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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

The tax landscape is ever changing with new developments or proposals appearing on a regular basis. Practitioners need to be cognizant of changes to properly advise clients. This material covers some of those changes or notices since the last segment. *[Running time: 34:09]*

Learning Objective:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including assessing syndicated conservation easements as listed transactions, determining the applicability of the BOI rules and the Corporate Transparency Act, and evaluating the applicability of the new DOL fiduciary rule to CPAs.

PART 2. INDIVIDUAL TAXATION

In Part 3 of the series, Renee Rodda discusses rental real estate. *[Running time: 24:16]*

Learning Objective:

Upon completion of this segment, the user should be able to analyze issues related to rental real estate, including assessing issues related to depreciation planning with bonus depreciation and IRC §179, identifying intricacies and exceptions to the tangible property repair (TPR) regulations, and understanding the depreciation recapture requirements.

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.

Renee Rodda, JD, is Senior Vice President of Tax and Accounting for CeriFi, LLC. She is the editor of Spidell's California Taxletter and Spidell's Analysis & Explanation of California Taxes. She has been educating tax professionals for more than 20 years. Renee is also a member of the advisory board for the Franchise Tax Board, the California Department of Tax and Fee Administration, and the Board of Equalization. She is a graduate of Chapman University School of Law with a Tax Law Emphasis.

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Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
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EXPERT ANALYSIS AND COMMENTARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, Ian Redpath looks at an audit report regarding the IRS's efforts to promote income tax compliance on gambling activities, final regulations targeting syndicated conservation easement transactions, and the Department of Labor Retirement Security Rule.

Let's join Ian.

Mr. Ian Redpath

Hi everybody, welcome to the program. This is the segment where we go over some things that have happened from the IRS to the courts and everything in between since the last time we got together. Obviously, things change every day, so we can't do everything, but kind of highlight some interesting things and some things that may affect a lot of you.

And let's start right in with an audit report from the Treasury Inspector General for the Treasury Department, and this is for tax administration, and is Audit Report No. 2024-300-064. And what this highlights, and this is why I think it's important to, you know, as we talk to our clients during tax season, that the Treasury Inspector General has said that, you know, the IRS's efforts to collect tax and force compliance in the area of gambling activities is woefully inadequate.

Gambling winnings revenue is about $60.5 billion in the gaming industry. So the IRS is saying, we believe, in fact, we know that people aren't claiming their gambling winnings. the IRS has received millions of W-2Gs, the reporting form for gambling, certain gambling winnings it's called, reporting billions of dollars in gambling winnings. And what the Treasury Inspector General found is that during the tax years 2018 to 2020, that they had found 148,908 individuals who were issued W-2Gs with more than $15,000 per individual in gambling winnings, and they never filed. They never reported those on their tax returns.

So non-filers were associated with, according to the Treasury Inspector General, about $13.2 billion in gambling winnings. So, the Treasury Inspector General's analysis said that just about 139,045 non-filers were already included in the non-filer case creation inventory, but essentially the IRS was doing nothing, you know, in response to the audit. The IRS analyzed 17,436 non-filers with income that was greater than $100,000 and calculated that it could potentially increase tax revenue by about $1.4 billion by addressing the total 139,045 non-filers. Even people getting the W-2Gs have not been reporting. The Treasury Inspector General, this is kind of a scathing report with the fact that the IRS is doing nothing.

So what does this mean? It means that we need to emphasize to our clients that if they have gambling winnings, they can expect that there's going to be certainly a much stronger and a much more vibrant approach to this by the Internal Revenue Service. They're going to be much more aggressive. So we know a lot of people have gambling winnings. They never report them. They play poker with their buddies and never report them. They go out and play games with their friends and there's gambling involved, and nothing's ever reported. What they're really talking about here are the people who are gambling and winning significant amounts of money. And again, to think that the W-2Gs, even though they've been filed, the IRS has not been pursuing the taxpayers.

What a huge number of taxpayers who got W-2Gs and did not report the income on their returns. So, make sure in your client organizer that you're asking about the W-2Gs and the gambling income. And likewise, remember you can take gambling expenses, ask about those also.

All right, so we also have a proposed regulation. This is a Proposed Regulation 113628-21. And this is interesting, if you've ever done any work with Native American tribes, this will be quite a change if this rule is adopted, which it appears it's going to be. It doesn't seem to be that there's opposition to it. But wholly owned Native American tribal entities would be granted the same tax-exempt status as the tribe. And so if a tribe organizes a wholly owned Native American tribal entity, they'll get the same tax-exempt status as the tribe would. In addition, it allows the tribal entities to claim the energy credits through either direct payments or the transfer of credits.

There's different ways. I have had some clients that were Native American tribes, and there's a lot of different ways. There are really setting it up through the federal government, Section 17 organization. Section 17 organizations are able then to act, and no matter where they are—on the reservation, off the reservation—they're not going to be subject to tax. The general rule is that if the organization is organized under state law, then they can be subject to taxation, especially in the states, and there's this federal issue. And then there are tribal chartered organizations, which essentially is that they're called resolution corporations, that the tribe recognizes them. And in fact, some states require, if you are organized as a tribal resolution corporation, that you have to file with the state as an out-of-state entity to do business. So what this will do is say that if it's organized and chartered, it'll be tax free regardless of where it does business.

Now, there's really been an argument with the Tribal Resolution Corporations. There's been an argument whether or not they should be subject to tax to activities performed outside the reservation. On the reservation, doesn't matter. But outside the reservation, this would make it clear that they're not subject to tax. Essentially what they're saying is that they're exercising inherent sovereign authority to generate revenue for the government, because remember they're tribal owned, and so, therefore, that they should not be subject to tax.

This will obviously change the rules, give some certainty here, and it will also allow them to claim the energy credits. And so a wholly owned tribal entity would be able to be, because it's an instrumentality of the government, it's going to be able to claim the energy credits. This will be an interesting change.

Well, know, over the last couple of years, every couple of months, we'll have a major decision concerning syndicated conservation easements. We know the IRS has been attacking them. We know every year they appear on the top of the list of the dirty dozen. They're always, you know, recently they've kind of got a permanent place, it appears, on the Dirty Dozen. In IR 2024-259, the IRS has issued final regulations formally classifying conservation easements and anything substantially similar to it as listed transactions subject to all the reporting and disclosure rules for listed transactions.

The thing is that a lot of these, there's partnerships or LLCs that are disregarded entities that are formed. They obtain property. Then, there's a huge value placed on a conservation easement. Often the IRS attacks those. And then the members, the partners, are able to take very large charitable contributions.

Now at one time the IRS came out with a rule that really said if the return was more than 2.5% of the investment, then it's suspect and it would not be allowed. But then that kind of went by the wayside and it became a question of a reasonable amount and a facts and circumstances test. And we know that various notices under the syndicated conservation easements, Notice 2017-10 that flagged these types of things as a form of tax shelter reportable then to the IRS. These were attacked and claimed that, well, these are actually subject to the APA, the Administrative Procedures Act, and found to be invalid because they didn't follow the Administrative Procedures Act. So there's been various courts that have held that some of the regulations under, like the extinguishment regulations, were invalid because they didn't follow the APA.

So as far as the list of transactions, the IRS went back to the table and said, okay, well, we're going do it and make sure that if it's subject to the APA, we're going to do it correctly and we're going to do it as required by the APA. And now we have this set of regulations, naming it specifically as a listed transaction. So if your clients come in and you have a client that wants to get involved with a syndicated conservation easement, make sure you inform them that these are now listed transactions and that they're going to have a lot of disclosure.

And again, the syndicated conservation easement has been on the top of the dirty dozen. The IRS thinks many of them are fraudulent. As I said, an investor purchases an interest and it could be direct, often through multiple tiers of pass-through entities, The entity donates a conservation easement then to a tax-exempt entity. The promoter gets compensated for the trouble. Either they get a fee, or they get an interest in the pass-through entity, and then the investors claim a large tax deduction for the conservation easement that was donated. And the IRS says that appraisals the promoters used to entice would-be investors, they over-exaggerate, they use unreasonable conclusions about the development potential of the real property, thus resulting in very large charitable contributions, but subject to the IRS challenge.

And so, you know, as I mentioned, back in December of 2022, the IRS released proposed regulations that followed the guidance in Notice 2017-29. But in a case called Mann Construction v. U.S., the Sixth Circuit Court of Appeals said that these have to go through formal rulemaking and follow the APA procedures for formal rulemaking. Thus, they're not valid. So the IRS just went back to the table to figure out how we are going to do it. They did it. They basically follow the former proposed rules, but these now will become listed transactions.

As I mentioned, the two and a half times threshold was lifted in the 2017 notice. And so the final new rules really kind of look like they are more of a facts and circumstances test. So the IRS looks at three major classes of abusive syndicated easements: those that involve contributions occurring before December 30th of 2022 (those pre-dating Mann); those for which a charitable contribution deduction is not automatically disallowed; and those that substitute the contribution of a fee simple for a contribution of just an easement. In other words, you didn't just transfer all the property in what's called a fee simple. You didn't just transfer all the property to the tax exempt entity. You just gave them an easement on the property. And those are the ones that are going to be really subject to a lot of scrutiny.

So these new rules take effect October 8th, 2024. Again, if you have clients that have or are considering conservation easements, I would look closely at this notice. And again, the rules take effect October 8th, 2024. You may want to change if you don't have what you feel is going to get you the adequate information, you may want to change your client organizer, client input sheets, in order to try to get the right type of information.

Well, a while ago, we talked about the case of National Small Business United v. Yellen. This is the case where a district court in Alabama decided that the Corporate Transparency Act and the BOI, the Beneficial Ownership Information Rules, were unconstitutional. It felt that it did not fall within the enumerated powers. There were two arguments that were made. One argument that was made was that it violated the Commerce Clause. These are a state law issue relative to incorporation of a business and not related at all to any federal Commerce Clause. And also, the second is a Fourth Amendment issue, unreasonable searches and seizures, that you're forcing people to give information without a warrant. Therefore, it's an unreasonable search and seizure.

This case, the Alabama federal district judge, there's been a number of other cases now that have been filed because what the judge did is the judge granted an injunction against enforcing the rules, but very, very limited. Limited to the members of the National Small Business United. It was narrow, but we've had multiple lawsuits since then as other organizations have said, well, hey, we want to jump in here, we want to get in, we want to be part of this. So, the 11th Circuit Court of Appeals has taken up the National Small Business United case. They heard oral arguments at the end of September, no decision yet. In trying to read the judges and some of their comments, they didn't seem to be very sympathetic to the arguments that were raised by the National Small Business Association. We'll see what happens when they finally come out with their decision.

All right, we've got a case called Carman. It's a Sixth Circuit Court of Appeals case. And again, it revives the crypto reporting legal challenges. And in this case, they partially reversed a lower court's dismissal of multiple constitutional challenges to the changes in the code section requiring disclosure of certain information on digital asset transactions. They were just dismissed by the lower court without, essentially without hearing. The Sixth Circuit's opinion said, and again this is Carman v. Yellen, the Sixth Circuit Court of Appeals said they erred in dismissing all of them; there were two cryptocurrency transactions and a crypto organizations complaint, and that they were not all situations that weren't ripe for review. And so what they did is the petitioners had asked the court to declare the amended section unconstitutional and then enjoin it.

And Carman, and a related Walsh, both deal in Bitcoin and wanted to receive their payments exceeding $10,000 thus subject to the new reporting requirement. Coin Center claimed it would also need to report due to contributions and sponsorship sales, its advocacy work, and cited increased compliance costs. But the district court disagreed that any costs or lost revenue in connection with complying with the reporting requirements were justifiable, finding the claimants lacked any standing and their claims were not right. And so they granted the government's motion to dismiss. The appeals court said, no, these issues, these are valid issues. They need to be determined, so reversed it and remanded it back. Didn't reverse it on all of the counts, but on the three. Reversed it in part and remanded it back to the district court for hearings. So we're now going to have some more hearings on these cryptocurrency reporting rules.

IR 2024-210. The IRS is reminding us that qualifying businesses, tax exempt organizations, state, local, and Indian tribal governments planning to claim the elective pay for projects placed in service in 2023 need to complete the pre-filing registration process now. This needs to get done ASAP. So the clean energy credits and elective pay, and this was in the Creating Helpful Incentives to Produce Semiconductors for America (CHIPS) and the Inflation Reduction Act (IRA), allows taxpayers to take advantage of certain manufacturing investments in clean energy and production tax credits through either elective pay or transfer. So elective pay makes certain of the credits and the chips manufacturing credit refundable. So they treat it as an elective payment amount, as a payment of your tax. And once your liability is paid, you're able to get a refund.

Transferability allows the entities that are qualifying for the tax credit but can't use it, for example, a tax-exempt entity can't use it, they can transfer all or a portion of the credit to a third party in exchange for cash. Now, this is the same type of thing we talked earlier about the tribal are now able to qualify. So they could qualify for the ability to transfer these credits for any projects in return for cash, something they can use, the credits, presumably whoever the transferee is. So to make it either one, you have to complete the pre-filing process and get a registration number. The registration number has to be on the tax return. The IRS says you should submit it at least 120 days before you plan to file the return making the election. They need that registration number.

All right. This is something that really could have, it has a major, major impact. The Department of Labor has issued updated rules to its investment advice fiduciary regulation. And, you know, this is not just to brokers, it could absolutely apply to CPAs. So the retirement security rule or the new and final rule, it's to get more transparency and to avoid conflicts of interest around distributions, rollovers, and investment advice for retirement. These are things that CPAs may very well be involved in. Should you roll that IRA over? Well, does that bring you under this rule?

So the rule provides that investors who make financial decisions impacting their retirement receive advice from trusted financial professionals that is in the best interest of them and not in the best interest of the financial professional. What this does is say, you as the professional giving this advice are going to be subject to the same fiduciary rules. You're a fiduciary. And so you're going to be subject to the duties of loyalty, the duty not to have a conflicting interest. And while you might have a conflicting interest, you have a duty to disclose it. So all of the fiduciary duties apply.

So you're acting in a fiduciary role. They're very strict. You have to give advice that is prudent and loyal to the client's interest. Avoid any misleading statements about conflict of interest, fees, investments. Follow policies and procedures designed to ensure the given advice is in the investor's best interest. Charge only a reasonable fee and then carefully manage any conflict of interest. And again, make proper disclosures if you do have it.

The final rule defines retirement investor as plan participants, beneficiaries, HSAs, IRAs, IRA owners, and beneficiaries and plan fiduciaries with any discretionary authority. It also amends some of the exemptions, the PTEs, they're called prohibited transaction exemptions. Now, the new rule generally took effect September 23, 2024. There are a few items that go and are delayed until 2025.

So ERISA imposes requirements on fiduciaries who provide investment advice for a fee. So most retirement investors rely on the advice of trusted professionals, brokers, insurance agencies, and registered investment advisors. These people often hold themselves out as experts. But it can go beyond that. It can be asking you as a CPA for particular advice. And many CPA firms are getting into investment advice. Pay close attention to this. So, the Department of Labor says when investors are looking to trusted advisors, the trusted advisor should have fiduciary duties towards them.

The determination of whether a recommendation took place. And here becomes the issue. The education of a client, this is, if you do this, this is how it will be treated. That's education, and that's not subject to these rules.

If you make a recommendation, it's subject to the rules. And a recommendation is something that makes a call for action. In other words, roll that IRA over into this account, a call for action. There's no bright line definition of what a recommendation is other than this general idea that it is a call for action. So factors in determining whether it took place: (1) can the communication reasonably be viewed as a call to action? Okay, you're going to need to do something, and (2) reasonably, it influence the investors decision. So, you know, again, we're going to take the difference between education and recommendation. They will be very, very different.

There used to be the advice that was produced on a one-time basis. For example, the recommendation to roll over retirement savings out of the workplace to an IRA was typically treated as fiduciary advice and not protected by ERISA's safeguards. So I should say it was not deemed to be fiduciary. Well, it is now. So it can be just one-time advice that you gave to a client that could cause you to fall under these rules.

CPAs will often find, and by the way, the DOL says specifically that they're not targeting CPAs here, it doesn't turn on what specific profession the advisor is. What's your profession is not relevant. It's aimed at those who hold themselves out as trusted advisors who make an investment recommendation. So I think we would have to say that CPAs hold themselves out as trusted advisors. And if you make an investment recommendation, well, you would seem to fall under these new fiduciary rules.

