

The Connection

August 2026 • Volume 20 • Number 1

In this issue

1. Employees alleging ERISA violation must exhaust pension plan's administrative procedures
3. DOL restores five-part test for investment advice fiduciaries
4. Tariffs and taxes: A suddenly more confusing 2026
5. IRA amendment deadline for SECURE 2.0 compliance extended to 2027
5. First-year depreciation under OBBBA
6. IRS delays applicability date for proposed RMD regulations
7. Edward Jones tax management opportunities



For tax and legal professionals only.
Not for use with the general public.



Employees alleging ERISA violation must exhaust pension plan's administrative procedures

The Eleventh Circuit has ruled employees could not maintain a suit alleging substantive ERISA violations because they failed to exhaust administrative procedures (*Bolton v. Inland Fresh Seafood Corporation of America, Inc.*, No. 24-10084 (11th Cir. Oct. 15, 2025)). The employees alleged company officers and directors, the pension plan's trustee and the plan's committee caused the plan to overpay for company common stock by tens of millions of dollars. However, in *Mason v. Continental Group, Inc.*, adopted by the Eleventh Circuit 40 years ago, the court implied an exhaustion requirement for benefits due under a retirement plan and for substantive ERISA violations.

Pension plan

The employer established a pension plan to help its employees save for retirement. The plan has two key features:

- It is a defined-contribution plan, meaning the value of the participants' retirement benefits hinges on the market performance of the investments in their individual retirement accounts.
- It is an employee stock ownership plan, which invests primarily in the company's own stock.

The employer created the employee stock ownership plan on Nov. 26, 2016. The plan used the proceeds from a \$92 million loan to purchase all 100,000 outstanding shares of company common stock from four of the company's directors and officers.

Five employees brought a class action against the employer, the officers and directors, the plan's trustee and the plan's committee under ERISA §502(a)(2) and ERISA §502(a)(3)(a)(3), 29 U.S.C. §1132 (a)(2) and (a)(3). The employees alleged the defendants breached their fiduciary duties by causing the plan — and therefore its participants — to overpay by tens of millions of dollars for the common stock. As a result, the participants' benefits were allegedly worth less than if the plan purchased the shares at a price commensurate with their fair market value. The plaintiffs also alleged the trustee failed to conduct proper due diligence before settling on the purchase price. They sought restoration of the plan's losses, return of the directors' and officers' gains, and other forms of equitable relief.

Administrative procedures

The employees acknowledged that the plan lays out administrative claims procedures. However, they did not claim that they exhausted these procedures before filing suit. Rather, they argued that they were excused from exhausting the plan's internal procedures.

The defendants moved to dismiss. The district court granted the defendants' motions on exhaustion grounds, concluding that the Eleventh Circuit mandates exhaustion before proceeding to court, and the U.S. Supreme Court has not overturned this requirement. The district court also denied the employees' request for a stay in lieu of dismissal so they could pursue an administrative claim. On appeal, the employees challenged each of these decisions.

Exhaustion of administrative remedies

ERISA does not expressly contain an administrative exhaustion requirement, but in *Mason v. Continental Group, Inc.*, 763 F.2d 1219, 1227 (11th Cir. 1985), the Eleventh Circuit implied one. This decision was grounded in several policy decisions, including that the administrative claim resolution procedures reduce the number of frivolous lawsuits under ERISA, minimize the cost of dispute resolution and enhance plan trustees' ability to carry out their fiduciary duties. The appeals court also reasoned that a pre-suit exhaustion requirement is consistent with congressional intent.

However, the Eleventh Circuit's application of the exhaustion requirement to statutory violation claims is at odds with most of its sister circuits, which — although they require exhaustion for benefits claims — do not require exhaustion for claims alleging violations of ERISA.

Binding precedent

The employees recognized that binding Eleventh Circuit precedent requires exhaustion of their claims of breach of fiduciary duty, but they urged the court to abandon its precedent and apply the law of the other circuits. The appeals court rejected the employees' contention.

