CERIFI CPEdge

Contact us at: cpedgesupport@cerifi.com
844.245.5970

CERIFI CPE NETWORK

TAX REPORT

MAY 2026 VOLUME 39, ISSUE 04

Note: Video may be viewed/downloaded from your CeriFi CPEdge account. See the user guide for more information on how to download the video and about credit for online meetings.

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

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

CERIFI

EXECUTIVE SUMMARY

PART 1. LIKE KIND EXCHANGE (1031) TO REDUCE TAXES – REAL ESTATE AND BEYOND

Like Kind Exchange to Reduce Taxes **3**

This program explains the tax rules governing **like-kind exchanges of real property under IRC §1031**. It reviews the statutory requirements, major regulations, and practical safe harbors for deferred and reverse exchanges. Topics include the "held for productive use in a trade or business or for investment" requirement, identification rules, like-kind standards, qualified intermediaries, constructive receipt restrictions, boot calculations, basis consequences, and related-party limitations. The course also discusses newer developments, including the continued importance of §1031 planning after the 2025 OBBB legislation left §1031 intact while increasing estate and gift tax exemptions, thereby strengthening long-range estate and income tax planning opportunities. *[Running time: 1:23:06]*

Learning Objective:

Upon completion of this segment, the user should be able to:

- Identify the statutory requirements for a valid §1031 like-kind exchange of real property, including the exchange, like-kind, and qualified-use requirements.
- Distinguish a taxable real estate sale from a tax-deferred exchange and calculate the effect of unrecaptured §1250 gain and deferred gain treatment.
- Apply the deferred exchange timing rules, including the 45-day identification period and 180-day exchange period, to common transaction structures.
- Evaluate the function of qualified intermediaries, qualified escrow accounts, qualified trusts, and Paragraph (g)(6) restrictions in avoiding actual or constructive receipt.
- Determine when boot, including mortgage boot, causes partial gain recognition in a like-kind exchange.
- Recognize planning opportunities and risks involving reverse exchanges, drop-and-swap transactions, former residences, vacation rentals, and related-party exchanges.

PART 2. THE ABC'S OF TRUMP ACCOUNTS

Trump Accounts **69**

This program explains the tax treatment and planning uses of Trump accounts under new IRC §530A. It covers eligibility, elections to open an account, pilot program contributions, the growth period, contribution limits, employer and charitable funding, eligible investments, rollover rules, and restrictions on distributions. The webinar also highlights issues practitioners may face with state tax conformity, basis reporting, kiddie tax concerns, and post-growth-period planning. A comparison of Trump accounts with Roth IRAs, 529 plans, and UTMAs helps practitioners determine when Trump accounts are the most effective option for clients seeking long-term savings and tax-deferred growth for children. *[Running time: 50:27]*

Learning Objective:

Upon completion of this segment, the user should be able to:

- Explain the rules for establishing and funding a Trump account, including eligibility, ordering rules, contribution types, contribution limits, basis, timing, investments, and rollover rules.
- Distinguish the rules that apply during the growth period from those that apply after conversion to a traditional IRA, including distributions and post-conversion planning opportunities.

  Evaluate how Trump accounts compare with other child savings vehicles—such as Roth IRAs, 529 accounts, and UTMAs—to determine when a Trump account may be the most appropriate choice.

ABOUT THE SPEAKERS

Jay Darby is a seasoned tax attorney and educator with more than 30 years of experience in income tax, estate planning, and complex business transactions. He has deep expertise in corporate and entity-level tax matters, including structuring and implementing acquisitions, sales, liquidations, and business terminations. Jay also serves as an adjunct professor at Boston University Law School and Boston College Law School, where he teaches advanced courses in corporate, partnership, and individual tax strategies, including Section 1202 Qualified Small Business Stock and like-kind exchanges. He is also the author of the third edition of Tax Aspects of Mergers, Acquisitions, and Business Sales, published by ALM National Underwriters.

Mike Giangrande, JD., LL.M, is a California licensed attorney and has been a tax practitioner for 25 years. He is licensed to practice before the United States Tax Court, has a B.S. in Accounting and an LL.M. in Tax from Chapman University, and has a J.D. from Whittier Law School. Mike has spent time as an adjunct professor of law and he served as a member of the Orange County Assessment Appeals Board. Mike has served as the Federal Tax Editor for Spidell Publishing, LLC since 2017 and has been lecturing during that time. Mike authors many tax manuals and webinars each year.

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

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

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

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

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

PART 1. LIKE KIND EXCHANGE (1031) TO REDUCE TAXES – REAL ESTATE AND BEYOND

Like Kind Exchange (1031) to Reduce Taxes

This video presents a detailed, practitioner-focused discussion of IRC Section 1031 like-kind exchanges, with emphasis on how they continue to serve as one of the most valuable tax-deferral tools available for real estate owners and investors. Jay Darby explains both the policy behind §1031 and the practical mechanics needed to structure a valid exchange. The presentation contrasts taxable sales with tax-deferred exchanges, walks through gain deferral and basis carryover, and explains why the 2017 Tax Cuts and Jobs Act narrowed §1031 to real property while still preserving substantial planning value. The program also explores core compliance issues such as the 45-day identification period, 180-day exchange period, qualified intermediaries, safe-harbor escrow arrangements, boot, mortgage boot, and reverse exchanges under Rev. Proc. 2000-37. It also highlights how estate planning and basis step-up rules can magnify the long-term value of exchange planning for taxpayers holding appreciated real estate.

Jay Darby

My name is Jay Darby, a tax attorney, proud of it. I practice in Boston, Massachusetts. I'm also an adjunct professor at Boston University and at Boston College. And I've taught many courses on 1031 exchanges and look forward to having a really good program today discussing this very important provision.

I describe it as one of the four skills you need to succeed, four or five skills you need to succeed because 1031 allows you to defer large amounts of gain for long periods of time, possibly permanently, thanks to the step up in basis of the Code Section 1014 and the change in the One Big Beautiful Bill that allows up to $15 million, $30 million for a married couple in terms of unified lifetime gift tax credit.

Let's go ahead and get started on the program. I'm going to push it forward for the slide deck. And here we go.

Sale exchange transactions give rise to income or gain under the Internal Revenue Code. Always have. The Internal Revenue Code dates back to 1913, the 16th Amendment. But even many years ago, the IRS recognized that certain types of business assets, investment assets in particular, especially real estate, which historically appreciate in value while being depreciated for economic purposes and tax purposes, would produce substantial built-in gain.

It would have what's called the lock-in effect. It would discourage people from selling them just because they didn't want to pay 30, 40 some different years, 30% tax, higher even during World War II, in tax on gain. And therefore, it would impede the flow of commerce and exchanges.

So this goes back to the first provision like 1031 in the code dates back to 1921. So, it goes back to like six, eight years after the internal revenue code even came into existence. It's been around for more than a century and it's been in some iteration available.