But the following circumstances are things that the Department of Labor deems to fall under the new rules. The CPA is asking questions about investment; there's fiduciary. The CPA makes recommendations on investments. The CPA is compensated for the advice. The CPA is taking the individual circumstance of the investor into account, not just a general concept. Generally, this is how this is viewed. Are you looking at it specifically for that client? The individual can rely on the CPA's advice given to promote their best interest. Now, if a CPA specializes in financial planning, they're obviously subject to these new rules.

In some respects, the CPA, depending on what they're saying and what they're recommending, could or could not be falling under these rules, but it's something to be careful of and to know whether you fall under it. So I would suggest you look at the new rule and see how this affects CPAs.

Thank you for joining me again. It's always great to have you here each and every month. I appreciate you constantly coming back to the program. And as always, please be safe.

Experts' Forum

By Ian J. Redpath, JD, LLM

A. TGITA Audit Report No. 2024-300-06414

The Treasury Inspector General for Tax Administration (TIGTA) has published the results of an audit to evaluate the IRS' efforts to promote tax compliance in the case of gambling winnings and by gaming operators responsible for payment of associated excise taxes on wagering. There appears to be a large tax gap relative to actual earnings and the taxes paid; even when Form W-2G *Certain Gambling Winnings* has been issued.

The gambling industry had gross gambling revenue of $60.5 billion in 2022. Winnings from gambling activities are income and must be included in a U.S. resident's gross income, the audit noted. For tax years 2018 through 2020 they found 148,908 individuals who were issued Forms W-2G with a total amount of more than $15,000 per individual in gambling winnings and did not file a tax return. These nonflier's accounted for about $13.2 billion in total gambling winnings. TIGTA's analysis determined that 139,045 of these nonfilers were included in the IRS' nonfiler case creation process inventory. The IRS has determined that it could collect about $1.4 billion from nonfilers. They also found that hundreds of Forms W-2G do not include a Taxpayer Identification Number. In addition, there are few processes in place to identify potential excise tax noncompliance by entities accepting wagers, particularly in emerging areas such as online sports wagering.

B. Preamble to Prop Reg REG-113628-21

The proposed guidance will treat wholly-owned Native American Tribal entities with the same tax-exempt status as the Tribe or Tribes that charter or organize them. They will also be allowed to claim certain clean energy credits through direct payments. Tribal chartered businesses are seen as an exercise of inherent sovereign authority to generate governmental revenue, self-govern the use of that revenue according to their own laws, and self-determine the use of that revenue for their citizenry.

The guidance, in amending §7701, provides that entities incorporated "exclusively under the laws of the Tribes that own them" are not considered separate entities. These businesses share "core characteristics with section 17 corporations and section 3 corporations," the preamble read. The IRS plans to defer to Tribal law in instances where an entity is owned by multiple Tribes to satisfy the wholly-owned requirement—the regulations only state that the entity must be incorporated under the laws of each Tribe.

Additionally, the regulations amend §6417 to permit wholly-owned Tribal entities to opt into elective (or direct) pay elections for clean energy tax credits established by the Inflation Reduction Act. Instead of receiving a tax credit, a taxpayer making this election is paid an amount equal to the value of the credit they are entitled to.

C. TD 10007; IR 2024-259

The IRS issued final regulations formally classifying certain conservation easements and substantially similar transactions as "listed transactions." They are now subject to the myriad of reporting and disclosure rules designed to combat tax avoidance schemes.

In Notice 2017-10, the IRS alerted taxpayers to so-called syndicated conservation easements, flagging such transactions and substantially similar transactions as a form of tax shelter reportable to the IRS as a listed transaction. This notice and many of the regulations related to conservation easements have, with some success, been attacked under the Administrative Procedures Act (APA). The IRS maintained the final regulations "merely" list syndicated conservation easements in accordance with the 6th Circuit's ruling in *Mann Construction*. Because of this, many of the comments it received were "beyond the scope" of the regulations.

Syndicated conservation easements have been on the IRS' Dirty Dozen list, It highlights the abusive arrangements in which promotors generate high fees in an attempt to game the tax system with grossly inflated tax deductions. (IR 2024-105). In December 2022, the IRS released proposed regulations implementing Notice 2017-29 after the 6th Circuit Court of Appeals determined in *Mann Construction v. U.S.* (129 AFTR 2d 2022-885) that the IRS it violated the Administrative Procedures Act and must go through the formal rulemaking process to make syndicated conservation easements listed transactions.

The IRS clarified the final regulations apply to three major types of abusive syndicated easements: "(1) those that involve contributions occurring before December 30, 2022; (2) those for which a charitable contribution deduction is not automatically disallowed by §170(h)(7); and (3) those that substitute the contribution of a fee simple interest in real property for the contribution of a conservation easement."

The final regulations took effect October 8, 2024.

D. *National Small Business United v. Yellen* (No. 24-10736)

The 11th Circuit Court of Appeals heard oral arguments regarding the constitutionality of the Corporate Transparency Act and its Beneficial Ownership Information (BOI) rules. This is hearing a lower court decision in Alabama that declared it unconstitutional and issued a limited injunction against enforcement against members of the plaintiff organization. The Court found that "it cannot be justified as an exercise of Congress' enumerated powers." The government appealed to the 11th Circuit.

The two arguments made by the plaintiff were that the Act violated the commerce clause as the incorporation of an entity is a matter of state law. The second was based on the Fourth Amendment search and seizure limitations.

The reports for new organizations under the BOI are already due while others have until January 1, 2025.

E. *Carman v Yellen,* (CA 6) 134 AFTR 2d 2024-5301

The 6th Circuit Court of Appeals found that the lower court erred in dismissing a number of constitutional challenges related to the §6050I requiring the disclosure of certain information on digital asset transactions. The court found that some are ripe for review.

Petitioners Dan Carman, Quiet Industries Owner Raymond Walsh, and nonprofit crypto advocate Coin Center contested the code change adding digital assets as to the definition of cash.

Thus, anyone engaged in a trade or business who receives $10,000 in cash must file a Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*.

The court found that petitioners' enumerated-powers claim is "clearly ripe" because it is a simple matter of whether legally Congress exceeded its authority at the moment it passed the law. The court also determined First and Fourth Amendment claims are also ripe because the plaintiffs will clearly have to make reports.

F. IR 2024-210

The IRS reminded qualifying businesses, tax-exempt organizations, and state, local and Indian tribal governments planning to claim elective pay or transfer credits for projects placed in service in tax year 2023 should complete the pre-filing registration process now.

G. Department of Labor Final "Retirement Security Rule,"

The Department of Labor (DOL) has issued updates to the investment advice fiduciary regulation, the "Retirement Security Rule," (final rule), which is designed to address transparency and conflicts of interest around distribution, rollover, and investment advice for retirement investors. The Retirement Security Rule provides that investors who make financial decisions impacting their retirement should receive advice from trusted financial professionals that is in the best interest of the investor, not the financial professional.

The Retirement Security Rule provides that when investment advice providers are acting in a fiduciary role they must:

- Give advice that is prudent and loyal to the client's interests;
- Avoid misleading statements about conflicts of interest, fees, and investments;
- Follow policies and procedures designed to ensure the advice given is in an investor's best interest;
- Charge no more than is reasonable for their services and
- Carefully manage their conflicts of interest and give investors basic information about them

It defines a retirement investor as the plan, participants, beneficiaries, HSAs, IRAs, IRA owners and beneficiaries, and plan fiduciaries with discretionary authority.

The DOL also amended related Prohibited Transaction Exemptions (PTEs) that apply to conflicted advice and rollover recommendations. The new rule and PTE amendments generally take effect on September 23, 2024; although some are delayed to 2025.

ERISA imposes requirements on "fiduciaries" who provide investment advice for a fee. Most retirement investors rely upon the advice of trusted investment professionals, such as brokers, insurance agents, and registered investment advisers, to invest their retirement savings at some point in their lives. These providers usually hold themselves out as expert advisers who are making individualized investment recommendations. The Department of Labor (DOL) believes that when investors look to trusted advisers for investment recommendations, the investors' best interests must always be the most important consideration

The determination of whether a recommendation took place is based on whether there is a call to action, which is determined on the facts and circumstances of a particular situation. Factors that will be considered in determining whether a recommendation has taken place include whether the communication reasonably could be viewed as a call to action and reasonably would influence an investor to trade a particular security or group of securities. Recommendations are distinguished from education.

The DOL believes that the 1975 rule is no longer viable. For example, a financial services provider was an investment advice fiduciary only if the advice was provided on a "regular basis" with respect to plan assets and there was "a mutual agreement, arrangement, or understanding" that the advice would serve as "a primary basis for investment decisions." This one-time loophole has been closed.

The DOL's final rule, effective September 23, 2024, provides that a financial services provider will be an investment advice fiduciary if:

- The provider makes an investment recommendation to a retirement investor;
- The recommendation is provided for a fee or other compensation, such as commissions; and
- The financial services provider holds itself out as a trusted adviser by specifically stating that it is acting as a fiduciary under title I or II of ERISA; or

- Making the recommendation in a way that would indicate to a reasonable investor that it is acting as a trusted adviser making individualized recommendations based on the investor's best interest.

Amounts held in workplace retirement accounts often represent the largest savings an individual has, and financial services providers often have a strong economic incentive to recommend that investors roll money into one of their institution's IRAs or annuities. Applying the ERISA fiduciary standard in these transactions will provide significant protections for retirement investors.

In 2019, the SEC issued a regulation titled "Regulation Best Interest," which established an enhanced best interest standard applicable to broker-dealers when recommending any securities transaction or investment strategy involving securities to retail customers. The SEC also issued guidance in 2019 reaffirming and clarifying investment advisers' fiduciary duties under the Investment Advisers Act of 1940. The final DOL rule is in alignment with the SEC.

The standards state:

- Advice must meet obligations of care and loyalty;
- Under the care obligation, the advice must meet a professional standard of care as specified in the exemptions;
- Under the loyalty obligation, advice providers may not place their own interests ahead of the interests of the retirement investor;
- The investment professional and firm must charge no more than reasonable compensation and comply with applicable federal securities laws regarding "best execution" and
- The advice must be free from misleading statements about investment transactions and other relevant matters.

The DOL has indicated that the new fiduciary rule does not target CPAs. The rule is aimed at those who hold themselves out as trusted advisers who make investment recommendations that investors rely upon. The following circumstances probably need to apply in order for the CPA to be subject to the new fiduciary rule:

- The CPA told the individual asking the questions about investments of which they are a fiduciary,
- The CPA made recommended investments a regular part of their business,
- The CPA was compensated for their advice,
- The CPA would be taking the individual circumstance of the investor into account, and
- The individual can rely upon the CPAs advice as given to promote their best interest.
- CPAs specializing in financial planning services are probably subject to the new fiduciary rule.

Examples where a CPA is a fiduciary:

- The CPA recommends that a client roll over a retirement plan into an IRA;
- The CPA regularly makes investment recommendations and holds themselves out to be a trusted investment adviser;
- Assume the CPA recommends that the client roll over their retirement plan into an IRA;

In these circumstances the CPA should document the basis for that recommendation and review this recommendation with the client. The CPA should analyze in writing why the client is better off making the rollover than not making it. Whatever the recommendation is, the CPA should know that his or her investment recommendation is motivated by what is in the best interests of the client.

GROUP STUDY MATERIALS

A. Discussion Problems

1. Your client, James, is interested in investing in a syndicated conservation easement. The expected return is outstanding, and he believes this is a great opportunity. He asks your advice.

2. James has also started a new domestic corporation in your state. He asks about the reporting of Beneficial Ownership Information (BOI). His attorney mentioned it but said to talk to his accountant.

3. James recently left his former employer and has asked your advice on what to do with his 401(k) plan and is considering a roll-over to an IRA.

Required:

Discuss the issues fairly presented in the above facts.

B. Suggested Answers to Discussion Problems

1. James should be advised that sometimes things that appear too good to be true aren't good at all. Syndicated conservations easements have been regularly attacked by the IRS on the value of the easement transferred. They have appeared on the "Dirty Dozen" of tax frauds and the Service has now finalized regulations making them listed transactions subject to additional reporting requirements.

2. The BOI rules have come under attack, and there is currently a case in the 11th Circuit Court of Appeals. The lower court issued a limited injunction only applicable to members of National Small Business United. If James is not a member, then this does not apply. Currently, the BOI rules apply and must be complied with according to FinCEN.

3. It appears that James is requesting you to provide a recommendation. If it is just education, a general discussion on the taxability, then it is not under the new DOL Final Rule. However, if it is a recommendation of a trusted advisor then you must comply with those new rules.

PART 2. INDIVIDUAL TAXATION

Key Considerations of Taxing Rental Real Estate: Part 3

In the final segment on rental real estate, we focus on depreciation issues and depreciation recapture.

Let's join Renée.

Ms. Renée Rodda

Let's go on to page 1-26 and let's dig a little more into depreciation and some depreciation recapture.

General depreciation issues: Residential real estate is depreciated with a 27.5-year life, whereas non-residential has a 39-year life. There are some options to expedite depreciation. You can take bonus depreciation or §179, where it's appropriate. You can reclassify certain expenses as non-capital expenses under the repair regulations. And we'll talk about that in a little more detail. Or you can do a cost segregation study to have part of the property reclassified as property that has a shorter recovery period.

We're going to talk about the pros and cons of each of these. But I think one thing that I like for people to keep in mind is that we're very often quick to say, "Obviously I want to take advantage of bonus depreciation, and I want to take advantage of §179 because I want to get all of that deduction upfront as quickly as possible." I think, especially with depreciation, we want to consider the fact that we're really talking about a timing difference. If I'm taking bonus or §179 or cost segregation accelerated depreciation, I'm taking depreciation that I was always going to get and I'm just front-loading it. That's great and it benefits your clients now, but we're going to have potential recapture issues. We need to look at what that means, as that then means their depreciation deductions are lower in later years. Because with depreciation, it's always just a timing issue. If I have a $100,000 asset, I can either depreciate that over 39 years, or if I qualify for bonus or §179, I might be able to take it all upfront. Maybe I need that $100,000 deduction in this year, because I have significantly more income.

But then we're going to talk about areas where maybe we want that income in the current year so we're not limiting other benefits. I just like to point that out as we start this depreciation discussion, because I think that's sort of our gut reaction is to always front-load that depreciation and maybe we don't want to do that. And we'll look at that in a moment.

When we talk about bonus depreciation, remember that bonus percentages are decreasing. So for 2024, bonus is only 60%. Remember that bonus is our default depreciation method, unless the taxpayer elects out. We do take bonus after §179, but before regular depreciation. If you elect out of bonus, it applies to all of the assets that are in that same class. So if you elect out, then you elect out for all of the assets in that class.

I do want to point out the Tax Relief for American Families and Workers Act of 2024. But I think this is a bill, for me it's a really interesting bill. Again, I'm a big tax nerd. I wouldn't do what I do if I didn't think all of this stuff was very interesting. I know I have some issues. But this bill was very interesting to me because at the end of 2023 into early 2024, this bill had a tremendous amount of momentum. It has bipartisan support. All signs pointed to the fact that this bill was going to be enacted in early 2024. As a matter of fact, it was promised to us before the filing deadline in 2024. This year, we actually did have an April 15 filing deadline for the first time in a very long time, but we did not, in fact, get a tax act. So the Tax Relief for American Families and Workers Act of 2024 has hit a stall.

I point it out in this discussion because it would, among other things, extend the 100% bonus depreciation rate through the 2024 and 2025 years. And it would increase the maximum amount of §179 current expense deduction to $1.29 million and the investment limitation cap to $3.22 million for property that's placed in service in 2024 and give us inflation adjustments for post-2023. I still feel that it's very likely this bill will be enacted… when, I don't know. It's being tied to now larger pieces of legislation, which means it's further slowed down.

There is a discussion of §179 on pages 1-27 and 1-28. Again, only for property use in a trade or business. For tangible personal property and for non-residential real property, it can also be claimed for improvement property, roofs, HVAC systems, fire protections, alarm and security. You can prorate between business and non-business use if the asset is used more than 50% for business in the year it's placed in service. §179 can be used asset by asset.

