

# **Tax Considerations for the Hospitality and Tourism Industry and What You Need to Know Under the “One Big Beautiful Bill Act**

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**Frank C. Mayer, Esq., CPA, MBA**

**Jessica M. Blanchette, Esq.**

**Jennifer L. Tsyn, Esq.**

# Tax Considerations for the Hospitality Industry and What You Need to Know Under the One Big Beautiful Bill Act



**Frank C. Mayer, Esq., CPA, MBA**

Member

[fmayer@bsk.com](mailto:fmayer@bsk.com)

518.533.3219

# Overview

- I. No income taxes on overtime compensation
- II. No income taxes on qualified tips
- III. Increase in the reporting threshold for certain information returns
- IV. Moving expenses
- V. State Taxes: Pass-Through Entity Taxes (“PTET”)
- VI. Increased State and Local Tax (“SALT”) Deduction
- VII. Extension and Increase of Qualified Business Income (“QBI”)
- VIII. Bonus Depreciation for Certain Business Property
- IX. Increase in Deduction Under IRC § 179
- X. Employment of Telecommuters

# I. No Income Taxes on Overtime Compensation

- For calendar years 2025 through 2028, individuals receiving “qualified overtime compensation” may deduct the portion of their pay that exceeds their regular pay rate.
- This would include the overtime premium or “half” portion of “time-and-a-half” compensation required under the Fair Labor Standards Act (“FLSA”).

*Example:* A nonexempt employee’s hourly rate is \$16.00, and they work one hour of overtime at an hourly rate of \$24.00. The employee may be eligible to deduct the \$8.00 premium received in excess of their regular rate for that hour of overtime.

# I. No Income Taxes on Overtime Compensation

- The deduction applies for income tax purposes, but not for FICA (i.e., social security and Medicare taxes).
- Qualified overtime compensation does not include compensation paid as a result of heightened state law requirements or negotiated collective bargaining agreements.
- Maximum deduction is \$12,500 or \$25,000 for joint filers.
- Deduction phases out for taxpayers with modified adjusted gross income over \$150,000 or \$300,000 for joint filers.

# I. No Income Taxes on Overtime Compensation

- The deduction is available for both itemizing and non-itemizing taxpayers.
- For 2025, employers or service recipients may use any reasonable method to determine qualified overtime as defined in guidance to be issued by the IRS and reporting such amounts on Forms W-2 or 1099-NEC.
- For 2025, there are no changes to withholding required.
- For 2026-2028 the IRS is required to provide updated income tax withholding requirements to address the possible deduction by individuals.

# I. No Income Taxes on Overtime Compensation

- For 2026-2028, Forms W-2 and 1099-NEC together with their instructions will need to be updated to address the reporting of qualified overtime.
- The IRS recently released drafts of the following forms for 2026:
  - Form W-4, Employee's Withholding Certificate; and
  - Form W-2, Wage and Tax Statement (which adds a new code TT in box 12 for qualified overtime reporting).
  - Taxpayers should use this amount in determining the deduction for qualified overtime compensation on Schedule 1-A (Form 1040).

## II. No Income Taxes on Qualified Tips

- For calendar years 2025 through 2028, individuals receiving “qualified tips” may deduct the qualified tips.
- The deduction applies for income tax purposes, but not for FICA (i.e., social security and Medicare taxes).



## II. No Income Taxes on Qualified Tips

- “Qualified tips” means cash tips (including credit card and tip sharing arrangements) received by an individual in an occupation which customarily and regularly received tips on or before December 31, 2024, but does not include any amount received by an individual unless:
  - I. such amount is paid voluntarily without any consequence in the event of nonpayment, is not the subject of negotiation, and is determined by the payor,
  - II. the trade or business in the course of which the individual receives such amount is not a specified service trade or business, as defined in IRC § 199A(D)(2)
    - Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.
  - III. such other requirements as may be established by the IRS.

