Chapter 15

New Legislation

1

Expiring Energy Credits and Deductions

Pg 604

IRS issued FAQ regarding the expiring energy credits

Table of Expiration Dates

December 31, 2025

- Energy efficient home improvement credit
- Residential clean energy credit



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Expiring Energy Credits and Deductions

Pg 604

September 30, 2025

- Previously owned clean vehicles credit
- New clean vehicles credit
- Qualified commercial clean vehicle credit
- Vehicle is acquired with written binding contract & a payment has been made



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Expiring Energy Credits and Deductions Pg 604

June 30, 2026

New energy efficient home credit

Energy efficient commercial buildings deduction



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Qualified Tips - Notice 2025-69 Pg 608

Notice 2025-69

No changes to the 2025 Forms W-2, 1099-NEC, 1099-MISC, or 1099-K

Employers and other payers were not required to separately account for cash tips or qualified overtime on those forms

Notice 2025-69 clarifies how workers determine their 2025 deductions

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Qualified Tips - Notice 2025-69 Pg 608

Provides transition relief

Tips received in the course of a **specified service trade or business** (SSTB)

Employers will have to make a determination for employees who receive tips whether their business is an SSTB

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Qualified Tips - Notice 2025-69 Pg 608

- Until January 1 of the 1st calendar year following the issuance of final regulations for purposes of §224
- IRS will treat the employee as having received tips in a business that is not an SSTB
- If the occupation customarily and regularly received tips on or before Dec 31, 2024.

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Qualified Tips – T.D. 1004 Pg 609

Final Regulations

- Identify occupations that customarily and regularly received tips on or before Dec 31, 2024
- Provide a definition of qualified tips
- Revise the list of occupations that receive tips
- Provide clarification on the definition of qualified tips
- Provide anti-abuse rules

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Qualified Tips – T.D. 1004 Pg 609

OBBBA § 70202(a) added new I.R.C. § 224

Provides for an income tax deduction for qualified tips

Instructed the IRS to provide a list of occupations that customarily and regularly received tips

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Practitioner Note Pg 609

Illustrative Examples

- List of occupations that receive tips is exhaustive
- Illustrative examples that fit each Treasury Tipped Occupation Code (TTOC) are not
- Occupations that fall within a TTOC may not be listed
- See pages 609 – 610 for revised list of occupations

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Revised List of Occupations Pg 609

TTOC 301 – Doormen

Included in Baggage Porters and Bellhops

Includes workers who do not work in a hotel or motel

TTOC 103 – Food Servers, Non-restaurant

Amended to "Food and Beverage Servers, Non-restaurant"

Covers a winery tasting room server

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Qualified Tips – T.D. 1004 Not in Book

Treasury Tipped Occupation Code (TTOC)	TTOC occupation title	TTOC occupation description	TTOC illustrative examples	Related standard occupational classification code (related SOC code) [1]
102	Wait staff	Take orders and serve food and beverages to patrons at tables in dining establishments or at catered events.	Cocktail waitress, dining car server, banquet staff	35-3031
103	Food or beverage servers, non-restaurant	Serve food or beverages to individuals outside of a restaurant environment, such as in hotel rooms, residential care facilities, or cars.	Room service food server, boat hop, beer cart server	35-3041

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Practitioner Note Pg 610

Apprentices and Assistants

- Qualify under the applicable TTOC occupation category
- Must perform same services

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Definition of Qualified Tips Pg 609

Qualified tips only includes:

- Amounts that are paid voluntarily
- Have no impact on scope or cost of service
- Are not subject to negotiation
- Determined by the customer
- Tips while performing a service that is a felony or misdemeanor **do not** qualify

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Definition of Qualified Tips Pg 610

Manager or Supervisor Tips

Voluntary or mandatory tip-sharing arrangement are **not** qualified tips

- Amounts received directly for services provided
- in the course of duties performed
- in occupation customarily received tips
- Are qualified tips if all other requirements for qualified tips are met