For 2024, $1.2 million is our asset limit, and the $3.05 million prior-year expensing threshold is in place. We do have an example on page 1-28. I don't think I need to walk through that. It's not anything new, just a reminder for you.

The §179 deduction is limited to a taxpayer's net income from the business, and then any excess is carried forward to the next year. Bonus, on the other hand, can create a loss that could offset income from other sources. You can also combine them. Take a look at the example that I have on page 1-29. FND Materials placed $2.5 million in assets in service in 2024. All of the assets are eligible for bonus depreciation and §179. If they only use the bonus default depreciation, then their depreciation deduction would be the $2.5 million times the 60% depreciation rate, that gives them $1.5 million. They can also claim regular depreciation for the year on the remaining $1 million of assets not consumed by the bonus. If they elected out of bonus and used only §179, then the depreciation deduction would be limited to the $1.22 million expensing limit for the year. And then they can also claim regular depreciation on the portion of the assets not consumed by §179 in bonus. If you combine bonus depreciation and §179 to maximize the depreciation, we put in service $2.5 million in assets in 2024; we expense $1,220,000 under §179; so we have $1,280,000 that is still eligible for bonus. Then we take the 60% on that amount. That gives us another $768,000 in bonus depreciation. So we get to take almost $2 million in bonus and §179, and then the remaining $512,000 gets depreciated under the regular depreciation rules.

Again, I think it very often looks so exciting to front-load these deductions and take advantage of them. I would say in most cases, that's going to benefit your client. I think one area where we really see an issue with maximizing bonus and §179 has to do with §199A. The reason for that is with §199A, if we reduce the taxable income, we also reduce the §199A deduction. Remember that I said depreciation is a timing issue. Maybe I have $2 million of depreciation that I'm going to get to take over the life of the asset. If I front load $1.2 million, for example, I've reduced my income by a $1.2 million, now I have a significant amount of income that is not benefiting from the §199A deduction. The §199A deduction is something that is a use it or lose it benefit, so if I give up that §199A deduction, because I've deferred my depreciation — I'm not losing the depreciation, I'm just deferring it over time.

I think all of this gets very complicated because then we start talking about time value of money and what if your clients get the money and invest it. That is not a one size fits all answer. Every client is going to have their own consideration of what they want to do. It's just your job to make sure they're aware of the different options.

If on the other hand, your clients have income over the phaseout threshold, bonus and/or §179 can help them maximize §199A. Again, no one-size-fits-all answer here. There are pros and cons to everything. Keep in mind that depreciation is subject to recapture. Another option is to consider expensing under the repair regulations, which we'll talk about next.

But I'd like to point out the chart that I have on pages 1-30 and 1-31. It gives you a great summary of bonus and §179. It talks about the caps, whether the property has to be new, when the benefits sunset, whether there's an income limitation. I think all of these are really great, handy tools to use as reminders for yourselves and to share with your clients if you're trying to explain some of this.

Like I said, depreciation gets recaptured. But if we expense something, we have some different rules there. We do have a discussion of the repair regulations on page 1-31. They were enacted in 2013. This is one of those things that, again, it was more than a decade ago and it feels like it was just yesterday. The repair regs gave us safe harbors to treat certain expenses as deductible repairs rather than capitalizing them. We have a *de minimis* safe harbor, a small taxpayer safe harbor, and a routine maintenance safe harbor.

The regulations also allow taxpayers to claim a partial disposition of an asset so they can recognize loss on the retirement or abandonment of a partial asset rather than having to depreciate the original and replacement. They can elect to capitalize all expenses that are capitalized for financial book purposes, so they don't have to bother maintaining two separate sets of books. And they gave us guidance as to what acquisition costs have to be capitalized and when activities are improvements that must be capitalized. They just gave us a lot of clarification that we had been waiting for.

Let's talk about these different safe harbors. The first one is the *de minimis* safe harbor. In order to qualify for the *de minimis* safe harbor, your clients have to have an accounting procedure that treats the item as an expense for non-tax purposes for amounts that were paid for property costing less than a specific dollar amount, or amounts paid for property with an economic useful life of 12 months or less. The taxpayer has to treat those amounts paid for the property as an expense on their financial statement or on its books if it doesn't have a financial statement. The amount paid for the asset can't exceed $5,000. It's $2,500 if your clients don't have financial statements. So if they aren't, SEC companies or companies that are preparing financial statements, then in most cases, we're talking about a $2,500 limit.

They do have to have a policy in place. We have a sample policy for you here on page 1-33. It's one of those things that you want to be able to share with the clients. If they make an election on a timely filed return, then all of their expenses that qualify can be expensed rather than capitalized. So, anything in that $2,500 or less category can be expensed. For S corps and partnerships, the election is made at the entity level. The election is irrevocable once the taxpayer makes the election. Like I said, it's going to apply to all expenses in the current year. I really think for most taxpayers, this is a huge benefit to them. I see a lot of taxpayers taking advantage of this.

We also have a safe harbor for small taxpayers with buildings. It's a $10,000 annual safe harbor election. If your client has a building that is owned or leased with an unadjusted basis of $1 million or less — that doesn't include the land value, just the building. The taxpayer has to have an average annual gross receipts of $10 million or less during the three proceeding taxable years. This allows them to expense improvements that don't exceed the lesser of $10,000 or 2% of their basis. This way, we have an improvement that's less than $10,000, we get to expense that rather than capitalizing it and depreciating it. It's really a big benefit to your clients. This applies separately to each building or unit and the election rules are the same as that de minimis safe harbor. The *de minimis* safe harbor lets them expense those assets that they acquire that are $2,500 or less. This lets them expense repairs that are $10,000 or less.

We also have a provision that says expenses for the routine maintenance of buildings and structural components can be expensed. These would be expenses to maintain the condition, not to improve or adapt for a new purpose. It's something that they reasonably expect to do more than once every 10 years. For example, if your client puts a 30-year roof on, even though it is to maintain the structure of the building, that's not something they're going to do more than once every 10 years. However, if they paint the building, that is something they're going to do more than once every 10 years. So they do get to expense that paint rather than capitalizing it. If they add a small out structure, for example, that's adding on. If they take a building and they do improvements to adapt it for a new purpose or for a new tenants, that's not going to qualify. Really, anything where they are just doing maintenance to keep the status quo in the building is going to qualify.

You can elect to treat repair and maintenance expenses as depreciable capital expenditures, so long as those expenses are incurred in the trade or business and the expenses are capitalized on the books and records. That election is made annually. So, maybe the client doesn't have any income in the current year. They'd rather make the election to capitalize it and depreciate it over time. That's certainly something they can do. The election is made on a timely filed return. For a consolidated group, however, the election is made member-by-member, different than S corps or partnerships where they make it at the entity level and that election flows through to the owners.

We do have some great FAQs and flow charts for you on pages 1-38 to 1-32. This helps you to distinguish between is this a capital expense or is it a repair? I think it's very difficult; there are some gray areas and your clients are going to want to push the envelope in certain areas. You may want to push the envelope in certain areas. I certainly understand that position, but this gives you, from the IRS, the FAQs that they go through to determine is this really a repair or is it something that gets capitalized?

On page 1-42, we have that tangible property flow chart where we can decide, all right, did we buy a small amount of tangible property? Then maybe we're going to get to use that *de minimis* safe harbor. Do we own a building with a basis of less than a million dollars? Then maybe we get to use that safe harbor for small buildings. Do we have some significant repair costs? Maybe we get to say they're eligible for the routine maintenance safe harbor. If we have costs for materials or supplies, maybe they are eligible materials that are deductible for the property rather than things we have to capitalize. this is a good flow chart to take a look at as well.

We do have a discussion starting on page 1-42 of depreciation recapture. Remember, we've talked about all of these different ways to accelerate depreciation. We've talked about taking depreciation on rental properties. The thing with depreciation is that depreciation gets recaptured. We have slightly different rules if the property is §1245 property versus §1250 property. We have special recapture rules for §179 property if the business use of the property falls below 50%. For §1245 property, this is depreciable personal property, so not the real property. We subtract the adjusted tax basis from the lesser of the original cost of the property before any depreciation, deductions, §179 or bonus, or the sales price. Then we include prior depreciation from exchanged or converted assets and amounts from prior owners for gifts. We can no longer do a §1031 exchange for §1245 property, but let's say that in the past we did a §1031 exchange for a business asset into another business asset. We have some depreciation that was taken previously that's still there; that would be added into that recapture amount. There's an example on page 1-44, but I don't think we need to walk through that.

For depreciable real property, the unrecaptured §1250 gains are taxed at 25% if a taxpayer has a net capital gain for the year. This is something I do want to point out because we do get questions about this. So we have Yves on page 1-44 who sells a commercial building for $1 million in 2024. The property was purchased for $600,000 in 2017. Can I just call her Yvonne? Her name is Yves, sorry. Yves claimed $90,000 in depreciation deductions on the property and had a total of $400,000 in net capital gain in 2024. Because the $90,000 unrecaptured gain is less than Yves' net capital gain for the year, the $90,000 is going to be subject to the 25% capital gain rate and the remaining $310,000 gets subject to the 20% capital gain rate, assuming she's in the top capital gain rate category. Again, just illustrating why we sometimes see those gains taxed at the 25% rate. I get a lot of questions about, "Well, my client has these gains, why are they being taxed at a 25% rate?" The reason is, it's that recapturing of the §1250 gains from the depreciation on the real property.

If your clients took depreciation for the home office, then that depreciation is going to be recaptured. Again, it may be subject to the 25% rate. However, if your clients use the simplified method to expense, there's no recapture. This is the type of thing where we want to take a look at this as we make these decisions today to consider how they're going to affect our clients in the future when they sell that asset. Because now maybe we have a situation where we want to take the simplified method, even if potentially it's a slightly lower deduction, because they're not going to have to recapture that amount later.

There is a discussion on page 1-45 about §1231 netting rules. The gains from sales of §1231 assets are treated as capital gains while their losses are ordinary losses. But if some §1231 assets are §1245 or §1250 property, the ordinary income depreciation recapture is done before the §1231 netting. This is something that I think your software does for you. But then when you look at the return, if it's not something where you understand the background of these rules, you're not clear on why these assets are taxed at different amounts.

On page 1-45, in 2024, Bo sells residential rental property that was purchased in 2020. We have his balance sheet from the sale. We have for the building, the furniture, and the land, his cost, his tax basis, and his fair market value. Then we list whether those are §1231 assets and which are §1245 versus §1250 assets. The sale of the furniture and appliances results in $0 of depreciation recapture. To determine the amount of §1250 unrecaptured gain, if any, we have to first determine whether there's a net capital gain. He has $190,000 from the building. We subtract the $5,000 in furniture and appliances. He has $55,000 from the land. So his net capital gain is $240,000. $90,000 from the sale of the building is unrecaptured gain. The amount of depreciation taken on the building is taxed at 25%. The remaining $150,000 is treated as §1231 net capital gains subject to the 20% capital gains rate. That's why he's going to have that double netting issue and some of it taxed at the 25% rate and some of it at the 20% rate.

There's a whole list on page 1-46 about what might trigger recapture. Typically, it's the sale or the termination of a lease, but you can go through that full list on page 1-46 if you want to take a look at it.

For §179, the recapture rules are a little different. If the business use of the property is reduced to 50% or less during the recapture period, which is the recovery period of the asset, then we recapture the §179 amount, less any depreciation that would have been allowable and that amount is taxed as ordinary income. If your clients want to take §179 on an asset, we have to make sure that the business use of that asset is going to continue during the full recovery period of the asset.

There is a discussion on page 1-47 about what do we do for our clients who didn't properly claim depreciation? I get this question quite often, especially with rental real estate. You may see clients that didn't claim depreciation. You have two options. You can file amended returns for the open years. If that doesn't get you to the full amount, then what you're going to do is use Form 3115 to catch the depreciation up. That's that change in accounting method form. The reason I point this out with rental property in particular is that if you have clients that didn't understand the rules, especially if they did their own returns and they didn't properly claim depreciation, when they go to sell that asset, the IRS is going to assume they took that depreciation each year and they're going to adjust the basis of the property when they audit it and account for that depreciation recapture. So you want to make sure that your clients get the benefit of the depreciation to the extent that they can.

Rental Real Estate: Part 3

DEPRECIATION ISSUES

Under MACRS, residential rental property is deducted over a period of 27.5 years using the straight-line method and mid-month convention, and nonresidential rental property is deducted over a period of 39 years.

However, taxpayers may frequently be able to expedite claiming property-related deductions by:

- Taking bonus depreciation or IRC §179 where appropriate.
- Reclassifying certain expense as a noncapital expense under the repair regulations; and/or
- Through utilizing cost-segregation studies, having a portion of the property reclassified as property with a shorter recovery period.

DEPRECIATION PLANNING WITH BONUS DEPRECIATION AND IRC §179

Depreciation planning is one of the most effective tools taxpayers have to change the outcome of an already-closed tax year. Most tax professionals automatically assume that taking bonus depreciation is always the most beneficial decision for their clients, but there are situations where bonus depreciation isn't available or may not be the best option.

Declining bonus depreciation amounts

Beginning with assets placed in service in 2024, the bonus depreciation amount decreased by 20% and is scheduled to decrease by 20% per year each year thereafter. (IRC §168(k)) The TCJA had enacted 100% bonus depreciation, but only for assets placed in service from September 28, 2017, through December 31, 2022.

Bonus Depreciation General Rates	
Date placed in service	**Depreciation rate**
2023	80%
2024	60%
2025	40%
2026	20%
2027 and thereafter	0%

Bonus depreciation is the default

When a taxpayer places qualifying property in service during the year, bonus depreciation is the default and must be claimed unless a taxpayer makes an election out. (IRC §168(k)(7)) Even though it is the default, bonus depreciation is taken after IRC §179 expensing and before regular depreciation.

The election out of bonus depreciation applies to a class or classes of property (e.g., property in a three-year class), not to a particular asset within that class. To make the election, taxpayers must attach a statement to a timely filed return (including extensions) indicating the class of property for which they are making the election. (Instructions, Form 4562, Depreciation and Amortization)

Potential legislative relief coming?

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) would, among other things:

- Extend the 100% bonus depreciation rate through the 2024 and 2025 tax years; and
- Increase the maximum amount of the IRC §179 current expense deduction to $1.29 million and the investment limitation cap to $3.22 million for property placed in service in 2024, providing inflation adjustments for post-2023 tax years.

Although the bill passed the U.S. House of Representatives with large bipartisan support, the bill has stalled in the Senate. It is unlikely this bill will pass before the November elections, if at all. Many commentators are speculating that these provisions will be negotiated as part of the larger package addressing the expiration of many of the TCJA provisions at the end of 2025, which would make retroactive relief unlikely.

IRC §179 expensing

IRC §179 can be claimed for tangible personal property used in a trade or business. For nonresidential real property it can also be claimed for qualified improvement property and roofs, HVAC systems, fire protection and alarm systems, and security systems.

A prorated IRC §179 deduction can be claimed for property used for both business and nonbusiness purposes only if the property is used more than 50% for business in the year you place it in service.

Unlike bonus depreciation, IRC §179 expensing can be used on an asset-by-asset basis, giving taxpayers more flexibility.

Caution

Remember IRC §179 can only be claimed if the property is used in a "trade or business." It cannot be used if the property is held only for investment purposes. Nor can it be claimed for rental property if the taxpayer is not in the trade or business of renting property.

Deduction amount

For 2023, taxpayers can use IRC §179 expensing on up to $1.16 million of qualifying assets placed in service during the year. If the total assets placed in service by the taxpayer during 2022 exceed the expensing limit threshold of $2.89 million, then the IRC §179 expense is subject to a dollar-for-dollar limitation. Both the IRC §179 expensing limit and the phaseout threshold are adjusted annually for inflation.

For 2024, these figures are increased to $1.22 million and $3.05 million, respectively.

