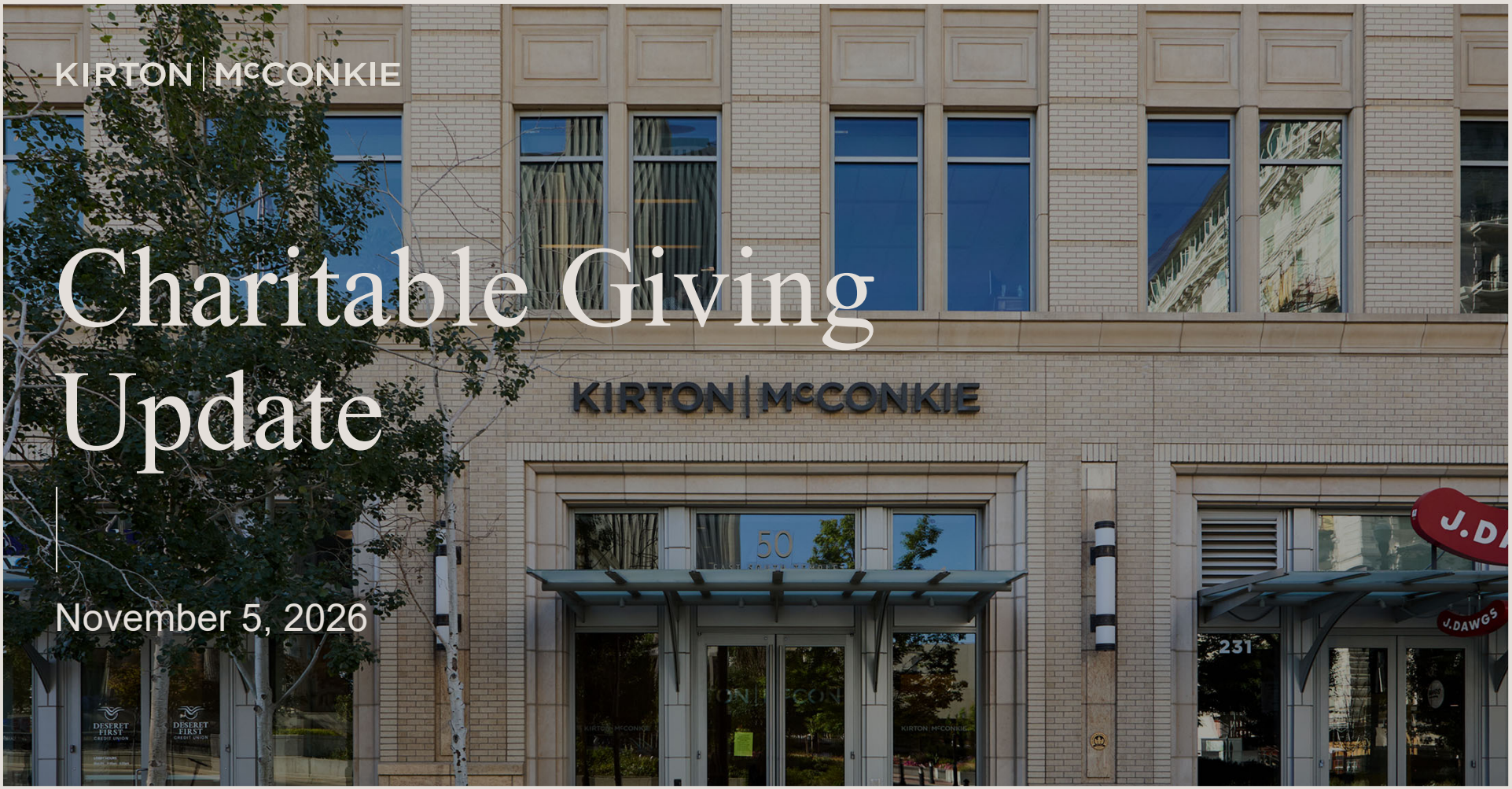

KIRTON | McCONKIE
Charitable Giving Update
November 5, 2026
KIRTON | McCONKIE
50
231
J.DAWGS
DESERET FIRST CREDIT UNION

Charitable Contribution Deduction

IRC Section 170



Deduction for Non-Itemizers – §170(p)

- Non-itemizers can take an "above-the-line" deduction for eligible donations
- Up to **$1,000 for single filers** and **$2,000 for married couples** filing jointly
- Only for **cash contributions** made directly to certain charitable organizations described in section 501(c)(3) of the tax code
  - Contributions to **donor advised funds (DAFs)** and **most private foundations** do NOT qualify
- Substantiation rules still apply
  - Donors must maintain records of contributions (e.g., or timely written communications) for ANY monetary contribution
  - Contemporaneous written acknowledgement (CWA) is needed for contributions over $250 – requirements for a CWA can be found in IRS Publication 1771.

