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TAX REPORT

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Topics for future editions may include:

- Disclosure and Use of Information
- IRS Section 338
- Qualified Stock Purchases

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Tax is an ever-changing and dynamic field of accounting. Practitioners need to be aware of the constant changes that may affect their clients so that they may appropriately advise them. This material will cover many recent developments.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including determining the process for an unannounced home visit by a Revenue Officer, evaluating equitable tolling of the 90-Day Tax Court petition period, and identifying the process of obtaining a private letter ruling for corporate issues. [*Running time 31:56*]

PART 2. INDIVIDUAL TAXATION

Practitioners are being confronted more frequently with international issues. If a practitioner has a nonresident alien client, reference to the U.S. taxation becomes critical. Issues such as FDAP and ECI income, as well as the effect of treaties, become of paramount importance in advising the client. Practitioners should have a working knowledge of those rules.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues relating to the U.S. taxation of nonresident aliens, including determining the application of FDAP, assessing the application of ECI, and evaluating the implications of tax treaties. [*Running time 45:02*]

PART 3. BUSINESS TAXATION

The determination of a capitalized expenditure can make or break a project. It can also be a useful tool for businesses in being able to write off certain types of expenditures. The tangible property regulations (TPRs) are often overlooked but can provide real potential benefits.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues related to the tangible property regulations (TPRs), including determining the methods of allocation and cost, assessing the impact of the TPRs, and identifying the safe harbors. [*Running time 35:26*]

ABOUT THE SPEAKERS

Ian J. Redpath, JD, LLM, is a nationally recognized tax attorney and consultant from Buffalo, New York and is a principal in the Redpath Law Offices. Mr. Redpath has published numerous articles on contemporary tax issues and co-authored several books on tax topics. He has extensive national and international experience in developing, writing, and presenting professional CPE programs. In addition to his active tax practice, he serves as Chairman of the Department of Accounting and Director of Graduate Accounting Programs as well as Professor of Taxation and Forensic Accounting at Canisius College in Buffalo.

Renata Maroney, CPA, is a Senior Manager with Martin DeCruze in Stamford, CT. Renata has over fifteen years of broad professional experience in a variety of areas. Her focus is business and international tax, ranging from getting technology start-ups off the ground to tax planning for complex international transactions. She has extensive experience assisting clients with U.S. tax reporting and compliance for offshore assets and foreign accounts. Renata has worked extensively in the area of U.S. international tax reporting, including FBAR and Forms 5471, 8865, 8858, 8621, 5472, 1042.

Bruce Johnson, MBA, is a founding partner of Capstan Tax Strategies and works closely with commercial real estate owners, investors, and accounting firms to provide practical, creative, and client-specific solutions. As an engineer and consultant with significant experience in cost segregation, energy consulting, and capital improvement projects, Bruce understands the importance of leveraging fixed assets to enhance cash flow and meet business needs. Bruce has served as a guest lecturer, is a frequent speaker for professional organizations including the AICPA and CCIM, and conducts popular webinars that can be found on respected industry platforms. Bruce is a senior member of the American Society of Cost Segregation Professionals and an active member of the Counselors of Real Estate and the NAIOP. He holds an MBA from the University of New Haven and a BS from the Massachusetts Maritime Academy.

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Learning Objectives (Refer to executive summary)	
Program Description (Refer to executive summary)	
Instructional delivery method	Group Live
Recommended CPE credit	3.0 Credits
Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
	• Basic Governmental professional experience
Advance preparation	None required
Course registration and, where applicable, attendance requirements (1)	

(1) Insert instructions for your students to register for the class and any other attendance requirements (e.g., bring your laptop, be prepared to work in groups, you will be required to sign in and sign out of the session, etc.)

EXPERT ANALYSIS AND COMMENTARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. Ian Redpath begins this month's discussion with an announcement from the IRS that they are going to discontinue unannounced revenue officer visits to taxpayers. Fact Sheet 2023-17 was issued in response to that decision and details the new IRS procedure.

Let's join Ian.

A. Fact Sheet 2023-17

Mr. Redpath

Hi, everybody, welcome to the program. I'm Ian Redpath. This is the segment where we go over a number of changes that have happened, some interesting cases, and some things that we should be aware of, whether it be from the IRS, or the courts, or Congress, for that matter. So, let's jump right in because we have had some interesting things that have occurred over the last month since we last met.

First, I want to refer you to Fact Sheet 2023-17. This fact sheet was issued in response to the Internal Revenue Service's decision, which they announced on July 24, 2023, that they were going to end unannounced Revenue Officer visits to taxpayers. What this fact sheet explains is the new procedure that the IRS is going to follow when it comes to unscheduled visits. They are going to send an appointment letter; the Revenue Officer will send an appointment letter to the taxpayer to schedule the initial or a follow-up meeting.

What is a Revenue Officer? The IRS Revenue Officers—and especially staff people often don't understand the difference—Revenue Officers are, obviously, unarmed employees; and their duty is to help resolve account balances, collections, securing overdue returns, and they will visit taxpayers, if necessary. Now, you want to distinguish that from a Revenue Agent. The Revenue Agents, they are the auditors; those are the individuals who are the auditors. They are going to conduct via mail, phone, and face-to-face visits, and in the office for a field audit. So, they are going to be looking at that. IRS Special Agents (criminal investigations) don't work civil cases, but they do work criminal cases. They are the ones that can carry guns. They look at things like tax [fraud], money laundering, and banking laws. They have a wide area that they will look at. Not only are they armed, but what is interesting is that they will often—because they are part of the Treasury, and the Treasury includes the Secret Service—they will often get involved in cases with the Secret Service, [such as] bank secrecy issues, money laundering. They will also actually be brought in for certain presidential details. So, for example, if the president is coming to a particular city, for a lot of the background work, they will bring in the IRS Special Agents because they are part of the Treasury. A lot of people don't know that.

Everyone is going to carry IDs. They have two forms of ID that they carry. One is called the IRS ID, which is called a pocket commission, and one is called the HSPD-12, which is an employee card. Each one of those cards, both of them, have a picture and an ID number; and, of course, a taxpayer (or you) can request to see that. In fact, you can request to see both IDs.

One of the things that the fact sheet does set out is that Revenue Officers can still make unannounced visits in some (very few) unique circumstances. However, what is interesting is the fact sheet doesn't discuss any of the unique circumstances. So, if you're looking for unique circumstances, it is not going to be in this guidance from the Internal Revenue Service.

B. *Culp v. Commissioner,* CA3, 132 AFTR 2d 2023-5198

Now we have a really interesting case. I have talked about this on a number of different programs over the last year to 18 months, this issue of equitable tolling of petitions to the Tax Court. Recently, we talked about a case where the Tax Court had said that petitions based upon Code Section 6330(d), which were the CDP (collection due process) petitions, filing after a collection due process to basically appeal that decision, that that time period was nonjurisdictional and, therefore, it was subject to equitable tolling. So, what do all these terms mean that we are talking about here? "Jurisdictional" means that the Court can't render a decision because it has no jurisdiction over the case or the situation. The Tax Court can't render a decision in an antitrust suit; it doesn't have jurisdiction to hear that.

The IRS has consistently rejected petitions that are a day late. I had a situation once where the IRS had punched the wrong date onto the 90-day letter. The client, through their attorney, had filed in the Tax Court; they filed the petition *before* the date that was stamped. The Court rejected it, saying, "It is late. It doesn't matter what the IRS said. You can count 90 days." That would be a case of equitable tolling. We didn't raise that issue at the time because the client was able to pay and filed in the district court for a refund. But this equitable tolling has been an issue going around. What does "equitable tolling" mean? It means that there is reasonable cause—think of it that way—reasonable cause that you missed the 90 days, and that the Court can consider whether your petition was not filed within the 90 days for reasonable cause. Think of equity; we think of equity as not [necessarily] following the rigid rules of the law but doing what is fair. I have been mentioning to you for quite some time that I know we are going to start seeing cases involving equitable tolling of the 90-day [period] within the deficiency notice, or the 90-day letter.

Sure enough, here we have the case, *Culp v. Commissioner*. This is a Third Circuit Court of Appeals [case], and the Third Circuit determined that Section 6213's 90-day deficiency petition filing period is not jurisdictional. In other words, you don't have to meet the 90 days for the Tax Court to take jurisdiction. The Tax Court had just dismissed the petition, saying, "Well, it is past the 90 days; you missed the 90 days—too bad. Go pay the tax and go to the claims court or go to district court, but you are not coming to this Court." They filed an appeal—and this follows up, as we mentioned, the court case that we discussed regarding the petition period after a CDP. And the Third Circuit said, "Tax Court, you were wrong because there is nothing in the statute, there is nothing in 6213 that links jurisdiction of the Court to the 90-day period." They said, "Therefore, it is obviously subject to equitable tolling." Yes, it is 90 days; but if you miss it, the Court can take into consideration *equitable* issues to decide if, in fact, they are going to take jurisdiction over that particular case. What the court said was, "Okay, Tax Court, we are sending it back to you, and you can decide, because no decision has been made as to whether equitable tolling should apply." Why not? Well, because the Court didn't have to do that. The Tax Court just got the petition, it was more than 90 days, [and said], "Sorry, it is dismissed. Nothing further to discuss." This court said, "No, you have to look at equitable tolling." Why did they miss the deadline? And what you could do is decide that no, there are equitable issues, and those equitable issues are things that should be considered by the Court. This follows the same logic, essentially, that the *Boechler* case followed; and the *Boechler* case is a Supreme Court case (142 S. Ct. at 1499). They specifically said those are not connected; the 90 days and the equitable tolling—or the 90 days and jurisdiction, I should say—aren't necessarily linked. Obviously, you're going to have a statute of limitations, but they said it should be subject to this equitable tolling. So therefore, this is a really interesting case. It is a Third Circuit case.

I expect we are going to see some cases coming in other circuits. That is normally what is going to happen; taxpayers are going to challenge this now in other circuits, and we will see what the Tax Court does with it. If the Tax Court says, "Yes, okay, we are going to apply equitable tolling," or if the government is going to appeal this. Now, this was the Third Circuit, and the government could appeal this to the Supreme Court just as in the *Boechler* case. They lost that [case]—and there is a good possibility they could lose this one, too, under the same basic theory. So, if you have cases that may be going to the Tax Court, pay attention to what is going on there relative to the CDP. That is already decided. And now this case, in which we have a circuit court, the Third Circuit, saying, "Yes, equitable tolling should apply; it is not jurisdictional."

C. Notice 2023-59, 2023-34 IRB

Now, we have Notice 2023-59. If you have a client who is considering having an energy audit, remember that Section 25C provides for home energy audit credits. Not a huge amount; 30 percent of the amounts paid for the energy audit, up to $150 per year. But many people are thinking, I'm going to make my house energy efficient. I'm going to do an energy audit. Well, the proposed regs are forthcoming. That is mentioned, but we don't have them yet. What they did say is the person performing the audit, while they are going to have to qualify as a home energy auditor, for 2023, they don't have to be qualified as defined in the guidance as a prerequisite. In other words, if it's a legitimate home energy audit, it is going to qualify for 2023, regardless of the fact that the individual who performed the audit may not be one who would qualify when the proposed regs come out. The proposed regs will be retroactive to the first of the year (2023), *except* as it relates to this particular provision.

D. IR-2023-135

Then, we have another IRS notice, and this is of interest because we have been talking about it for a while. In Notice 2023-135, the IRS Commissioner has noted that the backlog of ERC claims—employee retention credit claims—has been cleared, and their focus is now shifting to new claims that have been filed. Now, April 15, 2025, is the last time that anyone can file.

However, the IRS, again, as they have constantly said—we have talked about this over and over, and for those of you who saw the program we did with Karen Davis on this, even her CPA firm got a fraudulent notice made to look like an IRS notice by an ERC mill—the [IRS] has noted that unscrupulous promoters have marketed this aggressively, and a lot of [businesses] don't fit the parameters. It is available from March 13, 2020, to December 31, 2021, and is a filing of a 941 amended return.

Now, this question has come up, and I mention this because I have had so many emails from practitioners asking me an ethical question. I think I'm going to address this because it fits right in here. They went to the ERC mill, and they got this big credit. Now, they have come [to me]; and as one individual said, "I don't believe they qualify, but what am I supposed to do? Because now my client, my long-time client—I make a lot of money from the client—went to a mill (the mill contacted them), and now I have to amend their income tax return to reflect the credit that was taken for these wages." Well, you can't. If you really don't believe that they qualify, can you really [ethically] file the amended income tax returns? You don't believe they qualify for that credit, but what you are saying is that they did qualify for the credit if you [file] it.

This is an interesting question that you really should look at. If you reduce the wages, are you, in fact, saying that the claim for the ERC was legitimate? That the client's claim was legitimate? A lot of commentators are saying absolutely—[but] you need to be very cautious in doing that. Others say, well, no, you are just filing an amended return. That's what they did; it's just reflecting what they did. Again, you may want to think carefully before filing that, especially if it is a rather large number. The particular one I'm talking about was about $1.5 million. So, just keep that in mind and think about the ethical obligations there.

E. AM 2023-005

We have AM 2023-005. This is just a generic legal advice memo from the Chief Counsel's office. This is one that they just kind of sent out, it is not to a specific client—or I should say—taxpayer. It is just generic; this is something we're seeing. Why is this one important? It's important because it clarifies when, for the ERC, the employer suffered a suspension of operation because of supply chain disruption. So, to claim the credit, the employer has to show that the business was fully or partially suspended (during whatever the applicable quarter was), because of government orders limiting commerce, travel, and group meetings due to COVID.

In Notice 2021-20, they allowed certain employers to claim the ERC if they had to suspend business operations because their critical goods or materials suppliers' businesses were suspended by government order. "I can't get anything. I can't get supplies. I can't get what I need because [of] supply chain problems. My suppliers can't do it, based on government orders." Again, we are all going to go back to that government order. Again, there is a limited exception if an employer can be considered to have full or partial suspension due to a government order if—facts and circumstances—the business's suppliers cannot make critical deliveries of goods or materials due to a government order, which causes [the employer to suspend operations].

This gives five examples of whether the employer's business operations are suspended because of their supplier not being able to deliver critical goods and materials due to the supplier's suspension. They give five different examples, and I would refer you to those.

F. IR-2023-134

Now, we also have IR-2023-134, and this comes out of the Security Summit which is a partnership between the IRS state tax agencies and the basic tax community. This is the second in five parts called, "Protect Your Clients; Protect Yourself." This discusses the value of the IRS's Identity Protection PIN (IP PIN) Opt-In program. The Security Summit said this is actually tremendous in trying to avoid fraud; the IRS can verify the identity of the person filing. Eight million people obtained IP PINs.

The IP PIN is going to be valid for a year and is for any of the returns that are filed during the year. It is a six-digit number assigned to a taxpayer to prevent misuse of their social security [number]. A new IP PIN is going to be generated each year. They will assign the taxpayer an IP PIN which is used to confirm the identity on any return filed during the year, including a delinquent return. Now, the IP PIN is only for Forms 1040, 1040-NR, 1040-PR, 1040-SR, and 1040-SS.

Within this, what should you do to protect the IP PIN? Taxpayers should only share it with their trusted tax professional; but tax professionals should never store the IP PIN on a computer system because it could be compromised through identity theft or cyberattack. In addition, taxpayers should know (as well as professionals), the IRS will never call, email, or text either the taxpayer or the professional to request an IP PIN. If you get something like that or your client gets something like that, it's a scam. So, something to consider and something to discuss with our clients this tax season.

G. Revenue Procedure 2023-26, 2023-33 IRB

Now we have Rev. Proc. 2023-26. Back in Rev. Proc. 2022-10, the IRS established a pilot program for a new, fast-track private letter ruling request for corporate issues. Basically, the IRS will try to answer and provide a private letter ruling within 12 weeks. You can request an expedited [ruling]—less than 12 weeks.

The new program has two major changes from the 2022-10 pilot program. The IRS is not going to fast track any letter ruling requests on issues that include a closing agreement on an issue under the jurisdiction of the Chief Counsel. In addition, if during the discussion, a closing agreement issue arises during the process, the IRS will terminate the fast track. However, it can still follow the normal letter ruling process. Well, sometimes, that can take up to 24 months. The normal process you can find—and every year, it is in the same [place], just a different year—in Rev. Proc. 2023-1.

The other change is taxpayers are required to provide reasons for requesting fast-track processing of its letter ruling, but you're not required to demonstrate a business need for the processing unless you are requesting they do it in less than 12 weeks. Again, they will use the stated reason for fast tracking to determine whether to grant your request.

Again, generally, it will be a period of 12 weeks. By the way, this will apply to any request after July 26, 2023.

H. Revenue Ruling 2023-14, 2023-33 IRB

We have more information coming out on cryptocurrency in Revenue Ruling 2023-14. This deals with proof-of-stake awards. So, the old method [proof-of-work] is still legitimate and used. For example, Ethereum 1.0 uses proof-of-work [instead of] proof-of-stake. [With] proof-of-work, the person (they're called "miners") has to validate this new block being added or node being added to the block, but they had to solve these logarithmic issues, and it took a lot of computing power and a lot of energy.

The more modern approach is proof-of stake. Now, what is proof-of-stake? Essentially, in proof-of-stake, you are validating—they are often called "validators" (not miners)—basically trying to show that it is legitimate, it is not duplicative, and it can be put on as a legitimate block. But what you are doing is you're putting [up] a stake. You are putting up some of your cryptocurrency and saying, "Okay, if I'm wrong, this can be forfeited." Now, some use a consensus which means, essentially, they will choose what validators to use, and it is usually chosen by a protocol. If the validation is unsuccessful, you forfeit the staked units or some portion of them. But if it's successful, you get additional coins. You get additional cryptocurrency.

So, the question here is simply, "What is that?" Well, what this revenue ruling says is that a cash-method taxpayer who stakes cryptocurrency for blockchain and then receives, after validation, additional units of the cryptocurrency as a reward for the validation, includes it in income in the year in which they gain dominion and control over the validation reward—perhaps when it hits their wallet. The fair market value is determined as of the date and time that they get dominion and control. So, we're going to be arguing what do "dominion" and "control" mean. For the most part, it means when it hits the wallet—the electronic wallet.

So, a lot is going on with cryptocurrency. The other thing that we do know is that the government is still going on and on and on about how they're going to come out with more and more issues relative to cryptocurrency. So, with the new reporting, etc., we'll wait and see what happens with that.

I. Four New Technical Guides Published by IRS TE/GE

On the IRS website, there are four new Technical Guides that are published by the Tax-Exempt Organizations and Government Entities (TE/GE) division. These new Technique Guides replace ATGs (Audit Technique Guides) on the same issue. These guides, the so-called Technical Guides, basically take a lot of information from the Internal Revenue Manual and put it into these guides.

The TE/GE started combining the Audit Technique Guides into comprehensive, issue-specific documents called Technical Guides. These are to help not only the IRS employees, but governing boards and tax practitioners who work with them, by providing a lot of useful information. If you're not familiar with the Audit Technique Guides, I would always refer you to those. If you saw the segment on research that I did with Shannon Jemiolo, we talked a lot about these because they are often missed by practitioners. These were created to train IRS agents on certain issues, topics, or industries; and there is a wide range of them on the IRS website. Just go to www.irs.gov, type in "Audit Technique Guides," and you will come up with an alphabetical list. When you read them, you have to remember that it is talking to the auditor. (Sometimes you read it and it says "you"—they are talking to the auditor.) It will say, "This is what you should look for," or "If you see this, ask for these documents." It gives you examples, often, of what they are going to ask for in document requests. I look at them as important because they are not only important in structuring a transaction. I know what the IRS is going to be looking for, and I know what documentation the IRS wants to see. It is not just at the audit; I see it in the planning stage, too, that these can become very important. Again, they are out there. They are free, right on the IRS website.

These are a little different, because these were meant to be more expansive and to also talk to governing boards and tax practitioners. The latest [Technical Guides] are Disqualifying and Non-Exempt Activities for a 501(c)(3); Labor, Agricultural, and Horticultural—501(c)(5); Qualified Tuition Programs—529s; and Excise Taxes - Excess Benefit Transactions—Section 4958. Again, a lot of good information. There are currently 23 of these guides on tax-exempt and government entities; again, they are essentially combining the Audit Technique and Technical Guides on these areas into one.

I want to thank you for joining me. A lot of interesting things happened in the last month since we were last together. Thank you for joining me, and please be safe.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. Fact Sheet 2023-17

Following up on the IRS's announcement that it was ending unannounced Revenue Officer (RO) visits to taxpayers, this Fact Sheet explains the new procedures that will be used by the Service. In lieu of unannounced or unscheduled field visits, ROs will first send the taxpayer an appointment letter to schedule a meeting. This applies to preliminary and follow-up meetings. These will take place after the taxpayer has received other notices and mailings from the IRS before the RO gets involved. Generally, the RO request is because the taxpayer has not responded to prior communications from the Service. There will still be certain circumstances where unannounced visits may occur, but these are not detailed in this Fact Sheet.

ROs are unarmed civil agency employees whose duties include visiting taxpayers to help resolve their account balances. Their job includes collecting delinquent taxes and securing overdue returns. ROs interview taxpayers and/or their representatives face-to-face or by telephone. They obtain and analyze financial information to determine the taxpayer's ability to pay and consider alternative resolution of the tax debt.

The RO will have at least two forms of official credentials—an IRS issued ID, known as a pocket commission, and an HSPD-12, which is a federal employee card. Both cards contain a serial number and the employee's photo. Taxpayers have the right to see each of these credentials.

B. *Culp v. Commissioner*, CA3, 132 AFTR 2d 2023-5198

The Circuit Court of Appeals for the Third Circuit determined that the 90-day deficiency filing period under §6213 for filing a petition in the Tax Court is non-jurisdictional. As a result, a late-filed petition may still be allowed under the doctrine of equitable tolling. This is consistent with the Supreme Court's holding in *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493 (2022), in which the Court held the filing deadline after a CDP under §6330(d) was not jurisdictional and, thus, subject to equitable tolling. This means that the Tax Court may consider a case even if the deadline is missed if, under the facts and circumstances, it would be equitable to do so. This usually means that the taxpayer can establish good cause for missing the deadline.