## II. No Income Taxes on Qualified Tips

- A separate accounting of any amounts reasonably designated as cash tips and the occupation of the person receiving such tips must be reported by the employer or service recipient on IRS Form W-2, 1099-K, 1099-MISC, or 1099-NEC furnished to the individual, as applicable.
- Maximum deduction is \$25,000 for individuals.
- Deduction phases out for taxpayers with modified adjusted gross income over \$150,000 or \$300,000 for joint filers.

## II. No Income Taxes on Qualified Tips

- The deduction is available for both itemizing and non-itemizing taxpayers.
- The FICA tip tax credit for a portion of the employer paid social security taxes for employee cash tips is expanded to include beauty service establishments including among other things barbering and hair care, nail care, and spa treatments.
- The IRS released Proposed Regulations in September which includes a list of occupations that customarily and regularly received tips on or before December 31, 2024.

## II. No Income Taxes on Qualified Tips

- For 2025, employers or service recipients may use any reasonable method to approximate a separate accounting of amounts designated as cash tips and reporting such amounts on Forms W-2 or 1099-NEC.
- For 2025, there are no changes to withholding required.
- For 2026-2028 the IRS is required to provide updated income tax withholding requirements to address the possible deduction by individuals.

## II. No Income Taxes on Qualified Tips

- For 2026-2028, Forms W-2 and 1099-NEC together with their instructions will need to be updated to address the reporting of qualified tips.
- The IRS recently released drafts of the following forms for 2026:
  - Form W-4 Employee's Withholding Certificate
  - Form W-2, Wage and Tax Statement which adds the following:
    - A new code TP in Box 12 for the total amount of cash tips reported to the employer, where the employer is not a specified service trade or business. This amount should be used in determining the deduction for qualified tips on Schedule 1-A (Form 1040).

## II. No Income Taxes on Qualified Tips (cont.)

- Form W-2, Wage and Tax Statement which adds the following (cont.)
  - A new code TS in Box 12 for the total amount of cash tips reported to the employer, where the employer is a specified service trade or business. This amount should not be used in determining the deduction for qualified tips.
  - A new Box 14b, which employers should use to report the Treasury Tipped Occupation Code for the employee's tipped occupation. If the occupation code 000 is used, the employee's cash tips are not qualified tips, and should not be used to deduct the amount reported in box 12 (code TP) for the deduction for qualified tips.

## III. Increase in the Information Reporting Threshold for Certain Information Returns

- Beginning January 1, 2026, the reporting threshold for IRS Forms 1099-MISC and 1099-NEC increases from \$600 to \$2,000.
- Beginning in 2027, the \$2,000 reporting threshold will be adjusted for inflation.
- For purposes of Form 1099-K, Third Party Settlement organizations, the threshold is \$20,000 AND 200 transactions (unless Form 1099-MISC or 1099-NEC type payments would require otherwise).

## IV. Moving Expenses

- The income inclusion for moving expense reimbursements and the limitation on their deductibility set to expire on December 31, 2025, has been made permanent (the exclusion and deduction is still available for certain members of the intelligence community and members of the military).



## V. State Taxes: Pass Through Entity Taxes (“PTET”)

- In response to the Tax Cuts and Jobs Act (“TCJA”), most states enacted laws to allow state income taxes to be paid at the entity level on behalf of the members or shareholders (“Owners”), with a credit or deduction to the Owners.
- The law is silent on PTET so in absence of a change in the IRS position set forth in Notice 2020-75, PTET remains in place.

## VI. Increased State and Local Tax (“SALT”) Deduction

- The law increased the cap on the individual deduction for state and local taxes from \$10,000 to \$40,000 (or half of that amount for married taxpayers filing separate returns) for 2025.
- The deduction phases down to not less than \$10,000 to the extent a taxpayer’s modified adjusted gross income exceeds \$500,000 (or half of that amount for married taxpayers filing separate returns).
- Between January 1, 2025 and December 31, 2029 the cap and income thresholds will increase by 1% each year.
- Thereafter, the cap will return to the current level of \$10,000 (or half that amount for married taxpayers filing separate returns).

