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Topics for future editions may include:

- Taxation of dependent income

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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

The tax landscape is ever changing with new court cases, IRS actions, and sometimes, legislation. Practitioners need to be cognizant of changes to properly advise clients. This material covers some changes since last month. [Running Time: 25:45]

Learning Objective:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including: (1) assess the "new client" scam emails; (2) determine the appropriate filing for the start of the statute of limitations; and (3) apply the ERC Voluntary Disclosure Program.

PART 2. INDIVIDUAL TAXATION

The income taxation of estates and trusts can play a major role in proper planning and often does not get the attention it requires. It can also serve as a tool to shift income among family members. There are three related but distinct types of income in estates and trusts. Each plays a role in the amount a beneficiary may receive and the taxation of both the beneficiaries as well as the estate and trust itself. It is important that every practitioner has a basis understanding of the complex rules that apply in this area. The taxation of estates and trusts is governed by the provisions of Subchapter J. The fiduciary files a Form 1041 to report the taxable income to the government. [Running Time: 39:50]

Learning Objective:

After completing this segment, the user should be able to discuss a number of compensation of children by owners of closely held businesses including: (1) determine the accounting income of an estate or trust; (2) applying income tax rules to determine the taxable income of an estate or trust; (3) identify and apply the DNI of an estate or trust.

PART 3. BUSINESS TAXATION

The popularity and value of virtual currency, also called cryptocurrency, has grown significantly. The urban myth is that virtual currency is not money so there is nothing to declare. It has been used by some to avoid tax as a form of tax shelter similar to the concept of an offshore account. In 2014, the Service began providing guidance on virtual currency and its taxation. For the 2022 tax year, the Service changed the inquiry on Form 1040 to say "digital assets" without providing sufficient guidance, and they changed it again for 2023. Recently, the Service issued proposed regulations part of which are reliance regulations. It is important that practitioners are aware of the nuances of digital assets so they can educate clients. [Running Time: 41:52]

Learning Objective:

After completing this segment, the user should be able to discuss a number of aspects of virtual currency including: (1) determining what may be a digital asset for the question on the Form 1040, (2) evaluating the tax treatment of sales and exchanges of digital assets, and (3) applying the reporting requirements for transactions involving digital assets.

ABOUT THE SPEAKERS

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

Brian O' Sullivan, is a tax partner with LG Legacy Group, LLC, located in Dresher, PA. Brian's area of emphasis is income tax planning for high net worth individuals and consulting for closely held businesses. Additional areas of expertise include financial and economic analysis, valuation of closely held enterprises and professional practices, state and local taxation developments, real estate taxation, and merger and acquisition planning. Brian is a frequent speaker on technical tax topics.

Julie A. Welch, CPA, PFS, CFP, is a partner/shareholder and Director of the Tax Department at Meara Brown Welch, P.C. in a suburb of Kansas City, Missouri. She has written numerous articles, is a co-columnist for the Journal of Financial Planning, and has co-authored a book entitled *101 Tax Saving Ideas*. She speaks nationally on tax-planning topics, has appeared on radio and television, and has been quoted in numerous publications. Julie is a member of several professional organizations including the AICPA, MSCPA, and FPA. She has over 30 years' experience advising individuals, business professionals, and their companies.

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Program Level	Update
Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
	• Basic Governmental professional experience
Advance preparation	None required
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EXPERT ANALYSIS AND COMMENTARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, Ian Redpath includes a discussion regarding a case on appeal from the Eighth Circuit Court of Appeals. The question is whether life insurance earmarked for a corporate redemption should count toward a corporation's valuation for estate tax purposes.

Mr. Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. This is the Experts' Forum segment where we go over a number of things that have happened, whether it be the courts, the IRS, even Congress, since the last time that we spoke.

Now, one thing I want to say is, as we're recording to get this out to you, there was a tax bill that passed the House and is sitting in the Senate. As of the time we're filming, the Senate has not taken any action on it whatsoever. It's just sitting there, so it's unclear what is going to happen. It doesn't appear to have bipartisan support in the Senate. So, at this point, it has just gone through the House and nothing else has happened, but keep aware of that as it's retroactive. The big things are the child credit and some business deductions, especially things like research and experimental costs, these types of things. This is changing the rules on that. Again, retroactive to the 2023 tax year. Just watch out for it. We'll see what happens although again, as of today, there's no bipartisan support in the Senate for it.

A. IRS Tax Tip 2024-06

Well, we know we're in tax season and when we have tax season, there are always going to be issues that come up. The IRS, in Tax Tip 2024-06, warns professionals that the so-called "new client" scam is out there. It generally hits at peak tax season. Essentially, what happens is you will receive an email from someone asking for help with their taxes. It's a phishing email. Generally, there'll be a link there to click. "I've attached some information for you to review to determine if you want to handle my situation." If you open that, often it's a malicious link.

Generally, what's going to happen is they'll download malware onto your computer to gain access to your systems and to gain access to your client data. It's really a problem. So, the IRS warns about it and says to make sure that you just simply delete it. Also, a reminder about the Written Information Security Plans—you should be looking at [yours]; I would again recommend that—they are required. So again, the Written Information Security Plan, make sure you have yours and that it is in compliance.

B. *Seaview Trading, LLC, et al., Petitioners v. Commissioner of Internal Revenue,* United States Supreme Court Case Number 23-125

In a prior program, we talked about the *Seaview Trading* [case]. In *Seaview Trading*, the Ninth Circuit decided that the tax returns had to be filed in the service center designated by the IRS to start the running of the statute of limitations. This case has gone to the Supreme Court, and the Supreme Court denied certiorari. Now, what does that mean? In layman's terms, they won't hear the case. So, that Ninth Circuit Court of Appeals decision is going to stand.

C. IR-2024-39

We have just a warning, but I want to point this out. In IR-2024-39, the IRS is warning and saying there are certain signs that businesses and practitioners should look for as a suspicious employee retention (ERC) credit.

What they're looking at in the employee retention credit is seven signs.

One of the reasons that we're pointing this out, however, is [that the program ends soon]. There's a withdrawal process if you haven't received a payment and you want to withdraw an ERC claim for a client, but many have received payment—that was the case in the one I just mentioned. What do you do? Well, the Voluntary Disclosure Program for the ERC allows you to pay back 80 percent. You don't have to pay back 100 percent. Pay back 80 percent (and you can qualify, for example, for an installment to pay back 80 percent) and correct that incorrect ERC that you received payment for.

However—and this is my caveat to you—that program ends March 22, 2024, so it's ending *this* month. If you have a client and you want to take advantage of this, if your client was contacted and ended up using one of those ERC mills that we've heard so much about over so many different programs and so much time, if they've gotten their check, they can take advantage of this and pay back 80 percent of it and qualify for the disclosure.

So, it's a voluntary disclosure, but the point is the program ends on March 22. To be eligible, it's on wages paid after March 12, 2020, and before January 1, 2022.

D. IR-2024-36

We have another warning from the IRS. This is 2024-36, and this is a warning about the EFIN email scam. So, now we've got another scam. In this one, the IRS warns that the scammers are posing as software providers and they're requesting the EFIN documents from tax professionals under the guise of "required verification." So again, the IRS says these are scams. You should not respond to them. Do not open up anything in those emails. If you receive one, they recommend notifying the Inspector General. There is an email that you can send it to, phishing@irs.gov, and attach a copy of the [scam] email to that.

E. IR-2024-34

Now, the IRS has come out with a notice. It just really is something to think about, but I always think this is something to talk about to our clients if they can take advantage of it. In February, the IRS launched a new web page, and this is discussing the Employer-Provided Childcare Tax Credit providing [a credit for] childcare—such an important service today—to employees. The credit is significant. It's worth up to $150,000 per year and can offset 25 percent of the qualified childcare facility expenditures and 10 percent of other expenditures (for example, salaries of the people working in childcare).

It's a general business credit. It is subject to the carryback and carryforward under the general, so one back, and then forward. The credit [is claimed on] Form 8882 and then, of course, it carries on to the 3800 series as a general business credit. It's certainly something to talk to our business clients about as it provides a really great potential benefit.

F. IR-2024-33

There are a lot of questions about the 1099-K, so the IRS has a new fact sheet, Fact Sheet 2024-3, and this comes out in IR-2024-33. They've updated all of the frequently asked questions related to Form 1099-K.

Remember, the 1099-K was to go down to the $600 threshold, but that has been suspended. Therefore, for the 2023 year, the 1099-K reporting was the *old* reporting threshold ($20,000 and more than 200 transactions). So again, they've delayed the $600. Are they going to delay it again for 2024? We don't know, but they certainly have [for 2023]. There are new FAQs, so I'll leave those to your reading, but they're very helpful in that area.

G. Notice 2024-10, 2024-3 IRB 406; IR-2023-241

We also have Notice 2024-10. This is more guidance—it's interim guidance—on the corporate alternative minimum tax. It supplements Notice 2023-64 and clarifies previous Notices 2023-7 and 2023-20. Remember that this is the 15-percent minimum tax on the adjusted financial statement income of large corporations beginning in 2023. It applies to large corporations, so it's not going to apply to a lot of us, and they have to have financial statement income exceeding $1 billion.

The latest notice provides guidance relative to U.S. shareholders that control a foreign corporation (a CFC) that pays a dividend to the U.S. shareholder or another CFC. So, we have some further guidance out there now on this.

H. *Thomas A. Connelly, as Executor of the Estate of Michael P. Connelly, Sr., Petitioner v. United States,* United States Supreme Court No. 23-146

In the United States Supreme Court, there's a case now called *Connelly*, (*the Estate of Connelly*), Docket Number 23-146. This is a really important case that has kind of been flying under the radar. Essentially, the corporation had a $3 million life insurance policy that was for the sole purpose of redeeming the shares of the decedent's stock in a corporation. The IRS took the position that the value of the corporation has to include that $3 million insurance policy. Now, the taxpayer argues that, at a minimum, if you include the $3 million, then you also have to offset it with a $3 million dollar liability for the redemption requirement, because you have required redemption on death. A very common buy-sell type of agreement. Here, it was the corporation carrying the insurance to redeem out the shares.

This is a Missouri corporation called Crown C Supply. The shareholders are Michael Connelly, the deceased, and Michael Connelly's brother, Thomas, who was the executor of the estate and now is the only remaining shareholder. They had a purchase by the company using the proceeds of a life insurance policy to fulfill a redemption agreement. So, Crown bought all of the stock for the $3 million. The estate reported the stock at the same value on its federal estate tax return. Well, the IRS disagreed. The IRS argued that the stock redemption agreement failed to set forth a price. Therefore, the stock was worth $6.8 million—a $3.86 million valuation which everybody had agreed on, plus the $3 million proceeds multiplied by 77.18 percent, which was the ownership interest.

So, the question before the Supreme Court is whether the life insurance proceeds earmarked for a stock redemption increase the company's value for determining the value in the hands of the estate. Now, there are three circuits that have heard it, one saying it does and two saying that it doesn't, so we've got a split. We've got the Eighth Circuit, which is this case—the *Connelly* case—saying it does increase the value. Then, you've got the Eleventh Circuit and the Ninth Circuit that have said, no, it doesn't, and those cases are *Blount* and *Cartwright*. So, we've got a split in the Circuits.

So, this can have a significant impact going forward, especially when we get to 2026 and, if nothing is done and we have the big reduction in the unified credit, this really means we need to look closely at buy-sell agreements. Does it mean that cross-purchase agreements with shareholders become a better way to look at it? That's certainly one approach that would be considered.

So, we'll wait and see. Again, this could be a huge issue.

I. Fair Labor Standards Act, RIN 1235-AA43

Now, one thing that we're caught with, many times our clients may be involved with the Fair Labor Standards Act (overtime and that type of thing). In the Fair Labor Standards Act, RIN 1235-AA43, effective March 11 of 2024, the Department of Labor has published a final rule regarding determining the status of an independent contractor for the Fair Labor Standards Act. They rescinded the employer-friendly 2021 test that was implemented under the Trump administration, and they returned to the prior test, which is a multi-factor economic reality test.

Now, the interesting thing is, it's not the same as the IRS tests. You've heard of the so-called 20 common-law rules. The IRS has kind of boiled those down into three categories but, when you look at it, it's essentially the 20 common-law rules that are still applied. This is a little different. I've been in an audit where the IRS has referred to these rules and said they went through a Department of Labor audit and *they* held…. Well, the tests are different; they are not the same tests.

J. *Relentless, Inc. v. Dept. of Commerce, Dkt. No. 22-1219, and Loper Bright Enterprises v. Raimondo,* Dkt. No. 22-451

Now, we have a case that's really important. The Supreme Court has heard oral arguments—there are two combined cases, *Relentless, Inc. v. Dept. of Commerce* and *Loper Bright Enterprises v. Raimondo*. These cases are combined.

Why are they important? They are important, but the cases have nothing to do with tax. Here's what they have to do with—the Chevron doctrine. The Chevron doctrine is the historical case that the government uses for deference. So, when we're looking at a regulation and that regulation is interpretive, the courts have to give deference to the IRS's interpretation *if* the statute is ambiguous. The Chevron doctrine says that the courts have to defer to administrative regulations that interpret ambiguous statutes as long as the regulations are based on a permissible interpretation of the statute. Now, what replaces that? What replaces that is there is no deference to the government. Deference is basically a rebuttable presumption that these are correct. So, if the courts are no longer bound to that, that's important.

They call it the "Chevron two-step." The Chevron regulations were issued by the EPA in interpreting the Clean Air Act, but the IRS regulations are government regulations, so they fall within this. So, they were challenged, and when the case got to the Supreme Court, the Court announced the deference standard. For this deference standard, what the Court said was that in the Chevron two-step, first, you have to determine if the statute is ambiguous. If the statute is unambiguous, the Court has to simply give effect to the clearly stated intent of the legislature. Now, if you're not clear exactly what the intent was, look at the committee reports. That will tell you what the intent was. If the statute is ambiguous, the Court cannot adopt its own construction of the statute. The Court has to defer to the government agency's interpretation of that statute, as long as it's permissible. (If it's not clearly incorrect, it's a permissible construction.) So, once both are met, then the agency's interpretation is deemed to be correct. In statutes that are "ambiguous," it takes away the interpretive power of the courts. There is a prior decision by Justice Gorsuch in which he questioned whether the courts have given up their right to interpretation here. Well, they have under Chevron.

It's very possible that by the time you're watching this, it's very possible that the Court will have issued a ruling on this case. So, pay very close attention to it because it has very important ramifications on how we apply statutory construction on administrative regulations. If they're legislative (in the statute, for example, on consolidated returns, the statute says "according to regulations promulgated by the Secretary"—those are considered legislative; the legislature has passed those regulations), it's part of the law. But interpretive ones (and that's the Chevron case) have given this idea of deference to an ambiguous statute—to the IRS's interpretation being correct. A huge issue going forward, so I'd certainly make sure that you check what the Supreme Court decides on it.

How does it affect the states? Some states have adopted the Chevron rule in the interpretation of state regulations. Now, technically, it only applies to federal, but some states have adopted it, some have not. For example, Michigan has rejected it. Some states have rejected it, but some states have adopted it, so it has ramifications obviously at the state level, also.

Well, I want to thank you. A lot of things to go over this month. I want to thank you for joining me. I know that you're busy in tax season and you have a ways to go. So, I hope it's not going too badly. We can certainly hope that if they do come out with retroactive legislation again (like they've done to us in the past), that it will be somewhat smooth for you and your clients in getting through that. So, again, as always, thank you for joining me, and please be safe.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. IRS Tax Tip 2024-06

The IRS has issued a warning to tax professionals about a "new client" scam. This scam generally appears during "peaks during the busy tax filing season." It begins with the scammer emailing a tax professional to ask for help with their taxes. This phishing email has a malicious link or attachments that the scammer claims is their tax information. However, when the recipient clicks on the link or opens the attachment, the scammer gains access to the tax preparer's email address, password, and possibly other information. The scammer may also load malware onto the tax pro's computer to gain access to their system and their clients' data. Further, the scammers may then use that tax professional's hacked email account to target its clients. The Service urges people to report suspected phishing schemes to the:

- Treasury Inspector General for Tax Administration
- Federal Trade Commission
- Internet Crime Complaint Center

The IRS also reminded tax professionals that pursuant to Federal Trade Commission rules, they must have a Written Information Security Plan.

B. *Seaview Trading, LLC, et al., Petitioners v. Commissioner of Internal Revenue,* United States Supreme Court Case Number 23-125

The Supreme Court has denied review of the Seaview Trading Ninth Circuit decision that its delinquent partnership returns had to be filed with the service center designated by the IRS to start the statute of limitations period. The Ninth Circuit held that neither faxing the return to a revenue agent who requested it nor mailing the return to an IRS attorney constituted filing for statute of limitations purposes.

In July 2005, an IRS revenue agent contacted Seaview about its missing 2001 partnership return. Responding to the revenue agent's request, Seaview's accountant faxed a copy of the 2001 return to the revenue agent along with a certified mail receipt that Seaview claimed was poof that it had filed its 2001 return with the correct service center in July 2002. The Service denied receiving it in 2002. During the audit of Seaview in 2007, Seaview's counsel mailed another copy of its 2001 return to an IRS attorney. The return was never sent to the designated service center. In October 2010, the IRS issued a Notice of Final Partnership Administrative Adjustment for the 2001 return which disallowed a $35.5 million loss Seaview had claimed and asserted a tax deficiency. After Seaview filed a petition in the United States Tax Court challenging the IRS's adjustment on the basis that it was untimely, the Service countered that Seaview never filed its 2001 return, so the deficiency notice was timely. The Tax Court agreed with the IRS. On appeal, a panel of the Ninth Circuit disagreed and vacated the Tax Court's decision; however, on rehearing, the en banc Ninth Circuit judges rejected the panel's decision and upheld the Tax Court and IRS.

The en banc court explained that neither the IRS revenue agent nor the IRS attorney qualified under the regulations as a "designated place for filing." It also rejected Seaview's argument that the regulation's place-for-filing requirement applied only to returns that are timely filed.

C. IR-2024-39

The IRS previously unveiled its ERC Voluntary Disclosure Program for taxpayers to return an ERC amount that they received in error. The Service shared warning signs that an ERC claim may have issues. It reminds businesses that the Disclosure Program ends on March 22, 2024.

Seven suspicious signs that an ERC claim could be incorrect:

- Too many quarters being claimed;
- Government orders that don't qualify;
- Too many employees and wrong calculations;
- Business citing supply chain issues;
- Business claiming ERC for too much of a tax period;
- Business did not pay wages or did not exist during eligibility period; and
- Promoter says there is nothing to lose resolving incorrect ERC claims.