C. Notice 2023-59, 2023-34 IRB

The IRS indicates that proposed regulations on §25C energy credits are forthcoming and has issued guidance to be used by taxpayers to claim the credit for home energy audits. The regulations will provide the need for a qualified auditor and define what that is. However, for 2023, the auditor being qualified is not a requirement to claim the credit. The proposed regulations will apply to tax years ending after December 31, 2022; however, this Notice may be relied on for 2023. The credit is up to 30 percent of amounts paid for home energy audits with a maximum credit of $150 per tax year.

D. IR 2023-135

The IRS Commissioner noted that the backlog of Employee Retention Credit (ERC) claims has been cleared, and that focus now shifts to new claims. The credit was only available from March 13, 2020, to December 31, 2021; but claims can be filed until April 15, 2025. This credit has been a target of massive fraud, and the IRS is aggressively auditing amended returns.

E. AM 2023-005

In a generic Advice Memorandum, the Chief Counsel discussed the impact of supply chain disruption on the ability to claim an ERC. It clarifies guidance on when an employer suffered a suspension of business operations because of supply disruptions. Generally, to claim the credit, an employer must show that their business was fully or partially suspended during an applicable calendar quarter because government orders limited commerce, travel, or group meetings due to COVID-19. In Notice 2021-20, the IRS allowed the ERC if the business had to suspend business operations because the businesses of their critical goods or materials suppliers were suspended by government order. This limited exception applies to delivery of critical goods or materials due to a governmental order that causes the supplier to suspend its operations. This memo provides five examples pertaining to the exception and whether it would apply.

F. IR-2023-134

The Security Summit issued the second news release in its five-part "Protect Your Clients; Protect Yourself" series, which deals with the value of the IRS's Identity Protection PIN (IP PIN) Opt-in Program. The IRS IP PIN is a six-digit number assigned to eligible taxpayers to help prevent the misuse of their Social Security number on fraudulent federal income tax returns. A new IP PIN will be generated each year. The IP PIN must be used to confirm the taxpayer's identity on any return filed during that year. This includes current-year and delinquent returns. It is used only on Forms 1040, 1040-NR, 1040-PR, 1040-SR, and 1040-SS.

Obtaining a taxpayer's IP PIN can be a target for identity thieves. Taxpayers and tax professionals must take care to protect the IP PIN from those intent on committing identity theft.

Key tips for protecting IP PINs include the following:

- Taxpayers should share their IP PIN only with their trusted tax preparer.
- Tax professionals should never store their clients' IP PINs on computer systems, given that an identity thief or cyberattack may compromise a tax professional's system.
- The IRS will never call, email, or text taxpayers or tax professionals to request the IP PIN. Such communications should be considered a sign of a scam.

G. Revenue Procedure 2023-26, 2023-33 IRB

The IRS has issued a new procedure for fast-track processing of private letter rulings on corporate issues. This replaces the pilot program established by Rev. Proc. 2022-10. The new program makes two notable changes to the pilot program:

1. The IRS will not grant fast-track processing to letter ruling requests on corporate issues that include a closing agreement on an issue under the jurisdiction of Associate Chief Counsel. In addition, if a closing agreement issue arises during the fast-track process, the IRS will terminate the fast-track process. However, the IRS will continue to process the letter ruling request under the procedures found in Rev Proc 2023-1.
2. While a taxpayer must provide reasons for requesting fast-track processing for a letter ruling, the taxpayer is not required to demonstrate a business need for such processing unless the taxpayer is requesting the IRS to provide a ruling in less than 12 weeks. The IRS will use the taxpayer's stated reasons for fast-tracking to determine whether to grant the taxpayer's request.

Generally, the IRS will try to complete processing and issue a letter ruling within 12 weeks, unless a shorter or longer period is designated by the IRS employee reviewing the request. The Revenue Procedure provides details such as:

- Who qualifies for fast-track processing;

- What information the taxpayer must provide to the IRS before the required pre-submission conference; and
- What information the letter ruling request must contain, including the required statement with the taxpayer's rationale for requesting fast-track processing, the taxpayer's agreement to provide any additional information requested by the IRS, and a draft letter ruling.

This applies after July 26, 2023.

H. Revenue Ruling 2023-14, 2023-33 IRB

The IRS ruled that a cash-method taxpayer who stakes cryptocurrency for a proof-of-stake blockchain verification and receives additional units of cryptocurrency as rewards when validated must include the value of rewards in gross income in the tax year in which they gain dominion and control over the validation rewards. The value is based on the fair market value determined as of the date and time the taxpayer gains dominion and control over the reward(s).

Suppose a cash-method taxpayer stakes cryptocurrency native to a proof-of-stake blockchain and receives additional units of cryptocurrency as rewards when validation occurs. Must the taxpayer include the value of the rewards in gross income and, if so, in which taxable year?

Proof-of-stake reduces the amount of computational work needed to verify blocks and transactions. Under proof-of-work, hefty computing requirements kept the blockchain secure. Proof-of-stake changes the way blocks are verified using the machines of coin owners, so there does not need to be as much computational work done. The owners offer their coins as collateral—staking—for the chance to validate blocks and earn rewards. Validators are selected randomly to confirm transactions and validate block information. Thus, this system randomizes who gets to collect fees rather than using a competitive rewards-based mechanism like proof-of-work. To become a validator, a coin owner must "stake" a specific amount of coins. Blocks are validated by multiple validators, and when a specific number of validators verify that the block is accurate, it is finalized and closed. Validators receive additional cryptocurrency as rewards for validation. If the validation is wrong, the stake or a portion thereof is forfeited.

I. Four New Technical Guides Published by IRS TE/GE

The IRS's Tax-Exempt Organizations and Government Entities (TE/GE) division provides four new Technical Guides (TGs). These replace Audit Technique Guides on the same subjects. TGs are designed to help IRS employees, but exempt-organization employees, governing boards, and the tax practitioners who work with them may find these guides useful.

The latest TGs are:

- TG 3-10: Disqualifying and Non-Exempt Activities - Trade or Business Activities - IRC §501(c)(3)
- TG 5: Labor, Agricultural, and Horticultural Organizations - §501(c)(5)
- TG 44: Qualified Tuition Program - §529
- TG 65: Excise Taxes - Excess Benefit Transactions - §4958

Currently, there are 23 TGs available on the TE/GE Audit Technique and Technical Guides webpage.

GROUP STUDY MATERIALS

A. Discussion Problems

1) Your client, Jane, informs you that she had a home visit from someone claiming to be an IRS Revenue Officer. The person flashed a badge and demanded some personal data. Your client refused to provide any information and has come to you.

2) You have a new client who has brought in a deficiency notice. She said she was out of town working with a nonprofit group providing medical care in Central Africa. Her accountant did not try to reach her; and she only found out about the notice after her return, which is past the 90 days to petition the Tax Court.

3) Your client, SmithCo, a C corporation, has an issue that you believe would be best handled by obtaining a private letter ruling. However, it does require some urgency.

Required:

Discuss the issues fairly presented in the above independent factual situations.

B. Suggested Answers to Discussion Problems

1) Jane did the right thing. First, a Revenue Officer (RO) will no longer make unannounced home visits to the taxpayer, except in very unusual circumstances. The RO will have at least two forms of picture ID that they must show to the taxpayer on request. In this case, the person did not have the proper ID. This was most likely a scam.

2) This is an example of where equitable tolling should apply and the petition allowed. The Third Circuit Court of Appeals has ruled that the 90-day period is not jurisdictional, and the Tax Court can apply equitable tolling based on the facts and circumstances. If this situation is in the Third Circuit, the Tax Court must make the equitable tolling decision. If in any other circuit, the argument should be made and is likely to be successful.

3) There is a new procedure to obtain private letter rulings in corporate matters. This allows for a 12-week period; and in some cases, the taxpayer can request an even faster response.

PART 2. INDIVIDUAL TAXATION

Nonresident Taxation

Determining whether an individual is a resident or nonresident alien for tax purposes is an important analysis for any practitioner. Thousands of nonresident aliens own rental property, earn interest and dividends from U.S. investments, or are gainfully employed in the United States each year. Generally, nonresident aliens are subject to U.S. tax only on U.S. source income. Ian Redpath and Renata Maroney discuss key issues related to the taxation of nonresident aliens.

Let's join Ian and Renata.

Mr. Redpath

Renata, welcome to the program.

Ms. Maroney

Thank you for having me again.

Mr. Redpath

As I mentioned before in programs—we did a foreign tax credit, and we did a nonresident and residency tests [program]; you are the guru on international tax. So, it is great to have you here because this is something that, I think, is totally misunderstood, the U.S. taxation of nonresidents and how they are taxed. There is a lot of confusion about this. I think we really need to look at it, especially for example if, let's say we have a business client, and that business client is bringing people across the border to work, or maybe they have people who are working remotely. There are all sorts of issues right now that are coming up. So, this is a really important topic today; and especially with globalization, it becomes even more so. Let's start off, and we are talking about nonresidents. So, who's a resident?

Ms. Maroney

We talked about it in a little more detail in the previous program but, just to recap very quickly, for income tax purposes we look at the residency status based on two objective tests. One is either you are a citizen or a green card holder. If you have those two pieces of paper (your passport or your green card), tag, you're it; you are a resident for U.S. tax purposes. The other test, the "or" test, is based on the number of days that you spend in the United States. Important to understand there is that your visa status doesn't really matter. A lot of times, you will hear the same exact phrase, "nonresident alien," used by the immigration service for one purpose (immigration purposes) and the IRS—exact same term—for completely different purposes. So, those two terms should not be confused, and you should always understand. Are you talking about immigration status, or are you talking about tax status?

Mr. Redpath

Previously, in our prior program, I used the example that I had of a case in Minnesota where the IRS claimed that they couldn't be an S corp, that they were terminated and, therefore, they had to file [Form] 1120s and owed penalties and interest—all of the great things when they say you're terminated as an S corp—because they said, well, it is a nonresident alien (because the person was not documented), they were an illegal alien (or undocumented, depending on what term you want to use).

That didn't matter, because they had been living in the country continuously for five years. They were clearly a resident for income tax purposes. And what is "S corp?" It's an income tax provision, so it didn't matter that their status was a nonresident alien for immigration. For tax purposes—they were a resident alien for income tax, which meant, in my mind, they were a resident for purposes of Subchapter S rules that say you can't have a nonresident alien. Well, wait a second, they are [a resident] for tax purposes. So yes, it is something that you always have to pay attention to.

One thing you didn't mention, what about citizenship? You mentioned if you have a green card, you are automatic. What about citizenship?

Ms. Maroney

Yes, citizenship or if you have a passport in the United States, that's it; you are automatic. There is really no way to get out of it until you officially surrender your passport or your green card, and that is a process. You cannot just put it in your drawer and say, "Okay, I don't want to be a citizen anymore." No, you have to go through a lot of steps with the U.S. government to surrender your passport or green card. And even then, the IRS can still drag you back for certain purposes, like estate purposes. There is an exit tax, there are filing fees, and all kinds of things that you have to do; so just saying [you don't want to be a citizen anymore doesn't work]. Or, if your passport expires and you don't renew it, you don't lose your citizenship. A lot of people think that you might. No, you don't. There is a lot of [uncertainty] in this area.

Mr. Redpath

You mentioned the residency—and we have a slide here for our viewers—U.S. residency for income tax purposes under the substantial presence [test]. So, what does it mean? Our viewers are looking at a test that talks about 31 days, and 183 days, and formulas, and then some things to exclude (three things that might not count days). So, could you go over this for us?

Ms. Maroney

Sure. If you don't have a passport or green card, you fall back onto the substantial presence test, which is just, really, counting the number of days you are physically in the United States. The reason why you are in the United States doesn't really matter. Whether you are here for business, you are just living here, or you are vacationing here, it really doesn't matter. You are here, that's it. It counts as a day. So, you need to count the days; and there are two parts to this test. The first part says that you have to be here in the current year at least 31 days. So, a month. You have to be in the United States for at least a month. The second part goes into a pretty complex, convoluted, mathematical formula of how you get to 183 days. The complication here is that it looks not only at the current year, but also two prior years. So, in the current year, you take all of your days, then you sum one-third of the days in the prior year (the first prior year), and then one-sixth of the days in the second prior year.

Mr. Redpath

Do you ever wonder who came up with that? Who sat around in a committee and said, "It has got to be one-third and one-sixth from the year before." You look at these and say, "Who came up with this?"

Ms. Maroney

Very good question. I wish I could have a drink with that person and say, "Hey, what were you thinking?"

Mr. Redpath

Yes. What are you really getting at here? Is there something I'm missing? Is there something magic about that formula of the one-third and the one-sixth? Simplistically, you think they would just add up the days and that is what a lot of people do, they will just add up the days over three years and say, "You meet the test." No, maybe you don't, because it is one-third and one-sixth. Not all the days count though—necessarily—right?

Ms. Maroney

Correct. I just wanted to mention that sort of the magic number of days that you need to spend in the United States is about 122 or 123 days. That is about four months out of the year. If you consistently spend that number of days in the United States, you meet the substantial presence test. Four months is not a whole lot of time to be taxed on your worldwide income in the United States, so there are three main ways to get out of the system.

Mr. Redpath

Before you go there though, before we move on, let's also point out that if you are a resident, it kicks in all the FBAR reporting, too. So, it's not just paying tax on your worldwide income; now you're kicking in all the FBAR reporting.

Ms. Maroney

Well, not just FBAR, all of the foreign informational disclosures, like 5471s, and PFICs [passive foreign investment companies], and all kinds of fun stuff that have a whole lot of penalties associated with them. So yes, it's not cheap to become a U.S. resident, and a lot of people coming into the United States really are shocked by the accounting preparation fees. A lot of times, their foreign return is very simple. My Singaporean client always tells me that it takes them 15 minutes to file their Singapore tax return. They just log into the government account, click a couple of buttons, that's it, they're done. They don't even need an accountant. They come into the United States, and we start with all the foreign disclosures, and I'm spending a couple weeks on their return. There is no way they could navigate it themselves. So, it's a lot more complicated.

Mr. Redpath

You are absolutely right. I had an individual ask me a question that was, "I'm confused. I have to file a 5472, and I talked to a friend of mine who has done them, and he told me that it's going to be a minimum of about $5,000 that I have to charge the client?"

I said, "Well, depending on the complexity. It could be $5,000 to 25,000, depending on the complexity of that; so, yes, you better tell your client they have some sticker shock coming with some of the preparation fees." And that was just the 5472, the reporting information return on a foreign-owned U.S. company. So, you're right, the compliance fees can be—and rightfully so—very high, because there is a lot of complexity in trying to do what seems like it should be relatively simple.

Ms. Maroney

Right. So, if we can get out of being a resident, we always try to. There are essentially three main ways to do that. One is trying to say, "My days don't really count as a day spent in the United States." This provision is pretty limited in application and applies to commuters from Mexico or Canada, so a narrow border region. It applies to diplomats or NATO workers. It applies to some foreign students that come into the United States to study at U.S. universities.

Mr. Redpath

One comment on that is you have to look at what the visa is because the visa is very important, the type of visa that they are on. I mentioned in our other program that I have a good friend and colleague who is Canadian. He lives across the border. He married a Canadian, so he moved across the border. He has his Canadian citizenship. He resides in Canada. He's not here; when he comes to work, he's not here.

Ms. Maroney

Correct. His days do not count for the substantial presence test. The other way that you can argue against the substantial presence test is, essentially, if you don't spend 183 days in the current year. So, you are under six months in the current year in the United States, but you still meet the substantial presence test; you can argue that your true home, your closer connection, is in a foreign country. It sort of gets you to the concept of domicile almost; but the IRS has a whole checklist on Form 8840 that you have to go through and answer a bunch of questions. Where is your home? Where is your family? Where are your community ties for religious and political organizations, etc.? So, that one has a little broader application, and I think it is probably one of the most frequent ones that I have seen people use to get out of the substantial presence test. The last way to get out of it is to claim a tax treaty (the tie-breaker rules). Those essentially have a set of factors. Each treaty is a little bit different, but it usually has about four tests, and they are tested in order. Say the first test goes to the United States. That's it, you are a resident in the United States.

Only if the first test is sort of even [a tie] and you meet it in both countries, then you go to test number two. And if it is still even, you go to test number three. So, it is tested in a waterfall order. A caution with this. A lot of people get excited; but first, you have to have a tax treaty with the country that you want to argue, and second is that it changes your residency for income tax purposes only. So, for any other purposes, you are still a resident (employment taxes, estate taxes, states—whether New York state or Connecticut, whatever—a lot of times they will not follow this tax treaty and will continue to tax you as a resident if you meet the state requirements). So, you just have to be careful.

It becomes muddy and even more confusing [when trying to determine] for what purposes you are a resident, and for what purposes you are not a resident.

Mr. Redpath

You file your 1040 and attach the forms to say, "Here is why we don't have to pay tax on everything, because while we are a resident under the physical presence test, for one of these three reasons we should not be considered one." Is that a good way to look at it?

Ms. Maroney

Yes. You have to claim these exceptions, and you have to file forms and substantiate it with the IRS. And like for the closer connection exception, it is a subjective test; and the IRS can come back and disagree and start arguing with you that, no, you really are more connected to the United States. You have more stuff and more ties to the United States than to a foreign country. So, there is still wiggle room for disagreement with the IRS.

Mr. Redpath

We have a slide that we are going to put up on the taxation for income tax purposes for U.S. residency. The tax base (for example, worldwide). Can you go over this briefly for us?

Ms. Maroney

Sure. Once you determine whether you are a U.S. resident or nonresident for tax purposes, you are thrown into two completely different taxing regimes. The resident is what we are a lot more familiar with. It is the good old Form 1040, worldwide income, all the foreign disclosures, the FBARs, 5471s, PFICs, and other good stuff. We are a lot more familiar with that because we deal with it more often.

The other regime, the nonresidents, is a lot different and a lot less familiar to most people because it is not a daily thing that most people do. So, the difference there is that the tax base is only U.S.-source income. Obviously, there are a few exceptions; but essentially, it has to be from sources within the United States.

Mr. Redpath

And I would refer our viewers back to the program that we did last year on foreign tax credit where we talked a lot about what is U.S.- and what is foreign-sourced income.

Ms. Maroney

Yes, and then, this U.S.-source income is sort of divided into two very broad categories. One is FDAP which is more like an investment-type income, [taxed at a] flat 30-percent rate. Very nonintuitive to a lot of people that it is flat and there are no graduated rates. If you earn $100, it is the same 30 percent. If you earn a billion dollars, it is the same 30-percent rate.

Then, ECI (which is effectively connected income) is more like a business-type income. That is more familiar for people where you get to deduct expenses and it has graduated rates.

All of that goes on Form 1040-NR. It looks sort of like Form 1040, but it has two very different mechanisms. Again, people don't [always] realize that page one is for the business income, ECI. FDAP and the 30-percent withholding are reported on a completely different schedule—Schedule NEC—and it calculates that flat tax rate, and only the tax comes into Form 1040.

Mr. Redpath

What is foreign-sourced income and not foreign-sourced income is really highly complex, so that is a whole program (or two) in and of itself. What is effectively connected? And you mentioned FDAP. What are those and what are we looking at? Let's [start with] what does "effectively connected income" mean?

Ms. Maroney

Sure. Effectively connected income is really trade or business income from sources within the United States. It's a very gray area because the Code or, for that matter, any regulations or anything [else] don't really define what is a trade or business, and we don't have a set of rules to follow. It's an argument that you make, that, "My activity rises to the level of trade or business. It is not an investment one-off activity. It is a continuing activity for profit."

Mr. Redpath

These are the arguments we get into under Section 162. What is a trade or business? We get into this argument under 469. Is it a passive activity? So, with the hobby loss rules, we are always arguing what is a trade or business—or a real estate activity—does it rise to the level of a trade or business? So, as you said, it's a term that is used quite a bit, but there isn't one definite definition that we can look at.

Ms. Maroney

Yes, it is a very gray area; and, a lot of times, it is more art than science for attorneys to draft legal memos and argue that it is a trade or business or not. But one thing that we don't look at here is whether you are actively involved in this, or you are just passively involved. If it is a trade or business, it is a trade or business.

Important things to understand about ECI, or effectively connected income, is that you can deduct expenses that are properly deductible, and it has graduated rates. So, if you earn $100, it's going to be taxed at the 10-percent rate; if you earn a million dollars, it's going to be taxed at the 37-percent rate. That is sort of what you are used to seeing on Form 1040, on your domestic returns.

Mr. Redpath

What about capital gains? What about gains on the sale of property? And I know that FIRPTA, the Foreign Investment in Real Property Tax Act, when it came in, it turned everything on its head, including most of the tax treaties we had. So how are gains, for example, on real estate treated?

Ms. Maroney

So, a little bit of a throwback is that when ECI first came in, it was just limited to trade or business income. Gains (kind of by definition), they were like one-off transactions, and they didn't really fall into the trade or business income. Over the years, Congress came in and pulled in different types of gains under the definition of effectively connected income. The gains on real estate were the first thing, and that came with FIRPTA. I don't know how old that law is, but I do know what caused it was the Chrysler Building, I believe, in New York City. A Japanese firm owned the Chrysler Building, and they sold it for a massive gain a few years down the line; and they ended up paying no tax in the United States. Congress felt that was absolutely not right because real estate that is very clearly connected with the U.S.—it's right on U.S. soil—and how can a foreigner just pay no taxes on it? So, they pulled that into the definition of ECI. A more recent change was with the TCJA, where they pulled in the gains on the sale of partnerships as ECI income, as well. A lot of people are still grappling on how to really comply; and the IRS is still grappling on how to implement this rule. But essentially, what it says is that if a foreigner invests in a partnership and then sells that partnership interest, you have to look through to the partnership assets and see what kind of assets are there. If it is investment assets, it is investment gains, and we don't pull that into ECI. But if it's business assets—actual assets used in a trade or business in the United States—those gains on the deemed sale of assets become effectively connected income in the United States and is taxable to the nonresident.

Mr. Redpath

What about securities, people selling stocks and bonds?

