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Topics for future editions may include:

- Incentive Stock Options

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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

EXPERTS' FORUM 3

The tax landscape is ever changing with new court cases, IRS actions, and sometimes, legislation. Practitioners need to be cognizant of changes to properly advise clients. This material covers some changes since last month.

Learning Objective:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including: (1) the deadline for filing for an unclaimed refund from 2020; (2) determine the appropriateness of withdrawing client representative authorizations and (3) evaluate the extinguishment regulations for conservation easements.

PART 2. INDIVIDUAL TAXATION

A. Taxation of Dependent Income 14

While a dependent could be a qualifying child or relative who relies on the taxpayer for financial support, a dependent's earned income is still theirs. Unearned income may be treated differently. A dependent may need to file a tax return depending on certain limits.

Learning Objective:

After completing this segment, the user should be able to discuss a number of issues regarding compensation of children including: (1) identify when a child may be exempt from FICA on earned wages; (2) determine the standard deduction of a dependent; and (3) identify what amount of a child's unearned income is tax-free in 2024.

B. Stock Incentive Plans: Part I........................... 21

Incentive stock options are one means of compensating employees. They are particularly popular with start up organizations who may not be flush with cash at the beginning. There are several different types of stock incentive plans, most of which are intended to retain key employees.

Learning Objective:

After completing this segment, the user should be able to discuss a number of aspects of virtual currency including: (1) determining when incentive stock options are taxed as ordinary income, (2) evaluating the tax treatment of qualifying dispositions of ISOs, and (3) identify the appropriate tax treatment for a qualifying disposition and a disqualifying disposition of ISOs.

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 developing, writing, and presenting professional CPE programs. In addition to his active tax practice, he serves as Chairman of the Department of Accounting, Director of Graduate Accounting Programs, and Professor of Taxation and Forensic Accounting at Canisius College in Buffalo.

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Mike Giangrande, JD, LLM, is a California licensed attorney and has been a tax practitioner for 25 years. He is licensed to practice before the United States Tax Court, has a B.S. in Accounting, an L.L.M. in Tax from Chapman University, and a J.D. from Whittier Law School with a certificate of concentration in business law. Mike has spent time as an adjunct professor of law and has served as a member of the Orange County Assessment Appeals Board.

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	• Basic Tax professional experience
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—From a Declaration of Principles jointly adopted by a *Committee of the American Bar Association* and *Committee of Publishers and Association*

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 with a reminder to file for 2020 refunds and to withdraw all authorizations with the IRS that are no longer needed. He also includes a discussion regarding proposed regulations related to charitable remainder annuity trust transactions.

Let's join Ian.

Ian J Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. It's always great to have you here. This is a segment where we go over things that have happened since last time we talked. So let's just kind of jump right in and see what's happened. So we got the Internal Revenue Service, the courts, who have come up with a number of different things.

A. IR 2024-80

Starting off, we'll start off with IR 2024-80. Now, the IRS points out that May 17th is the deadline to claim $1 billion in refunds for the tax year 2020. The IRS announced that almost 940,000 people have unclaimed refunds for 2020.

And again, May 17th is the deadline to submit those returns. Remember, the filing deadlines were changed. They were moved back. So the IRS estimates that about a billion dollars in refunds remains unclaimed because taxpayers haven't filed their 2020 returns yet. So haven't filed the return, you're not going to get that refund. So although the three-year window, as I said, the three-year window for unfiled returns was postponed due to COVID. So we know that a lot of these are for low and moderate income workers, for example, the earned income tax credit. A significant amount of these, they believe, relate to the EITC.

The IRS also announced here, and this was an announcement that a new effort to focus high-income taxpayers who have failed to file federal income tax returns, and they believe that since 2017 that there are about 125,000 who have not filed returns. Here we are in 2024. So, you know, this is a big issue right now. What to do? You have a client come in and you believe they have a refund due. What do you do? Well, you know, first thing you do is ask them what documents they have. W-2s, 1098s, 1099s, then get a transcript online. And if you get a, you know, the wage and income transcript, that becomes really important in trying to recreate income that they may not have, the available information returns. You can also try to have them go online, perhaps with the bank, and see, can they go back and get copies or ask for copies, order copies of things like a 1098. The IRS generally only makes you go back six years to file. Now, remember, if you haven't filed, there's no statute of limitations, so they could make you go back longer. But in general, in practice, the IRS is saying file for six years. Then we'll make a determination whether we want you to go back further than that. So, it's not like you have to get 30 years of returns because the client hasn't filed. So you file the six years and then the IRS will obviously contact you and you can determine whether or not you're going to have to file any further returns. Now, one of the things [where]...this becomes an issue. I have this exact issue with a client who said, you know what, it doesn't matter that I didn't file, I don't have to worry about it because I got a refund every year. I know I got a refund. I overwithheld my taxes, so I know I have a refund. Well, the problem is this, that applying your refund to the following year is an election that you make. So the general rule, you get a refund. Now you may elect. Now how do you make that election? You make that election on the return by telling the IRS to apply this to my estimated payments for the next year. However, that's got a three year statute. That statute isn't extended in any manner. So therefore, if you have things that you think are carrying over. So when we calculated this person's tax, if you carried everything over from one year to the next, because some years they owed more than they did in other years, but if you kept moving over, they literally should have gotten a refund. Well, what happened was they

owed tax because the earlier years they had large refunds coming. They had fallen off. So the idea of just applying them, so the IRS said, yes, you are entitled to that refund, but you didn't file a tax return. Your time for claiming the refund has passed. So what are we going to do? Well, we're not going to allow you to make that election to apply it to the next year. So therefore, you have tax you owe, for example, for the next year. And so it's carried over and that's a mistake that's often made that thinks we can just carry it over indefinitely from one year to the next. So keep that in mind when you're preparing that return. The IRS also indicates that states, individuals who have amounts that are due from the federal may also have amounts due from the states, so filing a state return. Often, the states aren't as generous as the IRS when it comes to any type of mea culpa for not having filed.

B. IR 2024-78

Now we also have another IR, 2024-78. And this one is relatively straightforward. The IRS reminds everyone about these erroneous employee retention credit claims. They said since the Fall of 2023, the erroneous false claims have exceeded a billion dollars. And so the IRS, they had the special voluntary disclosure program. Now that voluntary disclosure program was great. You didn't get penalized and you had to pay back only 80%, recognizing that there were scams and people lost the fees. Now they have to go chase this company to try to collect the feedback. And by the way, often those companies are bankrupt or gone somewhere, they've disappeared. We have a judgment against an ERC mill. Well, the owner, the person who founded it, the owner is in prison and the company's belly up. There's nothing there. It's a nice piece of paper to have that judgment, but it's not going to do any good at this point. So the...ERC Voluntary Disclosure Program, was a great benefit. More than $225 million and over 500 taxpayers, and there's still 800 more that are in process. So this could be half a billion dollars at least that the IRS collects on people who use the Voluntary Disclosure Program. However...the voluntary disclosure program ended on March 22nd. So you can't use that anymore. However, the IRS also reminds us that the claim withdrawal process, where things have not been processed, there's been about 1,800 withdrawals equaling about $251 million. So the IRS has determined that more than 12,000 entities filed over 22,000 claims that were improper resulting in about $572 million in assessments. So the IRS is being very, very aggressive in trying to collect this. Now the IRS can reopen a voluntary disclosure program at a future date, and they have mentioned that they may reopen it. And a lot of that depends on what Congress does. Congress is discussing the possibility of shortening the statute of limitations for the ERTCs.

Now the statute of limitation for claims processed for 2020 is going to expire on and did expire on April 15th. Now the voluntary disclosure program as we said that was available until March 22nd. That program as I said may or may not be continued. The IRS has also announced and this goes back to our program back September, October time period, the IRS announced that there was a moratorium on processing any new claims. That moratorium on processing new claims is still in existence. So the moratorium continues and we don't know when the IRS is going to start processing any claims that were filed after September 14, 2023. And the IRS sent over 12,000 letters to entities trying to recapture ERTs that were previously paid. So the IRS has, they're undergoing audits right now. They're going after the promoters. And they have a number of criminal investigations. As of March, the IRS criminal investigation has initiated 386 criminal cases worth almost $3 billion in claims. However, while the moratorium on processing new claims still exists, What about the withdrawal? Well, the withdrawal process does still apply. If the client has either not received the check, has perhaps filed and it's a moratorium period, or they've received the check and haven't cashed it, then they can use the withdrawal process, and then no penalties or interest will apply with the withdrawal. However, that 20% doesn't apply, and that makes sense, why? Because you haven't cashed the check, you haven't gotten the money. Presumably, you haven't paid the mill, however, if you have, well then I guess you're going to have to sue them and try to collect it. So there's a lot going on when it comes to the ERTC.

If you legitimately have a client that has an ERTC claim while it's still open, and again, the IRS is talking about really narrowing the statute of limitations, but you believe in amended return, file it. Get in the queue for processing.

C. National Small Business United v. Yellen, No. 5:22-cv-1448-LCB (N.D. Ala.)

All right, we have a very interesting case. The National Small Business United versus Yellen. This is a Northern District of Alabama case decided in March. In this particular case, the judge on the district court ruled that the Corporate Transparency Act, and as a result, the beneficial ownership rules, unconstitutional. The judge said that it exceeds the constitutional limits on the legislative branch. There's no nexus to any enumerated power in Article One, Section Eight--that's the delegation of powers to the federal government-- that this doesn't have any relationship to any of those. And therefore, what is called the necessary and proper that the government has the right to pass any rules, regulations, laws, necessary and proper to carry out their enumerated powers. They said that can't apply because there is no nexus to an enumerated power. It was interesting because the ruling enjoined the IRS and of course the file the Treasury Department in general because you know the filing of the information goes to FinCEN.

They enjoined the Treasury Department from enforcing the BOI rules, the beneficial ownership rules and reporting, and any other aspects of the Corporate Transparency Act against the members, which was about 65,000 members in the National Small Business Association that brought the suit. They did not issue an injunction for anyone else or any other company. So you can't look at that case and say, well, they can't enforce anything against us. We'll wait to see what happens. You can take that and hope they win, but you're not going to avoid any penalty should the IRS decide to come after you or the FinCEN. But it's, obviously, a lot of other groups and individuals are apt to join that organization in their challenge. If they win on appeal, especially, you'll see a lot of people jumping in. The government's position is that this is necessary to fight fraud, money laundering, and the harms it does, and that alone is enough authority to declare that this is constitutional. Again, they said it creates a vital role in protecting the US financial system from lots of different threats, and therefore, it is certainly within the necessary and proper clause and the enumerated powers. Now, FinCEN has said that they're going to continue enforcement to any business that's not a member of the NSBA. And so again, assume that they're going to come after you and they are going to require enforcement. However, this is a start. We'll see what the Court of Appeals does because the Internal Revenue Service has announced that they are going to appeal this particular ruling. So they've appealed it to the Appeals Court and we'll see what happens. Very interesting case. But just because a case gets through, the District Court doesn't mean much until the appeals court. So this has been appealed to the 11th Circuit Court of Appeals.

D. Issue Number: 2023-03

All right, this is an interesting one that you may not think about, but the IRS, issue number 2023-03, the IRS came out and the Office of Professional Responsibility issued an alert recommending that Circular 230 practitioners withdraw any authorizations when the authorization is no longer needed. So they said you should withdraw or cancel any unnecessary authorizations that you have on file. One of the things they strongly suggest is that practitioners request a list of all of their authorizations from the IRS's central authorization or CAF unit.

You have a CAF number. The CAF number is that nine digit number that's assigned to the practitioner the first time they file a 2848, a power of attorney. And so that number is what is used and put in the computer to track any authorizations you as a practitioner have. So the IRS says, make sure you keep an up-to-date list of open client authorizations that were filed with CAF and withdraw them when they're no longer needed. Now, not just withdraw old ones now, but keep this in mind in the future that as soon as you're done with the case and you don't need it anymore, withdraw it. The practitioner can request a list of active authorizations which is called a CA-77 request from the IRS under the Freedom of Information Act. And again, the IRS keeps an up-to-date listing of authorizations. Request that CAF 77 report, and you'll know where you stand now. So the IRS again says this, unfortunately, this can open up the practitioner because under Circular 230, you have to have adequate procedures to ensure that, you know, your members, associates, employees, contractors comply with 230, and then one of those is the standards for providing advice, preparing and assisting tax returns or submissions to the IRS to protect the confidentiality and safeguard the client's identity. So withdrawing unneeded authorizations is important because the practitioner's obligation to maintain those confidences never ends as long as the authorization is on file with CAF. And again, it could be used by a cyber thief to gain access. So what the IRS again states that OPR says a 2848 remains in effect

until one, it's revoked by the taxpayer, two, it's withdrawn by the representative, or removed from IRS records under the established IRS retention period. So that might be helpful, right? What is that IRS retention period? Most, now notice they don't say all, authorizations are purged seven years from the taxpayer signature date. For estate tax returns, it's 15 years before they're purged. Now, if you have an authorization on file and someone dies, it automatically expires on the death of the taxpayer and is removed from the CAF when the IRS gets verification of the death, not automatically. So if you want to withdraw your authorizations, you simply do so in writing. List all the pertinent tax matters, just like you do on your power of attorney. What is the year, the form, and what it entails. So you do the same thing here. The pertinent tax matters, the tax periods. Now this has to be signed and dated by the withdrawing representative. They also note that another easy way to withdraw an authorization is to take a copy of the authorization, write withdraw, for example, on Form 2848, write withdraw across the top, sign it, and file it with the same CAF unit where you originally filed it.

The IRS also points out that another efficient way and secure alternative to filing paper withdrawal requests is to use the IRS's Tax Pro account. So the Tax Pro account actually, it's basically a check-a-box. It allows practitioners to manage their authorizations, including withdrawal. So once you link your CAF number to the Tax Pro account, you can go in, see what your authorizations are, and you can simply check a box to withdraw unneeded authorizations.

E. *Wylie v. Miller,* (DC MI) No. 2:2023cv10952 - Document 10 (E.D. Mich. 2024)

Now we have an interesting case that comes out of the District Court in Michigan, Wylie versus Miller. This is a bankruptcy court. The bankruptcy court...it was determined on appeal to the district court that the bankruptcy court denied a married couple's discharge when it found that they had an intent to hinder the bankruptcy trustee because they elected to apply their 2019 overpayment to their 2020 liability. So, you know, the return is filed. About two weeks after filing their bankruptcy, they filed their 2019 return, and elect by saying apply this to my estimated payments for next year, they applied the overpayment to the next year. Well, technically, legally, that overpayment is an asset of the bankruptcy estate, and therefore, should have gone into the bankruptcy estate. The trustee here takes the position that they can't be discharged in bankruptcy because that overpayment election had an intent to hinder the trustee, in essence a fraud on the trustee, and therefore, they should be denied a discharge in bankruptcy. And, the bankruptcy court agreed with the trustee.

This case then, on appeal to the district court from the bankruptcy course, they said that there was no intent to hinder the trustee. The only evidence cited by the bankruptcy court for finding that they intended to hinder the trustee was their testimony, which indicated the purpose in applying a 2019 overpayment to their 2020 liability was to reduce their 2020 liability. There's no showing that they knew that was an asset of the estate, that they tried to hide it, or that they attempted to provide some of their creditors, the IRS, a preference over any other creditor, or that they tried to hinder the...the bankruptcy and again, there's no showing that they actually knew or even should have been aware of the effect of that election on the return, apply it to the next year's estimated tax, on their non-tax creditors. The district court said, well, if you can't establish that, then they weren't intending to hinder, therefore the denial of discharge and bankruptcy is improper.