Example of IRC §179 expense limitation

Ninety-Niner, Inc. placed $3.5 million of assets in service during 2024. Their phaseout is calculated as follows:

Total assets placed in service	$3,500,000
Phaseout threshold	(3,050,000)
Reduction of IRC §179 expensing limit	$ 450,000

Ninety-Niner can only claim IRC §179 expensing on $780,000 of its assets, calculated as follows:

2024 IRC §179 expensing limit	$1,220,000
Reduction of IRC §179 expensing limit*	(450,000)
IRC §179 expensing limit	$ 770,000

* Calculated in previous step

Loss or no loss?

Determining whether the taxpayer wants to generate a loss can affect whether bonus depreciation or IRC §179 expensing is claimed. The IRC §179 deduction is limited to a taxpayer's net income from the business and cannot create a tax loss. Disallowed IRC §179 expense is carried forward and can be used in a future year.

However, bonus depreciation may create a loss that can offset the taxpayer's income in the current year from other sources.

Combining bonus depreciation and IRC §179

Bonus depreciation and IRC §179 can be combined to generate larger depreciation deductions than using either method alone.

Example of combining bonus depreciation and IRC §179

FND Materials, Inc. placed $2.5 million of assets in service in 2024. All assets are eligible for bonus depreciation and IRC §179.

If FND only used the default bonus depreciation, then its depreciation deduction would be:

Assets placed in service during 2024	$2,500,000
Bonus depreciation rate	60%
Depreciation deduction	$1,500,000*

* FND can also claim regular depreciation for the year on the remaining $1,000,000 of assets not consumed by bonus depreciation

If FND elected out of bonus depreciation and only used IRC §179 expensing, then its depreciation deduction would be limited to the $1.22 million expensing limit for the year.

FND can also claim regular depreciation for the year on the portion of its assets not consumed by bonus depreciation.

FND can combine bonus depreciation and IRC §179 to maximize its depreciation deductions.

Assets placed in service during 2024	$2,500,000
IRC §179 expensing limit up to the annual limit	($1,220,000)
Remaining assets eligible for bonus depreciation	$1,280,000
Bonus depreciation in effect for 2024	60%
Bonus depreciation	$ 768,000
Combined bonus and IRC §179 depreciation	$1,988,000

* FND can also claim regular depreciation for the year on the remaining $512,000 of assets not consumed by bonus depreciation and IRC §179 expensing

Effect on IRC §199A

Consider the maximum 20% qualified business income deduction. A taxpayer may benefit by opting out of bonus depreciation and not electing IRC §179, thus increasing taxable income and potentially increasing the IRC §199A deduction.

Conversely, consider decreasing income using either or both of these options if their taxable income is over the phaseout threshold to maximize the IRC §199A deduction.

✎ Planning Pointer

Taxpayers ineligible to or not wanting to claim an IRC §179 or bonus depreciation deduction should see if their expenses can be currently deducted rather than depreciated under the tangible property repair regulations (see discussion on page 1-31). This can be done if the expenses are not considered capital expenses or if the taxpayer can qualify for one of several different safe harbors.

The IRC §179 election is only available for qualified purchases and is limited to a taxpayer's taxable income from the active conduct of a trade or business. It cannot be claimed for property purchased for investment.

And while the TCJA expanded the definition of property eligible for bonus depreciation to include used property, it cannot be used for qualified improvement property. In addition, taxpayers may not wish to claim bonus depreciation for all items in the same class (which is a requirement), and the bonus depreciation deduction began phasing out in 2023.

Another consideration is that both deductions are subject to depreciation recapture (discussed on page 1-42).

Comparison of IRC §179 and Bonus Depreciation Deductions

Requirements/limitations	**Bonus depreciation (IRC §168(k))**	**IRC §179 deduction**
Caps	• 100% for property placed in service on or after 9/28/2017 through 12/31/2022; • 80% in 2023; • 60% in 2024; • 40% in 2025; • 20% in 2026; and • 0% after 2026 No aggregate cap (**Note:** Can claim deduction for applicable % of basis after IRC §179 deduction claimed)	Maximum aggregate deduction of $1.16 million for 2023 and $1.22 million for 2024 Maximum investment limitation $2.89 million for 2023 and $3.05 million for 2024 Both amounts are adjusted for inflation after 2024
Use in active trade or business required?	No. Can be used for investment property	Yes
Must property be new?	No. Used property was ineligible for property placed in service before 9/28/2017 (Can be claimed for personal property converted to business property)	No
Sunset date	December 31, 2026	Available indefinitely

(Continued)

Comparison of IRC §179 and Bonus Depreciation Deductions (Continued)		
Requirements/limitations	**Bonus depreciation (IRC §168(k))**	**IRC §179 deduction**
Taxable income limitation	No Can create NOL	Yes Deduction cannot exceed taxable income from a trade or business Unused deduction may be carried over
Per purchase versus per class	Must be claimed/elected out of by class of property (e.g., five-year property)	Elected on asset-by-asset basis (or portion of asset)
Minimum trade or business use	50% business use requirement applies only to listed property	All property purchased must be used over 50% of the time in business activity
Subject to recapture	Yes	Yes. Also subject to recapture if used less than 50% of time in business activity
Treatment of real property	Only available for: roofs, HVAC property, fire protection, alarm systems, security systems for nonresidential property	Only available for qualified improvement property and roofs, HVAC property, fire protection, alarm systems, security systems for nonresidential property
How claimed	Must be claimed unless the taxpayer makes an election out on a timely filed return	Taxpayers must make an election to claim the deduction on Form 4562, Depreciation and Amortization

KEY REPAIR REGULATIONS FOR PROPERTY OWNERS

In 2013, the IRS adopted tangible property repair (TPR) regulations to clarify which expenses property owners incur must be capitalized and depreciated over a period of years and which expenses may be currently expensed.

Of special note for most property owners, the regulations contain several "safe harbors" under which taxpayers may elect to treat certain expenses as deductible repairs without fear of being audited years later and having these expenses reclassified as capital expenses subject to depreciation. These safe harbors include the following:

- *De minimis* safe harbor (see page 1-32);
- Small taxpayer safe harbor (see page 1-34); and
- Routine maintenance safe harbor (see page 1-36).

In addition, the rules:

- Allow taxpayers to elect to claim a partial disposition of an asset and recognize loss on the retirement or abandonment of the partial asset rather than having to depreciate both the original and replacement asset;

- Allow taxpayers to elect to simply capitalize all expenses that are capitalized for financial book purposes so that they do not have to bother maintaining two separate books and evaluating whether a capital expense can be treated as a deductible repair expense (see page 1-37); and

- Provide extensive guidance as to what acquisition costs must be capitalized and when activities are classified as improvements that must be capitalized (see page 1-38).

While the increased IRC §179 limits and bonus depreciation may mitigate the current tax cost of capitalizing and depreciating assets, not all assets will qualify for either of these tax benefits.

DE MINIMIS SAFE HARBOR ELECTION

Businesses whose expenses would be considered capital expenses under the above rules may find some help in the form of the *de minimis* safe harbor. Many businesses may be able to use this *de minimis* safe harbor election to expense certain business assets and may even come out ahead because there is no IRC §179 expense limit, placed-in-service limit, or taxable income limit. (Treas. Regs. §1.263(a)-1(f))

In brief, if a taxpayer files a proper election and follows certain rules, the taxpayer may deduct tangible "units of property" with costs up to $2,500 or $5,000, depending on whether the taxpayer has an "applicable financial statement."

Applicable financial statement (AFS)

An "applicable financial statement" is defined in Treas. Regs. §1.263(a)-1(f)(4). An AFS is, generally, one that is submitted to the SEC or is subject to a certified audit. This applies to larger taxpayers.

Transactional costs such as delivery fees, installation, or similar costs included on the same invoice must be included in the cost of the property.

Safe harbor election rules and amounts

The rules for both taxpayers with and without an AFS are the same with the exception of the dollar amount considered to be *de minimis* and whether their accounting procedure must be written. Taxpayers with an AFS must have a written accounting procedure in order to elect this *de minimis* safe harbor. To qualify:

1. The taxpayer must have an accounting procedure treating as an expense for nontax purposes:

    a. Amounts paid for property costing less than a specific dollar amount; or

    b. Amounts paid for property with an economic useful life of 12 months or less; and

2. The taxpayer must treat the amounts paid for the property as an expense on its AFS (or on its books if no AFS) in accordance with their accounting procedures; and

3. The amount paid for the property may not exceed $5,000 ($2,500 without an AFS) per invoice (or per item as substantiated by the invoice).

Practice Pointer

The regulation requires the accounting procedure be written for those taxpayers expensing costs up to $5,000. Although those using the $2,500 limit are not required to have the procedure in writing, it is better to play it safe so there can be no question that such a procedure existed.

Remember that the written procedures must be in place at the **start** of the tax year.

Accounting procedures are generally part of a company's overall accounting policies. For clients that do not have adequate (or any) accounting policies, consider providing them with a sample capitalization policy that they can adopt.

Sample capitalization policy

Purpose

This accounting policy establishes the minimum cost (capitalization amount) that shall be used to determine the capital assets to be recorded in [BUSINESS ENTITY]'s books and financial statements.

Capital asset definition and thresholds

A "capital asset" is a unit of property with a useful life exceeding one year and a per-unit acquisition cost exceeding [SPECIFY AMOUNT]. Capital assets will be capitalized and depreciated over their useful lives. [BUSINESS ENTITY] will expense the full acquisition cost of tangible personal property below these thresholds in the year purchased.

Capitalization method and procedure

All capital assets are recorded at historical cost as of the date acquired.

Tangible assets costing below the aforementioned threshold amount are recorded as an expense for [BUSINESS ENTITY]'s annual financial statements (or books). In addition, assets with an economic useful life of 12 months or less must be expensed for both book and financial reporting purposes.

Documentation

Invoices substantiating the acquisition cost of each unit of property are to be retained for a minimum of 10 years.

Tax capitalization threshold: The permissible ceiling for deducting otherwise capitalizable expenditures is $5,000 when our business has applicable financial statements. The threshold is limited to $2,500 in the absence of applicable financial statements.

Election

A taxpayer must make an annual election to apply the safe harbor by including a statement on the taxpayer's timely filed original return (including extensions). (Treas. Regs. §1.263(a)-1(f)(5)) If made, the election applies to **<u>all</u>** qualifying expenses that meet the requirements; an electing taxpayer cannot exclude particular qualifying expenses. The election automatically extends to materials and supplies.

Practice Pointer

Should a taxpayer not want to expense an item under the *de minimis* safe harbor, the taxpayer can simply not expense them on the books and records.

The regulations provide that the statement must:

- Be titled "Section 1.263(a)-1(f) *de minimis* safe harbor election";
- Include the taxpayer's name, address, and taxpayer identification number; and
- Include a statement that the taxpayer is making the *de minimis* safe harbor election under Treas. Regs. §1.263(a)-1(f).

In the case of a partnership or S corporation, the election is made by the partnership or S corporation and not by the partners or shareholders.

Once made, the election is irrevocable for that year. (Treas. Regs. §1.263(a)-1(f)(5))

Example of de minimis election

Tinyco does not have an applicable financial statement but has written accounting policies in place at the start of the tax year treating as expenses for financial statement purposes amounts paid for property costing $2,500 or less.

During the tax year, Tinyco purchases 10 refrigerators costing $2,000 each, five washing machines costing $1,000 each, and 10 leaf blowers costing $200 each for a total cost of $27,000. They also purchase five separate security systems each costing $7,500.

If Tinyco makes the *de minimis* election, they may expense the $27,000 for the refrigerators, washing machines, and leaf blowers, and still have their full IRC §179 election amount available to expense the security systems.

SAFE HARBOR FOR SMALL TAXPAYERS WITH BUILDINGS

The regulations include a $10,000 annual safe harbor election for buildings owned or leased with an unadjusted basis no greater than $1 million. (Treas. Regs. §1.263(a)-3(h)) If the taxpayer qualifies and makes the election, the taxpayer is not required to capitalize, and may deduct, qualifying expenditures.

Small taxpayer

To qualify, the taxpayer must have average annual gross receipts of $10 million or less during the three preceding taxable years. Gross receipts include income from sales (not reduced by cost of goods sold), services, and investment income.

For new businesses, average annual gross receipts are determined using the average annual gross receipts for the number of taxable years that the taxpayer (or its predecessor) has been in existence. For short taxable years, the gross receipts are annualized.

Qualified building

An eligible building property includes a portion of a building that is a separate unit of property, such as leased office space or an individual condominium or cooperative unit, as long as the unadjusted basis of the property is no greater than $1 million. (**Note**: Unadjusted basis does not include land value.)

Cliff test

Under the safe harbor, a small taxpayer is not required to capitalize improvements if the total amount paid with respect to an eligible building for repairs, maintenance, improvements, and similar activities does not exceed the lesser of $10,000 or 2% of the building's unadjusted basis.

In computing the amounts expended, the taxpayer must include amounts not capitalized under the *de minimis* safe harbor election and under the routine maintenance provisions.

If the amount of such expenditures exceeds the threshold, the taxpayer is not eligible to make the election. The threshold is applied separately to each building owned or leased by the taxpayer. A condominium or co-op is considered an individual building property.

Making the election

The election is made annually by attaching a statement to the taxpayer's timely filed (including extensions) original return for the tax year for which the property is placed in service. The statement must be titled "Section 1.263(a)-3(h) Safe Harbor Election for Small Taxpayers" and include the taxpayer's name, address, taxpayer identification number, and a description of each eligible building property to which the taxpayer is applying the election.

In the case of a partnership or S corporation, the election is made by the partnership or S corporation, and not by the partners or shareholders.

Once made, the annual election is irrevocable.

Example of small taxpayer with building

Judy and John own three rental properties. Their average annual gross receipts are less than $10 million.

Property A

This property has an unadjusted basis of $700,000 in the building and $100,000 in land.

They build a new room on the property at a cost of $8,000 and have repair and maintenance costs of $1,000.

The total spent for improvements and maintenance is $9,000.

The threshold amount is $10,000 (lesser of $10,000 or 2% of the *building's* unadjusted basis (2% × $700,000 = $14,000)).

They may elect to expense the cost of the new room and the repairs because they otherwise qualify, and the sum of the costs of improvements and maintenance is less than the threshold amount.

Property B

This property has an unadjusted basis of $300,000 for the building and $50,000 for the land. They build a spa at the property at a cost of $6,000 and have $500 of general repairs.

The total spent for improvements and maintenance is $6,500.

The threshold amount is $6,000 (lesser of $10,000 or 2% of the *building's* unadjusted basis (2% × $300,000 = $6,000)).

They may not elect to expense the cost of the spa because the total cost of improvements and maintenance exceeds the threshold amount. They may deduct the maintenance costs as general repairs.

Property C

This property has an unadjusted basis of $800,000 for the building and $50,000 for the land. They build a garage at the property at a cost of $12,000 and have $3,000 of maintenance costs.

The total spent for improvements and maintenance is $15,000.

The threshold amount is $10,000 (lesser of $10,000 or 2% of the *building's* unadjusted basis (2% × $800,000 = $16,000)).

They may not elect to expense the cost of the garage because the total cost of improvements and maintenance exceeds the threshold amount. They may deduct the maintenance costs as general repairs.

(Treas. Regs. §1.263(a)-3(h)(10), Ex. 3)

SAFE HARBOR FOR ROUTINE MAINTENANCE

The regulations provide that routine maintenance need not be capitalized, including routine maintenance for buildings and their structural components. (Treas. Regs. §1.263(a)-3(i)) An election is not required to take advantage of the safe harbor.

"Routine"

The regulations specify that maintenance is routine only if:

- The maintenance is performed to keep a unit of property in its ordinarily efficient operating condition and not to improve or better the property; and
- At the time the unit of property is placed in service by the taxpayer, the taxpayer reasonably expects to perform the routine maintenance more than once during the property's class life (more than once every 10 years in the case of a building).

Note: Maintenance does not actually have to be performed within those time frames so long as the taxpayer has a reasonable expectation of such at the time the property is placed in service.

Examples of routine maintenance include inspection, cleaning, testing, and the replacement of parts. It also includes the replacement of damaged or worn parts with comparable and commercially available replacement parts.

Ineligible expenses

The safe harbor provisions do not apply to IRC §263A costs (costs incurred for production of property or for resale, i.e., inventory).

