

What is the Qualified Performing Artist tax deduction?

Since 1986, a provision in the U.S. tax code (“IRC”) has allowed certain performing artists (musicians, entertainers, actors, *et al.*) to deduct their business expenses “above the line” on their IRS returns. The fact that the deduction is “above the line” (aka an “**Adjustment to Income**” in tax parlance) is important because such deductions (which also include the student loan interest, IRA, and self-employed health insurance deductions, among others) are **used to reduce Adjusted Gross Income (“AGI”)**; more on this aspect below.

The types of deductible expenses are the same as the ones you would deduct on a Schedule C for expenses incurred while earning self-employment; and also the same as the expenses you **used to be able to deduct** as Unreimbursed Employee Expenses on your Schedule A prior to their elimination from the tax code as a result of the Tax Cuts and Jobs Act of 2017.

How do I know if I’m a “Qualified” Performing Artist?

Are you an individual...

1. Who renders services as a performing artist to at least 2 employers during the tax year?
2. Whose aforementioned employers each pay you at least \$200 **in wages** in the given tax year?
3. Who incurs “ordinary and necessary” expenses that equal at least 10% of the income you receive working for the aforementioned employers within the tax year.
4. Who, if married, files a joint return with his/her spouse.
5. Whose **entire AGI for the year does not exceed \$16,000** before accounting for the QPA deduction. If married, **the couple’s joint AGI must not exceed \$16,000** for the year

If you answered yes to all these questions you would “qualify” as a QPA. If the only reason you don’t qualify is because of #5, you would directly benefit from the passage of the Performing Artist Tax Parity Act (PATPA).

What is an “Adjustment to Income” and why is that important?

You pay taxes based on a percentage of your **taxable income**. You (or your tax preparer) arrive at your taxable income by taking your **Adjusted Gross Income** and subtracting either your standard or itemized deductions. Taxpayers’ AGI’s are calculated differently based on individual circumstances. **AGI is the IRS’s way of leveling the playing field when looking at a person’s income.** Because there are lots of untaxed forms of income throughout the economy (think certain retirement benefits, health insurance benefits, *etc.*), AGI is a way to account for expenses one person may have to incur that another does not by virtue of employer-provided benefits. There is a tax provision that allows a self-employed person who buys their own health insurance to not pay income tax on its cost, since the person who has health insurance provided by their employer does not have to pay income tax on the value of such benefits. The same goes for the self-employed person who has no retirement plan available through an employer. Since that person cannot have his or her employer take contributions out of his or her paycheck pre-tax, he or she is allowed to set up their own self-employed retirement account and on his or her tax return “adjust” (*i.e.*, reduce) his or her income by the amount of the contributions **so that there is parity in the tax law between the persons to whom such employer-based retirement benefits are and are not available.**

Because these adjustments are deductions taken prior to calculating AGI, they are sometimes called “above the line” deductions. **In addition to lowering a person’s income tax liability** (by indirectly lowering a person’s taxable income), **a smaller AGI will also increase eligibility for certain tax credits.** A person whose AGI is too high may not qualify for the Retirement Savings Credit, Child Tax Credit, certain education credits, or a myriad of other tax credits. **For these reasons, adjustments to income are incredibly important for reducing the overall tax levied on working- and middle-class taxpayers. The QPA deduction is one of these adjustments to income.**

Why is the Performing Artist Tax Parity Act necessary?

Under the current tax law, most musicians can no longer deduct expenses they incur while earning income as an employee. While most musicians have some sort of self-employment income (private teaching, gigs at churches, one-off jobs, *etc.*) **it is illegal to deduct those expenses that are attributable to employee income on a Schedule C.** Only those expenses incurred while earning the self-employment income may be deducted on a Schedule C. Since the vast majority of orchestras, schools, and even some churches pay their regular members / faculty as employees, most performing artists now have to pay income tax on the money they spend to own, repair, maintain, and insure their instruments; to travel from job to job; to take auditions or job interviews; to maintain an office or practice space. The proposed legislation will:

- 1) **Raise the income ceiling** for qualifying as a QPA from \$16,000 to \$100,000.
- 2) **Remove the marriage penalty** built into the QPA provision’s current language – it doubles the AGI limit for married couples who file jointly.
- 3) **Adjust the income ceiling every tax year for inflation** so that the QPA deduction will stay relevant for most middle-income performing artists over time.

THIS IS NOT A TAX BREAK!

In fact, it's quite the opposite – **it brings TAX PARITY to a group of workers who are expected to shoulder business expenses but are currently not allowed to deduct them.** Independent contractors paid as self-employed individuals get to deduct these expenses, corporations get to deduct these expenses, LLC's and partnerships get to deduct these expenses, orchestras (if they had to pay taxes) would get to deduct these expenses. *Under current tax law, almost any taxable entity except an employee gets to deduct these expenses.* Imagine if everyone were taxed as performing artists: car companies would have to pay income tax on the value of all the parts they buy from their suppliers, restaurants would have to pay income tax on the value of the food they purchase, mechanics would have to pay income tax on the cost of all their tools, everyone would have to pay income tax on the value of their office space, computers, utilities, and employee wages. In short, everyone's business costs would increase by 30% to 50%! Could you imagine the uproar?

The reason why employees do not get to deduct business expenses is because traditionally it is the business (*i.e.*, the employer) who would pay for and thus deduct such expenses. Do lawyers expect their paralegals to buy their own office supplies? How many engineers have to buy their own work computers? When a company's salesman travels the country is he expected to pay for his own airfare without reimbursement? Yet performing artists, especially musicians, are expected to buy, maintain, repair, and insure expensive equipment; they are expected to get themselves to and from concert venues across the country; they are required to provide their own space to practice, make reeds, and study music. **Yet while there is an expectation by employers that their performing artist employees pay these costs, there is no expectation that the performing artist employer reimburse such costs.** This huge disparity in working conditions between those working in the performing arts and those in other employment fields was the reason why the framers of the 1986 Tax Reform Act created the QPA tax deduction; however, because its income ceiling was never indexed to inflation and never raised by statute, 37 years later it can only meaningfully apply to a handful of college students. Given that \$16,000 is nearly under the poverty line, **the current reality is that no professional performing artist can make use of the qualified performing artist tax deduction in its present form.**