A business that received, but was not eligible for, the ERC can participate in the Voluntary Disclosure Program. The program allows eligible participants to repay the incorrect ERC, minus 20 percent. Remember that the ERC is available to eligible employers that paid wages to employees after March 12, 2020, and before January 1, 2022.

D. IR-2024-36

The IRS and Security Summit partners have alerted tax professionals about an email scam attempting to steal Electronic Filing Identification Numbers (EFINs). The scammers are posing as tax software providers and requesting EFIN documents from tax professionals under the guise of a "required verification." The IRS has received dozens of reports of email scams targeting tax professionals. Tax professionals who receive these emails are reminded they should not respond to the email and should not proceed with any of the steps displayed in the email. If you receive the scam email, notify the Treasury Inspector General for Tax Administration (TIGTA) to report it. You should also save the email and send it as an attachment to phishing@irs.gov.

E. IR-2024-34

The IRS has launched a new web page on the Employer-Provided Childcare Tax Credit. This credit is an incentive for businesses to provide childcare services to their employees. It is worth up to $150,000 per year and will offset 25 percent of qualified childcare facility expenditures and 10 percent of other qualified childcare expenditures.

This credit is considered one of the components of the general business credit subject to the carryback and carryforward rule. This means employers may carryback an unused credit one year and then carryforward 20 years after the year of the credit. The credit is claimed initially on Form 8882, Credit for Employer-Provided Child Care Facilities and Services. Taxpayers whose only source for the credit is from a pass-through entity can report the credit directly on Form 3800, General Business Credit.

F. IR-2024-33

Fact Sheet 2024-3 contains revised frequently asked questions (FAQs) for Form 1099-K, Payment Card and Third Party Network Transactions, to add additional information and more clarity regarding Forms 1099-K. The revised FAQs contain substantial changes within each section.

Previously, the IRS decided to delay the new $600 Form 1099-K reporting threshold for third-party settlement organizations for calendar year 2023. For 2023, Form 1099-K reporting will not be required unless the taxpayer meets the old reporting threshold (over $20,000 and more than 200 transactions) in 2023.

G. Notice 2024-10; 2024-3 IRB 406; IR-2023-241

The IRS has provided additional interim guidance on the §55 corporate alternative minimum tax (CAMT). Previously, the IRS issued Notice 2023-64, which clarifies and supplements Notice 2023-7 and Notice 2023-20. The IRS anticipates that forthcoming proposed regulations will be consistent with this interim guidance.

The CAMT imposes a 15-percent minimum tax on the adjusted financial statement income (AFSI) of large corporations for tax years beginning after December 31, 2022. The CAMT generally applies to large corporations with average annual financial statement income exceeding $1 billion. The latest notice's guidance provides rules for determining the AFSI of a U.S. shareholder when a controlled foreign corporation (CFC) pays a dividend to the U.S. shareholder or another CFC. The guidance also modifies and clarifies the rules in Notice 2023-64 for determining the applicable financial statement of a corporation that is included in a consolidated tax return.

H. *Thomas A. Connelly, as Executor of the Estate of Michael P. Connelly, Sr., Petitioner v. United States,* United States Supreme Court No. 23-146

This case is on appeal from the Eight Circuit Court of Appeals. The question is whether life insurance earmarked for a corporate redemption should count toward a corporation's valuation for federal estate tax purposes. The Justices' decision in *Connelly* involves a common estate planning tool. Depending on the outcome of the case, the tool could create significant tax impacts for estates, especially if the unified credit is reduced in 2026.

The case involves a Missouri company, Crown C Supply Co., Inc.; the estate of deceased shareholder Michael Connelly; and Michael Connelly's brother, Thomas—the executor of the estate and the company's only remaining shareholder. After Michael Connelly's death, his share of stock in Crown was purchased by the company using the proceeds of life insurance that was acquired for the purpose of fulfilling a redemption agreement. Crown bought all of Connelly's stock for $3 million and his estate reported the stock at the same value on its federal estate tax return. The IRS disagreed with the valuation, arguing that the stock redemption agreement failed to set the price and, therefore, Connelly's stock was worth $6.86 million [$3.86 million valuation, which both sides agreed on, plus the $3 million proceeds multiplied by 77.18 percent (Michael's ownership interest)].

Three circuit courts have ruled on this issue. This court, agreeing with the IRS that it is included and two courts, the Eleventh (*Estate of Blount v. Commissioner* (2005)) and the Ninth (*Estate of Cartwright v. Commissioner* (1999)), saying it is not included. All three cases hinged on the interpretation of the phrase in Reg. §20.2031-2(f)(2) which says, in relevant part, that "consideration shall also be given to nonoperating assets, including proceeds of life insurance policies payable to or for the benefit of the company, to the extent such nonoperating assets have not been taken into account in the determination of net worth." Connelly's estate argued before the 8th Circuit that using the willing-buyer/willing-seller test in Reg. §20.2031-1(b), a willing buyer of the shares would "take into account" that the $3 million in proceeds are an "asset" that is directly offset by the "liability" of the redemption agreement. The IRS argued the redemption is not a liability in the ordinary business sense and that a willing buyer at Connelly's death who endeavored to purchase all the shares would expect to pay $6.86 million, and then either extinguish the redemption agreement, or redeem the shares from himself.

A ruling in favor of the IRS will mean that clients should likely be advised to consider cross-purchase agreements rather than stock redemption agreements, especially in the case of an entity like the one in *Connelly*, which prior to Connelly's death had only the two brother-shareholders. A cross-purchase agreement would prevent the life insurance's value from being added to the corporation's valuation, and thus lower the chances that the estate will be required to pay taxes—an especially relevant factor as the estate tax exemption sundown date approaches. This option would also be less desirable for a company with shareholders who vary widely in age, as the younger shareholders would be paying higher premiums than the older shareholders.

It should be noted that the safe-harbor provision of §2703(b) and the accompanying Reg. §20.2031-2(h) allow a contract to set the price for estate tax purposes as long as:

- The contract is a bona fide business arrangement.
- It is not a device to transfer property to members of the decedent's family for less than full and adequate consideration.
- The contract contains terms that are comparable to other similar arrangements entered into in arm's-length transactions.

In addition, there are also several court-created rules such as:

- The contract must contain a fixed or determinable price.
- The agreement must be legally binding on the decedent's life and the decedent's estate after death.
- The price set for selling the shares during the decedent's lifetime cannot be higher than the price that would be required by the estate on the decedent's death.
- The restrictive agreement must have been entered into for a bona fide business reason and must not be a substitute for a testamentary disposition for less than full and adequate consideration.

I. Fair Labor Standards Act, RIN 1235-AA43

The U.S. Department of Labor published a final rule, effective March 11, 2024, regarding employee or independent contractor classification under the Fair Labor Standards Act (FLSA). It rescinds the more employer-friendly 2021 test and returns the DOL's test for determining worker classification to a multi-factor economic realities test similar to the long-standing test used before 2021.

According to the DOL, a series of U.S. Supreme Court cases from 1944 to 1947 "considered employee or independent contractor status under three different federal statutes enacted during the 1930s New Deal era—the FLSA, the National Labor Relations Act (NLRA), and the Social Security Act (SSA)—and applied an economic realities test under all three laws." The DOL applied a multi-factor economic realities test based on these rulings, which typically include the following six factors which are considered of equal weight:

- Opportunity for profit or loss,
- Investments by the worker and the employer,
- Permanence of the work relationship,
- Nature and degree of control,
- Whether the work performed is integral to the employer's business, and
- Skills and initiative.

The 2021 rule attempted to simplify the economic realities test and focus on two factors: the worker's opportunity for profit or loss and the nature and degree of control over the work being performed.

Although the 2023 rule is new, it is similar to the court-based economic reality factors that have been used for decades. To help develop a standardized process and checklist, the DOL added a list of frequently asked questions (FAQs) on the new rule.

Since the new DOL worker classification rule was announced in January, a few court challenges have emerged.

J. *Thomas,* 162 TC No 2

The Tax Court found that a widow was not entitled to equitable spousal tax relief because she failed to show that she did not have enough income or assets to pay the tax debt, and she had spent lavishly in the years leading up to her request for relief.

After Mr. Thomas died, Ms. Thomas was left with over $60,000 in unpaid federal income tax liabilities. She asked the Tax Court for equitable spousal relief under §6015(f). She met the seven "threshold conditions" for such relief. Rev Proc 2013-34 describes circumstances in which the Commissioner will make a streamlined determination to grant equitable relief under §6015(f). To be eligible for a streamlined determination, the requesting spouse must establish that she (1) is no longer married to the requesting spouse, (2) would suffer economic hardship if relief were not granted, and (3) did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return. The Court found that she met Condition 1 but Condition 2 was not met. It therefore did not look at Condition 3. To meet Condition 2, a requesting spouse can demonstrate economic hardship by showing that (1) her annual income is below 250 percent of the federal poverty guidelines, or (2) her monthly income exceeds her reasonable basic monthly living expenses by $300 or less [Rev. Proc. 2013-34, Sec. 4.03(2)(b)]. While she submitted some financial statements, the Tax Court found significant holes in the record that precluded it from concluding that her total income was below 250 percent of the federal poverty line. For example, she submitted a 2020 tax return from her business showing only $18,000 in net income. But the Tax Court was hearing the case in 2023 and wondered why she did not submit a 2021 or 2022 return. Additionally, the Court looked to her assets. She owned two homes, each valued at more than $600,000, which she alleged that after paying off her mortgages, even selling both homes would net less than the tax bill owed. But the Court was not satisfied with her valuations, saying that the record suggested they were worth much more and that one could be sold to satisfy the tax bill. Lastly, she had significantly benefited from the underpayments of income tax, which weighs heavily against her entitlement to relief. The court cited her lavish spending (trips to New York and Paris, purchases of expensive designer handbags, etc.).

K. *Relentless, Inc. v. Dept. of Commerce, Dkt. No. 22-1219, and Loper Bright Enterprises v. Raimondo,* Dkt. No. 22-451

There are two types of deference given by the courts to administrative agencies' interpretations of regulations. Auer deference (*Auer v. Robbins*, 519 U.S. 452 (1997)) provides that the courts will defer to the administrative agency's interpretation of its own ambiguous regulations unless it is "plainly erroneous or inconsistent with the regulation."

On January 17, 2024, the Supreme Court heard oral arguments in two cases seeking to overturn the second type of deference, Chevron deference (*Chevron, U.S.A., Inc. v. NRDC,* 467 U.S. 837 (1984)). The question before the Court has the potential to fundamentally change how both federal and some state courts decide cases involving tax regulations where the statute is ambiguous. Chevron deference provides that in that situation, the courts will defer to the administrative agency's interpretation of the statute as long as those regulations are based on a "permissible construction" of the statute. With Chevron, the first inquiry is whether the statute is ambiguous. If the statute is unambiguous, the court must simply give effect to the clearly stated intent of the legislature. If the statute is ambiguous, the court cannot adopt its own construction of the statute; instead, the court must defer to the agency's interpretation if the interpretation is based on a "permissible construction of the statute." This dual inquiry—whether the statute is ambiguous and whether the agency's interpretation is reasonable—has come to be known as the "Chevron two-step." Putting an end to the Chevron doctrine has the potential to upend precedent that relied upon judicial deference, and at the same time will create new opportunities for taxpayers to challenge IRS rules and regulations.

While the Chevron Doctrine is federal, many states have adopted the concept of regulatory interpretation. Those cases would likely have the same effect at the state level for those states.

GROUP STUDY MATERIALS

A. Discussion Problems

1) A staff member came into the office to tell you about an unsolicited email she received concerning a possible new client. She was unsure how to respond to the email and wanted to know if the office was taking on new clients. What would you advise her?

2) A new client comes to the office and informs you that they received a Notice of Final Partnership Administrative Adjustment that denied a large loss and assessed a deficiency for 2015. You contacted the former accountant who advised that he did not have a proof of mailing of the original return. However, in 2017, an agent contacted the client about the missing partnership tax return and the former accountant, on behalf of the client, faxed a copy of the return and mailed her a copy by overnight mail. The following year, the Service audited the tax year and the accountant hand-delivered a copy to the agent. The prior accountant told them that the statute of limitations had expired and the IRS was too late to make the assessment. What would you tell the client?

3) Your client has come in and informed you that they used a company to apply for and received a $1.8 million ERC. You review the information again and explain to the client that they do not qualify. They have cashed the check. What would you advise the client?

Required:

Discuss the issues fairly presented in the above independent facts.

B. Suggested Answers to Discussion Problems

1) This is most likely the "new client" scam. These are common scams during tax season. Inform the staff not to open any attachments or links in such emails. The scammer is attempting to gain access to your system and/or load malware to obtain client data. The email should be copied and deleted. You should notify the TIGTA.

2) Faxing, mailing to an agent, or hand-delivery to an agent are not considered filed for purposes of the running of the statute of limitations. The return must be filed with the appropriate designated Service Center to be considered filed. As a result, the statute has not begun and the Service may assess additional taxes, penalties, and interest.

3) The client should be advised to participate in the Voluntary Disclosure Program for ERCs. The client will have to pay back 80 percent of the ERC received. It is important to note that this program ends March 22, 2024.

PART 2. INDIVIDUAL TAXATION

Estates and Trusts

The provisions of Subchapter J of the Internal Revenue Code govern the taxation of estates and trusts. This taxation can play a significant role in proper planning and can serve as a tool to shift income among family members. Practitioners must have at least a basic understanding of the complex rules that apply in this area. In this segment, Ian Redpath and Julie Welch discuss the basics of estate and trust income and taxation.

Let's join Ian and Julie.

Mr. Redpath

Julie, welcome to the program.

Ms. Welch

Thanks, Ian. Good to be here.

Mr. Redpath

Always great to have you here and get your insight. This is something that, I think, a lot of people just don't understand the nuances. It seems simple. I know basic taxes. I should be able to easily figure out what's going on here until you start talking about, well, there are three different types of income when you're talking about a trust, for example. There are three types of income. What do you mean three types of income? Well, there's accounting, there's tax, and then there's distributable net income (DNI). Then you get the deer-in-the-headlights look like, "Well, I didn't know any of that."

Then you get attorneys who [are] clueless as to the accounting aspects, and I'm very, very adamant that attorneys and accountants need to work together. Even looking at a simple trust in a will—a simple testamentary trust—because you have all sorts of questions that come up. Where [do] the capital gains go? Where does the fiduciary fee come from? If you say *income*, what do you mean if you say someone gets *all of the income* or *a charitable contribution of 50% of the income*? Do you understand what that means? Then, when you tell people, "Well, you can actually get a distribution that seems logically to come from income but doesn't because of the calculation of DNI," it's, "What? They're the income beneficiaries. They have to pay a tax on all of that." Well, not necessarily. Boy, all of a sudden, it gives you a whole new view of it, right?

Ms. Welch

It does, and your comment about working together with the accountants and the attorneys is so critical because every trust is different. It's not like just doing an individual tax return where you know this is what's going to happen. Every trust can be created differently and have different language on how something is treated, so it's so important to actually look at that trust agreement and read it and highlight it or mark it up. Every year, go back and, for that client, for that trust, go back and reread those provisions. When something doesn't make sense, you go back to the person who—hopefully it's the person who drafted it, but an attorney who helps interpret—[and ask,] "What does this really mean?" For anything.

The operation of a trust, it sounds so simple. Oh heck, let's just throw the income on a tax return. Oh my gosh, who has to pay tax on that stuff, or how much does the trust pay? Can't I do something different because, oh my gosh, the tax rates are too high at the trust level? Can't I do something different? Well, you have to follow what the trust says, so I think it's so important to work together.

Mr. Redpath

You know, Julie, what you just said, I think, is the most important thing practitioners can take away from today. That is that you're going to follow the trust, and you look at state law as the fallback from what's in the trust. Generally, as long as it's not illegal, the courts are going to say, "You follow what is in the trust agreement." If the trust agreement gives the trustee full and complete authority to dispose of any assets they want to, well, the settlor or the grantor of the trust, they said that's their desire. That's their will. And, you know, how things get allocated. Where do things come from? State law—every state has an allocation of income and deductions, and every state says the same thing. "If not provided for in the trust agreement." If not provided for. So, what are you providing for? Don't assume anything. If you want something done some way, put it in the agreement. Julie, that was just, literally, I think, the most important thing anyone can take away from today is making sure that the trust agreement follows what your client really wants.

This is a true story. I represented these kids. Their father and mother were elderly, but their father was very well known. Sporting goods. I, obviously, would never mention the name, but if I mentioned it, everybody would know who it was. He wasn't my client.

The kids came to me. They said, "Dad's dying. He's only got a simple will. What's going on? That's all we can find." So, I got all the information I could in a short time. I called the doctors. The doctors said, "Yes, he's competent, but no, he's not going to last very long." And I drafted—I always say it was the greatest estate plan in the history of mankind. It was the greatest. There was no one that could have written such an outstanding document.

I flew out with the family. I met with him in the hospital. He goes, "Ian, can I speak to you alone?" So, the kids and his spouse leave. He goes," I'm not signing that." I told him, "You understand that if you sign this, I believe…" Who knows on audit, but I said, "I believe we'll be saving you about $12 million in tax." He goes, "I don't care. I'm not signing it." I said, "Well, why?" He goes, "I think my wife's fooling around on me. I'm not doing any of those things, and I'm not leaving her anything." By the way, she was 88 years old at the time. But I'm sorry, he just refused. He wasn't going to do any of this.

So, the one thing you always have to get out of a client first thing is the non-tax reasons they might have behind anything they want to do. Now, I'm giving myself a break because I didn't know the guy, and I was doing it for the kids that asked me. But I'm going, "Okay." So, what was the greatest estate plan in the history of mankind? It was a lot of worthless paper. I killed a lot of trees doing something that became worthless.

You know, we revised things, and I couldn't discuss with the kids why [their] dad wouldn't sign. Now, was she fooling around? I don't know. Could be—I'm not going to get into that—but it didn't matter. He didn't care. He said, "I don't care. I'll pay the government more tax. I am not going to do these things. I'm not putting her name on this." "Okay, I got it."

So, always when you talk to a client and you do any estate planning, that's one of the first things that you want to get out [of them] is what are some non-tax [reasons]? You're going to find out very often there are some strong non-tax reasons. "Hey, you know my kid will spend everything. My kid will take the money, he'll go out, he's going to buy a Lamborghini, and he's going to spend all the money on everything else. He'll be broke." Okay, spendthrift provisions. There's always non-tax things in there.

Our job is not to write the greatest estate plan in the history of mankind. I tried that one time. Our job is to get the best, most favorable tax result based upon what the client ultimately wants. We just have to get there. Am I wrong anywhere there?