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Ex 15.1- Manager Tipped for Manager Services Pg 611

- Mark Sorenson - manager at Loretta's Italian Restaurant
- Naomi Armano – customer. Dissatisfied with quality of meal.
- Mark listened to Naomi's complaint.
- Naomi tipped Mark $5
- Restaurant manager is not an occupation that customarily received tips
- Therefore: Tip is not qualified tip

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Ex 15.2 – Manager Tipped for Waitstaff Services Pg 611

- Mark Sorenson - manager at Loretta's Italian Restaurant
- Performs duties as waitstaff when restaurant is crowded
- Mark waited on Phoebe Bastoni
- Phoebe left Mark a $5 tip
- Tip is qualified tip

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Mandatory Amounts Pg 611

Not mandatory amounts if:

- Customer provided option to disregard or modify amounts added to the bill
- Customer has the option to reduce the tip amount to zero
- POS systems with a tip slider that allows customer to select "other" or "zero" are voluntary
- Nonpayment of the tip does not have any impact on scope or cost of service

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Ex 15.3 – Tip is Part of the Contract Pg 611

- Jamee Walker – self-employed painter
- Zoe Cantini – customer
- 15% service charge added to contract
- Jamee & Zoe both signed the contract
- Zoe paid Jamee after painting was completed
- Zoe paid Jamee an addition 10% (not in the service agreement)

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Ex 15.3 – Tip is Part of the Contract Pg 611

Conclusions:

- 15% service charge is not a qualified tip
- 10% cash tip is a qualified tip
- It was not included in the service agreement
- It was paid volunarily

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Digital Content Creators Pg 611-612

- **Compensation** - Customer payments to gain access to creator's content
- **Tip** – Voluntary payments after customer has already gained access to creator's content
  - Not required to gain access to content
  - Payment was voluntary & determined by customer

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Digital Content Creators Pg 612

Audience engagement mechanisms

- Superficial digital rewards
- Highlighted messages
- Digital tokens of appreciation

Does not disqualify an otherwise qualified tip

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Ex 15.4 – Payment to Access Digital Content and Qualified Tip Pg 612

- Helen is self-employed, provides training videos
- Videos are housed on a digital platform accessible on mobile app or through web browsers
- Users gain access after **paying a $5** contribution to Helen's digital platform account
- Therefore, **not** a qualified tip
- Jared paid the $5, then he sent an additional $2 contribution
- The $2 was a **qualified tip** – not required to gain access to the content

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Ex 15.5 – Voluntary Contributions to Digital Content Creator Pg 612

- Kirsten Park – self-employed and live streams cooking videos
- Available free to all users of the digital platform
- Viewers have the option to contribute a tip, as well as comments of appreciation
- These contributions are qualified tips
  - Not required to access the content
  - Are voluntary

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Planning Pointer Pg 612

- Final regulations for purposes of §224
  - Cash tips **include** amounts paid in **foreign currency**
  - All **digital assets** are e**xcluded** from definition of cash tips

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Anti-Abuse Rules Pg 613

Final regulations

Replaces the provision prohibiting ownership in, or employment by a payer with a provision

Stating **not a qualified tip** if:

- Based on all relevant facts and circumstances
  - Amount represents a recharacterization of wages or
  - Payments for goods or services

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Anti-Abuse Rules Pg 613

The following facts and circumstances may indicate a recharacterization of wages, payments for services, or other income as tips:

1. Charge for services provided in an invoice is **less than** the payment from the payer
   - Tip is the difference between the amount on the invoice and the payment amount
2. There is a significant shift in historical tipping or payment practices between the payer and the tip recipient

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Anti-Abuse Rules Pg 613

3. The employee's employer is the payer of a cash tip received by the employee
4. The tip recipient has a direct ownership interest in the payer of a cash tip

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Ownership Interest Defined Pg 613