In 2018, the Tax Cuts and Job Act kind of dramatically reduced the scope of 1031 transactions. It used to be if you exchanged art, airplanes, automobiles, and wine collections, they did a lot of those things in the early 2000s. It was very interesting to do. He once exchanged a famous legendary Andy Warhol painting for three Picasso's worth about $105 million. And those days, it was a lot of fun to do interesting 1031 transactions.

Since 1918, it's been reduced to be real property. It's still a pretty big percentage of what it used to be.

Frankly, back in before 2018, even with all the other things that you exchange, real estate was 85 to 90% of all the assets we exchanged. So it was not a real big change when they eliminated the other stuff. Just took some of the fun things out like the wine exchanges and things like that.

Multi-party exchanges are almost necessary. If A owns Whiteacre and B owns Blackacre, A probably can't find someone to buy Whiteacre. He wants to find someone else to buy Whiteacre and then get Blackacre. We have qualified intermediaries, as we'll talk about, that could do that. In the old days, A would have to go to B, who had Blackacre, and convince B to do an exchange of Whiteacre and then sell Whiteacre to the buyer that A had found. B would sometimes say no or sometimes say yes with great reluctance. It was complicated to do like exchanges before. These were called the Starker regulations under 1031 came into existence in 1991.

And so today it's very much easier to do like-kind exchanges. I'll make the observation that it wasn't even clear years ago you can do a deferred exchange whether it had to be simultaneous or not. There was a case called Starker from the ninth circuit in 1979 that said you have a deferred exchange. That one was five years. And Congress responded five years later, 1984, with 1031c, which provided a safe harbor. They said if you identified the replacement property within 45 days of transferring the outbound property, as we call it, and 180 days to complete the acquisition of the replacement property, that would qualify as a safe harbor exchange.

You can do it longer than that. You don't have to come into the safe harbor. You just then lose some of the very important safe harbor benefits you would like to have like a qualified intermediary being recognized as a separate party as opposed to your agent and things like that.

Detailed regulations came out in 1991. I say very candidly and accurately that the IRS invented 1031 exchanges in their modern iteration or their modern kind of style and existence. The reason is because without those regulations, nobody knew what to do. Nobody had confidence it would work. We did a lot of stuff because we hoped it would work, but it really put a real chill on 1031 exchanges back in the 1980s. 1991 comes along, these regulations come out. They're surprisingly liberal, very pro-tax fare. There's a series of subsequent regulations or revenue procedures that we'll talk about shortly. They came out from the IRS. It really made it possible to do a lot of very complicated transactions safely because you can come within the safe harbor by reading the regulations and following them.

Safe harbors that came out. Like I said, the Starker regulations came out in 1991. The reverse Starker Rev proc 2000-37 came out in 2000 and it allowed what's called the equivalent of a reverse exchange. It's not a real reverse exchange. It's properly characterized as a delayed foreign exchange. What you do is you can acquire the replacement property and park it in an exchange accommodation title holder. Eloquently acronym is an EAT, E-A-T and hold it until you're ready to sell your outbound property. And then you sell the outbound property through the QI and acquire the already parked replacement property through the QI from EAT. And it has the ability to substantially mimic the benefits of a reverse exchange by allowing you to acquire and hold the replacement property before you actually sell the outbound property.

In 2002, a lot of things happen around 2000, 2004, 2008 to really enable like-kind exchanges. Tentative and common arrangements. The IRS gave very detailed Rev Proc 2002-22 on how you take a property and co-own it by up to 35 co-ownership interest and it's treated as real estate, not a partnership interest. If it's a partnership, you can't exchange the partnership interest.

You could have the partnership itself exchange the real estate, it is not each of the tenants in common. TIC, we have each of these people can exchange the property on their own, outbound, roll into other property. It means you don't have to go with the other partners in the partnership and it created a lot of liquidity. Very shortly after that, they came out with the Delaware Statutory Trust, Rev. Rule 2004-86 and it used the Delaware Statutory Trust, just a grantor trust, as a disregarded entity that allowed you to be treated as owning the real estate under, owned in the DST.

And this allows, was an alternative way to fragment the interest. So it looked and felt like an intangible, like an equity interest in an entity or an entity owning the property, but it would be treated as owning the property for 1031 purposes. It's critically important because it has to be like-kind and therefore partnership vendors are not exchangeable. And these were two devices that were developed.

TICs came and went 2002-22 till about 2000. 2002 to 2008, there was a pretty substantial amount of TIC market in the world. DST has just turned out to be not very flexible, not very practical, but more so than TICs because TICs had the drawback that any TIC had a right to that sort of unraveled the TIC arrangement or demand, various rights to partition, things like that would kind of had that really balanced, safe, predictable arrangement. So DSTs have been winning in the marketplace since about 2008 or 2010.

I still use TICs from time to time, but for special situations, typically family-owned where some people want to roll out and go a different direction. Other people just want to sell and cash in their investment.

2008 finally, they came in with the Rev Proc that deals with vacation rentals. Lots of people have a second home they rent under 280A to rent it out over the rental period and use it for 10% of the time or in non-peak periods of the rental season.

And those can also be treated as eligible property for exchange. These are all things you got to know and understand how to use successfully.

What is the One Big Beautiful Bill Act due to affect 1031? Well, there was nothing in the bill itself that affected 1031 directly, but there was a discussion frankly to put all kinds of limitations on it for a $500,000 cap on deferred gains, dramatically narrow the scope of it make it smaller and those did not happen. What it did do is it made the lifetime estate and gift tax exemption amount or credit equivalent amount 15 million per individual 30 million for married couples combined.

And what that means is in 1031 structuring, you roll gain forward, you defer gain. But if you defer it long enough and run the asset through your estate and get a step up in basis under Code section 1014B at death, you can eliminate it. Your kids can get the property, you have no tax, the income tax that's built in will never be realized, recognized, I should say.

So, it really becomes kind of a very nice way to dovetail real estate ownership with estate planning. It makes 1031 all the more attractive to small, medium sized, larger estates that aren't gigantic, over 30 million.

Let's just talk about briefly the difference between a taxable versus a tax-free exchange. Again, an exchange of property could be taxable unless it meets the requirements of 1031. I call it one of the five most taxpayer friendly provisions in the code.

And it is important to look at the consequences of a property sale versus an exchange. The character of the income or gain depends on the nature of the underlying asset. If it's a capital asset, capital gain. If it's 1231 property, it gets long-term capital gain on the upside and then recapture on the way back up or deeper for a depreciation of 1245. And it can generate some ordinary income. And then to sell 1230 property loss, it's an ordinary loss I would call it tax heaven or tax nirvana, it generates long-term capital gain, the if you sell it at a profit, ordinary loss, or you sell it at a loss and you've got the 1245 recapture rules that kick in.

Now when you get to real property held as inventory or sale for business. That's ordinary property. You cannot exchange that for like-kind of exchange or 1031.

