

By Andrew L. Gradman

OBBBA: *The Blooper Reel!*

AFTER MONTHS OF WEBINARS and lunchtime CLEs, you now know all you need to know about the new federal tax law (One Big Beautiful Bill Act or “OBBBA”). The show is over, the credits have rolled—now it’s time for the OBBBA *blooper reel!*

The OBBBA was enacted fast. From introduction to signature, only 45 days elapsed. That beats even the TCJA (50 days), and contrasts with the biggest tax rewrite in our lifetimes, the Tax Reform Act of 1986 (323 days). With so little time for vetting, the law contains many self-defeating contradictions, perverse incentives, and nonsensical phrases. Nevertheless, these are the law of the land. Here are seven of my favorites.

1. Deduction for Qualified Tips

New § 224 creates a deduction for tips, up to \$25,000 per year. The kinks are still being worked out (see Trevor Sikes, “Will IRS Know Pornography When It Sees It

for Tips Deduction?”, Tax Notes Today Federal).

The weirdest part is the marriage penalty. Here is an illustration. Suppose that Joe and Jane are both Uber drivers. Joe earns \$50,000, and Jane earns \$75,000. Under the OBBBA, they each can deduct \$25,000 in tips. Suppose too that they are in a relationship. After four years together, Jane gives Joe an ultimatum: propose or split up. Hoping he will be swayed by the income-splitting advantages of filing jointly, she introduces Joe to her CPA. Instead, the CPA points out that, on their joint return, the couple can only enjoy a single \$25,000 deduction. There is no way around this; under § 224(f), if they marry but file separately, the deduction is entirely unavailable. Exasperated, Jane breaks up with Joe.

2. Deduction for Overtime

Desperate for a new start, Joe leaves Uber and takes a job as a long-haul truck driver. This is his second mistake.

New § 225 creates a similar deduction for overtime pay. However, it applies only if the pay is required under section 7 of the Fair Labor Standards Act. In a July 21 letter to Congress, several unions noted that the FLSA definition excludes transportation workers, including airline, rail, trucking, and maritime, and also disfavors fire fighters, law enforcement officers, hospital workers, and other emergency service workers. They urged Congress to fix this mistake.

3. Scholarship granting organizations

Under new § 25F, starting in 2027, individuals will get a dollar-for-dollar credit, up to \$1,700, for cash contributions to a scholarship-granting organization (SGO) that uses the money to fund scholarships for eligible students.

Hiding within this provision is a huge Trojan horse: If you just apply a little common sense, it becomes clear (in my opinion) that the official cost of



Andrew L. Gradman is a tax lawyer in Los Angeles. His focus is on transactional matters; he helps lawyers draft contracts which maximize after-tax value and tax return preparers obtain those results on tax returns. His website is www.gradmantax.com.

this provision was underestimated by a factor of fifty. See Andrew Gradman, “OBBBA’s School Vouchers: The Ship of State Springs a Leak”. August 1, 2025, Tax Notes Federal. If I’m right, then this section alone increases the cost of the whole OBBBA by 35% from its current estimate.

What happened is that when the Senate amended the bill on July 1, they removed a \$5 billion nationwide “volume cap” on the credits. But neither Joint Committee on Taxation nor Congressional Budget Office seems to have noticed that change.

4. Trump Accounts

Secretary of Treasury Scott Bessent has described Trump Accounts as a “back door for privatizing Social Security.” Later, in response to backlash, he recharacterized them as “an additive benefit for future generations, which will supplement the sanctity of Social Security’s guaranteed payments.”

Whatever their purpose, Trump Accounts are just IRAs, with these special features: They are currently only available for children born during the current Trump Administration. The federal government will seed them with a free \$1,000. Taxpayers can contribute \$5,000 per year (not deductible going in, not tax exempt coming out, but it compounds tax free). Distributions may not be taken before age 18. Employers can contribute \$2,500.

The blooper lies in the employer contribution. If you google it, you’ll see that everyone assumes that employers can contribute \$2,500 *annually*. But that’s not what it says. There is another Code provision which does expressly say that the contribution limit is per-year, but otherwise uses identical language, suggesting that the omission of this language for Trump Accounts means something different. But what? In an interview with the Journal of Accountancy, Professor Annette Nellen probed the ambiguities: “It just says \$2,500. It doesn’t say, is that a lifetime? Is that annual? What if the employee has 10 kids with 10 Trump accounts? Could they put \$2,500 into each of those? That needs a technical correction to address that.”

5. Deduction for Seniors

Did you get that email from the Social Security Administration, saying that “90% of Social Security beneficiaries will no longer pay federal income taxes on their benefits”? To be precise, IRC 151(d)(5)(C) provides a temporary new deduction for seniors. This can be as much as \$6,000 for “the taxpayer”, plus (if filing jointly) \$6,000 for “the taxpayer’s spouse.”

What has gone unnoticed is that, technically, this creates *four* \$6,000 deductions for a married couple. After all, once you’ve take into account the taxpayer and his spouse, you also have to consider that the *taxpayer’s spouse* is also a *taxpayer*, so she gets (another) a \$6,000 deduction... and *she* has a spouse, so he is (again) entitled to a \$6,000 deduction...

And another thing: although the new senior deduction was added to a code section which describes the so-called “personal exemptions,” it is not itself identified as an exemption. If read literally, this means that, technically, it cannot be taken by non-itemizers. See § 63(b).

Both results are so obviously unintended that they do not even merit a fix. Still, we are talking about the US Code. Why not say what you mean?

6. Microchip Factories

The CHIPS Act of 2022 created a 25% tax credit for costs of building new microchip factories, provided construction begins prior to 2027. The OBBBA increases the credit to 35%. This is a significant boost: even a 5% increase “can represent tax savings in the millions for an average-sized project.” (See Holland King, “Semiconductor Tax Credit Boost Only Helps Projects in Progress,” Bloomberg Tax, July 10, 2025.) The goal of the amendment, one would assume, was to encourage the production of even more chip factories.

In reality, most of the money will probably go to projects already being built, while doing little to incentivize new ones. This is because the credit still is limited to projects whose construction begins before 2027. This leaves only 18

months to begin construction. As Mr. King explains, the road to breaking ground can be complex—involving approvals, sourcing and purchasing the necessary land, community engagement, securing investment, designing the project, and obtaining required permits—and “projects that are just one day late... will miss out on the tax credit entirely.”

Another perverse incentive in the OBBBA—smaller in dollar value, but stupider in implementation—is that the increased credit only starts to apply for projects which come online at least six months after the law’s effective date. So: If you had planned to open your semiconductor factory between July and December 2025, now you have incentive to drag your feet for as much as half a year.

7. \$15 Million Exclusion Amount

The TCJA doubled the estate and gift tax exclusion amount, but only through the end of 2025. At that point, it was set to sunset back to what it would have been had the TCJA not been passed. The OBBBA (essentially) eliminates this sunset.

I suppose Congress did exactly what it meant to do in 2017, and then it did exactly what it meant to do in 2025. Still, I am calling this a blooper, because it took them eight years to figure out what they really wanted. In the meantime, lots of wealthy taxpayers spent lots of money on SLATs or other irrevocable gift-accelerating arrangements, which many of them otherwise wouldn’t have bought. To be clear, I think we tax professionals did the right thing by encouraging this planning. We had no way of knowing the sunset would be eliminated. But, now that it has been eliminated, it is only human nature for those clients to take out their frustrations on us. I wish they would take them out on Congress. 