Deduction "Floor" for Itemizers

- Beginning in 2026, individuals can only deduct charitable contributions to the extent that the total amount exceeds 0.5% of their Adjusted Gross Income (AGI).

- Example: If your AGI is $2,000,000, your 0.5% hurdle is $10,000.
  - If you donate $10,000 or less, you cannot deduct any of it.
  - If you donate $100,000, you can deduct $90,000

- Percentage-of-AGI limitations still apply, with a 5-year carryforward of amounts over the limit – *and the amount under the 0.5% floor*

Permanent 60% Limit for Cash Gifts

- The 60% AGI limitation for individual **cash contributions** made to **public charities** was made permanent.

- Contributions exceeding 60% of a taxpayer's AGI can be carried forward for up to 5 years.

- Congress made additional changes to the statute to try to clarify that donors that give cash and noncash gifts can still “stack” up to the 60% limitation

Charitable Contribution Carryforwards

- Contributions in excess of percentage limitations may be carried forward up to 5 years and are treated as contributions in the future year.
- Example: If your AGI is $2,000,000, your 0.5% hurdle is $10,000 and your 60% limitation is $1,200,000
  - If you donate $1,200,000 in cash to a public charity, you can deduct $1,190,000
  - If you donate $1,250,000 in cash to a public charity, what is the deduction?

- Following an example in the Bluebook report by the Joint Committee on Taxation (JCT), the 0.5% floor ($10,000) would reduce the total contribution amount to $1,240,000, of which you can deduct $1,200,000 (the 60% limit), and you'd have a carryforward of $40,000. AND because you have a carryforward due to the percentage limitation, you also get to carryforward the amount under the 0.5% floor ($10,000). So your total carryforward is $50,000.

Benefit Cap for High-Income Taxpayers

- If a top-bracket taxpayer makes an itemized charitable contribution in 2026 or later, the statute limits the tax savings to a maximum of 35 cents of tax reduction for every $1 donated, rather than the standard 37 cents.

- Thus close attention should be paid if very generous donors are near the 35%/37% line

Corporate Deduction "Floor"

- For tax years beginning after December 31, 2025, corporations can only deduct contributions that exceed a 1% floor.
- Section 170(b)(2)(A) now provides that "[a]ny charitable contribution otherwise allowable . . . as a deduction" – with certain exceptions – is only allowed "to the extent that the aggregate of such contributions –

  (i) **exceeds 1 percent of the taxpayer's taxable income** for the taxable year, and

  (ii) **does not exceed 10 percent of the taxpayer's taxable income** for the taxable year."

- Any amounts over the 10 percent limitation can be carried forward up to five years and are treated as contributions in the subsequent year

Corporate Deduction “Floor” (Continued)

- Example: Corporation with $100 million in taxable income (with some adjustments) would have a $1 million “floor” and a $10 million limit.
  - There would be no deduction until the corporation’s giving exceeds $1 million.
  - If the corporation gave $1.5 million, the deduction would be $500,000.

- There is ambiguity regarding calculation of the deduction limitation and carryforward.

Corporate Deduction Carryforward

- Example: Corporation with $100 million in taxable income (with some adjustments) would have a $1 million “floor” and a $10 million limit. Assume corporate gifts of $12 million.
- View 1: Apply the floor and limit separately.
  - $1 million is nondeductible “under the floor.”
  - The amount of contributions exceeding the 1% floor is $11 million.
  - The amount of contributions that does not exceed the 10% limit is $10 million.
  - Deduction is limited to $10 million, with a $1 million carryforward.
  - Since there is a carryforward due to the limitation, you also carry forward the $1 million under the floor for a total carryforward of $2 million

Corporate Carryforward (Continued)

- Example: Corporation with $100 million in taxable income (with some adjustments) would have a $1 million “floor” and a $10 million limit. Assume corporate gifts of $12 million.
- View 2: Apply the floor and limit simultaneously.
  - $1 million is nondeductible “under the floor.”
  - The amount of contributions that both exceeds the 1% floor and does not exceed the 10% limit is 9% (10% limit -1% floor) $9 million.
  - Carryforward over the $9 million limitation is $2 million. And since there is a carryforward due to the limitation, you also carry forward the $1 million under the floor for a total carryforward of $3 million.
- The JCT Bluebook indicates that Congress intended View 2, but a footnote states that “a technical correction may be needed so that the statute reflects this intent.”