The plaintiffs argued that several Supreme Court cases have undermined the Eleventh Circuit's exhaustion precedents to the point that they can no longer be considered good law. However, an intervening Supreme Court case must "actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." The cases cited by the employees either did not deal with administrative exhaustion or did not involve ERISA at all. Because none of these cases displaced *Mason*, it remains the law.

Obligation to exhaust administrative remedies

Next, the appeals court determined the district court did not abuse its discretion in dismissing the employees' claims for failure to plead exhaustion. The employees argued that even if the appeals court's exhaustion precedents remained intact, they were not required to plead exhaustion. However, the appeals court declined to vacate the district court's dismissal of their case and return it for the lower court to consider their request to remove their conditional exhaustion allegations and evaluate exhaustion on a factual record rather than the pleadings. The amended complaint makes plain that the employees did not exhaust administrative procedures, and the appeals court agreed that they were not excused from doing so.

Moreover, the district court acted within its discretion in dismissing the amended complaint. The court concluded that ERISA plaintiffs must plead exhaustion or a valid exception, and it found that the employees did neither.

Excuse of exhaustion requirement

Additionally, the district court did not clearly abuse its discretion by declining to excuse the employees' failure to exhaust before filing suit. If the plaintiff "had a fair and reasonable opportunity to pursue a claim through an administrative scheme prior to filing suit in federal court," and that administrative scheme "offers the potential for an adequate legal remedy," exhaustion is required as a precondition to judicial review.

A district court may excuse the failure to exhaust if resorting to an available administrative scheme "would be futile or the remedy inadequate ... or where a claimant is denied

meaningful access to the administrative review scheme in place.” A district court may also excuse exhaustion if it determines that the plan’s language caused the plaintiff to “reasonably interpret ... that she could go straight to court with her claim” without having to first completely exhaust the plan’s internal procedures.

The district court chose not to excuse the plaintiffs’ failure to exhaust their administrative remedies before initiating their lawsuit. The appeals court rejected the arguments advanced by the employees for why the district court was wrong. ■

DOL restores five-part test for investment advice fiduciaries

The Department of Labor (DOL) has issued a final rule and technical amendment that implements the judicial overturning of the Employee Benefits Security Administration’s 2024 final rule redefining a fiduciary under ERISA. The new DOL rule restores the prior five-part test for determining whether a person is an investment advice fiduciary (91 Fed. Reg. 13503 (March 20, 2026)).

The rule also rescinds the 2024 amendments to Prohibited Transaction Exemption (PTE) 2020-02 and reflects the judicial invalidation of portions of the PTE 2020-02 preamble. The guidance includes the full operative text of PTE 2020-02 as it was originally published on Dec. 18, 2020. The final rule is effective 30 days after publication in the Federal Register.

2024 actions

On April 25, 2024, the DOL published a final regulation that replaced the 1975 definition of a fiduciary. At the same time, the DOL finalized an amendment to PTE 2020-02 that expanded the exemption’s scope to include recommendations of any investment product, regardless of whether it was being sold on a principal or agency basis.

Texas courts issue stays

On July 25 and 26, 2024, two Texas district courts granted motions staying the effective date of the 2024 fiduciary rule, including *Fed’n of Ams. for Consumer Choice, Inc. v. U.S. Dep’t of Labor*, 742 F. Supp. 3d 677 (E.D. Tex. 2024) and *Am. Council of Life Insurers v. U.S. Dep’t of Labor*, No. 4:24-cv-482-O (N.D. Tex. Jul. 26, 2024). The Northern District of Texas court also stayed the effective date of the amendments to PTE 2020-02.

Starting in 2022, the Northern District of Texas also saw a challenge to the preamble of PTE 2020-02 regarding rollover advice and to the regular basis requirement of the five-part test regulation. The same year, litigation in Florida challenged policies referenced in FAQ 7 of PTE 2020-02 (*Am. Sec. Ass’n v. U.S. Dep’t of Labor*, 22-cv-00330-VMC,

2023 WL 1967573 (M.D. Fla. Feb. 13, 2023)). In 2023, the Florida court vacated the policy referenced in FAQ 7, and in 2025, the Texas court vacated portions of the PTE 2020-02 preamble that interpreted the five-part test regulation.