F. Valley Park Ranch, LLC, (2024) 162 TC No. 6

Now we have another interesting case. This is a tax court case, Valley Park Ranch, LLC. This goes on and on with all of the things we've talked about so many different times in different areas about the APA, the Administrative Procedures Act, and regulations now, the new thing that regulations are violating that, and most importantly, under the Conservation Easement. We spoke in a previous program that the extinguishment regs were declared invalid because they said they violated the APA. So in this particular case, you have a conservation easement. The tax court held that the IRS' rule governing the contents of the extinguishment clause, what they have in the extinguishment regs, in a conservation easement was invalid under the APA. This was a $14.8 million charitable deduction by Valley Park Ranch for a conservation easement that was granted in 2016. So the IRS disallowed the deduction in a notice of final partnership administration, administrative adjustment, because it said that the easement, the deed didn't satisfy all of the requirements of...Code Section 170(h) and the regs for deducting non-tax charitable contributions. They

took issue with the extinguishment clause in the easement deed, claiming the clause didn't comply with the regulations under Section 170A. The Tax Court said, well, the regulations that you're citing are invalid because they violated the APA, and as a result, the deed didn't need to comply with those requirements. Now, what's interesting here is that the Tax Court, this is a very different decision. The Tax Court...had upheld the extinguishment regulations in a case called *Oakbrook Land Holdings, LLC*. That's a 2020 case, 154 Tax Court, 180. The Court here said the Tax Court is no longer going to follow *Oakbrook*. So therefore, the Tax Court changed this position that the, it's held that the extinguishment regs do violate the APA. And again, that's a big difference.

G. Preamble to Prop. Reg. 108761-22

We have a preamble to Proposed Reg. 108761-22. This should be of some importance, these proposed regs, if you in fact do any estate planning work and you use CRATs, Charitable Remainder Annuity Trusts. According to the proposed regs, material advisors and certain participants, that these will be considered listed transactions and you'll be required to file the disclosures with the IRS and be subject to any penalties for failure to make those appropriate disclosures. Now the proposed regs make it clear that the only role or interest in the transaction is a remainderman, you're not going to be treated as a participant in the transaction or as a party to a prohibited tax shelter subject to the excise taxes or disclosure requirements. The IRS believes that there is an attempt to use CRATs, especially with a single premium immediate annuity, to permanently avoid recognition of ordinary income and/or any capital gain, and that those are in essence tax avoidance schemes. So this is interesting. If you are involved with any CRATs, you may very well want to look at this because the CRATs being called listed transactions, are you going to have to, and to what extent, there may be disclosures, and with those disclosures, is that something that you may wish to reconsider doing.

Also, in this, keep in mind that the IRS disagrees with the Sixth Circuit decision in Mann Construction. In Mann Construction, the Sixth Circuit Court of Appeals, and there's been some subsequent decisions that have applied the reasoning to the IRS notices. And the Sixth Circuit essentially held that, Notice 2007-83, and that it, in fact, which identified certain arrangements, violated the APA. And so therefore, normally the IRS in this case would release information about CRATs potentially being listed transactions via a notice, but the Sixth Circuit said that notice, you can't do that violates the APA so The IRS isn't changing their position on that so they instead of just issuing a notice, they've issued a proposed regulation as the way to try to get around *Mann;* however, keep in mind the IRS does not agree with *Mann*.

So I want to thank you for joining me. A lot of interesting things this month. I know we're finally through tax season. Although does tax season ever end anymore? I think it always goes through. Hopefully though you got through tax season in good shape and you're ready for some time off, hopefully. But we always have something coming out of the IRS or Congress or the courts. So I want to thank you again for joining me, and as always, please be safe.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. IR 2024-80

According to the IRS there are almost 940,000 people across the nation who have unclaimed refunds for tax year 2020 and it is estimated to be in excess of $1billion that remains unclaimed. The deadline to submit a claim for refund is May 17th. The normal deadline to file and claim a refund is three years from the time the return is due. In Notice 2023-21, the IRS extended the three-year window for 2020 unfiled returns to May 17, 2024, due to the COVID-19 pandemic emergency. Many of the claims relate to the Earned Income Tax Credit (EITC). The IRS also announced that it will begin a new focus on high-income taxpayers who have failed to file federal income tax returns. It is estimated there are more than 125,000 instances since 2017.

Practitioners should obtain copies of key documents such as Forms W-2, 1098 or 1099. It would be helpful to order a wage and income transcript from the IRS. This can be done online at www.IRS.gov or request a transcript with Form 4506-T.

B. IR 2024-78

The IRS announced today that compliance efforts around erroneous Employee Retention Credit (ERC) claims have topped more than $1 billion since last fall. The IRS believes it protected more than $1 billion in revenue in just six months with its IRS initiatives beginning with the processing moratorium, the claim withdrawal and voluntary disclosure program. The IRS estimates that more than 12,000 entities filed over 22,000 claims that were improper and resulted in $572 million in assessments.

The processing moratorium on new claims began September 14, 2023 and is still in effect. The ERC Voluntary Disclosure Program was suspended beginning March 22, 2024. It is estimated that it yielded more than $225 million from over 500 taxpayers while another 800 submissions are still being processed. The ERC claim withdrawal is still in effect and so far has seen approximately 1,800 entities withdrawing $251 million in claims.

The statute of limitations for claims processed for Tax Year 2020 expired on April 15. While suspended, the IRS has indicated it may reopen the ERC Voluntary Disclosure Program in the future, especially if Congress extends the statute of limitations for ERC claims.

Due to widespread abuse, the Service stepped up enforcement of ERC claims. It sent more than 12,000 letters to entities recapturing the ERC claim that was previously paid. This initial round of letters covers Tax Year 2020. In addition, it has increased audits, promoted investigations and criminal investigations. It should be noted that as of the beginning of March, they have initiated more than 386 criminal cases, with claims worth almost $3 billion.

Businesses are reminded that the ERC withdrawal process is still open for those who have submitted a claim and have not received the actual funds including uncashed and not deposited checks. No interest or penalties will apply.

C. *National Small Business United v. Yellen,* No. 5:22-cv-1448-LCB (N.D. Ala.)

A District Court in Alabama has ruled that the Corporate Transparency Act (CTA) and, as a result, the Beneficial Ownership Information (BOI) rules are unconstitutional. The Court issued a limited injunction against enforcement. The injunction only applies to the approximately 65,000 members of the National Small Business United (NSBU) organization. The Justice Department has appealed this decision to the US Court of Appeals for the Eleventh Circuit.

The District Court Judge held that the CTA exceeds the powers granted to the federal government legislative branch in the Constitution. The Federal Government only has the powers enumerated in the Constitution. If there is an

enumerated power then it may provide any laws necessary and proper to effectuate those powers. The Court found that there is no enumerated power that would allow the legislation to be necessary and proper. Congress cannot rely on this to achieve a policy goal. He suggested that there is a lack of clear evidence that the transparency legislation was justified by national security concerns. It is anticipated that other groups and individuals are apt to join the challenge, especially if it prevails upon appeal.

Congress passed the CTA to combat the criminal abuse of shell and front companies. It requires many small legal entities to report information about their true or "beneficial" ownership.

The limited nature of the injunction means that most clients will still need to comply with the CTA and BOI. The BOI rules require certain entities to report their beneficial ownership information to Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN will continue to enforce the rules in full against nonmembers. The BOI rules came into effect on January 1, 2024. Essentially, FinCEN defines beneficial owners as: any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25% of the ownership interests of such reporting company.

The enforcement is enjoined only in regards to the CTA. It does not affect the balance of the Bank Secrecy Act.

D. Issue Number: 2023-03

The IRS' Office of Professional Responsibility (OPR) issued an alert recommending that all Circular 230 practitioners should, if not already doing so, have a process and procedure to routinely withdraw client authorizations when they are no longer needed. OPR suggests that practitioners request a list of all their authorizations from the IRS' Central Authorization File (CAF) Unit to make sure they are withdrawing all authorizations that may still be active but are no longer needed.

A CAF number is a nine digit number usually assigned to a practitioner the first time they file a power of attorney and declaration of representative (Form 2848). This number is used to validate the practitioner's authorization to represent the taxpayer before the IRS will disclose any taxpayer information or deal with the representative on a tax matter. Withdrawing unneeded authorizations is important because a practitioner's obligation to maintain client confidences never ends and an active authorization on the CAF could be used by a cyber-thief to gain access to valuable taxpayer information.

According to OPR, Form 2848 will remain in effect until it is (1) revoked by the taxpayer, (2) withdrawn by the representative, or (3) removed from IRS records under the established IRS records retention schedule. The IRS purges most authorizations seven years from the taxpayer signature date. However, authorizations relating to estate tax returns are purged after 15 years and all authorizations expire on the death of the taxpayer and are removed from the CAF when the IRS receives verification of the date of death.

The OPR recommends that practitioners maintain an up-to-date list of open client authorizations filed with the CAF. When an authorization is no longer needed for that matter, they should be withdrawn in a timely manner. A practitioner’s list can be confirmed by requesting a list of active authorizations (CAF77 request) from the IRS under the Freedom of Information Act (FOIA). Practitioners unfamiliar with dealing with FOIA can find a sample of the request on the IRS’s FOIA Guidelines webpage.

Best Practices, according to the OPR include keeping an up-to-date list of authorizations and their status as in force or withdrawn. Even if a firm has such a file, it is still important that a practitioner that is leaving, selling or retiring from practice request a CAF77 report to make sure that all unneeded authorization for that practitioner are withdrawn.

It should be noted that Circular 230 practitioners; attorneys, certified public accountants, enrolled agents, and tax return preparers who participate in the Internal Revenue Service's Annual Filing Season Program, are responsible for protecting confidential client information. This is not only under Circular 230, but also under IRC §§6713 and 7216. There may be both potential civil and criminal penalties for the unauthorized use or disclosure of taxpayer information.

Under Circular 230 there must be "adequate procedures" to ensure that a firm's members, associates, employees, and contractors comply with Circular 230. This includes adhering to Circular 230's standards of practice when providing advice, preparing or assisting in the preparation of tax returns or other submissions to the IRS, protecting confidential client information, and guarding against client identity theft. In addition, the Federal Trade Commission also has authority to establish data safeguarding requirements for professional tax return preparers.

According to OPR, an authorization will remain in effect until it is (1) revoked by the taxpayer, (2) withdrawn by the representative, or (3) removed from IRS records under the established IRS records retention schedule. The IRS generally purges authorizations seven years from the taxpayer signature date. For estate tax returns, it is after 15 years. All authorizations expire on the death of the taxpayer and are removed from the CAF when the IRS receives verification of the date of death. However, this is not always the case and they are not always purged and practitioners should not rely on this.

An authorization withdrawal must be in writing. It must list all pertinent tax matters and tax periods covered by the authorization and must be signed and dated by the withdrawing representative. OPR indicates the easiest way to withdraw an authorization is to write "WITHDRAW" across the top of the first page of a copy of the Form 2848, sign and date the form below the annotation and then file it with the same CAF unit where the form was originally filed. The Form 2848 instructions list where the withdrawal request should be sent. A more efficient way to withdraw an authorization is to use the IRS' Tax Pro Account. Among other things, Tax Pro Account allows tax practitioners to manage their authorizations. Once the account is linked to a CAF number, the practitioner can simply check-a-box to withdraw unneeded authorizations.

E. *Wylie v. Miller,* (DC MI) No. 2:2023cv10952 - Document 10 (E.D. Mich. 2024)

A District Court in Michigan, overturned a bankruptcy court decision. The Bankruptcy Court denied a married couple's discharge in bankruptcy. The bankruptcy court had ruled that the couple intentionally hindered the bankruptcy trustee when they elected to apply their 2019 tax overpayment to their 2020 tax liability.

In this case, about two weeks after filing their bankruptcy petition, the Wylies filed their 2019 tax return and elected to apply their overpayment (over $20,000) to their 2020 tax liability. This election was made on the Form 1040 by indicated they wanted the refund applied to their 2020 tax. This refund was an actually an asset of the estate. The trustee objected to the Wylies' discharge arguing that by making the overpayment election they transferred property of the estate to their tax creditors with the intent to hinder the trustee. The bankruptcy court agreed.

While admitting they had done this, the Wylies argued that in making the election relative to the 2019 refund, they did not have an intention to hinder the trustee.

The burden of proof in a request to deny discharge in bankruptcy is on the objecting party. The objecting party must establish that the debtor, transferred or concealed, property of the bankruptcy estate, with the intent to hinder, delay or defraud the objecting party, after filing the bankruptcy petition. (See 11 USC 727(a)(2)(B)) The bankruptcy court found that the Wylies did act with such intent to hinder when they made the overpayment election.

The District Court found the bankruptcy court didn't adequately support its finding of intent to hinder. It found that the only evidence was the Wylie’s' trial testimony, that their purpose in applying their 2019 tax overpayment to their 2020 tax liability was to make sure that their 2020 taxes would be paid. While the bankruptcy court found this was sufficient to show that the Wylies preferred their tax creditors over other creditors, it inferred an intent to hinder. It was not established that the Wylies knew or were aware of the effect of their election on their non-tax creditors. As a result, the denial of discharge was overturned.

F. *Valley Park Ranch, LLC,* (2024) 162 TC No. 6

The Tax Court held that the IRS' rules related to the contents of the extinguishment clause in conservation easement deeds was "procedurally invalid" under the Administrative Procedures Act (APA). The case involved a $14.8 million charitable deduction by Valley Park Ranch, LLC (VPR) for a conservation easement conveyed in 2016. The IRS

disallowed VPR's deduction alleging the easement deed didn't satisfy all the requirements of IRC §170(h) and the regulations for deducting a noncash charitable contribution. The IRS particularly took issue with the extinguishment clause in the easement deed claiming the clause didn't comply with Reg. §1.170A-14(g)(6)(ii). The Tax Court held such regulations were invalid as the IRS violated the APA. The Tax Court holding in this case is a departure from its holding in *Oakbrook Land Holdings, LLC*, (2020) 154 TC 180. In *Oakbrook* the Tax Court upheld the validity of the extinguishment regulation. The Tax Court said it will no longer follow *Oakbrook* on this issue.

The Court further held that the easement deed satisfied the "restriction granted in perpetuity" requirement in IRC §170(h)(2)(C) and the "protected in perpetuity" requirement of IRC§ 170(h)(5).

The Tax Court found that Treasury failed to adequately respond to significant comments in the final regulations "basis and purpose statement" in violation of the APA's procedural requirements. For example, Treasury didn't discuss or respond to comments made by the New York Landmark Commission (NYLC) or six other commentators regarding the extinguishment provision, including comments by the NYLC that the formula for divvying up extinguishment proceeds failed to consider that a property owner may make improvements that should "properly alter the ratio" in the regulation.

G. Preamble to Prop. Reg. 108761-22

The IRS issued proposed regulations that identify certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, thus a reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors but provide that organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants. As a result, they are not parties to a prohibited tax shelter transaction subject to excise taxes and disclosure requirements.

The proposed regulations propose to identify the charitable remainder trust transactions described in Prop Reg §1.6011-15(b), and substantially similar transactions, as listed transactions for purposes of Reg §1.6011-4(b)(2) and IRC §§6111 and 6112. In addition, they inform taxpayers that participate in these transactions, and persons who act as material advisors with respect to these transactions, that they would need to disclose the transaction in accordance with the final regulations and the regulations under IRC §§ 6111 and 6112.