Ms. Welch

No, you are not. It is so critical, and it's nice if the accountant and attorney can work together before the trust is actually signed—while it's still in the drafting phase—because the accountant sometimes can read it in a different light. We're reading it from the accounting light—how we've got to account for it, how we're going to put it on the tax return, and what the tax consequences are going to be.

And if we walk through that with the client, I can't tell you how many times I'll tell a client, "Well, you've been doing it this way," you know, when you get a new client, "but that's not what your agreement says. You can't be doing that." They're like, "What? I had no idea," or, "That's not what Dad wanted." Well, it's right here in the document. You need to follow the document. If you're not following the document, it's not an income tax issue, really. It's more where the money's really going to go. That's what the trust is doing. It's protecting money.

Mr. Redpath

And the power that you give the trustee. I'll be right up front with everyone. I'm not a huge believer in corporate trustees alone. I had one situation where I had to argue with them. It was in a different state, and I said, "You know, I'm not licensed to practice in that state, but why am I explaining the state law to you?"

In essence, what they were going to do was put everything in the family trust and have nothing in the trust for the spouse. I went, "No, these things are not…." They were just taking value. I said, "None of those things are in the trust. These things were all in her own personal name. You're wrong. You can't do this." Ultimately, when she wanted to withdraw everything, she had the power. So, she wanted to withdraw everything from her side, and she said she wanted it in-kind sent to her brokerage account. They sold everything, collected a commission, and sent the cash, even though they had specific instructions from her. They said, "It says in the trust agreement [that] we have sole and complete authority to do this."

Remember, they're there to make money. Taking care of your family is secondary. And so, just a thought. Yes, you may want them around for investment advice, et cetera. Maybe you don't have a family member that you can really have—you might want to consider at least having a co-trustee with a family member. What [are] your thoughts on that? Maybe I'm maybe I'm totally off guard here. Maybe I'm off base.

Ms. Welch

You're talking from experience. Yes, experience is more important than seeing the things on the paper. You know, a lot of people say, "I want to have a corporate trustee because I don't want to have to burden my family." Well, sometimes your family's willing to do it. If you don't have anybody willing to do it or able to do it, then a corporate trustee does play a nice role. But usually, if we work with a corporate trustee, if we're working on the client stuff, we already know what's supposed to happen. We already have a list of what the assets are and where we think things should go. We are conferring with the corporate trustee because many times they're not quite sure, and then, working together, we get it to the right place, or the right thing happens. But they're the ones—you're right—they're the ones that ultimately control can they make a distribution or will they make a distribution. You're putting the burden on them.

A lot of them will follow what they think that the person wanted, but if that person is deceased—so the grantor is deceased, and you have a corporate trustee—and if it's somebody who they had worked with all of their career and life and all that, that's great. But guess what? That person retires or that person dies, and they're no longer there at that corporate trustee place. Now, you have somebody new who doesn't know your family history, your family values, or anything like that, and they're just picking it up and skimming through the document. "I have to follow what I think this says."

Mr. Redpath

I had another situation where I was talking to the person. I said, "Oh," and he showed me his family's cottage. We were out on this lake, and he goes, "Yeah." It's beautiful old place, but old. I mean, it was one of the old cottages on this lake where now everybody's got million-dollar places. This is one of the old, not insulated, a true "summer cottage." I said, "Geez, are you using it?" He goes, "No, it's just been empty since my dad died." I said, "Oh wow. Are you going to use it?" He goes, "No, we want to sell it, but the trustee…." I said, "Seriously? Your dad died ten years ago." I said, "How much money have you gotten from your dad's estate in the ten years?" He goes, "Nothing." I said, "None of the children have gotten a penny?" He said, "No." I said, "You better call the trustee, and you better find out what's going on. You should have gotten something by now because your dad died. Everything should have been distributed from what I can read." Because his mother had passed away shortly after. I said, "Why is everything just sitting in the trust, and you're not getting any distributions?" So, again, just another example. Watch out.

Trusts have different needs. You mentioned it. Is it for financial purposes? Is it protecting? Is it something that maybe you have a beneficiary who is a spendthrift, and you've got to watch out that they're going to spend everything. Or maybe you have someone with a disability or something like that. So, you know, there are different issues that have to be looked at.

In the typical trust, you have the grantor, and then the trust and the beneficiaries. There are two types of beneficiaries: *income* (who gets the current income) and the *remainder* (who gets whatever is left after). Then, of course, the estate—the person dies, and then you have the beneficiaries. So, they have to file a [Form] 1041 for income tax purposes. There are exemption amounts. What are those?

Ms. Welch

The different exemption amounts; an estate is the largest one, and that's $600. Then you've got whether it's a *complex trust* or a *simple trust*. A complex—I forget how they define one of them. One is defined as not being the other one.

Mr. Redpath

Right.

Ms. Welch

A simple one is usually the one where everything gets distributed—all of the income gets distributed to the beneficiary—and so the simple trust has a $300 exemption. And you're thinking, "Well, wait a minute. If everything gets distributed, do I need a $300 exemption?" We'll talk about that, I think, in a little bit, about how income gets taxed and what stays in the trust. But a simple trust has a $300 exemption, and a complex trust has a $100 exemption, so you've got $600, $300, or $100 different exemptions.

Mr. Redpath

What about accounting periods? Because that always becomes a question. Someone's died—what do we use for the accounting period? Or you have it in a trust. The trusts have a specific rule, correct?

Ms. Welch

Yes, trusts have a specific rule. Trusts are calendar year. They made that pretty blatant and easy. Calendar year. An estate can have a fiscal year. It cannot be longer than one year. So, what that means is, if somebody dies on January 15th—that might be a bad example because then we go to the calendar year.

But if somebody dies on February 15th, to have the longest possible time period in that estate, it will go all the way until January 31st of the following year. That would give you a little bit less than a 12-month period, and that's the longest it can be. Then, the next year, if the estate still isn't finalized or settled, it can go on for another full year from that date.

There's an interesting twist, though, to it. A trust and an estate can come together if it's what they call a living trust, an *irrevocable living trust*. They can come together and file a special election, a [Section] 645 election, to treat those two items as one. That trust, then, is part of that estate, and it does get a fiscal year on it. So, it's really not a trust; it's part of the estate. But that's the only exception.

Otherwise, trusts have a calendar year, and most estates you see have a fiscal year. But you can plan. You don't have to have it go for 11 months and 15 days. You can have it go for one month and 15 days or six months and 15 days in my example where the person died halfway through the year.

Mr. Redpath

But the rates here on the trust and estate are—you hit the highest rate pretty quickly, don't you?

Ms. Welch

You do. You're at the highest rate by about $15,000. For 2023, it was $14,450, and it gets inflation adjusted each year. At that point, you're already at the 37% tax rate bracket. Whereas an individual, we're talking a half a million dollars for some individuals, and they're not still at the 37% rate. So, a trust gets there very, very quickly. Only $2,900 is taxed at their lowest 10% rate, so it gets there very quickly.

Since these rate brackets got so compressed, a lot of people want to distribute as much as they can out of there if they can get it to a beneficiary with the lower bracket. In the old days, before these rates were so compressed, people would set up trusts for all of their kids. Every kid would have a different trust, and they would be able to use those lower brackets for each of the kids. They were able to really spread that tax out and have low rates. That was one of the impetuses for [the idea of] let's compress these rates and make sure that the trusts really should be operated the way they're supposed to be, and we're going to put the rates on at a high rate—a high rate at a very low income level.

Mr. Redpath

They're also subject to AMT [alternative minimum tax], and again, the exemption amount is low—under $30,000. And they're also subject to the NII [net investment income] 3.8% tax. Having something in a trust or an estate carrying on for too long is certainly not always the best when you're talking about the rate of tax. That concept changed dramatically a while ago.

Ms. Welch

One other thing we do have, Ian, is with the capital gains. They do have the lower brackets, but they get into that top 20% bracket again pretty quickly. But they at least get the 20% bracket the same as an individual does, so similar to that. You're not necessarily at the 37% bracket if you have high taxable income because if it's capital gain or qualified dividends, you do get that lower tax rate, along with the net investment income tax, of course.

Mr. Redpath

We have this concept in trust accounting of *accounting income*, and you mentioned the controlling document because that's really what this is based on. Now, there is a Uniform Division of Principal and Income Act, which many states have adopted or have something similar to it. But the law says you look at the document; you follow the document.

This accounting income becomes incredibly important if you're the income beneficiary because accounting income, it's really, kind of, following accounting rules. What did you get? If the document says that you get 50% of the income, it's not the taxable income. It's the accounting income that you get 50% of. This is often misunderstood, but then part of this—doesn't this become important? What power did you give the trustee, what is allocable to income, and what becomes allocable to corpus? So, why does that become important?

Ms. Welch

That's important because, as you mentioned, the income beneficiary gets the income, and the remainderman is the one who eventually gets the corpus or whatever. There is a struggle there between who's going to get the money? Am I going to get it now as the income beneficiary, or is the remainderman going to get it? If the trustee says, "Oh, well, gosh. Don't worry about it, Ian. You're the income beneficiary, but I'm going to give you more than the income this year." The remainderman can come in and say, "Hey, wait a minute, trustee. You shouldn't have given that to Ian. That's supposed to go to me. You gave too much to Ian, so I'm going to sue you because you gave too much." So, it really is important to follow that document.

Most of the time, you'll see things like income, like interest and dividends, and rents, and things like that. Typically, that would just be part of income as we would think about it. And principal would normally be things that we think about like, "Well, I sold an asset, so I have a capital gain." That's part of the asset itself, so that's going to be principal. Stock splits might be principal. Maybe insurance recoveries if I have an income-producing asset but something happened to the land itself, or there was a fire and burnt the house down. That's possibly principal unless the document calls it something different. Your textbook, when you're doing that return or that trust, your textbook is the trust document itself—to say, "What does it say?" If it doesn't say, then you go back to state law.

One of the biggest issues that we see is the capital gain issue because those rates are so high, and people want to get stuff out of those trusts and get it to the beneficiary because the beneficiary might even have a 0% capital gains rate. Can we get those capital gains out to the income beneficiary if the trust document is silent? I think, a lot of times then you have to look at state law and refer back to [the] legal side. I can read what it says, but I always go back to the attorney and say, "Let's make sure that we have this right. This is what it says on capital gains."

Mr. Redpath

If you take a simple example—you know, interest, dividends, rents, royalty—you could say, "Okay, that makes sense. That's pure income." But let's say that you allocated all the capital gain to the income beneficiaries, and so the trustee liquidates the entire trust. It all goes to the income beneficiaries, and there's nothing left for the remainder. There's nothing there. So, if you had a provision without thinking about [this], I mean, yes, capital gain is income. It's taxable income. It's income from the general concept of income. But if you think of it logically, it's really the underlying assets of the trust. If you sold that and put everything to the income beneficiaries, then what do you have left for the remainder? You would essentially liquidate the trust in a distribution, and I don't think that's what the people meant. You've got to be careful how you word the allocation of these items.

Likewise, what about fiduciary fees? Do the fiduciary fees all come out of the remainder every year, and the income beneficiary doesn't have any? Or do they come out of the income? Well, you could take all the income and have nothing left because all the fees and commissions came out of it. The law generally says, if you don't agree, most states say half and half—half goes to income; half goes to corpus.

These are all things that we have to think about from the accounting standpoint to work with the attorneys to make sure that they understand what these provisions mean. Because we know that a lot of attorneys use form books, and if the form book says this, then okay.

I went over an estate plan, and finally, I said to the attorney, "Who is Baker?" They said, "Oh, I just forgot to change the name in some of the places." So, I said, "Yes, you might want to change Baker [in] all the places because Baker is not the individual we're talking about."

Ms. Welch

That's funny. It's sad but true. I'm sure it happens more frequently than we think about.

Mr. Redpath

It's absolutely true.

So, taxable income is, you know, taxable income, right? It's the normal concept of taxable income. But then, we've got this thing that is really misunderstood—*distributable net income* (DNI). DNI is the deduction that's allowed for distributions. We don't just take the amount we distributed and say that's our deduction. We have to calculate the DNI, but it's also the maximum that the beneficiary has to pay tax on. Even though they may have gotten a distribution greater than the DNI, they're only going to pay tax on the DNI to the extent it comes from the DNI. Did I say that right?

Ms. Welch

Yes, and that's a real good point because you look at it, and you're going to calculate income—taxable income, not accounting income. You're going to calculate taxable income, and somebody's got to pay tax on that. Either the trust has to pay tax on that, or a beneficiary has to pay tax on that. When you add it all together, somebody's going to pay tax on the full amount.

If you distribute more than the income for whatever reason—you can make distributions of principal for whatever purposes a trust calls for—just because the beneficiary got that money doesn't mean it's taxable. They have to wait each year for that [Schedule] K-1 to come out and say, "Hey, this is how much of what you got. This is what the taxable consequences are." So, I think you did a good job of saying that distributable net income is the most that the beneficiary would have to pay tax on. It kind of gives you that, and it does some things with that tax-exempt interest.

If you have tax-exempt income, that amount is not taxable the same way that an individual would not have to pay tax on tax-exempt income. So, there [are] calculations to come up with that true number. DNI itself can be partially taxable and partially non-taxable because of the tax-exempt piece of it, but again, you're looking at the total income. Of this total pie, somebody's got to pay tax on the whole thing. Who's going to pay tax on what piece?

Mr. Redpath

We start with our taxable income; then we add back the exemptions. We add back, as you mentioned, tax-exempt interest because it's not subject to tax. We add back capital losses, and then we subtract out the capital gains that are allocable to corpus because they're not income related. Then, the deduction is going to be the DNI or the amount actually distributed. Again, [with] a simple trust, you assume a full distribution of everything that was there.

So, DNI—there's really two levels of DNI. There's first-tier and second-tier DNI. What's the difference between those two?

Ms. Welch

That's really where you're getting into if you have more than one beneficiary and they're not income beneficiaries, for example. So, one might be the remainderman and getting something along those lines. In a lot of trusts that we see, we don't have that issue because we don't have different tiers, but when you do have different tiers then you have to allocate first to the tiers and then among the people in those tiers to determine how much they get taxed on. Again, we have to take that whole pie and figure out who gets what piece of it to pay what piece of the tax on it. And there's calculations to do that. Really, you're looking at what was the total amount that would be considered the first tier, and then, if I have three beneficiaries, how much did each of those beneficiaries get so I can figure out what proportion amount? If they each got one-third, then they get one-third of whatever the first-tier distributable net income was, not whatever their actual distribution was, because, again, as you mentioned, they can be different calculations.

Mr. Redpath

Right, and first-tier, I guess we could simplistically look at it as simply, it's income that you have to distribute. The trustee has no discretion. So, if the document does not provide any discretion, the trustee must make a distribution of X amount of income, for example, to each of the beneficiaries or maybe a group of beneficiaries—to the children and then an amount to the grandchildren—or, let's say, income to the spouse, but [the trustee] has the discretion to make distributions to the children. It's possible to have no first-tier distributions if, in fact, there's nothing required to be distributed. If everything is just discretionary—you can do it if you want, trustee—then all you have are second-tier distributions.

So, when you do this, you use up your DNI on the first-tier distributions first, and then you get to the second-tier distributions—whatever's remaining after all the first tier. So, the first-tier [beneficiaries] get hit first with any income, and discretionary [beneficiaries]—whatever's left of the DNI gets allocated there to them.

Ms. Welch

That kind of makes sense based on the trust because, if the trust says all the income has to get distributed, those are the people who should have to be paying the tax on that because they got the income piece of it. Actually, on the second page of the [Form] 1041, when you're calculating distributable net income, there are separate lines there for total amount of distributions made during the year that were required and then other amounts distributed to get to the total number. So, it kind of goes through that calculation, right? When you're calculating distributable net income, it asks for those line items separately, probably to remind us that there are different consequences to each of those distributions.

Mr. Redpath

Now, what about the character of the income? We know when the trust calculates it—capital gain, tax-exempt income, et cetera. What about the character of the income when it gets to the beneficiaries?

Ms. Welch

Pretty much the same way. It's kind of like a pass-through to the extent—like a partnership, when it passes through interest income, it passes through as interest income. If it's qualified dividends, it passes through as qualified dividends. The same way with the trust. It maintains that character, so if the character is qualified dividends, and that's distributed out to the beneficiary, the beneficiary is going to get qualified dividend tax treatment on it. If it's interest income, it's going to pass out as interest income, and the individual is going to get interest income tax treatment, which is ordinary rates on that. Also, again, if it's investment income, like interest, it's going to come out and also be subject to the net investment income tax, just as if it was inside the trust. It's trying to make it somewhat of a pass-through so you're getting the same character and the same tax treatment when you get it out to the beneficiary.

Mr. Redpath

Another thing that happens that we don't think about necessarily is if you have tax-exempt income, then generally you're going to have to allocate a portion of the fiduciary fees to that tax-exempt income, and that becomes nondeductible. Now, from accounting, how you allocate it, it gets allocated because the tax-exempt income is accounting income. But from a tax return, you can't deduct it because it's considered to be expenses related to the production of tax-exempt income. I think that's missed often. Take the fiduciary fee and forget you can't deduct to the extent to which it may relate to the production of any tax-exempt income that's in that estate. So, that's something that's missed quite often.

Ms. Welch

Yes, you're right.

Mr. Redpath

What is the separate share rule?

Ms. Welch

The *separate share rule* is really when there's one trust, but it says, "Well, I want to have a separate share for each of my children, for whatever purposes." Maybe I didn't want to set up three trusts, so I just want to have one. But they each have a separate share, so you kind of do separate accounting for each of those shares.

Like the character of income passes through, well, let's now take that piece of the pie and we're going to distribute it out. I'm going to have separate shares, and I'm going to keep their accounting separate. So, if share number one distributes all of the income and share number two doesn't distribute any, I'm not going to allocate taxable income to the person who didn't get any. You're keeping everything kind of separate without having to physically do separate tax returns or have separate accounts set up at the bank or anything. It puts the onus on the accounting person to keep track of everything separately.

Mr. Redpath

It's primarily for the calculation of the DNI in a complex trust. That's really where it fits.

Julie, this is something that if you're not involved with it regularly, you don't think about it, but these are things that are really important when it comes to a trust. They're important to me in two ways. You've brought it up numerous times, and you brought it up right in the beginning. So, I'm going to go back to something you said; the document becomes, really, the key in all of this, whether it's how things get distributed to the potential income tax consequences. That document and having it properly drafted is so incredibly important. You made that point right up front, and I think that's where we should end also, is that is such an incredibly important point.

Julie, thanks for joining me. I've appreciated all your insights, as I'm sure our viewers have, and we'll have you on another program soon. So, Julie Welch, thank you very much for joining me.

Ms. Welch

Thank you very much, Ian. See you later.