Let's just talk about 1250 recapture as well. A 1250 recapture gain is like a 1245 depreciation recapture, which is where you depreciate an asset down and then you sell it for more than you paid for it, which is typically real estate. You'd have recapture except for depreciable real estate depreciated on a straight-line basis. It's called the unrecaptured 1250 gain and that can be rolled over. You don't have to recapture the 1250 gain. If you sell it, you have a special 25% tax rate higher than the capital gain rate, which is 20% currently. Below the ordinary tax rate, maximum tax rate of 37%. It's in the middle. It used to be 15% for capital gain, 25% for 1250, and 35% for ordinary income. Those rates got moved for the other two, but now for the 1250 gain. Let's just go to a simple example. A taxpayer buys Whiteacre for a million dollars, allocates $900,000 to tax basis for the depreciable improvements. And $100,000 for the non-depreciable land. And then over 10 years, it claims $225,000 in depreciation. That's about one quarter of the total $900,000 of tax basis.

It now receives an offer to buy Whiteacre for two million dollars which is million dollars more than he paid for it. He materially participates so we're not going to include the net investment income tax in the in the calculation of gain but if you sold Whiteacre for two million dollars our tax basis on sales would be reduced by the 225 all that is 1250 unrecaptured 1250 gain.

Long-term capital gain would be 100 000. The tax would be 25% on the 1250, recapture 1250 gain, 20% on the million dollars, and our tax will be $256,250. And our net after tax proceeds will be $1,741,750.

Same transaction except we structured it as a like-kind of exchange for Blackacre which is worth $2 million. Whiteacre is called the relinquished property and we sell that, assign that to a qualified intermediary who sells it to our buyer Whiteacre. And then we have the qualified intermediary nominally purchased Blackacre with our $2 million of proceeds.

$2 million has held in a qualified escrow account or a trustee account and then it's paid over to the seller of Blackacre. And then the qualified intermediary directs the direct transfer Blackacre directly to our taxpayer A. And because it meets the requirements of 1031, we have a $2 million fair market value. Our tax basis carries over 775. The realized gain is a $1,225,000.

We don't have any gain recognized. And that's the beauty of 1031. Obviously, this is actually a little bit more, you know, less favorable than many examples. A lot of times, Whiteacre has zero basis. And we have a huge amount of gain on sale and it's all gets avoided by rolling it over into Blackacre with the existing basis being carried over.

But the beauty is you don't have to pay for the taxes to get a step-up in basis. And that's a good deal by anybody's book anytime. So, let's look at the legal requirements for a 1031 exchange.

1031 reads as follows. This is the single sentence. It has got to be a very clear, simple-looking sounding context. No gain or loss shall be recognized on the exchange of property held for use in a trade or business or for investment if such property is exchanged solely for property of like-kind, which is either held for productive use in a trade or business or for investment.

Every one of those italicized words has been litigated to death and have important implications that we need to understand. First of all, it's a held requirement. It has to be held and it has to be for productive use in a trade or business or for investment.

Held is, it can't be used solely an exchange and it is sold off immediately. The idea is you're going to acquire it and hold it after you exchange it. Rev Rule 75- 292 is the IRS’s so-called stake in the ground.

They said property acquired at 1031 transaction and immediately contributed to corporation was not held for qualifying purpose. The idea was you got it; you immediately transferred it in exchange for stock and a corporation. That actually might qualify as held to some of the more recent guidance at the state level, especially the state of New York. But I'll talk about that in a minute.

But the idea was that there's some kind of implicit minimum time period after the exchange. You've got to hold it after you've exchanged it.

There's no guidance on the minimum period in a private letter ruling 8429039. The IRS said, two years would be a sufficient amount to satisfy 'held.' Of course it would, that's way too long.

And frankly, a year today is long-term holding period of the Code section 1222(3). I think that generates long-term capital gain. It's hard for them to say you haven't held it long enough. So, I always say, year in a day is my view of what's the absolute safest outside date to hold it.

Case law suggests even shorter. There is no specific maximum. It depends on your intent at the time you acquire the property, whether you're acquiring it for productive use in a trade or investment or a business or for investment. And it's a question of fact that's on the Bolker case, famous 1985 case.

Taxpayers the burden of proving this I never get too caught up on burden to prove things of tax court cases. You just have to prove your case. And, the Goolsby versus the IRS, it's kind of interesting contrasts. I bring out because just it's kind of interesting situations. These are taxpayers who sold properties, rolled it into a new property. More or less, moved into the property that they replaced as their personal residents. And the question is, did they hold it long enough for a good purpose before they turned it to personal use?

In Goolsby, what happened was they bought the replacement properties and two months later moved it into one of the replacement properties. By contrast, the IRS thins the taxpayers held it for investment, even though by Goolsby, they moved into the property and converted it to personal residence. What are the differences?

In Reesink, the good case, they made significant efforts to advertise the property for rent. They showed the house at least two potential renters, but they did not want to reduce their renting price to $3,000 a month. They sold the primary residence six months after they acquired the replacement property, and they did not move into the replacement property until eight months after the exchange.

In Goolsbee, what happened is the taxpayer made only limited efforts to rent the property before moving in and pulled a building permit to finish the basement two weeks after acquiring the property. I mean, everything said, you bought that to move in.

In Reesink, we think that you could at least say, we didn't even sell our house for six months until after we acquired it, we tried to rent it, we showed it, we advertised it. We acted like we held it for a business purpose.

Reesink demonstrates that it can turn on specific facts and maybe interpret it favorably by the court. Here's my stack back, lots of experience. Individuals who go in in these cases, every case is unique to its facts. A favorable ruling on a taxpayer in Reesink doesn't bind any other case that's going to come before the court. It's a one-time benefit that goes to Reesink to win this case.

Goolsbee was ridiculously bad facts. They pulled a permit to redo their basement two months, two weeks after they bought the property. He moved in two months later and it was really bad facts. But, the tax court could be pretty pro-taxpayer in specific cases where it doesn't have broad impact on lots of other cases. That's how I interpret Reesink. It was kind of a close case, but hey, the guy got a break.

All right. Our former residence can be converted to investment property and then made eligible for 1031 exchange. It's called a 1031-121 accommodation, typically. What happens is you get your residence and all the appreciation for many years is that you can you move out. You don't sell it right away. This is especially important if you've got a house you bought for $300,000 is now worth $1,500,000 today.

It has way more gain than you can shelter with the exclusion of the code section 121 for homeowners selling their principal residence. So, you can actually convert it to a rental property for two plus years.

Remember, for 121 you've got to have occupied it two out of the last five years. But, if you have occupied for 10 years or 20 years in the last two and then for the next two years after that, you rent it out. You can justify this becoming rental property and exchange it out, exclude the $500,000 in gain that you would otherwise exclude and roll over the rest of it into a new investment property and not pay any tax on the sale of your former residence. So, it's a very interesting thing to look at very closely for those of you with highly appreciated homes and don't want to pay the tax.

In addition to held, it's got to be held for the right use. It can't be a personal residence use. It's got to be held for productive use in a trade or business or for investment.

Inventory doesn't qualify. Personal residence doesn't qualify. It's got to again be used in a trade or business. One case that was shot down in flames was Moore. They exchanged one vacation home for another. But the vacation homes didn't come with the safe harbor into 2008-16 that we looked at earlier in the slide deck. They just use it for personal purpose. It was their vacation home. They want another vacation home.

