CHECKPOINT LEARNING

Contact us at: 2395 Midway Rd., Carrollton, TX 75006
checkpoint learning.cpecustomerservice@tr.com
800.431.9025

CPE NETWORK
TAX REPORT

JUNE 2023 VOLUME 36, ISSUE 5

NOTE: DVDs are no longer being manufactured. Video may be viewed/downloaded from your Checkpoint Learning account. See the user guide for more information on how to download the video and about credit for online meetings.

Attention Enrolled Agents: If you are an IRS Enrolled Agent and wish to get IRS credit for this course, be sure to enter your PTIN into your Checkpoint Learning profile before taking the course.

Attention NCRPs: This course does ***not*** qualify for AFSP professionals requiring "Federal Tax Law Update" credits.

Topics for future editions may include:

- Innocent Spouse Relief
- Repair Regulations

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum 3

There are constant changes affecting tax practice. It is incumbent on practitioners to stay abreast of these developments, not only to advise current clients, but also potential new clients. This material covers some recent updates.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including assessing an amended return to change the treatment of research and experimental costs, applying the new safe harbor language for conservation easements, and assessing the need to report beneficial ownership under FinCEN rules. *[Running time 28:14]*

PART 2. INDIVIDUAL TAXATION

Collection and Payment Alternatives 15

Taxpayers that are experiencing financial difficulty may be able to obtain payment relief from the IRS. Practitioners need to be aware of the many options available to properly advise clients.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze collection alternatives, including evaluating the use of an installment arrangement, determining if an OIC is available, and assessing the use of a currently not collectible status. *[Running time 31:15]*

PART 3. BUSINESS TAXATION

Return Positions, Disclosures, and Potential Penalties 31

There are many ethical considerations in taking position on a return. Practitioners must be aware of the considerations and the ways to avoid penalties, not only on the taxpayer but on the preparer. This material focuses on the preparer penalties.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues related to preparer penalties and disclosures to the IRS, including evaluating the levels of certainty without disclosure, determining if disclosure is required, and assessing the proper manner of disclosure. *[Running time 34:54]*

ABOUT THE SPEAKERS

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

Gary Bluestein, JD a partner in the law firm of Andreozzi Bluestein LLP, focuses his practice exclusively on tax representation. He previously served as a Senior Attorney for the IRS and a Special Assistant United States' Attorney, represented the IRS in the U.S. Tax and Bankruptcy Courts, served on several National Task Forces addressing IRS enforcement issues, and received numerous Special Act Merit Awards. Gary has taught Tax Practice & Procedure at the University at Buffalo School of Law and in the Canisius College's Master in Tax Program. He is a member of the Erie County Bar Association, the Tax Committee, and the Bankruptcy Committee. He also serves on the Planning Committee for the University at Buffalo School of Management Tax Institute. Gary frequently lectures and writes on a variety of topics relating to tax representation for numerous local and national professional groups and has published articles in the Thompson Reuters Tax Practice Series and the Erie County Bar Bulletin.

Shannon Jemiolo, CPA, PhD is an Assistant Accounting Professor at Canisius College in Buffalo, New York, where she also maintains an active tax consulting business. She holds a Bachelor's degree from West Virginia University and a Ph.D. from the University of Oklahoma. Prior to receiving her Ph.D., Shannon worked at in the tax division of PricewaterhouseCoopers and specialized in corporate tax, mergers and acquisition, and corporate restructuring. Shannon has written numerous articles on personal/corporate tax compliance and corporate social responsibility and has presented her tax research at national conferences around the country.

Be sure to include the completed sheet when you request certificates for this event.

Title of Course (Enter full title)	
Date of Class (MM/DD/YYYY)	
Time (Enter time of class)	
Location (Enter location of class)	

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

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

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. Ian Redpath begins this month with a discussion regarding News Release 2023-72. This announcement from the IRS contains their Strategic Operating Plan in a 150-page report to the Secretary of the Treasury. It outlines the Service's plans to use the $80 billion funding from last year's Inflation Reduction Act to transform the tax agency and improve service to taxpayers.

Let's join Ian.

A. News Release 2023-72

Mr. Redpath

Hi, everybody, welcome to the program. I'm Ian Redpath. This is the segment where we go over recent changes, some updates from Congress, some updates from the IRS and the courts—kind of a potpourri of topics.

Let's just jump right in with something that is a little late, but better late than never. News Release 2023-72. What does that say? Well, that is an announcement from the IRS about the long-anticipated spending plan for the $80 billion appropriation in the Inflation Reduction Act. There has been a lot of controversy. Exactly what is the IRS plan on spending this for? There was a deadline—February 17. The IRS missed the deadline. Now, they are facing a lot of heat from Congress; and, really, there is some heat from both sides of the aisle on this.

They finally came out with a 150-page document which is a basic outline and really not very informative. I wish I could tell you a lot of detail, but there is no detail, really. There are different categories—customer service and compliance enforcement, [but] if people were already somewhat opposed to this, they are probably saying, "There is nothing there. It doesn't tell us anything."

We do know, though, that one of the things that they are trying to do is improve customer service and the ability to respond, especially to phone calls. It has been a long time coming. This is just a strategic operating plan to rebuild this: customer service, the waiting times on phones, and in-person assistance. They want to do a lot of new technology, and the technology is going to be in two parts: for customer service to engage—especially online tools, but also, more of a use of AI to address potential targets for audit.

They point out something that says for the high-income, high-wealth filing, there are about 2,600 current employees working in that area, and about 30,000 individuals that make more than $10 million a year, 60,000 large corporations, and 300,000 large partnerships and S corps. Clearly, they need more technology and, obviously, staffing. They again have said that they are not going to go after households or small businesses making less than $400,000. That [is something] Janet Yellen did say. Again, a lot of technology stuff here.

What they did say is that they have 42 initiatives that they address, and each one has what they call key projects and milestones, and it covers more than 190 projects and 200 specific milestones. The IRS says, "We are going to identify additional projects and milestones as we continue to work. Here is the outline." And again, it is just the outline. They say in the document that they have been starved for resources for a long time, and they can't even do the audits of those that they want to—the high-income [taxpayers]. There are just not enough people. Again, a lot of AI and a lot of customer service, so that will be a good thing; a lot more use of things online. So, we will see where all this shakes out now, but at least there is a general outline. I can't give you specifics, unfortunately.

B. Revenue Ruling 2023-8

2023-18 IRB

Revenue Ruling 2023-8. You might want to pay attention to this if it hits one of your clients. This is a revenue ruling that obsoletes Revenue Ruling 58-74. Well, what is that? That allowed taxpayers to file for a refund or an amended return to deduct research or experimental expenses subject to the former [Section] 174(a) if they hadn't deducted it in the prior year.

The new ruling says, you know what, that is not determinative anymore because—and it is interesting that they finally [did it since] this is [from] 1958—and the IRS is finally saying, you know what, there might be something wrong with that because there is a consistency requirement and, really, this is a change of accounting methods. So, if you want to go back and amend a return for a change of accounting methods, you are going to need consent to change methods—and there is nothing in there requiring the consent of the IRS; so, therefore, they said Revenue Ruling 58-74 is totally inconsistent with the law. Whether it is an administrative adjustment request, an amended return, a refund claim, it doesn't matter. They said these are things that should have the consent of the IRS, and so therefore, 58-74 is inconsistent.

Why should you pay attention? Well, if there is anything that you are going to go back and do, especially with the changes in accounting for these things, Rev. Rul. 2023-8 gives you a transition to do it, up to July 31, 2023. If you have any clients involved, you have until July 31, 2023. After that, any changes would be requiring IRS approval and a request for a change of accounting methods.

C. Preamble to Proposed Reg., REG-121709-19

Now, we have a set of proposed regs here. These regulations, Proposed Reg. REG-121709-19, are proposed regs dealing with the approval mechanism for Code Section 6751(b) penalties. Now, those penalties require the approval of the supervisor. The question has been—and in a number of different programs, we have talked about how this is being litigated—what exactly does that mean? Who has to do it? Is it the person who is the supervisor during the audit? Is it the person who is the supervisor at the time? Could it be anybody with supervisory [responsibility]?

Well, the courts have been a little bit all over the place on this. So, the IRS really is coming out and saying, "We want to have a regulation that is going to say who are the people that can do it." The supervisory penalty approval requirement under Section 6751(b) says the IRS cannot assess penalties unless there is an initial determination of the assessment [and it] is personally approved in writing by the immediate supervisor of the individual making the determination, or a higher-level official. Again, it doesn't apply to every penalty, but it does apply to those penalties.

The proposed regs adopt three rules on the timing of supervisory penalty approval. The first [addresses] penalties included in a pre-assessment notice, like a deficiency notice, that is going to be subject to the Court's review. The second addresses penalties that the IRS raises in an answer or amended answer in Tax Court. The third addresses penalties assessed without an opportunity for Tax Court.

Essentially, it defines who is an "immediate supervisor" or "higher-[level] official." The immediate supervisor is any individual with responsibility to approve another's imposition of the penalty; and the term "immediate supervisor" under the proposal will refer to any person who, as part of their job, directly approves a penalty proposed by another IRS employee. So, it doesn't have to be that person's direct supervisor under this rule. And a "higher[-level] official" is simply going to be anyone who is authorized to approve a penalty under the Internal Revenue Manual. It is just going to look at the job that they have, or anyone who has approval in an answer, for example, to the Tax Court.

So, if you have this issue, you might want to look at this proposed reg. Again, it is only proposed, [with] public comments until July 10, 2023, but it is certainly something to look at. Again, we have had a lot of cases involving, "What exactly does that mean?" and "What is the form that has to take place?" So, the IRS thought it is important enough that they should address it.

D. Notice 2023-30; IR-2023-73

Now we have another notice, Notice 2023-30. This is really, I think, going to be helpful. It is something to look at because the IRS, in this notice, has provided safe harbor language for the extinguishment and boundary line adjustment clauses that were provided under SECURE 2.0 for conservation easements.

There have been a lot of issues on conservation easements. There have at least been some Appeals Court litigation where they said the extinguishment regs violate the APA [Administrative Procedure Act] and, therefore, are invalid. The IRS has said they are not going to follow that. There are other cases in the Tax Court right now dealing with those issues.

So, in SECURE 2.0, Section 605 of SECURE 2.0, dealt with this. I know it is not [in the original] SECURE—we think of that as retirement—but [SECURE 2.0] also had some other provisions. The safe harbor, again, only addresses corrections to the extinguishment and boundary line clauses provided in the particular deed. It provides that if a donor substitutes the language in the notice for the language in the original easement deed, and the amended deed is signed by the donor and the donee and recorded before—and here is the date—July 24, 2023, the amended deed will be treated as effective for purposes of the granting of a charitable contribution deduction as if it was originally recorded that way (so, it is retroactive).

But note that date, because I know there have been a lot of questions of people who have had conservation easements, or clients who have entered into conservation easements. Things have been up in the air, especially with this language issue, and SECURE tried to deal with it a little bit. So, again, July 24, 2023. If you have any clients dealing with conservation easements, you might want to look at that particular date.

E. Announcement 2023-12

2023-17 IRB

Well, we have a new form coming up. In Announcement 2023-12, the IRS has updated the Form 3115 (for a change in accounting method) and its instructions, and they are now available on the IRS website. The date on them [is] April 7, 2023. So, if you are seeking a change in accounting method, you should use the new version. This replaces the 2018 version.

There is going to be a transition period. The announcement says that [the IRS is] going to accept both forms, the old form and the new form, until only April 18, 2023. Well, we are past that date so, therefore, what does that mean? It means that you have to use the new form. If you filed, you have to have filed the new form now, if you filed for a change after April 18.

Prior to April 18, 2023 (you may have had one that you have already filed and is pending), the old form is fine; but the new form is going to be required for any other changes.

F. Revenue Ruling 2023-7

2023-15 IRB 633

Now, Revenue Ruling 2023-7. More and more people are taking non-commercial flights; and the question is, how do you value the fringe benefit of non-commercial flights? The IRS provides what they call the Standard Industry Fare Level [SIFL] cents-per-mile rates, and then the terminal charges, and they have provided that for the first half of 2023 in this particular Revenue Ruling, 2023-7.

The value of a flight is determined under the base aircraft valuation formula—that is that standard [SIFL] formula—and multiplying that cents-per-mile rate applicable for the period when the flight was taken and the appropriate aircraft, so it has the type of aircraft. Then, you are able to add to that [result] the applicable terminal charges. Now, the Department of Transportation semiannually will review the charges and the cents per mile, and there is a chart that is also provided in this revenue ruling. I know more and more people are taking private flights—non-commercial—so that is something to look at.

G. *Robert A. Di Giorgio, Sr., et ux. v. Commissioner*

TC Memo 2023-44

Now, we have a case in the Tax Court; this is *Robert A. Di Giorgio, Sr.* What happened here is the IRS came in—and he challenged it—the IRS used the bank deposit reconstruction for the business income and expenses, and there were multiple accounts that the taxpayer had in their own name and in various business names. Deposits were made into both personal accounts and business accounts, money was moved in between accounts, personal expenses were paid out of the business.…

Well, you know where this mess is going, right? Sometimes, it is hard to tell our clients, "Look, I hate to tell you this, but that is your business account. That is not your personal account. Don't pay your personal bills out of your business account; and, likewise, don't use your personal account to pay your business bills."

What happened here is he then challenged the IRS on this and said that this was not valid, that [the IRS] did not account for nontaxable sources. The Tax Court said no, this was absolutely the correct method; the IRS did account for nontaxable sources. Now, he did say that he had unaccounted-for expenses, but he provided no invoices, no proof of payments of anything. He could have had that, but he had no proof—and that can happen.

I had a situation where it was a restaurant, but what happened was that there was cash that was received that wasn't accounted for. Well, the IRS came in and the IRS audited, and they found that there was income that was not accounted for (cash) because they were paying people under the table (employees). Also, they had a lot of expenses; they didn't expense them, but they had the expenses, and they had proof of payment—mainly, that these were things that were paid by cash. But again, in audit, they were able to introduce that evidence. Well, [Di Giorgio] couldn't introduce any evidence.

Then—and this is pre-2018—he took a dependency exemption deduction on the return for the children of his second wife. They were nonresident aliens, and they weren't adopted, so [he was] not entitled to it.

H. FinCEN Issues Proposed Beneficial Ownership Information (BOI) Reporting FAQs

There have been some issues, so FinCEN has issued proposed beneficial ownership information reporting FAQs. If you go on their website, the new beneficial ownership information reporting requirements will take effect January 1, 2024.

Under the Corporate Transparency Act, certain businesses created or registered to do business in the U.S. have to report identifying information about their beneficial owners. So, this follows up on the rules that were finalized under the Transparency Act, and it states who is a beneficial owner for this purpose. Basically, a beneficial owner of a reporting entity is an individual who exercises substantial control over the entity, or who owns or controls at least 25 percent. Now, that is *OR* who owns or controls at least 25 percent. Also, the question has been, "What does this mean as far as reporting?"

For entities created or registered to do business in the U.S. before January 1, 2024, their initial reports are due January 1 [2025]. If it is created after January 1, 2024, their initial reports are due [within] 30 days, 30 calendar days—not business days, calendar days—of receiving notice that their entity's creation or registration is effective. In other words, once it has been effective that you have registered to do business, you have 30 calendar days to do that [reporting].

Again, anything up to January 1, [2024]—so, I should say December 31, 2023—that initial report is due January 1, 2025. If you are created before January 1, 2024, your initial report is January 1, 2025. Anything after that (created after January 1), your initial is 30 days after it becomes effective.

It also provides that if there is a change, you have 30 calendar days to make the change. [For example,] a change in ownership, you have 30 days to report that. And if you have to correct something, again, you have 30 calendar days after you discover the error to correct. This is becoming a big issue. I refer you to the FAQs that have been created by FinCEN.

I. *William F. Anderson, et ux. v. Commissioner*

TC Memo 2023-42

Then we have *William Anderson, et ux. versus the Commissioner*. This is a Tax Court case—an interesting case because this is a physician/geneticist and his pediatric surgeon wife, and they deducted expenses—legal expenses—relating to challenges to the husband. Essentially, there was a conviction for a sex offense involving the minor daughter of a colleague.

The taxpayers said the expenses related to the investigation of the colleague and the colleague's alleged scheme to sabotage the husband's gene therapy business and steal his research, and that is why this allegation, the sex offense with the minor daughter of that colleague, was made—so that the colleague could sabotage the business and steal his research. Therefore [the taxpayers claimed], these were business expenses related to this business.

The invoices stated the expenses, but they didn't refer to anything to deal with sabotage or theft. They just related to the husband's conviction; they didn't offer anything that would seem to indicate that this had anything to do with their business. And as a result, the Court said, sorry, but this has no relationship to your business. Yes, your business was hurt. Maybe the guy made the allegations because of that, but the expenses related to your defense were not related to the business itself.

J. IR-2023-74; Announcement 2023-11, 2023-17 IRB

Now we have a set of proposed regulations that have been released, IR-2023-74, and then Proposed Reg. REG-109309-22. These regs identify transactions that are the same or similar to micro-captive transactions, and those are listed transactions. They are on (and last month we talked about) the Dirty Dozen; they have been appearing on the Dirty Dozen for a while.