Ms. Maroney

Gains on securities, unless they rise to the level of a trade or business [are not ECI]. If you are just an investor and you buy securities in Google or whatever, that is one area where it is still not effectively connected income; it is still not taxable income in the United States.

The only exception to that is if a nonresident is in the country for more than 183 days in the current year. (So, it is a different test from the substantial presence test; it is just looking at the current number of days.) If they have capital gains on sales of securities, that is considered FDAP and that is taxed at a 30-percent rate. So, in your example where you have a colleague or friend who is commuting from Canada and Mexico, their days, theoretically, don't count for the substantial presence test and can be excluded. But if they are here for more than 183 days, they could be subject to this rule that taxes their capital gains in the United States. It catches a lot of people off guard. I had a situation where a foreign student came into the United States. Their days don't count for the substantial presence test, but they got pulled in under this rule. They had to sell a bunch of stock to finance their tuition (because they don't get any scholarships; they don't get any in-state tuition rates or anything, so their fees are humongous). The person sold a bunch of stock investments to finance the studies, had a bunch of gain, and got a very surprising tax bill—because you think, "Oh, long-term capital gains, 15-percent rate." No, it is FDAP. It is 30-percent flat. There are no deductions.

Mr. Redpath

You just mentioned a good lead-in to our next topic, the FDAP, which is fixed, determinable, annual, or periodic. So, what is that? You mentioned one example. What else does that encompass?

Ms. Maroney

FDAP is a loose basket of sort of related stuff, sort of not. Really, think about it as more passive-investment-type income, and it includes what you normally associate with investments: dividends, interest, and OID (original issue discount); some retirement, including social security benefits, can fall into it; alimony; rents (by default, rents fall into FDAP territory); royalties; some scholarships and fellowships; other things that fall into it are prizes, awards, lottery winnings, those kinds of things. So, *other than* trade or business income.

Mr. Redpath

And gambling. If the foreigner goes to Vegas and wins some money, it fits right in there to be taxed at 30 percent.

Ms. Maroney

Correct. Then, you get into the issues of can you deduct gambling losses, etc. That is one of the reasons why the U.S. is not really a very big destination for international gamblers. International gamblers usually prefer more tax-friendly jurisdictions—a lot of them in Asia.

Mr. Redpath

So, this is not a net basis. This is a gross basis, right? As you said, it is 30 percent on the gross. How do you report it?

Ms. Maroney

Correct. So, that goes onto a whole, completely separate schedule on Form 1040-NR, and that schedule is Schedule NEC. A lot of people don't realize that, because there is a line item on the front page of Form 1040-NR for interest or dividends and rents, which are your standard FDAP categories. So, a lot of people are just going to put it there, and that is not right. That interest needs to be effectively connected with the trade or business, which has a whole different [set of] criteria that you have to use. If it is just an investment-type interest or dividend, it has to go on that Schedule NEC where it will be subject to the flat 30-percent rate or a rate that is reduced by a tax treaty.

Mr. Redpath

We have an example here of Andy. Could you go over that example with us?

Ms. Maroney

Sure. This really is to illustrate the difference between FDAP and ECI, the very stark differences that it can produce. Andy, who is a nonresident in the United States, owns a rental real estate property in Miami. His gross rental that he collects every month is $100,000. His rental expenses, including everything (depreciation, taxes, management fees, etc.), are $90,000. So, we net $10,000 worth of net rental taxable income. By default—very nonintuitive for a lot of people that are used to dealing with Schedule E's on Form 1040—by default, this income would be taxed on a gross basis, meaning 30 percent on the gross $100,000 worth of receipts. So, the tax is $30,000 on this rental by default because it falls under the FDAP rules.

Now, specifically for rentals, there is an election (because as you can see, this produces really terrible results). There is an election that you can make that treats this income as ECI. One of the reasons they did this election is to avoid (I believe) constant bickering and arguments [such as] does your rental rise to the level of a trade or business, or does it not? So, as sort of a safe harbor, they said, "Okay, fine, just make the election. We'll call it a trade or business, and we'll call it ECI." Now, what does that do? It pulls it into what we are a lot more familiar with—on Schedule E, where we tax it on a net basis. We only tax $10,000, and we are subject to the graduated tax rates. Assuming there is no other income, we just pay $1,000 at a 10-percent tax rate. So, there is a huge difference between the FDAP $30,000 bill and the ECI $1,000 bill.

Mr. Redpath

That's a great example. So, effectively connected, you have a connection—I mean, that is [clear] just by the term. There is a connection to the United States—property, or there's a job, a business, or whatever, going on in the United States.

But the FDAP, you might not be in the United States. You may be just an investor, right? So, how does the United States—and by the way, not just the United States but anyone using source jurisdiction or taxing the source—what is the way that the government makes sure they collect their tax? Most countries use this as the mechanism; this is how we ensure collection. So, with FDAP, how does the government make sure they get [that tax]?

Ms. Maroney

As you mentioned, if I'm just an investor and I'm not a resident, and I live in (pick a country) China, Russia, whatever, good luck to the IRS trying to track me down, catch me, send me a bill, and force me to pay any tax. So, the IRS came out with a mechanism where they force the payees (the banks) to withhold the tax. That is where the whole nonresident withholding regime comes in, and it is very complicated and super-nuanced. It's on Form 1042, and the recipient's version of it is 1042-S. I can very confidently tell you that I think I [received] these withholding forms done correctly a handful of times; 80–90 percent of the time, there are errors on it, even by the big banks, because it is so complicated and so nuanced. And a lot of times, something is just miscommunicated somewhere between the client, the bank, or the investment. The scary part with those withholding forms is that the withholding agent (a lot of times, it's the bank for investment income or dividends, interest, etc.), they are personally liable for the tax.

Mr. Redpath

So, Renata, ECI may have some withholding. I think partnerships, for example, may have withholding, and there's Form 8805. But I think the one that sometimes people don't understand is the buyer of a real estate or a partnership interest (Form 8288), there are potential withholding requirements here. So, yes, if I'm the seller and I'm buying property from a nonresident, I'm paying them. I may have withholding responsibilities, right?

Ms. Maroney

Yes, again, one of those nonintuitive things that comes along with the taxation of nonresidents is the IRS is forcing, whichever way it can, the withholding. In a real estate transaction, we talked about the gains on the real estate are deemed to be ECI, and the IRS wants to make sure that it collects its money. Who is the other party in the transaction that controls the money? It's the buyer. So, the IRS put the responsibility onto the buyer to withhold money on the gain on the real estate; and the TCJA, back in 2017, did the same thing for the buyer on purchases of partnership interests from a nonresident. There is a very complex procedure for how you come up with the withholding amounts, how you transmit it, and how you file the forms. Nothing about international tax is easy. That is one of the parts that is really complex.

Pretty much all of the FDAP income that is coming from the U.S. is going to have withholdings, or at least supposed to have withholdings if the payors do their accounting properly. A lot of ECI business-type income will not have withholdings. There is less emphasis on withholding on ECI. The IRS realizes that if you have a trade or business in the U.S., you will be filing a tax return because you do want to get all of those deductions, all of those expenses deducted, and you want to get the graduated rates. The only way to do that is to file the return; and, if you file the return, you will pay the tax. So, a lot less withheld on ECI, and a whole lot more withheld on the FDAP on Form 1042-S. Whether or not it's correct is a whole separate issue.

Mr. Redpath

Now, you have mentioned treaties; and, with treaties, one of the things that can be negotiated is a lower rate. But one thing to mention is that if you have a bond, a lot of people say it is not fair, but a U.S. person can pay tax on the interest on that bond. But potentially, there would be no tax on a foreign person if they do not have more than a 10-percent ownership interest in that company, and that's called "portfolio interest." It has been around a long time. The intent was to help U.S. businesses get into what is called the Eurobond market—bonds designated in something other than their currency. The interest rates at the time that this was put in were running at about 22 percent prime. People, businesses, were paying 22 percent plus. And the idea was it reduced the value of the dollar which was very strong (which is great if you're importing, but not so great if you're exporting), and to reduce the pressures on short-term bond markets. It kind of did what it was supposed to do. It's still there, so it is possible that the rate could be zero if, in fact, it's portfolio interest, and they own less than 10 percent of the business. But most of our tax treaties provide for differing rates of tax on differing things, is that correct?

Ms. Maroney

Correct.

Mr. Redpath

And we have a slide up here. We have a slide up here with Spain and then India. Could you go over this for us?

Ms. Maroney

Sure. So, there are about 70 income tax treaties that the U.S. has with different countries. Two of the most commonly used tax benefits in there: one is the reduction of that flat 30-percent rate to something lower. And the lower could be zero, or it could be 5 percent, 10 percent, 15 percent, 25 percent, something else. Most common of that is probably a dividend. For example, in the U.S.-Spain tax treaty, there are two dividend rates. One is if you own more than 10 percent, then you just pay 5-percent tax. Or you pay 15-percent tax on any kind of other dividends. But this only applies if you are talking about receiving dividends from a Spanish corporation, or from a U.S. corporation if you are a Spanish resident. If you are talking about any other country, you have to look at other treaties which will have different rates, and it is all the power of negotiations between the two countries.

So, there are these withholdings—dividends most common—but there are also some withholdings on interest, some on royalties, some pensions, and a couple other things, but dividends are probably the most common that comes across in terms of FDAP income.

The other thing that treaties do is they help with ECI income, as well. That comes in the form of all kinds of provisions for service income. So, if a foreigner comes into the United States, performs services, earns a salary or commission or bonus or whatever (some sort of compensation for those services in the United States), sometimes we can claim tax treaty benefits and exempt that income or reduce the tax or do something with it.

[Here is] sort of a summary with a treaty with India. The income falls into a whole bunch of different categories between dependent services, essentially wages, independent services—which is like independent contractors. So, [for example, the Form] 1099 people that you see. Then, they go into very specific [areas], like public entertainment, teaching, studying, and training. Other tax treaties have a special provision for board of director fees and things of that nature. Each treaty will be a little bit different, but they all get to the same concept of, if you have this type of income for performances of services in the United States and you meet these conditions, those will exempt it from taxes in the United States. So, for example, with India, if you are an independent contractor and you come into the United States for less than 89 days, you can exempt that income from taxes in the United States.

A lot of times, it's a very powerful thing if you can plan it in advance and make sure that you don't exceed those limits, you don't exceed that number of days, and you do, in fact, have a tax treaty to claim. Because if you are going to come from Brazil, which doesn't have a tax treaty, any dollar earned in the U.S. will be subject to tax because Brazil didn't negotiate a tax treaty.

Mr. Redpath

And it's going both ways. It's their residents, our residents, our citizens, so it is a two-way street. But I think one of the things the U.S. really pushes on tax treaties and why they want a tax treaty and maybe they are willing to give up some things in the tax treaty, is the fact that they get the information sharing. The U.S. says, if you don't engage in information sharing with us, we are not going to sign a tax treaty with you. So, I think that is really one of the things the U.S. is always trying to get out of these tax treaties. They may give up a little bit here and there, but I think they think they're gaining on the back end on this.

So, Renata, thanks very much for being here. Appreciate it. This is a really complex area, but you have really helped to simplify it for our viewers. Renata Maroney, thank you very much for joining us, and we will have you on another program soon. Thank you, Renata.

Ms. Maroney

Thank you so much.

Mr. Redpath

Thank you to our viewers. Stay safe.

U.S. Taxation of Nonresident Aliens (NRAs)

By Ian J. Redpath, JD, LLM

A. Introduction

In order to properly assess an income tax on an individual, a taxing authority must have jurisdiction to do so. Internationally, the most common forms of jurisdiction are source and residence. Source jurisdiction makes sense as the income is generated in that country. The tax generally is collected via a withholding requirement on the U.S. payor. This is usually on a gross basis without any deductions. Residence jurisdiction, as the name implies, allows income tax on individuals who are residents of a country. This is often on a net basis through the normal methods of taxation, such as filing a return.

The United States adds another jurisdiction and applies U.S. income tax on citizens of the United States, regardless of where they reside. The United States taxes its residents and citizens on their "worldwide" income. To avoid double taxation, there is a foreign tax credit or a deduction that may be taken for income taxes paid to a foreign jurisdiction. For purposes of this material, we will be discussing the U.S. taxation of NRAs [See §§871, 881, and 882].

If an individual is an NRA, then only source jurisdiction applies. Only the U.S.-source income of nonresident alien individuals is subject to U.S. taxation. However, the U.S. may be able to tax the foreign-source income of a nonresident alien individual if that income is effectively connected with the conduct of a U.S. trade or business. The following chart summarizes the US taxation:

	U.S. resident for tax purposes	**U.S. nonresident for tax purposes**
Tax base	Worldwide income	U.S.-source income
Tax rates	Graduated rates (10%-37%)	Flat 30% rate on investment ("FDAP") income and graduated rates on business ("ECI") income
Main tax form	Form 1040	Form 1040-NR
Additional reporting	Subject to foreign informational reporting (FBAR, 5471, 8621, etc.)	Subject to nonresident withholding (Forms 1042-S, 8805)
Residency certification	Form W-9	Form W-8BEN

If an individual is determined to be an NRA with income subject to U.S. tax, they will file Form 1040-NR. The income reported will be taxed differently depending on whether it is "Effectively Connected to a U.S. Trade or Business" (ECI) or "Fixed, Determinable, Annual, and Periodic" (FDAP). NRAs filing Form 1040-NR cannot use the standard deduction, nor all the itemized deductions afforded to U.S. resident aliens. They also cannot file as married filing jointly.

B. Definition

The term "nonresident alien" (NRA) is used both by the United States Citizenship and Immigration Services (USCIS) and the IRS, but it has two different meanings. The status under immigration law may be relevant in applying the tests and exceptions for income tax purposes. Thus, a person can be an NRA for immigration purposes but a resident for tax purposes.

An NRA is an individual who is neither a citizen nor a resident of the United States. Citizenship is through one of two categories: nationality at birth or naturalization laws. Under the income tax law, residency is determined under one of two tests:

- Lawful permanent resident (citizenship or green card test)
- Substantial presence test (183-day test) [§7701(b)]

If either of the tests is met, the individual is considered a resident for income tax purposes. It should be noted that the above is for *income* tax. Other types of taxes can apply a different set of rules to determine the U.S. jurisdiction to tax. For example, for gift and estate tax purposes, residency is determined under the subjective "domicile" test. This is an analysis of the taxpayer's connections to the U.S., such as place of abode, family, friends, banking, and community contacts. For income tax, it is an objective test looking at either immigration/citizenship status or presence in the U.S.

C. Citizenship

The XIV Amendment, Section 1, Clause 1 of the U.S. Constitution provides that all persons born in the United States are U.S. citizens. This is the case regardless of the tax or immigration status of a person's parents. In addition, a person born outside the United States may also be a U.S. citizen at birth if at least one parent is a U.S. citizen and has lived in the United States for a specified period. The USCIS web page on citizenship through parents contains detailed information for persons born outside the United States to a U.S.-citizen parent or parents. As a result, it can come as a surprise to someone who has never been in the United States physically to find that they are, in fact, a U.S. citizen and subject to taxation on their worldwide income.

Section 349(a)(5) of the Immigration and Nationality Act (INA) [8 U.S.C. 1481(a)(5)] governs the right of a United States citizen to renounce abroad his or her U.S. citizenship. A person wishing to renounce U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship:

- Appear in person before a U.S. consular or diplomatic officer,
- In a foreign country at a U.S. Embassy or Consulate, and
- Sign an oath of renunciation.

Renunciations abroad that do not meet the conditions described above have no legal effect. U.S. citizens can only renounce their citizenship in person and, therefore, cannot do so by mail, electronically, or through agents. The renunciation is irrevocable and may have no effect on U.S. tax or military service obligations. In addition, the act of renouncing U.S. citizenship does not allow persons to avoid possible prosecution for crimes which they may have committed or may commit in the future which violate United States law, or escape the repayment of financial obligations, including child support payments, previously incurred in the United States or incurred as United States citizens abroad. It should be noted that if a person is not a dual citizen at the time of renunciation, they will be stateless.

The U.S. will continue to tax U.S.-source income for anyone who relinquished their U.S. citizenship within 10 years of deriving that income if they gave up their citizenship to avoid U.S. taxation. If the NRA lost U.S. citizenship within a 10-year period immediately preceding the close of the tax year, they must pay taxes on their U.S.-source income as though they were still U.S. citizens. This provision applies only if the expatriation had as one of its principal purposes the avoidance of U.S. taxes. There is an avoidance presumption if either of the following apply to the person:

- Average annual net income tax for the five taxable years ending before the date of loss of U.S. citizenship is more than $190,000 for 2023, or
- Net worth as of that date is at least $2 million.

These provisions also apply to "long-term lawful permanent residents" who cease to be taxed as U.S. residents. A long-term permanent resident is an individual who is a lawful permanent resident of the United States in at least eight taxable years during the previous 15-year period. An exception applies to certain individuals with dual citizenship.

The United States will continue to treat individuals as U.S. citizens or residents until the taxpayers provide certain required information and an expatriation notice. Expatriates who are subject to the 10-year rule must file an information disclosure statement annually. If an expatriate is physically present in the United States for at least 31 days during a calendar year during the 10-year period, the individual is taxed as a U.S. citizen or resident.

D. Income Sourcing

Income sourcing rules are very complex, with multiple exceptions and differing treaty applications. Generally, they are contained in §§861 through 865 of the Code. Each income type has a different rule; there are some general rules, but few shortcuts. If foreign sourcing cannot be shown, the default is to treat income as U.S. sourced. It must be remembered that income is not necessarily foreign sourced just because a foreign jurisdiction taxed the income.

The following chart summarizes many of the sourcing rules. Of course, there are numerous exceptions to these general rules. If the income is sourced in the United States, then the U.S. has jurisdiction to tax it. The taxation may vary based on the type of income and any applicable treaty provisions that may apply to the particular income.

Income Type	**Generally Sourced To**
Salaries, wages, other compensation	Where services performed
Pensions	Where services were performed that earned the pension
Business income: Personal services	Where services performed
Business income: Sale of inventory – purchased	Where sold (where title passes)
Business income: Sale of inventory – produced	Where produced (allocation may be necessary)
Interest	Residence of payor (not the recipient)
Dividends	Residence of payor
Rents	Where property is located
Royalties: Natural resources	Where property is located
Royalties: Patents, copyrights, etc.	Where property is used or permitted to be used
Gains on sale of real property	Where property is located
Gains on sale of personal property: Nondepreciable	Seller's tax home (different from residency for tax purposes)
Gains on sale of personal property: Depreciable	Where sold (separate rules for amounts related to depreciation recapture)

E. ECI

The term "trade or business" is notoriously not defined anywhere in the Code. It has been given different meanings in many different contexts, such as hobbies, §162 deductions, and §469 passive activity losses. Generally, the activities carried on in the United States must be regular, substantial, and continuous. There are two aspects to this determination:

- Is the NRA engaged in "the conduct of a U.S. trade or business," and
- Is the income "effectively connected" to a U.S. trade or business?

Factors in determining whether a U.S. trade or business exists include the location of production activities, management, distribution activities, and other business functions. Trading in commodities and securities ordinarily does not constitute a trade or business. Once an NRA is considered engaged in a U.S. trade or business, all U.S.-source income, other than investment and capital gain income, is considered effectively connected to that trade or business and is subject to U.S. taxation. Gains on the sale of real property are treated as ECI if the Foreign Investment in Real Property Tax Act (FIRPTA) is applicable. Gains on the sale of partnership interests are treated as ECI if the partnership's assets generate ECI. However, most gains on the sale of securities are neither ECI nor FDAP. Under a special rule, capital gains on the sale of securities are subject to a 30-percent tax if the nonresident spent more than 183 days in the U.S. in the current year.

ECI is taxed at the same rates that apply to U.S. citizens and residents and may also be subject to alternative minimum tax. One major advantage to this type of income over FDAP is that it is taxed on a net basis, so deductions attributable to the production of the ECI are allowed. ECI is reported on page 1 of Form 1040-NR.

F. FDAP

FDAP income generally is passive investment-type income: dividends, interest, original issue discount (OID), U.S. Social Security benefits, alimony, rents, royalties, scholarships and fellowship grants, other grants, prizes and awards, and lottery and gambling winnings. FDAP is taxed on a gross basis and cannot be reduced by expenses and deductions. While the rate of tax is a flat 30 percent, this is often reduced significantly by treaty. FDAP is reported on Schedule NEC and not on page 1 of Form 1040-NR. Because the payments are to NRAs, the tax is collected via a withholding requirement on the payor [§§871 and 1441].

There are exceptions to the FDAP 30-percent rate even though the income is U.S. sourced. These exceptions are to encourage certain types of foreign investment in the U.S. For example, interest earned on bank deposits is exempt as long as it is not ECI. Interest on U.S. Treasury bonds and notes generally will not be subject to the tax. Another major exception is "portfolio interest." If an individual owns, directly or indirectly, less than 10 percent of the voting power of the corporation, then an investment that creates interest will not be subject to the 30-percent withholding tax. In general, portfolio interest is:

- Non-effectively connected interest that would be taxable under either §871(a) or §881(a) but for this subsection, and
- The interest is paid on an obligation (debt) that is either in bearer form or registered form.

The interest income that the foreign lender earns must not be effectively connected to the lender's U.S. trade or business. It must be noted that obligations in bearer form issued after March 18, 2012, do not qualify for the portfolio interest exemption due to the repeal of §163(f)(2)(B). Thus, for obligations issued after March 18, 2012, only debt in registered form can qualify for the portfolio debt exemption. [Notice 2012-20]

There is a special election under §871(d) to treat rental income as ECI. This allows the deduction of rental expenses and computation of the tax at graduated rates.

Example ECI/FDAP: Andy, a nonresident for U.S. tax purposes, owns rental real estate in Miami, Florida. His gross rental income is $100,000. His deductible rental expenses (including real estate taxes, management fees, mortgage interest, depreciation, etc.) amount to $90,000.

Question: How is Andy's rental income taxed in the U.S.?2Answer: By default, rental income is FDAP income subject to a flat 30-percent tax (unless reduced by a tax treaty) on gross amounts. That means that Andy would have to pay $30,000 to the IRS.