They said the vacation home was expected to appreciate in value. So that was their investment purpose. That's where I said, no, it wasn't. The properties were used for personal use. And you just hope the mere expectation of what value doesn't make it an investment if you're using it as your residence, your second home. So that was sort of a clear example of how it's really got to be towing the line on the requirements of 2008-16. You can't just say, hey, it's my it's my second home, but it's I really think it's a good investment and even though we use it full time and never rent it out.

Those were bad facts.

The famous drop and swap is a very popular thing currently and for many years. What happens is people who own property in a partnership, maybe five partners say, and a couple would like to do like-kind of exchanges. Other people like to get separated out and the idea is to drop it down to the partners and then have them each do a separate like-kind exchange. It's called a drop and then a swap. There's also a swap and drops the other way around. You swap property in a partnership, then drop it down to the individuals.

The thing you're worried about is the held requirement. It's been, the IRS is very hostile to drop and swaps.

But they've been poorly in court and we will look at some of the cases in a minute. And the result is they don't really aggressively audit it anymore. States do California, New York in particular. But we'll talk about that as well in just a minute.

Classic drop and swap is I got a partnership. We've got a buyer. The partnership signs a P&S and the day before the closing, we drop it down. So, it's transferred from the partnership out of the five partners and each of them sells it to pre-negotiated buyer under the partnership agreement that gets assigned. Those are considered bad facts, but even those bad facts may be okay.

The case law is favorable to taxpayers. One quick caveat, if there's a body of case law, certainly the has been willing to litigate in the past; that means that they're willing to litigate it. So it's got to be, you got to be willing to defend it.

But in these cases, Maloney, investment property held by a corporation was exchanged for their investment property and then it just liquidated and distributed the property in a 333 liquidation. This was called a one-month liquidation back in the day for us corporations.

And they said that there was a continuity of the ownership interest notwithstanding the fact that there was a nominal transfer.

Bolker, a famous case, was a drop and swap scenario where corporation distributed real property to its sole shareholder, but then when an exchange of other like-kind property was dropped and then swapped, no minimum holding period.

The ownership alone satisfies the holding requirement. The intent to exchange satisfies the use requirement. Magneson, another case, they exchanged a 10% interest in investment property for a 10% interest in other property, which was then contributed to a partnership for a 10%, 9 to 10% general partnership interest.

These are all things where there's transactions going on before or after the exchange and the IRS has been very rigid trying to enforce this very strict rule of what held meant. And they lost a bunch of these cases late 1980s, early 1990s, stopped litigating it. The Rev. Proc. 2002-22 guidance on TICs said we will not give a ruling if you've done a drop and swap and that sort of signaled hostility toward it.

But they also had a period of time when they had to report it on a tax return if you'd done drop and swap. But the IRS has never really aggressively litigated this issue since the late 80s, early 90s. And we actually see the states, California in particular, has litigated it.

There's some favorable guidance out of California. Most of its unfavorable between, you know, in the California litigation. I put this thing, because this is a case that came out in June of 2025 out of New York, and they did a very, what I call, aggressive same-day drop and swap. They distributed the property from partnerships to the individual partners as tenants in common.

And they're said they'd be eligible for the treatment. The taxpayers maintain a continuous investment intent. They exchanged their property over for new property and no minimum holding period is required by statute. This is New York law. As I said, all these drop and swap cases these days are being litigated at the state level by states that are aggressive about auditing like-kind exchanges in New York. This is pretty favorable ruling and it's new so I thought I'd make it part of the slide deck.

Let's talk about like-kind. It's got to be a like not just exchange. All real estate is like-kind to other real estate. Improved real estate is like-kind with unimproved land. My explanation is you can exchange the Empire State Building for Iowa farmland or vice versa. It creates an enormous amount of opportunities because there's lots of stuff that qualifies as real estate under typically state law which determines the nature of property.

A lease of real property for the remaining term of 30 years or longer is considered like-kind to a fee interest in real estate. Now that's a complicated situation when you exchange a lease as the lessee for 30 years left in the lease. You can exchange it into a fee interest. It's actually a doable transaction. If you're the lessor, you can't take a lease of 30 years and exchange it.

Because as a lessor, your interest in the lease is the right to receive payments. And so, if you try to exchange that into a like-kind exchange, it might be considered payment upfront. It gets into 467 rental rules and things like that. But be careful about that one. But there it is a true statement in the regulation that says a lease of real property for 30 years or longer is considered to be equivalent of a fee interest for like-kind purposes.

Short-year leases are like-kind of equivalent leases. I've exchanged 10-year leases on property for 10-year leases on other property. And it's a way to swap a move of business and swap it out to a new property. I've had undivided interest as tenants in common. It can be exchanged for another parcel of real property. That's why the TIC deals work. 73-476, which I'll talk about in a second, is the world's most unrealistic revenue rule ever.

These are the facts. Three individuals owned an undivided interest as tenants in common in three separate parcels, each of which is exactly equal value, which is never going to happen. Even if you own apartments side by side in a building, they don't have exactly the same value typically.

They exchange their undivided interest in the three parcels for 100% ownership of one. So, A, B, and C each own a third of three properties. They exchange out and each one gets 100% of one property. No boot is paid by any of them. And they continue to hold as an investment in a single property after it's received. No gain or loss. That's the formulation it says, you can swap out TIC interest as real estate.

Now, let's look at some these really interesting, fun things that are considered real property. Water rights in many states, especially the Western states, are considered real property. And you can exchange these for a fee of interest in real estate. Got revenue rule 55-749.

Timber rights, the right to harvest real estate of its timber is often a real estate interest and the IRS has ruled the timber rights can be exchanged for a fee interest in real estate.

A perpetual easement, including environmental easements, can be classified as real property. And you can exchange an easement for a fee simple interest in real estate.

Other ones, agricultural easement for a fee of simple interest in farmland. A perpetual scenic conservation easement on ranch land can be exchanged for timberland, farmland, and ranch land. That's a lot of stuff. Agricultural easement, a fee simple real estate. Bear in mind foreign real property and U.S. property are not like-kind. It’s in the code itself 1031(h).

All right. Now let's talk about the exchange requirement. What is an exchange? Well, we know it should be A and B have property and they swap it. Here's my bike for your bike. Here's my car for your car. Here's my real property Whiteacre for your property Blackacre.

So, exchanges is a taxable event. The term sale or exchange is recognized throughout the Code is taxable unless you qualify into 1031.

Starker regulations really change the exchange requirement into a structuring exercise. This is true. It is all form and no substance. Like I said, the IRS invented this area of 1031 exchanges back when he issued the Starker regulations back in 1991. And in the subsequent guidance that I talked about, it made it possible to have a qualified intermediary who is clearly an agent of yours for every purpose, except for federal income tax purposes in the exchange transaction.