So, the questions are, "Does it have to be a specific type of transaction? Or something that is similar to?" And basically, the proposed regs provide for a number of different transactions that are similar to micro-captive transactions and so, therefore, should be considered reportable transactions.

There are a number of court decisions where the IRS's practice of issuing notices for listed transactions have been held not to comply with the APA—remember, I mentioned that with the conservation easement extinguishment regs. Well, there have been a number of different cases involving the use of notices for list[ed] transactions. The IRS has said that they disagree with the court decisions; but, nonetheless, the court decisions are out there. So, this is an attempt to finalize regulations in order to comply with the APA and, then, to make sure that [they identify] what is micro-captive.

Basically, you set up a company, you insure risks (the "insurement" of the risk), you pay the premiums. Sometimes, those risks are partially insured through someone else, but the related company, the micro-captive, they are able to elect to be taxed on only their investment income and not on the premiums, so the premiums tend to be high.

Now, it may be that they have gone ahead and insured part of it or, at lesser premiums, insured the risks. Sometimes, the risks are not risks that are very probable that they could ever happen. Again, not all micro-captives are bad; however, a lot of them are; and that is really what the IRS is getting at in looking at these micro-captives.

K. *U.S. v. Schwarzbaum*

DC FL, 131 AFTR 2d 2023-1226

We have *U.S. v. Schwarzbaum*. This is a district court in Florida and is an interesting case because the government renewed a motion for an order requiring the taxpayer to repatriate foreign assets to enforce a judgment entered after a remand regarding their FBAR [Report of Foreign Bank and Financial Accounts] liabilities was granted. The taxpayer said, "Well, wait a second. We filed an appeal, so the district court has no jurisdiction. Sorry, there is nothing that they can do." And the district court in Florida said no, that is not the case. The appeal does not mean that particular order is unavailing, so the order to disgorge is still going to apply. So, that is an interesting case that we have.

That brings us to the end of the program. I want to thank you very much for joining me today. We always have a lot of different things we get to cover, and always keeps us busy. Again, thank you very much for joining me, and please be safe.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. News Release 2023-72

A 150-page report to the Secretary of the Treasury outlines the IRS's plans to use the $80-billion funding from last year's Inflation Reduction Act. Critics say the plan is too generic, without enough specificity. The IRS did miss the February 17 deadline.

The plan is organized around five objectives:

1. Dramatically improve services to help taxpayers meet their obligations and receive the tax incentives for which they are eligible.
2. Quickly resolve taxpayer issues when they arise.
3. Focus expanded enforcement on taxpayers with complex tax filings and high-dollar noncompliance to address the tax gap.
4. Deliver cutting-edge technology, data, and analytics to operate more effectively.
5. Attract, retain, and empower a highly skilled, diverse workforce and develop a culture that is better equipped to deliver results for taxpayers.

Each objective is to be accomplished through specific initiatives outlined in the plan, which contains 42 initiatives designed to achieve IRS goals, each of which includes multiple key projects and milestones to measure progress. The plan covers more than 190 key projects and more than 200 specific milestones. The IRS will identify additional projects and milestones as work continues. The number of projects and milestones will grow significantly over time as the plan evolves to meet the needs of the nation and tax administration. For each milestone, the plan includes specific timeframes based on year.

The IRS wants to rebuild and strengthen its customer service activities, putting an end to long wait times on the phone, adding capacity to the in-person taxpayer assistance centers around the country, and providing new online tools for those who want to engage with the IRS digitally. It also wants to add capacity to unpack the complex filings of high-income taxpayers, large corporations, and complex partnerships, addressing a growing chasm between the number of experienced compliance personnel at the IRS (about 2,600 employees) who audit high-income, high-wealth tax filings for compliance and the roughly 30,000 individuals making more than $10 million a year, 60,000 large corporations, and 300,000 large partnerships and S corps. Further, the IRS wants to update various outdated systems in its core operations to help ensure the agency has the most modern and robust security in technology to protect taxpayer data.

The IRS notes that it will ensure the agency follows Treasury Secretary Yellen's directive not to raise audit rates above historical levels for small businesses and households making less than $400,000.

B. Revenue Ruling 2023-8

2023-18 IRB

The IRS has prospectively obsoleted Revenue Ruling 58-74, which allowed taxpayers to file a refund claim or amended return to deduct research or experimental expenses subject to former §174(a) that the taxpayer failed to deduct in a prior year. The new ruling also provides transition relief up to July 31, 2023, to follow the old ruling. The IRS noted that Rev. Rul. 58-74 is inconsistent with the IRS's position that a taxpayer cannot retroactively change accounting method without prior consent by filing amended returns, and it is inconsistent with the automatic change procedure for a taxpayer changing accounting method for research or experimental expenses from another provision of the Code to one under §174.

C. Preamble to Proposed Reg., REG-121709-19

The IRS has issued proposed regulations that address various aspects of the supervisory penalty approval rules in §6751(b). The intent is to clarify the rules for what constitutes supervisory approval for purposes of that section.

Generally, §6751(b) provides that the IRS cannot assess a penalty against a taxpayer unless the 'initial determination of such assessment' is 'personally approved in writing' by the 'immediate supervisor' of the individual making the determination to impose the penalty, or a 'higher-level official.' The proposed regulations would adopt three rules on the timing of supervisory penalty approval. The first rule covers penalties included in a pre-assessment notice, like a deficiency notice, that is subject to the Tax Court's review. The second rule would address penalties that the IRS raises in an answer or amended answer to a Tax Court petition. The third rule would address penalties assessed without prior opportunity for Tax Court review.

The proposed regulations define "immediate supervisor" as any individual with responsibility to approve another individual's imposition of a penalty. The term immediate supervisor would be any person who, as part of their job, directly approves of a penalty proposed by another IRS employee. This definition includes acting supervisors operating under a proper delegation of authority and ensures that the person giving the approval has appropriate supervisory responsibility over the penalty decision. A "higher-level official" is any person who has been directed via the Internal Revenue Manual or other assigned job duties to approve another IRS employee's penalty proposal before the penalties are included in a notice of deficiency, an answer to a Tax Court petition, or are assessed without need for such inclusion.

D. Notice 2023-30; IR-2023-73

The IRS issued a notice providing the safe harbor deed language for extinguishment and boundary line adjustment clauses required by §605(d)(1) of the SECURE 2.0 Act of 2022. The notice also describes the process donors may use to amend an original eligible easement deed to substitute the safe harbor language. Taxpayers have until July 24, 2023, to record their safe harbor deed amendments.

E. Announcement 2023-12

2023-17 IRB

The Service has issued an updated Form 3115 and instructions. This replaces the 2018 revision of the form. The IRS provided a transition period during which it accepted both the 2018 Form 3115 and the 2022 Form 3115. The IRS only accepted either the 2018 or 2022 versions of Form 3115 through April 18, 2023. Any Form 3115 prepared after that date must be filed using the current version.

F. Revenue Ruling 2023-7

2023-15 IRB 633

IRS provided Standard Industry Fare Level cents-per-mile rates and the terminal charge in effect for the first half of 2023 for purposes of determining value of non-commercial flights on employer-provided aircraft under Reg. §1.61-21(g). That regulation provides an aircraft valuation formula to determine the value of such flights under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula, or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in the regulations and adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation (DOT) and are reviewed semi-annually.

G. *Robert A. Di Giorgio, Sr., et ux. v. Commissioner*

TC Memo 2023-44

The Court upheld the IRS's reconstruction of a taxpayer's income by using bank records for income and expenses for years for which he held multiple accounts in his own name or in names of his businesses, deposited payments in both his business and personal accounts, moved money between those accounts, and used business accounts for personal expenses. The IRS supported its analysis with other documents and showed that likely sources of the income were the taxpayer's real estate sales, various other businesses, and stock trading. The taxpayer claimed he had additional unaccounted for expenses for his businesses but did not substantiate them. The Court also denied his claim for a pre-2018 dependency exemption for children of his second wife who were nonresident aliens and had not been adopted by taxpayer.

H. FinCEN Issues Proposed Beneficial Ownership Information (BOI) Reporting FAQs

The Financial Crimes Enforcement Network (FinCEN) updated its FAQs on the BOI rules that take effect on January 1, 2024. In September 2022, FinCEN issued final regulations (RIN 1506-AB49) implementing the Corporate Transparency Act (CTA). The CTA requires certain business entities created or registered to do business in the U.S. to report identifying information about their beneficial owners to FinCEN.

For entities created or registered to do business in the U.S. before January 1, 2024, the initial report is due by January 1, 2025. For entities created or registered to do business in the U.S. on or after January 1, 2024, their BOI reports are due within 30 calendar days of receiving notice that their entity's creation or registration is effective. Updated reports will be required when there is a change to previously reported information about the reporting entity or its beneficial owners; they will be due within 30 calendar days after a change occurs. Corrected reports will be required when previously reported information was inaccurate when filed. Corrected reports will be due within 30 calendar days of the error's discovery.

I. *William F. Anderson, et ux. v. Commissioner*

TC Memo 2023-42

A physician/geneticist and his pediatric surgeon wife were not allowed to claim a business deduction for legal expenses relating to state and federal legal challenges the husband mounted associated with his conviction for a sex offense involving the minor daughter of a research colleague. The taxpayers claimed that the expenses related to investigation of the colleague and the colleague's alleged scheme to sabotage the husband's gene therapy business and steal his research. However, the conviction was for an offense unrelated to his business. Additionally, the invoices for those services made no reference to being related to anything concerning the business. The taxpayers were allowed a few other invoices reflecting information technology work for the husband's website, advocacy, and promotion of his business image, which were related to the business.

J. IR-2023-74; Announcement 2023-11, 2023-17 IRB

The IRS issued proposed regulations identifying transactions that are the same, or substantially similar to, certain micro-captive transactions as listed transactions and, therefore, reportable transactions. Material advisors and certain participants in these listed transactions and transactions of interest are required to file disclosures with the IRS and are subject to penalties for failure to disclose. Recent court decisions have held that the IRS's longstanding practice of issuing notices to identify listed transactions and transactions of interest does not comply with the Administrative Procedure Act (APA) [Mann Construction, (CA 6 2022) 29 AFTR 2d 2022-885; CIC Services, (DC TN 2022) 129 AFTR 2d 2022-1983; Green Valley Investors, LLC, (2022) 159 T.C. No. 5 (2022)]. While it disagrees with the courts, this is to address that APA issue.

K. *U.S. v. Schwarzbaum*

DC FL, 131 AFTR 2d 2023-1226

The government was successful in obtaining an order requiring a taxpayer to repatriate foreign assets to enforce final judgment, entered after remand, regarding the taxpayer's Report of Foreign Bank and Financial Accounts (FBAR) liabilities, was granted. The taxpayer's arguments that his intervening appeal filing divested the district court of jurisdiction to enforce its judgment, or that repatriation was generally only available to collect outstanding taxes, was not applicable as it applies only in disgorgement cases.

A. Discussion Problems

Your client, Raphael, has come in with several tax issues.

1) He asks if it is possible to change the way they handled research and experimental costs in a prior year. The statute is still open to amend the return for that year.

2) He previously was involved in the contribution of a conservation easement for which he has a large charitable deduction. The attorney has questioned the language in the deed for the extinguishment and boundary regulations.

3) He has a business that you have determined will be subject to the beneficial ownership information (BOI) requirements.

Required:

Discuss the issues fairly presented in each of the above independent fact situations.

B. Suggested Answers to Discussion Problems

1) Rev. Rul. 2023-8 obsoleted Rev. Proc. 58-74. As a result, the option of filing an amended return for Raphael will only be available until July 31, 2023. After that, it will require a change of accounting method request with Form 3115.

2) Notice 2023-30 provides safe harbor language that can be substituted for current language in the deed. It can only be done until July 24, 2023.

3) If Raphael's business entity is subject to the BOI rules, the entity will have until January 1, 2025, to report. This is because it is in existence and registered to do business in the United States before January 1, 2024.

PART 2. INDIVIDUAL TAXATION

Collection and Payment Alternatives

Our clients often have tax liabilities that they either cannot pay in full or cannot pay at the current time. The Internal Revenue Service provides some alternatives available to taxpayers. Since each taxpayer's situation is unique, different alternatives may be appropriate. It is important that practitioners be aware of the various options and discuss them with the client to determine the best course of action. Ian Redpath and Gary Bluestein discuss the collection and payment alternatives available to taxpayers.

Let's join Ian and Gary.

Mr. Redpath
Gary, welcome to the program.

Mr. Bluestein
Thank you very much, Ian. It is a pleasure to be here.

Mr. Redpath
It is always great to get your insight on this. And, as our viewers know because you have been on our program a few times, you are a former IRS counsel so you get to look at this from both sides; but you have been one of the good guys in the white hats for a long time now. Your firm, as I have mentioned before, you do work across the country. You are not just regional, you are kind of a national firm, but I think this is your area of expertise. I don't know many firms that have more expertise than your office when it comes to these types of things. So, it is great to have you here so we can get your insight into it.

Start me off [with] what has happened. We have gotten something—probably a notice from the IRS—or maybe, even, we have just finished the audit and the client says to the accountant, "I can't pay this. There is no way I can pay this." Maybe [the accountant] could have said, "You should have thought of that before you did what you did," but nonetheless, "I can't afford to pay this." So, maybe that is the starting point, but at some point, you have decided, I have to think about alternatives to collect. Can you kind of start us off? Lead us down the path here.

Mr. Bluestein
Okay. What you just said actually made me think of something I wasn't thinking of saying, but that does happen a lot. People will, all of a sudden, look at a proposed return and say, "I can't pay this," and they make a huge mistake—they decide not to file because they can't pay it. Not being able to pay is no excuse for not filing; you have to file the return. If you don't file the return, you are subjecting yourself to a 25-percent failure-to-file penalty (25 percent of the tax plus interest accruing on it), which is a devastating penalty and, potentially, criminal prosecution under [Section] 7203 of the Internal Revenue Code. You do not want to not file. You can work out solutions after they assess the tax, but not filing is never good—and it also will [restrict] many remedies.

Mr. Redpath
One point I wanted to bring up, because this is something that is often misunderstood. For example, I had one [where the client] hadn't filed for ten years. The IRS has kind of a standard in there as to what to do, so maybe that is a good point. What happens if a client comes in and says, "I haven't filed returns for ten years," and you [say], "Where is your information?" And, of course, they have nothing. I guess your first step is to go to see if you can get a wage and income transcript, find out what they have there, but what do you do? What would you do in that circumstance in your office?

Mr. Bluestein

Well, to that first question: have they been contacted yet by the IRS? If they haven't, then yes, you are right, we will try to put it together. Now normally, under the Internal Revenue Manual, which is the IRS guidelines, they are only going to make you go back six years. In theory, they can make you go back forever because the statute of limitations (which is three years from the date the return is filed) doesn't run, because it was never filed for them to assess a tax. So, we would prepare the last six years of tax returns.

Now, you have a good point—often it is difficult. How do you do that? You can get income transcripts from the IRS to know all income reported to the IRS. The problem is deductions. Obviously, the taxpayer has to come up with them. We have had situations where we have done the best we can, and we put a disclosure on the tax return explaining that. You can only do the best you can, and you try to put it together. You are not going to fake deductions; you are going to do the best you can to present whatever deductions there are.

Once you get the returns filed, then you have to deal with the collection. Whether it was based on a filed return as you said in the beginning of this or, often, we have unfiled returns, you have to get those filed. And I will tell people, "Look, we will deal with the collection problem. That is less of a problem than dealing with a criminal investigation." So, we get that done; and, then, we look at our options, and I will go through them. The collection options are pretty straightforward, really. I can sit down normally with somebody and, in ten minutes, pretty much gauge—at least 90 percent of the time—which way we are going. Everybody who comes to me with a big collection problem, almost unanimously, the first thing they say is, "Can I do one of those offer in compromises?"

Mr. Redpath

"The IRS is settling for pennies on the dollar!" I have always said this—and I think you know because, in full disclosure, Gary and I go back a ways and we were in the same office building. I remember sitting down and having conversations with you [about this]. The problem is, the legitimate firms (like yourself) doing them, have people come in with these outrageous ideas of, "You don't know what you are talking about. What do you mean I have to pay all of that?" Or the worst-case scenario, you run the numbers and you [say], "You don't qualify for an offer in compromise." "What do you mean? The IRS is just giving it away. I heard it on the radio."

Mr. Bluestein

Yes, it is false expectations, unfortunately, and I will explain it to them. I have had countless people over the many years I have been doing this (on the other side of the fence, after I left the government) where people will come in and want to settle for pennies on the dollar, as you said. The problem is, I explain to them, it is a very objective formula.

So, since that is their favorite option, let's start with that, if that is okay with you. I will go over what an offer in compromise is, because that is usually the first choice for a big collection problem. It is not like the IRS can just say, "We like you. Let's cut you a break." They are supposed to treat everybody relatively the same, and that is the way it should be. They have to follow a very rigid, objective formula; and the formula is based on, basically, two parts of an equation.