Final regulations define ownership

- Corporation – ownership of **5% or more** of the stock
- Partnership – ownership of **5% or more** of the profits or capital interest
- Other Entities – **more than 5%** of the beneficial interests

Ownership interest is tested as of the date the tip is received

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Ownership Interest Defined Pg 613

Direct ownership interest

- Held directly by the tip recipient
- Held through an entity disregarded as separate from its owner
- Held through a qualified subchapter S subsidiary, a grantor trust or
- Held through a custodian, broker, nominee, agent or other similar intermediary

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Payer Defined Pg 613

Final regulations definition of **payer** as:

- Ultimate recipient of the services
  - Usually the customer, client, or other service recipient
    - An entity, such as an employer, that acts as a conduit to remit a tip
      - Is **not** a payer of the tip

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Qualified Overtime Pg 613

Fact Sheet 2026 – 13, I.R.C. § 225

- New deduction for qualified overtime compensation
- Provides answers to FAQ
  - Who may be eligible
  - Federal employees
  - Where to find supplemental information
  - Other rules

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US Department of Labor, FLSA 2025-05 Pg 614

Overtime compensation for employees who work for two related businesses

- Employee worked on 1st floor restaurant of a hotel and a members-only club on the 2nd floor
- Both shared a kitchen, offered same food & beverages
- Operated under similar trade names
- Separate legal entities but they have common ownership

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US Department of Labor, FLSA 2025-05 Pg 614

DOL letter reasons that separately incorporated entities may be considered a single employer with respect to an employee for purposes of compliance with the FLSA

- 2 or more entities considered separate employers
- Can be joint employers under FLSA
- If have related employment relationships with the same employee

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US Department of Labor, FLSA 2025-05 Pg 614

Horizontal joint employment

- One employer employs a worker for a set of hours in a workweek
- Another employer employs the same worker for a separate set of hours in the same workweek
- Employers are associated with respect to the employment of the worker

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US Department of Labor, FLSA 2025-05 Pg 614

Horizontal joint employment

- The employee's hours worked for all joint employers must be added together to determine total hours for the workweek
- Each of the employers is jointly and severally liable for any wages owed.
- If combined hours exceed 40 in a single workweek, the employee is entitled to overtime pay

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US Department of Labor, Opinion Letters Pgs 614-615

FLSA 2026-1

- Salaried licensed clinical social worker
- Originally classified as an exempt learned professional
- After employer's internal restructuring, employee was reclassified to hourly (non-exempt)
- Employee's supervisory role was discontinued

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US Department of Labor, Opinion Letters Pgs 614-615

FLSA 2026-1 – Conclusion

- Discontinuance of supervisory responsibilities would not preclude classification as an exempt learned professional
- Even if employee meets tests for exemption, the employer may choose to classify employee as non-exempt

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US Department of Labor, Opinion Letters Pgs 614-615

FLSA 2026-1 – Conclusion

- Employers have discretion to classify employees as non-exempt
- Must pay at least federal minimum wage
- Must pay overtime premium for work in excess of 40 hours in a workweek

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-2

Can employer exclude bonus payments from regular rate of pay?

How must employer include these payments in calculation of overtime premiums?

- Waste management employer paid employee drivers $12 per hour.
- Drivers could earn performance-based bonuses.

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-2

FLSA requires employers pay non-exempt employees:

- Overtime pay at rate not less than 1 ½ times regular rate
- For all hours worked over 40 hrs in workweek
- Regular rate includes all remuneration with limited exceptions

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-2 – Conclusion

- Employer must include the bonus payments in the regular rate of pay in workweek earned
- Payments are incentives and do not qualify as an excludable discretionary bonus
- Incentive bonus payments, in addition to base hourly rate, are used to calculate overtime rate

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-3

- Union & employer of emergency dispatch workers
- Collective bargaining agreement mandated 15-minute roll call prior to each shift
- Employer excluded that time in calculating overtime premiums

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-3

Under **FLSA**

- Employee must be compensated for all hours worked
- ***Hours worked*** includes all time during which an employee is required to be on duty or be on the employer's premises

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-3 – Conclusion

- 15-minute roll call period constitutes compensable hours worked
- Must be counted in total number of hours worked in each workweek for calculating overtime pay due
- Depending on the collective bargaining agreement, a partial exemption for overtime compensation may apply

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-4

State minimum wage exceeds the federal minimum wage

Must employer use federal minimum wage or higher state minimum wage to determine minimum pay standard?