Normally the IRS would release information about CRATs potentially being listed transactions via a Notice. But the Sixth Circuit issued an order in *Mann Construction v. US*, (CA 6 2022) 129 AFTR 2d 2022-885, holding that Notice 2007-83, 2007-2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA). The IRS disagrees with the Sixth Circuit's decision in *Mann Construction* and subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit.

A. Discussion Problems

1) Your client has received a check for an ERC claim that was filed by an ERC "mill." You had previously determined they did not qualify. The client has heard about the issues with ERC mills and now has come to see you again. They have not cashed or deposited the check. They ask about their options since they heard about a Voluntary Compliance Program.

2) You have been asked by the managing partner if there is anything they should be doing with old client authorizations. What advice would you have?

3) Another client has come in with an audit issue related to a conservation easement. The IRS is asserting the deed is insufficient as it violated the extinguishment regulations. As a result, the Service is denying a large conservation easement charitable deduction. Any advice for the client?

Required:

Discuss the issues fairly presented in the above independent facts.

B. Suggested Answers to Discussion Problems

1) The Voluntary Compliance Program is no longer available. Since the check has not been cashed the client should consider using the Withdrawal Process. They may withdraw the claim as long as the refund has not been cashed or deposited. The check should be marked void and returned to the IRS.

2) While the IRS generally purges authorizations after 7 years (15 for estate tax matters) and at the death of a taxpayer, according to the OPR, it is best practice to have a policy and procedure to withdraw authorizations when they are no longer needed. This will help protect client information. To determine still outstanding authorizations a request for a CAF77 report should be made. This will show the status of authorizations on file with the IRS. The withdrawal must be in writing, however, a copy of the authorization form may be submitted with "Withdrawn" marked at the top, dated and signed by the practitioner. It is a simple checkbox if using an IRS TaxPro Account.

3) If you believe the wording of the deed meets the requirement of Code, then reference should be made to Valley Park Ranch, LLC where the Tax Court declared that it would no longer follow Oakbrook Land Holdings, LLC and held that the IRS extinguishment regulations violate the APA.

PART 2. INDIVIDUAL TAXATION

A. Taxation of Dependent Income

While amounts received for the services of a child should be included in the child's gross income and not the parents, there are times when the *kiddie tax* rules come into play. Those rules are designed to prevent taxpayers from shifting investment income to their minor children at a lower tax rate.

For a look at how income of a dependent is taxed and tax planning opportunities in this area, let's join Ian and Brian.

Mr. Redpath

Brian, welcome to the program.

Mr. O'Sullivan

Excellent. Thanks for having me, Ian.

Mr. Redpath

Always great to have you and get your insight. I think this is an area that is really misunderstood. I hear all sorts of things out there, like I've heard people say, "You can't give any money to a kid because the IRS is going to tax it all to the parents regardless." That's not necessarily true. We also hear, "This is great because you can move lots of income—whatever you want." That's not necessarily true. Then you hear, "You don't have to pay any FICA or FUTA on a child regardless, so it's always good." You hear all sorts of stuff out there and the IRS is aware of that. They are aware of the fact that people try to use family members to divide the income up, especially lower income. And I think that's why the Service went to Congress and said, "Look, people are doing all of these types of things."

So, how do you keep people from transferring things over? Well, all of a sudden, if you are claimed as a dependent on another's return, you get less of a standard deduction. The exemptions were taken away. At one time, you got your full exemption, and you got the full standard deduction. If you were a child, it didn't matter. Well, now, if you're going to be claimed as a dependent—we're going to talk about that—there are limitations. So, the government has kind of tried to crack down on this. Another area I think where they cracked down is when they came in with the imputed interest rules and said, "You can't just be making these tax-free gifts to your kids," and then put all this over there, have them pay you back the loan when they turn 18 and they need the money for college. In the meantime, you've just shifted it over. They've been paying on the earnings, and now you're shifting it back. So then, they came out and said, "There's another way we'll get you. We'll get you with the kiddie tax." I think these were all attacks on the same thing. But, that doesn't mean that with proper planning that there aren't things we can do.

Mr. O'Sullivan

Without a doubt. We're certainly living in the age of social media and sound bites. I can absolutely tell you I've seen an uptick in questions in my practice and, immediately, I can go right to what I think the social media source was where they saw the 20-second clip that indicated how this was rubber stamped and you should be doing this. So, it's not to diminish the strategy. It's just that you want to make sure when you're taking a position for taxes that you are reading the rules. And I can assure you, the rules take more than 20 seconds covered in a sound bite as we're flicking through our phone.

So, we can definitely see the IRS has put a couple of caveats. They haven't destroyed the position, and shifting income to kids appropriately is important. You can get a win. You just have to be aware of the belts and suspenders that you have to adhere to, and you have to live in this reality. It can't be a total fiction. You can't just create it. If somebody has their one-year-old on the books for $17,000, it's just not going to work. It really depends on what they're doing. You've got to make sure you go through the form and the substance of it. Does it make sense? Does it pass that proverbial "smell test"?

And again, just because your friend said so, or the internet said so, doesn't mean that we have the whole thing. That's really been the largest [problem to combat] for this because it's a very easy sound bite to tee up. It has some truth to it, and it is a nice little jumping off point for us to kind of frame it with our clients. But sometimes, it loses a little bit of the steam when we talk about the implementation of it and doing it right.

Mr. Redpath

Our client goes to a party and somebody at the party says, "Well, my accountant says I can do this." And now, all of a sudden, you're doing something wrong. Well, no, there is more to the facts here that we need to know. But like you said, with proper planning, there are still a lot of advantages here, and we can take advantage of it.

You mentioned you really have to make sure that they are able to do the services. You and I were talking off camera that there's one case when it was a CPA and an attorney, and they had two kids. One worked for the law firm (her law firm—they were sole proprietors), and one worked for the CPA firm. Well, the problem was the kids were three and six months. So, I'm sorry—if they were 12 and 15, yes, you'd probably get away with them doing some work. A 12-year-old can do some filing and run photocopies and things like that. But the IRS came in and the IRS said, "Absolutely not. They're not providing any services. You're just trying to shift income over." Unfortunately, there are a lot of those types of cases.

I'm familiar with one where it's a dentist, and what he's doing is he has his daughter on his payroll, but everything he pays goes through this payroll. His daughter doesn't work there; she has never worked there. There are a lot of issues to be addressed there. So, one of the issues there is, I said to the daughter, "You do realize that you have a job," (not that job—I'm talking about another job) "and you don't qualify as a dependent of your parents." They don't qualify for the child credit; they can't get the child credit. "You don't qualify as a dependent because you are over 19 and you're not a full-time student. You don't qualify as a dependent, but they want to take you as a dependent for the child credit."

Mr. O'Sullivan

That conversation comes up, sure.

Mr. Redpath

You see where this is heading. And this is just a recent anecdote discussing that it happens. You see these types of things a lot. So, we did away with the exemption for dependents as we did with personal exemptions—I shouldn't say we did away with them; [they are] suspended until 2026—but not the definition. The definition of "dependent" is still around for a lot of different areas, like the child credit and the dependent credit. And if we go back to whether you have a limitation on your standard deduction, *can* you be claimed as a dependent? Not *are* you claimed but *can* you be claimed? So, I guess we go to the basics. What is a "dependent" for this purpose?

Mr. O'Sullivan

Sure, let's put the framework, or the base, in place here. What we're really talking about is anybody who's going to be under the age of 18, *or* age 19 but does not provide more than half of their own support, *or* under 24 and a full-time student and does not provide more than half of their own support.

At times there can be a dependent—right now, we're describing a dependent child—but there are times when a dependent can be someone other than just a child. You could have mom or dad in their twilight years, and you take care of them. You would apply the same standard. In that case, they would be over the age of 19 but they don't provide more than half of their own support. You'll see that from time to time if they're living with their kids in their older years.

So, that's one of the areas that is significant when you have a taxpayer (we'll call it your traditional mom and dad), they're in a higher tax bracket, perhaps there's a business at play, and they start saying, "Let's do some tax planning because I've got kids one, two, three, and four, and I think there's an opportunity here." When we look at the parents'

tax bracket, is it possible to take something from a large, marginal tax bracket and move it down to the other tax brackets? And when I say "something," I mean it could be in the form of wages, or it could be in the form of wealth, and have those other types of earned or unearned income be taxed at those lower brackets that the kids would typically enjoy.

I think that it's important to kind of distinguish between earned and unearned. If I could just quickly touch on that, anything that is earned is going to be in the traditional sense. You've got your wages, your tips, or something else that you've earned in the form of value (it could be property, it could be cash) for your personal services. That's going to be your earned income. I don't think there's anything too novel that's there. Usually, we think in terms of a W-2.

In the case of the child who happens to be a sole proprietor or partner where capital is not really the income-producing activity or factor—a very stereotypical example is you have your preteen or teenager who wants to run around when the snow hits the ground and shovel some driveways, and when the grass starts growing, mow some lawns. In that case, it's labor. So, that also would be in the nature of earned income.

Unearned income—and that's also another [area] where we're trying to do tax planning; we've got to differentiate between these two—unearned income is your traditional interest, your dividends, your capital gains, and things of that nature. It's going to be important because when we're talking about the earned income, what the IRS is always very concerned about is "shifting." Shifting money that mom or dad in a traditional sense earned, and then just allocated down to the kids in some artificial or even tax-motivated way, just to try to have a tax-bracket win. On the unearned side that's usually the goal, but when we're talking about tax planning for children or dependents, then we have to try to successfully navigate the kiddie tax. So, that's kind of a primer of what we're attacking here, and the thorns where people could get stuck in the mud.

Mr. Redpath

I think that one of the things that is kind of lost is Section 73, because Section 73 basically says that earned income, if it's compensation for personal services of a child, it is included in the income of the child, not the parent. And it says that even though the amounts are not received by the child (in other words, the parent might be keeping the income), if it's services of the child, it is income of the child. Then, we have to fall back on—and this is always an issue—what is "reasonable"? It's compensation for services, but it has to be reasonable in relation to the services provided. There's all sorts of litigation in the area of what is reasonable comp[ensation]. In the S Corp area, we talk about *unreasonably low*. That's probably not what we're looking at here with a child. We're probably looking at the opposite, which is, is it *unreasonably high*? This is the normal inquiry in a C corporation because, again, if it's unreasonably high, the rest is a dividend subject to double taxation. So, Section 73 is often overlooked and again, it becomes income of the child. If the child is working as sole proprietor—my neighbor fits exactly what you said—in the summertime cuts a bunch of people's lawns in the neighborhood, and in the wintertime gets the snowblower out and takes care of some of the neighbors' snow blowing. I've never asked my neighbor if they actually file a Schedule C for the income. For some reason, I think the income is not reported, but I'm not going to go there. I don't do their taxes, so I'm not concerned about what they're doing. But again, you could take the business deductions against that (gasoline, etc.). Certainly, he's got a great advantage.

One thing, too, is a child in 2024, if they have the income, they can make a tax-deductible contribution to an IRA up to $7,000. You could start socking away some money. In addition, if the company has it, they could include the child in the retirement benefits or any of their other types of benefits that they might have, if they qualify. So, those are all things that you need to look at. You mentioned if we look at the family as an economic unit, if we're able to split the income among different family members we may be able to have a significant savings as long as we can defend the compensation to the child as being reasonable.

Mr. O'Sullivan

Sure, and I know we spent a minute or two kind of poking fun at the reasonableness.

I think I've had two types of conversations when we bring this up in practice. You have the one taxpayer that hears, "Well, one strategy is pay your kids," and they look at it as if it's taboo or as if that is clearly tax evasion [and ask], "Is that okay?" Section 73 is what emboldens that strategy. It specifically says that if the child is performing the services it goes to the child, and that you can't move it around. So, that is one where we get people comfortable.

The other one is, "Well, I heard from so-and-so that I can pay my kid a default $13,000 and, therefore, pay no taxes. So, since I have four kids, did I just find this wonderful deduction for $52,000?" And it's like, hold on, that went way too fast. Those conversations, they tend to be at two different speeds. But that was the important part of Section 73.

The [approach] there—and we touched on it with the retirement plans, even going so far as to say if the income is strong enough for the dependent that a traditional [IRA] could make sense to try to get the taxes truly down to zero. So, you're thinking something in excess of maybe $13,000. Maybe they're up to $21,000, make a $7,000 deductible, then you get the standard deduction, and bring them down to zero. An alternative could be if you had that first preteen or 15-year-old who got their first job. You've got a 16-year-old who doesn't want to work a lot, but still makes about $4,000 a year. That could be a sweet spot for a Roth IRA because they are less than the standard deduction already, and they're already going to be at zero. That pops off the page as a wonderful opportunity there for a Roth IRA.

So, again, there is a time and place for these types of strategies. It's just the fiction-type scenarios where these things come off the rails. It's just a matter of, let's scope it in and find out what truly is in bounds.

Mr. Redpath

Now, what about FICA and FUTA? Because those are misunderstood rules—whether children are subject to FICA and FUTA if they're working for their parents.

Mr. O'Sullivan

Yes, and the government, really, they make it hard, don't they? They make it hard. And for taxpayers, in their brains they think, *payroll taxes* and it's in a silo, but we know nothing is as black and white as that. So, now we have FICA, now we have FUTA, and you have two staggered—like anything in taxes, the devil is in the details—you have two staggered benchmarks. If you're going to employ children (employ your dependents), and if they're under 18 and they work for the parents in the trade or business, your benchmark is under 18, and you can successfully not charge FICA.

FUTA goes one step further and will actually take it out to age 21. Now the important part, notice we said FICA and FUTA, not federal, not state. Totally different benchmarks. The income is still going to go on a W-2. It's just, you're shooting for that brass ring of, "Can we push deductions at large brackets down to income at low brackets? Then, can I avoid some of the pain taxes along the way with FICA and FUTA?" And the answer is, "Yes, if you do it right."

Now, if the parents own a corporation, this isn't going to work. The devil is in the details. If the parents are in a partnership and the parents aren't the only partners, it's not going to work. Same thing with an estate; it's just not going to work. So, where's your sweet spot? A sole proprietor, or a husband and wife own a traditional-type partnership where they control it. Then, reasonable compensation to the kids commensurate with reasonable services. Keep your time records, keep your logs, pay them the same as you pay other people or comparable. No $15,000 year-end bonus in December for the kids, [while] the administrative staff that's there nine-to-five the whole year gets nothing. You can't do that. It's got to walk, talk, and look as if it were a true, third-party-type transaction. Got to put some suspenders on it.

Mr. Redpath

Talking about when you go to a party and hear the stories about what other people are doing, I've heard this one. I had someone contact me and they said they were sure that their accountant was screwing up because their buddy has his kids working and they're not paying any FICA and they're going through all this. Well, yes, but that was a husband-and-wife partnership and you've got an S Corp so, sorry; it's just different rules. It doesn't seem logical. "You mean the form of my business is going to make a difference here?" Well, yes, it does. It's the fact that the

corporation is a separate taxable entity in that sense; it's a separate entity. The partnership, if you've got someone else working there, then anything that you're paying the child, they're getting a benefit from it, also. It's not going to them. So, you have to pay in to FICA.

So, yes [it is possible to avoid paying in], but it's limited as to the extent to which you can use that. Really, basically, a sole proprietor, or a husband-and-wife partnership because the only partners can be the parents.

Mr. O'Sullivan

Sure. And what's not lost in any of this, because we're talking about what's allowed versus the clearly outside-the-realm fiction, is the scrutiny that does come with it—even if you do it right. You can imagine the scrutiny that comes with it when you don't do it right. The government is always going to look at these when you have a related-party-type transaction. It doesn't mean you can't do it just because they're going to look at it. There are lots of taxpayers that get pulled for audit and it ends up in a "no change" because you explain it, you present the evidence, you present the documentation. It walks, talks, and looks like a third-party-type transaction. Where things fail is when you don't do that.