Now, under [Section] 7122 of the Internal Revenue Code, the IRS is authorized by Congress to compromise a liability. There are actually three types of compromises: one that is very little known is called a doubt as to liability offer. It is very rarely used, and that is not what I am talking about here. That is used where the taxpayer has missed their opportunity to challenge a tax. Maybe they missed the Notice of Deficiency on an income tax adjustment where you get 90 days to petition the court. Or maybe they missed the chance to challenge a trust fund liability, which is 60 days from getting a letter from the IRS. This would be a possibility to reopen that. [Again], that is not what I am talking about here.

What I am talking about is what is called a doubt as to collectibility offer, which is probably 99 percent of the offers submitted to the IRS. This is based on this formula. The IRS is not really looking at what you owe them, although that plays in a little bit; I will talk about it later. Mostly, what the point is, they are looking at what can they collect from you, and that is based on this rigid formula that breaks down into two parts of an equation.

The first part is, they have to look at what are the assets that they could collect from. And the IRS is a unique creditor; they can pretty much take anything. They can take retirement accounts (they are the only creditor who can do that), IRAs, and 401(k)s. The exemptions that are provided under state law do not apply to the IRS, and the exemptions under federal law do not apply to the IRS—with the exception of what is set forth in IRC Section 6334. If you want to read that, you will find they are pretty useless; they are not very significant exemptions. So, the big exemptions like IRAs, ERISA-qualified plans, homestead exemptions, equity in your house that varies from state to state, they don't exist. Those exemptions do not apply.

So, the way it works is they look at the assets, but that breaks down into two types of assets. You have cash assets, and noncash assets. The cash assets would be bank accounts, 401(k)s, IRAs—those are assets the IRS can take, and they have a cash value. Now, that [bank account] is worth 100 percent to the IRS. With IRAs and 401(k)s, they know that you will have to pay tax and often penalties, depending on your age, so they will give you credit for that; but, basically, you are losing the value of those retirement accounts in an offer. So, they add that up; that is part of the asset side.

Then, there are noncash assets. You have a house, a boat, a car, those kinds of things. Those assets, the IRS knows, the only way they are getting any money out of them is they have to seize and sell them, and they know they will not get full value at a forced sale. The IRS, for offer-in-compromise purposes, uses what they call quick sale value, which is a 20-percent reduction of the fair market value. So, if you had a $100,000 house with an $80,000 mortgage, you don't have to pay them anything in the offer—which is good, because we can protect equity of assets. I have had situations where people had eight or nine pieces of property, all with approximately 80-percent equity, and I didn't have to give anything for that. So, that is a good benefit.

They look at the noncash assets, reduce it by 20 percent, subtract any senior mortgages or liens, and whatever is left, you have to add that into the calculation for an offer in compromise. You add that to the cash part, and that is your asset side of the equation.

Then, you look at the second part, which is your income stream. What they do is they look at your monthly gross income from all sources, and then they subtract a whole list of necessary living expenses, and these come off mostly standardized charts. They are either capped or you have to substantiate certain ones in full. For example, they give you a standard amount for food, clothing, and miscellaneous expenses depending on how many people are in your household, and it comes right off a chart.

The second category would be housing and utilities. That, they give you, up to what you can substantiate, but it is capped at a certain amount depending on where you live, and it varies through counties throughout the country.

Then, they look at transportation, and that also varies throughout the country. They give you a standard amount for operating costs of the vehicle, but they also give you an amount that is capped for the monthly payment on a vehicle.

Then, they will give you taxes going forward. They want you to stay current on your state and federal taxes, so that is what it is.

They will give you medical—unlimited, as long as you can substantiate it. They do give you out-of-pocket medical expenses; and they will give you a standard amount unless you can prove otherwise. They will give you a reasonable amount for term life insurance, and that is pretty much it.

These are the expenses they give you, and you subtract the total expenses from your monthly gross income to come up with a net monthly amount. Whatever that number is, if it is a surplus (and sometimes it isn't) but if it is a surplus, they multiply that times 12.

So, let's say the assets through the formula I described add up to $20,000; and then you have an extra $1,000 a month, that is another $12,000. Your offer is $32,000—even if you owe a million dollars. I have had people who have owed a million dollars that I have compromised for far less than pennies on the dollar. But on the other hand, I have had cases where it won't work at all because the formula comes out to more than they owe.

When people advertise, it has always frustrated me and I have been doing this since I left the government. When they have these advertisements that [claim], "We can settle for pennies on the dollar. We can settle for 5 percent, 10 percent"—whatever they are saying—it is misleading, at best, because until they go over the client's finances, they have no idea what they can settle for.

So many clients come into my office with these false promises that they spent a lot of money on—and they have spent, literally, $10,000, $20,000, $30,000—and I will look at it and I will say, "They told you they were doing an offer in compromise?" Sometimes, [the promoters] don't even do it at all but, if they did, it had no chance of working. They didn't care; they were just charging for it. Now, it didn't work, and [clients] owe way more because interest and penalties keep growing while that offer is pending. It was rejected, and now their bank accounts have been levied. An offer was never going to work for them.

Mr. Redpath
And if they do, they often file an offer and then they say, "Oh, well. It got rejected. Too bad." I had one where [clients] came in, and they said that they were told that everything could be settled for $14,000. And I said, "Well, that is interesting, but you haven't filed tax returns for those years. What liability are you compromising? The IRS hasn't filed a substitute return, and you haven't filed a return, so how could they possibly come up with $14,000?" It will all be settled for $14,000—well, that is going to be $14,000 in their pocket and nothing [resolved for the client].

Mr. Bluestein
The IRS will not even consider looking at an offer if you are not current on all your tax return obligations.

Mr. Redpath
Right, and I believe, didn't your office, years ago, get a judgment for $250,000 or something against one of the first [offer in compromise] "mills" out there?

Mr. Bluestein
Well, no, my office did not. I took care of the client's tax problem; but the abuse was so bad he went to another law firm, and they sued, and I had to testify. We got a $153,000 judgment, but the other firm got it for the client. Unfortunately, the company filed bankruptcy—not because of that, but they were being attacked all over the country by attorney generals in various states.

Mr. Redpath
I believe that guy went to jail. Did he not? I remember him on television, but I actually do think he got some prison time.

Mr. Bluestein
My point is that there were always those companies and when they got shut down, there were ten more to replace them, it always seemed.

Mr. Redpath
Right, absolutely.

Mr. Bluestein
Now they're not all bad. I am not saying that, but unfortunately, there are some that are, and they prey on these people. They don't know what will work and what won't work. I really hate to see that, but it happens all the time.

Mr. Redpath
If you make an offer, Gary—certain taxpayers can get a waiver, but that is not very often—you have to make a down payment, right? You can't just come in and [say], "Here is my offer. Let's stop everything." You have to make a down payment, right?

Mr. Bluestein

Yes. Let's talk about the procedural aspects of doing an offer. There was a time you didn't, but because of the companies you have been alluding to, there were so many bogus offers, the IRS decided to make it required to do a deposit. So, what is the deposit? If you are doing a cash offer (which is what I am talking about, and it is the procedure that most of the offers are; I will talk about a different version in a second), but a cash offer requires a 20-percent deposit of whatever you have calculated the offer to be—and when we do a calculation, we are doing it right. There is often give and take with our negotiations with the IRS for various things that could be arguable; but we are not putting in a bogus number, and the 20 percent is usually accurate.

If you end up having to increase the offer after negotiating with the IRS, they will require you to increase the 20-percent deposit first. That is a nonrefundable deposit. If they deny the offer, they keep the money; they apply it to the tax liability. Now, this gets into a strategy that is a little beyond the scope of this discussion, but the only benefit you have is you can tell them where you want it applied. We will almost always put it to the most recent tax year for two reasons: that is the year that the statute of limitations is going to expire last, and also, for bankruptcy purposes, that is the year that will be dischargeable last. So, there is a benefit to doing that in most cases if the offer doesn't work.

Mr. Redpath

Can we follow up with that? Because that is something that is missed a lot. A business is not doing well—and especially if there are payroll taxes involved—people are sitting around and they are [saying], "Well, what am I going to pay? What taxes?" So, they just say, "I owe this money," and they write a check to the IRS. The IRS gets the [check, made out to] the U.S. Treasury. "Here you go. Here is your check, but it is only for part of it." That can be a disaster, right?

Mr. Bluestein

Well this is the example—and you are right on [point]—and I see this, unfortunately, a lot. Let's say you have a struggling business that has fallen behind, let's say, eight quarters of 941 payroll tax returns. So, the business owes not only the liability for each quarter. (It is important to understand how payroll tax is broken down. The audience is accountants, so I am sure you probably are aware of this. When I talk to lawyers, they're not so aware.) But there are three parts of the 941; you have the withholding from the employee's wages for their taxes, withholding for their social security, and the employer's contribution.

Those first two parts are held in trust for the government, and the government takes that quite seriously. So, when that is not remitted to the government, the corporation owes all three parts, plus interest and penalties (or whatever entity it is, it could be an LLC). They owe all three parts with interest and penalties.

However, individuals are personally liable, potentially, if the IRS determines you are a person in that entity who is responsible for the payroll tax and willfully failed to remit it. And that is easy for them to show in most cases. You are liable, personally, for the trust fund. So, if the company fails, they are coming after you. And even if the company doesn't fail, they're coming after you while they're going after the company. Just so you know, they also have emphasized in the last ten years that if the number is big enough, they are going to put you in jail, because IRC Section 6672 is what makes you civilly liable. They can pierce an entity to go after you for the trust fund.

IRC 7202 is almost identical. The first part says exactly the same thing that 6672 says. It says if you are a responsible person who willfully fails to remit the tax, 6672 says you are liable for the liability that is not remitted; 7202 says you are guilty of a felony punishable by up to five years in prison. So, if you have clients out there who aren't paying their payroll taxes, you have to tell them it is not only a horrible civil liability to have (and it is not dischargeable in bankruptcy), but you can go to jail for it if it is big enough.

With that said, you are right on point. An immediate strategy when money comes in and you want to catch up, you don't just send it to the IRS because they are going to take that payment and apply it in the best interest of the government. So, what does that mean? Well, if you have a quarter, they are going to put it, first, to the non-trust fund portion—that employer's portion—because they know they can go after the individual for the trust fund portion. They are going to put it to the non-trust fund portion.

If you're designating the payment, you can put it where you want. You put it on the trust fund portion. So, the IRS used to really screw people; they would never put it on the trust fund portion, but cases came down saying that was abusive. So now, what they do if there are multiple quarters, they put it first to the non-trust fund portion, the trust fund portion interest and penalties, and then they go to the next quarter and do the same thing until the money runs out. You don't have to do that. You can take the money and designate it all the way down: trust fund, trust fund, trust fund, trust fund. And that gets the individual off the hook.

Same with an offer and compromise. If you are going to do it (and you can do an offer for trust fund taxes), you would want to make sure, if you are doing it for a DBA, let's say, on 941 liabilities, you would want to apply that deposit to the trust fund portion. And you are absolutely right. That is a good strategy.

Mr. Redpath
Very often missed until, all of a sudden, you're sitting there and, like you said, even potentially criminally [liable]. And you are saying, "I paid some of them." Well, yes. Unfortunately, you still owe because in a criminal case, when you look at the sentencing guidelines, it is based upon the loss of revenue to the government. When they have lost that revenue—and that is the trust fund—they're going to come after you. They're not looking out for your best interest on that.

So, we have offers in compromise. As you mentioned, there are a lot of pitfalls there. What about an installment agreement? Where do those stand?

Mr. Bluestein
An installment agreement is my last resort, to be honest with you, because I want to legally save my client as much money as possible, and that involves paying the liability back. So, an offer in compromise, yes, that is a great first choice. Sometimes, bankruptcy is a better first choice, because that may discharge the liability without payment and may be better than an offer because it is a global resolution; but, sometimes, an offer is better. Those are two tools that I use together or separately, whichever works best.

When they won't work, and that happens—you might have a client who has too much in assets, too much income for an offer, and maybe the same problems with a bankruptcy, or the taxes are not dischargeable yet (which is commonly the case because it is a matter of timing)—an installment agreement may be the ultimate or only solution. Sometimes, it is a solution to get to a better solution because doing an installment agreement will stop collection. Maybe bankruptcy down the road will work, when the timing is right, and there is no law against doing a payment agreement for long enough until you can discharge it in bankruptcy. I do that all the time.

An installment agreement, just the mere request for one under IRC Section 6159 and 6331(k), those two sections together say that when you request an installment agreement, all collection is frozen; the IRS cannot collect. So, it is a useful tool, and sometimes it is the only tool. Although, I will tell my clients, they are going to run interest and penalties during the installment agreement. The longer I get you, the more you are going to pay, but it is still better than them levying your assets.

Mr. Redpath
Can I ask you one question, Gary? There is no tolling of the statute then, with an installment?

Mr. Bluestein
The statute of limitation is tolled while the request is pending; but once it is agreed to and the installment agreement is done, the statute starts running again. That is one tricky thing, too. When we look at transcripts to try to determine when a statute of limitation is going to expire, a collection due process appeal freezes it, an offer in compromise freezes it, and so does an installment agreement—and it is very tricky to try to calculate that. But in any event, there are so many different variations of installment agreements and options that have been expanded because of COVID; and even the IRS, I found out, is totally confused by what, currently, are the rules. So, I will just go over them in general.

They say one thing in their manual that I never use because clients wouldn't hire me if this was the case—if you owe under $10,000, you have an absolute right to an immediate installment agreement, no questions asked. I don't have clients that are at that level.

There is a thing called a streamlined installment agreement, which is under $50,000. That, I have often [used], or people can pay down to get to that point. It is a huge benefit if you can do that, because they will automatically give you 72 months, no requirement for financial disclosure, and here is the most important thing to most of my clients—they won't file a tax lien. A tax lien can be devastating to clients, especially if you are a financial planner, or you are in a business where you are relying on loans and commercial financing, or maybe you are an insurance agent. People don't want a Notice of Federal Tax Lien. I had a lawyer who was very upset about that possibility. So, if you [owe] $50,000 or less, no problem; you get a streamlined installment agreement. Now, you have to do it before a lien gets spit out. You want to be sure you can move quickly, but that will solve that problem.

Now this is where it gets interesting. What if it is above $50,000 and they can't get down to that? If it is under $100,000, they will still give you an installment agreement without financial disclosure, but they will file a lien, normally.

This is, really, where they get confused because, during COVID, they came out with these new rules that were so beneficial. For example, they said—and now it is in effect and this is where the IRS is kind of confused, I have learned—it is called the non-streamlined installment agreement. NSIA is the way they refer to it in the Internal Revenue Manual, which is their guidelines. They will give you, for up to $250,000, a 72-month installment agreement without the hassle of financial disclosure. However, they will file a Notice of Federal Tax Lien. For some clients, that is no good.

Now, this is where I got into a big fight with the IRS. They also said, though, if the year is 2019, they won't even file a tax lien because that was the heart of COVID when the return was due. So, I used that. I had a client who owed for four years. I got them paid down all the other years, so they were left with $200,000 on 2019. I asked for the installment agreement with no lien—and I went through the Taxpayer Advocate [Service] to be sure a lien would not be filed. I filed what is called a 911—and they came back and said, "Good news, we got your installment agreement approved; but, of course, because of the liability, they have to file a lien." And I went nuts. I said, "No way are they filing a lien. That was the whole point of this, and this is what this notice said."

I was told, through the taxpayer advocate, that the collection division was arguing that that does not apply anymore, and I said, "Where was it retracted? Where does it say that?" And [they] acknowledged, it doesn't say that anywhere. So, that seems to be a gray area. I did a CAP [Collection Appeals Program] appeal on that; and that is an interesting thing, too, because they weren't going to give me that. But if you read the manual, they are supposed to make a determination, when an installment agreement is requested, whether a lien should be filed. They made that determination that it should be filed, but it also says you have to notify the taxpayer and give them a right to a CAP appeal.

Well, they seem to have forgotten to do that. I, fortunately, had done a 911, so I was given some time, some protection, by doing that; and I demanded that CAP appeal. It is supposed to happen in a very short period of time—two to three days, maybe five to fifteen days. It was two months before I got a CAP appeal. Fortunately, the appeals officer agreed with me, and I got the payment agreement with no lien; but it seems to be a gray area for who you are dealing with at the IRS. You should be able to get an installment agreement for 72 months if it is under $250,000, without significant financial disclosure.

If it is beyond that, then you have to submit what is called a 433 financial form. There are two forms. Well, there are actually three. For simple ones, they use what is called a 433-F form. Usually, for our bigger clients, we are using 433-A forms disclosing all the financial information. And the IRS is telling you, based on your income and expenses, what you can afford to pay—which is never what my clients think they can afford to pay. There are limited housing allowances which are very ungenerous, I would say, and my clients are always over that, so that is a fight.

Now, there is this thing called the one-year rule where the IRS will give the taxpayer one year of the higher cost over the allowable expenses to adjust their lifestyle. It is not really [helpful]; that gives me some time to figure another strategy, maybe a bankruptcy, but it is not that helpful to these people. They don't really want to sell their house, but that is what the IRS is really saying—sell your house, change your life.

There is another rule you can use, too, called the six-year rule, where if you can full-pay the liability over six years and it's within the statute of limitations, they generally are going to let you do that. They will not challenge your expenses, but they will file a tax lien; and, again, that is the big rub for a lot of my clients.