In addition, amounts expended for the following are not routine and are not eligible for the safe harbor:

- For the betterment of a unit of property (see page 1-39);
- For the cost of replacing components if:
    - A retirement loss is claimed; and
    - Gain or loss is realized upon the sale of the replaced component;
- For which a basis adjustment is required on account of a casualty loss or event;
- To restore deteriorated and nonfunctional property to its ordinarily efficient operating condition; or
- To adapt property to a new or different use.

> **Practice Pointer**
>
> A change in accounting method is required with a full IRC §481(a) adjustment.

ELECTION TO CAPITALIZE REPAIR AND MAINTENANCE EXPENDITURES

Taxpayers wanting to reduce the administrative burden of maintaining two separate accounting systems may elect to treat repair and maintenance expenditures as depreciable capital expenditures as long as:

- The expenses are incurred in the taxpayer's trade or business; and
- The expenses are capitalized on the taxpayer's books and records. (Treas. Regs. §1.263(a)(-3(n)(1))

If an election is made, all repair and maintenance expenditures capitalized in the taxpayer's books and records for the taxable year must be capitalized for tax purposes as well.

Costs must be capitalized at the time the property is placed in service.

Comment

This is a "one-way" election. If the book-conformity election is made, it does not mean that all items that are expensed on the taxpayer's books can automatically be expensed for tax purposes. These items must still be evaluated under the other TPRs to see if they qualify to be expensed for tax purposes.

Note: This book-conformity election applies only to repair and maintenance costs deductible under Treas. Regs. §1.162-4. It does not apply to costs incurred for material and supplies or other costs deducted under other IRC sections.

Making the election

The election is made annually by attaching a statement to the taxpayer's timely filed (including extensions) original return for the tax year for which the property is placed in service. The statement must be titled "Section 1.263(a)-3(n) Election" and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making an election to capitalize repair and maintenance costs under Treas. Regs. §1.263(a)-3(n).

In the case of a partnership or S corporation, the election is made by the partnership or S corporation and not by the partners or shareholders.

In the case of a consolidated group, the election is made for each member of the group by the common parent, and the statement must include the name and taxpayer identification number of each member of the group.

CAPITAL EXPENSE VS. REPAIR

Under IRC §263, amounts paid to acquire, produce, or improve tangible property must be capitalized and depreciated. However, under IRC §162, expenses for materials and supplies and repair and maintenance costs are treated as a deductible business expense. The TPRs were adopted to clarify which is which, especially as they relate to clarifying what is a "deductible repair" and what is a "capital improvement" that must be depreciated.

Through FAQs, the IRS has identified a two-step analysis taxpayers should use to distinguish capital improvements from deductible repairs.

✐ Practice Pointer

The IRS's facts and circumstances analysis described here from their FAQs, while very detailed, is designed as a guide only. And remember, if any of the three tangible property repair regulation safe harbor rules discussed above applies (the *de minimis* safe harbor, the safe harbor for small taxpayers with buildings, or the safe harbor for routine maintenance), then a facts and circumstances analysis for amounts spent by the taxpayer is not necessary.

Step 1: What is the unit of property to which you should apply the improvement rules?

For buildings: The unit of property is generally the entire building including its structural components. However, under the final tangible property regulations and for these purposes only, the improvement analysis applies to the building structure and each of the key building systems.

The key building systems are the plumbing system, electrical system, HVAC system, elevator system, escalator system, fire protection and alarm system, gas distribution system, and the security system. Lessees of portions of buildings apply the analysis to the portion of the building structure and portion of each building system subject to the lease. Lessors of an entire building apply the improvement rules to the entire building structure and each of the key building systems.

For nonbuildings: The unit of property is, and the analysis applies to, all components that are functionally interdependent. Components of property are functionally interdependent if the taxpayer cannot place in service one component of property without placing in service another component of property.

For plant property, e.g., manufacturing plant, generation plant, etc.: The unit of property is, and the analysis applies to, each component or group of components within the plant that performs a discrete and major function or operation.

For network assets, e.g., railroad track, oil and gas pipelines, etc.: The taxpayer's particular facts and circumstances or industry guidance from the Treasury Department and the IRS determines the unit of property and the application of the improvement analysis.

There are two additional rules, based on depreciation conformity, that determine when a component or group of components of a unit of property must be treated as a separate unit of property. These are:

For the year placed in service: This rule, only for nonbuilding property, is triggered at the time the taxpayer initially places the unit of property in service. If, at the time the unit of property is first placed in service, the taxpayer properly treats the component of the unit of property as being within a different MACRS class than the MACRS class for the unit of property of which the component is a part, or the taxpayer properly depreciates the component using a different depreciation method than the depreciation method used for the unit of property of which the component is a part, then the taxpayer must treat the component as a separate unit of property.

Subsequent change in classification: This rule for both building and nonbuilding property is triggered when the taxpayer makes a subsequent change in classification of the property for MACRS. In any taxable year after the unit of property is initially placed in service, if the taxpayer or the IRS changes the treatment of that property to a proper MACRS class or a proper depreciation method (for example, as a result of a cost segregation study or a change in the use of the property), then the taxpayer must change the unit of property determination for that property under this rule to be consistent with their change in treatment for depreciation purposes.

Step 2: Is there an improvement to the unit of property, or in the case of a building, the building structure or any key building system, identified in Step 1?

A unit of tangible property is improved only if the amounts paid are:

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

A betterment is an amount paid:

- To fix a material condition or material defect that existed before the acquisition or arose during production of the unit of property;
- For a material addition, including a physical enlargement, expansion, extension, or addition of a major component, to the property or a material increase in capacity, including additional cubic or linear space, of the unit of property; or
- That is reasonably expected to materially increase productivity, efficiency, strength, quality, or output of the unit of property where applicable.

The term "material" is not defined in the final tangible property regulations. Although examples are included that refer to percentage increases, these examples are provided to assist taxpayers in understanding the rules. These percentages are not intended to set a standard, for example, a particular percentage increase in square footage or capacity, or for determining whether the amount paid is a "material" betterment. In determining whether a betterment is "material," taxpayers should use common sense and reasonable judgment as applied to their own facts and circumstances.

Examples of a material betterment include:

- **Ameliorates (fixes) a material condition or defect:** A taxpayer acquires land with a leaking underground storage tank left by previous owner. Costs to clean up the land would be for an improvement because they fix a material condition or defect that arose prior to the acquisition;

- **Material addition:** A taxpayer adds a stairway and loft to its retail building to increase its selling space. Costs to build the stairway and loft are for an improvement because they materially increase the capacity of the taxpayer's building structure; and

- **Material increase in strength:** A taxpayer adds expansion bolts to its building that is located in an earthquake-prone area. These bolts anchor the building frame to its foundation, providing additional structural support and resistance to seismic forces. Costs incurred to add these expansion bolts would be for an improvement because they increase the strength of the building structure.

The following characterize amounts to restore a unit of property:

- **Replacement of a major component or substantial structural part:** Amounts paid for the replacement of a part or combination of parts that make up a major component or a substantial structural part of the unit of property; or

- **Recognition of gains or losses and basis adjustments:** The taxpayer has taken into account or adjusted the basis of the unit of property or component of the unit of property, including:

    - **Deducted loss:** Amounts paid for the replacement of a component of the unit of property, and the taxpayer has properly deducted a loss for that component, other than a casualty loss;

    - **Sale or exchange:** Amounts paid for the replacement of a component of the unit of property, and the taxpayer has properly taken into account the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component; or

    - **Casualty loss or event:** Amounts paid for the restoration due to damage to the unit of property for which the taxpayer is required to take a basis adjustment because of a casualty loss under IRC §165, or relating to a casualty event described in §165, but limited to the basis in the unit of property; or

- **Deterioration to state of disrepair:** Amount paid to return the unit of property to its ordinarily efficient operating condition if the unit of property has deteriorated to a state of disrepair and is no longer functional for its intended use; or

- **Rebuilding to like-new condition:** Amounts paid for the rebuilding of the unit of property to a like-new condition after the end of its class life.

Examples of restoration expenditures include:

- **Restoration after casualty loss or event:** A taxpayer owns an office building. The building is damaged by a hurricane. The taxpayer either deducts a casualty loss under IRC §165 because of the damage or receives insurance proceeds after the accident to compensate for the loss. The taxpayer properly reduces the basis of the building by the amount of the loss or by the amount of the insurance proceeds. Assuming that the reduction in basis is less than or equal to the taxpayer's adjusted basis in the building, amounts paid to restore the damaged building must be treated as an improvement and must be capitalized. Note: If the amounts paid to restore the property exceed the adjusted basis of the property prior to the loss, the amount required to be capitalized may be limited (see Treas. Regs. §1.263(a)-3(k)(4)(i) for application of this limitation);

- **Deterioration to a state of disrepair:** A taxpayer operates a farm with several outbuildings. The taxpayer did not use or maintain one of the outbuildings on a regular basis, so it fell into a state of disrepair and could no longer be used in the taxpayer's business. The taxpayer decides to restore the building by shoring the walls and replacing siding. The costs are for restorations, and therefore improvements, because the building was returned to its ordinarily efficient operating condition after it had deteriorated to a state of disrepair and was no longer functional for its intended use; and

- **Rebuild of property to like-new condition:** A taxpayer owns a fleet of vehicles. After the end of the class life of each vehicle, the taxpayer disassembles and rebuilds each vehicle according to the manufacturer's original specification. Costs paid to rebuild each vehicle are for restorations, and therefore are improvements because each fleet vehicle is restored to a like-new condition after the end of its class life.

The following example adapts the unit of property to a new or different use:

- An amount is paid to adapt a unit of property to a new or different use if the adaptation is not consistent with the ordinary use of the unit of property at the time the taxpayer originally placed it in service.

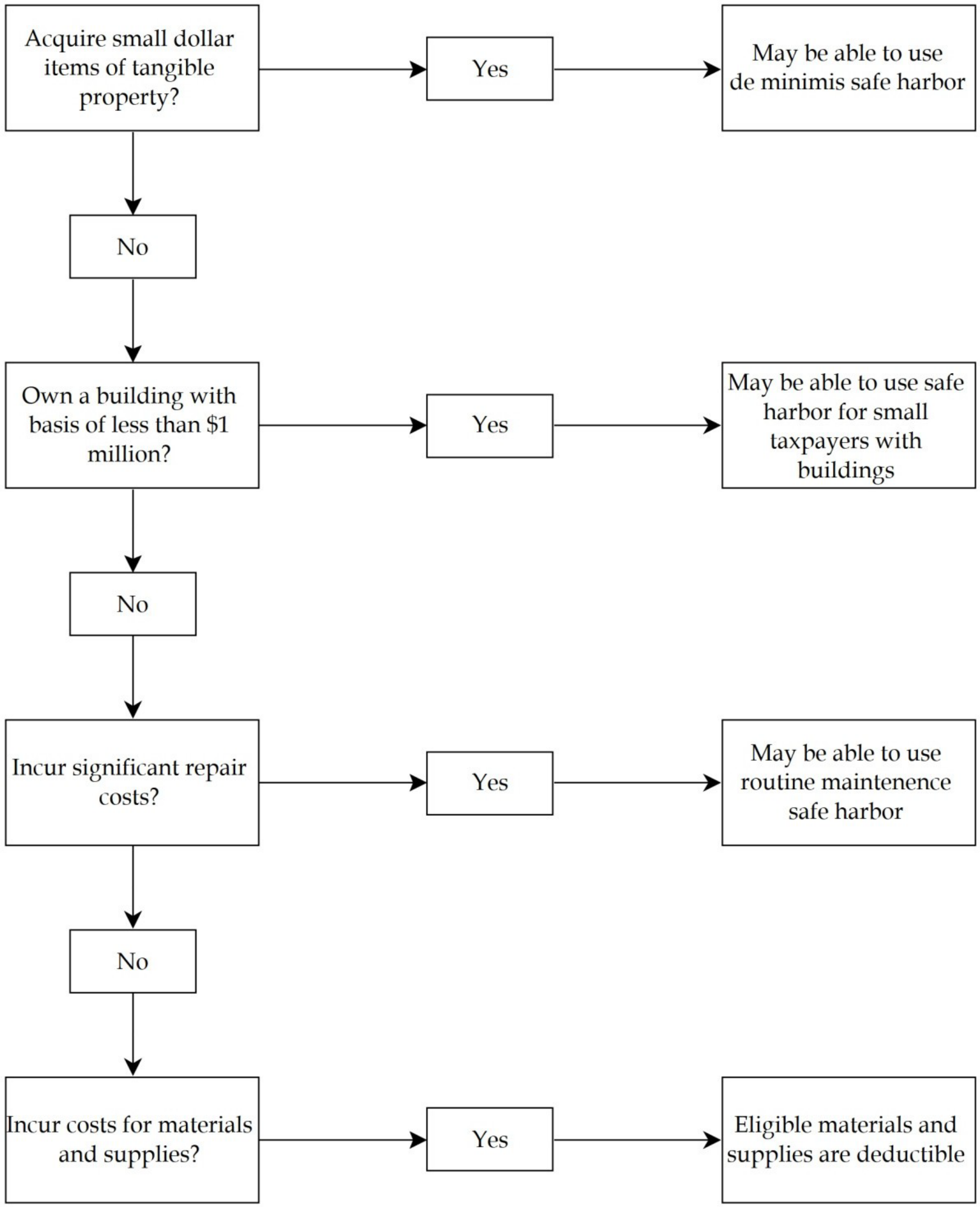
Examples of what may or may not constitute a new or different use include:

- A taxpayer owns a manufacturing building that it used to manufacture items for several years beginning when the building was placed in service by the taxpayer. The taxpayer pays amounts to convert the manufacturing building into a showroom through modifications to the building structure and various building systems. Costs to convert the manufacturing building into a showroom are improvements because the structure and systems are converted to a new or different use that is inconsistent with the intended ordinary use of the building (manufacturing items) at the time it was placed in service;

- A taxpayer owns a fishing boat that it used in its fishing business for several years beginning when it was placed in service. The taxpayer pays amounts to convert the fishing boat into a sightseeing boat that it plans to offer for scenic passenger tours. Costs to convert the fishing boat into a sightseeing boat adapt the unit of property to a new or different use that is inconsistent with the intended ordinary use of the fishing boat at the time it was placed in service. The conversion is an improvement that must be capitalized; and

- A taxpayer owns a building that it plans to sell. In order to prepare the property for viewing, the taxpayer paints the walls and refinishes the floors. Preparing the property for sale by painting walls and refinishing floors is not adapting the building to a new or different use for purposes of determining whether there is an improvement to the property.

TANGIBLE PROPERTY FLOWCHART



DEPRECIATION RECAPTURE

Depreciation Recapture Generally

The gain received from the sale or other disposition of IRC §1245 or §1250 property for which depreciation was claimed or was allowable must be treated as ordinary income rather than capital gain income. This is referred to as "depreciation recapture," which prevents taxpayers from receiving a double benefit of claiming depreciation deductions against ordinary income during the year the property is held and then having all the gain from the sale of property subject to the lower capital gains tax rate.

How the depreciation recapture is computed depends on whether the property sold is IRC §1245 property or IRC §1250 property. Special recapture rules apply to IRC §179 property if the business use of the property falls below 50%.

Depreciation recapture for both sales of business property and sales of investment property is reported on Form 4797, Sales of Business Property.

If there is any gain from the sale of investment property in excess of the amount recaptured, the excess amount is reported on Form 8949, Sale and Other Dispositions of Capital Assets.

IRC §1245 PROPERTY

IRC §1245 property is depreciable personal property, such as furniture, autos, and appliances. It also includes qualified improvement property for which an IRC §179 expense deduction was claimed. Otherwise, it does not include structural components of buildings such as HVACs.

To compute the amount subject to depreciation recapture, subtract the property's adjusted tax basis from the lesser of the property's:

- Recomputed basis (the original cost of the property before any depreciation deductions, including IRC §179 and bonus depreciation); or
- The sales price.

The result will be taxed as ordinary income, rather than capital gains. With the exception of IRC §197 intangibles, the computation is done for each asset separately.

Example of IRC §1245 depreciation recapture

Yoshi sells a furnished condominium that was a rental property for $500,000 total, with $450,000 allocated to the condominium and $50,000 for the furniture and appliances. The original cost of the furniture/appliances was $75,000, and Yoshi had previously claimed $30,000 depreciation on these items.