Mr. Redpath

The standard deduction for 2024 is $14,600 for a single person—and keep that in mind here. If you can be claimed as a dependent on another's return, then it's the greater of $1,300 or earned income plus $450, not to exceed the normal standard of $14,600. Well, if you were to give $14,600 of compensation, then that's earned income. So, let's just say they get $15,000 (to make it even). In essence, they're going to get their earned income plus $450. Well, no, they can't because they can't exceed the normal standard of $14,600. Okay, but they get the full standard of $14,600; they're not subject to that limited standard, even though they are a dependent (they can be claimed as a dependent on another's return). It's that earned income plus $450. And when we're talking about hiring or having children work for us, the sweet spot for us is, "Okay, we can get up to the full standard deduction of earned income and not have to pay."

This is where, as we were talking [earlier], what if you decided you're going to give them fringe benefits? If they are excludable fringes, you're providing them with even more benefit. Or, they can make a contribution to an IRA and add another up to $7,000 on there. Well, now, you're getting into some significant money that you're essentially moving over to the child. And if it's a sole proprietorship or a husband-and-wife partnership, you're also not going to pay necessarily (depending on the age, but let's say that they meet the age requirement), you're not going to be paying any FICA and you're not going to be paying any FUTA. So, suddenly, you've got a pretty good savings that you're making from legally shifting income over to a child.

Mr. O'Sullivan

Without a doubt. And I think at some point you'll start to see the scales start to move pretty heavily [in that direction]. I distinctly recall a particular conversation I had with a client. He doesn't have an existing payroll, so he would have to onboard a payroll provider. We all know with payroll, even if you do it right, you're eventually going to get a notice somewhere down the line from the state level or state unemployment. So, there is emotional pain that can come along with it. He wasn't really exploring the retirement account win that you were talking about. So, there was this low economy of a possible win after the deduction but the inclusion down to zero for the dependent—different from if you have that sole proprietor or that partnership where they already have payroll in place. So basically, the payroll costs are kind of a sunk cost or it's a de minimis increase to add one or two employees. That's not too bad. Now you start to find that sweet spot. Now, if you can actually have them provide those services—instead of it being a fiction, you can actually provide those services and document it, and then, if you have a plan where it allows for that age group to participate and to be able to take those deductions at the entity level—you start to get these scales, the more sweeteners you put into it. If you have multiple kids it could change the math, depending on if the ages are right.

So, when I've talked about with other taxpayers, we had a couple where they just weren't starters when they started to factor in the payroll costs and the implementation, but once they had a couple and then there are some sweeteners, it starts to make a lot of sense pretty quickly.

Mr. Redpath

Yes. One thing we do have to obviously deal with is the kiddie tax because that's out there. It went to a different version of how to do the kiddie tax, and then they said, "This isn't really working well. Let's go back to the original version of the kiddie tax." So, can you kind of give us just a quick overview of the kiddie tax, how it applies, and really, what the purpose of it is?

Mr. O'Sullivan

Of course. The whole purpose of kiddie tax is [to prevent] taxpayers that were trying to circumvent paying their fair share. What was happening was we were having taxpayers with investments, things that would traditionally put off interest, dividends, and capital gains, and instead of having them spill to the husband or wife who could potentially be in a higher marginal bracket, let's move this stock portfolio down to little Jimmy, Susie, and Bobby because they don't do anything else—they just go to school—so their tax bracket is de minimis. The idea was, move it and get the win.

The government clearly picked up on this because now they're losing marginal dollars at the parents' marginal rate and they're getting effectively zero or *bupkes* at the kids' level. So, they said, "Let's put the kiddie tax on." What this effectively did was after a certain threshold it moved the portfolio, the unearned income, into the parents' marginal tax bracket. That kind of destroyed the whole mechanism—but you get a little win by still doing it.

So, you'll notice that the way that it works is if you have a dependent and they have portfolio income or unearned income that's going to be there, what you'll do is you're going to get $1,300, the first amount, free. And I think $1,300 is the 2024 limit.

Mr. Redpath

Yes, $1,300 is 2024. Right.

Mr. O'Sullivan

So, $1,300. You're going to get the first win, and that's going to be tax-free. That's just like if the taxpayer had it. So again, you get a little win by moving the income down. You don't get that win when you put it on mom and dad's return, so there is a little bit of a gimme. I don't know that I'd go through too many hoops just to get a small win on a $1,300 giveaway. If it works, it works. So, it's a giveaway.

The next $1,300—there are two tranches—the next $1,300 is going to be at the kid's marginal bracket. All right, there's another little win; not earth shattering. Usually, when you hear about kiddie tax, you hear, "Okay, well, that's the punitive part, in excess of $2,600." Usually, that's the benchmark thrown around. So now, anything over the $2,600 is at the parents' marginal tax bracket. Realistically, as practitioners, what does that mean? It means you have to extend the kid's tax returns if you're extending mom and dad, because you don't know the marginal tax bracket yet, so you're going to extend the kid's. You're going to do [the parents'] in the summer (or October 14, like some of our clients), and then you're going to get the kid's right out behind them, because you have to know the marginal bracket.

So, it's perfectly fine as a strategy if you're trying to do estate planning and wealth management, because the wealth will grow with the kids. It's their asset. But when we're trying to also get the taxable income win, you get $2,600. That's a bit of a win, but the rest is at the parents' marginal bracket. So, for all intents and purposes, we're indifferent. Let's just do this type of strategy for estate planning and if we get a little bit of a carrot, then so be it.

Mr. Redpath

So essentially, if you have more than one child, you have to take the net unearned income of all the children—that amount over the $2,600—add it together, now apply that to the parents' rate, and then prorate it back based upon the amount of income over the total net unearned income to the child. So, the child could actually be paying more because it's a pro rata share of what the parents' bracket is, but they're taking all the children's income. Now, if they are already at the highest bracket, it's not going to matter but, in theory, it could put them into a new bracket for purposes of this. It doesn't affect the parents' return. It's just to calculate what the child's tax is. Then, on that $1,300, they're

going to pay at the child's rate, whatever that may be. And again, that would be the child's rate, so that would include any of that income from a job they might have, or any other income. So, it's not just, "Oh, well that gets taxed at zero percent" (or ten percent or whatever). It gets taxed at whatever the rate is with their other income, so we're going to toss that in.

Now, there is an option that a parent can have. If the gross income is more than $1,300 but less than $13,000, they can include it on the parents' return. Just simply, there is Form 8814 which is the election to report the child's [income]. It has to be interest and dividends only to report it. What are your thoughts on that, on reporting it on the parents' return?

Mr. O'Sullivan

I've seen this in practice. I've done it a couple times. Usually what will happen, realistically, we'll do the parents' return. We didn't know we were engaged for the kid's return, and we'll find a 1099 inside the parents' information, and then we'll finally ask, "What do you want to do with this?" If it hits that sweet spot (interest, dividends), oftentimes we're just going to make this election, put it in the parents' return, no fuss, no muss, because sometimes it'll cost [more]. I mean, our time's not free, as practitioners. Got to charge something. Sometimes, it could even cost more to do that if we charge them separately. We're always a little bit angsty about that particular form—not from the federal side, but because oftentimes the states don't parrot it. I know for us over here in Pennsylvania, they don't care about this particular form. If you have more than $34, Pennsylvania wants a tax return from the taxpayer. In this case, it would be each of the kids.

The other times that we will see it, and it makes us say "Man, we missed an opportunity here," we'll get the 1099, it'll have the kid's information on it, the kid's social security number; they sold some stocks. Fractional shares, a couple bucks here and there, so there are gross proceeds on it or there's some foreign tax credit that's on it. When those other things (other than interest and dividends) are present, usually then we'll flip an email to the client that says, "What do you want to do with this thing? Do you want to do this on your own? Because they have their own obligation." Otherwise, what we're thinking is, we'd like to be able to do this for them, but maybe we just do a quick kid's tax return. This way, we can get the federal and the state out at the same time.

Mr. Redpath

There are a lot of things to think about, but we're talking about an awful lot of potential—I'm just going to use the word *potential*—in providing compensation if we're in one of those circumstances where we have a business where we can provide compensation to a child. It's certainly something to think about. It's not something to dismiss. If they're old enough, and I'm not saying they have to be 17, but if they're old enough where they actually can do the services, there are certainly some great planning opportunities here.

Mr. O'Sullivan

Without a doubt, and I think the real win, what I usually focus my taxpayers on—they love the immediate tax deduction, but what we try to focus them on is that next step. The tax deduction is the gimme. The next step is the retirement plan. Just be able to put that cash away. It's such a leg up if you're putting that away for the seven-year-old, or the ten-year-old who had $2,500 on a W-2. When he's ten, maybe it got up to $3,000 or $4,000. When they're 12, well, they need to start working more, so maybe that's up to $5,000 or $6,000. So long as it's real. It's realistic; it's not a complete fiction. Give them the cash so that you can put the belts and suspenders and show they were like any other employee. Then, you make them make that retirement account. Don't tell them about it. Let them know about it when they're 18 or when they're 24 in some cases. Keep the statements. That could be such a significant windfall, just something to push them forward as they're starting their lives, and something they could leverage as they're just getting out of school or whatever their walk of life happens to be. It could be such a significant windfall to get all of that, especially if you're looking at Roth opportunities. Getting in at those young ages, those numbers could really exponentially grow.

Mr. Redpath

Absolutely. Brian, thanks for joining me today. I really appreciate it. A lot of great insight, and a lot of great planning opportunities to think about.

B. Stock Incentive Plans: Part I

Stock incentive plans have proven to be a difficult subject for many tax professionals to understand and/or track for their clients. The difficulty typically starts with the client's lack of understanding of their own options.

Often clients cannot answer the basic question: What type of stock incentive plan do you have?

Let's join Mike Giangrande, JD, LLM to discuss the types of plans available.

Mr. Giangrande

So there are five main types of stock incentive plans that we're going to talk about here today. We're talking about incentive stock options, non -qualified stock options, employee stock purchase plans, RSUs, and restricted stock units and RSAs, restricted stock awards. Only ISOs and ESPPs are defined as statutory stock options.

And, then NQSOs, when someone says they've got a non -statutory option, they're typically talking about non -qualified stock options. We'll briefly cover stock warrants and phantom stock, but not a whole lot there for us to cover today. So when it comes to stock incentive plans, I find that one of the big points of confusion starts with the fact that our clients typically understand very little about what they have.

I get very smart clients. I'm here in California. You get clients who have worked in the tech industry and they have stock options. And you say, great, what kind of stock options do you have? And they suddenly turn into a caveman. Oh, stock option. They don't know what they have. So for us to get an understanding of what exactly our client has, one of the great things we want to ask them for is a list of items that I've compiled for us. And we have a checklist on the very last page of the materials. But really what I want you to start with is get a copy of the plan literature, the plan documents themselves, as well as any supplemental literature that the employer puts out. Lots of employers, particularly large employers, typically will have some kind of plain language description of the stock incentive plan and the employee's rights and responsibilities there. And so if you're less confident yourself in stock options, it's a sly way to ask your client, hey, I need these things as well. And then you can read them in plain English and get a good understanding of the type of option that your client has. I got a client at Netflix. And Netflix, I'll tell you, did one that was interesting. My client forwarded me a cartoon that Netflix had produced that described their incentive stock options to the employees. And I thought that was funny. I did watch the cartoon. Didn't find it particularly useful for tax reporting purposes, but I thought it was really kind of fun.

So we're going to start here with incentive stock options. Now incentive stock options have no income recognition on the grant. So when your client has granted the option to purchase at some point in the future shares of their company stock at hopefully a reduced rate, that's the whole point, right? To a reduced rate. And that's the grant date. So the date the stock is granted there is no income recognition.

Now we'll talk about section 83B elections later, and which type of stock incentive plans we're going to cover today where you can make a section 83B election. Like I said, I don't want to get too much into that now, because I'm going to cover that at the end, but an 83B election essentially brings in taxable income to a sooner date, typically up to the grant date, right? The date when the ISO is granted, 83B election allows you to be taxed upfront if you want. We'll talk about that later.

There is no regular income tax recognition when your client exercises their incentive stock option either. So when your client actually does purchase the shares at some point in the future, they've met their vesting period right between the grant date and the exercise date, their vesting period, they've now purchased the shares, there is no regular income tax recognition on that date with an incentive stock option.

However, there is an AMT adjustment, which I'll talk about in just a short while. I'll cover all the AMT issues at one time, but there is an AMT adjustment, but no regular income tax recognition. And then when our client eventually goes and then sells the incentive stock, the stock they acquired through the incentive stock option, the tax treatment

will depend on whether the disposition is what we call a qualifying disposition or a non -qualifying disposition, also referred to often as a disqualifying disposition.

Now, if we look at our ISO timeline that I've got on the screen here, I guess we've got our grant date, that's sort of the starting point. We've got our vesting period, which means your client has the options that have been granted to them, but they're not allowed to purchase them yet. We have the exercise date, which is the date they actually purchased their company shares, and then we have our sale date. The timeframe here between the exercise date and the sale date helps determine whether the sales are qualifying or a nonqualifying disposition. Actually what you really need is you need to know the distance between the grant date and the sale date as well as the distance between the exercise date and the sale date, and we're going to get into that in just a minute.

Now when we have a client who exercises an incentive stock option during the year, it's not granted but the exercise. When our clients exercise incentive stock options, remember exercise is when they purchase them during the year, then the employer must issue the Form 3921 by January 31st of the year following the year we exercise that option. If our client exercises four blocks of stock during the year, they're going to get four Forms 3921. I have seen some employers, they'll issue one Form 3921 and just have sort of different lines for each of the stock blocks, that's okay as well. But you should have a detail of each block of stock on the Forms 3921. I want you to get a copy of that Form 3921. It's going to be super easy to figure out the AMT adjustment with that information, and then, will help us later on in determining the taxable gain when our client sells the stock. Because when we talk about the AMT adjustment, when you take the Form 3921, the AMT adjustment is quite simply box four minus box three, and then, obviously multiply it by the box five, which is the number of shares. And, we'll see those forms in a minute and how that works.

So now let's get on to the disposition of the stock. So I said our taxable or our tax treatment depends on whether we have a qualifying disposition or a non -qualifying disposition. And on a disposition, our disposition generally is the sale, exchange, or even a gift of ISO stock.

If you look on page three (see the supplemental), I've got a caution box here for you. Typically, a gift does not give rise to a taxable event. In an ordinary gift situation, what happens is you gift an asset to somebody, right, this provider's not cash, gift an asset to somebody, they take a transferred basis in that gift. And then the gain is recognized when that recipient of the gift eventually sells the asset. When it comes to incentive stock options, there is an exception. If you give stock prior to the requisite holding periods of the stock, you will give rise to a taxable disposition here, even on a gift. I'll tell you, I can't think, I don't think I've ever actually run across that in my client base, but just be aware that if somebody wants to gift stock they've acquired through an ISO, make sure that they don't trigger a sale there or income recognition. That's the caution box in the middle of page three.