Mr. Redpath

Right. We have done another program on bankruptcy, and that is obviously another area that, potentially, you might use. It has its own pitfalls, and we did a whole program just on that. Gary, I want to thank you for joining me today. What a lot of information and a lot of strategies that all of our viewers should be paying close attention to. So, Gary Bluestein, thank you very much for joining me today. I really appreciate it.

Mr. Bluestein

Thank you, Ian! I really enjoyed it. I appreciate it. Take care.

Collection Alternatives

By Ian J. Redpath, JD, LLM

A. Introduction

Often, our clients have tax liabilities that they either need more time to pay or cannot pay in full. The IRS provides some alternatives that are available to taxpayers. There is not a "one-size-fits-all" approach; each taxpayer's situation is unique, and different alternatives may be appropriate. Practitioners should be cognizant of the rules and discuss the options with the client to determine the best course of action.

B. Installment Agreements

An installment agreement remains in effect for its stated term or until it is superseded by a new agreement [IRC §6159(b)(1); Reg. §301.6159-1(c)(3)(I)]. The agreement ends no later than the expiration of the statute of limitations on collection or at some earlier specified date [Reg. §301.6159-1(c)(3)(ii)]. The IRS has established procedures for requesting an installment agreement, and the request must be submitted in accordance with these procedures. The agreement must be in writing; it can be in the form of an agreement signed by the taxpayer and the IRS, or a letter signed by the IRS and delivered to the taxpayer that confirms an agreement [Reg. §301.6159-1(c)(2)]. Taxpayers may also use Form 9465 to ask the IRS for a payment agreement when they file their returns. Remember that a $5,000 penalty applies to any person who submits an application if any portion of the submission either is based on a position which the IRS has identified as frivolous or reflects a desire to delay or impede the administration of federal tax laws [§6702(b)].

The taxpayer's specific tax situation determines which payment options are available. Payment options include full payment, a short-term payment plan (paying in 180 days or less) or a long-term payment plan, also called an installment agreement (paying in more than 180 days). Note that sole proprietors and independent contractors apply as individuals. Businesses may qualify to apply online for an installment agreement if all tax returns have been filed, and if the business owes $25,000 or less in combined tax, penalties, and interest. There is no fee for full payment; however, under a payment plan, interest and any applicable penalties continue to accrue until the liability is paid in full. Individuals may be able to set up a short-term payment plan using the Online Payment Agreement tool (OPA).

If a taxpayer is not able to pay the balance in full within 180 days, requesting an installment arrangement may be an option. A request can be made using the OPA, or on Form 9465 mailed to the IRS. The IRS may also process the request directly over the phone. Various options are available for making monthly payments:

- Direct debit from a bank account,
- Payroll deduction from the taxpayer's employer,
- Payment by EFTPS,
- Payment by credit card or debit card via phone or Internet,
- Payment via check or money order, or
- Payment with cash at a retail partner.

The IRS charges a user fee at the time the agreement is entered into unless reduced or waived for a low-income taxpayer.

If a taxpayer cannot make payments on a properly timely filed return for the prior year (April 15th) and cannot pay the balance in full, the taxpayer may request a payment plan (including an installment agreement) using the OPA application. Even if the IRS has not yet assessed the tax, a pre-assessed agreement may be entered into. This can be done online with the OPA, or by submitting Form 9465 with the return. There is also a toll-free number to call to set up a plan: (800) 829-1040 for individuals or (800) 829-4933 for businesses.

In order to have a plan considered, the taxpayer must be current on all filing and payment requirements. Taxpayers in a bankruptcy proceeding generally are not eligible. The plan must include a day of the month specified for payment (1st through 28th), and payments must be received by that date. The OPA will provide an immediate determination on the proposed plan, while mailing generally takes about 30 days.

The IRS has a streamlined installment agreement procedure. This is online and allows for quick and easy processing by not requiring the completion of a collection information statement (Form 433) or a determination to file a Notice of Federal Tax Lien.

There are streamlined online payment agreements for:

- Streamlined Installment Agreements (SLIA)—72-month payment terms for balances of $50,000 or less, and
- Streamlined Processing for Balances up to $250,000—Must be paid within the statute of limitations for collection (which is 10 years from assessment), and the matter is not already assigned to a Revenue Officer. This replaced the former plans between $50,000 and $100,000. However, a taxpayer under the previous plans will continue on the 84-month payment.

Generally, they are easy to obtain from the IRS because they:

- Require minimal, if any, financial disclosure to the IRS;
- Do not require an IRS manager to approve the payment terms;
- Do not require taxpayers to liquidate assets to pay the IRS; and,
- Can be set up in one phone call or interaction with the IRS.

The IRS will automatically agree to an installment plan (a Guaranteed Installment Agreement or GIA) if the taxpayer owes $10,000 or less and:

- The taxpayer has not filed late or paid late in the previous five years (not including extensions of time to file);
- All tax returns have been filed;
- The taxpayer agrees to file on time and to pay on time in future tax years; and
- The taxpayer agrees to allow the IRS to take any refunds to apply against the liability in the future.

The minimum monthly payment the IRS will accept is the total of the balance due, including penalties and interest, divided by 36 months. The main benefit of this type of plan is that the IRS will not file a federal tax lien or levy for outstanding taxes due.

SLIAs can be used by individual taxpayers for income taxes and other assessments, including unpaid trust fund penalty assessments if the total assessed balance is $50,000 or less of tax—it does not include accruals of penalties and interest after the original assessment of tax, penalties, and interest and:

- The taxpayer must pay within 72 months; and
- All required tax returns have been filed.

The GIA and SLIA can be completed online using the OPA tool at www.irs.gov. In both plans, the IRS will not attach a lien to the taxpayer's assets. Taxpayers who owe $25,000 to $50,000 must agree to pay by automated direct debit or payroll deductions to avoid the tax lien. For the "Streamlined Processing" plan, taxpayers can avoid filing their financial information with the IRS if they agree to pay their tax bill by direct debit or payroll deductions. If they do not agree to these automated payments, the IRS requires taxpayers to provide a Collection Information Statement (IRS Form 433-A or 433-F). Unlike the other plans, the IRS will file a tax lien.

In addition to the online forms, a request may be made using Form 9465 or by contacting the IRS by phone. It should also be noted that the time period will not exceed the remainder of the collection statute of limitations. Thus, the taxpayer may not get the full amount of time.

Ability-to-pay installment agreements require taxpayers to file a Collection Information Statement and prove their average monthly income and necessary living expenses. In addition, the IRS often asks taxpayers to liquidate or borrow against their assets to pay their outstanding tax bill in ability-to-pay agreements.

The IRS will agree to an In-Business Trust Fund Express Installment Agreement if:

- The assessed tax liability is $25,000 or less (for an in-business taxpayer) and
- The proposed payment amount will fully pay the tax liability within 24 months or by the end of the collection statute, if earlier.

Payment must be direct debit if the assessed tax liability is between $10,000 and $25,000.

There is an automatic guaranteed installment agreement if the tax owed is $10,000 or less for an individual and:

- All tax returns for the past five years have been timely filed and the tax paid;
- The taxpayer has not entered into an installment agreement for the payment of income tax;
- The tax will be paid in full within three years;
- The taxpayer agrees to comply with the tax laws while the agreement is in effect; and
- The taxpayer is unable to pay the liability in full when due.

If a taxpayer does not qualify for the streamlined or online program, relief may still be requested using the regular installment agreement. The following forms are applicable, depending on the situation:

- Form 9465 – Installment Agreement Request
- Form 433-D – Installment Agreement
- Form 433-A – Collection Information Statement for Wage Earners and Self-Employed Individuals
- Form 433-B – Collection Information Statement for Businesses
- Form 433-F – Collection Information Statement (a simplified streamlined version)

The IRS will not automatically approve this agreement; instead, the taxpayer must negotiate with the IRS. The taxpayer must file the appropriate Form 433, Collection Information Statement. This form collects information about income, debts, living expenses, assets, and accounts, and allows the taxpayer to propose an installment payment amount. The IRS has published Collection Financial Standards on www.irs.gov which contain expense allowance standards for completing the Form 433 and will be the basis of negotiations with the Service. The Form 433-A is used by individuals and has a simplified version in Form 433-F. IRS Revenue Officers have some flexibility in accepting the 433-F if they choose to do so. Internal Revenue Manual 5.15.1.1 (3) states that Revenue Officers may use the Form 433-F if the taxpayer owes less than $250,000 in income taxes, or less than $100,000 from the trust fund recovery penalty and are a wage earner. However, it is unlikely that a Revenue Officer will accept the shorter 433-F over the 433-A or 433-B. To begin with, Revenue Officers are the highest level of IRS collection enforcement—they are going to want the highest level of financial disclosures. Additionally, a Revenue Officer likely knows that a case-closure write-up that is based on a 433-F will likely be rejected by his Group Manager. Of course, not having to file these disclosures is an advantage of the streamlined process.

It will usually take a few months for the IRS to review a proposed payment plan. The IRS may refuse a proposed agreement if it considers some of the taxpayer's living expenses unnecessary, if untruthful information was provided, or if the taxpayer failed to complete a prior installment arrangement. If a taxpayer is unable to pay a tax liability through a non-streamlined agreement, consider filing an offer in compromise (OIC).

Partial Payment Installment Agreements (PPIA) allow a taxpayer to make monthly payments based on what the taxpayer can afford. It is helpful if the tax cannot be paid in full by the end of the collection statute. The payment is based on disposable income after essential living expenses are accounted for. A taxpayer must owe over $10,000, have no outstanding returns, have limited assets, and no bankruptcies. To request a PPIA, taxpayers must file Form 9465 and accompanying financial statements on Form 433. A partial payment plan can be set up for a longer repayment term, but the IRS may file a tax lien. The IRS might also require assets to be sold to pay the tax debt rather than enter into a PPIA. The terms of the agreement will be reviewed every two years. The most appealing feature of a PPIA is that it is easier to obtain than an offer in compromise. Additionally:

- A PPIA takes 30 days or less to process. An offer in compromise, on the other hand, takes five to nine months to complete. (That is, it takes three to six months for the IRS to determine if the taxpayer qualifies, and two to three months for an IRS lawyer to review it and accept the deal.)
- Unlike an OIC, there is not the risk of going back to square one (owing the entire tax debt amount) due to late filing of tax returns or missing payments.
- A PPIA is easier and faster to get than an OIC, and less paperwork is required compared to an OIC.
- Although the IRS can increase the monthly payments on a PPIA, they are generally lower compared to an OIC. Also, there is no lump-sum payment.
- In the case of an OIC, the IRS may extend the amount of time in which they can legally collect the tax debt, which does not happen with the PPIA.

C. Offer in Compromise

IRC §7122 authorizes the IRS to compromise a liability. An offer can be made if there is a doubt as to liability involved. This can be utilized when a client has missed the opportunity for a pre-payment challenge to a proposed tax assessment as a result of failing to petition the Tax Court. However, the vast majority of offers in compromise relate to what is referred to as "doubt as to collectibility." Contrary to a significant amount of misinformation that is disseminated by certain questionable tax representation companies, an offer in compromise or settlement is based on an objective formula.

There is a great deal of solicitation and advertising that indicates that the tax liability can easily be settled for "pennies on the dollar"—a specific dollar amount or a specific percentage. However, the amount that a doubt as to collectibility offer in compromise requires in order to settle an outstanding balance is based on a formula, which consists of an analysis of a taxpayer's equity in assets, income, and allowable expenses. For a representative to market that they can settle for a specific amount or percentage without going through a detailed financial analysis is misleading, at best.

Although a detailed discussion of a doubt as to collectibility offer in compromise is beyond the scope of this material, the general formula works as follows:

The amount offered must equal the sum of two parts of an equation. The first part is the value of any cash assets. The IRS can levy bank accounts; and, therefore, with few exceptions, the IRS requires the full amount of cash assets to be offered. For example, if a taxpayer has $50,000 in cash, the IRS wants $50,000 as part of the offer in compromise calculation. Cash assets would include IRAs and 401(k)s, since the IRS is the only creditor that can levy these otherwise exempt assets. They will, however, allow credit for the tax and penalty consequences if such an asset was liquidated to fund an offer.

Noncash assets, such as a house, a boat, a car, etc., will not be valued at 100 percent. The IRS knows that the only way they can get money out of these assets is to seize and sell them. They realize they will not receive full value at a forced sale. Therefore, they use what is referred to as "quick sale value," or a 20-percent reduction. They will take 80 percent of the fair market value of the asset and, if there are senior encumbrances, they will subtract them from the value. For example, if the taxpayer owns a $100,000 house with an $80,000 mortgage, that asset would be worth $0 in the equation for offer-in-compromise purposes. These noncash assets are then added to the cash assets, and that total equals half of the equation.

The second part of the equation involves a calculation of the taxpayer's monthly gross income. If it is a married couple, the IRS looks at the total income for the family household. This is true even if the other spouse does not owe the tax liability. The IRS then looks at allowable necessary living expenses, which are mostly standardized. These allowable expenses change periodically and can be obtained from the IRS website at www.irs.gov.

When the monthly expenses are subtracted from the monthly income, the excess, if any, is multiplied times 12. This number would then be added to the asset side of the equation to determine the amount that must be offered. For example, if the asset side equals $50,000 with the 20-percent reduction and subtraction of senior encumbrances in relation to the noncash assets, and the taxpayer has an extra $1,000 per month, the offer would be $50,000 plus $12,000, a total offer of $62,000. This is true even if the taxpayer owes $500,000. However, there is a second calculation that the IRS does for individuals with excess income. In the event that the taxpayer's excess income is significant enough to allow for full payment of the outstanding liability over the remaining statute of limitations (which, again, is 10 years from the date of assessment), they will not allow an offer in compromise but, instead, will require an installment agreement.

If an offer in compromise is rejected, the taxpayer does have an appeal right. Sometimes, there is more flexibility at the IRS Appeals level; but, for the most part, they follow the formula referenced above. It is necessary to calculate the amount that is being offered and then, with the offer submission, to pay 20 percent as a nonrefundable deposit. This amount will be applied to the outstanding tax liability. A processing fee of $205 is also required unless the taxpayer meets specific qualifications as a destitute taxpayer. The formula described is for what is referred to as a cash offer.

There is an alternative to pay the balance of the offer over a 24-month period of time, but this normally is not advantageous since it requires a 24 multiplier of excess monthly income, instead of a 12 multiplier. However, this may be useful if there is not significant excess income, but there is equity in an asset.

Under unusual circumstances, the IRS can deviate from this rigid formula where a taxpayer can qualify for what is referred to as effective tax administration or an ETA offer. This is where the assets or income can fully pay the liability and/or will require a much higher amount than the taxpayer can afford, but there are extenuating circumstances or hardship that would justify acceptance of the offer. These are very difficult to get accepted but, post-COVID, there may be more leniency and most likely there will be an increase in this type of offer being submitted.

There are five basic requirements for consideration of an OIC:

- Filed all returns;
- Made all required estimated tax payments;
- Current with federal tax deposits;
- Cannot pay full amount; and
- Not in bankruptcy.

The OIC is filed using the following forms:

- Form 656
- If there is doubt as to liability, Form 656-L
- Form 433-A (OIC)
- Form 433-B (OIC)

Note that a taxpayer cannot file doubt as to liability with any other alternative or if there has been a court determination of the tax due. For this purpose, there is no Form 433 accompanying the application. The fee and down payment may be waived for low-income taxpayers. The same rules that apply to installment agreements apply here.

D. Currently Not Collectible

If a taxpayer cannot pay any of the amount due because the payment would prevent the taxpayer from meeting basic living expenses or would create a financial hardship, the IRS may delay collection until the taxpayer is able to pay. This is referred to as "currently not collectible" status. Being currently not collectible does not mean the debt goes away. Prior to approving a request to delay collection, the IRS generally will require a Collection Information Statement and proof of financial status (this may include information about taxpayer's assets, monthly income, and expenses). The tax debt continues to accrue penalties (up to the maximum allowed by law) and interest until the debt is paid in full. During a temporary delay, the IRS will review the ability to pay. They may still file a Notice of Federal Tax Lien.

E. Bankruptcy

Another option for a delinquent taxpayer is bankruptcy. That is beyond the scope of this material, but options are available for both liquidations and reorganizations. There are timeframes on the taxes that may be discharged, and practitioners need to be cognizant of those important rules.

F. Conclusion

Taxpayers who are unable to pay their full taxes due have many alternatives to pay. Practitioners need to look at each individual situation to determine the best options for that particular client.

A. Discussion Problems

Your client, Betsi, has come to you with a collection notice from the IRS. She has been filing her tax returns, but she has not paid the taxes due for over three years. The accumulated taxes, interest, and penalties now exceed $200,000. She is unable to pay that currently. She has also recently had a number of financial hardships, and she has been putting money into her business to keep it afloat as well as paying medical expenses for her seriously ill daughter. You have determined that she cannot pay all of the tax debts currently.

Required:

Discuss the options fairly raised by the above facts based on the material.