The recapture amount of the furniture/appliances is determined as follows:

Lesser of sales price or recomputed basis	$50,000
Adjusted tax basis ($75,000 - $30,000)	(45,000)
Total	$ 5,000

The $5,000 of the $20,000 gain ($50,000 - $30,000) will be treated as ordinary income.

We will address what happens with the remaining $15,000 of gain shortly.

Depreciation included

Depreciation includes the amounts claimed on the IRC §1245 property by the taxpayer as well as the following depreciation amounts:

- Amounts claimed on property the taxpayer exchanged for, or converted to, the IRC §1245 property in a like-kind exchange or involuntary conversion; and
- Amounts a previous owner of the IRC §1245 property claimed if the taxpayer's basis is determined with reference to that person's adjusted basis (for example, the donor's depreciation deductions on property the taxpayer received as a gift

> ***Example of depreciation tack-on***
>
> Shawn owned a residential rental property that he gifted to his daughter Marianne. Shawn had previously claimed \$10,000 in depreciation deductions on appliances at the property. If Marianne later sells the property, she must count the \$10,000 paid by Shawn in her depreciation recapture calculations.

IRC §1250 PROPERTY

IRC §1250 property is depreciable real property, essentially buildings and their structural components, including walls, floors, windows, doors, central air conditioning systems, light fixtures, etc. Land is not depreciable, so it is not subject to IRC §1250 recapture. However, a leasehold of land is subject to recapture.

Although IRC §1250 recapture provisions are almost identical to the IRC §1245 treatment, there is one huge caveat. IRC §1250 only requires recapture of prior depreciation that is in excess of what straight-line depreciation would have been (aka "additional depreciation"). Because all real estate purchased after 1986 must be depreciated using the straight-line method over 27.5 years for residential property and 39 years for nonresidential property, this issue rarely arises anymore.

Unrecaptured gain

However, as in all things tax, nothing is that simple. IRC §1(h)(1)(E) subjects "unrecaptured IRC

§1250 gain" to a tax of 25%, rather than the lower capital gains rates, if the taxpayer has a "net capital gain" for the year. Unrecaptured IRC §1250 gain is the lesser of:

- The amount of depreciation taken on the property that is not recaptured as ordinary income under IRC §1250; or
- The actual gain on the sale.

"Net capital gains" is the sum of all of the taxpayer's long-term and short-term capital gain recognized during the taxable year. Essentially, this means that a taxpayer must first add in the IRC §1250 gain into the IRC §1231 netting computation. If there is a net capital gain and it exceeds the amount of depreciation claimed on the IRC §1250 property, then the IRC §1250 unrecaptured gain is subject to the 25% tax rate, and any remaining gain is taxed at the taxpayer's applicable capital gains tax rate.

> ***Example of IRC §1250 unrecaptured gain***
>
> Yves sells a commercial building for \$1 million in 2024.
>
> The property was purchased for \$600,000 in 2017. Yves claimed \$90,000 in depreciation deductions on the property. Yves had a total of \$400,000 in net capital gain in 2024.
>
> Because the \$90,000 unrecaptured gain is less than Yves' net capital gain for the year, the \$90,000 would be subject to the 25% capital gains rate, and the remaining \$310,000 would be subject to the 20% capital gains rate (assuming Yves is in the top capital gains rate).

> ***Comment***
>
> If there is no net capital gain, there is no IRC §1250 recapture.

Home offices

If a taxpayer sells their home and a portion of the home was used as a home office, the amount of depreciation claimed on the home office may be subject to the 25% tax on IRC §1250 unrecaptured gain tax.

However, if the taxpayer used the simplified option for claiming home office expenses available under Revenue Procedure 2013-13, then the amount deducted under the simplified method is not subject to recapture.

INTERPLAY WITH IRC §1231 NETTING RULES

The depreciation recapture provisions (other than the IRC §1250 unrecaptured gain provisions) are computed prior to the IRC §1231 netting procedure.

Under IRC §1231, if total gains from the sale of IRC §1231 assets is a net gain, the gain is treated as a capital gain (unless the taxpayer is a C corporation), whereas if the sum of the taxpayer's gains and losses from the sale of IRC §1231 assets results in a net loss, then the loss is treated as an ordinary loss.

However, if some of the IRC §1231 assets are IRC §1245 or IRC §1250 property, gain from the sale of these assets may be taxed as ordinary income, rather than capital gain under the depreciation recapture rules. This ordinary income computation is conducted prior to the IRC §1231 netting calculation, so that only the capital gains from the sale of these assets are used in the IRC §1231 netting process.

Unlike the IRC §1231 netting rules, the depreciation recapture rules are computed on an asset-by-asset basis.

Example of IRC §1231 interplay

In 2024, Bo sells residential rental property that was purchased in 2020. Below is Bo's balance sheet from the sale:

	Cost	Tax Basis	FMV	§1231 asset	§1245 asset	§1250 asset
Building	$500,000	$410,000	$600,000	Yes	No	Yes
Furniture/appliances	$25,000	$15,000	$10,000	Yes	Yes	No
Land	$120,000	$120,000	$175,000	Yes	No	No

The sale of the furniture/appliances results in $0 in depreciation recapture ($10,000 - $15,000).

To determine the amount of IRC §1250 unrecaptured gain, if any, we must first determine whether there is a net capital gain.

Building	$190,000
Furniture/appliances	(5,000)
Land	55,000
Net capital gain	$240,000

$90,000 of the gain from the sale of the building is IRC §1250 unrecaptured gain (the amount of depreciation taken on the building) and is taxed at 25%. The remaining $150,000 is treated as IRC §1231 net capital gains subject to the 20% capital gains tax rate.

WHAT TRIGGERS RECAPTURE?

The following is a list of transactions and events that either trigger or escape depreciation recapture:

- A sale in a sale and leaseback transaction, a sale under a conditional sales contract, and a transfer of title back to the seller, creditor, or new purchaser upon foreclosure of a security interest trigger recapture. But, a transfer of legal title to a creditor upon creation of a security interest, or to a debtor upon termination of a security interest, escapes recapture. (Treas. Regs. §§1.1245-1(a)(3), 1.1250-1(a)(2)(i))
- For like-kind exchanges and involuntary conversions, IRC §1245 depreciation isn't recaptured unless gain is recognized or non-IRC §1245 property is acquired (IRC §1245(b)(4); Treas. Regs. §1.1245-4(d)); and IRC §1250 depreciation isn't recaptured except where gain is recognized, stock is bought to acquire control of a corporation owning replacement property, or non-IRC §1250 property is acquired. (IRC §1250(d)(4); Treas. Regs. §1.1250-3(d))
- Conversion to personal use (except for IRC §179 property) doesn't trigger recapture, but a later sale will.
- Termination or disposition of a lease where depreciation was taken by the lessee (or sublessee) generally triggers recapture. (Treas. Regs. §1.1245-2(a)(3)(i))
- Incorporation of a business triggers recapture only if gain is otherwise recognized. (IRC
- §§1245(b)(3), 1250(d)(3); Treas. Regs. §§1.1245-4(c), 1.1250-3(c))
- Corporate distributions in kind (including liquidating distributions) generally trigger recapture, except in a tax-free complete liquidation of a subsidiary with carryover basis, where recapture is triggered upon disposition by the parent-transferee. (IRC §§1245(b)(3), 1250(d)(3); Treas. Regs. §§1.1245-4(c), 1.1250-3(c))
- Corporate split-ups and reorganizations generally don't trigger recapture, except to the extent that gain is otherwise recognized on transfer of the property. (IRC §§1245(b)(3), 1250(d)(3); Treas. Regs. §§1.1245-4(c), 1.1250-3(c))
- S corporation elections or termination of S status doesn't trigger recapture.
- Sale of a partnership interest triggers recapture. Contributions to a partnership generally don't trigger recapture but may if property is subject to a liability. (IRC §§1245(a) and (b)(3), 1250(a) and (d)(3); Treas. Regs. §§1.1245-4(c), 1.1250-3(c))
- Gifts generally don't trigger recapture, but recapturable depreciation carries over to the donee. (IRC §§1245(b)(1), 1250(d)(1); Treas. Regs. §§1.1245-4(a), 1.1250-3(a))
- For transfers by reason of death, recapturable depreciation is neither triggered nor carried over. (IRC §§1245(b)(2), 1250(d)(2); Treas. Regs. §§1.1245-4(b), 1.1250-3(b))
- When a trust or estate realizes gain from the distribution of depreciable property in satisfaction of a fixed-dollar bequest, or from a distribution of property in satisfaction of a bequest of other property, recapture is triggered. (Treas. Regs. §§1.1245-4(b), 1.1250-3(b))

IRC §179 RECAPTURE

Recapture of amounts expensed under IRC §179 is triggered when the business use of the property is reduced to 50% or less during the recapture period. The recapture period is the entire recovery period of the qualifying property. (Treas. Regs. §1.179-1(e)) The recapture amount is the expensed amount under IRC §179 minus the amount of the depreciation that would have been allowable for all prior tax years up to and through the recapture year. This amount is taxed as ordinary income during the year of recapture.

Example of IRC §179 recapture

In January 2022, Paul, a calendar-year taxpayer, bought and placed in service IRC §179 property costing $10,000. The property is three-year property. He elected a $5,000 IRC §179 deduction for the property and also elected not to claim a special depreciation allowance. He used the property only for business in 2022 and 2023. In 2024, he used the property 40% for business and 60% for personal use. He figures his recapture amount as follows:

IRC §179 deduction	
2022	$5,000
Allowable depreciation	
2022	$1,666
2023	1,666
2024 ($1,666.66 × 40% business)	666
Allowable depreciation	$3,998
Recapture amount ($5,000 - $3,998)	$1,002

The recapture amount is reported on the 2024 Form 4797, Sales of Business Property.

Interplay with IRC §1245 recapture rules

The IRC §179 recapture rules only apply if the property's use drops below the 50% business use requirement. If the property is sold, exchanged, or otherwise disposed of, the IRC §1245 recapture rules apply.

FIXING DEPRECIATION DEDUCTIONS

Taxpayers that have underclaimed the amount of depreciation they were required to claim have two options:

- They can file amended returns for open tax years if the error is due to a mathematical or posting error, or if the taxpayer has not adopted a method of accounting (by using the same method for two consecutive years) for property placed in service after 2003; or

- They can change their method of accounting to claim the correct amount of depreciation by either filing a complete Form 3115, Application for Change in Accounting Method, and receiving prior IRS approval, or via the IRS's automatic consent procedures available for specified method changes by submitting an abbreviated Form 3115 and making an IRC

- §481(a) adjustment to claim a "catch-up" depreciation deduction. (IRC §446; Treas. Regs.

- §1.446(e); IRS Publication 946, How to Depreciate Property)

The changes that qualify for the automatic consent process are listed in revenue procedures that have been periodically updated since 1997. The latest update is contained in Revenue Procedure 2023-24.

GROUP STUDY MATERIALS

A. Discussion Questions

1. How does the declining bonus depreciation schedule affect tax planning strategies?

2. What is the difference between IRC §179 expensing and bonus depreciation, and in what situations would a taxpayer prefer one over the other?

3. Why might a taxpayer elect to opt out of bonus depreciation for a particular class of assets?

4. What are the three safe harbors under the Tangible Property Regulations (TPR), and how do they help taxpayers in managing repairs and capital expenditures? Provide examples of when each safe harbor would be beneficial for a taxpayer.

5. Why might a taxpayer choose to make a book-conformity election under the TPR rules, and what are the implications of this election?

6. How do the depreciation recapture rules differ between IRC §1245 and IRC §1250 property?

B. Suggested Answers to Discussion Questions

1. The bonus depreciation rate declines each year by 20%, dropping from 60% in 2024 to 0% after 2026. This decrease impacts tax planning strategies, as taxpayers may accelerate purchases of qualifying assets to take advantage of higher bonus depreciation rates before they fully phase out. However, most tax professionals automatically assume that taking bonus depreciation is always the most beneficial decision for their clients, but there are situations where bonus depreciation isn't available or may not be the best option. Taxpayers need to assess whether electing out of bonus depreciation may better serve their long-term tax planning.

2. IRC §179 expensing allows taxpayers to deduct the full cost of qualifying property up to a specific limit in the year it is placed in service, whereas bonus depreciation allows for a percentage deduction (currently phasing out) of the asset's cost without an aggregate limit. Bonus depreciation is automatic, but taxpayers may elect out by class or classes of property. A taxpayer might prefer IRC §179 for greater flexibility since it can be applied asset-by-asset, while bonus depreciation applies to an entire class of property. Bonus depreciation may be preferred when the taxpayer wishes to create or increase a loss in the current year.

3. A taxpayer might elect to opt out of bonus depreciation if they want to spread deductions over a longer period, especially if they are looking to avoid reducing their taxable income below certain thresholds that could limit other deductions, such as the Qualified Business Income (QBI) deduction under IRC §199A. Additionally, spreading out deductions can prevent creating losses that may not be immediately usable, depending on the taxpayer's overall tax situation.

4. The three safe harbors under the TPR are:

   a) De Minimis Safe Harbor: This allows taxpayers to deduct tangible property costs instead of capitalizing them, provided the costs are below $2,500 per item or invoice (or $5,000 with an AFS). For example, a business could deduct the purchase of low-cost office equipment rather than depreciating it over several years. Many businesses may be able to use this de minimis safe harbor election to expense certain business assets and may even come out ahead because there is no IRC §179 expense limit, placed-in-service limit, or taxable income limit.

   b) Small Taxpayer Safe Harbor: This applies to taxpayers with gross receipts of $10 million or less, allowing them to deduct repairs and maintenance costs on buildings with an unadjusted basis of $1 million or less, as long as the total amount spent does not exceed $10,000 or 2% of the building's unadjusted basis. For instance, a small taxpayer could use this safe harbor to deduct repairs on rental property, provided the expenditures stay within the threshold.

   c) Routine Maintenance Safe Harbor: This allows taxpayers to deduct the costs of routine maintenance, such as cleaning, testing, or part replacement, if the taxpayer reasonably expects to perform this maintenance more than once during the property's class life. An example is a company that performs routine HVAC maintenance on its office building every few years.

5. A taxpayer might choose the book-conformity election to reduce the administrative burden of maintaining two sets of accounting records (one for financial books and one for tax purposes). By making this election, all repair and maintenance expenditures capitalized in the taxpayer's financial books must also be capitalized for tax purposes. This election can simplify accounting but may reduce flexibility in treating certain expenses as deductible repairs.

6. IRC §1245 property, which includes depreciable personal property, triggers recapture of the full depreciation claimed as ordinary income upon sale, up to the lesser of the property's recomputed basis or sales price. In contrast, IRC §1250 property, which includes real property such as buildings, only requires recapture of depreciation in excess of what would have been allowed under the straight-line method (i.e., "additional depreciation"). However, unrecaptured §1250 gain is subject to a 25% tax rate.

GLOSSARY OF KEY TERMS

AFS—Applicable financial statement

APA—Administrative Procedures Act

BOI—Beneficial Ownership Information Rules

CTA—Corporate Transparency Act

DOL—Department of Labor

ERISA—Employee Retirement Income Security Act of 1974

HVAC—Heating, ventilation, and air conditioning

MACRS—Modified accelerated cost recovery system

NOL—Net operating loss

PTE—Prohibited transaction exemptions

RIA—Registered investment adviser

TIGTA—Treasury Inspector General for Tax Administration

TPR—Tangible property repair

CPE Network®

Tax Report

Volume 37, Issue 10 **November 2024**

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

1. According to Ian Redpath, what did the Treasury Inspector General's audit report (2024-300-064) identify as a significant issue in the IRS's enforcement efforts?

   A. Inadequate audits of small businesses
   B. Over-reporting of charitable contributions
   C. Misuse of energy tax credits
   D. Lack of follow-up on non-reported gambling winnings

2. According to Ian Redpath, what does Proposed Regulation 113628-21 say about wholly owned Native American tribal entities?

   A. They are granted the same tax-exempt status as the tribe.
   B. They are exempt from state tax.
   C. They are taxable if operating off the reservation.
   D. They will be taxed as corporations.

3. According to Ian Redpath, how does the IRS classify syndicated conservation easements under the new final regulations in IR 2024-259?