Now, there are situations where a disposition, a taxable disposition does not occur when you transfer. So a disposition does not happen when there's a transfer to a spouse or to simply retitle the stock to joint ownership, as long as the employee is still a joint owner of that stock. When you pledge the stock as collateral or transfer by bequest or inheritance, so you die that's not going to trigger that taxable event. And again, that list is on page three. I think what I want to impart to you at this point is simply that you can trigger a taxable disposition when you're gifting or transferring stock acquired through an ISO, even if that transaction typically might not be a taxable transaction. So getting back to our dispositions, as I said earlier, I'm going to repeat it. Tax treatment depends on whether the disposition is a qualifying disposition or a non -qualifying disposition. Let's define what those are now. In a qualifying disposition of stock acquired through an incentive stock option, this is the sale of stock acquired through an ISO if the shares have been held for greater than two years after the grant date and greater than one year after the exercise date. If those two-time requirements are met when you sell the stock, then you have a qualifying disposition.

If those time requirements are not met, then you have a disqualifying or a non-qualifying disposition, very simply. So look at the date you sold that stock. Has it been . . . greater than two years since the grant date and greater than one year since the exercise date? And if so, you have a qualifying disposition. Obviously, when we have clients with ISOs, the goal is to sell the stock when there's a qualifying disposition.

Ideally, you don't want to sell that stock in a non-qualifying disposition. Because in a qualifying disposition, the employee is only going to recognize long-term capital gains or losses. It is really simple. . But in a qualifying

disposition, all you're going to have is long-term capital gain. The sale price minus the exercise price is going to give you long-term capital gain. It can technically give you long-term capital loss as well. Hopefully, if it's an incentive stock option you're not losing money. And, it's that simple.

Qualifying disposition, awesome. I'm going to take the 1099B that our client receives and I'm just going to report what's on that 1099B. Let's walk through our first example here of a qualifying disposition of an incentive stock option on page four. Here we've got Dusty who was granted an incentive stock option by his employer on July 2nd, 2019, for 2000 shares with an exercise price of $25 per share. On September 19, 2021, he exercised the option for 500 of those shares when the fair market value of the stock was $35 per share. Dusty receives the 3921 from his employer the following January, and I've reproduced that here. And, so you see here on the Form 3921, box one is our grant date. Box 2 is our exercise date. Box 3 is our exercise price per share. Box 4 is the fair market value per share on the exercise date. And box 5 shows the number of shares transferred. And so now on February 11, 2023, Dusty sold the 500 shares that he exercised on September 19, 2021, for $40 per share. Because the February 11, 2023 disposition of the shares was made more than two years after the July 2, 2019 grant date and more than one year after the September 19, 2021 exercise date, the sales are a qualifying disposition. So for federal income tax purposes, Dusty is going to recognize only long -term capital gain here. So we're going to take our sale proceeds per share, $40, subtract out the exercise price paid per share, which is $25, also shown on the 3921 box three is our gain per share of $15, multiply that by our 500 shares and he has $7 ,500 of long -term capital gain. Now on the Form 3921, I want to mention the AMT issue again, the $10 difference per share, which is box four minus box three, and then, we're going to multiply that by the 500 shares is $5,000, which also represents Dusty's AMT adjustment in 2021. So when he exercises those shares, he's going to have on his form 6251, a $5,000 AMT adjustment on the exercise of his incentive stock options.

I want to move on to the tax treatment of non -qualifying dispositions. So if we have a non-qualifying disposition, this is when the employee is going to recognize some ordinary income. And that ordinary income is going to be reported on a W-2. So I've got this calculation on top of page 5. You want to look at how we calculate our ordinary income. And the ordinary income is the lesser of the sale price or the fair market value of the stock on the exercise date. I subtract from that the exercise price paid for the stock, and that's going to equal our ordinary income, which will be reported on our clients W-2. If you notice that ordinary income calculation is the exact same calculation as the AMT adjustment was that we talked about in that example with Dustin on the previous page. Box four minus box three equals our ordinary income, with a small exception because we're using the lesser of the sale price or the fair market value on the exercise date. Typically, it's going to be the fair market value and exercise date. So similar, the same as the non -qualified stock. Then any remaining gain or loss that's not treated as ordinary income is capital gain. And it's treated as long-term capital gain if the stock has actually been held for more than one year. You'd see that in a situation where your client meets the one-year part of the qualifying disposition test, but not the two -year part of the qualifying disposition test. Then any ordinary income is going to be reported on the employee's W -2, but is not subject to either social security or Medicare tax.

Now let's walk through a non-qualifying disposition of incentive stock, I have to be careful when I say this, non-qualifying disposition of stock acquired through an incentive stock option. On page five, look at the example here with Karleen. Karleen was granted an incentive stock option by her employer on April 30, 2021 for 4,000 shares with an exercise price of $50 per share. On June 9, 2022, she exercised the option for 1,000 of those shares when the fair market value of the stock was $70 per share. And so we've reproduced Karleen’s Form 3921 here in the example. We got the exercise price at $50 a share in box three, fair market value at $70 on the exercise date in box four, and then the 1,000 shares that she exercised in box 5. On May 12, 2023, Carly sold those 1,000 shares that she exercised on June 9, 2022 for $80 per share. Now, $80 sale price. And now because the May 12, 2023 disposition of the shares was made less than one year after the exercise date, the sale of the non -qualifying disposition and Karleen’s gain must be divided into two components. So we have to look at our ordinary income component. So this is the first part. We're going to take the sale price of the shares of $80. We're going to subtract out the fair market value on the exercise date of $70. And, then, we're going to take the lesser of the sale price or fair market value, which is $70. From that, we're going to subtract out the $50 exercise price she actually paid. And she's going to end up with a $20 difference, multiply that by the 1 ,000 shares. And Karleen will end up with $20,000 of ordinary income that's going to show up on her W -2.

Moving on to the next page, the second part of the example, we want to look at the capital gain component now. So now we look and we see, okay, Karleen sold the shares for $80. She paid $50. So we have to reduce that by the $50 she paid, then reduce it further by the $20 per share that she picked up as ordinary income on her W-2 gives us our capital gain per share of $10 multiplied by that 1,000 shares. And she ends up with $10,000 of short -term capital gain because she held the shares between the exercise date and sale date was less than a year. So Carly's capital gain, like I said, is $10,000 short term.

Let's talk about now the incentive stock options and the basis that you're going to actually see on the Form 1099B. So if we're talking about a qualifying disposition, you notice I didn't get into the 1099B with the qualifying disposition. And the reason for that is, in a qualifying disposition, you're only going to be recognizing long-term capital gain. That was our first example with Dusty. And because of that, what's going to show up on the 1099B in an incentive stock option is going to be what your client paid for those shares, their exercise price. And so because in a qualifying disposition, we've only got long -term capital gain equal to our sale price minus what we paid for the shares, the basis that's going to show up on the 1099B when you've got an incentive stock option and those shares are sold in a qualifying disposition will be the actual basis of those shares. You can report on that 8949 what shows up on the 1099B as the basis. Because there was no ordinary income recognition, there is no basis adjustments in that situation. Incentive stock option, qualifying disposition, no basis adjustments from what is shown on the 1099B. And we're harping on that point, but this is...some of the most confusing things when it comes to stock options. But in a non-qualifying disposition, where we do have ordinary income reported on the employee's W-2, we have to add that to the basis that is shown in the 1099B. Because even if you have a non-qualifying disposition and your client picks up ordinary income on the W -2, the basis shown on the 1099B is still going to be only the exercise price, what they actually paid for the shares. And so now let's move on to the example on page seven and let's walk through Karleen's situation.

We're going to use the same facts as the last example. Facts are the same as the last example and we're going to look at Karleen's 1099B. So you recall Karleen sold 1000 shares on May 12, 2023. She acquired the shares, that's her exercise date, on 6/9/2022, so less than a year prior. She sold it for $80,000 because it was $80 per share times 1,000 shares. Her cost basis was $50 a share times 1,000 shares, so $50,000 basis. What is going to show up on her 1099B is $30,000 of capital gain. And we know from the prior example that she doesn't have $30,000 of capital gain. She had $20,000 of ordinary income and $10,000 of capital gain. So if you grab that 1099B and you just simply report on the 8949, which shows up in 1099B, guess what? You're making Karleen pay not only ordinary income on a lot of those shares, but also capital gain because she's already been taxed on 20,000 of it. And so what we need to do is you need to now move on to the 8949 and you need to make a basis adjustment for the $20,000 that she picked up as ordinary income. And you see that on the 8949 I've reproduced for you on page seven, column F and G, column F you're going to put the code B as in boy, and you're going to reduce the taxable gain by $20,000 giving us capital gain on the 8949 of only $10,000. This is where, in this situation, you're going to look at the W -2 and you're not going to know.

You're going to see that there was ordinary income on the W -2. But it's not going to be as clean as what I've shown here with Karleen, right?. . . Because what shows up on the W-2, your client may end up with W -2, but she may have multiple stock that was sold. So she may have had some income on the W-2 the prior year, some in this year, but you don't necessarily have an exact matching of what's going on here.

So what I want you to do is see if the brokerage company, if your client's holding their shares through E -Trade, Fidelity, Morgan Stanley, whoever it is, see if they have some kind of supplement that shows, because some of them are really good about showing, here's how much showed up on your W -2. And then it is super simple. You just take that and add it to the basis on the Form 8949. And that's the kind of detail you're looking for. Look for that supplemental detail that your client might not realize is beneficial for you for tax purposes.

SUPPLEMENTAL MATERIALS

A. Kiddie Tax and Dependent Income

The filing requirements for dependents are determined by factors such as the amount of earned and unearned income, marital status, age, and blindness. In some cases, a dependent may have to file a return even if their income is below the normal filing threshold due to special circumstances.

Generally, a child is responsible for filing their own tax return and paying any tax, penalties, or interest. If a child cannot file their own return, a parent or guardian must file it on their behalf.

To prevent parents from shifting their unearned income to their children to be taxed at a lower tax rate, the "kiddie" tax under IRC Section 1(g) applies to children with unearned income (interest, dividends, capital gains, rents, royalties, etc.). Under these rules, the net unearned income of a child over the annual limit is taxed at the child's parents' tax rate. For 2023, the inflation-adjusted amount for unearned income annual limit without kiddie tax is $2,500.

The Tax Cuts and Jobs Act (TCJA) attempted to change/simplify the tax rate for the net unearned income of a dependent child effective for tax years beginning after 2017 and before 2026 [IRC section 1(j)(4)]. The TCJA effectively applied ordinary and capital gains rates applicable to trusts and estates to the net unearned income of a child. Earned taxable income is taxed according to the single taxpayer's brackets and rates. The child was basically unaffected by the child's parent or the unearned income of any siblings. The Setting Every Community Up for Retirement Enhancement (SECURE) Act of December 2019 repealed the kiddie tax provision added by the TCJA so that the unearned income of children reverts back to the old rules (pre-TCJA) and will not be taxed at the trust and estate rates.

The SECURE Act provisions are effective for tax years beginning after December 31, 2019; however, taxpayers may elect to apply it to tax years which began in 2018 and 2019.

The child subject to the tax remains unchanged. The kiddie tax applies to a child if all of the following apply:

1. The child's unearned income exceeds the annual limit adjusted for inflation ($2,500 for 2023)
2. The child either
   - was under age 18 at the end of the year, or
   - was age 18 at the end of the year and did not have earned income that was more than half of his support, or
   - was a full-time student over age 18 and under age 24 at the end of the year and did not have earned income that was more than half of his support.
3. At least one of the child's parents was alive at the end of the year, and
4. The child does not file a joint return during the year.

Whether or not either or both parents claim the child as a dependent, the kiddie tax applies.

The kiddie tax is calculated by adding the net unearned income of the child to the parent's income and then applying the parent's tax rate. A child's net unearned income is determined by subtracting from the child's unearned income the sum of:

1. The minimum standard deduction for dependents ($1,250 for 2023), and
2. The greater of the minimum standard deduction amount or the amount of allowable itemized deductions that are directly connected with the production of the unearned income.

The child's net unearned income cannot be greater than the child's taxable income.

Remember there are preferential tax rates for long-term capital gains and qualified dividends.

Let's look at the steps to calculate tax under the "kiddie tax" rules. Ben and Jen file jointly, are in the 22% tax bracket, and have a child named Glen who is 14 years old. In 2023, Glen receives $7,600 of interest income.

Step 1: Determine Glen's unearned income

- Unearned income $7,600

Step 2: Determine Glen's taxable income by subtracting Glen's standard deduction ($1,250)

- AGI $ 7,600 – Standard deduction $1,250 = Taxable income $ 6,350

Step 3: Determine Glen's net unearned income subject to kiddie tax

- Unearned income $ 7,600 – kiddie tax threshold $2,500 = Net unearned income $ 5,100

Step 4: Determine Glen's tax

The first $1,250 is taxed at the child's rate (the tax rate for single individuals, 10%). The remainder is taxed at the parents' marginal tax rate. Also notice, Glen's unearned income is only interest income so there is no preferred tax rate for capital gains and qualified dividends.

- Tax on the first $1,250 of taxable income: $ 125 (single individual's tax rate)

- Tax on the remainder amount of $5,100 ($6,350 – $1,250): $1,122 (22%)

- Total Tax: $1,247

If the "kiddie" tax applies, there are two filing options:

1. The child files a tax return and, uses Form 8615, *Tax for Certain Children Who Have Unearned Income*.

2. The parents may elect to report the child's income on their own return if the child's gross income is from interest and dividends (including capital gain distributions and Alaska Permanent Fund dividends) only, and is more than $1,250 but less than $12,500. The child cannot have made estimated tax payments for the year, including any overpayment applied of tax from his or her 2022 return applied to 2023 estimated tax, nor any income tax withheld from the child's income. Form 8814, *Parent's Election to Report Child's Interest and Dividends,* is used.

Note

If the parents elect to report the child's income on their tax return, the child is treated as having no gross income and does not have a filing requirement.

If the parents elect to report the child's income on their return, they cannot take certain deductions that the child could take on his or her own return such as the additional standard deduction of $1,850 if the child is blind, the penalty on early withdrawal of child's savings, and itemized deductions such as the child's charitable contributions.

B. Stock Incentive Plans

Stock incentive plans have proven to be a difficult subject for many tax professionals to understand and/or track for their clients. The difficulty typically starts with the client's lack of understanding of their own options.

Often clients cannot answer the basic question: What type of stock incentive plan do you have? Is it:

- An incentive stock option (ISO) plan;
- A nonqualified stock option (NQSO) plan;
- An employee stock purchase plan (ESPP);
- A restricted stock unit (RSU) plan;
- Restricted stock awards (RSAs);
- Some combination thereof; or
- Something else entirely?

Only ISOs and ESPPs are classified as "statutory" stock options. We will explore each of the listed plans here.

Practice Pointer

When a client first mentions that they are a participant in their employer's stock incentive plan, be sure to request a copy of the plan documents and any other literature provided to the client regarding the plan.

The plan documents, similar to a partnership agreement, LLC operating agreement, corporate bylaws, or a trust agreement, will set out the terms of the plan. This agreement is critical to gaining an understanding of your client's particular plan. Employers often provide supplemental information to their employees explaining the stock incentive plan in easy-to-understand terms, including the tax consequences of the plan. Tax professionals who are less confident in their knowledge of stock incentive plans can use this supplemental information to help with their own understanding as well.

Be sure to note the expiration date of any stock options and calendar them. Helping clients ensure that they exercise stock options before they expire can help you provide great value to your clients.

Stock Warrants

Stock warrants are similar to stock options. They are both certificates that allow the holder to purchase a specified number of shares, at a specified time, for a specified price. Stock options are normally granted to employees and other service providers, whereas warrants are typically granted to nonemployees (including outside investors).

Generally, warrants are not compensatory for tax purposes, so we won't explore them in this course. However, some options may be incorrectly referred to as "warrants." Depending on the facts and circumstances, if the warrants are actually issued in exchange for the performance of services, then they are subject to the rules under IRC §83(a). We will discuss IRC §83 in greater detail throughout these materials.