Income Taxation of Estates and Trusts

By Ian J. Redpath, JD, LLM

A. Introduction

In planning a person's financial affairs, it is common to look at the potential estate and gift tax consequences**.** Those are only part of the puzzle. Income taxation of estates and trusts can play a major role in proper planning and often does not get the attention it requires. It can also serve as a tool to shift income among family members. There are three related but distinct types of income in estates and trusts. Each plays a role in the amount a beneficiary may receive and the taxation of both the beneficiaries as well as the estate and trust itself. It is important that every practitioner has a basis understanding of the complex rules that apply in this area. The taxation of estates and trusts is governed by the provisions of Subchapter J. The fiduciary files a Form 1041 to report the taxable income to the government.

B. Trusts and Estates Overview

A trust is usually either testamentary, established created by a will, or inter vivos, established by an instrument taking effect during life of the person establishing it. In a trust, the trustee takes title to property for the purpose of protecting or conserving it for the beneficiaries. The beneficiaries generally have "equitable ownership" rights to the property.

There are normally at least three key parties in a trust, each having a distinct role and sometimes having conflicting interests. The grantor, also called a donor or settlor, is the person establishing the trust and transferring the property into trust. The trustee takes title for the benefit of the beneficiaries and is responsible for preserving and administering the assets placed in the trust in accord with the trust instrument. The beneficiary is the party entitled to the income and/or corpus of the trust. Sometimes they may be referred to as income beneficiaries and residual beneficiaries or remainder persons. A conflict can arise as to what is income and what is corpus. The more that goes to the income beneficiaries, the less remaining for the residual interest holders.

The corpus of the trust refers to the principal of the trust. It is usually the assets transferred in and any additions, including amounts allocated to corpus by the terms of the instrument. The terms of the trust become extremely important when looking at the interests of the income beneficiaries and remainder interests. The income beneficiaries receive the accounting income of the trust while the remainder interest receives the corpus remaining at the termination of the trust. It should also be remembered that a trust can have a reversionary interest. That is an interest of the grantor that may require the assets to revert back to the grantor upon the happening of a certain event or on termination of the trust.

A trust may exist for a limited period of time, years or until the happening of an event or in some states it may be a dynasty trust that has an almost perpetual existence. Many states have eliminated or significantly revised the "rule against perpetuities" that required a trust to terminate no later than a "life in being plus 21 years."

Trusts are dependent on relevant State trust law. Reference needs to be made to what can be done in a particular state. There are some common principles that often date back to English common law. There are 25 states that have adopted a version of the Uniform Trust Code (https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d). Great care must be taken to assure compliance with the law. This is an area that requires coordination between a client's accountant and legal counsel. In a trust the trustee is generally bound to the terms set forth in the instrument by the grantor. Within guidelines the trustee makes distributions of income or corpus to the specified beneficiaries. Simple trusts require that the trustee distribute their entire accounting income each year and the beneficiaries are not qualified charities. Generally there are no distributions of corpus during the year. Any other trust is considered a complex trust. Another trust term that is often encountered is a grantor trust. This is a trust that the grantor has retained the right to revoke or to determine/change the beneficiaries. These are taxed directly to the grantor under IRC§671. (See also Rev. Rul. 75-257)

Estates will also have three key parties. The decedent, who establishes the will; the executor, the legal representative appointed under the will or the administrator if there is no will, and the beneficiaries who will receive the assets and/or income from the estate. If the decedent creates a will, the decedent nominates the executor and determines the beneficiaries. If there is no will, the Court appoints an Administrator and State law determines who receives the assets of the decedent.

The termination date of a trust or estate can offer planning potential opportunities. For example, if the entity is in a lower tax bracket than are the beneficiaries, income should be accumulated so that exemptions and lower brackets can be used with respect to the related income. Also, if an IRC§ 6166 election to extend time for payment of estate taxes is considered, then keeping the estate open for an extended number of years may make sense.

C. Overview of Estate and Trust Taxation

Trusts and estates are separate tax entities. They are not true conduits but generally will not be taxed if income is distributed to beneficiaries. Taxes are generally imposed on the entity's income or beneficiary who receives the income.

The entities are generally free to choose their own accounting methods. They do not have to follow the methods of the grantor or beneficiaries. An estate may report on a calendar or fiscal year, while trusts generally must have a calendar year-end.

Trusts, and to a limited degree estates, once served as excellent tools to shift income. The result has been provisions to discourage this use of trusts. For example, tax rates for trusts and estates reach the highest bracket , 37%, at taxable income of $15,200 in 2024. So they are clearly highly compressed. Dividends and long-term capital gains are taxed at the same rates as for individuals (i.e., 0%, 15%, and 20%). There are very nominal exemptions for estates and trusts. An estate is allowed $600, while a simple trust is $300 and $100 for all other trusts.

The fiduciary may be subject to alternative minimum tax (AMT). They have a $23,900 annual exemption to the AMT, phased out at a 25% rate when AMTI exceeds $79,850. The AMT rate is the same as individuals. Further, the net investment income of trusts and estates is subject to the 3.8% additional Medicare tax on undistributed net investment income that exceeds $12,500.

D. Income in Estates and Trusts

Estates and Trusts have three types of income; accounting income, taxable income and distributable net income (DNI). Unless modified, whenever the Code uses the term "income" for trusts and estates, it refers to accounting income. This is an extremely important concept. For example, if a beneficiary is to receive ½ of the income of the trust each year, that is the trust's accounting income, not taxable or gross income. The general rule is that the instrument, trust or will, will determine the allocation of items to income or corpus. This included both income and expenses. The courts will always first look to the instrument and the desires of the grantor or decedent. If there is no provision in the instrument concerning an item, then reference will be made to state law. Each state has its own laws concerning these items. There is a uniform act that many states follow to some degree. The Uniform Principal and Income Act essentially constitutes GAAP.

Example: The Jones Trust is a simple trust. Mrs. Thompson is its sole beneficiary. In the current year, the trust earns $40,000 in taxable interest and $25,000 in tax-exempt interest. In addition, the trust recognizes an $8,000 long-term capital gain. The trustee assesses a fee of $10,000 for the year. If the trust agreement allocates fees and capital gains to corpus, trust accounting income is $65,000, which is what is distributed to the beneficiary of the simple trust. The financial burden of the fiduciary's fees is born by the residual holders. If the trust agreement allocates the fiduciary's fees to income, the trust accounting income is $55,000, and that is the amount to be distributed. The income beneficiary bears the entire burden of the fiduciary fees. If the trust agreement allocates all capital gains and losses and one-half of the trustee's commissions to income, then the trust accounting income is $68,000.

As can be seen from the examples, if the capital gains and losses are allocated to income and the fiduciary disposed of all of the assets of the trust, then there would be nothing left to distribute to the residual holders.

Estate or trust taxable income is computed similarly to individuals, with some exceptions (IRC §641(b)). The fiduciary is allowed the ordinary, necessary and reasonable expenses related to the production of the income, carrying on a trade or business, management or maintenance of the property and administrative costs (IRC §161 and §212). There are no deductions for the expenses related to tax-exempt income (IRC §265). The deductible fees must be allocated between the deductible and disallowed amounts. An estate or complex trust is allowed a more generous deduction for charitable contributions (Reg. §1.642(c)-1 and 3). Unused loss carryovers are allocated to the beneficiaries when the entity terminates. To the extent administrative costs are deducted on the Estate Tax Return, they may not be taken on the Form 1041 by the fiduciary. The character of income and deductions is determined at the entity level. Fiduciaries are subject to the passive activity loss rules of IRC §469. Material participation must be provided by the fiduciary. (See TAM 201317010). Cost recovery deductions are assigned proportionately among the recipients of the entity accounting income. It does not matter if the depreciation is allocated to income or corpus. It is also subject to recapture. In addition, fiduciaries qualify for the IRC §199 domestic production activities deduction (DPAD). Based on the allocations of accounting income, the fiduciary and the income beneficiaries share W–2 wages and qualified production activities income (QPAI). The deduction is then computed separately by the beneficiaries.

Generally, no gain or loss is realized on property distributions to a beneficiary. The property will have the same basis to the beneficiary as it did to the entity. The distribution absorbs DNI and qualifies for a distribution deduction (IRC §643). The fiduciary may elect to recognize gains or losses related to distributed assets. If elected, the beneficiary's basis in the property will be its fair market value on the date of distribution. The trustee or executor can direct the related gain or loss into the hands of the optimal taxpayer. The related-party provisions of IRC §267 limit the effectiveness of this if the beneficiary qualifies as a related party.

Gross income includes income in respect of a decedent (IRD) and income to which a decedent was entitled but which was not includible in the decedent's final income tax return. IRD includes traditional IRAs, rents, interest, salary, etc., accrued but not received by a cash-basis taxpayer. IRD also includes death benefits from retirement plans. If the IRD is included in the gross estate, there is no step-up or step-down to fair market value. That is, the beneficiary receives a carryover basis.

The third type of income is distributable net income (DNI). It serves several functions. It is the maximum distribution amount that can be taxable to the beneficiaries (IRC §652 and §662) as well as the distribution deduction for the trust or estate (IRC §651 and §661). The character of the income making up the DNI carries over to the beneficiaries (IRC §652 and §662). The computation of DNI is determined as follows:

1) Compute taxable income before distribution deduction
2) Add personal exemption.
3) Add net tax-exempt income.
4) Add net capital losses.
5) Subtract any net capital gains allocable to corpus.
6) Calculate the distribution deduction by subtracting net tax-exempt income.
7) Subtract the lesser of the following to arrive at taxable income
    - Deductible portion of DNI.
    - Taxable income actually distributed.

Income tax credits are allocated between the estate or trust and its beneficiaries on the basis of the accounting income allocable to each (IRC§642).

Item	Totals	Accounting Income	Taxable Income		Distributable Net Income/Distribution Deduction
Income					
Income					
Expense					
Expense					
Personal exemption					
Accounting income/taxable income before the distribution deduction					
		Step 1	***Step 2***		
Exemption					
Corpus capital gain/loss					
Net tax-exempt income					
Distributable net income					
Distribution deduction				***Step 3***	
Entity taxable income				***Step 4***	

From: South-Western Federal Taxation 2024: Corporations, Partnerships, Estates and Trusts Hoffman; Raabe; Young; Nellen and Maloney

E. Taxation of Beneficiaries

DNI determines the amount that can be taxed to the beneficiaries. Income passed through to the beneficiaries retains its specific tax character. Therefore, it is taxed to the beneficiaries in the same manner it would have been taxed to the fiduciary had it not been distributed. Beneficiaries are taxed on the entity's income required to be distributed in the beneficiaries' tax-year in which the estate or trust's taxable year ends. The maximum amount that beneficiaries of a simple trust are taxed on is their proportionate share of the entity's DNI, even if not actually distributed to the beneficiary. If there is tax-exempt income included in DNI, the taxable amount to the beneficiaries could be less than the DNI. The items of income in DNI are apportioned ratably according to the required distributions to the beneficiaries.

The starting point for the calculation of DNI is the taxable income before the distribution deduction. To this the following adjustments are made:

- Add back the personal exemption.
- Add back net tax-exempt interest; reduce the total tax-exempt interest by charitable contributions and by related expenses that are not deductible.
- Add back the entity's net capital losses.
- Subtract any net capital gains allocable to corpus. The only net capital gains included in DNI are those attributable to income beneficiaries or to charitable contributions.
- = Distribution Deduction (Note: DNI calculation includes the net tax-exempt interest income of the entity, so that amount must be removed from DNI in computing the distribution deduction.

DNI is categorized as first tier or second tier DNI. First tier DNI relates to amounts that are required to be distributed. Second tier DNI is allocated to discretionary distributions made by the fiduciary that are not required to be by made by terms of the instrument. This has a significant impact on the taxability of distributions in complex trusts and estates.

DNI is first categorized as first tier DNI to the extent of distributions required to be distributed currently, whether or not actually distributed. If only first-tier distributions are made, and the total amount distributed is less than the DNI, each beneficiary's distribution is fully taxable as it is fully covered by DNI. However, if the distributions exceed the amount of first tier DNI then the DNI must be allocated to the beneficiaries on a pro-rata basis, The DNI is allocated by multiplying the first tier DNI by the beneficiary's proportionate share of the total first tier distributions for the year.

After DNI is allocated to first tier distributions, it is then allocated to second-tier distributions. If the first-tier distributions exceed the DNI then all of the DNI will be absorbed in the first-tier and so none of the second tier distributions will be taxable to the beneficiaries. If the first-tier distributions do not exceed the DNI then the balance of the DNI is then allocated to second-tier distributions. Like first-tier DNI, the second-tier beneficiaries will have income to extent of the allocable portion of second-tier DNI. The manner of allocation is the same as for first-tier DNI. (See IRC§662(a)(1) and (2) and Reg. §1.662(a)-2 and 3).

It is possible that a person can be both a first and second-tier beneficiary. In that c

ase they will be treated as two separate and distinct distributions the same as those made to different persons.

Example: The trustee of the Newport Trust has the discretion to distribute the income or corpus of the trust in any proportion between the two beneficiaries of the trust, Lauren, and Ainsley. Under the trust instrument, Lauren must receive $15,000 from the trust every year. In the current year, the trust's accounting income is $50,000, and its DNI is $40,000. The trustee pays $15,000 to Lauren and $25,000 to Ainsley. The DNI is first allocated to first-tier DNI distributed to Lauren. This leaves $25,000 of DNI which will all go to the second-tier distribution to Ainsley. All of the income is taxable because it is covered by DNI and the trust will deduct $40,000 in arriving at taxable income.

Lauren receives a first-tier distribution of $18,000. Now assume that second-tier distributions include $20,000 to Lauren and $25,000 to Ainsley. The trust's DNI is $40,000. Total distributions exceed the amount of DNI. The DNI is allocated between Lauren and Ainsley as follows:

(1) First-tier distributions

- To Lauren $18,000 DNI
- To Ainsley —0—

Remaining DNI = $25,000

(2) Second-tier distributions

- To Lauren $ 9,778 DNI [(20/45) × $22,000]
- To Ainsley $12,222 DNI [(25/45) × $22,000]

As a general rule, the character of income to the beneficiary will be the same as that received by the fiduciary. If there are multiple beneficiaries and all DNI is distributed, each class of income is allocated to beneficiaries in proportion to the income they receive. If the entity distributes only part of the DNI, the distributions are treated as being in the same proportion as the items that are included in DNI (IRC §662)

Similar to partnerships, estates and trusts can make special allocations of deductions or income. The allocations must be permitted by the trust agreement and have substantial economic effect (Reg. § 652(b)-2(b)). NOLs and capital losses do not flow through to beneficiaries until the termination year. If there is negative taxable income in the termination year, the loss flows directly to the beneficiaries. They are taken as miscellaneous itemized deductions subject to the 2%-of-AGI floor.

GROUP STUDY MATERIALS

A. Discussion Problem

Your firm represents the trustee of the Berkley trust. The trust instrument allows the trustee to distribute any amount of accounting income and corpus to the trust's income beneficiaries, Peter and Paul. The following information is provided to you for this year.

Taxable interest income	$50,000
Tax-exempt interest income	25,000
Long-term capital gains—allocable to corpus	10,000
Fiduciary's fees—allocable to corpus	8,000

Distributions: $30,000 to Peter and $30,000 to Paul.

Required:

1). What is the Berkley trust accounting income?

2). What is the DNI and the distribution deduction?

3) What is the taxable income?

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B. Suggested Answers to Discussion Problems

Item	Totals	Accounting Income	Taxable Income	Distributable Net Income/Distribution Deduction
Taxable interest income	$50,000	$50,000	$50,000	
Exempt interest income	25,000	25,000		
Net long-term capital gain	10,000		10,000	
Fiduciary fees	8,000		(5,647)*	
Personal exemption			(100)	
Accounting Income/Taxable Income Before the Distributions Deduction		$75,000 **STEP 1**	$54,253 **STEP 2**	$54,253
Exemption				100
Corpus Capital Gain/Loss				(10,000)
Net Exempt Income				22,617**
Distributable Net Income				$66,970
Distribution Deduction			(44,353) ▲ **STEP 3**	
Entity Taxable Income			$ 9,900 **STEP 4**	

* 60/85 x $8,000

** $25,000 – $2,383 (disallowed fees)

▲ Lesser of total distributions ($60,000) or deductible portion of DNI ($66,970 – $22,617 = $44,353).

PART 3. BUSINESS TAXATION

Digital Assets

Digital assets have grown in both popularity and value in recent years. The Internal Revenue Service has provided some guidance and proposed regulations regarding broker reporting, gain and loss determination, and some definitions. However, there is still confusion regarding what qualifies as digital assets and what is reportable regarding them. Ian Redpath and Brian O'Sullivan discuss the evolving world of digital assets, including what information practitioners must obtain from clients and the professional judgments that must be made for proper reporting.

Let's join Ian and Brian.

Mr. Redpath

Brian, welcome to the program.

Mr. O'Sullivan

Ian, thanks for having me back.

Mr. Redpath

Always great to have you here; always great to get your insights. Our viewers always enjoy when we do programs with you, so it's great to have you back.

So, we have an interesting—this thing keeps changing almost daily. *Digital currency* a few years ago, then *virtual currency*, and now *digital assets*. The terms keep changing; the language keeps changing in the tax returns. I think one thing our viewers should be aware of is that there has been added to both S corps and partnerships new language mirroring the language from the [Form] 1040 on digital assets. So, now they're expanding that from a reporting standpoint.

Let's go back and see where this confusion is coming in and what they did because they made major changes in the language and changed it from *virtual currency* to *digital assets* in 2022. Can you give us a little history as to where we are now?

Mr. O'Sullivan

Sure, and I think you framed that right, Ian. It has been a little bit across the board. It seemed like, for a little while, that the individual taxpayers were getting picked on a little bit because we saw, a couple years ago, the question pop up on the 1040. And when it first came out, there [were] words on there that said, "did you acquire."

Usually, we're thinking from a tax perspective. We want to do the right thing. We check the box. Yes, my client acquired Bitcoin or acquired Ethereum—or whatever virtual currency was out there—but that doesn't necessarily mean anything. There [were] no separate disclosures that were required. Just, yes, we acquired it. Because you're allowed. You're allowed to have virtual currencies. It doesn't mean you did anything wrong as a taxpayer. But taxpayers were quick to note, "Well, wait a minute. [The Form] 1120-S's, the [Form] 1065s—they don't have that same box." So, they were feeling a little bit picked on.

But the issue is, over time, as you framed up, they've started to tweak the terms of what they're looking for. To their credit, I think they're finally finding the sweet spot. It's right on the front. It's on page one of the 1040. Now you're going to see, as you mentioned, we've got boxes on the 1065; we've got boxes on the 1120-S.