## VII. Extension and Increase of Qualified Business Income (“QBI”)

- The law makes permanent the QBI deduction created under the TCJA at its current level of 20% of taxable income.
- Applies to certain domestic trades or businesses operated as either an S-corporation, partnership, trust, sole proprietorship or estate.
- Deduction phases out for certain specified services trades or businesses (“SSTB”), beginning at \$394,600 for 2025, and adjusted for inflation in 2026 and beyond.

## VII. Extension and Increase of Qualified Business Income (“QBI”)

- The taxable income phase-out range increases from \$100,000 to \$150,000 for joint filers and from \$50,000 to \$75,000 for other filers.
- The law also establishes an inflation-adjusted minimum deduction of \$400 for taxpayers with at least \$1,000 of qualifying income from active trades or business.

## VIII. Bonus Depreciation for Certain Business Property

- Bonus depreciation for certain property acquired and placed in service under the Tax Cuts and Jobs Act, was reduced by 20% each year beginning in 2022 and which would have fully phased out by 2026 has been reinstated and made permanent.
- This applies to any qualifying property acquired and placed in service after January 19, 2025.

## VIII. Bonus Depreciation for Certain Business Property

- This includes most tangible personal property used in a trade or business with a depreciation recovery period  $\leq 20$  years for such things as:
  - Furniture and Equipment;
  - Machinery;
  - Computers; and
  - Land improvements.

## IX. Increase in Deduction under IRC § 179

- Expensing of certain property under IRC § 179 increased to \$2.5 million, with a phase out beginning at \$4 million.
- Applies to certain equipment, machinery, canned software and non-residential property improvements, such as security systems, HVAC systems, and new roofing.

## IX. Increase in Deduction under IRC § 179

- Phase out begins at \$4 million and is phased out completely once investments reaches \$6.5 Million.

*Example:* Taxpayer purchases qualifying property of \$5.5 million which exceeds the phase out threshold by \$1.5 million. Accordingly, the allowed deduction is reduced dollar-for-dollar from \$2.5 million to \$1 million.

- Applies to property placed in service after December 31, 2024.
- These amounts are indexed for inflation for taxable years beginning after 2025.



# X. Employment of Telecommuters

## Employer Registration

- Wages are subject to taxation in the jurisdiction where the services are performed.
- Employers typically need to register for:
  - Income tax withholding;
  - Unemployment Insurance;
  - Workers' Compensation; and
  - Other lawfully required benefits.
- Employment laws of the local jurisdiction typically apply.

# X. Employment of Telecommuters

## Business Registration, Corporate Income Tax

- Employer registration in a state may be considered creating a “Nexus” (i.e., a taxable presence) in the state for corporate income tax purposes.
  - Employer registration may require the filing of corporate income tax returns, which may allow for the apportionment of some income away from New York State.

# X. Employment of Telecommuters

## Qualification to do Business in the State

- In-state activities may require registration to do business.
- The failure to register may prevent an entity from bringing a lawsuit (but typically may defend).
- Most states impose penalties on unregistered foreign corporations that transact business.
- Some states may impose penalties on officers or directors of non-compliant foreign corporations.

# X. Employment of Telecommuters

## Withholding Under the NYS Convenience of the Employer Rule

- NYS employers are required to withhold NYS income taxes as well as income tax in the state where services are rendered. Employee must have a “bona fide home office” in another state to avoid NYS withholding.
- “Convenience of the employee” v. “employer necessity” is based on certain factors. Either Primary Factor, or 4 of 6 Secondary Factors and 3 of 10 Ancillary Factors.
- Employer should not provide tax advice to employees but should urge employees to consult their own tax advisor regarding the availability of a home state credit for NYS taxes paid.
- Employers that do not withhold NYS taxes face assessments for taxes plus interest and penalties, together with the possibility of personal liability for officers and directors determined to be a “responsible person.”
- The best course of action is to withhold NYS taxes as well as home state taxes where appropriate and let employees pursue NYS income tax refund claims or credits on their own in the state where services are rendered.