For clients who have been granted compensatory warrants, you must obtain a copy of the plan documents. The terms of the plan will determine whether the warrants are taxed the same as one of the nonstatutory stock incentive plans, such as NQSOs, RSUs, or RSAs.

Incentive Stock Options (ISOs)

Grant and Exercise of ISOs

An employee does not recognize income when an ISO is granted (the grant date), rather the income is recognized when the stock is disposed. (IRC §83) The tax treatment depends on whether the disposition is a qualifying or nonqualifying disposition.

The grant date is the date the employee is first granted the option to purchase, at some point in the future, shares of their employer stock at a stated exercise price. However, the employee typically must wait a period of time (defined in the ISO plan documents) before they can exercise their option to purchase the stock. The waiting period is also referred to as the vesting period for the ISO.

An employee also does not recognize income (for regular tax purposes) when an incentive stock option is exercised (the exercise date). (IRC §421(a)) However, incentive stock options are subject to an alternative minimum tax (AMT) adjustment when they are exercised.

Form 3921

Employers must issue Form 3921, Exercise of an Incentive Stock Option Under Section 422(b), by January 31 of the calendar year following the calendar year in which an employee exercises an ISO. Form 3921 provides the following relevant information that is used to calculate the employee's AMT adjustment on the exercise date as well as taxable gain when the stock is ultimately disposed of by the employee:

- Grant date;
- Exercise date;
- Exercise price per share;
- Fair market value per share on the exercise date; and
- Number of shares transferred to the employee pursuant to the exercise of the option.

An employee must receive a different Form 3921 for each stock option exercised during the year. For example, if an employee exercises incentive stock options on three different dates during the 2023 calendar year, then the employee must receive three separate Forms 3921 by January 31, 2024.

A copy of Form 3921 is reproduced in the next two examples.

Disposition of Stock Acquired Through an ISO

An employee will generally recognize income in the year in which they dispose of the stock purchased under an ISO plan. (IRC §1222)

A disposition occurs when legal title to the shares is transferred, whether by sale, exchange, or gift, or if the employee delivers the stock in payment of the exercise price of any other incentive stock option held by the employee. (IRC §424(c)(1))

> **Caution**
>
> Typically, a gift does not give rise to a taxable event. (IRC §102(a)) Rather, the recipient takes the gift subject to a transferred basis and will recognize all the gain on the stock when it is sold. (IRC §1015)
>
> There is an exception to this rule when stock acquired through a statutory stock option (through either an incentive stock option or an employee stock purchase plan) is gifted prior to the requisite holding periods for the stock. (IRC §424(c)(3)(A)) The requisite holding periods are discussed immediately below.

The following transactions do not constitute a taxable disposition:

- Transfers to a spouse;
- Transfers into joint ownership with right of survivorship provided the employee remains one of the joint owners;
- A pledge of the stock as collateral for a loan; or
- A transfer by bequest or inheritance upon the employee's death or certain tax-free exchanges of the shares permitted under the Internal Revenue Code. (IRC §424(c))

Defining Qualifying Dispositions

The employee's federal tax liability upon disposition of stock acquired through an incentive stock option depends on whether the disposition is a qualifying or nonqualifying disposition.

A qualifying disposition occurs if the sale or other disposition of the stock takes place:

- More than two years after the date the incentive stock option was granted for the particular shares involved in the disposition; and
- More than one year after the date the option was exercised for those shares. (IRC §422(a))

If both of these requirements are met, then the disposition is a qualifying disposition. Otherwise, the disposition is a nonqualifying disposition.

Tax Treatment Of Qualifying Dispositions

The employee recognizes long-term capital gain (or loss) by subtracting the exercise price paid for the stock from the sale proceeds. (IRC §1222)

Example of ISO qualifying disposition

Dusty was granted an incentive stock option by his employer on July 2, 2019, for 2,000 shares with an exercise price of $25 per share. On September 19, 2021, he exercised the option for 500 vested shares when the fair market value of the stock was $35 per share.

Dusty received the following Form 3921 by January 31, 2022:

☐ CORRECTED (if checked)

TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code Employer One First Street Anaheim, CA 92801		1 Date option granted 7/2/2019 2 Date option exercised 9/19/2021	OMB No. 1545-2129 **Form 3921** (Rev. October 2017)	**Exercise of an Incentive Stock Option Under Section 422(b)**
TRANSFEROR'S TIN 12-3456789	EMPLOYEE'S TIN 987-65-4321	3 Exercise price per share $ 25.00	4 Fair market value per share on exercise date $ 35.00	**Copy B** **For Employee**
EMPLOYEE'S name Dusty Employee Street address (including apt. no.) 123 Main Street City or town, state or province, country, and ZIP or foreign postal code Anaheim, CA 92801		5 No. of shares transferred 500 6 If other than TRANSFEROR, name, address, and TIN of corporation whose stock is being transferred		This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
Account number (see instructions)				

Form **3921** (Rev. October 2017) (keep for your records) www.irs.gov/Form3921 Department of the Treasury - Internal Revenue Service

On February 11, 2023, Dusty sold the 500 shares that he exercised on September 19, 2021, for $40 per share.

Because the February 11, 2023, disposition of the shares was made more than two years after the July 2, 2019, grant date and more than one year after the September 19, 2021, exercise date, the sale is a qualifying disposition. For federal income tax purposes, Dusty will recognize long-term capital gain calculated as follows:

Sale proceeds per share	$40.00
Exercise price paid per share (Form 3921, box 3)	- 25.00
Gain per share	15.00
Number of shares sold	× 500
Long-term capital gain	$7,500

On the Form 3921 shown, the $10 price difference per share (box 4 minus box 3) × the 500 shares exercised in 2021 = $5,000, which represents Dusty's AMT adjustment in 2021. We will explore AMT issues in more detail on page 7.

Tax Treatment Of Nonqualifying Dispositions

Generally, a nonqualifying disposition (aka disqualifying disposition) of stock purchased under an incentive stock option plan will result in ordinary income calculated by subtracting the exercise price paid for the stock (Form 3921, box 3) from the fair market value of the stock on the exercise date (Form 3921, box 4). (IRC §421(b)) This calculation is identical to the AMT adjustment in the year the incentive stock options were exercised.

If the nonqualifying disposition is made in an arm's length sale or exchange with an unrelated party, the ordinary income is limited to the amount by which the amount realized upon the disposition of the stock or the stock's fair market value on the exercise date, whichever is less, exceeds the exercise price paid for the stock. (IRC §421(b))

Lesser of sale price or FMV of stock on excise date – Exercise price paid for stock = Ordinary income

Any additional gain recognized upon the nonqualifying disposition is capital gain, which is classified as long-term capital gain if the shares have been held for more than one year following the exercise date. (IRC §1222(3))

The portion of a nonqualifying disposition that is taxed as ordinary income should be reported on the employee's W-2 for the year the stock is sold and is not subject to Social Security and Medicare tax.

Example of ISO nonqualifying disposition

Karleen was granted an incentive stock option by her employer on April 30, 2021, for 4,000 shares with an exercise price of $50 per share. On June 9, 2022, she exercised the option for 1,000 shares when the fair market value of the stock was $70 per share.

Karleen received the following Form 3921 by January 31, 2023:

☐ CORRECTED (if checked)

TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code
Employer
One First Street
Anaheim, CA 92801

1 Date option granted: 4/30/2021

2 Date option exercised: 6/9/2022

OMB No. 1545-2129

Form 3921 (Rev. October 2017)

Exercise of an Incentive Stock Option Under Section 422(b)

TRANSFEROR'S TIN: 12-3456789

EMPLOYEE'S TIN: 987-65-4321

3 Exercise price per share: $ 50.00

4 Fair market value per share on exercise date: $ 70.00

EMPLOYEE'S name: Karleen Employee

5 No. of shares transferred: 1,000

Street address (including apt. no.): 123 Main Street

City or town, state or province, country, and ZIP or foreign postal code: Anaheim, CA 92801

Account number (see instructions)

6 If other than TRANSFEROR, name, address, and TIN of corporation whose stock is being transferred

Copy B
For Employee

This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

Form **3921** (Rev. October 2017) (keep for your records) www.irs.gov/Form3921 Department of the Treasury - Internal Revenue Service

On May 12, 2023, Karleen sold the 1,000 shares that she exercised on June 9, 2022, for $80 per share.

Because the May 12, 2023, disposition of the shares was made less than one year after the exercise date, the sale is a nonqualifying disposition, and Karleen's gain is divided into two components:

Ordinary income component

Karleen will recognize ordinary income calculated as follows:

Sale price per share	$80.00	
FMV of shares on exercise date (Form 3921, box 4)	$70.00	
Lesser of sale price or FMV on exercise		$ 70.00
Exercise price paid per share (Form 3921, box 3)		- 50.00
Ordinary income per share		20.00
Number of shares sold		× 1,000
Total ordinary income (reported on her 2022 Form W-2)		$ 20,000

(Continued)

Example of ISO nonqualifying disposition (Continued)

Capital gain component

Karleen will recognize capital gain calculated as follows:

Sale proceeds per share	$ 80.00
Exercise price paid per share (Form 3921, box 3)	- 50.00
Ordinary income per share (from above, reported on her 2023 Form W-2)	- 20.00
Capital gain per share	10.00
Number of shares sold	× 1,000
Short-term capital gain	$10,000

Karleen's capital gain is short-term capital gain because she held the stock for one year or less after the exercise date (her sale date was May 12, 2023, and her exercise date was June 9, 2022).

If the shares purchased under an incentive stock option plan are sold in a nonqualifying disposition for less than the exercise price paid for them, then the employee will recognize a capital loss equal to the excess of the exercise price paid for the shares over the amount realized upon the disposition of the shares. (IRC §1222(2) and (4))

For example, if the stock sold by Karleen in the previous example instead sold for $31 per share in the nonqualifying disposition, then she would recognize only a short-term capital loss of $19 per share ($31 sale price - $50 exercise price).

Basis Reported On Form 1099-B (ISOs)

When an employee exercises incentive stock options, the shares are transferred into the employee's brokerage account. The cost basis provided in the employee's brokerage account (as well as on Form 1099-B when the shares are sold) is the exercise price the employee pays for the shares.

When a qualifying disposition occurs, the employee does not recognize any ordinary income, so the basis reported on Form 1099-B will accurately reflect the employee's basis in the shares sold. The transaction is considered a covered transaction, so the exercise price the employee pays for the shares (the employee's basis) will be reported to the IRS on Form 1099-B.

When a nonqualifying disposition occurs, the amount of ordinary income reported on the employee's W-2 must be added to the basis shown on Form 1099-B. This is because the true cost basis for shares includes the amount paid for the stock plus the difference between the fair market value at exercise and the exercise price (the amount reported on Form W-2).

Example of Form 1099-B basis adjustments on sale of stock acquired in an incentive stock option plan and sold in a nonqualifying disposition

The facts are the same as the previous example. Karleen's 1099-B on the sale of her stock will contain the following relevant information:

Shares sold	Date sold	Date acquired	Proceeds	Cost basis	Gain (loss)
1,000	5/12/2023	6/9/2022	$80,000*	$50,000**	$30,000

* 1,000 shares × $80 per share
** 1,000 shares × $50 per share exercise price

If Karleen's tax professional simply reports capital gain on her income tax return as shown on her Form 1099-B, then she will report $30,000 of capital gain from the sale of the 1,000 shares. However, as the previous example illustrates, she actually has only $10,000 of capital gain. The remaining $20,000 of gain was taxed as ordinary income and reported on her W-2 (she has already been taxed on it).

The $20 of ordinary income recognized per share (calculated in the previous example) and reported on Karleen's W-2 must be added to the basis shown on her 1099-B. The basis is added on Form 8949 using code "B" in column (f), as follows:

Form **8949** Department of the Treasury Internal Revenue Service

Sales and Other Dispositions of Capital Assets

File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.
Go to *www.irs.gov/Form8949* for instructions and the latest information.

OMB No. 1545-0074
2023
Attachment Sequence No. **12A**

Name(s) shown on return: Karleen Employee
Social security number or taxpayer identification number: 123-45-6789

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are generally short-term (see instructions). For long-term transactions, see page 2.
Note: You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).

You *must* check Box A, B, *or* C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

☑ **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)
☐ **(B)** Short-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS
☐ **(C)** Short-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the **Note** below and see *Column (e)* in the separate instructions.	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). See the separate instructions. (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g).
Name of company - Nonqualifying disposition of ISO	6/9/2022	5/12/2023	$80,000	$50,000	B	($20,000)	$10,000

A. Discussion Problem

A. **Kiddie Tax and Dependent Income**

1. Discuss the filing requirements for dependents.
2. Discuss when the kiddie tax applies.
3. Discuss the filing options available.

B. **Stock incentive plans**

1. Discuss the different types of stock option plans.
2. Discuss what occurs at the grant date and the exercise date of a stock option.
3. Discuss the employee's federal tax liability upon disposition of stock acquired through an incentive stock option.

B. Suggested Answers to Discussion Problems

A. **Kiddie Tax and Dependent Income**

1. The filing requirements for dependents are determined by factors such as the amount of earned and unearned income, marital status, age, and blindness. In some cases, a dependent may have to file a return even if their income is below the normal filing threshold due to special circumstances. A dependent must file a return if any other taxes are owed, such as social security and Medicare taxes on tips not reported to an employer or on wages received where these taxes were not withheld, or alternative minimum tax.

2. The kiddie tax applies to a child if all of the following apply:

   1. The child's unearned income exceeds the annual limit adjusted for inflation ($2,500 for 2023)

   2. The child either

      - was under age 18 at the end of the year, or
      - was age 18 at the end of the year and did not have earned income that was more than half of his support, or
      - was a full-time student over age 18 and under age 24 at the end of the year and did not have earned income that was more than half of his support.

   3. At least one of the child's parents was alive at the end of the year, and

   4. The child does not file a joint return during the year.

   Whether or not either or both parents claim the child as a dependent, the kiddie tax applies.

3. If the parents elect to report the child's income on their tax return, the child is treated as having no gross income and does not have a filing requirement.

   If the parents elect to report the child's income on their return, they cannot take certain deductions that the child could take on his or her own return such as the additional standard deduction of $1,850 if the child is blind, the penalty on early withdrawal of child's savings, and itemized deductions such as the child's charitable contributions.

B. **Stock incentive plans**

1. The types of stock option plans include:

   - An incentive stock option (ISO) plan;
   - A nonqualified stock option (NQSO) plan;
   - An employee stock purchase plan (ESPP);
   - A restricted stock unit (RSU) plan;
   - Restricted stock awards (RSAs);
   - Some combination thereof; or
   - Something else

   Only ISOs and ESPPs are classified as “statutory” stock options.

2. An employee does not recognize income when an ISO is granted (the grant date), rather the income is recognized when the stock is disposed. (IRC §83) The tax treatment depends on whether the disposition is a qualifying or nonqualifying disposition.

   The grant date is the date the employee is first granted the option to purchase, at some point in the future, shares of their employer stock at a stated exercise price. However, the employee typically must wait a period of time (defined in the ISO plan documents) before they can exercise their option to purchase the stock. The waiting period is also referred to as the vesting period for the ISO.

   An employee also does not recognize income (for regular tax purposes) when an incentive stock option is exercised (the exercise date). (IRC §421(a)) However, incentive stock options are subject to an alternative minimum tax (AMT) adjustment when they are exercised.