They've also changed the language now with respect to these digital assets, and it really is focusing on the income tax components. Because, really, we're doing income tax returns, at least with respect to the 1040s, and the information returns with the 1065s [and] 1120-S's. They took away that "did you acquire" component because "acquire" doesn't necessarily mean you had a taxable event. Now they're finally focusing on, "did you receive," "did you sell," "did you dispose," "did you exchange"—those types of things that indicate to us as practitioners, okay, we're thinking about Schedule Ds. Oh, okay, did we end up getting it for services? Ah, they're looking for income events.

When the Service was trying to tee this up, you'll see that they first started in 2014 to get this going. Then we saw the forms. They did another rehash in 2019. They changed the language. At one point there was a swing and a miss where—and this is where the attorneys love to work in the *and* or *ors*—they changed the previous "and" statement, which was very, very expansive. They changed it to an "or" statement, which I think was probably unintentional. I don't think the goal was to limit the scope. When they put that "or" statement in the 2019 language, on its face, something that would clearly fit into a digital asset, like an NFT [non-fungible token], all of a sudden doesn't necessarily meet the criteria of a digital asset. So, that left us in a tailspin.

Practitioners, over the last couple of years, we've been struggling with (1) what's the right way to answer the box, and (2) working with your clients to make sure we're asking the right questions [and] making sure they know this is new. They have to tell us how we're supposed to be answering that box.

Mr. Redpath

Brian, I think that's an important point that you're making because a lot of times the language—and people call them different things, client organizers, input sheets, whatever you call it that you get the information [from]—often the language we have in [those items does not include] the information we need.

For example, you mentioned NFTs. Well, NFTs did not appear to be digital assets based upon the definition that the IRS was using, but then they changed it in the instructions. In fact, they came out and said NFTs—and for those who aren't aware, those are non-fungible tokens. You have to ask your client about those.

So, an NFT could be a GIF, like $2 million for one of the first GIFs that ever came up. *GIF* as in G-I-F, not as in *gift*. So, GIFs. It could be artwork. All of a sudden you have 100—we'll call them *shares* for want of a better term—tokens in the artwork. You don't own that artwork, but you own a piece of the artwork through this NFT that you can then dispose of.

People go, "Well, wait a second. It doesn't fit." As you said, "and" definition, it doesn't fit. The "or" definition, it fits. So, the Service just came out and they didn't change that definition that they had in some of their previous guidance that had the "and." They changed it in the instructions. They haven't come out with anything beyond instructions, but then, in the instructions and on the FAQs, they specifically said, "For example, NFTs are digital assets."

So, yeah, could you make an argument that maybe they're not? You could. Are you going to be successful? Well, not unless you're willing to go to court.

Mr. O'Sullivan

Sure.

Mr. Redpath

The IRS is not going to grant that, so there better be enough on the table to make it worth going to court to argue that issue. But, as you said, this language has been problematic for some people, and I think they're trying to, as you said, refine it enough so at least you understand.

Mr. O'Sullivan

Yeah. One of the things that they did initially with the first cut—when we first saw the question on the 1040 a couple of years ago—it left a lot of us as practitioners going, "Well, what really do you mean?" Because my kid over here plays video games, and within the video games, there's a virtual currency. I'm taking real U.S. dollars [and] converting it into that in-game currency. And while the terms and conditions of most of those games say you can't sell the in-game currency, sometimes players don't adhere to the terms, and they will sell in-game currency. You play a video game, you get a bag of gold or whatever the equivalent is, and you could sell it in the real world.

We were left going, how expansive could this possibly be? So, the Service gave us these three criteria—and this was the "and/or"—where they were talking about, does it function as (1) a medium of exchange, (2) a unit of account, and/or (3) a store of value? Where previously that was an "and" statement.

For us as practitioners, we take a very conservative approach on this because we've been down the road with the FBAR [Foreign Bank Account Report] reporting and how there [were] so [many] teeth there. And while this isn't necessarily a FinCEN [Financial Crimes Enforcement Network] thing on its face, it's right on the income tax return. It's not hard to see the parallels of what they're really trying to get to.

So, if we use these three criteria with the client, [and] if they say, "Yeah, it meets one of those," we tend not to play the verbiage games. We'll mark the box, and at that stage, we're usually working with the client to find out, do we have an income event for receiving it? Do we have an exit event, like a schedule D, reportable thing for converting the currencies?

Mr. Redpath

And again, they went to this term *digital asset* because practitioners were saying, "Well, it's not currency. What I have is not currency; therefore, it doesn't fit. Therefore, I don't have to report it." So, [the IRS] said, "Well, okay, we'll just expand it to *digital assets*, [and] make it a much broader definition."

I thought it was interesting, in the 2023 language, that they chose to eliminate the word "gift." So, for 2023, "did you receive as a reward, award, payment for property or services, or sell, exchange, or otherwise dispose of a digital asset or a financial interest in a digital asset," (i.e., an NFT). I sold an interest in an NFT (a non-fungible token).

They eliminated the word "gift," but I think that does fit in the disposition. You dispose of an asset if you gift it to someone. So, that's one question people have had for 2023 is, do I have to report a gift since they took that language out? I'm taking the position that a disposition includes a gift. I disposed of it by gift. I would still have to report that. I don't know. What is your feeling on that? Because I've heard people saying different things about that since they took the word "gift" out. I just think they took it out because they thought it was redundant.

Mr. O'Sullivan

Sure. The way we're looking at this is, property is property, whether it's tangible or virtual. I think that we understand as U.S. citizens, U.S. taxpayers, [or] residents, you're taxed on worldwide income. And the way the regime currently is, we understand [that], if we give a gift of property, we think that also fits within the virtual component there, so I can gift without creating an income tax event. So then, removing it from an income tax return, that's how we've internally rationalized it, is that it's just focusing on the income tax.

Doesn't mean the gift side goes away though. If you have something of value—and sometimes it's significant value—for a taxpayer to say this thing of significant value that I gifted to another person in a true and completed gift is not on a gift return, to me, [it's] a bit far-fetched. I don't know that I'd be signing that one myself.

Mr. Redpath

Yeah, I think the IRS, in that context, like you said, I think what they're saying is, is there a gift tax return that's being filed with this?

Mr. O'Sullivan

That's right.

Mr. Redpath

Did you dispose of it? Well, and previously, again, they said "gifts" right out front. I just don't feel they were eliminating gifts. I think they just felt the language was redundant in the term *disposition*.

I think one of the other things that causes confusion is the instructions provide that if an asset has the characteristics of a digital asset it's going to be treated as a digital asset. There's no further explanation. We do have two conflicting things—the "and" and "or." Is that all the characteristics? You would think, when they talk about characteristics, you would get a whole list of items that would be, “These are the characteristics to look at,” but they don’t. We really just have the three things that you mentioned, the instructions and some previous guidance saying “or,” and some limited guidance saying “and,” but they haven’t really provided much in that. So, again, you go back to 2014, and you had the “and/or.” Then you have “and” in 2019. Then you have “or.” Again, it’s all over the place on the different guidance. Notice 2014-21, and then in Revenue Ruling 2019-24—again, different characteristics. I mean, it is different if you use “and” or “or,” so I think that’s just something that is out there.

Now, we have this requirement to come in under the Infrastructure Act for broker reporting of digital assets. Where do we stand on that?

Mr. O’Sullivan

It’s a great question because it really comes down to [the fact that for] the last couple years, the government has been struggling to get optics on this. They tried to do the checkbox. We belabored where it’s inconsistent [in] the way that it’s being answered. They’re not really hitting home.

The brass ring for taxes and from the government’s perspective is, let’s get a third party to start doing the reporting much like they do today with Schedule B. Just like we see today with [Form] 1099s.

Mr. Redpath

Some of us, Brian, are old enough to know that, at one time, there was no requirement for reporting basis. Basically, your broker statement just was pretty much what value you had, and you figured it out when you disposed of an asset. And the brokerage firms, the investment houses, went crazy when [the IRS] finally said, “You have to report.” [The firms said], “No, we can’t do that. We can’t report all these things. We don’t have the info.” Well, now it’s standard; you expect it.

Mr. O’Sullivan

That’s right.

Mr. Redpath

But we’re getting the same thing now from the digital side, saying, “Well we can’t report all this stuff. What do you want us to report? We have no information.” And in some respects, I think they’re right. In a lot of respects, some of these offshore don’t have the information that they would need.

Mr. O’Sullivan

Yeah, and I think that some of that is by design. Part of the allure of virtual currencies was the anonymity that comes along with it, and that’s assuming you have somebody who wants to do things that are above board with a virtual currency. When you introduce an element of individuals who want to do things that are not above board with digital currencies, you can see where the need for secrecy or [the] desire for it really starts to—a part of that is now when the Service starts to identify these third-party houses that are helping to facilitate [these transactions].

Someone like me, if I want to open a virtual wallet and, all of a sudden, I want to put in a Bitcoin or whatever else is the hot new virtual currency, and try to catch the wave, you have to have a wallet to be able to do that. Then you’ve got to have a broker who helps you facilitate [moving] those virtual currencies around. So, now the government—we saw this with sales tax compliance across the [United States]. They pushed the sales tax, not on the itty-bitty sellers, but on the big facilitators.

Mr. Redpath

Right.

Mr. O'Sullivan

The big ones that are out there. We all know them. So, this is another opportunity where the government said, "Don't worry. We already have the analogy here in the States with the brokers. Same thing with the 1099s. We push it onto them. We're going to do the same thing for you guys." Right now, it postpones digital reporting. That's at least with the latest guidance that we got in 2023. But they did kind of say, "If you want to, you may report it consistent to existing reporting practices."

And what we mean by that is, we do see some virtual currency houses—the big ones—that are out there, that have already gotten a lot of press for some of the challenges they faced as a budding, infant-type industry. There's a lot of scrutiny. Are they tax havens? Are they helping people avoid or evade taxes?

In order to get ahead of that and to get governments to better adopt virtual currencies, they're trying to play nice in the sandbox, and some, while they don't have a hard requirement, they are producing—because you do have good taxpayers here in the States that want to meet their obligations, but they need help. It's kind of like when somebody has—they go to Vegas; they do a lot of gambling. I want to report my gambling winnings and my losses, but if I do it and I have to count all these receipts, I'm not going to be right. So, you get a player's card, and they give you an accounting at the end of the year. The same thing here with some of these virtual houses, where they're going to give you the analogy of something that would be like a [Form] 1099-B. And if you're receiving it (if you have some of the better ones), they'll give me the comparable of your 1099 for the income component that's there.

Mr. Redpath

Well, Brian, I had a client come in with a rather extensive, very extensive [Form] 8949. "Here's the form."

Mr. O'Sullivan

Yep.

Mr. Redpath

I'm going, "Okay. All right."

Mr. O'Sullivan

Scan and attach.

Mr. Redpath

This was prepared by somebody. Yeah. It was a third party that they paid to essentially go through all their digital-asset accounts and try to put together this information. They actually came in and said, "Okay, here you go. It's all reported. It's ready for you to file."

Mr. O'Sullivan

Sure.

Mr. Redpath

Of course, I looked through it and said, "I think I want to look through this." But again, the extent to which I have the information—or even have the knowledge with some of these virtual currencies and all the things that go on—to say, "Oh, yeah, this is something we've got to report. This is something we don't." A lot of practitioners don't have that. You start talking about, "Oh, there was a hard fork," or "This person, they're a miner, and they're using a proof-of-stake." There [are] all sorts of different proofing methods out there, and they have different results on there, depending on how it's done.

There's a lot of that out there where the average practitioner, unless you're a high-tech person—you're a techie—you really may not even know how to do this. It's highly complex when you start trying to dig into the woods on how these digital assets work. [It] really is, kind of, digging into the woods on it.

Mr. O'Sullivan

Yeah, and certainly we've had some analogies with this over time. We've all had high-net-worth taxpayers that, at some point, they got involved with a broker that said, "Well, why don't we start exchanging currencies?" And you have your forward contracts, your calls or puts, but when you're moving currencies around, that reporting's existed for quite some time. So, it's kind of an analogy here with a digital currency. It's just a different medium. It's a different forum.

Mr. Redpath

Right.

Mr. O'Sullivan

Instead of buying individual shares of a euro or whatever or other currency comes to mind—but you still have to track your U.S. basis in that currency, and then its disposition when you come back here to the States. It doesn't just [go], "Oh look, I caught the ride. It's now worth a little bit more, and I win." The government says, "No, no, no. Where's my 40 percent?" They still want their piece.

Mr. Redpath

Yeah, absolutely. We've got a set of proposed [regulations] that are interesting that have come out. One of the interesting parts about the proposed regs is that, in determining gain or loss, they said they're reliance regs. So, those portions of the proposed regs that came out recently are reliance regs. I'm just going to read this, so we'll put this slide up for our viewers.

What's a broker? According to the regs, a *broker* includes "persons who sell [or] license software to unhosted wallet users if they facilitate or offer services to facilitate the purchase or sale of digital assets." But the term *broker* does not include "merchants that sell goods or services in return for digital assets," I think that becomes important; "persons who are solely engaged in the business of validating transactions through proof-of-work," we were just talking about that—[persons] who get compensated, proof-of-work or proof-of-stake or another consensus mechanism; and persons who solely engage in selling hardware or software without such persons providing other functions.

So, essentially, a broker is really the person who's licensing the software or facilitating the transactions. It is really the person who is becoming the broker. So, the proposed regs—where do we stand on these things?

Mr. O'Sullivan

The proposed regs are going to require brokers to end up ultimately reporting the digital assets, and that's really where they want to get to. Now, it's going to be staggered where there's going to be the reporting of proceeds, [and] then it's going to be staggered for reporting of gains and losses.

Your important due dates there are going to be for—2025 is going to be your reporting with respect to your proceeds. So, to Ian's anecdote there, some practitioners remember when basis wasn't required. Well, here's the next one for the new crop. We're going to have individuals years from now say, "Well, I remember when digital assets only had to report basis, and that was for the year 2025." [In] 2026, they're going to catch up, and those brokers are going to have to end up reporting the basis component of that along with the gain.

The challenges that we have along the way [are] with respect to the information reporting and whether or not we're going to be implementing this new form that they're introducing to do this. That's going to be the Schedule DA, the 1099-DA.

Right now, we're working with a lot of clients. We're talking about 1099s. We're talking about tax forms. How are we going to report this to the government in a timely fashion? For those practitioners that are thinking along the same lines, it's not as simple as any digital transactions will go on the equivalent of a 1099-B. In this case, it'll end up being a 1099-DA, and that's going to be for reporting a digital asset that takes place after 1/1/25.

It is refreshing in that we're getting guidance years in advance to give the software companies time to plan [and] us to get the word out with respect to our clients. This way we can start shaping what does that data need to look like? Or, as practitioners, what do we need to be on the lookout for as a part of our intake for tax returns just to be compliant in 2025? No longer is getting just the 1099-B really the answer. We need to also be asking for a 1099-DA in 2025.

Mr. Redpath

We have IR-2023-153, which goes over that and sets up the timing on that 1099-DA that's supposedly coming out. We also had postponed the $10,000 rule, the reporting for the $10,000 when it involves digital assets. So, we've had a postponing of what we expected to have to do in this year. Just like the 1099-K got postponed again, we have kind of the same situation here.

Mr. O'Sullivan

That was a big deal where a lot of firms were really angsting over the receipt of virtual currencies. Now look, in most [people's] lives, this isn't something that's going to impact or change how they're doing it. But if you're in that sphere and you're in that industry with virtual currency and you're catching a wave where there's appreciation. If there's no reporting and all of a sudden you're using digital assets to now acquire a house, using digital assets to acquire a business, or converting [digital assets] to cash and then using the cash to acquire a business. If there's no reporting on that, oftentimes individuals will take a very cavalier approach of, let them come get me. That's not really the way to attack it.

They're trying to come up with mechanisms—pushing it onto the brokers—to capture those types of transactions, even the real-estate-broker component. When homes are being bought with digital assets, there's going to be reporting. One on the 1099-S. That's not new; we've seen 1099-S for years. But there is going to be a component on there that talks about the fair market value of digital assets received to help facilitate that transaction. Now, that's interesting.

As a practitioner, I don't do a tremendous amount, boots on the ground, with clients navigating virtual currencies. It's very fact specific. [The] client brings it to us. They had a significant win; they want to talk about when can they take losses. That type of consulting, but it's not the bread and butter of what we're doing.

So, to hear that there's a targeted industry with the real estate side pulls back the curtain a little bit. That says where does the IRS perceive there could be abuses? And it clearly is seeing individuals in the digital-asset realm starting to buy real estate, and they now want better optics. They don't want to just know that the sale happened and how much it [was] worth. They want to know how much of it was paid for with digital assets. To me, I thought [it] was pretty eye opening to see that particular angle that they're working towards.

Mr. Redpath

Yeah, and I think the fact that they're trying to define in the proposed regs—for example, they say if you move from one wallet to another, that's not a disposition. You don't have to report anything like that. Don't worry about it. But the real estate, they're very specific that [the taxpayers] have to report the fair market value of the digital assets if they're used in a real estate transaction.

Now, the reliance part of these [regs] really goes to determining gain or loss, which is relatively simple in essence. I think there are some issues relative to, okay, how do we, for example, allocate costs? Or if we're disposing of something, what are we disposing of if we have digital assets that we have acquired over a period of time?

We know, in a brokerage account, we can specifically identify, otherwise, we use FIFO [first-in, first-out]. They had to address, well, what do we do in a digital account? If you just say, "Okay, I'm disposing of whatever number of Bitcoin." How do you determine what the basis is in the Bitcoin that you that you disposed of? Or you use Bitcoin—and this is where people are going to get caught, I think, in a lot of things—you use Bitcoin to purchase, let's say, real estate. Well, the fair market value gets reported when you bought the real estate, but what this buyer better remember is, they just disposed of that Bitcoin or that digital asset. They may have to report gain or loss based upon the basis that they had in the digital assets they used to purchase the real estate.

Mr. O'Sullivan

Sure, and it's absolutely a trap for the unwary because I can even see it. Think heat of tax season. You ask a client, "What happened? How'd you buy it?" "Oh, I transferred this." A lot of us—because we don't often ask our clients when they buy something with $10,000 of cash—we don't usually ask them, "What was your basis in that cash?" We don't usually do that.

Mr. Redpath

Right.

Mr. O'Sullivan

But we have to start to retrain ourselves that we only don't have a disposition of that cash because we have $10,000 of basis in that cash.

The same analogy is there on these digital assets. I think a great example would be somebody got in when Ethereum was very, very, very low or Bitcoin was real low, and now it's sky's the limit. Then you convert that into property—buying a house, buying a car, got to get a jet, got to get a couple of those—but that appreciation has never hit a tax return. Well, once you convert that from a digital asset into a plane, into a property, that's for value, and the government's not willing to walk away from that because it's significant. So, that's absolutely a trap for the unwary.