B. Suggested Answers to Discussion Problems

1) The decision of what action to pursue is going to be based on an analysis of Betsi's financial condition and ability to pay. The collection statute is 10 years. If she can pay within the remaining period(s), then she could qualify under the streamline process under $250,000. If she cannot pay within the statute, she could possibly qualify for a partial payment installment plan. Otherwise, a regular installment payment plan can be offered.

2) The next option would be an offer in compromise. The ability to obtain one can be determined with a calculation applying the IRS formulas. There is a cash offer and installment offer. These have a number of rules that must be followed.

3) If the payment of the tax would create a financial hardship or the inability to meet basic living expenses, the taxpayer could request currently uncollectible status. The IRS will review this status regularly and most likely file a tax lien.

PART 3. BUSINESS TAXATION

Return Positions, Disclosures, and Potential Penalties

The United States maintains a voluntary compliance system of tax reporting. While reporting and paying tax are required under the law, taxpayers voluntarily report income, deductions, losses, and credits. For many, this involves retaining the services of a professional tax preparer or advisor. In an attempt to ensure compliance with the tax laws, there are a number of penalties that may apply to taxpayers and their tax preparers if they do not comply with the proper standards and reporting requirements. Ian Redpath and Shannon Jemiolo discuss key issues related to return positions, disclosures, and potential penalties.

Let's join Ian and Shannon.

Mr. Redpath
Shannon, welcome to the program.

Ms. Jemiolo
Hi, Ian. Thank you so much for having me.

Mr. Redpath
It is always great to have you, always great to get your insight. One of the things I think that often happens is when you are doing the tax returns, you are confronted many times with, do I take a position or not on a return? There are a lot of issues that go into it, and there is a lot of confusion as to exactly what are my ethical obligations, my legal obligations.

Now, you and I are going to do a segment for another month dealing with the law and, basically, resources—what is out there, and what do they mean, and what can we find? I know accountants a lot of times have trouble with the, "I found a court case—I win." Well, that was a bankruptcy court in Texas. So no, you may not have won if you're sitting in North Dakota. So, there are all those issues that really are, I am going to say, foreign to accountants; but this is one that I think is so timely as the law changes so dramatically, and it is constantly changing and changing and changing. And we are being asked to take positions on a return without necessarily realizing what are the obligations that we have.

We have kind of a stark [set of figures]—this comes from the 2022 fiscal year—but you want to talk about potential criminal—the IRS special agents identified $33 billion, and they seized over $7 billion in assets. Here is the one that always gets me. As you know, I have done a lot of tax fraud litigation (criminal, unfortunately), and the IRS, they don't lose.

Ms. Jemiolo
They don't.

Mr. Redpath
If it gets criminal, you're trying, generally, to plea bargain the best deal you can get, and they have a 90.6-percent conviction rate for cases that they've prosecuted. So, keep that in mind. If the special agent shows up, they usually have a pretty darn strong case that they're going after.

To put this in perspective, I think you're familiar with *Chrisley Knows Best*—the show. So, if we can enlighten our viewers who aren't aware, it is a TV show. I will admit, it was never high on my watch list, never in my favorites; but for a lot of people, it was.

Ms. Jemiolo
You missed out.

Mr. Redpath
He had a few tax problems, he and his wife and their preparers. So, what happened there?

Ms. Jemiolo
Well, to be honest with you, I didn't follow the show a whole awful lot, either, until the tax thing came up. That, of course, is what made the show more interesting to me. But they got into some tax trouble and, initially, everybody was talking about, "Oh my goodness. These two wealthy—at least, we thought very wealthy—individuals are going to jail for issues with their taxes." Then, all of a sudden, you find out that their tax preparer is joining them because the tax preparer did not do their due diligence with the returns. They made positions that were not strong enough for the IRS.

Mr. Redpath
Well, the good thing for the preparer in that particular case was, I believe he [Chrisley] got eleven years, she got seven, and the preparer only got three. But nonetheless, the preparer went to jail based upon the positions that were taken. They said he was aiding and abetting the criminal activity of the Chrisleys. He was aiding and abetting them and is going to spend three years in federal prison.

I have clients sometimes that [say], "We don't go to real prison." Well, even if there's just a fence around you, and they tell you, "You can't leave for three years," it [gives you] a different view of it. It may not be the hardcore prison, but even "Club Fed," when you can't leave it, it is not a good thing. So, we really have to be careful even as preparers. The IRS is going after them, and the IRS can also go after your license. They can disbar you and notify your local society to try to take your CPA license away. So, be careful when you take tax return positions.

Ms. Jemiolo
Absolutely. The thing, I think, that comes up more often than not is not so much that the preparers are trying, necessarily, to deceive the IRS to push through these fraudulent tax returns and have these issues. It is almost like we are walking through a minefield when we are preparing these tax returns because there are so many different things changing in the tax law. Not that that is an excuse for the Chrisleys' tax preparer, of course; but it is just a matter of knowing what your responsibilities are in these tax return engagements, to really make sure that you are protecting yourself.

Mr. Redpath
Oh, absolutely, and one of the things that I think is hard to do, for anyone in the practice, is when to say "No." You have a really good client, and the client… I remember when I was first in practice and the senior partner said to me, "Ian, your clients are not your friends. They may be acquaintances, but they are not your friends." If they think you screwed up, they are going to throw you under the bus. Don't even think about it; they will throw you under the bus quickly.

I had a very good client. This was an old, old client my senior partner had. The grandfather had started the business, and it went from the grandfather, and then to the father; and, now, he has a daughter so it goes to the son-in-law. The son-in-law came in, and he said, "I want you to take this position." I said, "No. It's wrong." He says, "Well, if you are not going to do it, I am taking my files and leaving." And that becomes a real problem, sometimes, as you think, am I going to lose this good client or should I take that position? Well, I told him, "Come tomorrow and I will have all your files boxed up," and he did.

I always thought it was interesting because I was handling an audit for a client and I heard this voice booming, "What do you mean I can't take those?" I recognized the voice. So, I was wondering if it was the same things that he was trying to get me to do. But it's ultimately going to fall on you, so it is a tough decision; but, at some point, you may have to walk away, and it becomes very, very difficult to take that position, sometimes.

Ms. Jemiolo
Oh, absolutely, and a lot of times, I think the taxpayers themselves may not realize the liability that we incur by signing that tax return. They're thinking, what do you need to take this position? I want you to, it is my return. But if we are signing our name on it, it is a whole other ballgame.

Mr. Redpath
Right. Yes, we have to tell them, "Here are the potential penalties, and this is what my thought is." But I think we get it right out front. You can't play the audit lottery. You can't say, "Well, what is the chance of getting caught?" That is not a reason to take a position; that's unethical. And that's clear—there is no ethical standard that allows you to play the audit lottery. But there are times we look at something, and I have said to clients before—two things—sometimes I have said, "You can't afford to be right. I think we're right, but the IRS is going to challenge it," and "It's not that much money. You can't afford to pay me to challenge this, so what do you want to do?" But that is their decision. So, telling them that, "I think we can win," [might be an acceptable position]. But what you can't do is say, "We can slide it through," or "You know what, if they catch it, we will bring it up and just have to change it." Well, I am sorry, that is not an appropriate way to take a position.

So, what are the penalties? [Section] 6694 applies, and we are going to focus in because there are similar penalties on the taxpayer, so that would be [Section] 6662, but we want to focus in on the preparer. We are talking to our viewers right now and the things they have to be aware of. This applies to the preparer. So, what does 6694 say as far as a preparer is concerned?

Ms. Jemiolo
Yes, so 6694 puts it on the preparer. They have the penalty—I will start with the penalty, the threat, before we get into the big stuff. The penalty is the greater of either $1,000—that is your floor—greater of $1,000 or 50 percent of the income that you got paid (the tax preparer was paid) to do that return, how much money they were getting from it. So, we're not talking about small [amounts], $50 or $100. It is a minimum of $1,000 that you are going to get hit here for this.

Mr. Redpath
And that can go up to $5,000, right?

Ms. Jemiolo
Yes, it can escalate, especially once you get into those more complex returns where your fee is higher. All of a sudden, the risk is going up.

Mr. Redpath
I think one of the things that gets confusing is—and this is a little off topic, but not [much]— one of the things that I always tell people is, make sure that you don't use global engagement letters because the IRS will come in and say, "Wait a second, that was part of your fees for this engagement." No, no, no, we did their financial statements. "Well, yes, but you did it as part of doing the tax return, right? You did the financials. You had to do that for tax." And the IRS, when you do a global and [it states that] we are going to do all these services, or when you are not very detailed on the services you are going to be providing, the IRS, if there are penalties being attached, they are going to try to bring as much [of those services] into that as your fees from the engagement because they can get 50 percent of that. So, it is something to be careful of.

It also goes to the preparer. Literally, they could go after a member of the firm, a staff member who prepared the return if they wanted to, and say, "How much time did you spend? How much do you get paid? This was what your fees were from the engagement." So, the IRS has a lot of potential to go after preparers on this.

Ms. Jemiolo
Yes, absolutely.

Mr. Redpath
So, you said the penalty. Where do we go from here?

Ms. Jemiolo
As far what 6694 is going to penalize you for as the tax return preparer, it's did you file a tax return? Did you sign your name to a return on which there is an understatement of tax due because of (I don't know if this is the right word for it; it is my word for it) a frivolous position? A position that is not going to be supported. You don't have any support for it, you are just throwing it up and saying, like you said earlier, if you are going to win the audit lottery—or lose the audit lottery, you would rather, in this case. And that is whether or not—this is my favorite part of it—whether or not you knew about the position, or if you reasonably should have known about the position. Ignorance here is not bliss.

Mr. Redpath
You can't say, "I didn't realize that the client did X, Y, or Z, or didn't do X, Y, or Z." And the Service itself, in the regs, talks about really taking a position that you have a reasonable basis for, or substantial authority. And tax shelters, you have even a higher standard when it comes to tax shelters, and that standard is the more-likely-than-not standard. So, more likely than not, and this is where people have to realize that we have to use our professional judgment. More likely than not—okay, more than 50 percent. I have done my research, what does that mean, more than 50 percent? A substantial authority—more than 40 percent. I've never had a situation where it was 39.98 percent—oh my gosh. Then, a reasonable basis, which kind of varies a little bit. Is it 25 percent? You have to have these bases; but then, that is not enough. I've done my research, I have determined that I have this basis to take a position, but those are not the only things that I have to look at. I have to look at, do I have to disclose? Well, if it is a reasonable basis, I have to disclose; substantial authority, I don't; more likely than not [basis], I don't have to disclose.

So, I disclose. I disclose my position, and the IRS agrees that I had at least a reasonable basis for it, and I disclosed it. Does that mean I win?

Ms. Jemiolo
I wish.

Mr. Redpath
What does disclosure mean? I think that people misunderstand what it means to disclose a position.

Ms. Jemiolo
I think people misunderstand it both ways, really. So, by disclosing it, all you are doing is—and the best way to do the disclosure is through the IRS's disclosure statement, Form 8275. You will fill that out, attach it to the return—and it is simply describing the positions that you are taking that you are not, maybe, 100-percent sure that the IRS would agree with.

It doesn't necessarily mean that [you are going to get selected]. It is not a big flag waving in the back to tell the IRS to, hey, come look at this. It is not a guarantee that you are going to get audited; and I think that is a big fear a lot of times when you talk to clients about disclosing these kinds of tax positions. At the same time, it is not necessarily a safeguard. You can't file that Form 8275 without giving any kind of guidance or tips to the IRS about what the position is and think that is going to cover you. It is not necessarily a pure safeguard, but it is also not necessarily going to automatically get your return selected.

Mr. Redpath
Yes, and I think it is a real misconception. People think, well, if I file an 8275, the IRS is going to audit me. No, and my experience in filing them is never getting audited. Okay, we disclosed that we took a position, we disclosed what the position is. Why did we disclose the position? Because, quite frankly, we were—I don't want to say 100% sure—but we certainly were more likely than not. We didn't have to believe that there is better chance we will win than they were, but we felt we had an arguable position. Based upon the law and the research, it was a reasonable one that, yes, there is a good chance this could be sustained on audit, but how do I do that?

Well, I looked at the authority against me, the authority in favor, and I have weighed the authorities. (That is our next program.) We weighed the authorities and say, "Hey, I feel pretty confident. My professional judgment is that I believe we have a reasonable basis, but I have to disclose it." Or, "Hey, we have substantial authority for our position. We don't have to disclose it." But all that does is say your penalties are eliminated. It doesn't mean you win. You may still lose.

Ms. Jemiolo
Even though it may not necessarily be right (this is not an automatic win), there is really not a downside to going ahead and doing the disclosure. So long as—you don't necessarily want to say too much—we run the risk of just writing everything out, this huge narrative. A huge narrative may not be a great idea. You want to show that you have support for your position. You want to show that this is a strong position, it is more likely than not to be upheld in a court; but you don't necessarily want to send a 50-page memo to the IRS.

Mr. Redpath
Absolutely right. Basically, if you send a 50-page memo, you are probably going to get audited. They are going to say, "This position has to be really bad. We have to look into this." But the only time, I think, it is possible to get an audit would be the [Form] 8275-R. What is the 8275-R?

Ms. Jemiolo
The 8275-R is where you are disclosing your position, but it is a position that is contrary to the Treasury Regulation. So, you are questioning the regulation's validity.

Mr. Redpath
Right. I am telling [the IRS], "I took a position that is contrary to your reg." The IRS may come in on that one. That is where you may see them. However, I had one we didn't get audited. But I said, "Per *Smith versus Jones*" or "Per *Smith versus the Commissioner*, the Tax Court held…"—and that is all I disclosed—"The Tax Court held…." So, yes, we took a position contrary, but we were following the Tax Court's decision in this case. We had to disclose it because we took a position contrary to a regulation and we never heard back. They accepted the return and life went on.

Now, historically, you could do what were called white paper disclosures; and a lot of people are used to those, and they still do use them. First of all, what is a white paper disclosure? And secondly, can you use those?

Ms. Jemiolo
A white paper disclosure is not using the standardized form. It is producing a written document outlining what you did; and you are still sending that in with the return, but it is not necessarily in the format that the IRS would like to see it.

Mr. Redpath
Yes, it is not the form. The IRS has said the only method that they want to accept are the 8275s. If you are going to file a white paper, you are probably going to have to go to court and argue that this was a legitimate disclosure because the IRS is clear that the disclosure method today is the 8275 or 8275-R.

Ms. Jemiolo
Yes, even filing that white paper, even if you are still disclosing it and that is your goal in doing that, it is not necessarily going to help you avoid the different penalties that come. So, for the people who are still doing the white papers, it is really better to disclose on an 8275. There is no reason not to.

Mr. Redpath
No, well, the reason not to is that you better have substantial authority. There is your good reason not to. "I have substantial authority. I don't have to." So, we have talked about the IRS and what the IRS is looking at. So the IRS has, and they have said, in the regs, the IRS lists what they consider substantial authority. The regs, revenue rulings, revenue procedures, treaties, official explanations. Those can be substantial authority, but the problem is that they

still require you to analyze them because you may find court cases that are the opposite. So, it is not just saying, "I have a court case—I win because it is a substantial authority." You have to look at that and think, well, wait a second. That is substantial authority, yes, I get it, but wait a second, there is more. I have more cases against me than for me. I don't have substantial authority.

Ms. Jemiolo
Yes, finding that one needle in a haystack. That one case that supports what you are doing may not be enough.

Mr. Redpath
Does not give you substantial authority. But if you look at the regs, the regs do list substantial authority and say these items do constitute substantial authority. But really, what they're saying is these items constitute substantial authority if, in fact, you still meet that 40-percent threshold. I believe that I am going to win because I have met that 40-percent-threshold professional judgment.

Now, that is not enough because we also have other things to look at. One of the things that we have to look at is the Circular 230—Circular 230 and the AICPA Statements on Standards for Tax Services [SSTS] for our ethical requirements. So, Circular 230, paragraph 10.34, dealing with tax returns—like you mentioned earlier, frivolous—you can't file if you are willful, reckless, [or through] gross incompetence; but it says you can't sign a return that lacks a reasonable basis. If you have a reasonable basis, yes, you can take that position if you disclose it.

These all kind of fit together, but the thing is, Circular 230 has its own penalties. If you violate Circular 230, you are going to get penalties. If you violate the law, we already mentioned the penalties there. So, you could have up to 150 percent of the fees in your engagement in penalties if you also are violating Circular 230. And they can—they use the word disbar—but they can stop you from ever appearing in front of the IRS again.

I think the interesting one, too, is the AICPA, because they use the old terminology. They never updated, so in their [SSTS] No. 1, they say you can't take [a position] unless you have at least a realistic possibility of being sustained. Realistic possibility is considered to be higher than reasonable, but less than substantial authority. So, where does that fit? What they say is if a law, the IRS, Circular 230, a state society, provides for a higher standard—or a standard, I will say that—you use that standard. If they don't, you use realistic possibility, according to the AICPA; that is what you are going to apply. Now, some states, for example, South Carolina has adopted these as their rules, and a lot of states have. You also have to see if your own state has a different rule when it comes to this, because you have a lot of different—a myriad—of interpretations that you have to go through.

So, reasonable basis. What is a reasonable basis? Can we just simply say that's reasonable. I know that we have these standards, these percentages that we talked about, but how do they fit? Tell me what you do to decide, yes, I have reasonable [basis], or no, I have substantial authority.