You transfer your property to the qualified intermediary who sells it to your buyer. Then it goes and buys the replacement property from the seller and it is deemed to be the party that returns it. You're doing a nominal exchange with the qualified intermediary who doesn't either own either property. They're just a qualified intermediary doing a service for you. That's a great and valuable service. We're appreciative of it. So that works out pretty darn well.

Let me go forward. I mean, this exchange is pretty straightforward if there's only two parties involved. You're never going to find someone that's got exactly the property you want. You know, A owns Whiteacre, B owns Blackacre, but back here. But B doesn't want Whiteacre. B wants to sell Blackacre to A and then he wants to sell Whiteacre to somebody else C and that's why you really do need these. Qualified intermediary rules to make it really very liquid and the IRS in 1991 blessed it.

People were using qualified intermediaries, but we had serious questions about whether that was bonafide because the intermediary would get paid a fee and there's clearly an agent in most kind of traditional concepts. So, it was wonderful the IRS came in and blessed these things back in 1991. Thank you, IRS.

And in the old days, I go back to exchanges back in the 1980s. I had to talk the seller of Blackacre into being our qualified intermediary. They would reluctantly agree that they were going to buy, take Whiteacre and sell it to our buyer and give us Blackacre in the exchange and pocket the difference in the money. And it was doable.

It just was really hard. And the guy that was owning Blackacre didn't want to know part of it for the most part. And we often had direct transfers. So that person was not in the chain of title. Environmental stuff back then especially was very scary. Nobody wanted to be in the chain of title, owning real estate. So we'd have direct transfers, which the IRS eventually also blessed, by the way.

And so the qualified immediately was born in the multi-party exchanges have been a dominant way of transferring ever since. Now, a true reverse Starker exchange would be you acquire the replacement property and then you later transfer out the relinquished property, as we call it, to the same party that gave you the replacement property. The IRS has never blessed that. There are no real true reverse Starkers.

What they did provide in Rev Proc 2000-37 is what I call a delayed forward. You use your exchange accommodation title holder, called an EAT. And before selling your relinquished property, you basically acquired the replacement property, park it with the EAT, which is typically a subsidiary of the QI. It doesn't have to be, it typically is.

And then at some point you find the buyer for the relinquished property and you use the money to pay off the debt. Oftentimes you lend the money to the EAT to acquire the replacement property. You need some liquidity to make these work typically. And then when you sell the outbound relinquished property, the money is used to pay off the debt either to yourself or to a bank but often to yourself.

And it's a it's substantively similar to reverse exchange because you've got your relinquished property going outbound the replacement property you've acquired before you transfer the relinquished property, it is what it is.

Why do you do these? Well, the reason is because as I explained, you can always sell a relinquished property. You can't find a buyer or reduce the price. But if you have a replacement property and you've got these IDs, the requirements, if you need property you may not sell a relinquished property and you go to buy the replacement property, the party that owns it can say I've changed my mind. I want another hundred thousand, or I want 250 or I want to renegotiate the deal.

You can't make someone sell you the replacement property. If it's a big important property, the basic safe way to do it is buy the replacement property. Do you know you have it? Park it until you need it. And, then do your outbound relinquish transaction, which you can always, like I said, you can't sell for a million eight, you can offer to sell it for a million seven. You'll find a buyer. You can reduce the property price, but you cannot force somebody to sell you the replacement property. They can hold you up or they just don't want to do it.

So, related party rule, just to be aware of this. You can exchange property with a related party, but what they don't want you to do is doing what's called basis shifting.

They don't want you to exchange the property with your mother, brother, family member, a wholly owned corporation, and then sell it with a step up in basis. I have a high basis property. My mom has low basis property. We want to sell the low basis property. I swap with my mom. She takes my property, it becomes low basis property in her possession. I take her property, it becomes high basis property in my possession. Then I sell it to the buyer that wanted to buy it from her and the family has no gain.

There's a two year wait. These things are pretty easy to avoid. Just wait the two years before you do the second transaction. And there's also a exceptions the regulations for death and voluntary conversion and so forth. So, these are easy to avoid. Just make sure you know it and don't walk into an inadvertent mistake.

Next is boot. The boot rules are surprisingly complicated. I've got a few examples I'll go through and you really got to parse them carefully. It's not that mathematically hard once you know the rules, but you got to be really careful applying the rules. I'll give you some examples. 1031 says it's like-kind exchange if it's exchanged solely for property of like-kind.

You're not going to in the real world find real estate. It's exactly equal to each other. And somebody is going to get something cash to make up the difference. It's an adjustment between the party of cash and or a subject of debt or maybe another property besides real estate. In the qualifying receipt of non-qualifying property, mean, not like property is called boot. The results in taxable income or gain.

You recognize boot. If you get cash in a deal, you recognize the gain first. It's the lesser, either the total gain on the transaction or the full amount of the boot.

If you've got a million-dollar property with a hundred thousand dollars of basis. So it's got $900,000 of built in gain. I transferred for an $800,000 property and $200,000 of cash. I will recognize 200,000 to boot because I've got $200,000 of cash. I've got $900,000 to gain but I've only got two of cash. That's why I recognize and I'll take my property with a value of $800,000 and I'll have $100,000 in basis and $200,000 of cash which I recognize the gain on.

Let's go and look at some of specific strategies for managing the boot problem. The first thing you do is to avoid recognizing gain, you've got to go over or off. You've got to buy a property that's as large as or larger than the relinquished property. And then you've got to not get back cash. Whenever you get cash, you're going to have taxable boot. That's just unless there's no gain which is the entire point of doing a 1031 is to defer gains. So, there must be gain. Otherwise, you wouldn't even be doing it.

So, the boot is received, the remaining portion of the gain is rolled over tax free, but the boot is recognized immediately. Boot rules are very mechanical, but they're complicated. Like I said, it's the lesser of the full amount of gain you recognize on the exchange or the amount of boot you get.

For example, you got $500,000 of deferred gain, you get $700,000 of cash, only recognize the $500,000, you really got more cash than that because it's the lesser of all the cash or all the gain. The boot is the sum of the money and the fair market value of non-qualifying property. Liabilities are assumed and transferred. Technically, we talk about property is liabilities assumed by a party in exchange.

They typically let you put in mortgages. They realize nobody assumes debt anymore. So, you can release a mortgage and then put it on another mortgage on the replacement property and those can be netted. It's called mortgage debt.

If you trade down in your debt amount, if you $200,000 mortgage, you acquire a property with $100,000 mortgage, that's called mortgage boot. It's the reduction treated as a cash equivalent. It's like you got $100,000 in cash and paid off the mortgage. So, it's one of the ways you count boot in this fairly complicated process.

Now, cash or other properties netted against consideration received in the form of a structural liability. However, cash is not netted against the consideration in the form of a an assumption of liability.

So you can put in cash to offset a reduction of liability. You can essentially put money in to offset a reduction of a liability, but you can't receive cash to ever have an offset against liability. Any time you get cash, you got a boot.

Let's look at some examples. Taxpayer A exchanges property with a fair market value of $200 subject to a liability of $100 to B in exchange for property with a fair market value of $150. And so it's a liability of $50 so they've each got a hundred dollars of net equity in the debt in the properties.