However, there is a special election under §871(d) to treat rental income as ECI. This would allow Andy to deduct rental expenses and compute the tax at graduated rates. If the rental was Andy's only U.S.-source income, he would be in the 10-percent bracket and would owe just $1,000 to the IRS.

G. Foreign Investment in Real Property Tax Act (FIRPTA)

Historically, NRAs and foreign corporations could avoid U.S. taxation on gains from the sale of U.S. real estate if the gains were treated as capital gains and not ECI. In the mid-1970s, under pressure from farming interests, Congress took action to take away the incentive that allowed nonresidents to bid up the price of farmland by enacting FIRPTA.

Under FIRPTA, gains and losses realized by NRAs and foreign corporations from the sale or other disposition of U.S. real property interests (USRPIs) are characterized as ECI, thus subject to U.S. taxation. The term "U.S. real property interest" means an interest in real property, including an interest in a mine, well, or other natural deposit, located in the United States or the U.S. Virgin Islands, as well as certain personal property that is associated with the use of real property, such as farming machinery. It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the five-year period ending on the date of disposition. If, on the date of disposition, the corporation did not hold any U.S. real property interests, and all the interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then an interest in the corporation is not a U.S. real property interest. After December 31, 2004, the sale of an interest in a domestically controlled qualified investment entity is not the sale of a U.S. real property interest. A qualified investment entity is any real estate investment trust (REIT) or any regulated investment company (RIC). The entity is domestically controlled if, at all times during the testing period, less than 50 percent in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the five-year period ending on the date of the disposition, or (b) the period during which the entity was in existence. [See IRS website: *Definitions of Terms and Procedures Unique to FIRPTA*.]

NRA individuals must pay a tax equal to the lesser of:

- The applicable tax on their alternative minimum taxable income, or
- Regular U.S. rates on the net U.S. real property gain for the taxable year.

Any purchaser acquiring a USRPI from a foreign person must withhold 10 percent of the amount realized on the disposition. [§1445]

H. Foreign Corporations

A corporation created or organized in the United States is a domestic corporation; otherwise, it is a foreign corporation. Foreign corporations are taxed similarly to NRAs. Capital gain income is exempt from tax, and a flat 30-percent tax rate is applied to U.S.-source investment income items if they are not ECI. Generally, foreign corporations will be taxed only on their ECI in the U.S.

I. Tax Treaties

There are over 60 bilateral tax treaties in effect. These are very useful in reducing the flat 30-percent withholding on FDAP income and exempting some ECI income. For example, under the U.S.-Spain income tax treaty, the 30-percent withholding on dividends paid by U.S. corporations is reduced to 5 percent in cases of 10-percent ownership, and 15 percent on other dividends. Under the U.S.-India income tax treaty, ECI related to the performance of personal services could be entirely exempt from U.S. taxes if conditions are met. Here is an excerpt from that treaty:

Code[1] (2)	Purpose[22] (3)	Maximum Presence in U.S (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
17	Independent personal services[7, 8]	89 days	Any contractor	No limit	15
18	Dependent personal services[8, 17, 57]	183 days	Any foreign resident	No limit	16
42	Public entertainment	No limit	Any U.S. or foreign resident	$1,500 p.a.[26, 50]	18
19	Teaching[4]	2 years	U.S. educational institution	No limit	22
20	Studying and training:				
	Remittances or allowances	Reasonable period	Any foreign resident[27]	No limit	21(1)

U.S. citizens cannot use tax treaty tie-breaker rules to become nonresidents for income tax purposes. In addition, claiming tax treaty tie-breaker rules can jeopardize U.S. immigration status. To claim the benefit, the taxpayer uses Form 8833. Note that the tax treaty tie-breaker rule treats the individual as a nonresident solely for the purposes of computing U.S. income tax liability. For other purposes, the individual will still be treated as a U.S. resident. It should also be noted that the U.S. Constitution provides that the supreme law of the land is statutes and treaties. This is interpreted as meaning they are of the same level. While most countries treat treaties as contracts, the U.S. can override existing law with a new treaty or override a treaty provision with a change to internal law. To deal with this, the courts have adopted the “last-in-time” approach. Whichever is the last adopted will apply to that situation. [*Cook v U.S.*, 288 U.S. 102 (1933)]

J. Reporting

The IRS often has no practical way of enforcing U.S. tax laws on NRAs and, therefore, requires withholding of U.S. taxes at the source, such as with FDAP or FIRPTA. FDAP withholding is reported on Form 1042-S by payees. It is a very complex form, often incorrectly prepared. Note that withholding agents have personal liability for the tax. ECI withholding is reported on:

- Form W-2 by U.S. employers
- Form 8805 by partnerships
- Form 8288 by the buyer of the real estate or partnership interest

Most ECI is not subject to withholding.

K. Conclusion

The taxation of nonresident aliens is an important determination for any practitioner who may have NRA client(s). The rules are complex but may provide some benefits with proper planning.

GROUP STUDY MATERIALS

A. Discussion Problems

1) Your client, Svetlana, is a foreign national residing in Farawayland. She has invested heavily in Farawayland. She has a former spouse in the United States who is paying her alimony from their 2015 divorce. (Svetlana is taxed on the alimony.)

2) In addition to the above, Svetlana owns a corporation, organized in Farawayland. It has not opened offices and is conducting business in the United States.

3) You have determined that Farawayland has a tax treaty with the United States.

Required:

Discuss the issues fairly presented by the above independent facts.

B. Suggested Answers to Discussion Problems

1) The income generated for Svetlana in the United States is FDAP. Generally, she will be taxed at a 30-percent flat rate in the U.S. The payor will be required to withhold that tax from the payments to Svetlana. It is possible that some of the interest could be exempt from the withholding as portfolio interest if she owns less than 10 percent of the company. The alimony is also considered FDAP since it is taxable to her.

2) The corporation operating in the United States is a foreign corporation and, thus, is subject to net taxation on the ECI that it generates in the United States.

3) It is possible that the tax treaty between the United States and Farawayland may contain lower rates of tax on items such as interest and dividends. Any conflict with the Code will be resolved using the last-in-time rule.

PART 3. BUSINESS TAXATION

Tangible Property Regulations

Taxpayers and the IRS have historically argued about what had to be capitalized and what could be written off over a shorter period of time. The appropriate period to write off an expenditure needing to be capitalized was also a continual issue. The tangible property regulations were adopted in 2013 to address many of these issues. The final regulations are effective for taxable years beginning on or after January 1, 2014. Ian Redpath and Bruce Johnson discuss the tangible property regulations, which are often overlooked but can provide real benefits.

Let's join Ian and Bruce.

Mr. Redpath

Bruce, welcome to the program.

Mr. Johnson

Ian, it's fantastic to be here. Always a pleasure.

Mr. Redpath

Last time, we did a program which was really well received on cost [segregation] studies, and I know that that's your area of expertise. You're with Capstan Tax Strategies, and you deal with these things all the time, as well as making presentations to accountants and attorneys on this type of area. A lot of us have just kind of put aside these tangible property regs. You forget that they're out there if you're not dealing with them all the time. In talking with you off camera, it suddenly dawned on me, we have to do a program on this because this is really interesting. A lot of savings, and I think a lot of things that our viewers may have not [necessarily] forgotten about but haven't been on the top of their list.

Mr. Johnson

To your point, Ian, it's kind of hard to believe that these came out in permanent form in January of 2014. Seems like decades ago, actually. We are coming up on eight plus years. But prior to that, there were no real written rules with regard to capitalization and the ability to expense certain things.

We've had some great opportunities, like the one here that we see with regard to, in particular, an auto dealership that underwent renovations—actually, repositioning of an existing retail store to an auto dealership. The result of that, ultimately (certainly cost segregation was one of the foundational strategies), was looking at the interplays between these new rules of the TPRs. And to your point, yes, they've been in service for a long time. As we all can probably recall, back in those days, there was a mad rush. This was the topic of the day almost every day with regard to, *what is this? What does this now mean for us?* It did institute a number of opportunities, but also, certainly, another level of complexities that people now had to understand to be able to navigate and to get the benefits that everybody really wanted. For example, this is the first time ever in writing that the IRS had indicated that a taxpayer, when something was abandoned, replaced, or demolished, could write off the remaining basis of the old asset. So, it was a pretty big deal.

Again, like you also said, at least based upon our experiences here at Capstan, as time has gone by, this has not necessarily been top-of-mind for folks. It's important because these need to be timely used strategies. It's not like we can go back in time somewhere to cost segregation and say, "I didn't need these, but now, three years later, I can use these deductions. We can go back and use a [Form] 3115 or in some cases, amend a return to get that." That is not the case with many of these strategies in the TPRs. They have to be timely filed in the year the work is completed.

Mr. Redpath

The example here with the auto dealership—as you said, a big-box store acquired in 2018, renovated, and placed in service in 2020. So, you had the bonus depreciation in play and QIP [qualified improvement property]. Single-story showrooms, sales, administrative areas, customer waiting areas, the body shop, the lift stations to do the work, and a drive-through service area. And the point here is the depreciable basis—$4,925,038 (or roughly $5,000,000) in depreciable basis. But how, what, where, and when become the real issue.

As you mentioned, and we have another slide here, the tangible property regs, they're very much in play. So, we have our four circles here. Can you tell us what our viewers should be looking at?

Mr. Johnson

Yes, so these are the typical strategies that we see interplay with many opportunities. Number one, at the top of the circle there, the 12 o'clock position, is cost segregation. But then, we also look at getting involved in maybe some [Section] 179 deduction benefits, or the energy incentives, such as 179D, in this particular instance. Then, obviously, what we are talking about here are the TPRs. And what's interesting is that the cost segregation or depreciation-derived benefits—or sorry, depreciation-derived benefits and the energy benefits of 179D—those are very flexible. You can use those when you need those; we can go back in time. But 179 and the TPRs, both of those have a similar restriction in that you have to make these claims in the year the work was done, as we mentioned before. But in certain instances, and this particular example that we're discussing, had almost all of these interplaying as a benefit for this particular taxpayer. What is super important is understanding this and making sure you have the time to navigate in preparation and also, then, to execute the strategy.

Mr. Redpath

Yes, and I think, Bruce, that there's a point where all of us should at least admit what we don't know. I am probably not going to call you on a corporate reorganization. However, what I know about this [TPRs]—I know about it, I'm aware of it, but I don't think I'm going to be doing my client any good if I'm trying to make these decisions myself. So, we need someone like you, an expert in the field, to be able to sustain on an audit. I don't think this is something that [every practitioner can do]. I'm saying this because I do know practitioners who say, "I can do this, and I'll come up with a way of allocating." That's really, in some respects, foolhardy to not know what you don't know.

Mr. Johnson

I would say that most tax professionals are certainly aware of this. But to your point, there are subtle nuances in how you can really set up to get the maximum benefit. Our goal is to educate [about] the potential, demonstrate what the opportunity is, and then, should we have the opportunity, to execute the plan. There are certain instances, Ian, where it just might be that we have a refresher conversation with the CPA to say, "Here are the fact patterns that you have; you can certainly do this on your own, because this is not a complicated endeavor" (unlike the [dealership] example that we are talking about here).

A great example would be if I have a client that owns a warehouse. They have owned it for 10 years. The building itself is maybe 30 years old. Now, we're looking at the need to replace the roofing system. So now, we have a new capital asset. What do we do with the old asset? Back to where we had the four circles, you have a lot of potential strategies here that could be interplaying. One could be for the existing roof, doing 179 expensing because that is clearly a newly defined asset that can be expensed under those rules, if you can use those. Then, certainly, the TPRs, we can be writing off the remaining basis of the assets that are being demolished, replaced, or abandoned. So, in theory, you could have a scenario here in this short example where you're writing off both the basis of the new, as well as the remaining basis of the old. Back to firms like Capstan, certainly we would love to help; but in that simple instance, Ian, if you look at the TPRs, there's a very easy way for the CPA community to be able to come up with the values of those assets. One is using the consumer price index calculation off of the invoice for the new work. That would be an instance where we might have a conversation and say, "Look, unless you really, really want a third party involved, you could be doing this on your own." But when you look at the complex scenarios where you have an old building, multi-tenant, and you really don't know when that tenant space, the assets, were first placed in service, that's where a consultant like Capstan can bring value to the opportunity, certainly to identify and present what the benefits are, but also provide defensibility.

Mr. Redpath

Yes, there's a building right near me; and, at one time, it was a high-end shopping mall—it was *the* high-end shopping mall. Now, it's mostly empty. What they are doing, however, is they are converting it to multi use. They have restaurants in there; they're going to put housing units in there (they haven't gotten to that yet); they are putting in all sorts of different [boutiques] and small shops, as well as restaurants, bars, and entertainment areas. That would be an example where I don't think I would want to be doing that myself. I understand it. But I'm going to need some data, aren't I, if I get audited, to support these allocations that I've made?

Mr. Johnson

I would say yes. Now, I would also say that we at Capstan get involved in lots of projects similar to what you just mentioned. The probability of being audited, at least based upon our experience, is well below the published percentage (about 1.2 percent of all returns are audited). We don't see that. But I can say that in the instances where the audits do occur, yes, the agents are asking for a greater level of detail and relying on what the taxpayer has, to ultimately come down to their next level of questions and so forth.

Again, the two examples we've discussed here, the highly sophisticated auto dealership (which I would put the mixed-use example you just had in that same category) versus, "Hey, I just did a roof." Those are two different scenarios. One, I would suggest looking at a third party to help you do that. The [second] one, I think it's just a matter of kicking off the rust on what you already know to take advantage of it for your client.

Mr. Redpath

I think about a year ago, Bruce—and correct me if I'm wrong here—but I think the IRS did come out and say that they were going to look more closely at cost segregation studies, that this was an area of concern.

Mr. Johnson

Yes, certainly, there are a couple of things that, over the past say five or so years, they were going to be focusing on: small businesses, $100 million and under, and certainly looking at things like accelerated depreciation, or the TPRs, as well. But based upon our experience here at Capstan, we really haven't seen that [materialize] into lots of questions. Now, there may be audits that are occurring by our clients, Ian, but the documentation has been enough to satisfy any questions.

Mr. Redpath

And also, we have had COVID.

Mr. Johnson

Absolutely. And also, being somewhat sympathetic to the IRS's situation, they have had some significant budget restraints and they've had changes—like we all have been dealing with—people issues, staffing, retirement, and all that; and they also have a lot of other things to do. So, this may not necessarily rise to the most important level of interest for them. But when it does, I can say that they definitely look under lots of rocks to make sure that they're covering all their bases.

Mr. Redpath

We have another slide here, which I think is good. It's what's required to be capitalized under the TPRs. Can you go over this for us?

Mr. Johnson

Yes. Anytime an event occurs from a renovation standpoint, we face the question: can we expense, or do we have to capitalize? Prior to the TPRs, it pretty much was a free-for-all; you could almost make up your rules as you went. Certainly, that all changed in 2014. So, when I look at the TPRs, they essentially put a box around a decision process, and they instituted a step of logic that we have to go through. The event occurs and, within the TPRs themselves (and I think it was roughly 600 pages of new regulations for us to have to familiarize ourselves with), they had about 150 specific examples. Windows and HVAC rooftop units are some that come top of mind for me. So, those specific examples, we could be leveraging to determine if our fact pattern fits that; then we have a very easy roadmap to determine expense versus having to capitalize.

If not, then we look at this rather detailed process that we have to step through. The first would be to analyze your formal expense policy. Now, there are three that the IRS has issued as part of the TPR formalization in permanent status. Then, if we have an event that occurs that fits within those, we can expense and we're done.

However, if not, then we go down to the next level of question, which is the infamous (or famous) BAR test: betterment, adaptation, or restoration. Each of those terms has a four- or five-page definition in the TPRs. We have to determine the specific scope of our opportunity. Does it fit these definitions? If it does, we don't pass the BAR test. If it doesn't fit any of those, then we can move on and be able to justify the potential expensing of the asset.

We're not done yet, Ian. There is one level if we pass the BAR test—which, by the way, in my limited experience, I believe that the TPRs were written to justify more capitalization as opposed to expensing; it has been my experience. If you're able to pass the BAR test, then we go to the third round which, I think, is probably the most top of mind for people, and that's the materiality test. That's where this term (which we will talk about shortly in a little bit more detail) "unit of property" (UOP) comes into play.

So, determining if we can't fit the expense policies, we drop to the BAR test. If we pass the BAR test, then we get down to the materiality question. And that's where we look at, does this activity, this specific scope, rise to the level of being material with regard to its category? A good example is, you are doing TI [tenant improvements] work for a tenant space, and there are certain aspects of that [for which] we go through this process: it doesn't fit the expense policy, we pass the BAR test, then we go in and do this mathematical analysis versus UOP, and we could, therefore, justify expensing through that.

I spent a lot of time going through this, but I think it just illustrates the level of complexity that exists for us to be able to justify all or some of a renovation activity in a project. You mentioned that mixed-use property. That's a classic example. We see that quite a bit, and I suspect we are going to see that for the foreseeable future. But being able to walk through this detailed, explicitly defined process [is important] to make sure that you are making a good, sound decision.

Mr. Redpath

You mentioned, and we've heard the term, "unit of property." What exactly is that? That used to be a buzz term. I heard that so many times, I thought I would never want to hear it again in my life; but what exactly is that unit of property?

Mr. Johnson

This is certainly one of the aspects of the TPRs that got a lot of attention. First, "unit of property" is used in other parts of the Tax Code; but, specifically, the TPRs had its own unique definition. Essentially, what it did was create a new segmentation—I'll use that word—of capital assets. Let's say that the renovation that we're talking about is about $1 million worth of work. Then, you look at the scope of activities within that. Initially, this follows a very similar pattern for us that we look at for depreciation. For depreciation in this million-dollar renovation, we'll be breaking things down into its pieces and parts and applying case law to determine the class lives. Then ultimately, hopefully, justifying a depreciation-derived benefit through accelerated depreciation. So, the unit of property follows the same methodology in that you are going to be breaking down the pieces and parts of the scope; but then, you're going to be placing it into the distinct categories identified as "unit of property."

For example, category one for unit of property is structural. So, by definition, in unit of property, that is everything from your roof, windows, doors, foundation, and interior walls. All of that fits inside of that unit of property. What's interesting also to note is that this is an all-new definition for UOP. But the regulations also state that all real estate, whether it be a freestanding building or, say, you just own the tenant improvements, technically, you must have the unit of property identified. It's a compliance aspect for things. So, as I mentioned, it really follows, initially, the methodology of depreciation; but once you have those numbers set and into the categories, this is where things start to differ from standard depreciation.

Standard depreciation, as we know, we have class lives; and over time, we write off a portion of the basis. And in theory, if there is no capital addition over time, we will run out of depreciation. That's not the case with unit of property; because, essentially, unit of property is something that evolves with the building, meaning that roof work that we had mentioned in the example we had before (a building you have owned for 10 years), initially, 10 years ago, you bought the building, and there is a value for the existing roof. Well, now this new event occurs and, aside from depreciation, we have a value of the existing roof; it resides in that structural component of unit of property. So now, we have this activity; and we engage that strategy we talked about where there is a practice for dealing with the new capital asset, but also for writing off the remaining basis of the old. Well, that math certainly [incorporates] itself in the depreciation, but with regard to unit of property, there's also math that goes there. First, you [calculate] the value of the write down for the old roof, and then you add in the new value of the new roof. So, just in that one little illustration (the warehouse), in theory, if you do nothing else over the term of its ownership, you could run out of depreciation. But by [using] the math we just went through, high level, for unit of property, unit of property could still have tremendous value, even at the end of, say, a 40-year ownership. And that's because technically, annually, we need to be updating the unit of property values every year.

Unit of property is something that typically resides in the workpapers. It's not something that is a part of your tax return; it's just a decision metric that you use each time an event occurs. Remember the decision process we mentioned, starting with your expense policy, then looking at the BAR test, and the materiality. Unit of property is part of that last part, the materiality test. Again, you update that annually based upon the capital activities that are going on at a property.

Mr. Redpath

Now, is this related, then, to the partial asset disposition? What exactly is a "partial asset?" Because it seems to me that what you are talking about is we would put it into that partial asset disposition.

Mr. Johnson

Let's go back to the example we've been talking about with the re-roof on a warehouse. The first step is to look at how we can treat this new roof asset. For years, we have all thought, okay, that is a 39-year asset; we are going to depreciate it straight line. But as we talked about, there is the potential, if it is something that the taxpayer can use, you can Section 179 and write off as much or all of the basis of that new roof. But now, remember, how do we treat the old roof? One of the, I would say, unwritten rules of the TPRs is the IRS really didn't want to see multiple instances of the same asset on a tax return. Again, this is the first time ever that the IRS put in writing that a taxpayer can write off the remaining basis.

In our example, we have a 10-year-old roofing system that we purchased 10 years ago. So, let's say it has $100,000 of remaining basis. Well, now, with this activity, we can write off that remaining basis for the tax return on the depreciation schedule; but then, inside the unit of property, we do that same math we discussed. So, in the unit of property, for the structural component, which is section one, we would write off the $100,000, and then we would add the basis of the new roof. Therefore, going forward, we have a new structural component number in the unit of property to look at again next year, say, if something occurs.

It's interesting, Ian. The IRS has posted a number of guidance items with regard to the TPRs since their issuing. About a year and a half after the TPRs came out, they actually issued an Audit Techniques Guide which was kind of exciting because we were thinking, we have all these questions, and they're going to be answered. Basically, it was a repackaging of what the TPRs said. To your point, there have been some other clarifications that have come up, but they haven't been earth shattering. So, from our perspective, there are still a host of questions. Now, we think that the TPRs have pretty good, sound logic in them. We know how to follow most of them; and we haven't been challenged on anything, at least that we've seen in our work. But we know that, for example, a PAD election, a partial asset disposition, we have to do that work in the year the work was completed. You can't go back and say, "Oh, on my 2021 return, I forgot about that roofing system. Let's go back and write it down." We can't do that.

There are still some people that remember that three-year period right around 2013 and 2014 when we had the ghost asset opportunity to go back and clean up our depreciation schedules. Well, that window closed. There are still some folks that think back on those days and that it is still available—that is not the case. So, one of the clarifications you're mentioning is illustrating how we go through that process and making sure that we all remember that we must do these in a timely fashion.