Ms. Jemiolo
For me, substantial authority would be that you are getting this from the Treasury, from a private letter ruling, from something like that, where you [can confirm that] this is pretty hard and fast. Reasonable basis is something that, maybe, is not coming specifically from a Treasury Reg. Maybe you don't have a private letter ruling for it, but you can interpret. You can look back at the Committee notes, see what Congress's intent was, and piece that together as a reasonable argument for your position.

Mr. Redpath
Yes, and there was a study done by the Denver Tax Institute, and they said about 10 to 12 percent of the people in attendance (there were 500 attendees) had filed an 8275. Of those, only two—only two—got audited, so not a high percentage getting audited. And the other thing is, the IRS is so understaffed right now that, really, there are even less.

The IRS comes out with a procedure every year [such as], "Okay, practitioners, this is basic disclosure. Make sure you put the basis in there on your Schedule D. Make sure you have accounted for basis. That is adequate [disclosure]."

But really, the things in there are not the types of things we're looking at when we are talking about reasonable basis and adequate disclosure, are they?

Ms. Jemiolo
Well, no, it is all put together. That 8275, we are going to be looking for the adequate disclosure. We are going to be looking for that reasonable basis.

Mr. Redpath
Well, and those things are simplistic; there are simplistic things where we don't have an issue. These are the ones that we get paid for—to take a position on a return. Now, one of the things, I think, that has always been an issue is, the client comes in, the client gives you the information, you have the information on their client organizer, and they didn't give you everything. They haven't really given you everything. What do you do on that? Can you just rely on the information provided by the client? Because that is always an issue that practitioners have to deal with.

Ms. Jemiolo
It is, and it is a tough one. You do, to an extent, have to rely on the information that is being provided by the taxpayer but, at the same time, it is on us to ask the questions. "Do you have this? I know that you say you don't, but if I reword it like this, does this meet the criteria?" So, doing more of the probing questions, asking, digging into the details a little bit more to make sure that they have what they have and they don't have what they don't have.

Mr. Redpath
Circular 230 requires us to do due diligence. We have to do due diligence, but one thing is clear. We are not auditors; we don't audit a return. When the client comes in and they say, "This is my cost of goods sold," I am not going in and saying, "Well, we are going to come and do an inventory before we can do your tax return." I am going to say, "Okay, all right." But I have to look at it, because the AICPA standard says you can rely on the information provided—and by the way, this is identical language to the Circular 230—you can rely on what your client brings in, you can rely on the information provided by the client as long as it does not appear to be incomplete or inaccurate. Like you said, you have to ask the questions. You can't put blinders on and think, well, I don't want to ask that question because then I might get an answer I don't want.

Ms. Jemiolo
Yes—don't tell me about this. If I don't know, it's okay.

Mr. Redpath
Right. I had an interesting audit where they got the information from another client and [the IRS] audited one client of this firm. They had taken a large deduction for something; and, for whatever reason, the auditor pulled the return of the supposed payee on that. Nothing there. Well, the accountant said they knew about it. They are telling me in private, "Well, we knew that because we do both of their returns." They said, "We can't use the information from one for the other, so we have to draw a wall." And I said, "Well, you can't disclose it, but how can you prepare that return and sign it when you know one of the two of them is lying?" I said, "You have an ethical obligation. One of the two of them has to be lying, so you have to ask."

Their view was, we don't want to know because they are both our clients, and we have a wall between our clients that none of the information we get from this client can we use when we are looking at [that] client. I said, "You just violated your ethical obligations because you know that one of them is providing you inaccurate information. You can't ignore it." You can't disclose it—hey, Jane over here says that she paid you X amount of money—you can't say that; but you can't ignore the fact that you know that one of them is lying. Now, you don't know which one, but one of them is. One is not reporting the income and the other is taking a deduction. One of the two of them is lying.

Ms. Jemiolo
You're the attorney here. I would imagine, though, that the IRS would not necessarily lose the argument that, well, there was a wall between the tax returns.

Mr. Redpath

No. If they go after the person, then they would have every right to, ethically, they have every right to go after them under Circular 230. Just saying, "Hey, we just relied on the information"—no; they are going to go after you for preparer penalties. They are going to say you should have known that the information was inaccurate or incomplete from one of them. So, what should you do? Maybe you are going to lose both clients, but you can't sign the returns because you know one of them is lying. So, there are a lot of these ethical issues that we have to deal with.

Good faith—do we really know what good faith is? How do we define good faith when we're talking about these dealings? Common law view? Just an honest belief, I guess?

Ms. Jemiolo

Yes, that is how I would do it. Good faith is honesty. You are going to assume. There is an honest belief that there is no malice there, that there is no intent to defraud.

Mr. Redpath

Yes, it is interesting. Shannon, I really thank you for being here. I think we have given our audience a lot of things to think about when they are talking about taking a position on a return, and items that really are important. As always, you have to hold yourself to the higher standard. Just because one might have a lower standard doesn't mean that you should hold yourself to that lower standard. You have to hold yourself to the higher standard. Whether it is Circular 230 or the AICPA, from an ethical standpoint, you should be holding yourself to the highest standards you can.

Shannon Jemiolo, thank you very much for being here. I really appreciate it. And to our viewers, thanks for joining us, and be safe.

Preparer Penalties and Disclosure

A. Introduction

Tax return preparation is the lifeblood of many accounting practices and at the heart of tax compliance. The United States maintains a voluntary compliance system of tax reporting. While reporting and paying tax are required under the law, taxpayers voluntarily report their income, deductions, losses, and credits to the government. For many, this process entails retaining the services of a professional tax preparer. In an attempt to ensure proper compliance with the tax laws, the government has instituted a regime of penalties that apply to tax preparers, taxpayers, and other tax advisors. The penalties have ethical standards attached. Practitioners must look to statutes, the Statement on Standards for Tax Services (SSTS) of the AICPA, Circular 230, and applicable state society ethical standards.

B. General Standards

IRC Section 6694 provides:

"(a) Understatement due to unreasonable positions

(1) If a tax return preparer—

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Unreasonable position

(A) In general

Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(B) Disclosed positions

If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) Tax shelters and reportable transactions

If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith."

It is possible for a tax professional who violates both IRC §6694 and Circular 230 to be subject to a penalty as high as 150% of the fees generated from that return or claim.

Treasury Circular 230, Paragraph 10.34, "Standards with respect to tax returns and documents, affidavits and other papers" provides in part:

"(a) Tax returns.

(1) A practitioner may not willfully, recklessly, or through gross incompetence—

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in IRC Sec.6694(a)(2)."

Additionally, a practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to a position taken on a tax return if the practitioner advised the client with respect to the position or prepared or signed the tax return or other documents filed with the IRS. The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure. This applies even if the practitioner is not subject to a penalty under the IRC with respect to the position or with respect to the document, affidavit, or other paper submitted.

AICPA SSTS #1 provides in part "a. A member should not recommend a tax return position or prepare or sign a tax return taking a position unless the member has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged." In Interpretation 1-1, the SSTS provides that a "member should determine and comply with the reporting and disclosure standards, if any, that are imposed by the applicable taxing authority with respect to recommending a tax return position or preparing or signing a tax return." If the applicable taxing authority has no written standards that apply with respect to recommending a tax return position or preparing or signing a tax return or if its standards are lower than the standards set forth in this paragraph, the following standards will apply:

A member should not recommend a tax return position or prepare or sign a tax return taking a position unless the member has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits, if challenged (commonly referred to as the realistic possibility of success standard). A member may recommend a tax return position if the member (i) concludes that there is a reasonable basis for the position, and (ii) advises the taxpayer to appropriately disclose that position. A member may prepare or sign a tax return that reflects a position if (i) the member concludes there is a reasonable basis for the position, and (ii) the position is appropriately disclosed.

The SSTS's default "realistic possibility of success" standard is a lower standard than the "substantial authority" standard and the "more likely than not" standard, but it is a higher standard than the "reasonable basis" standard. If the standard of the applicable taxing authority is lower than the "realistic possibility of success" standard, then the member should comply with the "realistic possibility of success" standard or the "reasonable basis" standard with appropriate disclosure.

To summarize the standards that may be applicable:

- More likely than not (>50% chance)
- Substantial authority (40–45% chance)
- Realistic possibility (33.33% chance)
- Reasonable basis (20–25% chance)
- Not frivolous / Patently improper / Merely arguable or colorable (<20% chance)
- Frivolous standard (5–10% or less chance)

These rules require a full understanding of the law and will cause problems for less sophisticated tax accountants. Tax accountants will now have the same burden of legal analysis as lawyers without the basic legal or research training. This may require a change in how undergraduate accounting programs approach the teaching of taxation. These standards can be viewed as the preparers' "confidence level" in the position contemplated or taken on the return of claim.

C. More Likely than Not and Substantial Authority

Disclosure is unnecessary to avoid penalties if the practitioner establishes that the position meets the "more likely than not" standard for tax shelters and "substantial authority" for other positions. This is based on the confidence level of the practitioner and the authority being relied on. Reg. §1.6662-4(d)(3)(iii) lists the authorities that may be cited to support that there is substantial authority for the tax treatment of an item. The weight accorded an authority depends on its relevance, its persuasiveness, and its source. The regulation provides in part that there is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment. Reg. §1.6662-4(d)(3)(iii) indicates that only the following are acceptable authorities to determine whether there is substantial authority for the tax treatment of an item:

- Internal Revenue Code and other statutory provisions;
- Proposed, temporary, and final regulations;
- Revenue rulings and revenue procedures;
- Tax treaties and regulations thereunder and Treasury and other official explanations of such treaties;
- Court cases;
- Congressional intent as reflected in committee reports;
- General explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book);
- Private letter rulings and technical advice memoranda issued after October 31, 1976;
- Actions on decisions and general counsel memoranda issued after March 12, 1981;
- IRS information or press releases; and
- Notices, announcements, and other administrative pronouncements published by the Service in the Internal Revenue Bulletin.

There is substantial authority for a tax position if there is substantial authority at the time the taxpayer files the return containing the position, or if there was substantial authority on the last day of the tax year to which the return relates.

D. Disclosure

The first place to look for proper disclosure on a Form 1040 is the annual IRS Revenue Procedure. That provides details about common issues and what constitutes "properly disclosed" on the return. If an item is properly disclosed, then further disclosure is not necessary. (See Rev. Proc. 2022-41, 2022-50 IRB 527.) A position is properly disclosed in accordance with §1.6662-4(f) on a properly completed and filed Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, as appropriate, or on the tax return in accordance with the annual revenue procedure described in §1.6662-4(f)(2). The Form 8275-R is used if the position is contrary to a regulation.

Form **8275**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Disclosure Statement

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement.
► Information about Form 8275 and its separate instructions is at *www.irs.gov/form8275*.
► Attach to your tax return.

OMB No. 1545-0889
Attachment Sequence No. **92**

Name(s) shown on return | Identifying number shown on return

If Form 8275 relates to an information return for a foreign entity (for example, Form 5471), enter:
Name of foreign entity ►
Employer identification number, if any ►
Reference ID number (see instructions) ►

Part I **General Information** (see instructions)

	(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1						
2						
3						

Form **8275-R**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Regulation Disclosure Statement

Use this form only to disclose items or positions that are contrary to Treasury regulations. For other disclosures, use Form 8275, Disclosure Statement.
► Information about Form 8275-R and its separate instructions is at *www.irs.gov/form8275*.
► Attach to your tax return.

OMB No. 1545-0889
Attachment Sequence No. **92A**

Name(s) shown on return | Identifying number shown on return

If Form 8275-R relates to an information return for a foreign entity (for example, Form 5471), enter:
Name of foreign entity ►
Employer identification number, if any ►
Reference ID number (see instructions) ►

Part I **General Information** (see instructions)

	(a) Regulation Section	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1						
2						
3						

Early Tax Court cases suggested whitepaper disclosures could suffice as adequate disclosure. "Adequate disclosure on return can be satisfied by providing on the return sufficient information to enable respondent to identify the potential controversy involved." (Schirmer, 89 TC 277 (1987), (citing S. Rept. 97-494, at 274 (1982)) "[Whitepaper] disclosure requires more than the production of a "clue" with respect to the nature of the potential controversy involved." (Schirmer, 89 TC 277 (1987)) "Attachments to petitioner's returns could be described as invitations to audit the returns, they put IRS on notice of potential controversies, each deduction now in dispute was set out, so disclosure was adequate." (Andrew Crispo Gallery, 63 TCM 2152 (1992)) "Mere listing of amounts expended for insurance and travel and entertainment on proper tax form did not provide clue and, thus, were not adequately disclosed." (Horwich, TCM 1991-465 (1991)) The IRS later amended applicable reg. to say Form 8275 and Form 8275-R disclosure is the only way to properly disclose.

E. Due Diligence

When applied to a tax practitioner's responsibility, Circular 230 employs a due diligence standard. The tax preparer may rely on the taxpayer's representations of the facts but may be required to investigate the accuracy of certain facts when inconsistencies arise that bring into question the accuracy of those facts being asserted. The due diligence standard further applies to the preparer delineating what facts need to be addressed and the investigation into ascertaining what those facts are.

F. Reasonable Cause and Good Faith Exception

There is a general safe harbor exception to the penalty provisions. This exception is based upon reasonable cause and good faith. Among the factors are the nature of the error causing the understatement, the frequency of errors, the materiality of the errors, the preparer's normal office procedures to identify errors, and reliance on the advice of another preparer. A preparer will be found to have acted in good faith when the preparer relied on the advice of a third party who is not in the same firm as the tax return preparer and who the preparer had reason to believe was competent to render the advice. The advice may be written or oral. The preparer has the burden of proving the advice was given. A tax return preparer is not considered to have relied in good faith if—

(i) the advice is unreasonable on its face;

(ii) the tax return preparer knew or should have known that the third party advisor was not aware of all relevant facts; or

(iii) the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the tax return or claim for refund was prepared, that the advice was no longer reliable due to developments in the law since the time the advice was given.

G. Conclusion

The threats of penalty will have a chilling effect on many preparers as they determine how aggressively to take a position favorable to the taxpayer/client. Certainly, the application of the standards of confidence in such a legal environment will far too often lead to conservative positions that will presumably not favor the taxpayer. The cloud of penalties that hang over the preparer will most likely result in the preparer becoming the first level of audit for the government.

A. Discussion Problems

Your client, Pedro, has an interesting and complicated tax issue. You have done your research and now must decide what position to recommend that the client take on the return. You are going to prepare and sign the return. You have found authority on both sides of the issue.

Required:

1) What is the confidence level you must have not to disclose your position?

2) What confidence level is needed to take the position but with disclosure?

3) If disclosure is required, what is the method to disclose?

B. Suggested Answers to Discussion Problems

1) After proper research and evaluation of the authorities both for and against your position, you can take the position and not disclose if you have at least substantial authority for your position. This is generally considered a 40% or greater chance of success on audit. The regulations list what can constitute substantial authority, but the evaluation of relevance and importance of the authority is up to your professional judgment.

2) If, after analyzing the authority, you determine based on your professional judgment that you have a reasonable basis for your position, you may take it as long as it is properly disclosed. A reasonable basis is considered a 20%–25% chance of being successful on audit.

3) Generally, in this type of situation, proper disclosure is the use of Form 8275. If the position is contrary to a regulation, then the appropriate form is the Form 8275-R.

GLOSSARY OF KEY TERMS

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

BOI—Beneficial Ownership Information

Beneficial Owner of a Reporting Entity—A beneficial owner of a reporting entity is an individual who exercises substantial control over the entity, or who owns or controls at least 25 percent.

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)—H.R. 748, also known as the CARES Act, is the third coronavirus relief package and was signed into law on March 27, 2020. This bill had bipartisan support in both the Senate and House and contains both tax and non-tax provisions applicable to individuals and businesses.

CTA—Corporate Transparency Act

GIA—Guaranteed Installment Agreement

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

Offer in Compromise—The IRS has the ability to "compromise" a civil or criminal tax liability after assessment and before referral to the Department of Justice. The taxpayer may seek a compromise based on doubt as to collectibility, doubt as to liability, or to promote effective tax administration. The process is known as offer in compromise (OIC) and constitutes an agreement between a taxpayer and the IRS to accept less than full payment.

PPIA—Partial Payment Installment Agreements

Setting Every Community Up for Retirement Enhancement (SECURE Act)— Part of the Further Consolidated Appropriations Act, 2020 (H.R. 1865, P.L. 116-94, the SECURE Act was enacted on December 20, 2019. It provides expanded opportunities for individuals for retirement savings and makes a number of administrative simplifications. It also includes a change to the kiddie tax.

SLIA—Streamlined Installment Agreement

CUMULATIVE INDEX 2023

BY TOPIC

BY CITATION

BY SPEAKER

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

1. According to Ian Redpath, the IRS's spending plan for appropriations from the Inflation Reduction Act, as outlined in News Release 2023-72, includes which of the following?