Because the 2024 fiduciary rule never became effective and the five-part test regulation was never replaced, the new final regulation takes the administrative steps to reconcile the regulatory text in the Code of Federal Regulations. According to the DOL, even though PTE 2020-02 has remained operative, its preamble is no longer reliable due to the court decisions. Thus, to protect stakeholders from relying on preamble language that either has been directly invalidated by the courts or may be rendered logically flawed or misinterpreted as a result, the DOL guidance clarifies its view that the entire preamble of PTE 2020-02 is effectively vacated.

“According to the DOL, even though PTE 2020-02 has remained operative, its preamble is no longer reliable due to the court decisions.”

However, neither district court questioned the procedural aspects of the DOL’s grant of PTE 2020-02. Accordingly, the new guidance leaves in full effect each term and condition of PTE 2020-02 as originally granted. For convenience, the DOL is republishing the text of PTE 2020-02 without the amendments adopted on April 25, 2024. ■

Tariffs and taxes: A suddenly more confusing 2026

On Feb. 20, 2026, the Supreme Court announced its decision on President Trump's use of the 1977 International Emergency Economic Powers Act (IEEPA) to impose tariffs. The Court held 6–3 that the President had exceeded his powers under IEEPA, finding that tariffs imposed under that authority were invalid.

The United States has collected around \$240 billion in tariffs since the beginning of 2025, at least half of them imposed under IEEPA authority. The administration had used that authority to pressure manufacturers to shift to domestic production, open foreign markets to U.S. goods and services, influence the actions of foreign governments and support the cost of the One Big Beautiful Bill Act (OBBBA). The question is what happens next.

It is not clear that tariffs were having their desired effect. Overall, the dollar has not been strengthening, foreign exporters have not been cutting prices and there has been no measurable increase in domestic manufacturing jobs. The Supreme Court decision could complicate further trade agreement negotiations.

Tax refunds

In anticipation of the Supreme Court's decision, many businesses have already considered refund claims to recover tariffs paid. This may be an easier avenue for larger businesses such as Costco, which already filed a refund claim, than for small businesses that import inventory from overseas. The cases could overwhelm the U.S. Court of International Trade and take years to resolve. This could cost up to \$120 billion, a significant loss of federal revenue.

Deficits

President Trump's tariffs have been hard to pin down. He threatens large tariffs and then lowers them either on his own or through trade deals negotiated with other countries. Many of those deals are still being negotiated, and the Supreme Court decision will likely affect negotiations. OBBBA, combined with what was projected to remain of the President's tariffs, was already expected to contribute to a growing deficit.

Now, with many of those tariffs no longer valid and trade deals losing support, the projected deficits could grow significantly. This could have an impact on future tax policy, Federal Reserve decisions and the value of the dollar. Congress has tended to let deficits grow rather than reduce spending or raise taxes to address them.

The federal government might be forced to increase borrowing to address the growing deficits, which could have negative consequences for interest payments, interest rates and economic growth. ■

“This could have an impact on future tax policy, Federal Reserve decisions and the value of the dollar.”

Administrative shift to other authorities

The administration has indicated it will seek other authorities for its tariff decisions. The Trade Expansion Act of 1962 could be one such authority. This act seeks to promote economic growth and protect national security when imports pose a threat. Tariffs imposed under this act, such as those on steel and aluminum, are not affected by the Supreme Court decision. The Secretary of Commerce has 270 days to investigate and report to the president, and the president has 90 days to act. The president is not bound by Commerce's recommendations.

Another possible authority is the Trade Act of 1974. The focus here is either (1) violation of a trade agreement or (2) whether imports are entering the U.S. in quantities or under circumstances that threaten or impair national security. This requires an initial investigation by the U.S. Trade Representative to support tariff imposition and may only apply to certain sectors of the economy. President Trump has initially imposed a 15% worldwide tariff under Sec. 122 of the Trade Act. This tariff is only valid for 150 days unless Congress acts to extend the tariff or the president seeks to use another statutory authority.