Mr. Redpath

Now, one thing we haven't mentioned, and a lot of our viewers would say, "Well, I have clients and I have used (even if I haven't properly elected it), I'm using the safe harbor, the $2,500 or $5,000." Can you just briefly describe the safe harbor rule and what our viewers should know?

Mr. Johnson

Sure. The de minimis rule came out, and this was one of the areas where it initially came out—I think it was $500 and $5,000, and the IRS adjusted that. And from what I understand, Ian, there is still some ability, if you can prove that prior to the TPR formalization, you had a practice—say it's $10,000 or $50,000—in theory, you could continue demonstrating that you had always had that in effect.

Mr. Redpath

But you would have to show [applicability] on that. The IRS is saying, "Yes, you do have the facts and circumstances, but you still have to show that the law applies to it." In other words, yes, I do have the right to do this, the ability to do this. It doesn't become just, "Oh, if I had it in place," because I hate to say this but, all of a sudden, I can see some old, "Oh, this policy just appeared. We forgot we had it." You have to show that yes, the rules do apply and that you are able to do it. It is not a free "Here. Everybody gets to do it if you already had it in place."

Mr. Johnson

Yes, for sure, and thanks for adding a little bit more color to that. We just know that some of our larger taxpayers have made that argument. But for the most part, people are fitting within the expense policy, the de minimis expense policy, as it was written in the TPR. So, we have the two levels. The first is your standard, up to $2,500 per item, which I suspect is pretty much common knowledge, but I strongly advise people, if you are using the de minimis rules, make sure you have itemized invoices to be able to identify things. Don't use lump sum costing. But the $5,000 is reserved for an entity that has an audited financial statement in place. And as I have come to understand, it is a fairly involved process and typically that is not going to be your average, everyday taxpayer going through that endeavor. Those are the two levels that we see. As long as you have an activity that fits inside that, then more likely than not, you'll be able to leverage that as a defensible method for expensing something. We also have the small business taxpayer rule for anything under $10,000 to leverage. Now, in my experience, Ian, that probably is one of the least useful of these because it really restricts your ability to write off more than the $10,000. So, we don't see that used as often. Then, the third—and it is surprising, I think—I see a lot of our real estate clients using the routine maintenance safe harbor as a strategy that they leverage on an annual basis. So, those are the three policies that are in place. The de minimis is probably the easiest to use, but the routine maintenance safe harbor is probably the most sophisticated. It gives the taxpayer a lot more room to be able to do other things with these rules.

Mr. Redpath

And I think one of the things that our practitioners need to be aware of is the fact that there are certain elections that have to be attached to the return if you are, in fact, electing it. And you have to treat [expenditures in a consistent manner]. For example, if you use the safe harbor, you are saying *anything* that fits within that, you are going to handle under the safe harbor. In other words, you can't pick and choose and say, "Well, these items this year are under safe harbor, but these aren't." It has to be all. A lot of times, that election is missed. It is required to be on there. [The election] is not a change of method. Now, for the small taxpayer, that one sometimes does require a change of method. So, you really need to look at the TPR and see exactly, what do I have to do to do this?

Let's go back—because we have gone through a lot of this—let's go back now to our dealership. We started with this. Where are we now? Let's go back to the beginning and just look at the slide again. We had a property, it is a big box, acquired in 2018, renovated and placed in service in 2020, a single-story showroom, sales—the typical auto dealership (not a typical big-box store which is, generally, just a warehouse, almost, for most big box stores). The total depreciable basis, $4,925,038, or close to $5 million. Now, if we come forward here and look at what the result of this was, [there are] some significant benefits here. Can you go over what is the result of this in applying the TPR?

Mr. Johnson

Sure. I think the numbers here on the slide really speak for themselves. When you're looking at cost segregation and auto dealerships as someone that does this on a regular basis, we typically say this is a target-rich environment. I think the numbers speak for themselves. You have almost $1.3-plus million in taxable benefit that resulted from a cost segregation study on the almost $5 million investment. So, a pretty good return on the investment for that. But as the last bullet on the slide says, it didn't end there because, as we've talked about in this example, this was a purchased, pre-existing building that has been repositioned for a new use. So, what it did was it really brought into play the ability for the taxpayer to use a partial asset distribution.

Mr. Redpath

Yes, we have a slide on that one, also. So how did that work?

Mr. Johnson

To finish on this first slide, before we go to the partial asset disposition, one of the things that is not listed on here is there were assets that were identified that we just didn't know exactly what was taken as a Section 179 expense in this new work, because that potential existed there. As we talked about de minimis, there were things that were highlighted. We just don't know what the CPA and the taxpayer took.

But then, as we just mentioned, it didn't end there. The partial asset disposition, we identified almost another $570,000 worth of existing asset value that was available for disposition. Essentially, the table that you see here references those assets of the pre-existing building that were identified, that were demolished, abandoned, or replaced as a result of the repositioning of the property for the auto dealership.

Once again, if you think back on the slide where we had the four strategies identified in the circles, we see we are leveraging all but one of them here and that, by the way, a 179D was done post all of this work. So, essentially, in this one little scenario, all four of those strategies were put into place. When you break it down, the potential tax benefit at least paid for a third, if not maybe more, of the total capital project. So, it's a pretty good story for the CPA and to share with their taxpayers.

Mr. Redpath

Oh, absolutely. I think this whole area is something that, as we mentioned in the beginning, we remember it, but the importance of it if you have a client—and we're talking big numbers here—but the benefits can still be there for much smaller projects. You can still get significant benefits from it, so I think it's important to keep it in mind.

Bruce, again, thank you for your insight in this. It's an area that someone like yourself and Capstan, the experts in the field, it's important because while you may not have a lot audited, we know the IRS is looking at these things. They don't come out with these Audit Technique Guides, they don't come out with a compliance initiative, unless they plan on looking at it. Maybe we're just in a COVID period where they're not looking at it and, as you mentioned, [due to] some of the cutbacks, but it is certainly something we need to be prepared for and the benefits here could be tremendous. Bruce, thank you for your insight. Really appreciate it. You gave our viewers an awful lot to think about. So again, thank you very much for being here today.

Mr. Johnson

Thank you. Appreciate the opportunity as always, Ian.

SUPPLEMENTAL MATERIALS

Tangible Property Regulations

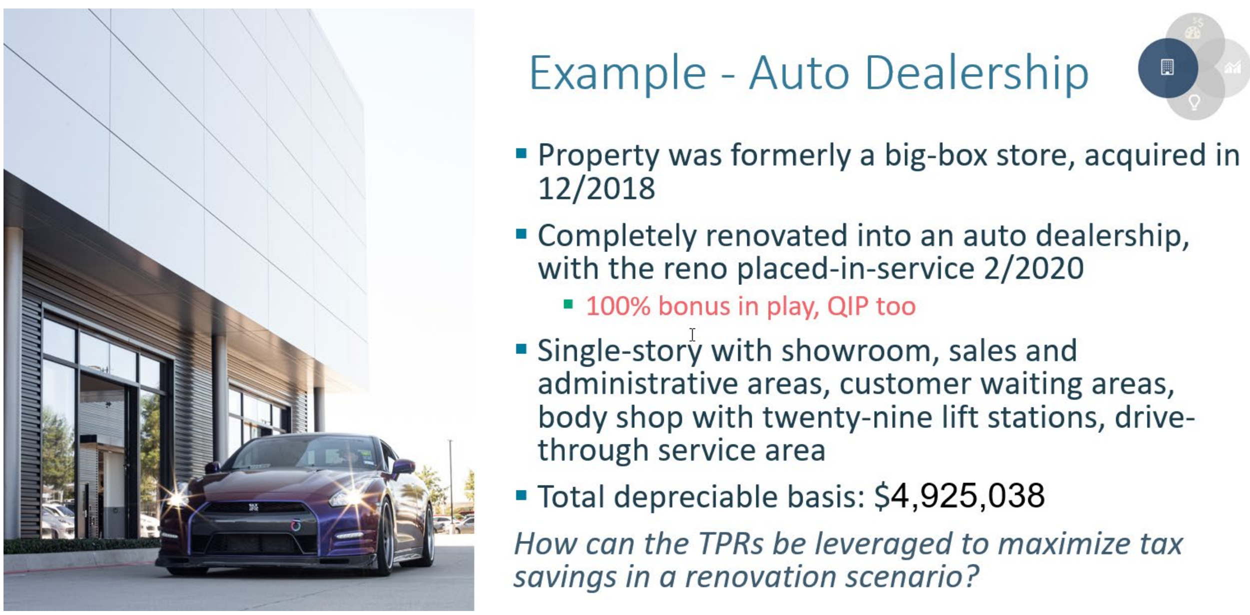
By Ian J. Redpath, JD, LLM

A. Introduction

Historically, taxpayers and the IRS have argued about what had to be capitalized and what could be written off over a shorter period of time. In addition, the appropriate period to write off an expenditure that needs to be capitalized was a continual issue. The tangible property regulations (TPRs) were adopted in 2013 to address many of these issues. The final TPRs are effective for taxable years beginning on or after January 1, 2014.

Section 162 is the general deduction for businesses and allows taxpayers to deduct the ordinary and necessary expenses incurred carrying on a trade or business. These include the costs of certain materials, supplies, repairs, and maintenance. In conjunction with this, §263(a) requires that taxpayers capitalize the costs of acquiring, producing, and improving tangible property, regardless of size or cost. The final tangible property regulations attempt to combine the case law and other authorities into a framework to simplify the decisions and process.

Example:



The final tangible property regulations apply to anyone who acquires, produces, or improves tangible real or personal property in a trade or business. They apply to taxable entities—corporations, S corporations, partnerships, individuals filing a Schedule C, E, or F, and nonprofits with unrelated business income filing Form 990-T. The rules are most significant for those that regularly incur large capital expenditures, e.g., electric utilities, telecommunications companies, and businesses with substantial real estate holdings, but they can also be used to benefit rehabilitations/renovations.

TPR-defined acceptable methods of valuation and asset allocations are:

- Cost Segregation Study or
- Producer Price Index (PPI) method—Discounting the replacement asset back to the placed-in-service date of the old asset using the PPI for Finished Goods (if a restoration) or the PPI for Final Demand for all other situations.

B. Capitalization or Repairs

The TPRs attempted to combine then-existing case law and administrative rules into a framework to help analyze whether a cost is deductible as a repair and maintenance expense or must be capitalized as an improvement. Generally, amounts paid or incurred for an improvement to tangible property under the TPRs must be capitalized. The determination is a facts-and-circumstances analysis and is described in more detail below. The TPRs do not eliminate the requirements of §263A, which generally provide that a taxpayer must capitalize the direct and allocable indirect costs of producing real or tangible personal property and acquiring property for resale. The TPRs provide some simplifying safe harbors and elections (simplifying alternatives) to ease the compliance.

The first step in the analysis distinguishing capital improvements from deductible repairs is to determine the unit of property (UOP). For buildings, it is generally the entire building, including its structural components. For TPR purposes only, the improvement analysis applies to the building structure and each of the key building systems. The key building systems are the plumbing system, electrical system, HVAC system, elevator system, escalator system, fire protection and alarm system, gas distribution system, and the security system. Lessees of portions of buildings will apply the analysis to the portion of the building structure and portion of each building system subject to the lease. For non-buildings, the UOP is all components that are functionally interdependent. Components of property are functionally interdependent if one component of property cannot be placed in service without placing another. For plant property, e.g., a manufacturing plant, generation plant, etc., it is each component or group of components within the plant that performs a discrete and major function or operation. For network assets, e.g., railroad track, oil and gas pipelines, etc., it looks at the particular facts and circumstances, or industry guidance from the Treasury Department and IRS, to determine the unit of property and the application of the improvement analysis.

There are two additional rules, based on depreciation conformity, that determine when a component or group of components of a UOP must be treated as a separate UOP. If, at the time the UOP is first placed in service, the taxpayer properly treats the component of the UOP as being within a different MACRS class than the MACRS class for the UOP of which the component is a part, or it is properly depreciated using a different depreciation method than the depreciation method used for the UOP of which the component is a part, then it must be treated as a separate UOP. For both building and non-building property, when a subsequent change is made in the classification of the property for MACRS, then the taxpayer must change the UOP determination for that property to be consistent with the change in treatment for depreciation purposes.

The next inquiry is whether there has been an improvement to the UOP. It is improved only if the amounts incurred are BAR. The BAR analysis is:

- For a betterment to the unit of property;
- To adapt the unit of property to a new or different use; or
- To restore the unit of property.

A betterment relates to amounts paid to fix a material condition or material defect that existed before the acquisition or arose during production of the UOP; or paid for a material addition, including a physical enlargement, expansion, extension, or addition of a major component to the property or a material increase in capacity, including additional cubic or linear space, of the UOP; or that are reasonably expected to materially increase productivity, efficiency, strength, quality, or output of the UOP where applicable. The term "material" is not defined in the TPRs. In determining whether a betterment is "material," it is a matter of professional judgement applied to the specific facts and circumstances.

The second analysis is, are the amounts to adapt the UOP to a new or different use? Generally, this means a use that is not consistent with the ordinary use of the UOP when originally placed in service.

The third analysis is, are the amounts to restore a UOP? These can be amounts paid for the replacement of a part or combination of parts that make up a major component or a substantial structural part of the UOP, if the taxpayer has taken into account or adjusted the basis of the UOP or component of the UOP, including:

- Amounts paid for the replacement of a component of the unit of property, and the taxpayer having properly deducted a loss for that component, other than a casualty loss; or
- Amounts paid for the replacement of a component of the unit of property, and the taxpayer having properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component; or
- Amounts paid for the restoration of damage to the unit of property for which the taxpayer is required to take a basis adjustment because of a casualty loss under §165, or relating to a casualty event described in §165, but limited to the basis in the unit of property; or
- Amounts paid to return the unit of property to its ordinarily efficient operating condition, if the unit of property has deteriorated to a state of disrepair and is no longer functional for its intended use; or
- Amounts paid for the rebuilding of the unit of property to a like-new condition after the end of its class life.

C. Safe Harbors

If the taxpayer falls into one of the safe harbors, then they are allowed to deduct the costs of work performed on owned or leased buildings, e.g., repairs, maintenance, improvements, or similar costs that fall into the safe harbor election for small taxpayers.

The TPRs allow taxpayers to elect to apply a de minimis safe harbor to amounts paid to acquire or produce tangible property, to the extent such amounts are deducted for financial accounting purposes or in keeping the taxpayer's books and records. If there is an applicable financial statement (AFS), the safe harbor is up to $5,000 per invoice or item (as substantiated by invoice). If no AFS, then it is $2,500 ($500 prior to January 1, 2016) per invoice or item (as substantiated by invoice). These are amounts that qualify under the safe harbor; they are not a limitation on amounts that can qualify as business expenses under the TPRs. The de minimis safe harbor election does not include amounts paid for inventory or land. Additionally, it does not apply to rotable, temporary, and standby emergency spare parts that the taxpayer elects to capitalize and depreciate under §1.162-3(d). It does not apply to rotable and temporary spare parts that the taxpayer accounts for under the optional method of accounting under §1.162-3(e).

An AFS includes a financial statement required to be filed with the SEC, as well as other types of certified audited financial statements accompanied by a CPA report, including a financial statement provided for a loan, reporting to shareholders, or for other non-tax purposes. An AFS also includes a financial statement required to be provided to a federal or state government or agency other than the IRS or the SEC. The accounting procedures must be in writing. If there is no AFS, there does not have to be written accounting procedures; however, there must be a consistent accounting procedure or policy existing at the beginning of the taxable year.

To elect the safe harbor, attach a statement titled "Section 1.263(a)-1(f) de minimis safe harbor election" to the timely filed original federal tax return including extensions for the taxable year in which the de minimis amounts are paid. The statement should include the taxpayer's name, address, and Taxpayer Identification Number, as well as a statement that the taxpayer is making the de minimis safe harbor election. The taxpayer must apply the de minimis safe harbor to all expenditures meeting the criteria for the election in the taxable year. An annual election is not a change in method of accounting; therefore, filing of Form 3115 is not required. Also, filing Form 3115 is not required to stop applying the de minimis safe harbor for a subsequent tax year.

In general, when the de minimis safe harbor is elected, materials and supplies that also qualify under the de minimis safe harbor are treated as de minimis costs and are not treated as materials and supplies. However, the de minimis safe harbor does not change the ability to deduct costs for materials and supplies, incidental or non-incidental, that do not qualify under the de minimis safe harbor. For costs that do not qualify under the de minimis safe harbor, taxpayers may apply the rules for identifying and deducting repair and maintenance costs, incidental supplies, and non-incidental materials and supplies.

Note that inventory that was accounted for as non-incidental materials and supplies under §471(c) (for years beginning after December 31, 2017, Revenue Procedure 2001-10, or Revenue Procedure 2002-28 for years beginning prior to January 1, 2018) are still characterized as inventory and not subject to the de minimis safe harbor election.

The TPRs clarified rules for the treatment of materials and supplies costs. In most cases, they do not change the general rules for deducting materials and supplies. The TPRs provide additional elections and methods for those using rotable spare parts. Materials and supplies are tangible, non-inventory property used and consumed in operations, including:

- Acquired components—Costs of components acquired to maintain, repair, or improve tangible property owned, leased, or serviced by the taxpayer, and that is not acquired as part of a larger item of tangible property; or
- Consumables—Costs of fuel, lubricants, water, and similar items that are reasonably expected to be consumed in 12 months or less, beginning when used in operations; or
- 12-month property—Costs of tangible property that has an economic useful life of 12 months or less, beginning when the property is used or consumed in operations; or
- $200 property—Costs of tangible property that has an acquisition cost or production cost of $200 or less.

The property need only fit into one of the above categories to qualify as a material or supply.

As under prior rules, the taxpayer may deduct the costs of incidental and non-incidental materials and supplies in the following manner:

- If the materials and supplies are incidental, i.e., of minor or secondary importance, carried on hand without keeping a record of consumption, and no beginning and ending inventories are recorded (such as pens, paper, etc.), then deduct the materials and supplies costs in the taxable year in which the amounts are paid or incurred.
- If the materials and supplies are not incidental, then deduct the materials and supplies costs in the taxable year in which the materials and supplies are first used or consumed in operations.
- If the de minimis safe harbor is elected, any materials and supplies also qualify for the safe harbor and the taxpayer must deduct amounts paid for these materials or supplies under the safe harbor in the taxable year the amounts are paid or incurred. Such amounts are not treated as amounts paid for materials and supplies and may be deducted as business expenses in the taxable year they are paid or incurred.

D. Routine Maintenance

Taxpayers are not required to capitalize as an improvement amounts that meet all of the following criteria:

- Amounts paid for recurring activities that the taxpayer expects to perform;
- As a result of the use of the property in the taxpayer's trade or business;
- To keep the property in its ordinarily efficient operating condition; and
- The taxpayer reasonably expects, at the time the property is placed in service, to perform the activities:
  - For building structures and building systems, more than once during the 10-year period beginning when placed in service, or
  - For property other than buildings, more than once during the class life of the UOP.

If the amount does not meet all the requirements for the routine maintenance safe harbor, it may still be deducted if it is not for an improvement under the facts-and-circumstances analysis.

This safe harbor does not apply to amounts paid for betterments. It also will not apply to certain restorations that would otherwise be improvements, including amounts to replace a major component or substantial structural part of a UOP.

What must a taxpayer do to apply the safe harbor for routine maintenance to amounts paid for repairs and maintenance? Because these final tangibles regulations are based primarily on prior law, if the taxpayer previously was in compliance with the rules, the taxpayer generally will be in compliance with the final tangible property regulations, and typically no action will be required. If the taxpayer is not in compliance or otherwise wants to change the method of accounting to use the safe harbor for routine maintenance, the taxpayer should file Form 3115, Application for Change in Accounting Method, and compute a Section 481(a) adjustment.

E. Safe Harbor Election for Small Taxpayers

The requirements of the safe harbor election for small taxpayers are:

- Average annual gross receipts of $10 million or less; and
- Owns or leases building property with an unadjusted basis of $1 million or less; and
- The total amount paid during the taxable year for repairs, maintenance, improvements, or similar activities performed on such building property does not exceed the lesser of two percent of the unadjusted basis of the eligible building property or $10,000. (The taxpayer makes the election to use the safe harbor for each taxable year in which qualifying amounts are incurred.)

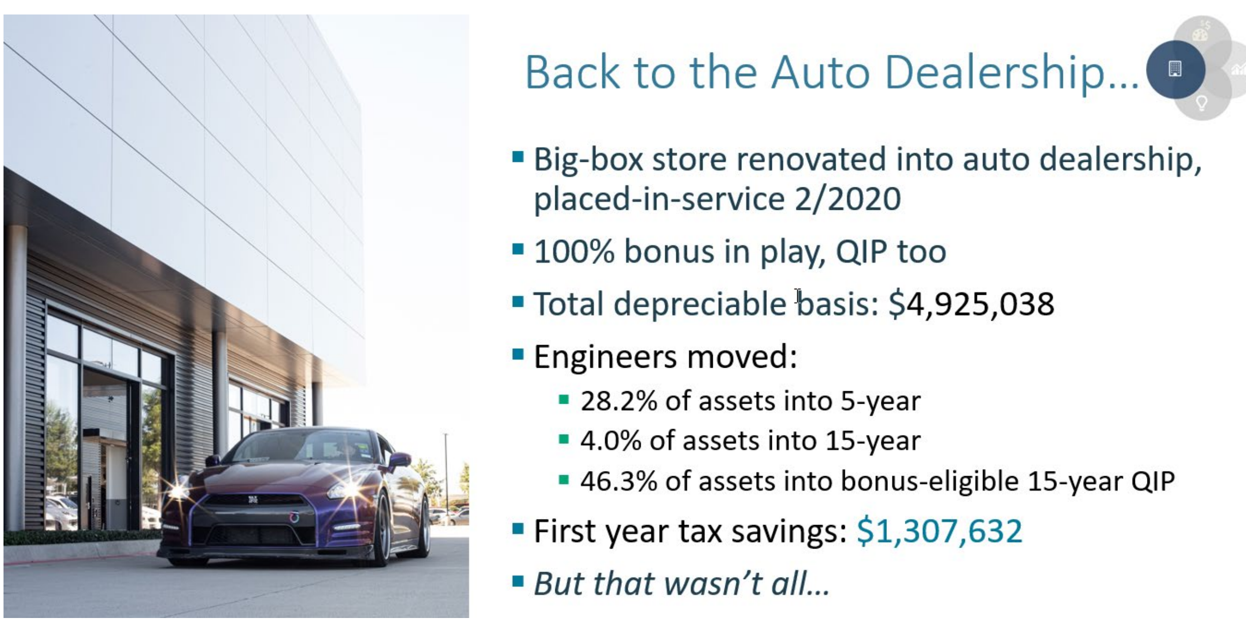
The election is made by attaching a statement to the income tax return for the taxable year. An annual election is not a change in method of accounting; therefore, Form 3115 is not required.

