of fuel, lubricants, water, and similar items that are reasonably expected to be consumed in 12 months or less, beginning when used in operations.

Casualty/Theft

- **Casualty/Theft**: of business assets (form 4684)
    - Deduction = (Adjusted Basis - Any remaining value) - Any insurance received
    - Deductible in the year it happens or theft is discovered.
    - *Have to file an insurance claim if you have insurance, or otherwise can't claim a deduction for any amount insurance might have covered (above the deductible)*. Can't claim deduction if claim is pending. Can amend a prior year for any amount not covered by insurance.
    - Partial Loss: Loss is the reduction in market value (up to the amount of the basis). Amount also reduced by any insurance settlement.

Depreciation

- (form 4562) Using for business, > 1 year life. Starts when placed in service (not when purchased).
- **Not depreciable**: Land, inventory, personal use, section 197 intangibles are amortized instead (copyrights, patents, franchises, non-compete agreements, and goodwill).

- **Leasehold improvements**: Depreciable improvements by renter.

- **Modified Accelerated Cost Recovery System (MACRS)**:
    - 5 years: Vehicles, computers, etc.
    - 7 years: Furniture, ag. machinery.
    - 15 years: Land improvements.
    - 27.5 years straight-line: Residential or mixed use (if > 80% residential) real estate.
    - 39 years straight-line: Commercial real estate.

- **Methods**: Can't change after starting, except to straight-line, or maybe if ask for permission using form 3115.

179/Bonus

- **Section 179**: Can choose per item or part of an asset. Opt-in. Bought (not gift) by business from unrelated party (spouse, ancestors, descendants), > 50% business use if Listed Property, must be used in the US. Must be first year placed in service. Cannot create a total net business loss (but does get carried forward until there is a future profit), not real property, < $1,080,000 (2022) in value, phases out if total asset purchases total > $2.7M (amount allowed reduces by $1 for each $1 over).
    - **Eligible**: *Tangible* property (except off-the-shelf software) that isn't real estate or inventory. Includes: (office furniture, machinery), livestock (that isn't inventory), lodging furniture (but not

        for residential rentals?), single purpose farm structures, storage/transport of petroleum. **Nonresidential buildings use only**: roofs, HVAC, fire protection systems, security systems.
    - **Not eligible**: Intangibles (except off the shelf software), enlargement of building, elevator, escalator, expansion of structure.
    - **Auto limits**: (if not not-personal use ambulance etc) 0-6000 lbs $11,200 year 1, etc. 6001-14000 lbs (large SUVs/trucks with a bed < 6') $27k. 14001+ no limit. Can't use standard mileage rate if used 179.

- **Special depreciation** ("bonus depreciation") (temporary, 100% 2022, 80% 2023, ...) Default, must opt-out by asset class each year on a timely filed return (can't opt out if delinquent). Can opt back in by amending later. Can create a net loss (applies to other income or carries forward), applies to entire asset (can't do partial). Entire asset class. Must be first year placed in service. > 50% business use if Listed Property. Not from a related party if it's used property. No limits.
    - **Eligible**: Tangible personal property with <= 20 years MACRS life, water utility property, off the shelf software, fil/tv/theater production costs, nut/fruit trees/vines, Qualified Improvement Property (QIP).

- **Listed property**: Passenger vehicles < 6000 lbs, entertainment/recreational/photographic equipment. Stricter recordkeeping. If used >= 50% for personal use, can't take section 179 or bonus.

Amortization

- **Section 197 intangibles**: straight-line 15-year. Intangibles (except off the shelf software). Basis is the cost to purchase/create it. Can't use 179/bonus depreciation.
    - Examples: patents, copyrights, trademarks, trade names, franchises, intellectual property, customer mailing lists, covenant not to compete, and goodwill.
    - If shorter agreement (franchise agreement, noncompete covenant, etc), can deduct the remaining basis when the agreement ends.

Depletion

- Mining, quarrying, cutting timber. Figured as:
    - **Cost depletion**: (depletion basis / total recoverable units) * units sold.
    - **Percentage depletion**: A flat percentage set by law for oil and gas investors.

Dispositions

(Form 4797 Sale of Business Property)

- **Related party**: Between individuals or corporations owned (or indirectly owned) by related parties. Spouses, ancestors, descendents, siblings, half siblings (not step- or inlaws). No deduction allowed for losses (except exception for a corporation dissolving). Can't even be netted if there are multiple gain/loss transactions with the same party the same year. Losses suspended until the property is disposed of to a non-related party.

Types of assets:

- **Ordinary assets**: Inventory, accounts receivable, product sales, patent (?), formula, process, artistic compositions, letters.

- **Capital assets (capital gains reporting)**: (section 1221) Personal use assets and most investments. Hobby item sales, collectibles, stocks, etc. (except if professional securities dealer, then it's "inventory"). Raw land held for investment. Personal gains reported on Schedule D (1040).
    - **Collectibles**: Taxed at ordinary tax rate, but capped at 28% if long-term (if not professional dealer).
    - **Noncapital assets**: (everything else, ordinary assets and 1231 assets) Inventory, depreciable property (even after fully depreciated), real property for a business, self-produced stuff, accounts receivable/notes acquired by a business, professional dealers' stocks, professional's collectibles, business supplies.

- **Section 1231**: Depreciable *business property (not personal-use)* and *held over 1 year*. Not: Inventory, personal-use, or held < 1 year. Use form 4797.
    - If net loss from sale of business assets: Is an ordinary loss (that's good). If net gain from sale of business assets: Long-term cap gains (that's also good).
    - Types:
        - **1245**: Not real estate. Machinery, equipment, etc. If sold at a gain: Depreciation recapture is taxed as ordinary income ("1245 gain"). Other gain that isn't depreciation recapture is "1231 gain" taxed at cap gains rates.
        - **1250**: Real estate. “Unrecaptured section 1250 gains” and taxed at your ordinary income tax rate, but max 25% .

Installment Sales

- Such as real estate acquired note.
- **Form 6252 Installment Sale Income**. Each payment includes: return of seller's adjusted basis, gain on the sale, interest income (if any). Otherwise other option is to recognize all gain in the year of the sale. Depreciation recapture?
- **Related party**: ok, but if they sell < 2 years, the TP loses the installment sale benefit. Exceptions: death, involuntary conversions.
- **Not**: Inventory sales, sold at a loss, stock/securities on a market.