IRA amendment deadline for SECURE 2.0 compliance extended to 2027

The IRS has extended the deadline for amending IRAs, SEP IRAs, and SIMPLE IRAs to comply with the SECURE 2.0 Act of 2022. The new deadline is Dec. 31, 2027 (IRS Notice 2026-9, I.R.B. 2026-7, Feb. 9, 2026).

Under §501 of SECURE 2.0, retirement plans and contracts had until the end of the first plan year beginning on or after Jan. 1, 2025, or by a later date prescribed by the Secretary, to adopt plan amendments reflecting changes made by

SECURE 2.0, §601(b)(1) of the SECURE Act of 2019, §§2202(c)(2)(A) and 2203(c)(2)(B)(i) of the CARES Act and §302(d)(2)(A) of Title III of the Taxpayer Certainty and Disaster Tax Relief Act of 2020. ■

First-year depreciation under OBBBA

The Tax Cuts and Jobs Act (TCJA) provided 100% first-year bonus depreciation for qualified depreciable property. However, under TCJA, first-year depreciation started to phase down starting in 2023: 80% in 2023, 60% in 2024 and 40% in 2025. Congress tried to prevent the phase-down from beginning; however, nothing was enacted in time.

The One Big Beautiful Bill Act (OBBBA) in 2025 restored the 100% first-year bonus depreciation deduction, but only for qualified property acquired after Jan. 19, 2025. This left 100% first-year bonus depreciation unavailable during the phase-down period under TCJA. In Notice 2026-11, the IRS has provided some guidance for how to handle first-year bonus depreciation on 2025 tax returns.

Notice 2026-11

Notice 2026-11 states taxpayers may rely on existing additional first-year depreciation deduction regulations for 2025 tax returns. This includes rules for whether depreciable property is eligible for the additional first-year depreciation deduction and rules determining the amount of allowable deductions under OBBBA.

Elections

In applying OBBBA and the lack of retroactivity of 100% bonus depreciation, Notice 2026-11 outlines several elections available to taxpayers:

- Taxpayers may use 40% instead of 100% for qualified property placed in service during the first year ending after Jan. 1, 2025 (60% for longer production periods or certain aircraft).

- Taxpayers may deduct additional first-year depreciation for one or more specified plants planted or grafted after Jan. 19, 2025.
- Taxpayers may treat certain acquired or self-constructed components of larger self-constructed property as generally eligible for the additional first-year depreciation deduction.
- Taxpayers may elect not to deduct the additional 100% first-year depreciation deduction for a qualified sound recording production.

Sound recording productions

OBBBA added a first-year depreciation deduction for qualified sound recording productions, similar to existing provisions for movie and television productions. Notice 2026-11 includes guidance on the deduction for qualified sound recording productions:

- A sound recording production is treated as acquired on the date the principal recording commences.
- A sound recording production is considered placed in service at the time of the initial release or broadcast.
- A sound recording production qualifies for the additional first-year depreciation deduction if the sound recording production commences in a tax year ending after July 4, 2025.

Research and experimental costs

The IRS had previously released guidance in Rev. Proc. 2025-28 on expensing research and experimental costs. OBBBA permits immediate expensing of domestic research and experimental costs after Dec. 31, 2024, with an election for retroactive application for businesses with gross receipts of \$31 million or less. Taxpayers have the option to immediately expense domestic research and experimental costs or elect 60-month amortization. Foreign research and experimental expenses must continue to be capitalized and amortized over 15 years.

For the small business election for businesses with gross receipts up to \$31 million, taxpayers may elect to retroactively apply 100% first-year deduction to tax years 2022–24. This election will require amended or superseding tax returns by specified deadlines.

Qualified production property

OBBBA also provides for 100% bonus depreciation for qualified production property. As of this writing, we are still awaiting IRS guidance on this new provision.