To your point, I can imagine the conversations with our clients now when we say, "Well, what was your basis in that money that you sold?" And they go, "What are you talking about? You never asked me about my basis in my money before."

So, the idea of, just like if you were to hop onto a brokerage account and you sell certain lots of stocks, you can specifically identify when you have a purse or a wallet that has your Ethereum or your Bitcoin. How much or what lot of the Bitcoin did you dispose of? With these regs, what they talked about was, at the time of the transaction—you don't get revisionist history—at the time of the transaction, if you [specifically] identify what lot it is, that'll be respected for basis purposes of what lot did you sell. That kind of levels the playing field because we get to do that today with stocks, so that made a lot of sense. It's not too far of a grasp to figure out why they did that. And then, to your point, Ian, they said, "If you don't [specifically] identify, then we're going to go FIFO." Right. We're not going to play games of averaging and, "Well, I meant this lot, but I didn't tell you." They just said, "This is the playing field."

Mr. Redpath

I think the other thing there, Brian, is the fact that they said, "You know what? It's FIFO based upon your purchase date, not the date that it went into your account or in your wallet." Because you could be moving [a digital asset] from wallet to wallet. You could be all over the place. It doesn't matter when it entered there. It's going to be, "Okay, when did you actually purchase that?" So, there may be additional information we're going to have to get from the client, not just, "Okay, here's the information that I have on this in this wallet that I disposed of to purchase this property." It's going to be, "No. When did you purchase that, and what was the value at the time you purchased it?"

Mr. O'Sullivan

Sure.

Mr. Redpath

We have to look at the purchase date to determine that under FIFO, so FIFO is [the] purchase date, not the date it got into your account or your wallet. Those are going to be totally disregarded for this purpose.

Mr. O'Sullivan

Sure.

Mr. Redpath

Again, we're going to allocate any particular costs. We're going to allocate them also when we dispose of these. So, there's a whole lot of things we have to pay attention to today that we didn't have to, and even though this reporting—as I said, transaction costs. If you're disposing of your digital assets, you're going to have transaction costs that go with those. If you're exchanging digital assets, one digital asset for another, one half of the total digital asset transaction's cost paid by the taxpayer [is] allocated to the disposition and the other half [is] allocated to the acquisition. So, how do we allocate the costs when we go from one digital asset to another digital asset? It says basically 50/50. Don't look at values. It's 50/50. Fifty percent of the transaction costs went to the sale; fifty percent went to the purchase. We don't have to argue about it.

Mr. O'Sullivan

Yeah, I thought that was nice. It was good of them to get ahead of that because they could see the game already getting played well in advance. Well, should it be based on quantity? Should it be based on relative value? Should it be based on…? And they just said, "Split the baby. Half the costs go into each one and move on." I thought that was good to give clarity for taxpayers on that.

Mr. Redpath

I think it was too. I think what's happened then is, as you said, we've got some clarity, but the nice thing is we've got clarity that applies essentially now. Because these are reliance regs. You don't have to follow them. By the way, they're only reliance regs related to the determination of gain or loss. So, the basis, what's the basis of the assets, what assets, the transaction costs—those are the reliance rights.

The other part of the regs are not reliance regs. They're, just as you mentioned earlier, okay, well, this is going to come in. You'd better start preparing for it in the future. Like the DA form, 1099-DA (digital assets). That's prospective in that sense.

Mr. O'Sullivan

Ian, to that point, that was actually a nice segue right there. I know I introduced the concept of the DA, I drew some analogies, but I didn't specifically cover what that form is going to be looking like.

Mr. Redpath

Okay.

Mr. O'Sullivan

Before we move too far along, I just want to paint some color on the 1099-DA so people can just start to emotionally envision what this looks like. I think what the IRS did was they just took a copy/paste of the 1099-B, and they changed the title so that it was separate. So, that'll give people a feel for what kind of information they [are] looking [for]. Specifically, they're going to be looking for the name, address, and the identification.

Mr. Redpath

I'll put a slide up here for our viewers so they can see what we're talking about here—the new form.

Mr. O'Sullivan

Perfect. Again, nothing new here: name, address, tax ID number, name and number of units of the digital assets sold. If you're visualizing emotionally a 1099-B, this reads like a script. The sale, the date, and the time.

That's interesting, the time. I'll be curious to see how far they go with that, to see if they're talking about actual time so that they can track it. Because it's a currency, and it can move pretty quick. At times this stuff can be fungible and interchangeable, so it's easy to lose it. The time is a way to hook into that, so I'll be curious to see how that's implemented. We currently don't have that with shares of stock in the 1099-B, so that's an area that's different.

The gross proceeds amount after reduction for the allocable digital transaction costs—we just covered how that's determined—and then a transaction ID in connection with the sale. All of that, except for the time component, looks exactly like a 1099-B. So, it should be an easy row to hoe for these brokers that are going to have to do this reporting and even systems on our side to be able to receive this data.

Mr. Redpath

Yeah, it definitely is going to be helpful, but there's still going to be a lot of questions. I'm glad that it's been pushed off until we can get an answer to some of the things that are there. Clearly, they're trying to make everyone in the industry aware of where they're coming from and when they're going to get there. So, you'd just better be prepared. But, yeah, this 1099-DA form, as you said, it's going to parallel.

Here's the thing that I'm just not sure of. On the brokerage statement, we get all of these, you know, the loss disallowed [and] it's a wash sale. I'm assuming that [digital assets] would be in the concept of a wash sale. I'm not sure because I haven't addressed that yet, but are there going to be disallowed losses similar to your stock investments or your securities investments? I could see them treating this in a similar manner and saying, "Well, you don't get the loss because you turned around repurchased two minutes later. **Y**ou repurchased a similar [asset]." And then you get a question: is Ethereum a similar asset to Bitcoin?

Mr. O'Sullivan

Right.

Mr. Redpath

I see these arguments coming up that they haven't addressed yet. Again, following a brokerage statement, you've got that column that [says] disallowed loss, wash sale. So, I think that's something they're going to have to address between now and 2025 when this comes in.

Mr. O'Sullivan

Sure, the ability to harvest any inherent losses that are there and then immediately turn around and rebuy, which was the whole reason for the wash sale rules with shares of Apple or Microsoft. It was just too convenient. You've got to believe that's going to be on the agenda to make crystal clear when these things go to reporting. They're going to have a position. I don't want to presume and say this is the way that it is, but we'd be very leery of the ability to manipulate that and harvest your basis all the way down and still end up in the same economic position.

Mr. Redpath

I think we have to go back to what we were saying originally when we first started today, that we do have to start considering, as practitioners, our client input and what information are we going to need to gather? Not for last tax season and, no, not necessarily for 2024, but certainly going forward.

So, I think we need to start preparing for that now and collecting the data as quickly as possible because we're going to need it for anything filed. Yeah, [the regs talk] about sales after January 1, 2025, but we need to be preparing our clients and starting to get the information. Because you know what's going to happen in 2025, they're going to come in, and we're not all going to be prepared. So, I think it's a good idea to start preparing now. Get them thinking about it and finding out what they've got. And even to answer the questions today—what do you have, and do we have anything to report?

The government knows there's a lot of noncompliance when it comes to digital assets. That's the reason they're proposing all of these things; they think they're losing a lot of money from noncompliance. And I don't blame practitioners. This is complicated. If you're not asking the right questions, and even if you are asking the right questions, you don't necessarily get the right answers from your client.

Mr. O'Sullivan

Sure, and if you think about the analogies of these other initiatives that they had with, say, offshore compliance or reporting of controlled foreign [corporations] or foreign bank accounts, it took years for the industry and a lot of saber rattling and then really bad penalties and then enforcement for that to become part of the real culture. I'm not going to say we didn't comply, but a lot of times we said, "We do income taxes. We don't do international." But once that really had teeth, then it became part of the culture.

It's the same thing with this. The tide is turning. It's taken many years, and it's now a part of our interview process, our organizers, [and] our engagement letters. We're asking these things ad nauseam. One of the things they taught us from the foreign bank account compliance was they buried that question on Schedule B. Well, they learned from that. They said, "No, no, no. We're not going to bury this anymore." [It's] right on the 1040. You've got to answer. And now it's phrased in the way that it looks like an income event.

Mr. Redpath

By the way, Brian, it was hidden first. When they first started asking the question, it was hidden. And then they said, "No, no, no, no, no. We're moving it right to the front here."

Mr. O'Sullivan

Yes, those were the postcard years when the 1040 was chopped up quite a bit. But, yeah, they hid it, and they realized [it] doesn't make sense. But the important part, I think, is—what the practitioners that are going to hear this should really be taking away— is we talked about a lot of dates based on implementation and/or proposed regs. A lot of that's with respect to the brokers, not with respect to the taxpayer or the practitioner.

Mr. Redpath

Right.

Mr. O'Sullivan

Income is still income, and when there's a disposition of a digital asset, that's still something where the radar has to go off. More questions have to be answered because it's likely an income event or—we didn't even talk about it—a loss event.

Mr. Redpath

Right.

Mr. O'Sullivan

It could be a realized disposition. So, us as practitioners, just know that even though there's staggered dates, it does apply going forward. You don't need a tax form for it to be income. It is income.

Mr. Redpath

Right. Absolutely. That's an absolutely great point, and that's a great point for us to end on. The taxpayer still has to pay tax, so it doesn't matter whether they get a form or not from someone else.

Brian, I want to thank you for joining me. Really great program. Thanks, and we'll have you on another program soon.

Mr. O'Sullivan

I really appreciate it, Ian. Thank you.

Digital Assets—2023 Tax Year

By Ian J. Redpath, JD, LLM

A. Introduction

The popularity and value of digital assets have grown significantly. The urban myth is that digital assets are not money so there is nothing to declare. They have been used by some to avoid tax as a form of tax shelter similar to the concept of an offshore account. Taxpayers often do not understand that digital assets are not anonymous, and the IRS has the ability to track them. In 2014, the Service began providing guidance on virtual currency and, of course, the taxation of it. The 2022 Form 1040 and its instructions made substantial changes to the reporting and types of digital assets without providing much guidance. The language has been changed again for the 2023 tax year and expanded to include other forms. Additionally, the Service has issued proposed regulations dealing with broker reporting, gain and loss determination, and some definitions. The gain/loss parts of the proposed regulations are considered reliance regulations.

In 2019, the IRS added a question about virtual currency to Schedule 1 of Form 1040. For 2020, they moved that question to the first page of Form 1040 and the header of Form 1040-SR. This question was revised further in 2021, 2022, and 2023.

For the 2022 tax year, the Service made some significant changes that added additional complexity and confusion. To demonstrate the importance of this area, they added a marginal heading of "Digital Assets." Next, and more importantly, the language of the question was substantially revised to read:

At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?

This new language expanded the category to "digital assets." The question also asked if the digital assets are received whether by reward, award, or compensation (such as wages), when prior years used "acquire" or "dispose." This new definition of the word *receive* required taxpayers to report what would be a taxable transaction. Part (b) of this question was meant to capture nearly any relinquishment of a digital asset, whether by selling it (capital gain), exchanging it (various potential tax implications depending on the nature of the transaction), or gifting it (which could result in the need for a Form 709 filing). The intent is to determine if other reporting may be necessary.

For 2023 tax year, the language was slightly revised again to read:

At any time during 2023, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?

Though no longer specifically called out in the question, a gift is a type of disposition; therefore, gifts of digital assets should still be reported. For 2023, the IRS added similar questions to Forms 1120, 1120-S, and 1065.

There is justified confusion among practitioners as to why some assets are included. The Form 1040 instructions are derived from the Infrastructure Investment and Jobs Act (IIJA) and provide the following information:

Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins. *If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal income tax purposes.* (Emphasis added.)

This mirrors the prior language for virtual currency, but unlike the instructions for virtual currency there is no further explanation of what those characteristics are. Likewise, the IRS website does not provide any characteristics. The Service has provided conflicting characteristics of virtual currency. Notice 2014-21 says it is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In Rev. Rul. 2019-24 and the FAQs, the Service uses "and" rather than "and/or," meaning all three characteristics must be present for an item to qualify. Non-fungible tokens (NFTs) don't appear to be a unit of account but are a store of value. NFTs are listed in both the instructions and the updated website as digital assets.

B. Non-Fungible Tokens (NFTs)

On April 28, 2023, the Joint Chiefs of Global Tax Enforcement (J5) issued an intelligence bulletin containing best practices for taxpayers who have or are planning to buy NFTs. NFTs can be anything digital, including drawings, music, or other items that can be considered art. They have been described as an evolution of fine-art collecting, only digital.

While money and crypto/virtual currencies are *fungible*, meaning they can be traded or exchanged for one another, NFTs cannot. Because they hold a value primarily set by the market and demand, they can be bought and sold just like other physical types of art. NFTs' unique data makes it easy to verify and validate their ownership and the transfer of tokens between owners. They are unique cryptographic tokens that exist on a blockchain and cannot be replicated. NFTs can represent real-world items like artwork and real estate. Tokenizing these real-world tangible assets makes buying, selling, and trading them more efficient while reducing the probability of fraud.

An NFT is created, or *minted*, from digital objects that represent both tangible and intangible items, including:

- Graphic art
- GIFs
- Videos and sports highlights
- Collectibles
- Virtual avatars and video game skins
- Designer sneakers
- Music

So, in lieu of getting an actual oil painting to hang on the wall, the buyer gets a digital file. Artists no longer have to rely on galleries or auction houses; instead, artists can sell their art directly to the consumer as an NFT, which also lets them keep more of the profits. In addition, artists can program in royalties, so they will receive a percentage of sales whenever their art is sold to a new owner. Brands like Charmin and Taco Bell have auctioned off themed NFT art to raise funds for charity. Twitter co-founder Jack Dorsey sold his first ever tweet as an NFT for more than $2.9 million.

While NFTs do not appear to be a unit of account or medium of exchange, they are a store of value. If Rev. Rul. 2019-24's definition of virtual currency is applied rather than Notice 2014-21's definition, NFTs would have previously been excluded from the IRS' virtual currency question. The IRS has taken the ambiguity out of this by specifying in the Form 1040 instructions that NFTs are considered digital assets and, thus, the updated wording of the question applies to them.

C. Broker Reporting

There is a growing question about whether virtual currencies are reportable on Form 114, Report of Foreign Bank and Financial Accounts (FBAR). FinCEN Notice 2020-2 stated that FBAR regulations do not define a foreign account holding virtual currency as a type of reportable account. [See 31 CFR §1010.350(c)]. Thus, a foreign account holding virtual currency is not reportable on the FBAR unless it is a reportable account under 31 CFR §1010.350 because it holds reportable assets besides virtual currency. However, the Financial Crimes Enforcement Network (FinCEN) intends to propose to an amendment to the regulations implementing the Bank Secrecy Act (BSA) to include virtual currency as a type of reportable account. At this time, these changes have not been implemented.

Generally, transactions in digital assets will be reported on Form 8949 and Schedule D of the Form 1040. However, if a person received any digital assets as compensation for services or disposed of any digital assets that were held for sale to customers in a trade or business, those transactions must be reported as any other income of the same type—for example, W-2 wages on Form 1040 or 1040-SR, line 1, or inventory or services from Schedule C on Schedule 1. IIJA expanded the reporting requirements in order to stop the perceived underreporting of digital asset transactions.

The IIJA expanded the definition of *brokers* to include those responsible for regularly effectuating transfers of any digital asset recorded on a cryptographically secured distributed ledger or any similar technology. The definition includes persons who sell or license software to unhosted wallet users if they facilitate or offer services to facilitate the purchase or sale of digital assets, but the term *broker* does not include merchants that sell goods or services in return for digital assets; persons who are solely engaged in the business of validating transactions through proof-of-work, proof-of-stake, or another consensus mechanism; and persons who are solely engaged in selling hardware or licensing software without providing other functions or services. It defines *digital assets* as “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.” As a result of this change, brokers were to have increased reporting requirements for transactions entered into after December 31, 2022, but this deadline was extended.

In IR-2023-153, the IRS issued a series of proposed regulations that would require brokers to report sales and exchanges of digital assets by customers. The proposed regulations cover a range of issues related to digital assets where there have been questions, including defining brokers and requiring proceeds to be reported to the IRS on new Form 1099-DA. The new reporting is for sales or exchanges of digital assets that take place on or after January 1, 2025. The proposed regulations would require brokers—including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallet providers—to report gross proceeds on a newly developed Form 1099-DA and to provide payee statements to customers in accordance with Prop. Reg. §1.6045-1. Brokers, in certain circumstances, would also be required to include gain or loss and basis information for sales that take place on or after January 1, 2026, on these information returns and statements, so that customers have the information they need to prepare their tax returns. For each sale of a digital asset on or after January 1, 2025, the broker will need to report the following information:

- The name, address, and taxpayer identification number of the customer
- The name and number of units of the digital asset sold
- The date and time of the sale
- The gross proceeds amount (after reduction for the allocable digital asset transaction costs)
- The transaction ID in connection with the sale, if any
- Whether the sale was for cash stored-value cards or in exchange for services or other property

For each sale of a digital asset on or after January 1, 2026, the broker must also report the adjusted basis, the date and time of purchase, and whether any gain or loss is long-term or short-term.

The proposed regulations extend to those reporting on real estate transactions—such as title companies, closing attorneys, mortgage lenders, and real estate brokers—who are treated as brokers for dispositions of digital assets. They must report the disposition of digital assets paid as consideration by real estate purchasers to acquire real estate in real estate transactions that close on or after January 1, 2025. These real-estate-reporting taxpayers would also be required to include the fair market value of digital assets paid to sellers of real estate in real estate transactions that close on or after January 1, 2025, on their Form 1099-S.

Finally, the proposed regulations set forth the rules for the allocation of costs incurred in a digital asset transaction, determination of basis and amount realized, and the identification of digital assets sold. In general, existing regulations and other guidance under §§1001 and 1012 provide the tax rules for determining a taxpayer's amount realized on the disposition of digital assets and basis in purchased digital assets. Proposed §1.1001-7(b)(1)(i) provides the general rule for determining the amount realized on a sale or disposition of digital assets for cash, other property differing materially either in kind or in extent, or services. Under these rules, the amount realized is the sum of: (i) the cash received; (ii) the fair market value of any property received (including digital assets) or, in the case of a debt instrument issued in exchange for the digital assets and subject to §1.1001-1(g), the issue price of the debt instrument, as provided under the rules of §1.1001-1(g); and (iii) the fair market value of any services received. The sum is then reduced by the allocable digital asset transaction costs.