A is trading down and B is trading up. It's a reduction in liabilities. A goes from $100 on his property to $50. He's traded down. There's a $50 gain recognized by A. B's going the other direction because he's going up and he does not recognize debt.

It shows you the kind of the directionality of these rules. Trading down is generally going to be taxable. Trading up is generally not taxable, where there's just the property and liabilities involved.

Now, let's take C as property, the fair market value of $300, so it's a liability of $200, which is net $100 of equity, and he puts in $50 of cash and $50 of securities. Okay, so he goes from $100 of net equity plus another $100 of other property to in exchange for property for a market value of $250, so to a liability of $50. That's also worth $200, economically it matches up.

C has boot in the amount of $50. Now, indebtedness of S200. There's marked down to $50. So that's $150. They gave cash and securities. So, paying cash offsets the relief of that $100,000, the relief of debt but it was $200 down to $50, was $150. And then $100 is offset by the cash paid. So, his boot is $50.

D has an amount of a hundred. He has the property and the cash and so he's gone from $300 with liability of $200 to $50 cash. He gets $50 boot as a result of getting the cash on the receiving end, so those are opposite sides and these examples are also kind of funny because they got E and F going opposite directions.

There were very interestingly different consequences. Okay, E's got a property $350 of value liability $150 which is $200 of net equity. It goes to a property of $300 and a liability of $200. So, a $100 of value plus cash of $100. Okay, so he has a boot of $100. The indebtedness relieved of $150 is offset by the $200 because he goes up by up to two. But because he has a hundred of cash boot, he recognizes the hundred. The fact that he went up in equity, in liabilities from one fifty to two. You can't use that as a credit against the cash. If you get cash, you got boot. That's what that rule illustrates and shows.

Now, capital gain treatment where boot is received, they'll typically be capital gains because you're selling the property. It's very possible they realize some ordinary income or recapture in exchange.

It'll result in ordinary income or unrecaptured 1250 gain which is 25%, ordinary income is 37%. That's typically, it's not usually accelerated. It's theoretically possible under 1017 of the code that you have a reduction related to a COD event and ordinary income on a sale of real estate, not usual. It used to be when you had an accelerated depreciation of a real estate, but that ended in 1987. It's been four years. There's virtually none of that around anymore. But you can have something other than capital gain if you recognize your boot and the boot gets a portion to it.

Now, real quickly on alternative minimum tax, there are many tax reasons not to hold real estate in a C corporation. One of them is that you can do a like-kind of exchange and avoid tax on it, but it'll still generate AMT potential liability because of the earnings and profits preference and puts a book preference for C corporations, uniquely C corporations.

So, be aware of that, that C corporations don't want to pay tax on real estate, they typically would like-kind of if they own it. The better thing in fact is to elect S status and get out of C corporation status entirely, but sometimes you can't or sometimes there's other reasons to be a C. So be aware that that's an element in a C corporation that's doing a like-kind of exchange. It may have a tax-free exchange under 1031, but it may have a AMT consequence because of the E and P preference item under code section 56(g).

Now, the tax basis of property is the basis of the property surrendered then increased by the amount of money received or decreased by my money received or increased money gain you recognize and decreased by the loss recognized. So, the basis of property is usually pretty easy to figure out and follow.

I mean unlike boot which is pretty complicated sometimes. The basis rules are pretty straightforward. Also, the amount of brokerage, really, selling costs or transaction costs, including QI fees, to be added into the brokerage amount.

Depreciation, interesting issue. You roll over your basis, but you have to start depreciating it under a new convention. And that was you start over, you roll it over, you don't continue the depreciation. The rest of the depreciation schedule on your relinquished property, you have a new depreciation schedule that goes for 39 years. It's commercial real estate, 39 years, it'll be a small amount over 39 years. So, there's a real, detriment on the depreciation schedule trade off, but it doesn't usually stop people from doing like-kind of exchange. They want to not pay the tax rather than pay the tax and have a lot more depreciable basis. That's never what people want. They want to have the low basis and it goes under a new depreciation schedule.

Multi-party. Before the issuance of the Starker regulations, it was difficult to implement a like-kind exchange. That's an understatement. Deferred were permitted. The most prudent taxpayers were reluctant to structure a deferred exchange because it just had counterparty risk and all kinds of other risks that made it hard to do.

To be a QI you got to put in the G6 restrictions as they're called once the property goes into the exchange, you can't get it. That's a very controversial issue. People starting to exchange and then say, I changed my mind, give me my money now. You can't do that.

But a QI, once you sign it up, once they've taken the liquid property and sold it, you've got to hold it for 45 days at a minimum. If you don't identify in 45 days, you can get your money out. If you identify three properties, even if there's no likelihood you're going to close on them, you got to wait 180 days before you get your money out because of the G6 restrictions. So be very careful about those.

All right, Starker rules. You got to identify within 45 days, it's called the ID period, close in 180 days, we call it the exchange period. If we're a Starker, you buy the replacement property and park it with a need before you relinquish your relinquished property and transaction is equivalent of a reverse exchange and it's formally authorized by the rec prop about 2000-37.

Failure to satisfy the identification requirements in the 45-day period means it's outside the exchange. You got to be careful. It's easy to do but it's something people can screw up because they don't know they're doing or they think they're too casual about it.

It makes it taxable. You know, you don't blow the safe harbor. You can still claim it's an exchange outside the safe harbor, but you want to have your identification procedures. They're nuanced and I'll say that they're surprisingly complex, not super complex. You got to be careful. You do it the right way. So, here's how we do it.

It's a 45-day ID period. And you got to do it either to the person obligated to transfer the replacement property or another person involved in the exchange. We almost always identify it to the QI, okay, 100% of the time. The replacement property is received before the end of the ID period, it's automatically identified. That's not usually the issue or the problem.

How do you identify it? It must be unambiguously described in a written document or agreement. The legal description, I always use beats and bounds. I never do the, casual. It's the Empire State Building. You can use street address or you can use distinguishable name. My problem with street addresses is some properties are 28, 30 Main Street. Is 28 Main Street enough? Don't want to find out. I use the metes and bounds. The real estate lawyers are going to do it. Empire State Building, yeah, maybe, but I don't know if there's multiple parcels that are part of the Empire State Building. Again, I love the metes and bounds. I never use the Darby farm or the Frasier farm or you know, H hardware building, things like that. I use the metes and bounds every time myself.

TIC interest, written identification should be pretty accurate. You want to say a 23% interest is tenant in common in the TIC. You don't want to say a TIC interest. You may fail the 75% test we'll talk about in a minute. How accurate you have to identify. The regulations are really flexible and they allow you to identify more than one property. There's a three-property rule, a 200% rule, a 95% rule which I'll describe in a minute in how and how they work and which ones make sense to typically use.

[54:32]

Regardless of the number of relinquished properties, the maximum replacement properties you can identify is three. I don't do multiple relinquished properties in exchange. Each relinquished property, I always treat as a separate exchange, makes it simple. I can identify the same three replacement properties for multiple outbound transactions. But I don't like trying to lump them all together. I just might keep being careful and diligent in these rules and being applied.