3. The employee's federal tax liability upon disposition of stock acquired through an incentive stock option depends on whether the disposition is a qualifying or nonqualifying disposition.

   A qualifying disposition occurs if the sale or other disposition of the stock takes place:

   - More than two years after the date the incentive stock option was granted for the particular shares involved in the disposition; and
   - More than one year after the date the option was exercised for those shares. (IRC §422(a))

   If both of these requirements are met, then the disposition is a qualifying disposition. Otherwise, the disposition is a nonqualifying disposition.

   If the disposition is a qualifying disposition, the employee recognizes long-term capital gain (or loss) by subtracting the exercise price paid for the stock from the sale proceeds. (IRC §1222)

   Generally, a nonqualifying disposition (aka disqualifying disposition) of stock purchased under an incentive stock option plan will result in ordinary income calculated by subtracting the exercise price paid for the stock (Form 3921, box 3) from the fair market value of the stock on the exercise date (Form 3921, box 4). (IRC §421(b)) This calculation is identical to the AMT adjustment in the year the incentive stock options were exercised.

   If the nonqualifying disposition is made in an arm's length sale or exchange with an unrelated party, the ordinary income is limited to the amount by which the amount realized upon the disposition of the stock or the stock's fair market value on the exercise date, whichever is less, exceeds the exercise price paid for the stock. (IRC §421(b))

GLOSSARY OF KEY TERMS

Charitable Deduction—Donations to a qualified charity

Charitable Remainder Trust—irrevocable trusts that permit the donation of assets to charity and allow for drawing annual income for life or for a specific time period

Charitable Remainder Annuity Trust (CRATs)—distribute a fixed annuity amount each year and additional contributions are not permitted

Conservation Easement—voluntary, legal agreement that permanently limits uses of the land in order to protect its conservation values

Dependent—a qualifying child or relative of the taxpayer, but may not be the spouse

Earned Income—Wages, salaries, tips, and other taxable employee pay. Employee pay is earned income only if it is taxable.

Incentive Stock Options—an employee benefit that gives the right to buy stock at a discount with a tax break on any profits

RSUs—grant an employee the stock itself once the vesting period is completed

Unearned Income—any form of income earned passively; such as interest, dividends, casino winnings and rental income from investment properties

CPE Network®

Tax Report

Volume 37, Issue 4 **May 2024**

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

1. According to Ian Redpath, under IR 2024-80, what is the deadline for taxpayers to claim previously unclaimed refunds for the 2020 tax year?

   A. April 15, 2024
   B. May 17, 2024
   C. June 30, 2024
   D. December 31, 2024

2. According to Ian Redpath, what did the district court in *National Small Business United v. Yellen* rule regarding the Corporate Transparency Act and the beneficial ownership rules?

   A. They are constitutional and necessary to fight fraud and money laundering.
   B. They are constitutional but should be revised to be less burdensome on small businesses.
   C. They are unconstitutional, as they exceed the limits on the legislative branch.
   D. They are unconstitutional, but only for members of the National Small Business Association.

3. According to Ian Redpath, according to Issue Number 2023-03, what should Circular 230 practitioners do with unnecessary authorizations on file with the IRS?

   A. Keep them on file indefinitely for record-keeping purposes
   B. Withdraw or cancel them when they are no longer needed
   C. Notify the client but take no action to withdraw the authorizations
   D. Wait for the IRS to purge them after the established retention period

4. According to Ian Redpath, in *Wylie v. Miller*, what did the district court determine regarding the married couple's intent when electing to apply their 2019 overpayment to their 2020 tax liability?

   A. They did not intend to hinder the trustee, as there was no evidence they knew the effect of the election on their non-tax creditors.
   B. They intended to hinder the bankruptcy trustee and should be denied a discharge.
   C. Their intent was irrelevant, as the election automatically disqualified them from a bankruptcy discharge.
   D. They intended to defraud the IRS and should be subject to criminal charges.

5. According to Ian Redpath, in *Valley Park Ranch, LLC*, what did the Tax Court rule regarding the IRS' extinguishment clause regulations for conservation easements?

   A. The regulations are valid and the easement deed did not comply with them.
   B. The regulations are invalid under the Administrative Procedures Act (APA), so the deed did not need to comply with them.
   C. The regulations are valid, but the Tax Court will no longer enforce them based on the Oakbrook precedent.
   D. The regulations are invalid, but the easement deed still did not meet the requirements for a charitable deduction.

Continued on next page

6. According to Ian Redpath and Brian O'Sullivan, according to Section 73 of the Internal Revenue Code, earned income of a child for personal services is which of the following?

   A. Always included in the income of the parent
   B. Included in the income of the child, even if the amounts are not received by the child
   C. Excluded from the income of both the parent and the child
   D. Included in the income of the parent, unless the child receives the amounts directly

7. According to Ian Redpath and Brian O'Sullivan, what are the age requirements for a child to be exempt from FICA taxes when employed by their parents in a trade or business?

   A. Under 18 years old
   B. Under 21 years old
   C. Under 24 years old
   D. There is no age requirement for FICA exemption

8. According to Ian Redpath and Brian O'Sullivan, for a dependent who can be claimed on another's return, the standard deduction for 2024 is which of the following?

   A. $1,300
   B. The greater of $1,300 or earned income plus $450, not to exceed $14,600
   C. Always $14,600, regardless of earned income
   D. Not available for dependents

9. According to Ian Redpath and Brian O'Sullivan, under the kiddie tax rules, what amount of a child's unearned income is tax-free in 2024?

   A. $1,300
   B. $2,600
   C. The full amount of unearned income
   D. None of the unearned income is tax-free

10. According to Ian Redpath and Brian O'Sullivan, parents can elect to report a child's income on their own return using Form 8814 if the child's gross income is which of the following?

   A. Less than $1,300
   B. More than $1,300 but less than $13,000, and consists of only interest and dividends
   C. More than $13,000
   D. Any amount, regardless of the type of income

Continued on next page

11. According to Mike Giangrande, when are incentive stock options (ISOs) taxed as ordinary income?

    A. At the time of grant
    B. At the time of exercise
    C. At the time of a qualifying disposition
    D. At the time of a disqualifying disposition

12. According to Mike Giangrande, what is the holding period requirement for a qualifying disposition of ISOs?

    A. More than 1 year after grant date and more than 2 years after exercise date
    B. More than 2 years after grant date and more than 1 year after exercise date
    C. More than 1 year after grant date and more than 1 year after exercise date
    D. More than 2 years after grant date and more than 2 years after exercise date

13. According to Mike Giangrande, what information is reported on Form 3921 when an employee exercises ISOs?

    A. Grant date, exercise date, exercise price, and fair market value at exercise
    B. Grant date, vesting date, exercise price, and number of shares
    C. Exercise date, vesting date, sale price, and number of shares sold
    D. Exercise date, sale date, sale price, and gain on sale

14. According to Mike Giangrande, in a qualifying disposition of ISOs, what is the tax treatment of the gain?

    A. Short-term capital gain
    B. Long-term capital gain
    C. Ordinary income
    D. Mix of ordinary income and capital gain

15. According to Mike Giangrande, when reporting a disqualifying disposition of ISOs on Form 8949, what adjustment should be made to the basis reported on Form 1099-B?

    A. No adjustment is needed
    B. Decrease the basis by the amount of ordinary income reported on Form W-2
    C. Increase the basis by the amount of ordinary income reported on Form W-2
    D. Increase the basis by the amount of long-term capital gain

CPE Network®
Tax Report
Volume 37, Issue 4 **May 2024**

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Evaluation Form

Please take a few minutes to complete this survey related to the **CPE Network® Tax Report** and return 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 May 2024 **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	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Taxation of Dependent Income	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Stock Incentive Plans: Part 1	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

Which segments of the May 2024 issue of **CPE Network® Tax Report** did you like the most, and why?

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Which segments of the May 2024 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**?

____

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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 May 2024 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5=highest):

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	|______|	|______|	|______|
Julie Welch	|______|	|______|	|______|
Brian O' Sullivan	|______|	|______|	|______|

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 contribute 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: ____________________ 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: ____________________

CPLgrading@cerifi.com

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 3 times per CPE hour. 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 December 31, 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), Checkpoint Learning Network will not be the sponsor and will not issue certificates. 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

CPE Network program materials are copyrighted and may not be reproduced in another document or manuscript in any form without the permission of the publisher. As a subscriber of the **CPE Network Series,** you may reproduce the necessary number of participant manuals needed to conduct your group study session.

“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 online.

- If the emailed 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 email 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. Participants’ two-way video should remain on during the entire presentation.

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 asks 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.

Where individual participants log into a group live program they are required to enable two-way video to participate in a virtual face-to-face setting (with cameras on), elements of engagement are required (such as group discussion, polling questions, instructor posed questions with time for reflection, or a case study with engagement throughout the presentation) in order to award CPE credits to the participants. Participation in the two-way video conference must be monitored and documented by the instructor or attendance monitor in order to authenticate attendance for program duration. The participant-to-attendance

monitor ratio must not exceed 25:1, unless there is a dedicated attendance monitor in which case the participant-to-attendance monitor ratio must not exceed 100:1.

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 emailed 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 email 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—Email

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

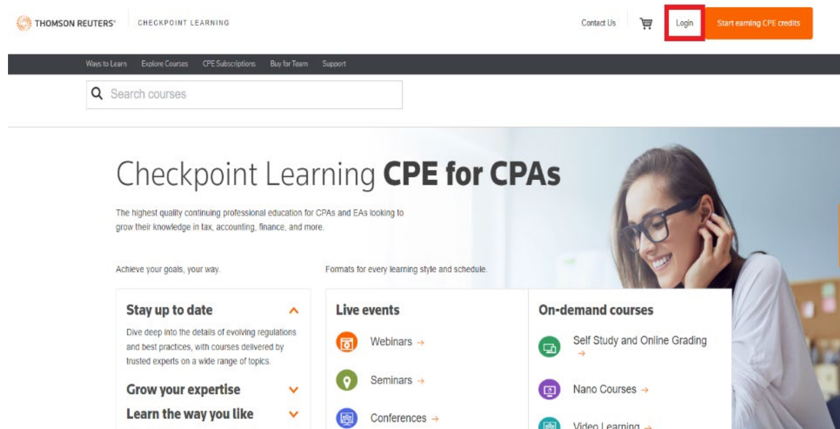
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

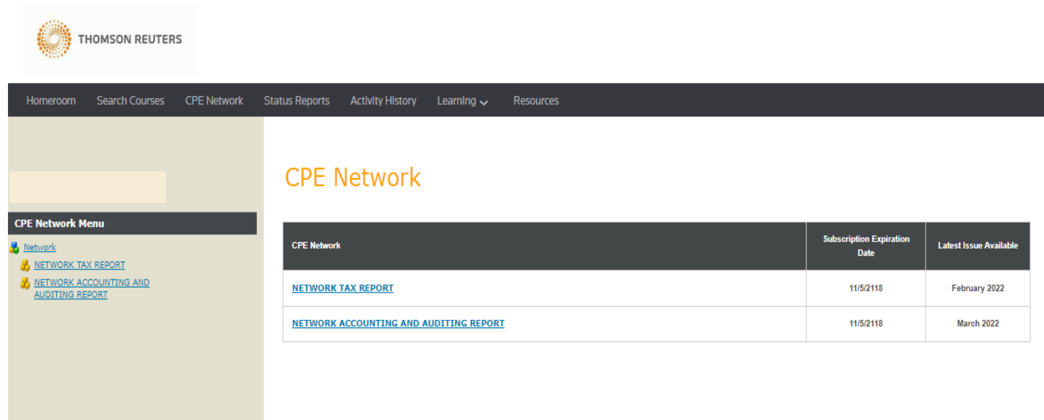
Self-Study—Online

Follow these simple steps to use the online program:

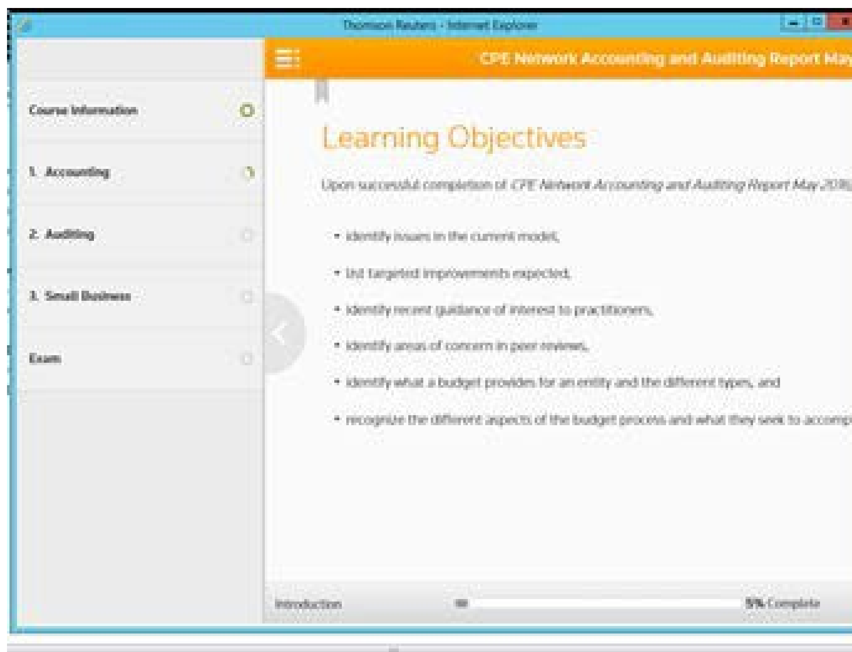
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

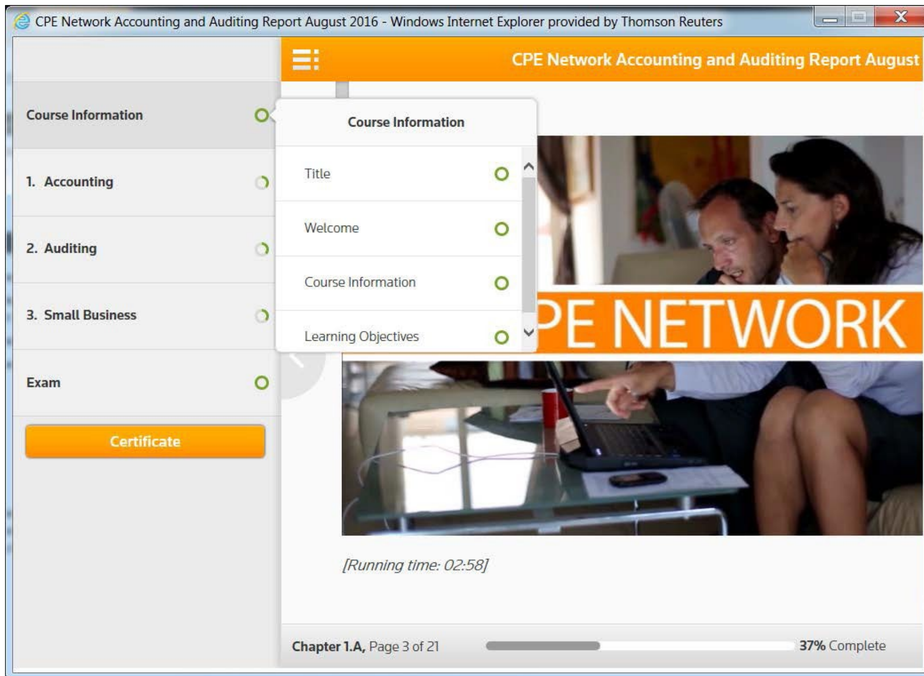


The Chapter Menu is in the gray bar at the left of your screen:



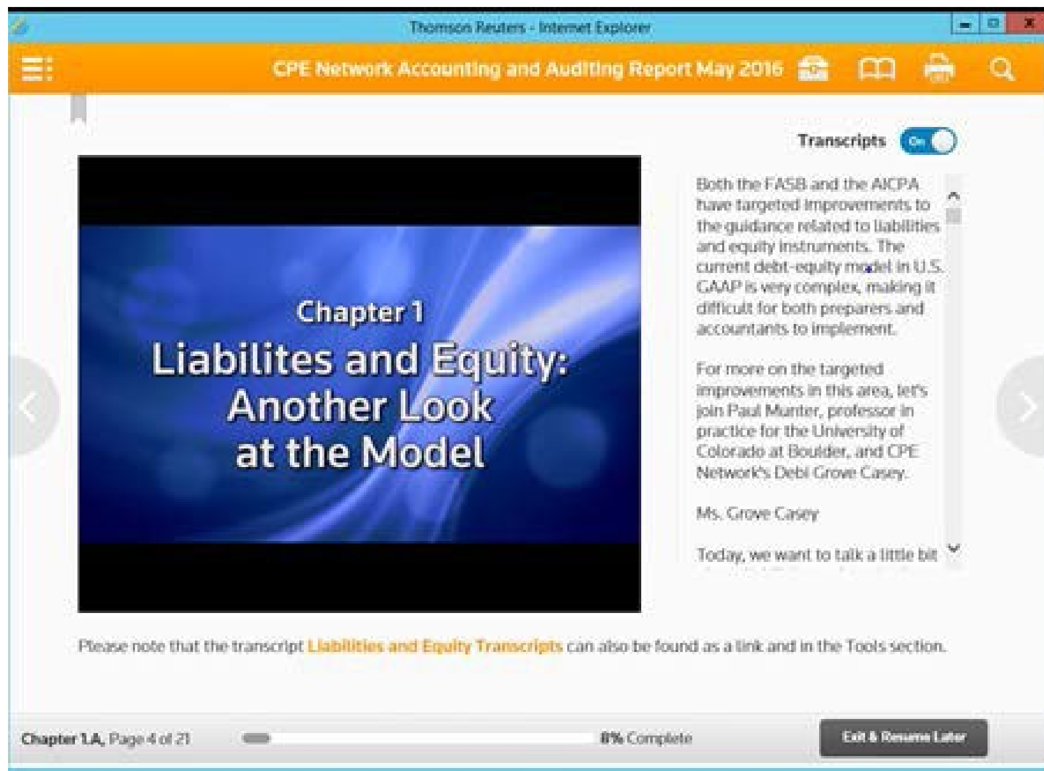
Click down to access the dropdown menu and move between the program Chapters.

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

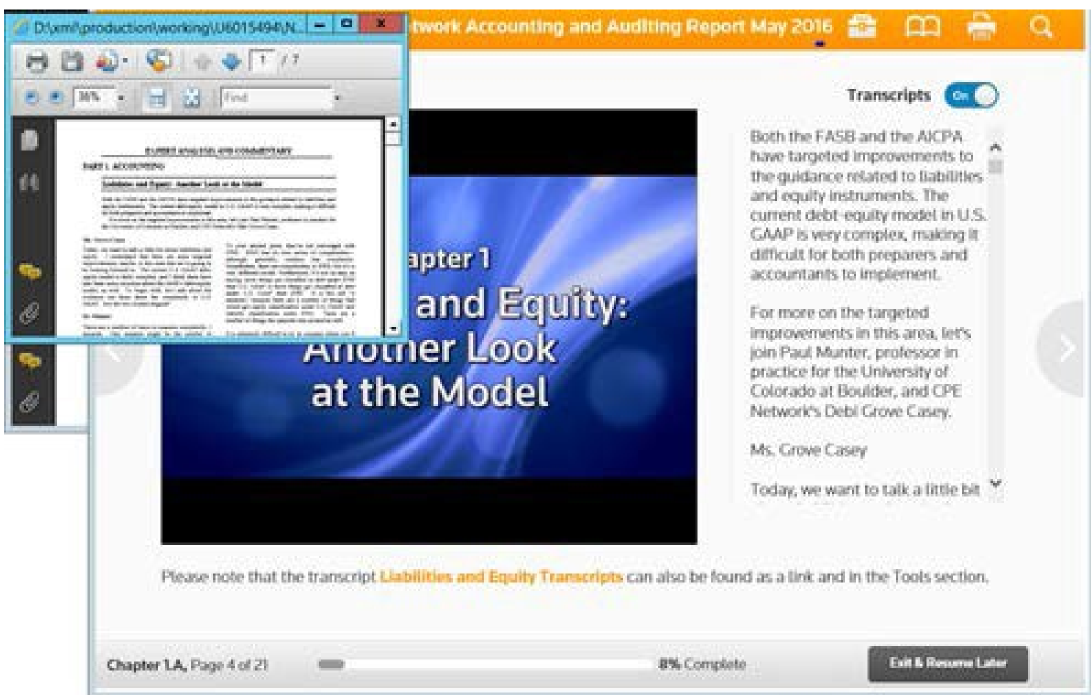


- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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

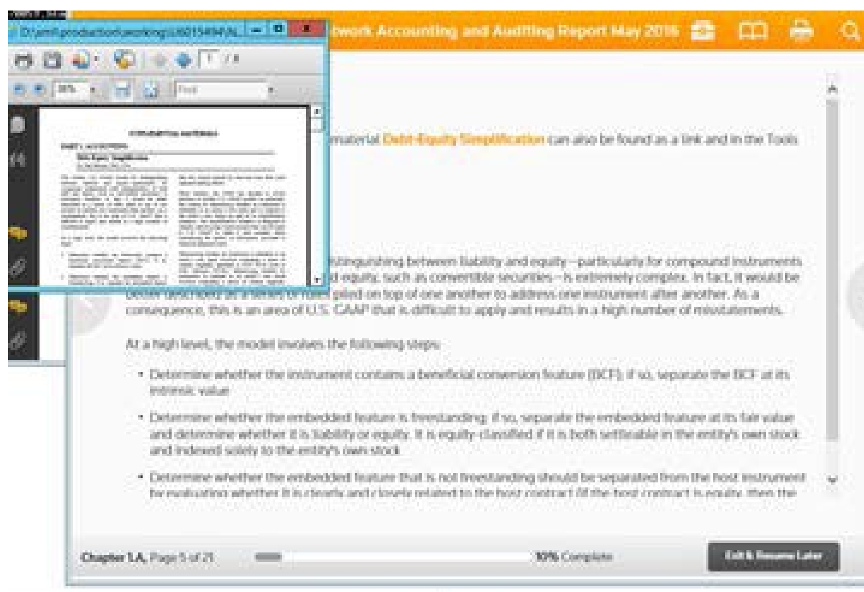
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.



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.

CPE Network Accounting and Auditing Report July 2016

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

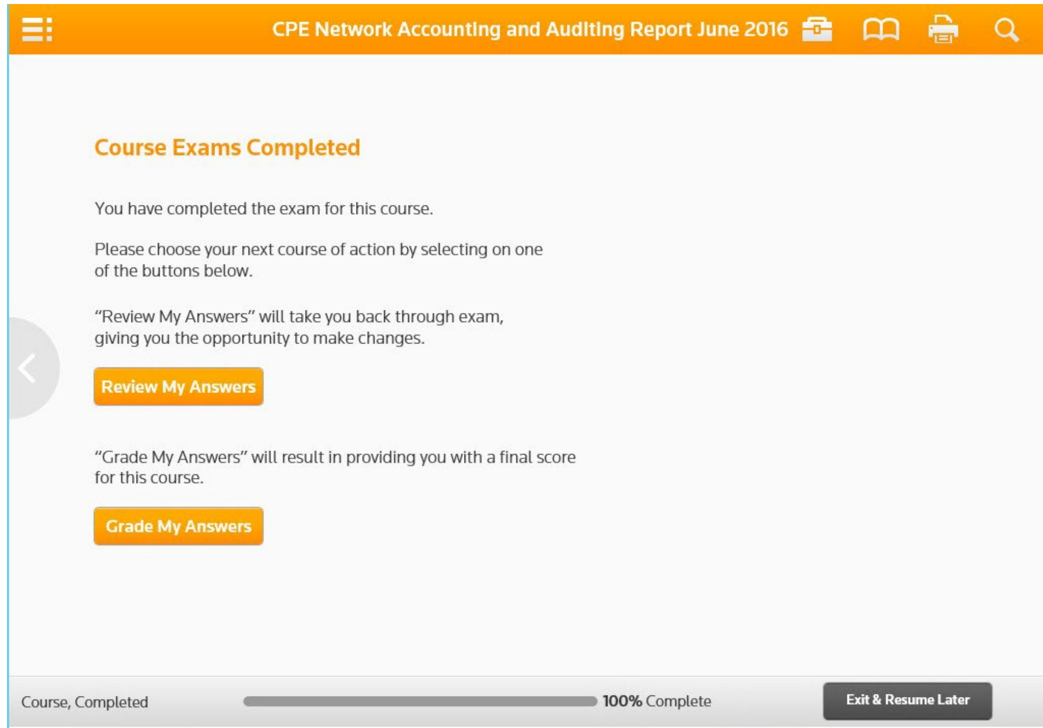
   An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions 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.

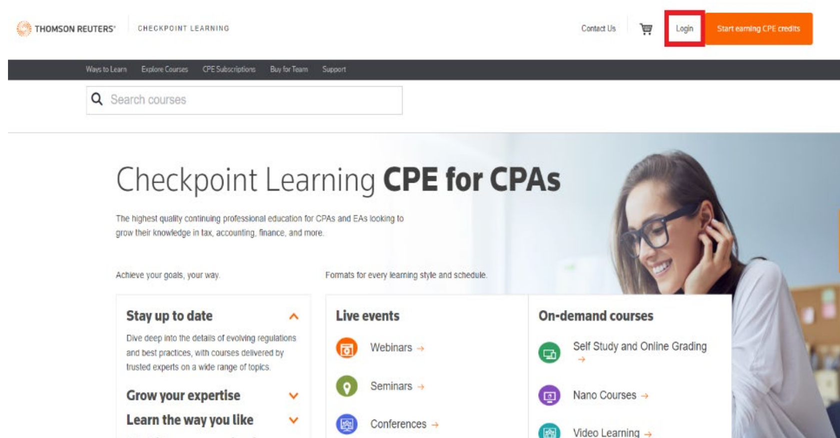
Print

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**.

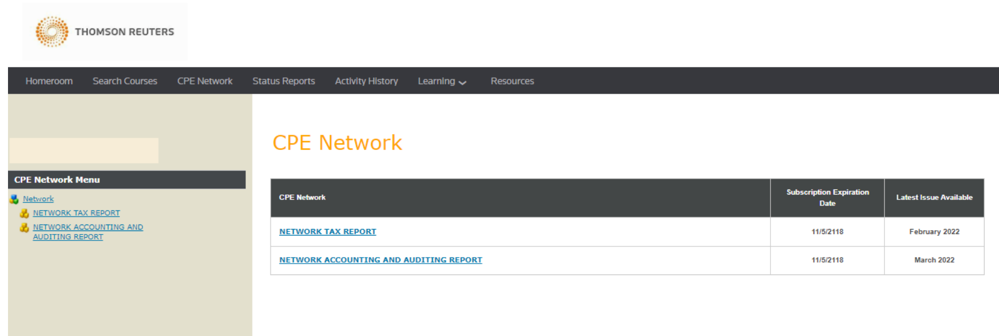
Transitioning From DVDs

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

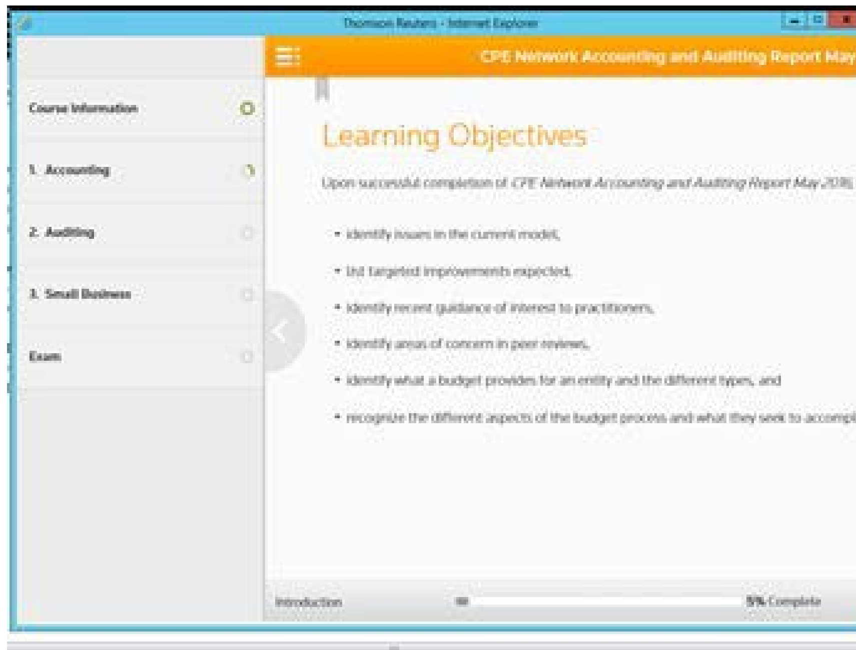
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

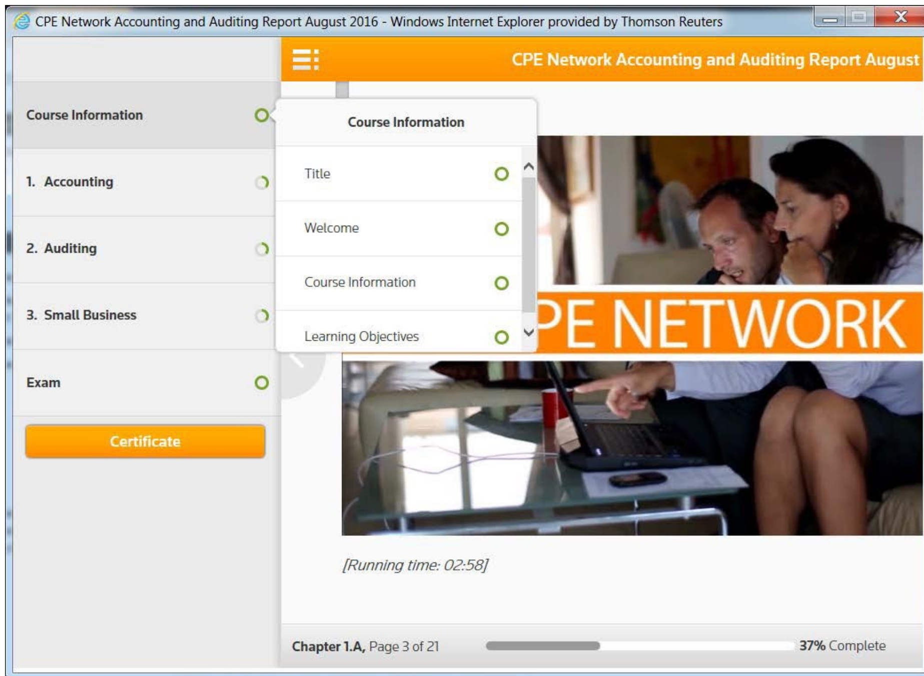


The Chapter Menu is in the gray bar at the left of your screen:



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.

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 (if any).
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