Corporate Deduction: Now What?

- Bunching contributions?
  - Corporate foundations have been used to “bunch” donations in high income years and spend in lower income years
  - More complicated analysis with the new floor
- Ordinary and necessary business expense deduction?
  - Facts and circumstances test
  - Expense must bear a **direct relationship** to the taxpayer’s trade or business and be made with a **reasonable expectation of financial return** that is **commensurate with the amount of the payment**.
- Caution! Self-dealing rules apply to transactions between corporations and corporate foundations

IRS “Dirty Dozen”

- IRS’s annual list of tax scams includes charitable giving scams:

3. Fake charities. Fraudsters often exploit tragedies and disasters by creating fake charities to collect donations and personal information. The IRS is committed to preventing fraudulent nonprofits from taking advantage of the American taxpayer.

Taxpayers who give money or goods to a charity may be able to claim a deduction on their federal tax return if they itemize deductions, but charitable donations only count if they go to a qualified tax-exempt organization recognized by the IRS.

9. Non-cash charitable contribution schemes. Some schemes involve inflated appraisals of donated property using syndicated conservation easements or art. Promoters often promise to eliminate or substantially reduce tax liability. The IRS warns taxpayers not to file returns with made-up information and reminds taxpayers that it can hold refunds while verifying claims.

Federal Scholarship Tax Credit

IRC Section 25F



Federal Scholarship Credit

- New Section 25F provides a **dollar-for-dollar credit** for contributions of cash to "scholarship granting organizations" (SGOs) that use the contributions to fund scholarships for eligible students in states where they are registered as an SGO.
  - Effective beginning in 2027

- Federal credit is reduced by any amount of a state credit that is allowed for the contribution to an SGO

- States must opt in and provide a list of SGOs approved to operate in the state to the Treasury Department annually.

Scholarship Granting Organizations

- Must operate as a valid 501(c)(3) public charity (private foundations are ineligible)
- Must allocate at least 90% of its income directly to scholarships for “qualified elementary or secondary education expenses”
- Must serve a minimum of 10 qualifying students attending multiple schools and meet other requirements
- Must be listed on a registry certified by a participating state governor and submitted to Treasury annually
- Can serve multiple states, provided funds for each state are segregated
- Can serve public schools, as well as religious and private schools

Exclusion for SGO Scholarship Income

- Section 139K excludes from income scholarship amounts received from an SGO
- The “qualified elementary or secondary education expenses” that can be paid by an SGO scholarship are broader than those that can be excluded by recipients of college scholarships under section 117, which are limited to tuition, fees, books, and supplies
- SGO scholarships may pay for the same range of expenses as Coverdell education savings accounts, including:
  - Tuition, fees, academic tutoring, special needs services, books, supplies, and other equipment used in connection with enrollment or attendance at a public, private or religious school
  - Room/board, uniforms, transportation and supplementary itmes or services (including extended day programs) which are required or provided by a school in connection with attendance
  - Expenses for purchase of computer technology or equipment or Internet access, if used by the student during the years the student is in school

Other OB3* Changes

* One Big Beautiful Bill



Expanded Tax on Exempt Compensation

- Expanded application of the excise tax on compensation paid to exempt organization employees (section 4960)
  - Previously applied only to the top-5 highest compensated employees of the exempt organization (taking into account compensation paid by the organization and all related (taxable and tax-exempt) organizations
  - Starting in 2026, ALL employees of the exempt organization – and all former employees – are covered employees and their compensation is potentially subject to tax
- Tax is paid at the corporate rate (21%) on compensation over $1 million and "excess parachute payments" made to employee that are involuntarily terminated
- Treasury has indicated that exceptions in existing regulations for certain "volunteer" or donated services will continue to exclude employees from covered status