Three properties you can identify without regard to the fair market value of the property I can sell one outbound property and identify three properties, each dramatically more valuable than the ones I just transferred out. Identify any number of replacement property as long as the aggregate fair market value does not exceed 200% of the fair market value of relinquished property. I don't want to have multiple relinquished properties, I said, but 200% of the value of the property that's transferred out.

I don't like the 200% rule because what if the properties are later sold? It turns out your 200% was actually 210% or 205%. I call it the 170% rule to try and undershoot. If you go over by a penny too much, you don't satisfy, if you undershoot, you're fine. I say it's a 170% and if we're going do more than three properties, when do have to do more than three properties? Sometimes you got a huge property transferring one large property and you want to replace it with 10.

And, identify 17 properties maybe each worth a million for a ten million dollar property outbound it's under 200 % easily there's even some dispute about the valuation of the 17 properties I identified it hopefully doesn't go over 200% like I said I'm careful about that rule because of the risk it's valuation that you don't really control the IRS at end of the day may not agree with you.

Okay, three properties we know what that is. 200% rule. If you do more than three or more than 200%, and there is no property identified, you fail it. The one thing you can do is over identify four properties worth three times, 300% more. It's called the 95% rule. That means you acquire 95% of the property you identify is acquired before the end of the exchange period.

So as long as you get 95%, I had one deal one time where we had four towers in New York, couldn't do the three-property rule, they reached separate properties, they're all part of a large residential complex, each one was a separate property. We had to identify all four of them. It was more than 200%, but we intended to acquire all four of them. So, we got the 95% rule. So one time I've used the 95% rule to make sure that I had an eligible exchange. The reason is that we were exchanging property in this large housing complex for separate properties and we couldn't meet the technical 200% rule or the three-property rule.

Okay. Identification can be revoked as long as you do it within the forty-five period. Deliver the person who you the original identification notice to. Like I said, I always give the notice to the QI member to the to the private exchanging party. Once the property is identified, you got to receive it before the end of the exchange period.

And it's got to be substantially the same property as identified. What does substantially mean? Well, you've got one example of regulation, which is an informal, we call it the 75% test. The facts are in the example 4 of the regulations, be identified a property that consists of two acres of unapproved land valued at $250,000.

You later got one and a half acres because 75% of the original property and an assumed transactional value of $187,500; 75% of the value as well. And then the portion is not different from the basic nature of the property as a whole. It was the property you carved off wasn't the lakefront property, and the uncarved off property was the backland that was worthless. It was 75% of essentially a property that was roughly equal in value or quality-wise in the basic nature. They said that was substantially the same.

It's an oversimplification of a more complicated fact pattern, but that's the basic 75% test. I don't want to be up against that. If I've got a TIC, I'll say a 23% interest, a 28% interest, a whatever percentage interest of a TIC we're acquiring.

Replace a property not yet existence can be identified as a replacement property. You've identify it, legal description underlying land, much practical identification as you can at the time, but the construction and the existing improvements. It's always an interesting thing about how much you can vary with it being substantially the same property identified. I mean, would not want to have a building identified as residential housing and turn it into a movie theater or a racetrack or something like that.

But substantially, we pushed them up a little bit on these deals because we knew they would build-to-suit, you really want to be able to build what's at the end of the day, whether it's the architect and the engineers or what we also determine as they go along. The plans change. No building has ever been built that was exactly identical to the original blueprint. And those changes will take place.

I don't worry about that as long as it's pretty much substantial. The same thing we talked about, that's good enough for me and I think it'll be good enough for the IRS.

Whether there's a receipt of identified property, substantially same allows for variations due to usual or difficult production changes. That's for the build-to-suit. The substantial changes are made in the property we produced. Through the rebuilding process, the property was sealed, not because it is substantially the same. Now, again, we say we made big changes in the property and if they're substantial, that would not be substantially identical. It's kind of without defining what those are, just be careful when you have a, build-to-suit to feel comfortable that you're building what you identified in the identification process.

180-day wise, applies you got, you got to build-to-suit. You got to deliver the property, whether or not it's completed. And, uh, there's a additional production can occur afterwards. The property receivable that's added after the 180-day rule of the transfer of the property will not be like-kind property. It's just additional, whatever you got it at day one, 79, you hope is well, it's sufficient and substantially complete and sufficient to meet the requirements that you have.

Build-to-suits are always interesting and fun and you can run. There's a lot of flexibility in the regulations to do those kind of things.

The rules are important about whether you received the money. When you sell the outbound property, it's got to go into the QIs account. You can't have the actual constructive receipt, but they're pretty flexible, in the regulations. The tax period doesn't apply with the safe harbors. The constructive receipt dollar remains a substantial problem. What's the constructive receipt safe harbor than you typically have. Typically, you've got an account that's controlled by the QI. Taxpayer can have a veto power, it's got to the QI typically controlling it, as well as the taxpayer.

What you want to do is you want to say the QI and I have to approve expenditures. The money can't be siphoned off improperly, but you can't pull it out yourself. The QI has always got to approve it. And so with the G6 restrictions.

And then constructed receipt would be if you've got actual use of the money. You can't use it as collateral typically. You can't use it as, you know, to borrow against.

You can't have kind of rights. You can get interest on it, which is kind of an amazing thing under the rules. Let's look at the safe harbor rules. What it does is it provides security for the money. All the acquisition of the replacement properties being arranged with the money. When you sell a big piece of property, five million, 50 million, 500 million, you want to make sure that money's got control over it. And there's four safe harbors that will treat you as not having constructive receipt of the money, even though it's safe and you're protected.

Where one of the safe harbors is security or guarantee arrangements. You can have it secured by a mortgage, standby letter of credit, all kinds of stuff where you're certain that you'll get the money. It's not at risk in the hands of the QI or the other party if there happen to be a counterparty doing the transaction. I guess a mortgage, a standby letter of credit. You can't draw unless the transferee defaults and guarantee by the third party. Those are all security arrangements that are allowed.

Qualified escrow accounts and qualified trust you have an agreement where that's put in trust with a bank. I always do this. I never allow the QI to put the money in the QI's general account. Lots of people got murdered in the 1980s 1990s 2000 era when the the QI went under the money wasn't separated into a qualified escrow or qualified trust and the money was lost.

Qualified escrow the escrow holder is not the taxpayer or a related party disqualified person and qualified trust is a trust as opposed to an escrow arrangement. They are so close in structure and purpose that they're interchangeable. I've had to draft a qualified trust agreement. I used a qualified escrow to draft it. Other way around, if I had to get a qualified escrow, I started the qualified trust document and mark it up.

They literally are the bank wholly at in an account that's either an escrow account or a trustee account where the trustee could be the bank, but it could very likely is the escrow. I mean, the qualified intermediary and the taxpayer. You just have to not have control over it. Rates confirmed upon taxpayer determine to dismiss the agent or OK.