Summary

The restoration and expansion of full first-year deductions is favorable to taxpayers. Although OBBBA did not provide full retroactivity, an election is available to smaller businesses for retroactive application of research and experimental costs. Additionally, taxpayers may generally catch up on full expensing over the next couple years for depreciation lost during the phase-down period under TCJA. ■

“OBBBA also provides for 100% bonus depreciation for qualified production property.”

For domestic research and experimental expenses for 2022–24, taxpayers may elect a one- or two-year catch-up period. Taxpayers may deduct all remaining unamortized research and experimental amounts in the first tax year beginning after Dec. 31, 2024, or spread the deductions over 2025 and 2026.

IRS delays applicability date for proposed RMD regulations

The IRS has announced it expects to delay the applicability date of proposed regulations on required minimum distributions (RMDs) until the distribution calendar year that would begin six months after the date the regulations are finalized (IRS Announcement 2026-7, I.R.B. 2026-11, March 9, 2026). Specifically, this guidance applies to proposed amendments of Treas. Reg. §§1.401(a)(9)-4, 1.401(a)(9)-5 and 1.401(a)(9)-6, issued in July 2024.

On July 19, 2024, the IRS published proposed regulations regarding RMDs under I.R.C. §401(a)(9) and related provisions. Except for Prop. Treas. Reg. §1.401(a)(9)-5(a)(5)(v), the regulations were proposed to apply to determining RMDs for calendar years beginning on or after Jan. 1, 2025.

Now, the IRS expects future final regulations that would amend Reg. §§1.401(a)(9)-4, 1.401(a)(9)-5 and 1.401(a)(9)-6 to apply to RMDs for the distribution calendar year that would begin no earlier than six months after the date any future final regulations are issued in the Federal Register. For periods before then, taxpayers must continue to apply a reasonable, good-faith interpretation. ■

Edward Jones tax management opportunities

Although Edward Jones cannot provide tax or legal advice, our financial advisors can use a team approach with you to help mutual clients understand the impact of capital gains and losses on their investments and offer opportunities to use tax management strategies before the end of 2026.

1. Financial advisors can **identify clients** who may have substantial realized gains and/or losses before the end of 2026 and get permission to share this information with you.
2. They can **identify current investments** these clients hold at Edward Jones that may have substantial unrealized capital gains and/or losses.
3. They can work together with you to **share tax management opportunities** with these clients. ■

Learn more

Please contact
one of our
financial
advisors today
about helping
mutual clients.

Building a team of professionals to help provide solutions for our clients

At Edward Jones, we believe that when it comes to financial matters, the value of professional advice cannot be overestimated. In fact, in most situations we recommend that clients assemble a team of professionals to provide guidance regarding their financial affairs: an attorney, a tax professional and a financial advisor.

We want to work together as a team and offer value for your practice and clients. Using complementary skills and philosophies, we can help save time, money and resources while assisting mutual clients in planning for today's financial and tax challenges.

Edward Jones is unique in that we offer to CPAs and attorneys a wide variety of complimentary tax and legal guides from CCH Wolters Kluwer as a vital resource in advising your clients on a broad range of estate, business and income tax planning issues. 2026 publications now available to CPAs and attorneys include *One Big Beautiful Bill: Law, Explanation & Analysis* as well as the *Practical Guide to Estate Planning*. You can contact an Edward Jones financial advisor to learn more about these resources and how to obtain them.

The Connection journal content is provided by CCH Incorporated and Edward Jones and published by Edward D. Jones & Co., L.P., d/b/a Edward Jones, 12555 Manchester Road, St. Louis, MO 63131. Opinions and positions stated in this material are those of the authors and do not necessarily represent the opinions or positions of Edward Jones. This publication is for educational and informational purposes only. It is not intended, and should not be construed, as a specific recommendation or legal, tax or investment advice. The information provided is for tax and legal professionals only; it is not for use with the general public. Edward Jones, its financial advisors and its employees cannot provide tax or legal advice; before acting upon any information herein, individuals should consult a qualified tax advisor or attorney regarding their circumstances. Reprinted by Edward Jones with permission from CCH Incorporated. All rights reserved.