   A. As non-reportable transactions
   B. As listed transactions
   C. As exempt transactions
   D. As charitable deductions

4. According to Ian Redpath, the IRS is reminding us of the pre-filing registration process for which of the following in IR 2024-210?

   A. Energy efficiency credit
   B. Housing improvement credit
   C. Elective pay
   D. Clean air credit

5. According to Ian Redpath, how does the Department of Labor's Retirement Security Rule impact CPAs providing investment advice related to retirement accounts?

   A. CPAs are subject to the rule when making recommendations.
   B. CPAs are subject to the rule when educating a client.
   C. CPAs only have to follow the rule if they hold a financial advisor license.
   D. CPAs can provide investment advice without being subject to the rule if it's a one-time recommendation.

Continued on next page

6. According to Ian Redpath, what did the Treasury Inspector General's audit report (2024-300-064) identify as a significant issue in the IRS's enforcement efforts?

   A. Inadequate audits of small businesses
   B. Over-reporting of charitable contributions
   C. Misuse of energy tax credits
   D. Lack of follow-up on non-reported gambling winnings

7. According to Ian Redpath, what does Proposed Regulation 113628-21 say about wholly owned Native American tribal entities?

   A. They are granted the same tax-exempt status as the tribe.
   B. They are exempt from state tax.
   C. They are taxable if operating off the reservation.
   D. They will be taxed as corporations.

8. According to Renée Rodda, what is the bonus depreciation percentage for assets placed in service in 2025?

   A. 80%
   B. 60%
   C. 40%
   D. 20%

9. According to Renée Rodda, what is the maximum amount a taxpayer can expense under IRC §179 in 2024?

   A. $1.16 million
   B. $1.22 million
   C. $3.05 million.
   D. $1.29 million.

10. According to Renée Rodda, under what condition can a taxpayer make the election out of bonus depreciation?

    A. Only for specific assets within a property class
    B. For an entire class of property
    C. Only for nonresidential property
    D. For any asset, regardless of class

Continued on next page

11. According to Renée Rodda, what is the purpose of the de minimis safe harbor?

    A. To allow taxpayers to expense certain business assets that would otherwise be capitalized
    B. To allow taxpayers to expense all capital assets
    C. To exempt taxpayers from bonus depreciation recapture
    D. To increase the maximum §179 deduction

12. According to Renée Rodda, what is the maximum dollar limit for the small taxpayer safe harbor for buildings?

    A. $1,000
    B. $5,000
    C. $10,000
    D. $15,000

13. According to Renée Rodda, which is considered routine maintenance under the tangible property repair (TPR) regulations?

    A. Constructing an addition to the building
    B. Replacing a major structural component
    C. Renovating a building to a new use
    D. Cleaning and testing

14. According to Renée Rodda, which property is subject to recapture under IRC §1250?

    A. Building
    B. Land
    C. Personal-use automobile
    D. Office furniture

15. According to Renée Rodda, which of the following generally triggers depreciation recapture?

    A. Sale of a partnership interest
    B. Termination of S corporation status
    C. Contribution of property to a partnership
    D. Conversion of property to personal use

CPE Network®
Tax Report
Volume 37, Issue 10 **November 2024**

SUBSCRIBER SURVEY

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 November 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	|______|	|______|	|______|	|______|	|______|	|______|
Key Considerations of Taxing Rental Real Estate: Part 3	|______|	|______|	|______|	|______|	|______|	|______|

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

____

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Which segments of the November 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**?

____

____

____

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

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	|______|	|______|	|______|
Renee Rodda	|______|	|______|	|______|

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: CPE Network Tax Report, November 2024 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

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Advertising / Promotional Page

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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:

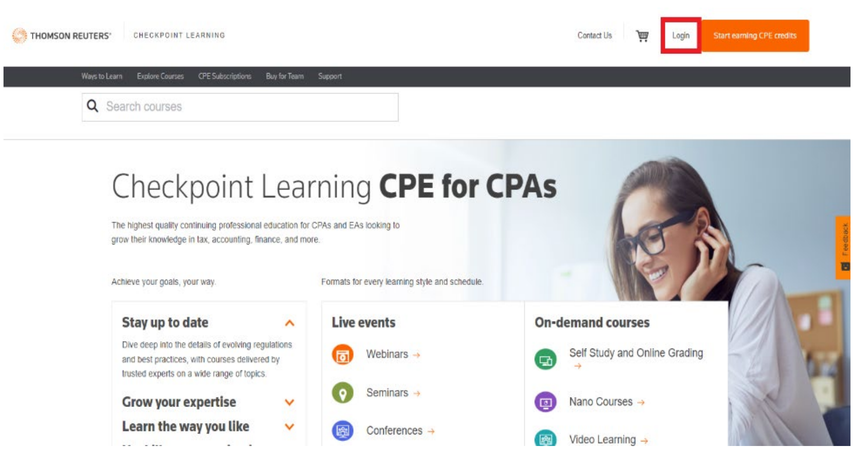
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

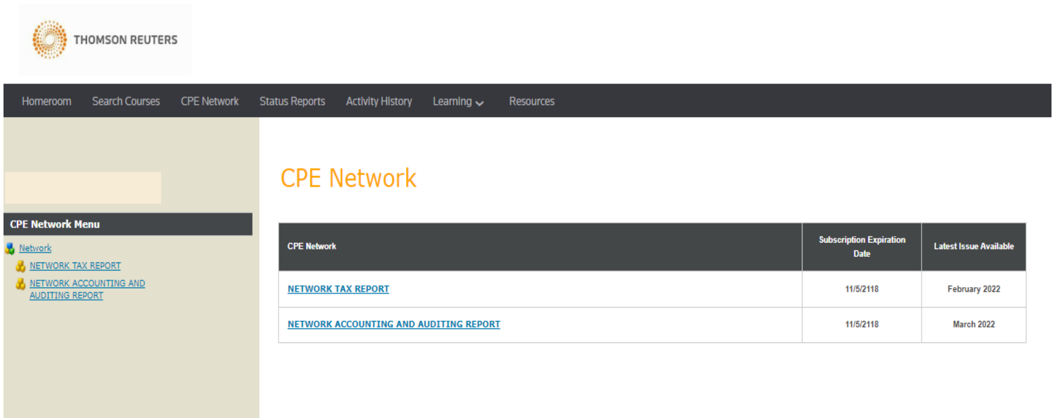
Self-Study—Online

Follow these simple steps to use the online program:

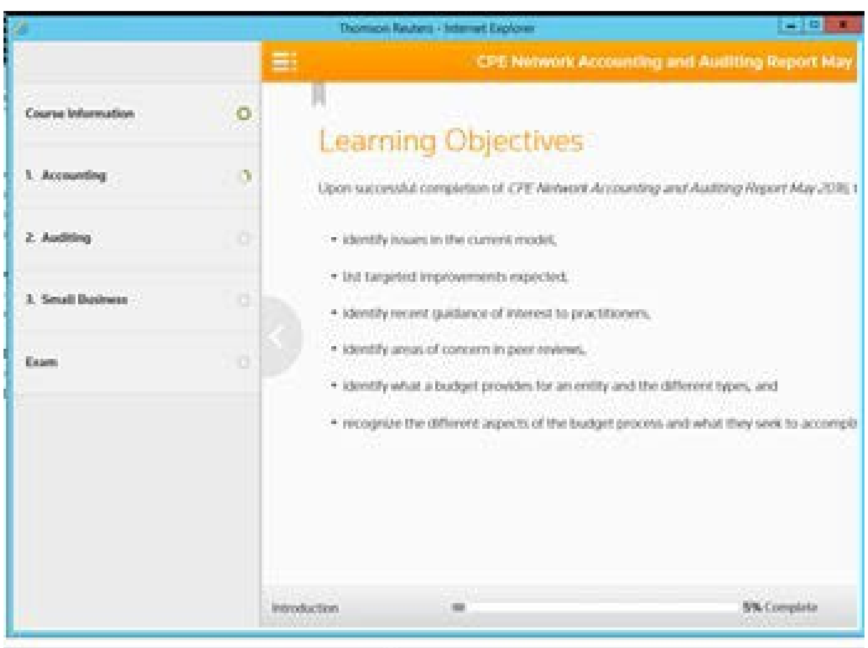
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

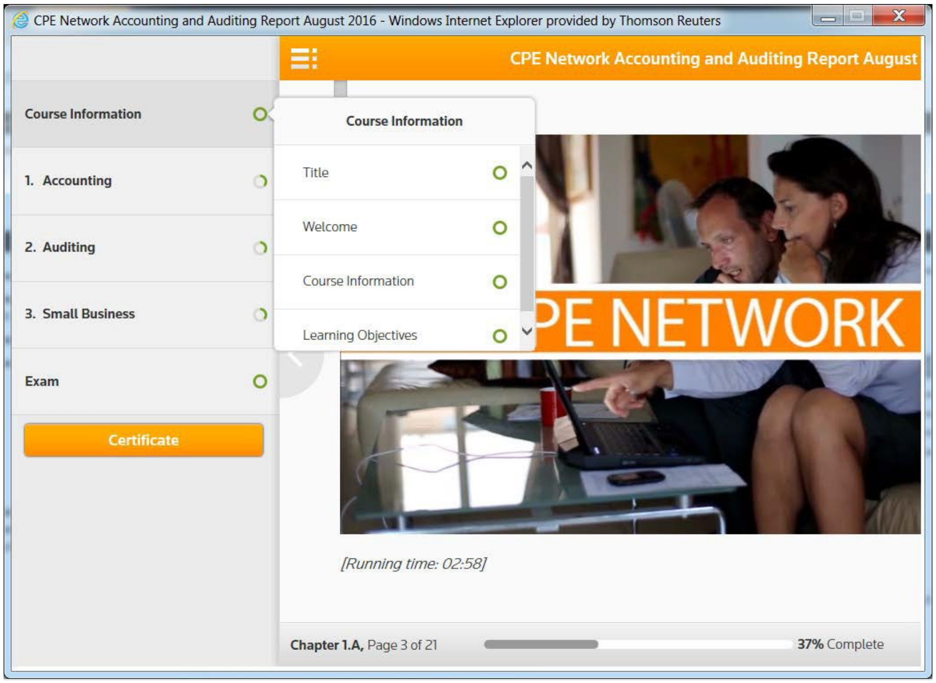


The Chapter Menu is in the gray bar at the left of your screen:

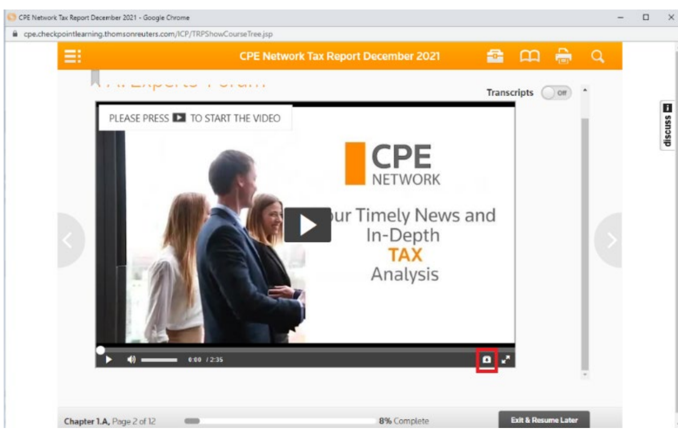


Click down to access the dropdown menu and move between the program Chapters.

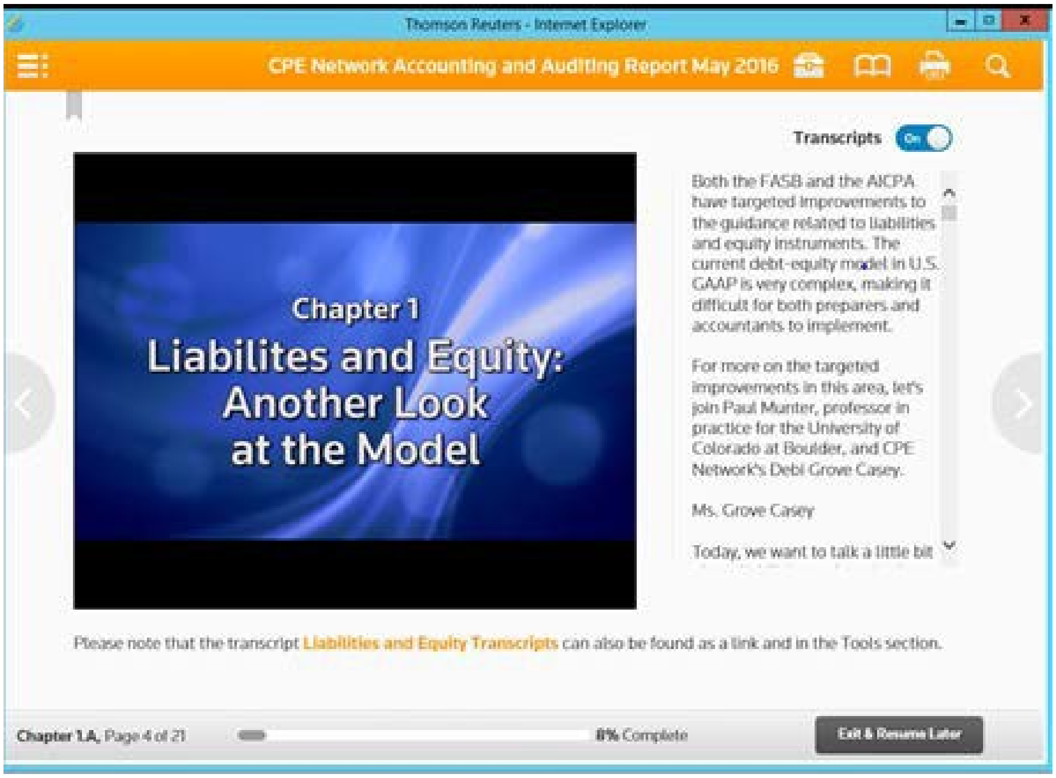
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



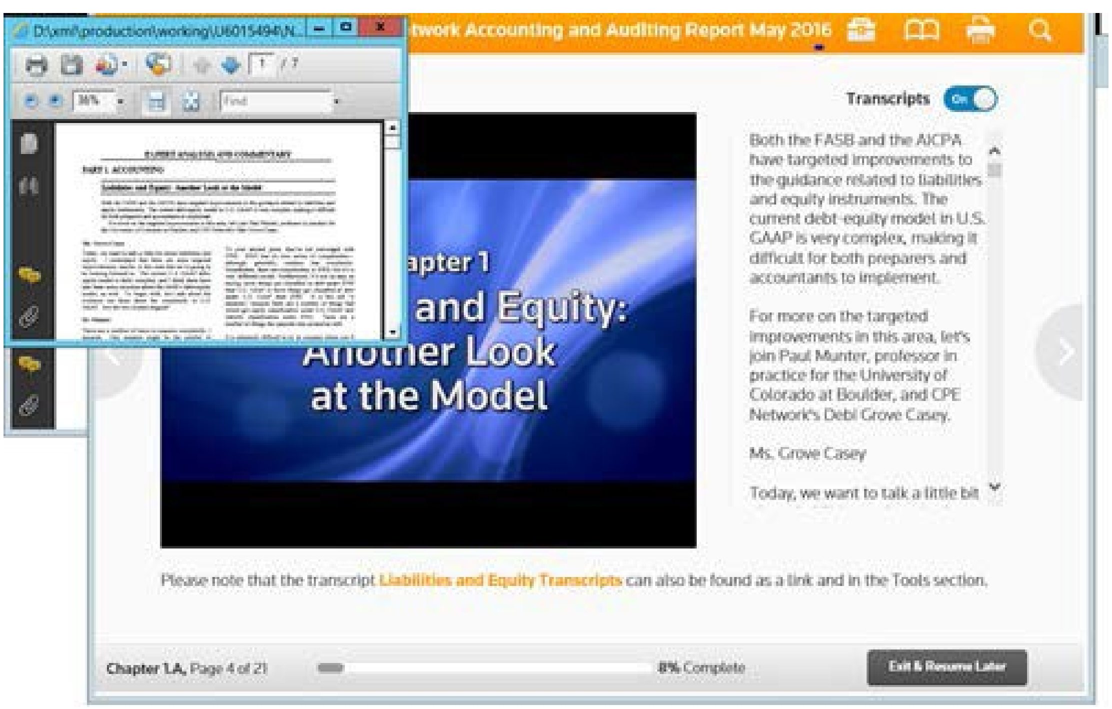
- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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



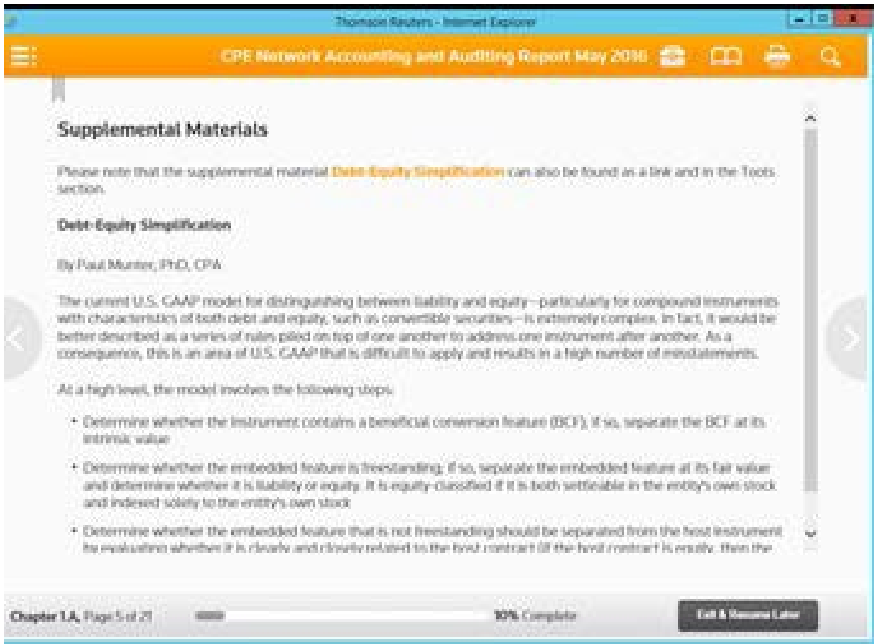
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.