These proposed regulations provide rules for identifying which units of a particular digital asset held in a single wallet or account, as defined in proposed §1.6045-1(a)(23), are sold, disposed of, or transferred when less than all units of that digital asset are sold, disposed of, or transferred. Proposed §1.1012-1(j)(1) and (2) provide rules for units of a digital asset that are left in an unhosted wallet, and proposed §1.1012-1(j)(3) provides rules for units of a digital asset left in the custody of a broker.

For units held in unhosted wallets and, therefore, not left in the custody of a broker, proposed §1.1012-1(j)(1) provides that if a taxpayer sells, disposes of, or transfers less than all the units of the same digital asset held within a single wallet, the units disposed of for purposes of determining basis and the holding period are determined by a specific identification of the units of the particular digital asset in the wallet or account that the taxpayer intends to sell, dispose of, or transfer. For a taxpayer that does not specifically identify the units to be sold, disposed of, or transferred, the units in the wallet or account that are disposed of are determined in order of time from the earliest purchase date of the units of that same digital asset. For the purposes of making this determination, the dates the units were transferred into the taxpayer's wallet or account are disregarded (e.g., if the taxpayer held them in a different digital wallet for a period of time after the purchase date).

Proposed §1.1012-1(j)(2) provides that a specific identification of the units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of the transaction, the taxpayer identifies in its books and records the particular units to be sold, disposed of, or transferred by reference to an identifier (e.g., purchase date and time or the purchase price for the unit) that is sufficient to identify the basis and holding period of the units sold, disposed of, or transferred. A specific identification can be made only if adequate records are maintained for all units of a specific digital asset held in a single wallet or account to establish that a unit is removed from the wallet or account for purposes of subsequent transactions.

Taxpayers may rely on the gain/loss computation rules for dispositions in tax years ending on or after August 29, 2023. These portions of the proposed regulations are considered reliance regulations.

Internal Revenue Code §6050I requires any person engaged in a trade or business that receives cash in excess of $10,000 in a single transaction or in related transactions to file Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business. The IIJA expands the scope of this section to include required reporting of digital assets. As a result, individuals engaged in a trade or business will be required to report digital asset transactions over $10,000 using Form 8300. The reporting requirements were to be effective for transactions entered into as of January 1, 2023, or later. However, in Announcement 2024-4, the Service announced it is postponing this particular provision as it requires the Treasury Department to issue regulations before it goes into effect.

D. Other Reporting

Practitioners are also questioning whether virtual currencies are reportable on FinCEN's Form 114. FinCEN Notice 2020-2 stated that FBAR regulations do not define a foreign account holding digital assets as a type of reportable account. [See 31 CFR §1010.350(c)]. Thus, a foreign account holding digital assets is not reportable on the FBAR unless it is a reportable account under 31 CFR §1010.350 because it holds reportable assets besides virtual currency.

However, FinCEN intends to propose an amendment to the regulations implementing the Bank Secrecy Act (BSA) to include virtual currency as a type of reportable account. At this time, these changes have not been implemented.

E. Conclusion

There is quite a bit of confusion on what is included in digital assets. The lack of official guidance means that practitioners must take care to obtain the right information from their clients and make professional judgements as to what is reportable.

A. Discussion Problems

Your client, Carla Springs, is a famous professional soccer player living and playing soccer in the United States. She heard that she can avoid paying tax on part of her salary by being paid in crypto/virtual currency. As a result, in 2023, she had her employer pay two thirds of her salary in Bitcoin. Each pay period, her employer diverted two thirds of her check to purchase a Bitcoin that was then put in her virtual wallet.

Carla also invested in Lionel Messi superhero cards. They were issued virtually as NFTs. On 2/1/23, she invested in five of them, each token costing $5,000. On 12/1/23, she purchased an additional five tokens for $8,000 each. On 12/15/23, she made a gift of three tokens to her best friend and teammate, Pippa. The value at the time of the gift was $9,000 per token. On 12/31/23, she sold a single token for $10,000.

Required:

1) Address the tax treatment of the salary diverted into Bitcoin.

2) Address the tax treatment of the NFTs.

3) Address the reporting requirements for the above matters.

B. Suggested Answers to Discussion Problems

1) The fact that Carla is receiving compensation for services makes the value of her salary taxable as ordinary income. The form of payment, digital or otherwise, is not relevant. Digital assets include crypto/virtual currency, so Carla's Bitcoins would be considered property received for services. The fair market value of the property (equal to what Carla's employer paid for the Bitcoins) is taxable. In addition, the digital assets would be subject to FICA as wages.

2) There has been a controversy as to whether NFTs are digital assets; however, the Service, for the 2023 tax year, makes it clear that NFTs are digital assets subject to answering "YES" to the question on Form 1040. The instructions for Form 1040 and the revised IRS website specifically list them as digital assets. The transfer Carla made to her teammate is a gift, and the sale she made at the end of the year is considered a sale of property. She should specifically identify the tokens she is transferring as otherwise, it would be considered first in, first out (FIFO).

3) Carla has several reasons that she must answer "YES" to the question on page 1 of the Form 1040. She received digital assets and also disposed of interests in digital assets both by gift and by sale. The amounts Carla received as compensation would be reported as salary. The sale should be reported on Form 8949 and Schedule D. She is subject to filing a gift tax return, although the total amount of the NFTs Carla gifted to Pippa is below the annual exclusion amount.

GLOSSARY OF KEY TERMS

Beneficiary—Party entitled to the income and/or corpus of the trust. Sometimes they may be referred to as income beneficiaries and residual beneficiaries or remainder persons.

Corpus of the trust—Principal of the trust

Digital Assets—Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins.

DNI—Distributable Net Income

FinCEN—Financial Crimes Enforcement Network

Grantor—Called a donor or settlor, is the person establishing the trust and transferring the property into trust

NFTs—Nonfungible tokens

Trust—Usually either testamentary, established created by a will, or inter vivos, established by an instrument taking effect during life of the person establishing it. In a trust, the trustee takes title to property for the purpose of protecting or conserving it for the beneficiaries. The beneficiaries generally have "equitable ownership" rights to the property.

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

1. According to Ian Redpath, based on the *Seaview Trading* case, when does the statute of limitations on a tax return start to run?

   A. At the end of the taxpayer's tax year.
   B. On the date a taxpayer sends its tax return to the IRS.
   C. On the date the tax return is officially filed in its designated IRS service center.
   D. Currently, it is on the date it is officially filed in the designated service center, but this may change after the Supreme Court rules on the case.

2. According to Ian Redpath, the seven signs of suspicious employee retention credit (ERC) claims outlined in IR-2024-39 include which of the following?

   A. Claiming too few quarters or too short of a time period.
   B. Referencing government orders that qualify as a government shutdown.
   C. Not referencing any applicable supply chain issues.
   D. Listing too many employees or using incorrect calculations.

3. According to Ian Redpath, IR-2024-36 provides a warning about which of the following scams?

   A. Phishing emails requesting Electronic Filing Identification Numbers (EFIN) from tax professionals as "required verification."
   B. Use of the "Chevron two-step" in relation to certain situations or specific doctrine to which it does not apply.
   C. Phishing emails to tax professionals from "new clients" that include a malicious link to gain access to client data.
   D. Mills that encourage taxpayers to use the $600 threshold on their Form 1099-Ks instead of the $20,000/more than 200 transactions threshold.

4. According to Ian Redpath, employers can claim up to what maximum annual amount under the Employer-Provided Childcare Tax Credit if they operate a qualified childcare facility?

   A. $50,000
   B. $100,000
   C. $150,000
   D. $200,000

5. According to Ian Redpath, if not related to withholding, an error in a reporting dollar amount is considered *de minimis* under TD 9984 if it is less than what amount?

   A. $25
   B. $50
   C. $100
   D. $150

Continued on next page

6. According to Ian Redpath and Julie Welch, which of the following is ***not*** a type of trust-associated income?

   A. Accounting income
   B. Taxable income
   C. Distributable net income
   D. Fiduciary net income

7. According to Ian Redpath and Julie Welch, which of the following is correct related to a trust?

   A. State law takes precedence over the trust agreement regarding the allocation of income and deductions.
   B. While every trust can be created differently, the tax implications from trust to trust are all the same.
   C. Because every trust can be created differently, you must refer to the trust document for treatment.
   D. Distributable net income does not matter for tax purposes.

8. According to Ian Redpath and Julie Welch, trusts do which of the following?

   A. Always benefit the grantor
   B. Protect the money
   C. Always provide income to the remainder beneficiaries
   D. Never provide charitable contributions

9. According to Ian Redpath and Julie Welch, which of the following has a $300 exemption?

   A. Simple trust
   B. Complex trust
   C. Estate
   D. Irrevocable living trust

10. According to Ian Redpath and Julie Welch, the highest rate of income tax for trusts is which of the following?

    A. 3.8%
    B. 10%
    C. 20%
    D. 37%

11. According to Ian Redpath and Brian O'Sullivan, which of the following became a digital asset under the revised IRS definition in the tax return instructions?

    A. Fiat currency
    B. Equity shares of a corporation
    C. NFTs
    D. Dividends paid

12. According to Ian Redpath and Brian O'Sullivan, the Internal Revenue Service provided how many criteria for the definition of a digital asset?

    A. Two
    B. Three
    C. Four
    D. Five

Continued on next page

13. According to Ian Redpath and Brian O'Sullivan, a person who sells or licenses software to unhosted wallet users by facilitating or offering services to facilitate the purchase or sale of digital assets is which of the following?

A. A broker
B. A miner
C. A merchant
D. An exchange

14. According to Ian Redpath and Brian O'Sullivan, which of the following is the year the proceeds of digital asset disposals will first need to be reported?

A. 2024
B. 2025
C. 2026
D. 2027

15. According to Ian Redpath and Brian O'Sullivan, which of the following sets the timing on the Form 1099-DA?

A. IR-2024-34
B. IR-2024-36
C. IR-2023-153
D. IR-2023-241

CPE Network®
Tax Report
Volume 37, Issue 3 **March 2024**

SUBSCRIBER SURVEY

Evaluation Form

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

How would you rate the topics covered in the March 2024 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	**Topic Content/ Coverage**	**Topic Timeliness**	**Video Quality**	**Audio Quality**	**Written Material**
Experts' Forum	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Estates and Trusts	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Digital Assets	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

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

____

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____

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

____

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____

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

____

____

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

____

____

____

____

How would you rate the effectiveness of the speakers in the March 2024 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5=highest):

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

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

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

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

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

Were program materials accurate? Yes ☐ No ☐ ______________________

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

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

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

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

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

Specific Comments: ____

____

Name/Company ____

Address ____

City/State/Zip ____

Email ____

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

CPE Network®

CPE Group Attendance Sheet

Firm/Company Name: ____________________

Account #: ____________________

Location: ____________________

Program Title: CPE Network Tax Report, March 2024 Date: __________

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

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

Instructor Name: ____________________ Date: __________

E-mail address: ____________________

License State and Number: ____________________

CPLgrading@cerifi.com

CPE Network/Webinar Delivery Tracking Report

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

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

CHECKPOINT LEARNING NETWORK

CPE NETWORK®
USER GUIDE

REVISED December 31, 2023

Welcome to CPE Network!

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

This User Guide has the following sections:

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

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

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

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

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

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@cerifi.com

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

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

Incomplete submissions will be returned to you.

"Group Internet Based" Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

1. You are using **Zoom** for your webinar. The moderator pauses approximately every 15 minutes and asks that participants confirm their attendance by using the “raise hands”

feature. Once the participants raise their hands, the moderator records the participants who have their hands up in the **webinar delivery tracking report** by putting a YES in the webinar delivery tracking report. After documenting in the spreadsheet, the instructor (or moderator) drops everyone's hands and continues the training.

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

Where individual participants log into a group live program they are required to enable two-way video to participate in a virtual face-to-face setting (with cameras on), elements of engagement are required (such as group discussion, polling questions, instructor posed questions with time for reflection, or a case study with engagement throughout the presentation) in order to award CPE credits to the participants. Participation in the two-way video conference must be monitored and documented by the instructor or attendance monitor in order to authenticate attendance for program duration. The participant-to-attendance monitor ratio must not exceed 25:1, unless there is a dedicated attendance monitor in which case the participant-to-attendance monitor ratio must not exceed 100:1.

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@CeriFi.com

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

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

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Email

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

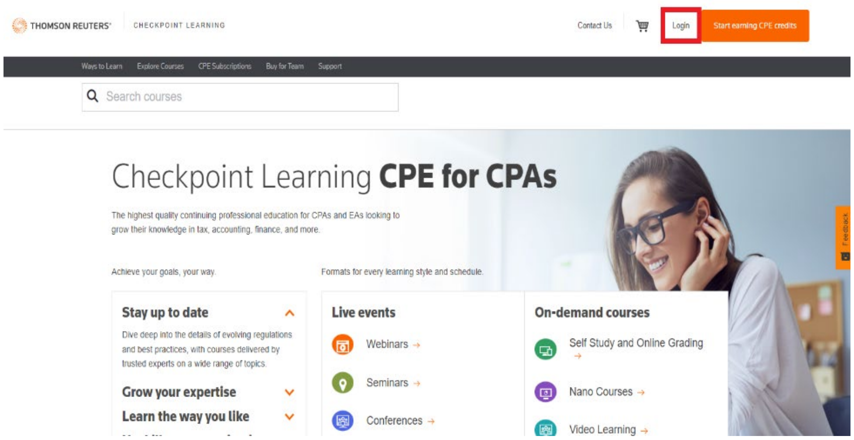
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

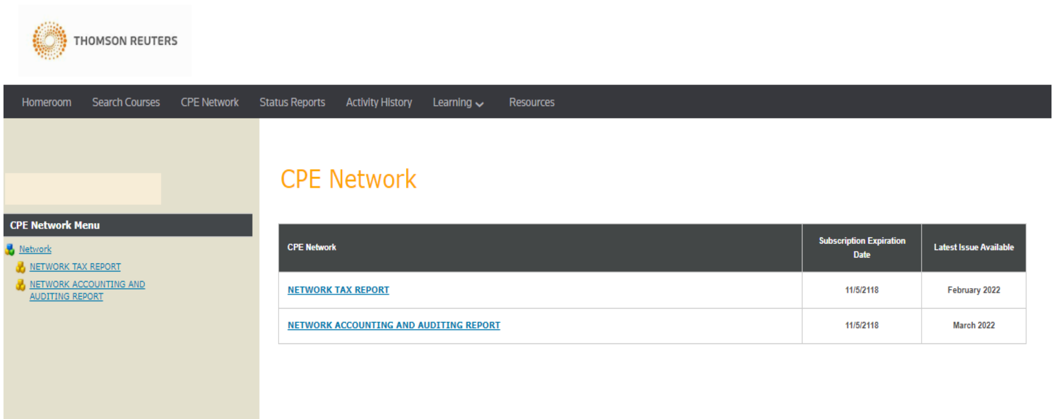
Self-Study—Online

Follow these simple steps to use the online program:

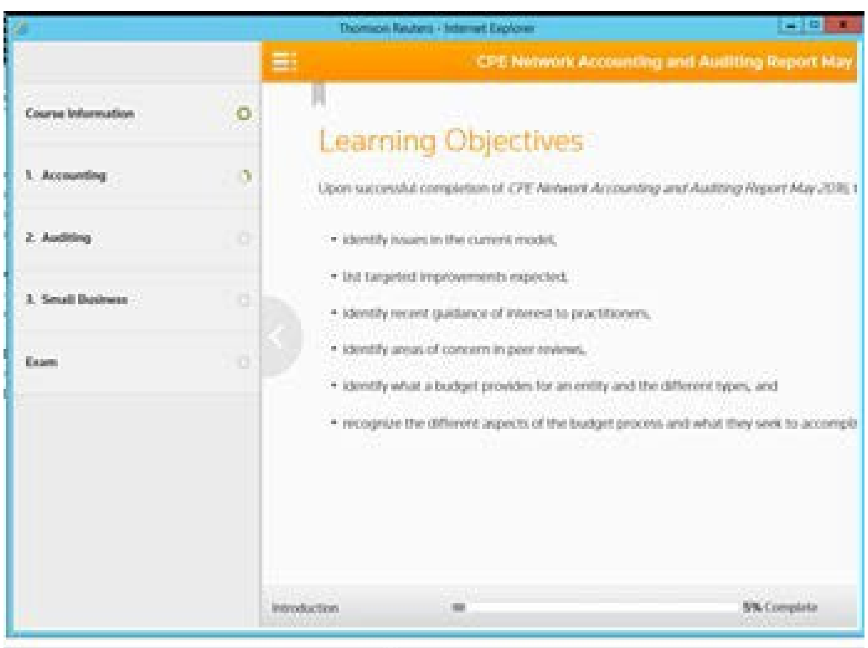
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

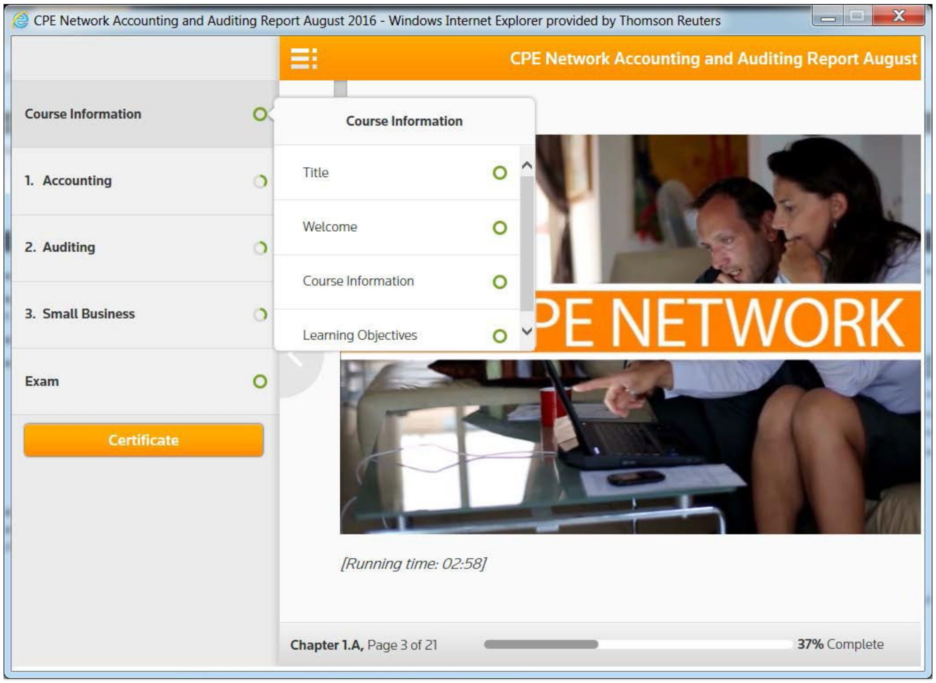


The Chapter Menu is in the gray bar at the left of your screen:

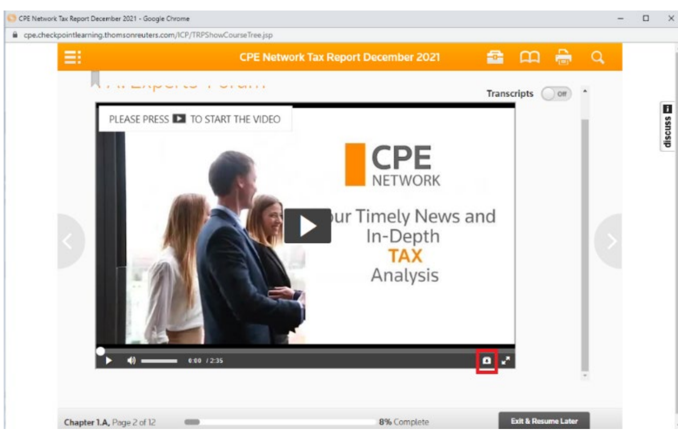


Click down to access the dropdown menu and move between the program Chapters.