F. Partial Asset Dispositions (PAD)

The PAD election is useful in a renovation scenario. It permits the immediate write-off of the remaining depreciable basis of an asset that was replaced or removed from service. It must be done in the year the work is completed. For this purpose, a cost segregation study is a great tool to identify assets for PAD treatment. A study will expedite the amount of gross basis the taxpayer can write off via a PAD election. Absent a study, the PAD election calculations and support under IRS audit can be complex.

G. Conclusion

The TPRs remain both viable and important. Practitioners should be aware of the benefits that might be available for clients. Returning to our example:



Additional Savings Through PAD

Line Item	Sub Grp.	UoP #	Unit of Property Description	Service Date	Class Life	Asset Description	Fully Adjusted Basis
9	A	1	Main Bldg Structure	11/07/2014	39	Metal siding, aluminum panel, corrugated, .024" thick, painted, metal framing	$ 35,332
11	A	1	Main Bldg Structure	11/07/2014	39	Door, aluminum & glass, without transom, 6'-0" x 7'-0" opening	$ 12,139
12	A	1	Main Bldg Structure	11/07/2014	39	Door, aluminum & glass, without transom, 3'-0" x 7'-0" opening	$ 6,193
19	A	1	Main Bldg Structure	11/07/2014	39	Aluminum framing for 1/4"glass, storefront	$ 26,044
20	A	1	Main Bldg Structure	11/07/2014	39	Glazing panel, plate glass, 1/4" thick, tempered	$ 21,911
21	A	1	Main Bldg Structure	11/07/2014	39	Roofing, single ply membrane, EPDM, 45mils, fully adhered	$ 25,201
22	A	1	Main Bldg Structure	11/07/2014	39	Insulation, rigid, roof deck, fiberboard, mineral, 2" thick, R5.56	$ 22,571
23	A	1	Main Bldg Structure	11/07/2014	39	Roof flashing, aluminum with fabric backing, 2 sides, .004"	$ 2,119
32	A	1	Main Bldg Structure	11/07/2014	39	Sales/showroom: Interior partitions, metal stud frame, GWB both sides	$ 3,228
33	A	1	Main Bldg Structure	11/07/2014	39	Sales/showroom: Interior partitions, metal stud frame, GWB one side	$ 1,349
34	A	1	Main Bldg Structure	11/07/2014	39	Sales/showroom: Acoustic Ceilings, fiberglass board on suspended T-Grid	$ 28,929
35	A	1	Main Bldg Structure	11/07/2014	39	Sales/showroom: Ceramic floor tile	$ 67,040
36	A	1	Main Bldg Structure	11/07/2014	39	Sales/showroom: Ceramic tile cove base	$ 3,774
37	A	7	Main Bldg Alarm & Protection	11/07/2014	39	Sales/showroom: Exit sign, incandescent, ceiling or wall mount	$ 673
46	A	1	Main Bldg Structure	11/07/2014	39	Toilet partition, sales/showroom area	$ 3,096
47	A	1	Main Bldg Structure	11/07/2014	39	Urinal Screen, sales/showroom area	$ 369
59	A	2	Main Bldg HVAC	11/07/2014	39	HVAC, rooftop single-zone system, sales/showroom areas	$ 71,590
62	A	4	Main Bldg Electrical	11/07/2014	39	Lighting System, sales/showroom areas	$ 39,492
63	A	4	Main Bldg Electrical	11/07/2014	39	Lighting System, shop areas	$ 122,497
87	A	111	Land Improvements	11/07/2014	15	Asphalt paved parking lot , 8" gravel base, 2-1/2" binder, 2" wear course	$ 25,326
88	A	111	Land Improvements	11/07/2014	15	Lawn sod, turf mix	$ 2,277
89	A	111	Land Improvements	11/07/2014	15	Concrete sidewalk, 4" thick, 6" gravel base, 5' wide	$ 9,491
91	A	10	Main Bldg Personal Property	11/07/2014	5	Plastic Laminate Service & POS Counters	$ 11,093
92	A	10	Main Bldg Personal Property	11/07/2014	5	Sign tower, steel framed	$ 13,089
93	A	10	Main Bldg Personal Property	11/07/2014	5	Coiling grille, service counter	$ 696
94	A	10	Main Bldg Personal Property	11/07/2014	5	Resilient flooring	$ 1,369
95	A	10	Main Bldg Personal Property	11/07/2014	5	Carpeting	$ 2,584
96	A	10	Main Bldg Personal Property	11/07/2014	5	Decorative rockscape wall	$ 898
97	A	10	Main Bldg Personal Property	11/07/2014	5	Wall signage (nameplates)	$ 80
98	A	10	Main Bldg Personal Property	11/07/2014	5	Exterior spotlight, tower & vehicles	$ 2,688
99	A	10	Main Bldg Personal Property	11/07/2014	5	Paging system	$ 890
100	A	10	Main Bldg Personal Property	11/07/2014	5	Sound system	$ 2,345
101	A	10	Main Bldg Personal Property	11/07/2014	5	Air compressor wiring connections	$ 1,295
						Totals	$ 567,669

GROUP STUDY MATERIALS

A. Discussion Problems

Your client is considering purchasing an existing warehouse building and converting it into a small boutique set of shops. The cost of the project, both the building and the renovations, is expected to be about $10 million. Your client believes that having to capitalize the entire project may not make it financially feasible.

Required:

1) Discuss how to best determine the valuation and make asset allocations.

2) Discuss how the TPRs can be used to the client's advantage.

3) Identify the safe harbors for the TPRs.

B. Suggested Answers to Discussion Problems

1) The generally accepted methods for determining allocation are:

   - Cost Segregation Study or
   - Producer Price Index (PPI) method—Discounting the replacement asset back to the placed-in-service date of the old asset using the PPI for Finished Goods (if a restoration) or the PPI for Final Demand for all other situations.

   The cost segregation study is generally the best method, if available.

2) The TPRs may provide the ability to "write-off" various costs of a project faster, making it more economically viable. The inquiry is whether it must be capitalized. The first inquiry is to determine the UOP. Then, apply the BAR analysis:

   - For a betterment to the unit of property;
   - To adapt the unit of property to a new or different use; or
   - To <u>restore</u> the unit of property.

   A betterment relates to amounts paid to fix a material condition or material defect that existed before the acquisition or arose during production of the UOP; or paid for a material addition, including a physical enlargement, expansion, extension, or addition of a major component to the property or a material increase in capacity, including additional cubic or linear space, of the UOP; or that are reasonably expected to materially increase productivity, efficiency, strength, quality, or output of the UOP where applicable.

   The PAD election is useful in a renovation scenario. It permits the immediate write-off of the remaining depreciable basis of an asset that was replaced or removed from service. It must be done in the year the work is completed. For this purpose, a cost segregation study is a great tool to identify assets for PAD treatment.

3) If the taxpayer falls into one of the safe harbors, then they are allowed to deduct the costs of work performed on owned or leased buildings, e.g., repairs, maintenance, improvements, or similar costs that fall into the safe harbor election for small taxpayers. The TPRs also allow taxpayers to elect to apply a de minimis safe harbor to amounts paid to acquire or produce tangible property, to the extent such amounts are deducted for financial accounting purposes or in keeping the taxpayer's books and records. If there is an applicable financial statement (AFS), the safe harbor is up to $5,000 per invoice or item (as substantiated by invoice). If no AFS, then it is $2,500 ($500 prior to January 1, 2016) per invoice or item (as substantiated by invoice). These are amounts that qualify under the safe harbor; they are not a limitation on amounts that can qualify as business expenses under the TPRs. The de minimis safe harbor election does not include amounts paid for inventory or land. Additionally, it does not apply to rotable, temporary, and standby emergency spare parts that the taxpayer elects to capitalize and depreciate under §1.162-3(d). It does not apply to rotable and temporary spare parts that the taxpayer accounts for under the optional method of accounting under §1.162-3(e).

GLOSSARY OF KEY TERMS

American Rescue Plan Act of 2021 (ARPA)—The American Rescue Plan Act (ARPA) of 2021 (H.R. 1319, P.L. 117-2) was signed into law on March 11, 2021, and contains numerous individual, business, payroll, and pension provisions. The provisions, including $1,400 stimulus payments and an extension of payroll credits, relate to the COVID-19 pandemic. Additionally, the Act makes certain 2020 unemployment benefits tax-free, provides premium assistance for COBRA continuation coverage, expands the 2021 child tax credit, provides additional support for small businesses, and other relief.

Infrastructure Investment and Jobs Act—Public Law No. 117-58, also known as the Bipartisan Infrastructure Framework, was signed into law by President Biden on November 15, 2021, and includes approximately $1.2 trillion in spending to include funding for broadband access, clean water, electric grid renewal, and transportation and road provisions, along with tax-related provisions.

FDAP—Fixed, Determinable, Annual, or Periodical

FIRPTA—Foreign Investment in Real Property Tax Act

Form 1040-NR—U.S. Nonresident Alien Income Tax Return

Form 5471—Information Return of U.S. Persons With Respect to Certain Foreign Corporations

Form 8833—Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

Form 8840—Closer Connection Exception Statement for Aliens

Form 8843—Statement for Exempt Individuals and Individuals With a Medical Condition

Nonresident Alien—A person who is not a U.S. citizen and does not live in the United States, or lives in the United States under a nonresident visa, or does not meet the substantial presence test. A nonresident alien return is filed on Form 1040-NR. See IRS Publication 519, *U.S. Tax Guide for Aliens*.

Resident Alien—A citizen of another country who lives in the United States and/or has resident status by law or visa, or passes the substantial presence test. For tax purposes, a resident alien is generally under the same rules as a U.S. citizen. See IRS Publication 519, *Tax Guide for Aliens,* for more information.

Tax Cuts and Jobs Act (TCJA)—Public Law No. 115-97, an act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, was signed into law by President Trump on December 22, 2017. Although not the official name for the new legislation, it is most commonly referred to as the Tax Cuts and Jobs Act (TCJA)

CUMULATIVE INDEX 2023

BY TOPIC

BY CITATION

BY SPEAKER

CPE Network®
Tax Report
Volume 36, Issue 8 **September 2023**

Choose the best response and record your answer in the space provided on the answer sheet.

1. According to Ian Redpath, which of the following statements best describes IRS Revenue Officers?

   A. They are auditors who conduct visits via mail, phone, and face-to-face as well as performing field audits in the office.
   B. They are unarmed employees who help resolve account balances, collections, and overdue returns as well as conducting visits if needed.
   C. They are armed employees who work on criminal cases (e.g., tax fraud and money laundering) and sometimes help on presidential details.
   D. They are administrative employees who read petitions and determine whether they are jurisdictional and if equitable tolling is applicable.

2. According to Ian Redpath, what does the term *equitable tolling* mean in relation to collection due process (CDP) petitions under IRC Sec. 6330(d)?

   A. The taxpayer has reasonable cause for missing the filing deadline.
   B. The Tax Court has jurisdiction to hear a case.
   C. The IRS has the ability to authorize unannounced visits.
   D. The IRS has the ability to dismiss a petition.

3. According to Ian Redpath, what is the main purpose of the Identity Protection PIN (IP PIN) discussed in IR-2023-134?

   A. To prevent taxpayers from claiming excessive deductions
   B. To authenticate the identity of taxpayers when filing returns
   C. To enable taxpayers to access their digital wallets securely
   D. To track the movement of cryptocurrency across digital wallets

4. According to Ian Redpath, what does Rev. Rul. 2023-14 address regarding cryptocurrency?

   A. Guidelines for setting up cryptocurrency wallets
   B. Tax treatment of proof-of-stake awards
   C. Regulations for initial coin offerings (ICOs)
   D. Reporting requirements for digital transactions

5. According to Ian Redpath, what is the primary difference between the new Technical Guides and the previous Audit Technique Guides (ATGs)?

   A. Technical Guides are only for IRS employees, while ATGs were for the general public.
   B. Technical Guides are less comprehensive than ATGs.
   C. Technical Guides combine information from the ATGs and the Internal Revenue Manual to be more expansive.
   D. Technical Guides are not available to the public.

Continued on next page

6. According to Ian Redpath and Renata Maroney, what are the two objective tests used to determine if someone is a resident for U.S. tax purposes?

   A. The individual has a business in the U.S. and resides in the U.S. for more than 183 days a year.
   B. The individual has a visa for work or study in the U.S. and pays U.S. income tax.
   C. The individual either has U.S. citizenship or a green card, or they meet the substantial presence test.
   D. The individual owns property in the U.S. and has U.S.-source income.

7. According to Ian Redpath and Renata Maroney, what does the substantial presence test for U.S. tax residency involve?

   A. Being physically present in the U.S. for 183 days or more during the current year
   B. Being physically present in the U.S. for at least 31 days in the current year and meeting a certain formula that takes into account days from two prior years
   C. Being physically present in the U.S. for six months or more regardless of the previous years
   D. Being physically present in the U.S. based on a set number of days each year for three consecutive years

8. According to Ian Redpath and Renata Maroney, what type of income are nonresidents typically taxed on in the United States?

   A. Investment-type income only
   B. Business-type income only
   C. U.S.-source income only
   D. All worldwide income

9. According to Ian Redpath and Renata Maroney, what does "effectively connected income" (ECI) refer to?

   A. Investment-type income taxed at a flat 30-percent rate
   B. Income derived from occasional activities or hobbies
   C. Trade or business income from sources within the United States
   D. Income sourced outside the United States from international business operations

10. According to Ian Redpath and Renata Maroney, what form is used for reporting FDAP income for nonresidents?

   A. Form 8805
   B. Form 8288
   C. Form 1042
   D. Form 1040-NR Schedule NEC.

11. According to Ian Redpath and Bruce Johnson, how long can taxpayers use strategies and deductions related to the IRS's 2014 Tangible Property Regulations (TPRs)?

   A. Two years from the time the work is completed.
   B. Five years from the time the work is completed.
   C. They must be timely filed in the year work is commenced.
   D. They must be timely filed in the year work is completed.

Continued on next page

12. According to Ian Redpath and Bruce Johnson, when is it most beneficial for a CPA to consult a firm like Capstan Tax Strategies in relation to the TPRs?

    A. For a simple client like one that put on a new roof.
    B. For a complex client like a sophisticated automobile dealership conversion from a big-box store.
    C. It is a best practice to use a consultant on all TPR issues due to their complex nature.
    D. At this point, most CPAs know enough about the TPRs to make special consultations unnecessary.

13. According to Ian Redpath and Bruce Johnson, the steps for determining what is required to be capitalized under the TPRs should be performed in what order?

    A. Materiality test; the betterment, adaptation, or restoration (BAR) test; analyzing taxpayer's formal expense policy
    B. The BAR test; analyzing taxpayer's formal expense policy; materiality test
    C. Analyzing taxpayer's formal expense policy; the BAR test; materiality test
    D. Analyzing taxpayer's formal expense policy; materiality test; the BAR test

14. According to Ian Redpath and Bruce Johnson, which of the following statements best describes an aspect of UOPs as that term relates to the TPRs?

    A. UOPs are a method for segmenting capital assets (e.g., structural).
    B. UOPs are specific categories that are listed on tax returns.
    C. The treatment of UOPs is unaffected by materiality.
    D. Once valued, UOPs only need to be updated after major changes.

15. According to Ian Redpath and Bruce Johnson, what is the standard safe harbor per item under the TPRs?

    A. $1,000.
    B. $2,500.
    C. $7,500.
    D. $10,000.

CPE Network®
Tax Report
Volume 36, Issue 8 SEPTEMBER 2023

SUBSCRIBER SURVEY

Evaluation Form

Please take a few minutes to complete this survey related to the **CPE Network® Tax Report** and return it with your quizzer or group attendance sheet to CeriFi, LLC. All responses will be kept confidential. Comments in addition to the answers to these questions are also welcome. Please send comments to **CPLgrading@cerifi.com**.

How would you rate the topics covered in the September 2023 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Nonresident Taxation	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Tangible Property Regulations	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

Which segments of the September 2023 issue of **CPE Network® Tax Report** did you like the most, and why?

____

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Which segments of the September 2023 issue of **CPE Network® Tax Report** did you like the least, and why?

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____

____

What would you like to see included or changed in future issues of **CPE Network® Tax Report**?

____

____

____

Are there any other ways in which we can improve **CPE Network® Tax Report**?

____

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How would you rate the effectiveness of the speakers in the September 2023 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5=highest):

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	|______|	|______|	|______|
Renata Maroney	|______|	|______|	|______|
Bruce Johnson	|______|	|______|	|______|

Which of the following would you use for viewing **CPE Network® Tax Report**? DVD ☐ Streaming ☐ Both ☐

Are you using **CPE Network® Tax Report** for: CPE Credit ☐ Information ☐ Both ☐ ____________________

Were the stated learning objectives met? Yes ☐ No ☐ ____________________

If applicable, were prerequisite requirements appropriate? Yes ☐ No ☐ ____________________

Were program materials accurate? Yes ☐ No ☐ ____________________

Were program materials relevant and contributed to the achievement of the learning objectives? Yes ☐ No ☐ __________

Were the time allocations for the program appropriate? Yes ☐ No ☐ ____________________

Were the supplemental reading materials satisfactory? Yes ☐ No ☐ ____________________

Were the discussion questions and answers satisfactory? Yes ☐ No ☐ ____________________

Were the audio and visual materials effective? Yes ☐ No ☐ ____________________

Specific Comments: ____________________

____

Name/Company ____________________

Address ____________________

City/State/Zip ____________________

Email ____________________

Once Again, Thank You…
Your Input Can Have a Direct Influence on Future Issues!

CPE Network®

CPE Group Attendance Sheet

Firm/Company Name: ______________________________

Account #: ______________________________

Location: ______________________________

Program Title: CPE Network Tax Report, September 2023 Date: __________

Name	**Email**	**Total Hrs**	**IRS PTIN ID (if applicable Tax only)**	**Sign In**	**Sign Out**

I certify that the above individuals viewed and were participants in the group discussion with this issue/segment of the CPE Network® newsletter, and earned the number of hours shown.

Instructor Name: ______________________________ Date: __________

E-mail address: ______________________________

License State and Number: ______________________________

CPE Network/Webinar Delivery Tracking Report

Course Title	
Course Date:	
Start Time:	
End Time:	
Moderator Name, Credentials, and Signature Attestation of Attendance:	
Delivery Method:	Group Internet Based
Total CPE Credit:	3.0
Instructions:	During the webinar, the moderator must verify student presence a minimum of <u>3 times per CPE hour</u>. This is achieved via polling questions. Sponsors must have a report which documents the responses from each student. The timing of the polling questions should be random and not made known to students prior to delivery of the course. Record the polling question responses below. Refer to the CPL Network User Guide for more instructions. Partial credit will not be issued for students who do not respond to at least 3 polling questions per CPE hour.
Brief Description of Method of Polling	Example: Zoom: During this webinar, moderator asked students to raise their hands 3 times per CPE hour. The instructor then noted the hands that were raised in the columns below.

			First CPE Hour			**CPE Hour 2**			**CPE Hour 3**			**FOR TR USE ONLY**
First Name	**Last Name**	**Student Email**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Certificate Issued?**

CHECKPOINT LEARNING NETWORK

CPE NETWORK®
USER GUIDE

REVISED August 29, 2023

Welcome to CPE Network!

CPE Network programs enable you to deliver training programs to those in your firm in a manageable way. You can choose how you want to deliver the training in a way that suits your firm's needs: in the classroom, virtual, or self-study. You must review and understand the requirements of each of these delivery methods before conducting your training to ensure you meet (and document) all the requirements.

This User Guide has the following sections:

- **"Group Live" Format:** The instructor and all the participants are gathered into a common area, such as a conference room or training room at a location of your choice.
- **"Group Internet Based" Format:** Deliver your training over the internet via Zoom, Teams, Webex, or other application that allows the instructor to present materials that all the participants can view at the same time.
- **"Self-Study" Format:** Each participant can take the self-study version of the CPE Network program on their own computers at a time and place of their convenience. No instructor is required for self-study.
- **Transitioning From DVDs:** For groups playing the video from the online platform, we suggest downloading the video from the Checkpoint Learning player to the desktop before projecting.
- **What Does It Mean to Be a CPE Sponsor?:** Should you decide to vary from any of the requirements in the 3 methods noted above (for example, provide less than 3 full CPE credits, alter subject areas, offer hybrid or variations to the methods described above), <u>Checkpoint Learning Network will not be the sponsor and will not issue certificates.</u> In this scenario, your firm will become the sponsor and must issue its own certificates of completion. This section outlines the sponsor's responsibilities that you must adhere to if you choose not to follow the requirements for the delivery methods.
- **Getting Help:** Refer to this section to get your questions answered.

IMPORTANT: This User Guide outlines in detail what is required for each of the 3 formats above. Additionally, because you will be delivering the training within your firm, you should review the Sponsor Responsibilities section as well. To get certificates of completion for your participants following your training, you must submit all the required documentation. (This is noted at the end of each section.) Checkpoint Learning Network will review your training documentation for completeness and adherence to all requirements. If all your materials are received and complete, certificates of completion will be issued for the participants attending your training. Failure to submit the required completed documentation will result in delays and/or denial of certificates.

IMPORTANT: If you vary from the instructions noted above, your firm will become the sponsor of the training event and you will have to create your own certificates of completions for your participants. In this case, you do not need to submit any documentation back to CeriFi, LLC.