# Navigating the Sales Tax Audit Process: From Initiation to Appeal



**Jessica M. Blanchette**

Associate

[jblanchette@bsk.com](mailto:jblanchette@bsk.com)

518.533.3240

# Sales Tax Obligations / NYS Hospitality & Tourism Industry

1. Register as a Sales Tax Vendor and obtain Certificate of Authority
2. Collect and remit sales tax
3. File quarterly sales tax returns
4. Keep “adequate records”

# The Audit Process: First

- Auditor will reach out with Information Document Request (IDR)
- Be responsive to the auditor
- Enlist help of accountant and attorney

# The Audit Process: Second

- Auditor will conduct review.
- Three “buckets”:
  1. Sales
  2. Expenses
  3. Capital Items
- Importance of keeping “adequate records”



# The Audit Process: Third

- Auditor will issue Notice of Determination

# Appeals

- Appeal to either the Bureau of Conciliation and Mediation Services (BCMS) for a conciliation conference or the Division of Tax Appeals for a hearing.
- At a conciliation conference:
  1. More informal proceeding / mediation-type setting
  2. Facilitate discussion
  3. Conciliation consent issued by conferee
- At a hearing:
  1. More formal adversarial proceeding
  2. Papers, briefs, and evidence
  3. Determination made by ALJ

# Key Takeaways

1. Keep adequate records
2. If and when you get a notice from an auditor, do not ignore it
3. Be as cooperative as possible with the auditor

# Alcohol Excise Tax: Common Mistakes and Legal Updates



**Jennifer L. Tsyn**

Member

[jtsyn@bsk.com](mailto:jtsyn@bsk.com)

518.533.3218

# Overview

## I. TTB Updates

## II. Common Mistakes

- a. Tax rate misapplication and product categorization
- b. Commonly miscategorized products
- c. Improper documentation
- d. Exemptions and reduced rates

## III. Items Specific to Cider and the “Bubble Bill”

# TTB Updates - Impacts of Shutdown

- Due to the lapse in funding, the TTB (Alcohol and Tobacco Tax and Trade Bureau) has suspended all “non-excepted” operations.
- You can make and view applications but nothing will be reviewed or processed.
- 398 of the 459 employees to be furloughed
- You must continue to file electronic payments and returns for federal excise taxes and operational reports.

# Other TTB Updates

- TTB launched a “Tax Simplification” effort.
  - Designing new forms to combine excise tax return and the specific operational report
  - Not yet adopted
  - Starting with beer
  - Could request to participate in pilot program for beer
- No more paper checks after September 30, 2025

# Common Mistakes

- There are 4 keys to alcohol excise tax
  - It attaches when produced
  - It is determined when it's removed from the bonded premises for consumption or sale
  - The tax is paid at a later date
  - The tax rate is based on alcohol content, materials used, and/or production method
- Different alcohol types (beer, wine, distilled spirits) have different rates
- Rates vary by volume, alcohol content, method of production, production scale
- Applying an incorrect tax rate can lead to audits



# What is a “Wine” for Excise Tax Purposes

Federal rates:

- Still wine (16% ABV or less)
- Still wine (over 16% to 21%)
- Still wine (over 21% to 24%)
- Mead – solely from honey and water
- Artificially carbonated wine
- Sparkling wine

# What is a “Wine” for Excise Tax Purposes (cont.)

- Hard cider
  - At TTB level, ABV .5% to 8.5% and it's taxed as a wine but can qualify for reduced rate for hard cider
  - In New York, it's 3.2% to 8.5% ABV; if it contains more than 8.5% ABV, it's a wine

# What is a “Beer” For Excise Tax Purposes

- At the TTB and at the New York level, it's any fermented beverage brewed or produced from malt, wholly or in part, or from substitutes for malt, at least .5% ABV
  - Includes beer, ale, porter, stout and malt liquor
  - Includes sake and similar products
  - TTB definition includes these substitutes for malt: rice, grain of any kind, bran, glucose, sugar, molasses
    - Gluten free beer
    - Adjunct lagers
    - Experimental or craft beers

# What is a “Beer” For Excise Tax Purposes

- Malt beverages are made by the alcoholic fermentation of an infusion or decoction (or both) in potable brewing water of malted barley and hops
  - A beer made without both malted barley or hops is a beer under IRC but not a malt beverage
  - can include hard soda, hard sparkling seltzer, hard lemonade