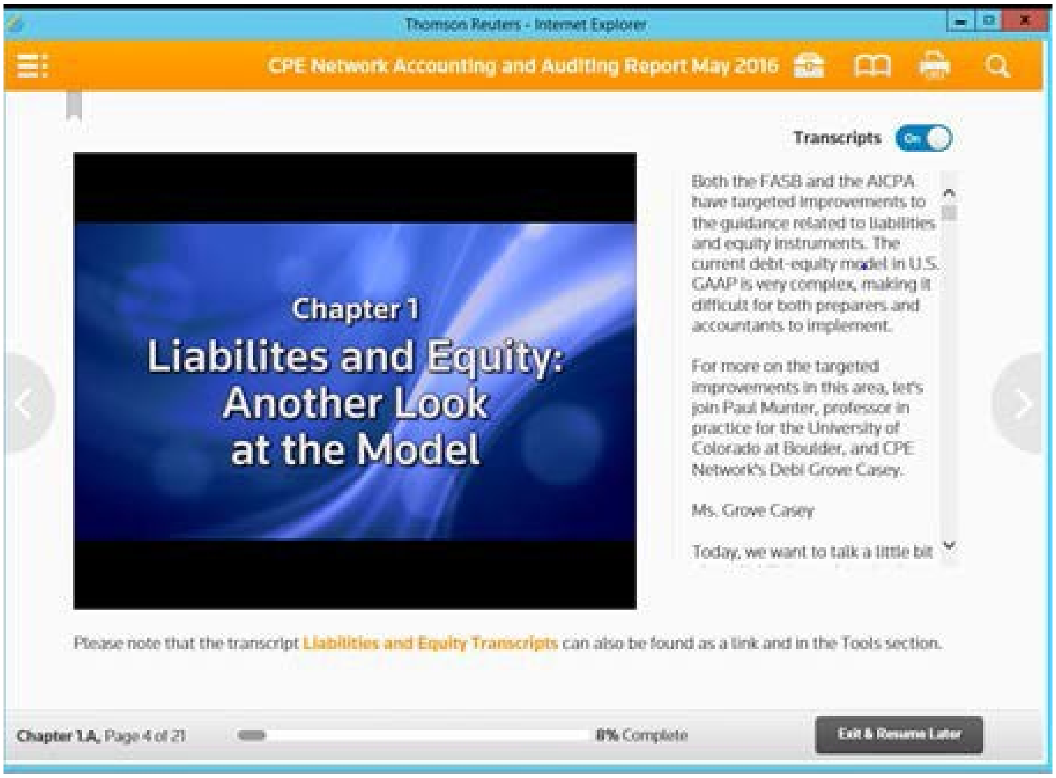
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



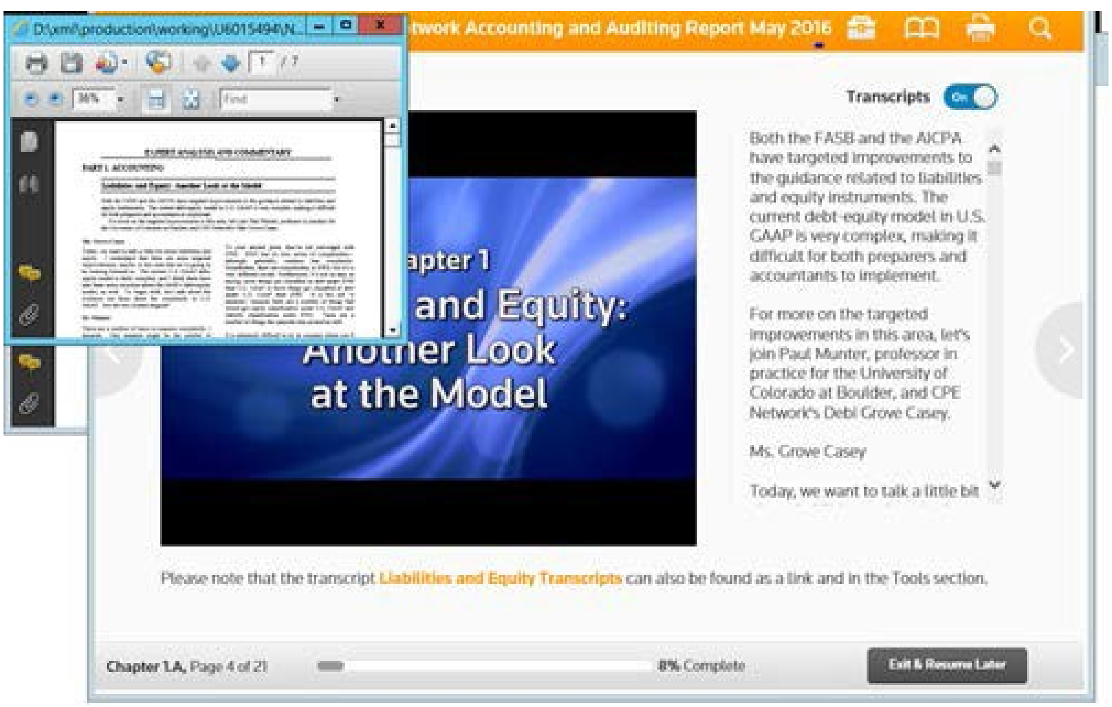
- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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



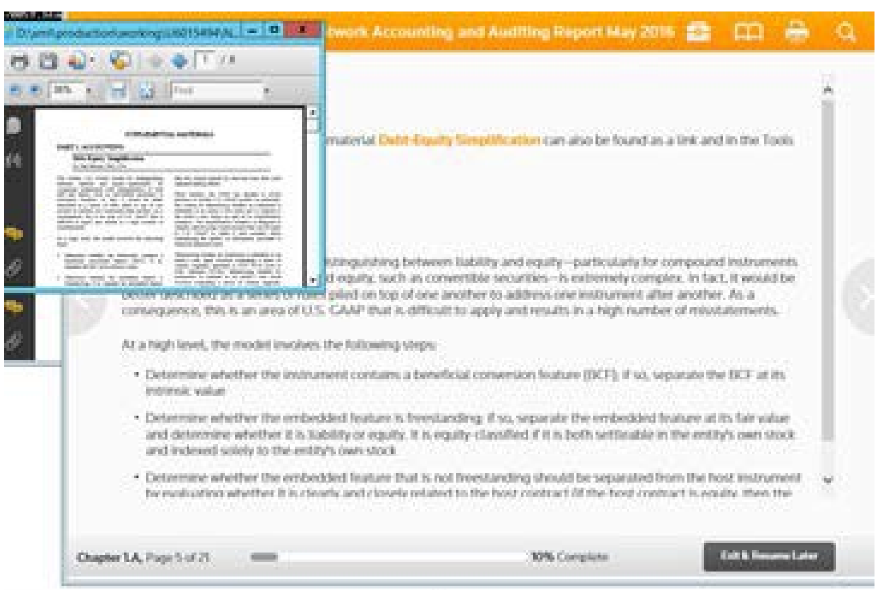
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.



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



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



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

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

CPE Network Accounting and Auditing Report July 2016

Suggested Answers to Discussion Problems

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

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

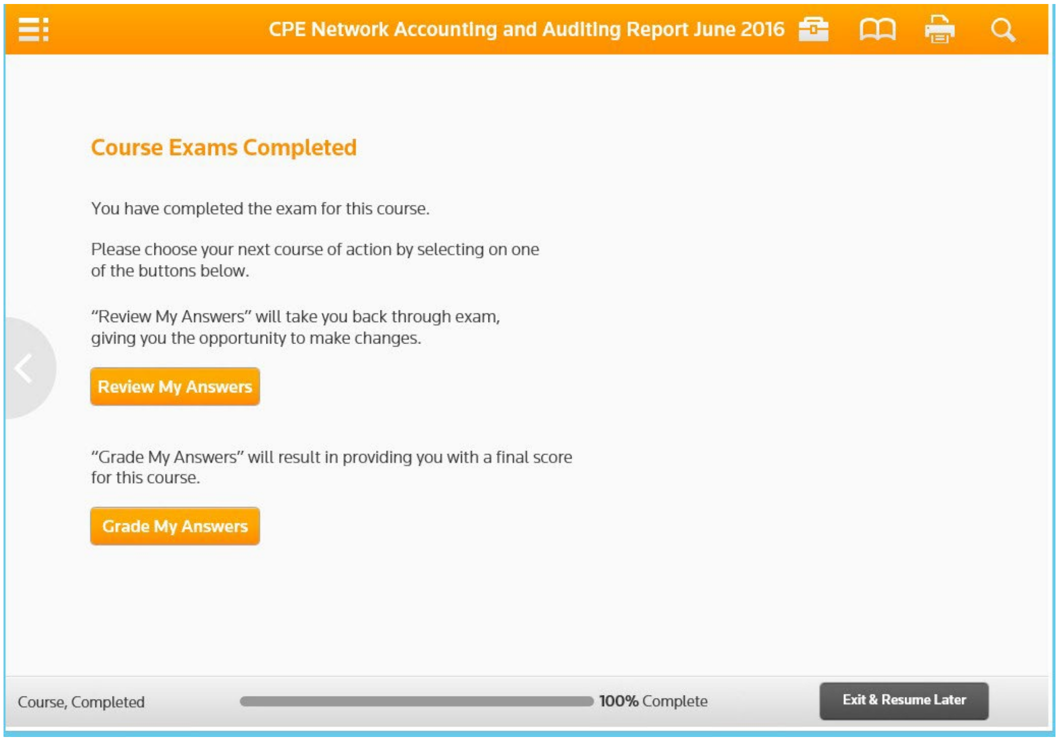
    An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions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

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

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

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

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



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

Additional Features Search

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

Search Results are displayed with the number of hits.

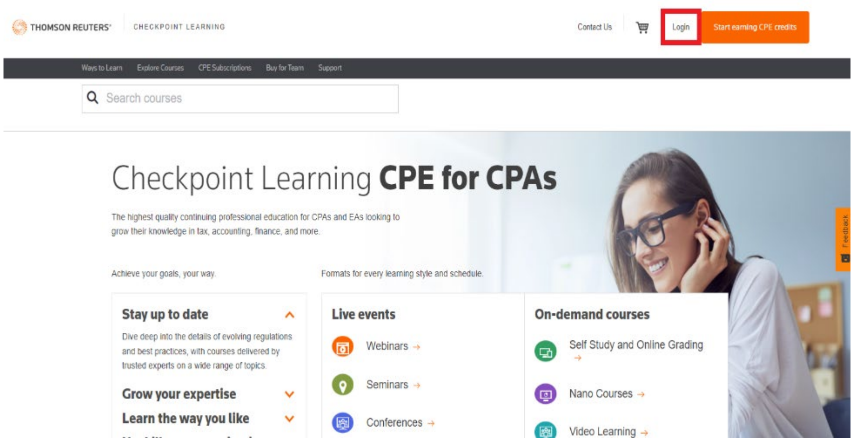
Print

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

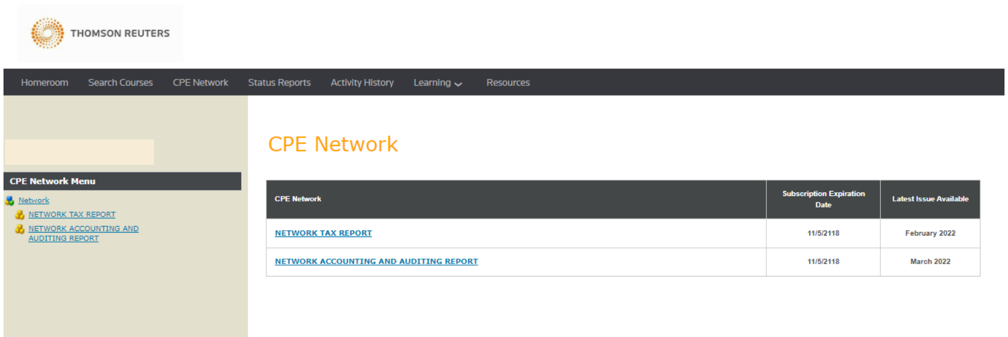
Transitioning From DVDs

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

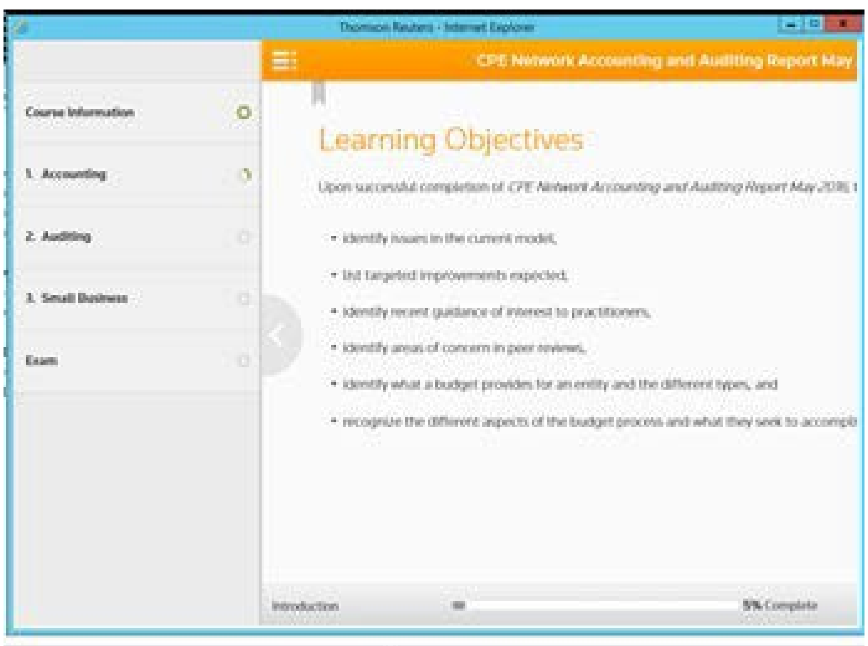
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

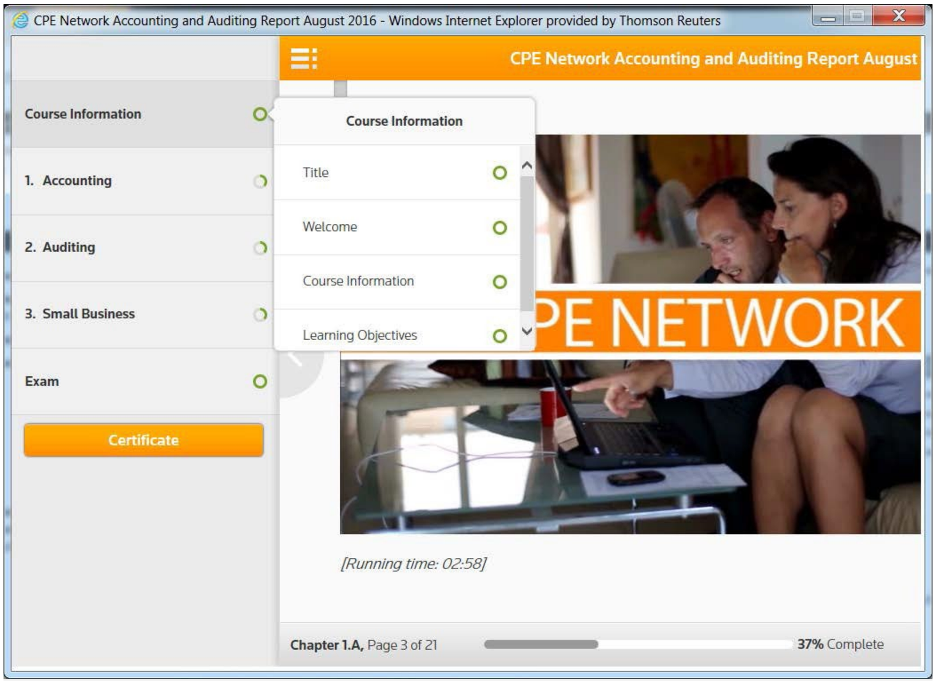


The Chapter Menu is in the gray bar at the left of your screen:

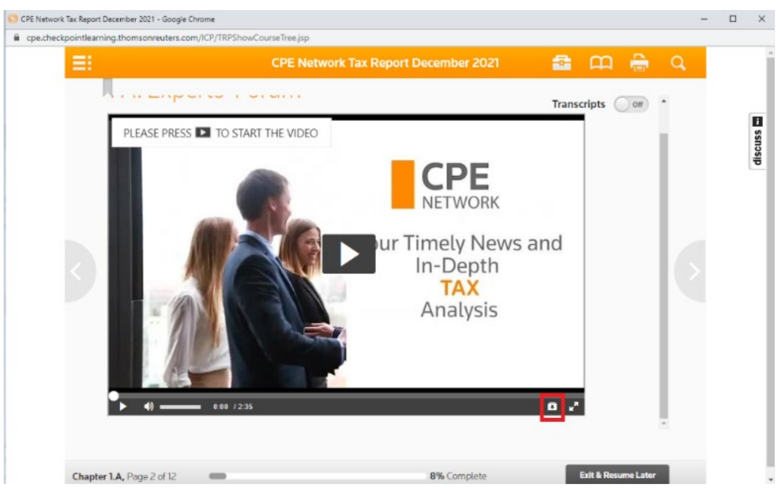


Click down to access the dropdown menu and move between the program Chapters.

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



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



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

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

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

<u>Determining CPE Credit Increments</u>

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

The CPE certificate is the participant's record of attendance and is awarded at the conclusion of the seminar. It should reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early.

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

Appendix: Forms

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

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

Getting Help

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

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