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US Department of Labor, Opinion Letters pg 615

FLSA 2026-4

Are tips deemed compensation for exemption from overtime pay for certain commission-paid employees?

FLSA exempts from overtime pay employees of retail service establishments whose

1. Regular rate of pay exceeds 1 ½ times the federal minimum wage
2. Compensation is composed of > 50% commissions

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US Department of Labor, Opinion Letters Pg 615

FLSA 2026-4 – Conclusion

- Minimum wage standard is based on the federal minimum wage
- Bona fide tips are not commissions
- Service charges based on sale of goods or services and paid to employees qualify as commissions

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US Department of Labor, Opinion Letters Pgs 615-616

FLSA 2026-5

Can employees who qualify for FLSA's executive, administrative, or professional exemption perform additional duties in secondary role paid on an hourly basis?

Exempt nursing specialist works as an hourly wage (non-exempt) staff nurse

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-5

- Exemption for executive, administrative, or professional employee
- Employee's primary duty must be the performance of exempt work

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-5 – Conclusion

- Performance of additional non-exempt work at hourly rate
- Insufficient to alter employee's exempt status
- Primary duty must remain performance of exempt work
- Salary requirements must continue to be met

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-6

Does a bonus structure satisfy overtime requirements by including overtime pay calculations within the bonus?

Employer pays bonus with any overtime due on the bonus

Conclusion – Employer does not need to recompute the regular rate of pay

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-7

Must employees be paid for time spent moving through employer-controlled areas during a meal period?

- Employer provided unpaid 30-minute meal period
- Employee had option to leave premises or remain at work

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-7

- FLSA does not require employers to provide employees rest breaks or meal periods, with limited exceptions
- Bona fide meal periods are not work time, if provided
- Time is non-compensable if it is predominantly for the employee's benefit

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-7 – Conclusion

- Employer provided a bona fide meal period
- Employee was relieved from work duties
- Difficulty in taking an off-site meal does not affect whether employee received a bona fide meal period
- Time spent to travel off-site is part of the meal period and not compensable

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-8

Are certain pre-shift activities by hospital employees compensable work?

Conclusion:

- Pre-shift activities such as equipment checks and chart reviews are integral to employee's principal job duties.
- Therefore are compensable.

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-8 – Conclusion (Con't)

- Pre-shift activities such as waiting to check in/out
- Not compensable hours
- Must occur before an employee's 1st principal activity or after last principal activity of the day

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-9

Is mid-day travel between an employee's home and work office worktime which must be paid?

- Employee works at both locations
- Mid-day travel is offered as a voluntary alternative to unpaid commuter travel

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-9 – Conclusion

Mid-day travel qualifies as commuter travel

Not hours worked under the FLSA

Employer would not need to record such travel time as work

Not subject to wage & hour requirements

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US Department of Labor, Opinion Letters Pg 616

FLSA 2026-10

Field service engineer spent time:

- Receiving pages
- Calling clients & other engineers to schedule appointments
- Drove from home to 1st client appointment

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US Department of Labor, Opinion Letters Pg 616-617

FLSA 2026-10 – Conclusion

- Time spent receiving pages is not compensable hours
- Incidental to the employee's use of employer-provided vehicle for commuting
- Time spent calling clients & other field service engineers to schedule appointments is compensable hours worked
- Integral & indispensable to employee's principal work

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