# Beer for New York State Excise Tax Purposes

- Lager, ale, porter, stout
- Braggot
- All other fermented beverages from malt or any substitute, .5% ABV

# What is “Liquor” or “Distilled Spirits” For Excise Tax Purposes

- At the TTB level, “distilled spirits” is defined as all products of distillation which contain distilled spirits, including whiskey, vodka, rum, gin, brandy, and wine containing more than 24% ABV.
- In New York, it’s all distilled or rectified spirits, brandy, cordial (wine or liquor base), whiskey, rum, gin and all other distilled beverages and wine containing more than 24% ABV.
- Wines over 24% ABV taxed as a liquor
- Fortified wines (like port or sherry) – what is ABV?
- Cordials and liqueurs – what is ABV? and is it distilled (at federal level, could be a specialty wine or a flavored malt beverage)?

# Commonly Misclassified Products

- Canned “cocktails”
  - Could be a spirit, beer or wine
- Hard Seltzer
  - Made with fermented sugar or malt base?
  - Could be beer, flavored malt beverage, or a spirit, depending on production method and ABV
- Low alcohol wines and fortified wines

# Commonly Misclassified Products

- Flavored malt beverages
  - Could be a beer or a spirit
- Hybrid beverage
  - Wine based spritzers with added spirits



# Improper Documentation

- What should be in your detail logs – be familiar with 27 CFR Chapter 1, Subchapter A
  - Record operations as they occur
  - Get and retain source documents
  - Alcohol content and quantities
  - All records subject to inspection by TTB
  - Keep by tax class
  - Keep in liters or gallons
- TTB requires retention for at least 3 years. NY doesn't have a clear time limit but requires records be kept at the licensed premises

# Exemptions and Reduced Rates

- Small producer exemption
  - At federal level
    - Wine: producers making less than 250,000 gallons a year can claim a credit of up to \$0.90 per gallon on 1<sup>st</sup> 100,000 gallons, subject to certain limits
    - Beer: producers making less than 2M barrels annually can pay a reduced rate on first 60,000 barrels
    - Distilled Spirits: Craft Beverage Modernization Act has tiered rates, lower rate on first 100,000 gallons

# Exemptions and Reduced Rates (cont.)

- At New York level
  - Refundable credit for registered alcohol distributors if produced in NYS up to
    - 60M gallons of beer
    - 60M gallons of cider
    - 20M gallons of wine
    - 800,000 gallons of liquor
  - Credit on the first 500,000 gallons produced in NYS

# Other exemptions

- Tax free shipments
- Damaged, returned or destroyed products

# Issues specific to Cider and Possible Changes to the Law

- TTB's 22.6 cent rate for "Hard Cider" applies only if:
  - Derived primarily from apples/pears or apple/pear juice concentrate and water
  - Containing no other fruit product or fruit flavoring
  - At least .5% and less than (not equal to) 8.5% ABV
  - No more than 0.64 grams of carbon dioxide per 100 milliliters
- The New York definition is 3.2% to 8.5% ABV
- Many popular hard ciders contain other fruit products or fruit flavoring
- There are also issues that can arise from carbonation requirements

# The Bubble Bill

- Bubble Tax Modernization Act of 2024, also Bubble Tax Modernization Act of 2025
  - To modernize the taxation of carbonated beverages
  - To address tax disparity faced by fruit based cider, mead and wines compared to grape based products
- Current problem – fruit based ciders, meads and wines face significantly higher tax once they exceed a certain carbonation limit. Not the case for grape based products

## The Bubble Bill (cont.)

- The Bubble Tax Modernization Act would raise carbonation level.
- Hasn't been much movement on the bills

# Conclusion

- Be cautious about:
  - Mis-categorizing products
  - Making sure all requirements of an exemption are met and documented
  - Keeping good records
  - Cider which has other fruit flavors added or doesn't fall within carbonization levels



# Questions?



# Thank You

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It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

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