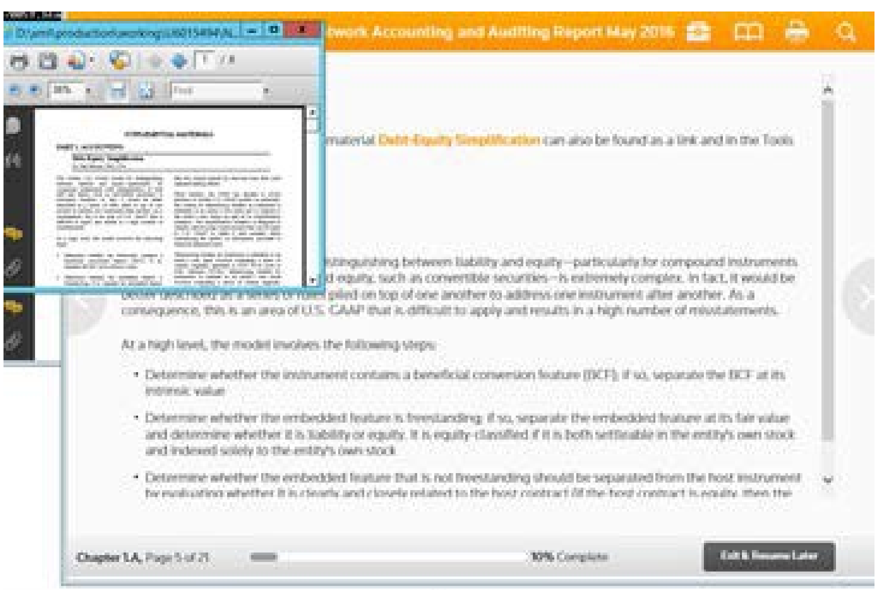


Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



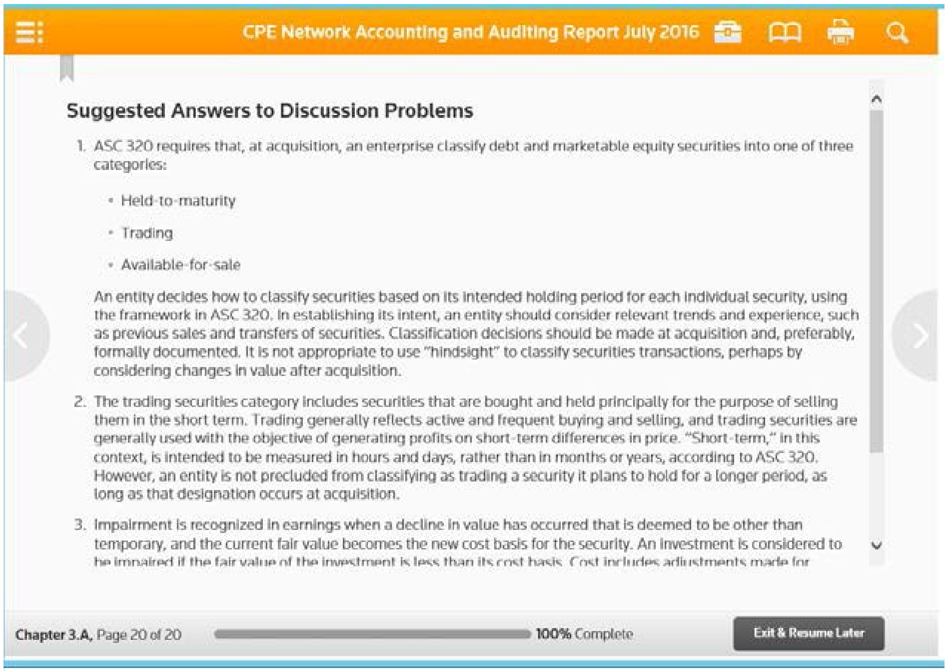
Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.





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.



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

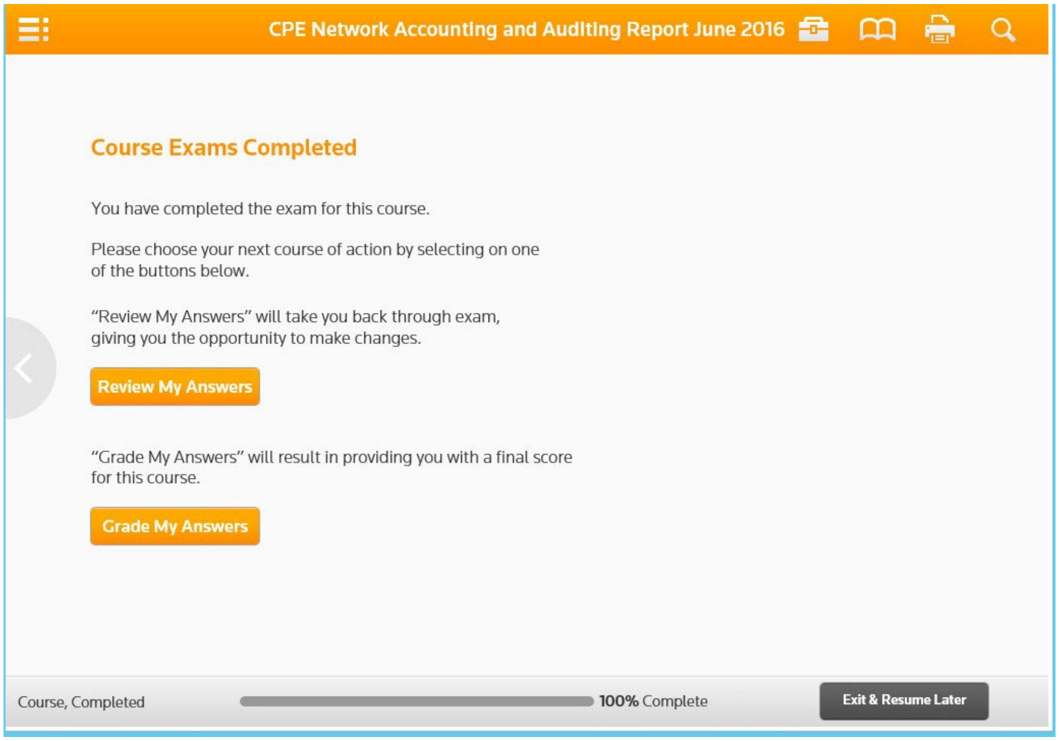
   An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions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

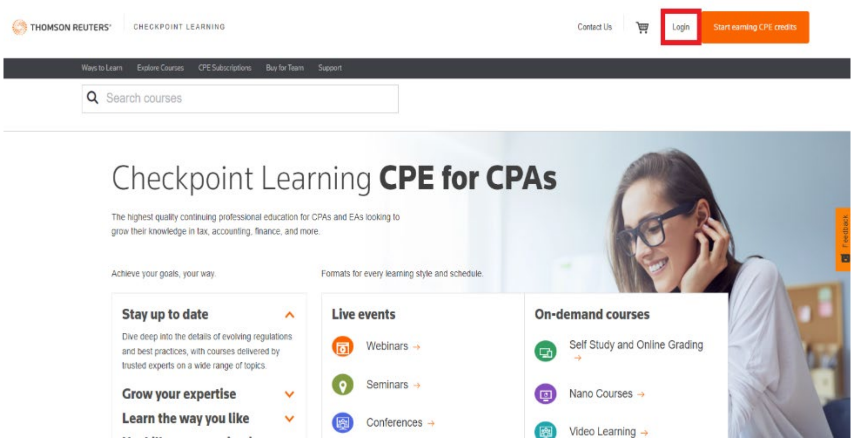
Print

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**.

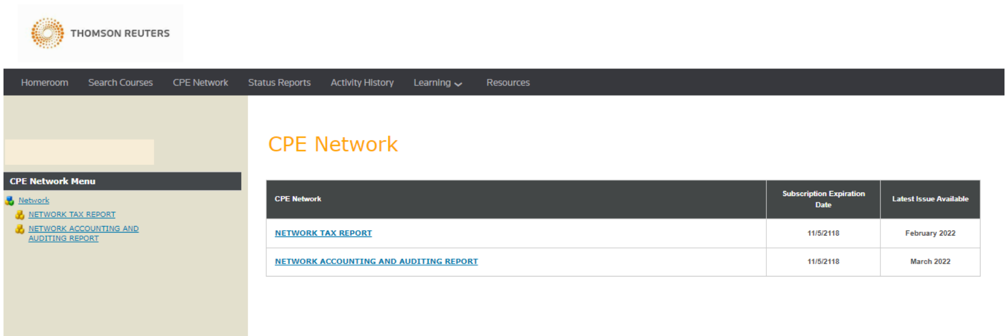
Transitioning From DVDs

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

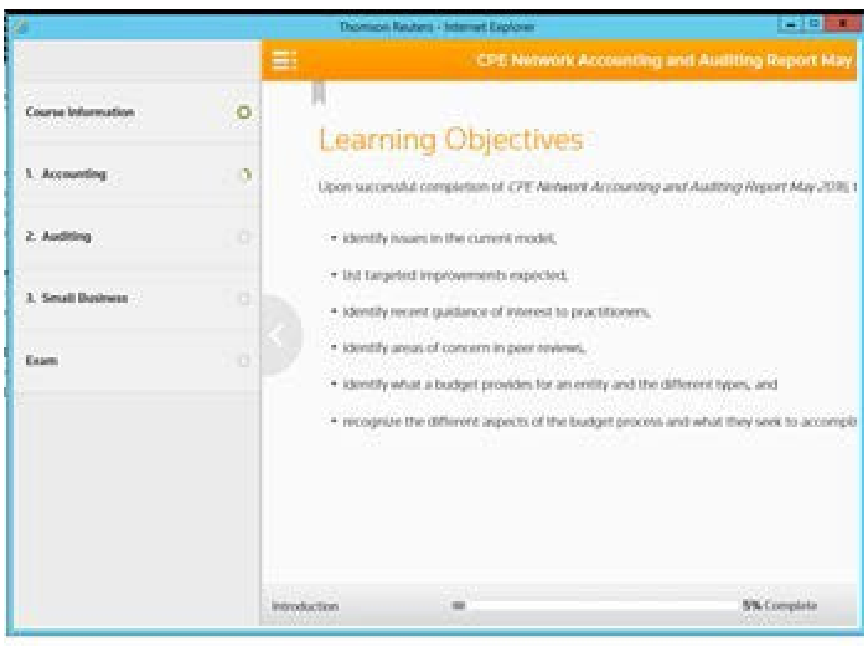
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



- 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:



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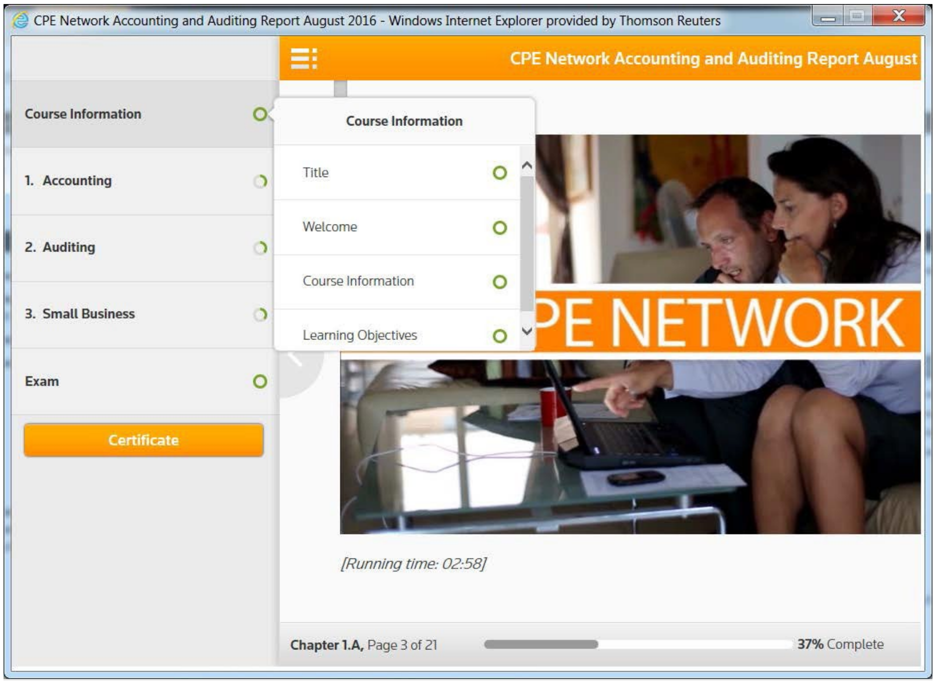

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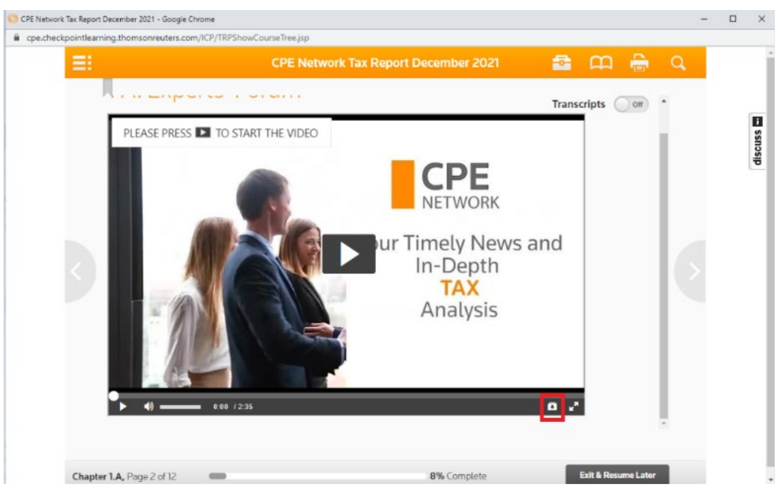

Video segments may be downloaded from the CPL player by clicking on the download button noted above. You may need to use the scroll bar to the right of the video to see the download button. **Tip: You may need to use the scroll bar to the right of the video to see the download button.**

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

<u>Determining CPE Credit Increments</u>

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