If you have any questions on this documentation or requirements, refer to the “Getting Help” section at the end of this User Guide **BEFORE** you conduct your training.

We are happy that you chose CPE Network for your training solutions. Thank you for your business and HAPPY LEARNING!

Copyrighted Materials

“Group Live” Format

CPE Credit

All CPE Network products are developed and intended to be delivered as 3 CPE credits. You should allocate sufficient time in your delivery so that there is no less than 2.5 clock hours:

50 minutes per CPE credit TIMES 3 credits = 150 minutes = 2.5 clock hours

If you wish to have a break during your training session, you should increase the length of the training beyond 2.5 hours as necessary. For example, you may wish to schedule your training from 9 AM to 12 PM and provide a ½ hour break from 10:15 to 10:45.

***Effective November 1, 2018:** Checkpoint Learning CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by Checkpoint Learning Network. Checkpoint Learning Network will not issue certificates for “group live” deliveries of less than 3 CPE credits (unless the course was delivered as 3 credits and there are partial credit exceptions (such as late arrivals and early departures). Therefore, if you decide to deliver the “group live” session with less than 3 CPE credits, your firm will be the sponsor as Checkpoint Learning Network will not issue certificates to your participants.

Advertising / Promotional Page

Create a promotion page (use the template after the executive summary of the transcript). You should circulate (e.g., email) to potential participants prior to training day. You will need to submit a copy of this page when you request certificates.

Monitoring Attendance

You must monitor individual participant attendance at “group live” programs to assign the correct number of CPE credits. A participant’s self-certification of attendance alone is not sufficient.

Use the **attendance sheet.** This lists the instructor(s) name and credentials, as well as the first and last name of each participant attending the seminar. The participant is expected to initial the sheet for their morning attendance and provide their signature for their afternoon attendance. If a participant arrives late, leaves early, or is a “no show,” the actual hours they attended should be documented on the sign-in sheet and will be reflected on the participant’s CPE certificate.

Real Time Instructor During Program Presentation

“Group live” programs must have a **qualified, real time instructor while the program is being presented.** Program participants must be able to interact with the instructor while the course is in progress (including the opportunity to ask questions and receive answers during the presentation).

Elements of Engagement

A “group live” program must include at least one element of engagement related to course content during each credit of CPE (for example, group discussion, polling questions, instructor-posed question with time for participant reflection, or use of a case study with different engagement elements throughout the program).

Make-Up Sessions

Individuals who are unable to attend the group study session may use the program materials for self-study either in print or online.

- If the print materials are used, the user should read the materials, watch the video, and answer the quizzer questions on the CPE Quizzer Answer Sheet. Send the answer sheet and course evaluation to the address listed on the answer sheet and the CPE certificate will be mailed or emailed to the user. Detailed instructions are provided on Network Program Self-Study Options.
- If the online materials are used, the user should log on to her/his individual Checkpoint Learning account to read the materials, watch the interviews, and answer the quizzer questions. The user will be able to print her/his/their CPE certificate upon completion of the quizzer. (If you need help setting up individual user accounts, please contact your firm administrator or customer service.)

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded by Checkpoint Learning Network after the "group live" documentation is received (and providing the course is delivered as 3 CPE credits). The certificate of completion will reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early.

Subscriber Survey Evaluation Forms

Use the evaluation form. You must include a means for evaluating quality. At the conclusion of the "group live" session, evaluations should be distributed and any that are completed are collected from participants. Those evaluations that are completed by participants should be returned to Checkpoint Learning Network along with the other course materials. While it is required that you circulate the evaluation form to all participants, it is NOT required that the participants fill it out. A preprinted evaluation form is included in the transcript each month for your convenience.

Retention of Records

Regardless of whether Checkpoint Learning Network is the sponsor for the "group live" session, it is required that the firm hosting the "group live" session retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (Group Study Attendance sheets; indicating any late arrivals and/or early departures)
- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name and credentials
- Results of program evaluations.

Finding the Transcript

Note: DVDs no longer ship with this product effective 3/1/2023.

When the DVD is inserted into a DVD drive, the video will immediately begin to play and the menu screen will pop up, taking the entire screen. Hitting the Esc key should minimize it to a smaller window. To locate the pdf file of the transcript either to save or email to others, go to the start button on the computer. In My Computer, open the drive with the DVD. The Adobe Acrobat files are the transcript files. If you do not currently have Adobe Acrobat Reader (Mac versions of the reader are also available), a free version of the reader may be downloaded at:

- https://get.adobe.com/reader/

The entire transcript is also available as a pdf in the Checkpoint Learning player in the resource toolbox at the top of the screen, or via the link in the email sent to administrators.

Requesting Participant CPE Certificates

When delivered as 3 CPE credits, documentation of your "group live" session should be sent to Checkpoint Learning Network by the following means:

Email: CPLgrading@cerifi.com

When sending your package to CeriFi, you must include ALL of the following items:

Form Name	Included?	Notes
Advertising / Promotional Page		Complete this form and circulate to your audience before the training event.
Attendance Sheet		Use this form to track attendance during your training session.
Subscriber Survey Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

All CPE Network products are developed and intended to be delivered as 3 CPE credits. You should allocate sufficient time in your delivery so that there is no less than 2.5 clock hours:

50 minutes per CPE credit TIMES 3 credits = 150 minutes = 2.5 clock hours

If you wish to have a break during your training session, you should increase the length of the training beyond 2.5 hours as necessary. For example, you may wish to schedule your training from 9 AM to 12 PM and provide a ½ hour break from 10:15 to 10:45.

***Effective November 1, 2018:** Checkpoint Learning CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by Checkpoint Learning Network. Checkpoint Learning Network will not issue certificates for “group live” deliveries of less than 3 CPE credits (unless the course was delivered as 3 credits and there are partial credit exceptions (such as late arrivals and early departures). Therefore, if you decide to deliver the “group live” session with less than 3 CPE credits, your firm will be the sponsor as Checkpoint Learning Network will not issue certificates to your participants.

Advertising / Promotional Page

Create a promotion page (use the template following the executive summary in the transcript). You should circulate (e.g., email) to potential participants prior to training day. You will need to submit a copy of this page when you request certificates.

Monitoring Attendance in a Webinar

You must monitor individual participant attendance at “group internet based” programs to assign the correct number of CPE credits. A participant’s self-certification of attendance alone is not sufficient.

Use the **Webinar Delivery Tracking Report.** This form lists the moderator(s) name and credentials, as well as the first and last name of each participant attending the seminar. During a webinar you must set up a monitoring mechanism (or polling mechanism) to periodically check the participants’ engagement throughout the delivery of the program.

In order for CPE credit to be granted, you must confirm the presence of each participant **3 times per CPE hour and the participant must reply to the polling question**. Participants that respond to less than 3 polling questions in a CPE hour will not be granted CPE credit. For example, if a participant only replies to 2 of the 3 polling questions in the first CPE hour, credit for the first CPE hour will not be granted. (Refer to the Webinar Delivery Tracking Report for examples.)

Examples of polling questions:

1. You are using **Zoom** for your webinar. The moderator pauses approximately every 15 minutes and ask that participants confirm their attendance by using the “raise hands” feature. Once the participants raise their hands, the moderator records the participants who have their hands up in the **webinar delivery tracking report** by putting a YES in the webinar delivery tracking report. After documenting in the spreadsheet, the instructor (or moderator) drops everyone’s hands and continues the training.
2. You are using **Teams** for your webinar. The moderator will pause approximately every 15 minutes and ask that participants confirm their attendance by typing “Present” into the Teams chat box. The moderator records the participants who have entered “Present” into the chat box into the **webinar delivery tracking report**. After documenting in the spreadsheet, the instructor (or moderator) continues the training.
3. If you are using an application that has a way to automatically send out polling questions to the participants, you can use that application/mechanism. However, following the event, you should create a **webinar delivery tracking report** from your app’s report.

Additional Notes on Monitoring Mechanisms:

1. The monitoring mechanism does not have to be “content specific.” Rather, the intention is to ensure that the remote participants are present and paying attention to the training.
2. You should only give a minute or so for each participant to reply to the prompt. If, after a minute, a participant does not reply to the prompt, you should put a NO in the webinar delivery tracking report.
3. While this process may seem unwieldy at first, it is a required element that sponsors must adhere to. And after some practice, it should not cause any significant disruption to the training session.
4. **You must include the Webinar Delivery Tracking report with your course submission if you are requesting certificates of completion for a “group internet based” delivery format.**

Real Time Moderator During Program Presentation

“Group internet based” programs must have a **qualified, real time moderator while the program is being presented.** Program participants must be able to interact with the moderator while the course is in progress (including the opportunity to ask questions and receive answers during the presentation). This can be achieved via the webinar chat box, and/or by unmuting participants and allowing them to speak directly to the moderator.

Make-Up Sessions

Individuals who are unable to attend the “group internet based” session may use the program materials for self-study either in print or online.

- If print materials are used, the user should read the materials, watch the video, and answer the quizzer questions on the CPE Quizzer Answer Sheet. Send the answer sheet and course evaluation to the address listed on the answer sheet and the CPE certificate will be mailed or emailed to the user. Detailed instructions are provided on Network Program Self-Study Options.
- If the online materials are used, the user should log on to her/his individual Checkpoint Learning account to read the materials, watch the interviews, and answer the quizzer questions. The user will be able to print her/his CPE certificate upon completion of the quizzer. (If you need help setting up individual user accounts, please contact your firm administrator or customer service.)

Awarding CPE Certificates

The CPE certificate is the participant’s record of attendance and is awarded by Checkpoint Learning Network after the “group internet based” documentation is received (and providing the course is delivered as 3 CPE credits). The certificate of completion will reflect the credit hours earned by the individual, with special calculation of credits for those who may not have answered the required amount of polling questions.

Subscriber Survey Evaluation Forms

Use the evaluation form. You must include a means for evaluating quality. At the conclusion of the “group live” session, evaluations should be distributed and any that are completed are collected from participants. Those evaluations that are completed by participants should be returned to Checkpoint Learning Network along with the other course materials. While it is required that you circulate the evaluation form to all participants, it is NOT required that the participants fill it out. A preprinted evaluation form is included in the transcript each month for your convenience.

Retention of Records

Regardless of whether Checkpoint Learning Network is the sponsor for the “group internet based” session, it is required that the firm hosting the session retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (Webinar Delivery Tracking Report)
- Copy of the program materials
- Timed agenda with topics covered
- Date and location (which would be “virtual”) of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name and credentials
- Results of program evaluations

Finding the Transcript

Note: DVDs are no longer shipped effective 3/1/2023

When the DVD is inserted into a DVD drive, the video will immediately begin to play and the menu screen will pop up, taking the entire screen. Hitting the Esc key should minimize it to a smaller window. To locate the pdf file of the transcript either to save or email to others, go to the start button on the computer. In My Computer, open the drive with the DVD. It should look something like the screenshot below. The Adobe Acrobat files are the transcript files. If you do not currently have Adobe Acrobat Reader (Mac versions of the reader are also available), a free version of the reader may be downloaded at:

- https://get.adobe.com/reader/

Alternatively, for those without a DVD drive, the email sent to administrators each month has a link to the pdf for the newsletter. The email may be forwarded to participants who may download the materials or print them as needed.

Requesting Participant CPE Certificates

When delivered as 3 CPE credits, documentation of your "group internet based" session should be sent to Checkpoint Learning Network by the following means:

Email: CPLgrading@CeriFi.com

When sending your package to CeriFi, you must include ALL the following items:

Form Name	**Included?**	**Notes**
Advertising / Promotional Page		Complete this form and circulate to your audience before the training event.
Webinar Delivery Tracking Report		Use this form to track the attendance (i.e., polling questions) during your training webinar.
Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Self-Study” Format

If you are unable to attend the live group study session, we offer two options for you to complete your Network Report program.

Self-Study—Print

Follow these simple steps to use the printed transcript and video:

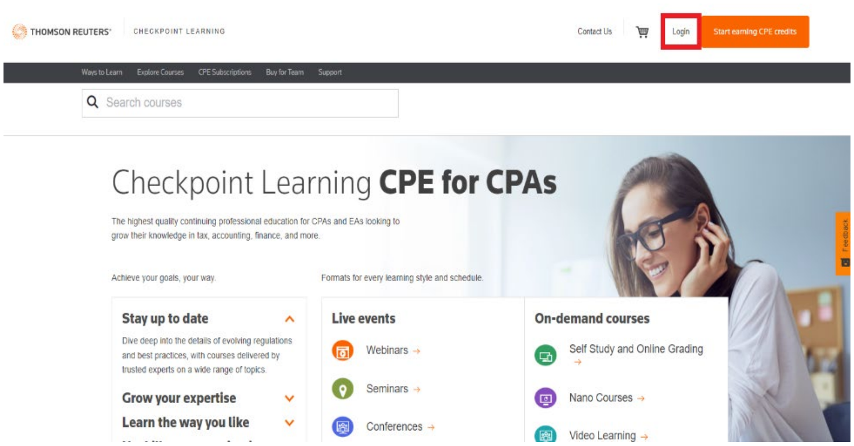
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.
- E-mail your completed quizzer and survey to:

    CPLgrading@cerifi.com

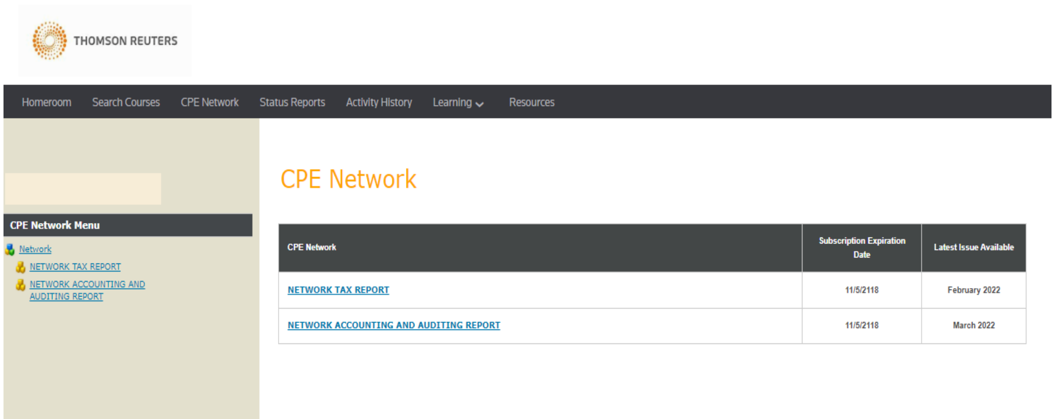
Self-Study—Online

Follow these simple steps to use the online program:

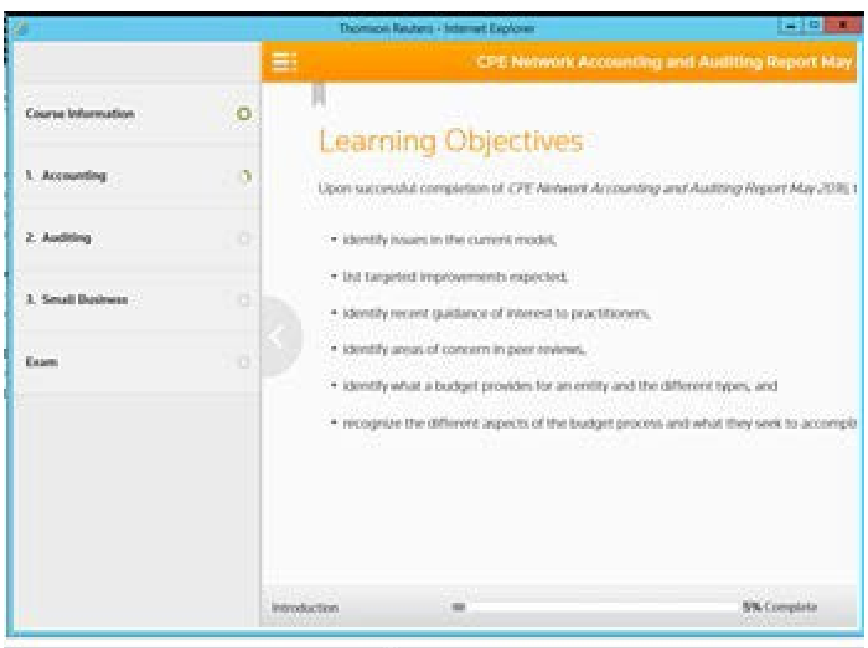
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



- In the **CPE Network** tab, select the desired Network Report and then the appropriate edition.

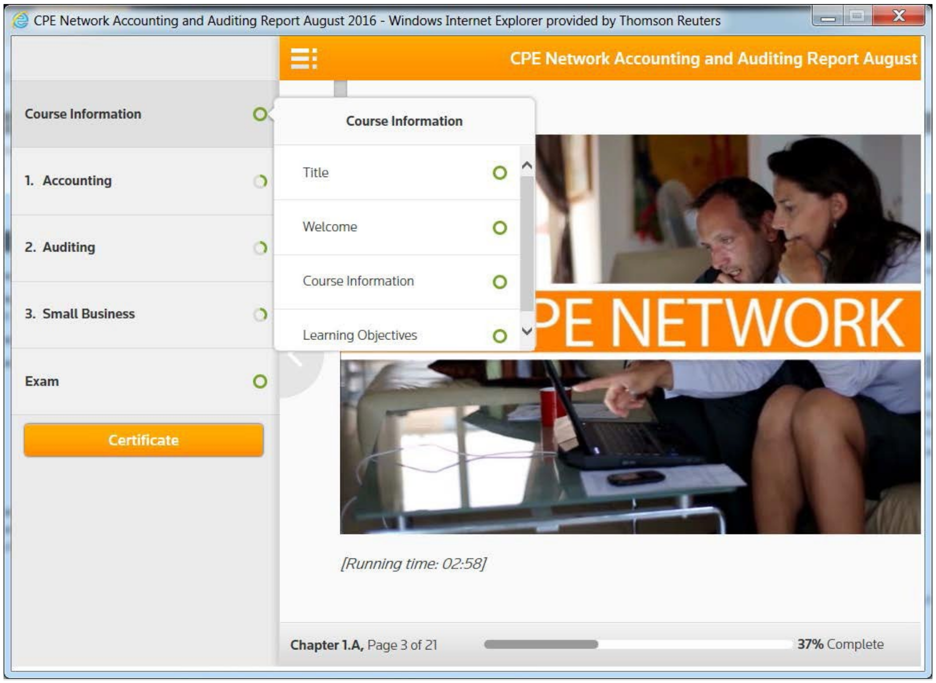


The Chapter Menu is in the gray bar at the left of your screen:

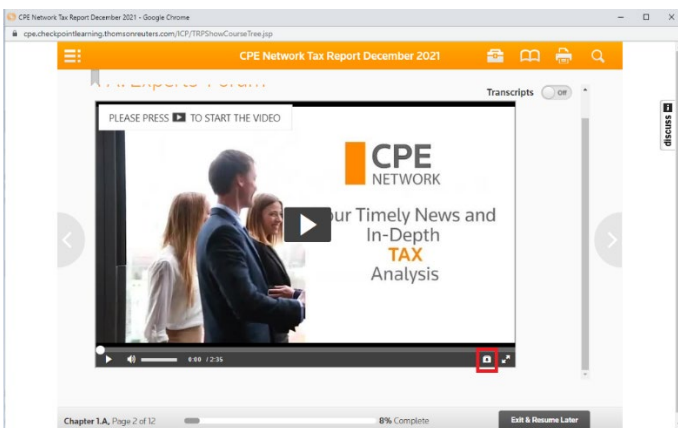


Click down to access the dropdown menu and move between the program Chapters.