   A. More staffing to increase audits on households making less than $400,000
   B. More staffing to increase the number of penalties they can enforce
   C. Increased use of artificial intelligence (AI) and other technology for customer service and targeting audits
   D. Increased use of AI and other technology so they can decrease staff members and in-person assistance

2. According to Ian Redpath, what is the purpose of Revenue Ruling 2023-8?

   A. It makes Revenue Ruling 58-74 obsolete so certain changes, adjustments, and amendments to tax returns will need IRS approval.
   B. It indicates that the IRS will be taking a closer look at micro-captives and related tax fraud schemes.
   C. It provides a safe harbor for the extinguishment and boundary line adjustment clauses for conservation easements under SECURE 2.0.
   D. It provides information on valuing the fringe benefit of taking private, non-commercial flights, including cents-per-mile rate and terminal charges.

3. According to Ian Redpath, the definition of a "higher-level official" under Proposed Regulation REG-121709-19 goes beyond the definition of "immediate supervisor" and includes which of the following?

   A. The IRS Commissioner or a judge appointed to the Tax Court
   B. The direct supervisor of any IRS employee who proposes a penalty
   C. Any person who, as part of their job, directly approves a penalty proposed by another IRS employee
   D. Anyone authorized to approve a penalty under the Internal Revenue Manual

4. According to Ian Redpath, under the Corporate Transparency Act, a *beneficial owner* exercises substantial control over a reporting entity or owns/controls a ***minimum*** of what percent of the entity?

   A. 10%
   B. 15%
   C. 25%
   D. 40%

5. According to Ian Redpath, which of the following might be of particular interest to taxpayers seeking a change in accounting method?

   A. Announcement 2023-12
   B. Revenue Ruling 2023-7
   C. *Robert A. Di Giorgio, Sr. et ux. v. Commissioner*
   D. *William F. Anderson, et ux. v. Commissioner*

Continued on next page

6. According to Ian Redpath and Gary Bluestein, should taxpayers still file their tax return if they cannot immediately pay the amount of taxes owed?

   A. No, there are more remedies available to taxpayers who do not file the tax return.
   B. No, the tax return should not be filed until an alternative arrangement has been worked out with the IRS.
   C. Yes, they should file anyway to avoid the failure-to-file penalty and possible criminal prosecution.
   D. Yes, unless it has been long enough that the statute of limitations has run out, six to ten years.

7. According to Ian Redpath and Gary Bluestein, when calculating a ***doubt as to collectibility*** offer in compromise, what amount does the IRS use to value the taxpayer's noncash assets (i.e, their *quick sale value*)?

   A. Fair market value
   B. Fair market value minus 10%
   C. Fair market value minus 20%
   D. Fair market value minus 30%

8. According to Ian Redpath and Gary Bluestein, when calculating a taxpayer's income stream for a ***doubt as to collectibility*** offer in compromise, expenses for which of the following are allowed on an unlimited basis if substantiated?

   A. Medical
   B. Housing and utilities
   C. Food, clothing, and miscellaneous
   D. Transportation

9. According to Ian Redpath and Gary Bluestein, taxpayers can get a *streamlined installment agreement* with no disclosure requirement and no tax lien if the total amount of taxes owed is under what threshold?

   A. $20,000
   B. $50,000
   C. $100,000
   D. $250,000

10. According to Ian Redpath and Gary Bluestein, what is one advantage of an installment agreement during which taxpayers pay off their tax liabilities under the *six-year rule*?

    A. The IRS gives taxpayers extra time to file amended tax returns.
    B. The IRS will not file a federal tax lien against the taxpayers.
    C. The IRS will accept the installment agreement with no questions asked.
    D. The IRS will not challenge the taxpayers' expenses.

11. According to Ian Redpath and Shannon Jemiolo, what is the likelihood that the IRS will get a conviction in a tax fraud litigation case?

    A. The IRS prosecutes most cases, so they are unlikely to win if the taxpayer is well prepared.
    B. The IRS has a 90.6% conviction rate for prosecuting tax fraud litigation cases.
    C. The results of tax fraud litigation cases are evenly split between taxpayers and the IRS.
    D. The results of tax fraud litigation cases depend on the state in which they are heard.

Continued on next page

12. According to Ian Redpath and Shannon Jemiolo, which of the following stances about taking a questionable position on a tax return is most ethical?

    A. Only taxpayers will face consequences from the IRS, so CPAs can support any position taxpayers choose.
    B. If a taxpayer is unlikely to get audited, their CPA does not need to worry about taking a questionable tax position on the taxpayer's return.
    C. If a taxpayer is willing to pay a CPA to change a position that is rejected by the IRS, the position can be taken on the taxpayer's return.
    D. If a taxpayer insists that a certain position be taken on their tax return, but their CPA believes it is frivolous, the CPA should not take it and should withdraw from the engagement.

13. According to Ian Redpath and Shannon Jemiolo, tax preparers face a penalty of what amount under Section 6694 of the Internal Revenue Code?

    A. $100
    B. $750
    C. Greater of $1,000 or half the income received by the preparer for preparing the return
    D. Tax preparers will not face a penalty if they were ignorant about a problematic tax position on the return.

14. According to Ian Redpath and Shannon Jemiolo, why would Form 8275 be included with a tax return?

    A. To disclose a tax position that the preparer thinks has a reasonable basis but might not be approved by the IRS
    B. To create a safe harbor for a tax position so that the return is safe from an IRS audit
    C. To disclose and explain a tax position that is contrary to the Treasury Regulations
    D. To legitimize a whitepaper written about a specific tax position and submitted with the return

15. According to Ian Redpath and Shannon Jemiolo, how should tax preparers approach the information provided to them by their tax clients?

    A. They can take the information from the clients at face value as long as the preparers are working in good faith.
    B. They can rely on information provided by their clients, but they are also required to do their own due diligence.
    C. They must keep a wall between clients, even if information from two related clients contradicts each other.
    D. They must audit the information on their clients' tax returns (e.g., inspect inventory) before signing the return.

CPE Network®
Tax Report
Volume 36, Issue 5 **June 2023**

Subscriber Survey

Evaluation Form

Please take a few minutes to complete this survey related to the **CPE Network® Tax Report** and return it by mail to 2395 Midway Road, Carrollton, Texas 75006, Attn: Managing Editor. All responses will be kept confidential. Comments in addition to the answers to these questions are also welcome. Please send comments to **CPLgrading@thomsonreuters.com.**

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

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	|_____|	|_____|	|_____|	|_____|	|_____|	|_____|
Collection and Payment Alternatives	|_____|	|_____|	|_____|	|_____|	|_____|	|_____|
Return Positions, Disclosures, and Potential Penalties	|_____|	|_____|	|_____|	|_____|	|_____|	|_____|

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

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

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**?

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

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	_____	_____	_____
Gary Bluestein	_____	_____	_____
Shannon Jemiolo	_____	_____	_____

Which of the following would you use for viewing CPE Network® A&A 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, June 2023 Date: _____

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

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

Instructor Name: _____ Date: _____

E-mail address: _____

License State and Number: _____

Group Study PO Box 115008, Carrollton, TX 75011 -5008 Fax (888) 286.9070 CPLgrading@thomsonreuters.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 May 1, 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 Thomson Reuters.

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!

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Mail: Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008

Email: **CPLgrading@tr.com**

Fax: 888.286.9070

When sending your package to Thomson Reuters, 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 Thomson Reuters any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

"Group internet based" programs must have a **qualified, real time moderator while the program is being presented.** Program participants must be able to interact with the moderator while the course is in progress (including the opportunity to ask questions and receive answers

during the presentation). This can be achieved via the webinar chat box, and/or by unmuting participants and allowing them to speak directly to the moderator.

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Mail: Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008
Email: CPLgrading@tr.com

Fax: 888.286.9070

When sending your package to Thomson Reuters, 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 Thomson Reuters any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Print

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

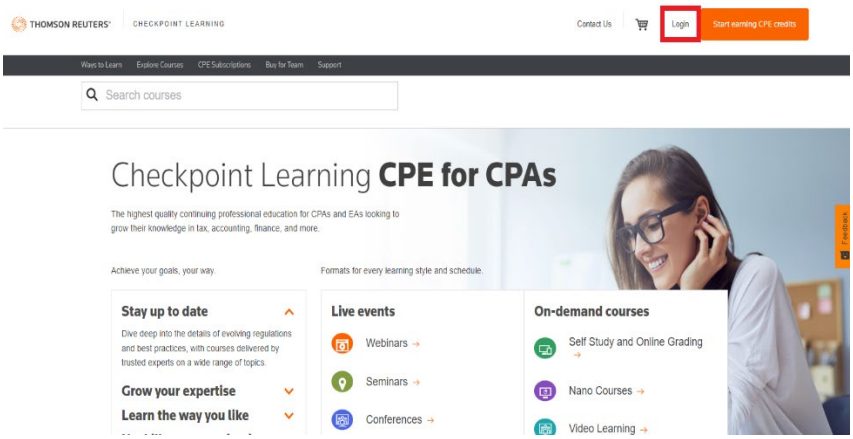
- Watch the DVD.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.
-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

  Thomson Reuters
  PO Box 115008
  Carrollton, TX 75011-5008

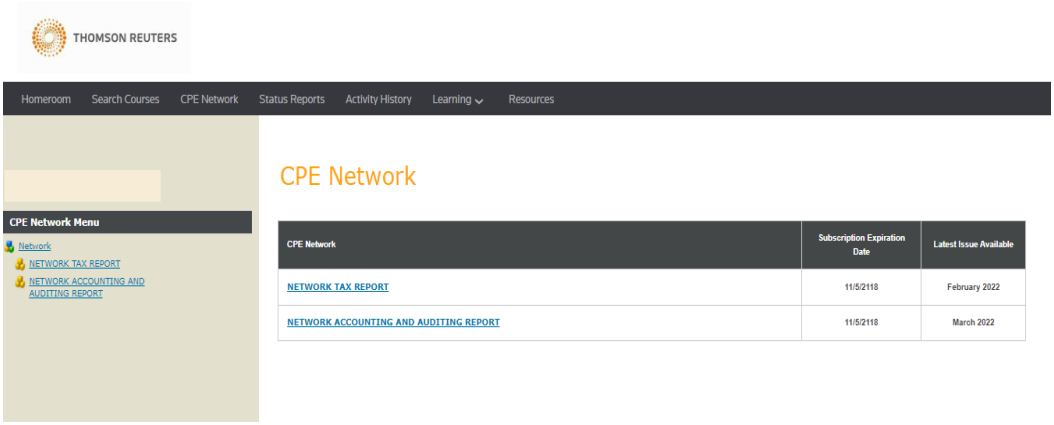
Self-Study—Online

Follow these simple steps to use the online program:

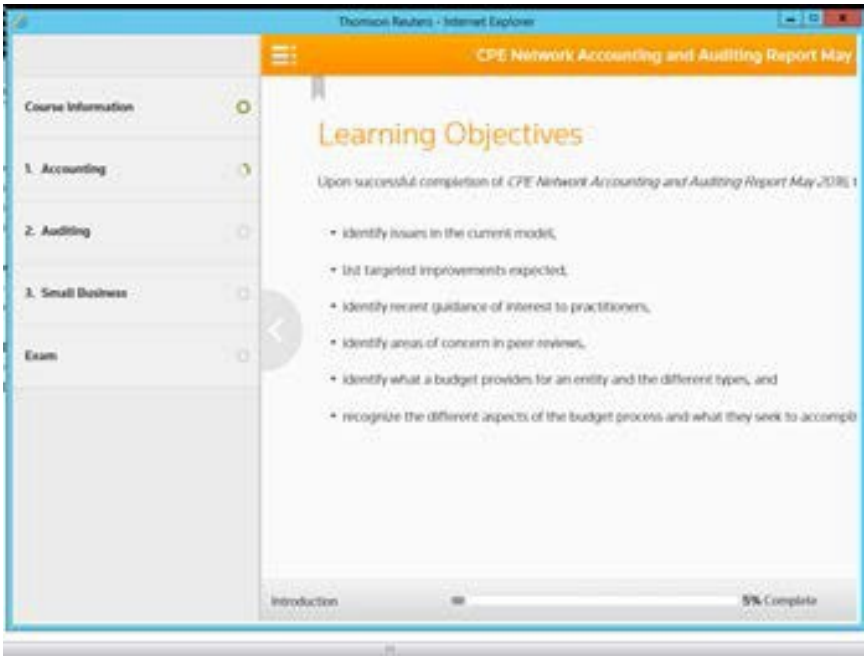
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

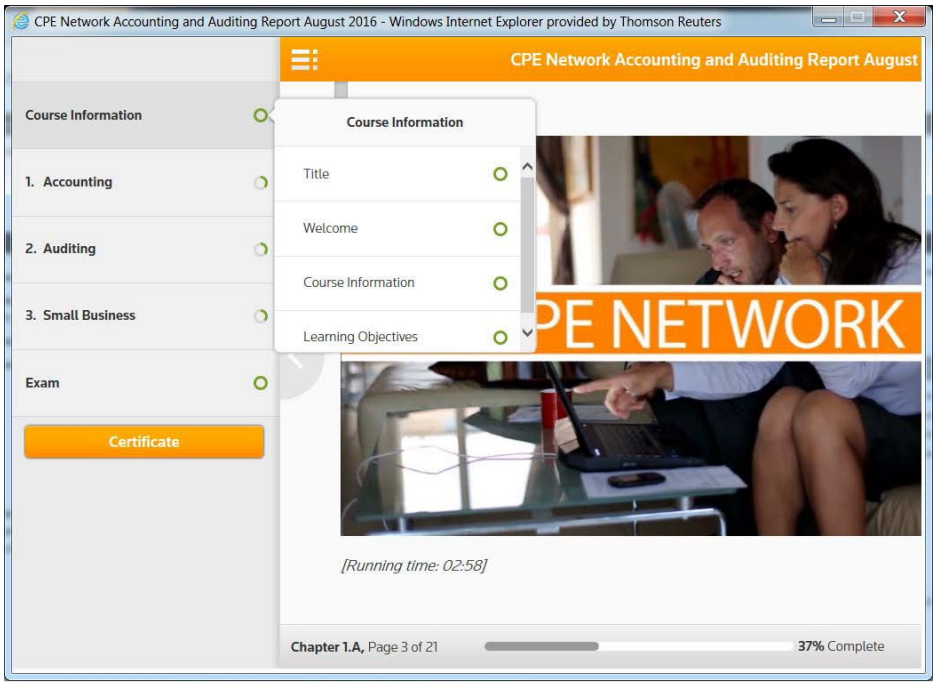


The Chapter Menu is in the gray bar at the left of your screen:



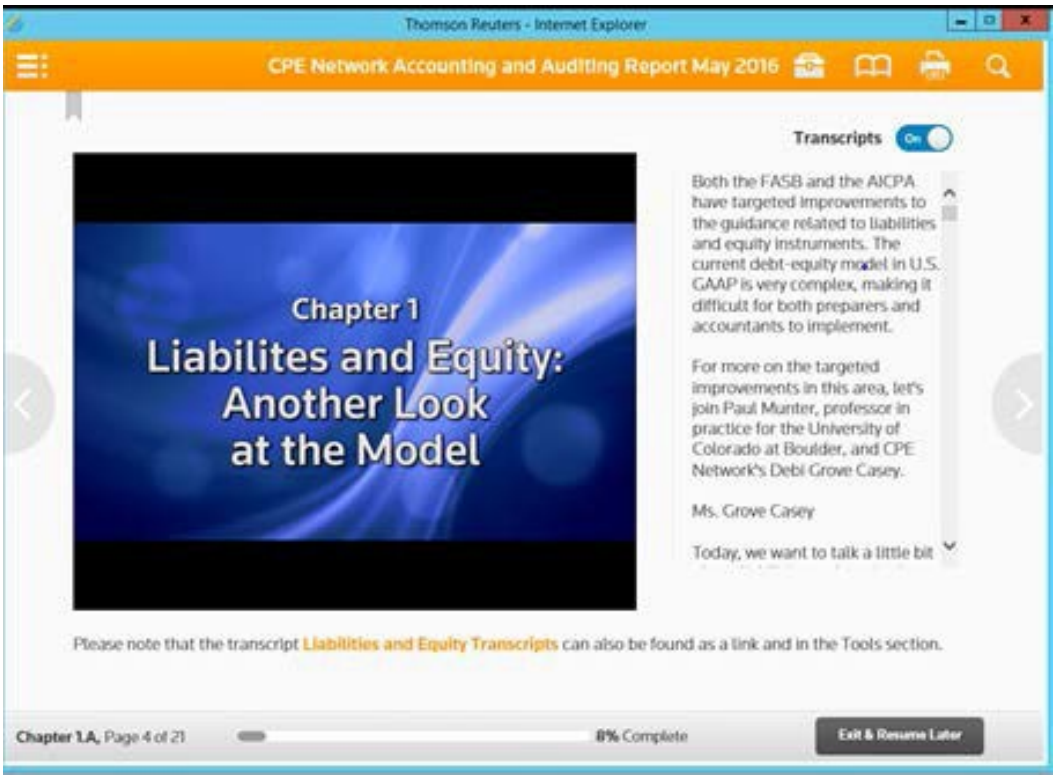
Click down to access the dropdown menu and move between the program Chapters.