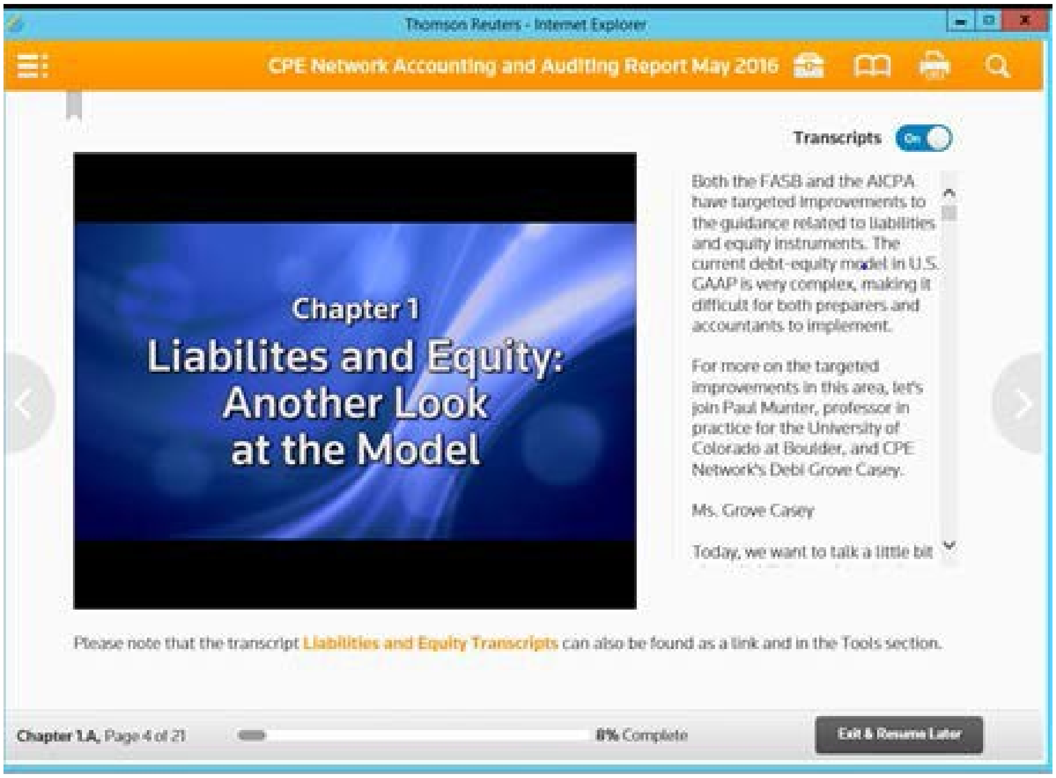
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



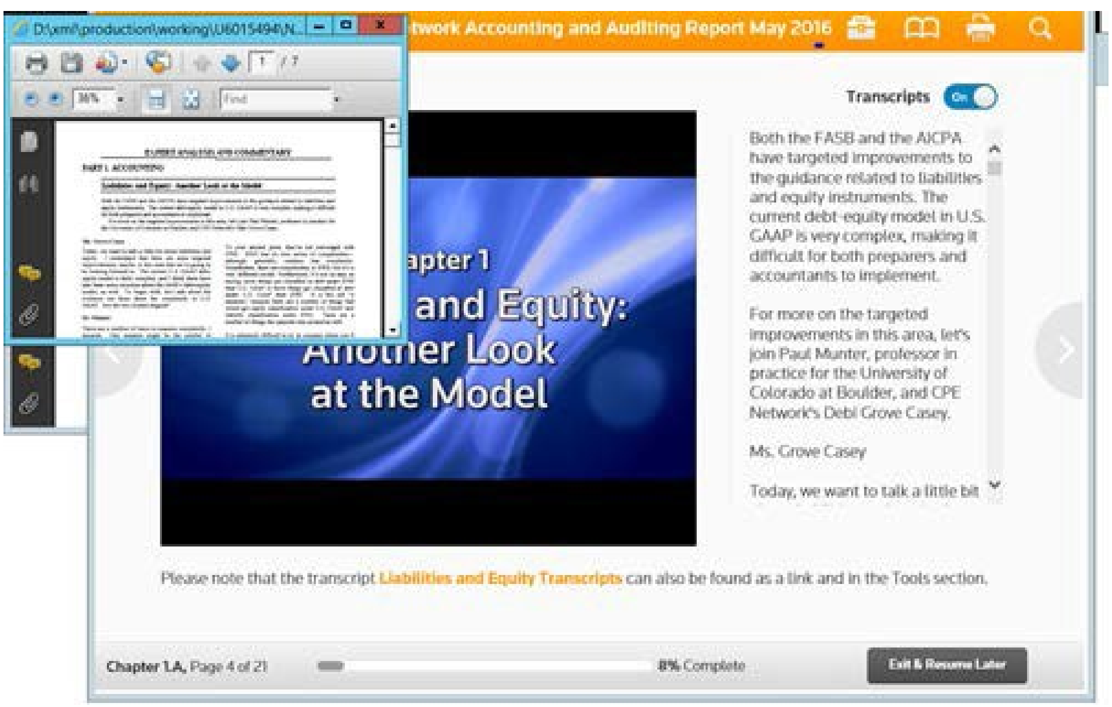
- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access the related materials.



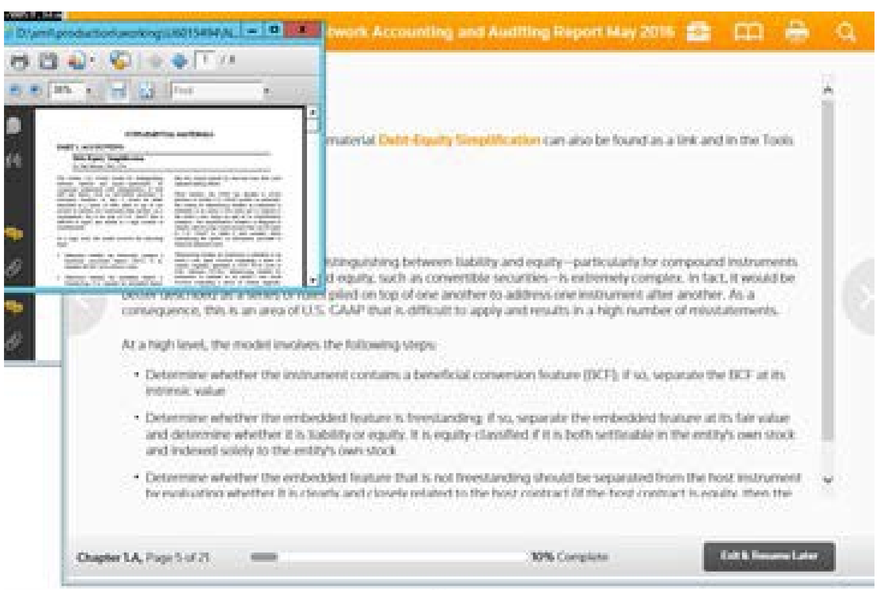
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.



Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.



Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

The Suggested Answers to the Discussion Problems follow the Discussion Problems.

Suggested Answers to Discussion Problems

1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:

   - Held-to-maturity
   - Trading
   - Available-for-sale

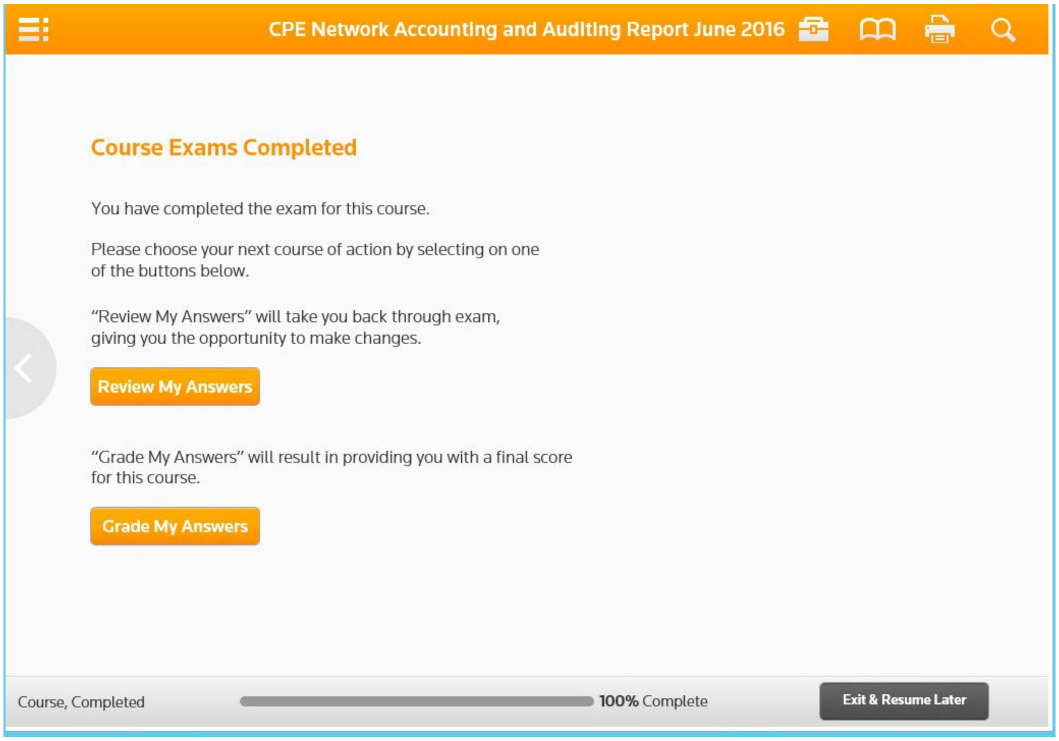
   An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions should be made at acquisition and, preferably, formally documented. It is not appropriate to use "hindsight" to classify securities transactions, perhaps by considering changes in value after acquisition.

2. The trading securities category includes securities that are bought and held principally for the purpose of selling them in the short term. Trading generally reflects active and frequent buying and selling, and trading securities are generally used with the objective of generating profits on short-term differences in price. "Short-term," in this context, is intended to be measured in hours and days, rather than in months or years, according to ASC 320. However, an entity is not precluded from classifying as trading a security it plans to hold for a longer period, as long as that designation occurs at acquisition.

3. Impairment is recognized in earnings when a decline in value has occurred that is deemed to be other than temporary, and the current fair value becomes the new cost basis for the security. An investment is considered to be impaired if the fair value of the investment is less than its cost basis. Cost includes adjustments made for

The **Exam** is accessed by clicking the last gray bar on the menu at the left of the screen or clicking through to it. Click the orange button to begin.

When you have completed the quizzer, click the button labeled **Grade or the Review button**.



- Click the button labeled **Certificate** to print your CPE certificate.
- The final quizzer grade is displayed and you may view the graded answers by clicking the button labeled **view graded answer**.

Additional Features Search

Checkpoint Learning offers powerful search options. Click the **magnifying glass** at the upper right of the screen to begin your search. Enter your choice in the **Search For:** box.

Search Results are displayed with the number of hits.

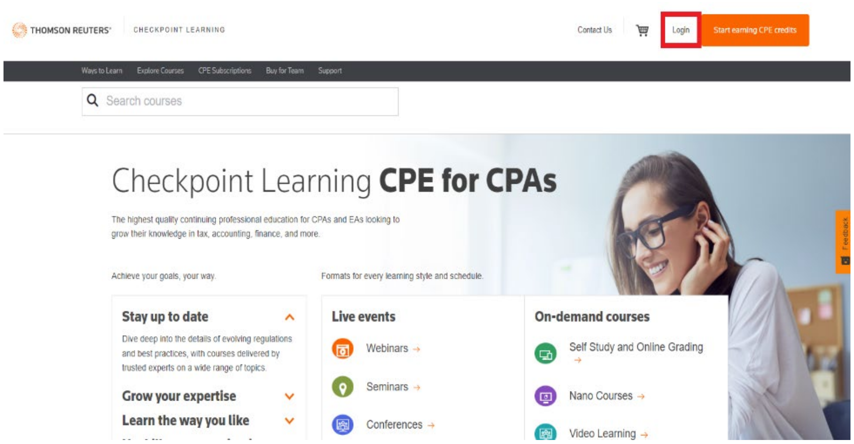
Print

To display the print menu, click the printer icon in the upper bar of your screen. You can print the entire course, the transcript, the glossary, all resources, or selected portions of the course. Click your choice and click the orange **Print**.

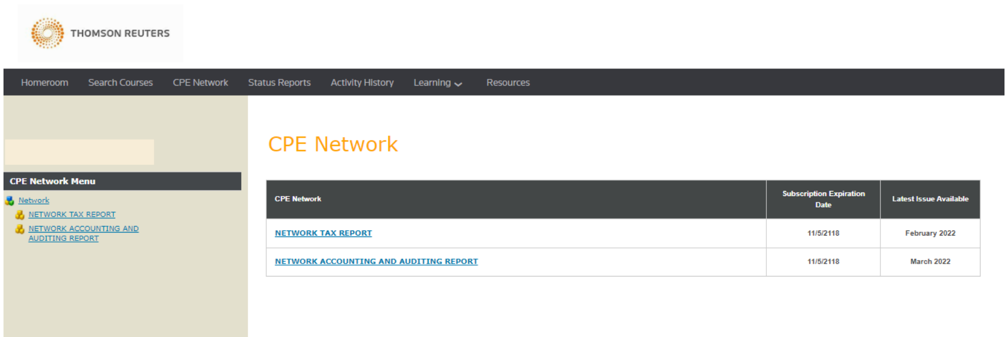
Transitioning From DVDs

Follow these simple steps to access the video and pdf for download from the online platform:

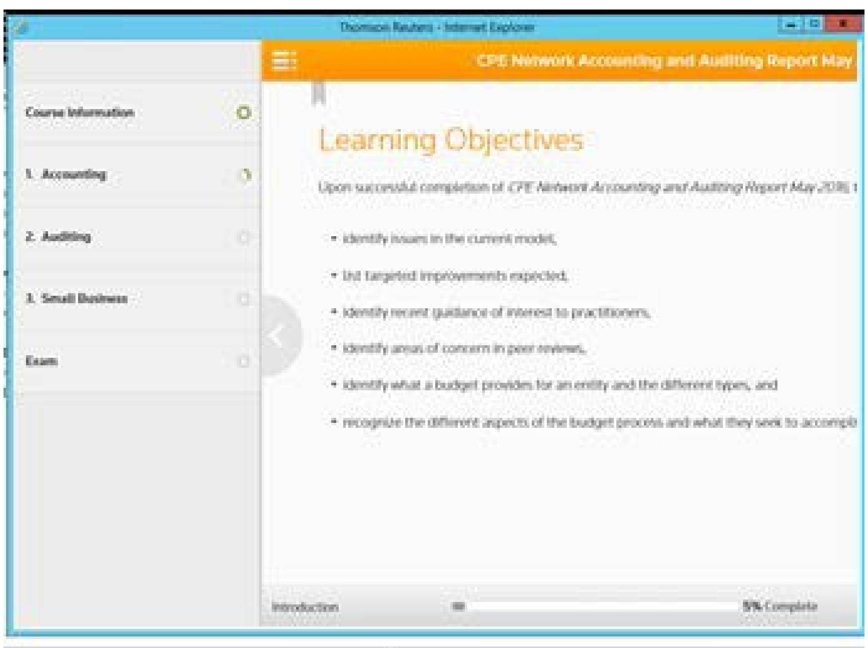
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



- In the CPE **Network** tab, select the desired Network Report by clicking on the title, then select the appropriate edition.

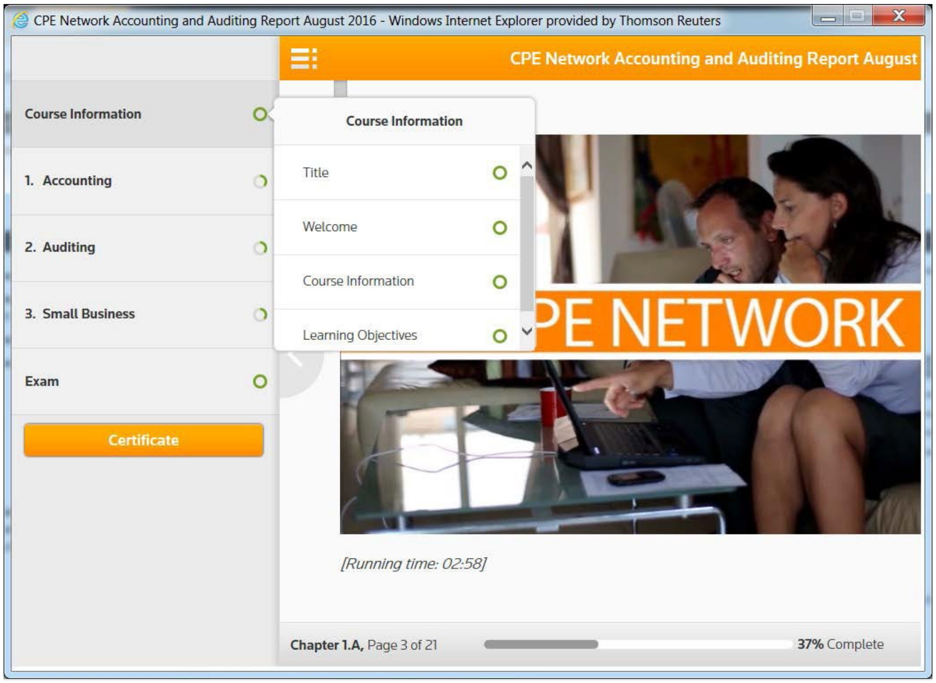


The Chapter Menu is in the gray bar at the left of your screen:

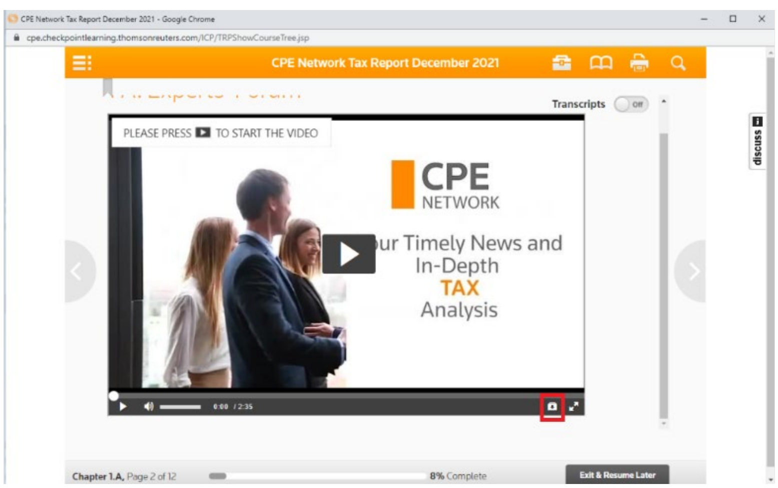


Click down to access the dropdown menu and move between the program Chapters.

- **Course Information** is the course Overview, including information about the authors and the program learning objectives



- Each Chapter is self-contained. Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions.



Video segments may be downloaded from the CPL player by clicking on the download button noted above. You may need to use the scroll bar to the right of the video to see the download button. **Tip: You may need to use the scroll bar to the right of the video to see the download button.**

PDFs may be downloaded from either the course toolbox in the upper right corner of the Checkpoint Learning screen or from the email sent to administrators with each release.

What Does It Mean to Be a CPE Sponsor?

If your organization chooses to vary from the instructions outlined in this User Guide, your firm will become the CPE Sponsor for this monthly series. The sponsor rules and requirements noted below are only highlights and reflect those of NASBA, the national body that sets guidance for development, presentation, and documentation for CPE programs. **For any specific questions about state sponsor requirements, please contact your state board. They are the final authority regarding CPE Sponsor requirements.** Generally, the following responsibilities are required of the sponsor:

- Arrange for a location for the presentation
- Advertise the course to your anticipated participants and disclose significant features of the program in advance
- Set the start time
- Establish participant sign-in procedures
- Coordinate audio-visual requirements with the facilitator
- Arrange appropriate breaks
- Have a real-time instructor during program presentation
- Ensure that the instructor delivers and documents elements of engagement
- Monitor participant attendance (make notations of late arrivals, early departures, and “no shows”)
- Solicit course evaluations from participants
- Award CPE credit and issue certificates of completion
- Retain records for five years

The following information includes instructions and generic forms to assist you in fulfilling your responsibilities as program sponsor.

CPE Sponsor Requirements

Determining CPE Credit Increments

Sponsored seminars are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned. Sponsors must monitor the program length and the participants’ attendance in order to award the appropriate number of CPE credits.

Program Presentation

CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. CPE program sponsors must make the following information available in advance:

- Learning objectives.
- Instructional delivery methods.
- Recommended CPE credit and recommended field of study.
- Prerequisites.
- Program level.
- Advance preparation.
- Program description.
- Course registration and, where applicable, attendance requirements.
- Refund policy for courses sold for a fee/cancellation policy.
- Complaint resolution policy.
- Official NASBA sponsor statement, if an approved NASBA sponsor (explaining final authority of acceptance of CPE credits**).**

Disclose Significant Features of Program in Advance

For potential participants to effectively plan their CPE, the program sponsor must disclose the significant features of the program in advance (e.g., through the use of brochures, website, electronic notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants must receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration and attendance policies and procedures must be formalized, published, and made available to participants and include refund/cancellation policies as well as complaint resolution policies.

Monitor Attendance

While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must maintain a process to monitor individual attendance at group programs to assign the correct number of CPE credits. A participant's self-certification of attendance alone is not sufficient. The sign-in sheet should list the names of each instructor and her/his credentials, as well as the name of each participant attending the seminar. The participant is expected to initial the sheet for their morning attendance and provide their signature for their afternoon attendance. If a participant leaves early, the hours they attended should be documented on the sign-in sheet and on the participant's CPE certificate.

Real Time Instructor During Program Presentation

"Group live" programs must have a qualified, real time instructor while the program is being presented. Program participants must be able to interact with the real time instructor while the course is in progress (including the opportunity to ask questions and receive answers during the presentation).

Elements of Engagement

A "group live" program must include at least one element of engagement related to course content during each credit of CPE (for example, group discussion, polling questions, instructor-posed question with time for participant reflection, or use of a case study with different engagement elements throughout the program).

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded at the conclusion of the seminar. It should reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early. Attached is a sample *Certificate of Attendance* you may use for your convenience.

CFP credit is available if the firm registers with the CFP board as a sponsor and meets the CFP board requirements. IRS credit is available only if the firm registers with the IRS as a sponsor and satisfies their requirements.

Seminar Quality Evaluations for Firm Sponsor

NASBA requires the seminar to include a means for evaluating quality. At the seminar conclusion, evaluations should be solicited from participants and retained by the sponsor for five years. The following statements are required on the evaluation and are used to determine whether:

1. Stated learning objectives were met.
2. Prerequisite requirements were appropriate.
3. Program materials were accurate.
4. Program materials were relevant and contributed to the achievement of the learning objectives.
5. Time allotted to the learning activity was appropriate.
6. Individual instructors were effective.
7. Facilities and/or technological equipment were appropriate.
8. Handout or advance preparation materials were satisfactory.
9. Audio and video materials were effective.

You may use the enclosed preprinted evaluation forms for your convenience.

Retention of Records

The seminar sponsor is required to retain the following information for a period of five years from the date the program is completed unless state law dictates otherwise:

- Record of participation (the original sign-in sheets, now in an editable, electronic signable format)
- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name(s) and credentials
- Results of program evaluations

Appendix: Forms

Here are the forms noted above and how to get access to them.

Delivery Method	**Form Name**	**Location**	**Notes**
"Group Live" / "Group Internet Based"	Advertising / Promotional Page	Transcript	Complete this form and circulate to your audience before the training event.
"Group Live"	Attendance Sheet	Transcript	Use this form to track attendance during your training session.
"Group Internet Based"	Webinar Delivery Tracking Report	Transcript	Use this form to track the 'polling questions' which are required to monitor attendance during your webinar.
"Group Live" / "Group Internet Based"	Evaluation Form	Transcript	Circulate the evaluation form at the end of your training session so that participants can review and comment on the training.
Self Study	CPE Quizzer Answer Sheet	Transcript	Use this form to record your answers to the quiz.

Getting Help

Should you need support or assistance with your account, please see below:

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	844.245.5970	Cplsupport@cerifi.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	844.245.5970	Cplsupport@cerifi.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	844.245.5970	Cplsupport@cerifi.com	• Billing • Existing orders • Cancellations • Webinars • Certificates