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

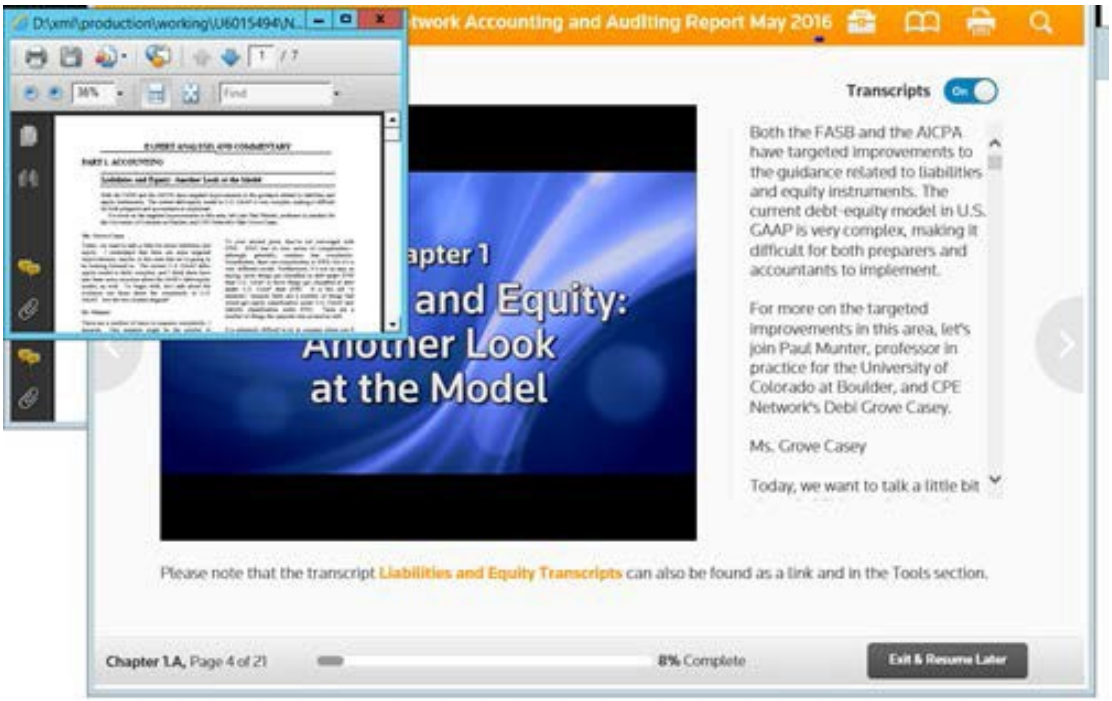


- **Each Chapter is now self-contained.** Years ago, when on the CPEasy site, the interview segments were all together, then all the supplemental materials, etc. Today, each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This more streamlined approach allows administrators and users to more easily access the related materials.

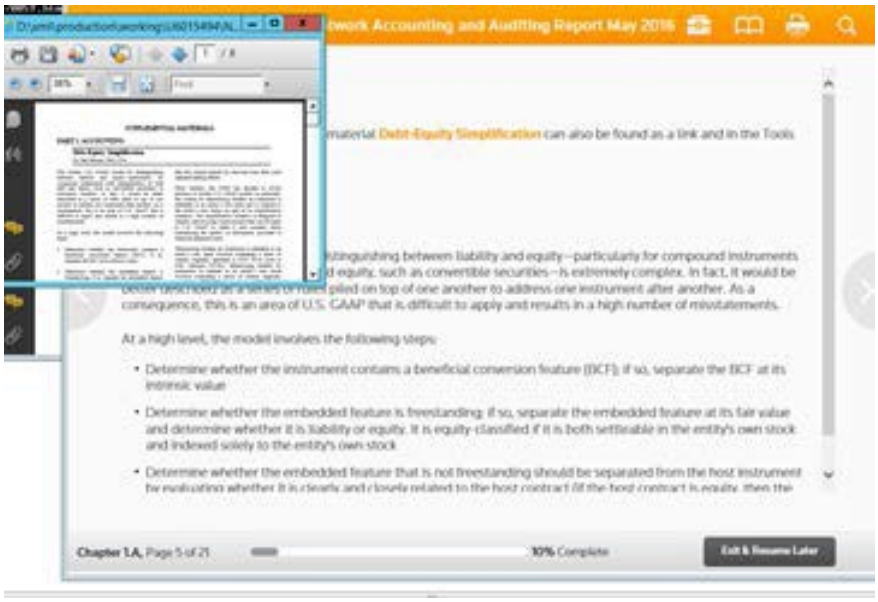
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.



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.

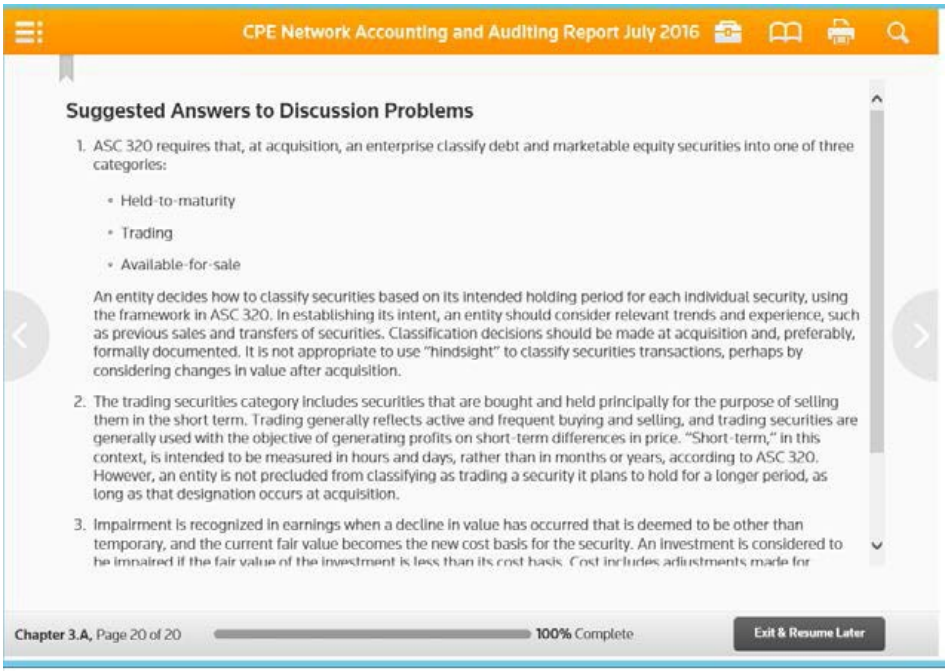


Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.



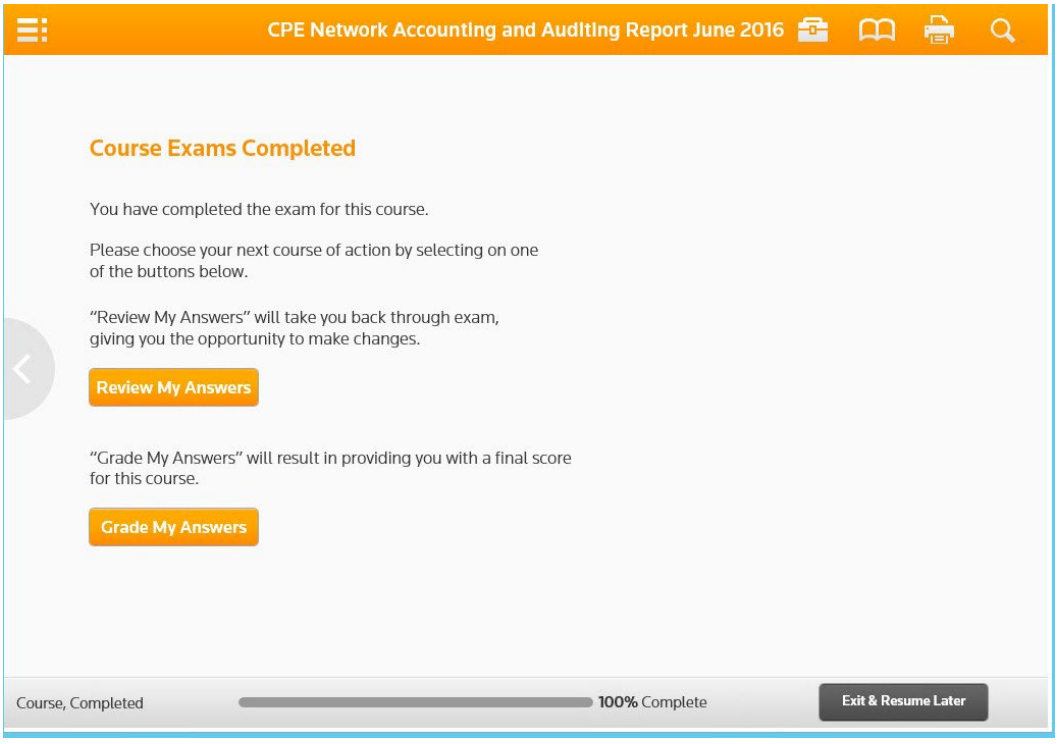
Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

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



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

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



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

Additional Features Search

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

Search Results are displayed with the number of hits.

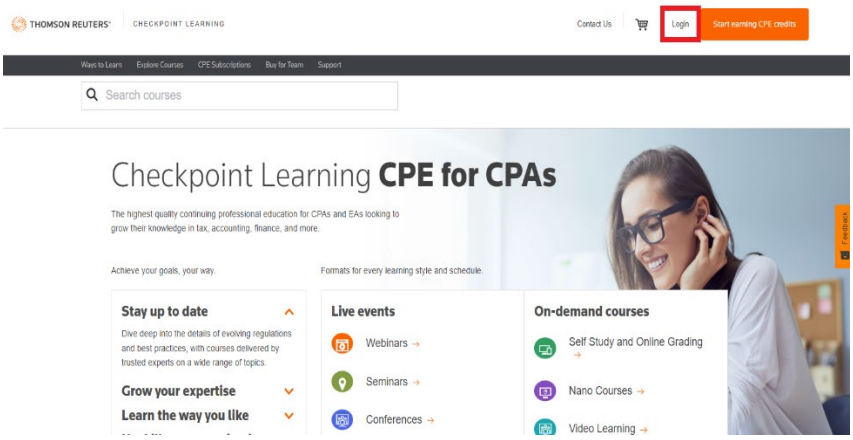
Print

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

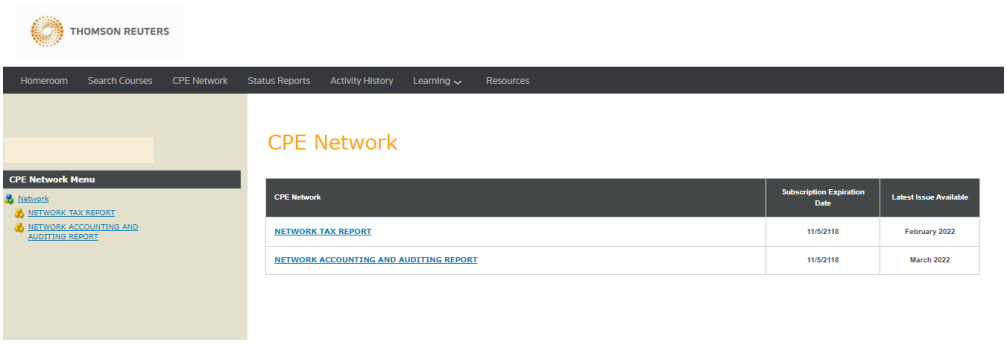
Transitioning From DVDs

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

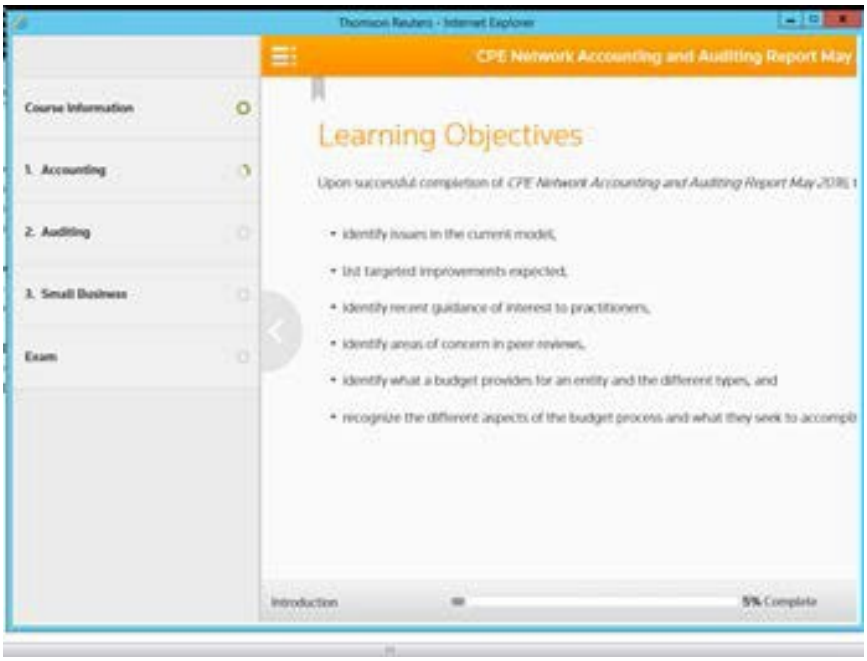
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

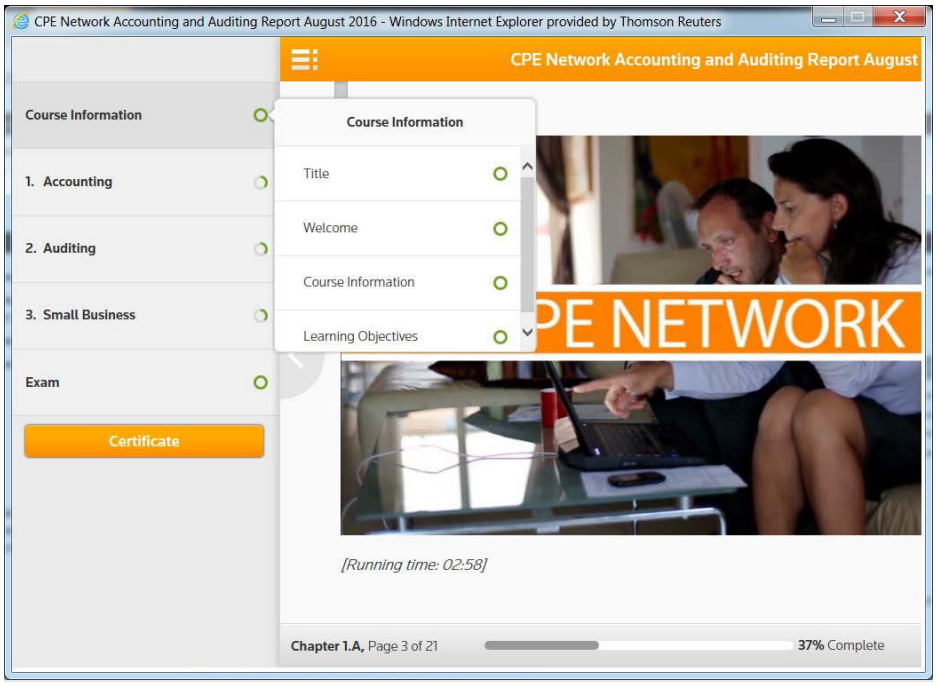


The Chapter Menu is in the gray bar at the left of your screen:

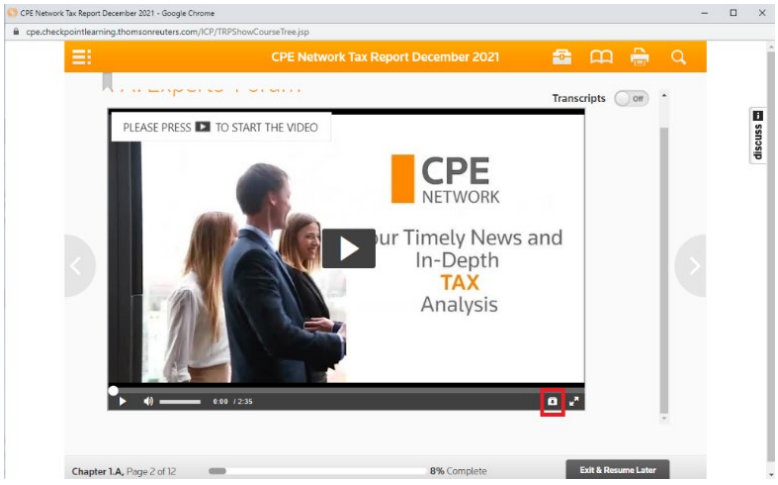


Click down to access the dropdown menu and move between the program Chapters.

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



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



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

PDFs may be downloaded from either the course toolbox in the upper right corner of the Checkpoint Learning screen or from the email sent by CPENetworkgroupstudy.

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

Appendix: Forms

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

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

Getting Help

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

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	800.431.9025 (follow option prompts	checkpointlearning.techsupport@thomsonreuters.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	800.431.9025 (follow option prompts	checkpointlearning.productsupport@thomsonreuters.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	800.431.9025 (follow option prompts	checkpointlearning.cpecustomerservice@thomsonreuters.com	• Billing • Existing orders • Cancellations • Webinars • Certificates