You don't have to, you know treat that as if you've got control of the escrow. And so there's a lot of flexibility. These are designed to make it doable in a world where it makes sense to also have oversight and security and control. So, these rules are really functional in every respect.

Qualified intermediaries, this is the huge special safe harbor. It's what you need for almost every modern transaction. You need the QI to be deemed the buyer of the relinquished property who transfers it to the ultimate buyer, takes the cash, buys or replacement property and transfers it back within 180 days to the taxpayer who's doing the exchange.

Cooperative intermediaries are independent. They can't be a disqualified person. Uh, lawyers can even do it, but they can't do it for clients. They've represented recently. Be careful, there are rules about that. I recommend getting someone in the QI business. There's lots of really good people that do it. Uh, they don't charge very much by the way. They charge something $2,500, sometimes $1,500. They typically, uh, make money on the transaction with a bank by depositing the escrow funds for the 180 days or so into a bank at a lower interest rate.

You often forego interest or get a much lesser interest rate than you might otherwise because that's how the QI makes the money. But the fees are often very reasonable in my view for time effort and work that the QI has got to do including managing some fairly sophisticated documents to exchange being and all the other things, the ID agreement, all the other stuff that goes into a well-executed exchange transaction.

The transferor can receive interest or growth factors in the funds in the escrow without being deemed to have actual constructive use or receipt of the funds. We can't get the money out until after them.

The cash out, it's got to be subject to the G6 limitations. It's got be in there for the hundred and eight days or 45 days ID period. And you don't ID and get your money out. But these are really, this makes the QI relationship real. You cannot give the money to the QI and take it back as your whim. Once it's in there, it's a real commitment and you got to live with it. I've had people get very upset about the money. They want their money back. And it turns out to very stressful.

Let's just look at G6 a little bit more carefully. It imposes limits with respect to the second, third, and fourth of the safe harbors. We just looked at it both first with security interests like a letter of credit, but for QIs and escrow accounts or trust accounts. All these are going to be subject to the G6 restrictions.

The taxpayer can't receive, pledge, borrow, or otherwise obtain the benefits of the money. Okay. Like I said, the end of the ID period, if you don't identify any replacement property, you automatically fail the 45 day test and your exchange is over and they can get your money.

And then if you receive all the identified replacement property, not that you can't receive it, you have received it, your exchange is done. There's a material substantial contingency, which is unusual you know, this is sort of a hardship exception. I've never used this myself ever. We're going to try and apply a limitation on G6. Like I tell people, if you don't want to do it and go forward, don't identify your money. It's law. You know, in the escrow for 45 days, if you do identify, it doesn't mean all the three the three properties aren't going to close. I'm done. Even if that's the case, got to wait till 180 days to get your money back just FYI. So be careful.

There are certain things that carve out. Some things are sensible about a lifetime exchange. If you've got rental property, you carve out rents and things like that or pro rate rents. So it goes from the closing. And then commissions and closing costs are typically borne by the each party respectively, their own cause. You're acquiring replacement property, the real estate commission, the broker's commission. All these closing costs will all go into the basis of the property and it's logical.

These basis issues typically are common sense. Boot issues, as I warned you earlier, I worry about they're a little more complicated than they initially seem sometimes.

Hire a qualified intermediary. There's lots of good reputable companies. Make sure that they're people that have been around for a long time and know what they're doing.

Typically, they charge a flat fee. I put in $5,000 so that people aren't expecting to be cheaper than that, but it could be. A lot of times it's $2,500, $1,500. It's just amazing how little they'll charge for this because they get, as I said, a benefit from the bank by putting the money in and either paying you zero interest or a nominal amount of interest. You really want interest from your QI. You better negotiate that upfront before you sign the agreement because typically that's kind of where their profit is.

Some will charge a larger upfront fee, but most profit from the deposit use the money in the escrow account to get a de facto interest rate for the bank for placing at the bank. Identification, like I said, it seems simple, but people, if you don't supervise them, they'll make mistakes. They won't describe it the right way. They won't deliver within 45 days. They want to change their mind after 45 days. You got to be really careful on the ID part of it.

Reverse exchanges. This is the last and the most important of all of the ones I think we talk about today because rules exchanges make a lot of sense. They're called a parking transaction and the idea is that you acquire the replacement property before you give up their relinquished property and you own it and hold it in an exchange of combination title holder called EAT and it's parked there. Typically, you give the money one way or the other to the EAT that needs to acquire the replacement property. It may be the arranged financing and you're the guarantor. That's all okay. The EAT can borrow money from you. That's okay.

It's especially when you're doing a build-to-suit, you often have the EAT doing the build-to-suit to acquire the property in which you're going to build-to-suit and then they'll lease the property to you for a dollar. If it's a functional property, if it's still being built, they'll hire you as the construction manager. You actually would expend the money and approve the expenditures and run the money that's in the EAT possession which you provided. This is on a replacement transaction, but it can also be, you also do a build-to-suit on a reverse exchange.

All these things are part of the great flexibility the IRS has provided to taxpayers under the Starker regulations and subsequent authority. This is again an area the IRS has invented that wouldn't exist but for the very clear, very favorable kinds that's in the regulations. So understand it and learn how to take advantage of it.

A taxpayer typically advances funds through a loan. He acquires a replacement property and then if it's a functional property, it's going to be for that matter a shopping center or an apartment building or whatever, they typically lease it to you for a dollar under triple net lease that technically, I mean, it transfers everything but title to you right away. You've got the economic benefits and the economic burdens of the property. The interesting thing is because you haven't done the exchange yet, you can still depreciate the outbound relinquished property, but you cannot depreciate the replacement property because you don't own it yet.

So you've got triple-net lease, which as a lessee you don't depreciate the property anyway, and you can collect all the rents from the tenants and you can do all the all the stuff you need to do maintenance and everything else is it's yours and everything except tactical legal title. And frankly, equitably, you own the darn thing, right? You advance the money, you've got control of it. It's every and the EAT is a a fact totem or an agent for you.

So, for every purpose, except like-kind of exchange law, the EAT is your agent and it's you owning the property. But it's technically considered OK because we haven't completed the exchange yet.

Legal title in the replacement property is held by the EAT. And like I said, neither the EAT nor the taxpayer claimed depreciation deductions because the EAT has acquired the property for resale to you. And so it's not a depreciable asset against the EAT and you don't own it yet. So you can't depreciate it either. By the way, the legal title is just an interesting comment to note. It's held by the EAT. It's very common. The QI wants to get rid of the EAT anyway.

What you'll typically do is when you take possession of the replacement property, they'll actually transfer you the limited partnership interest of the LP that is the EAT and holds the replacement property. Because it's a single member LLC, it's treated as an acquisition of the replacement property by you. What that does is it transfers the EAT entity to you. QI gets rid of it, doesn't have to liquidate it. You don't need to either. You also don't have to pay stamp taxes. Typically, there's some jurisdictions where they're smart and they know a transfer of LLC interest is like the transfer of the underlying property.

But you often do that so that there's no recorded deed change of property transfer the EAT interest. And in the major jurisdictions, there's no real estate tax. And in other jurisdictions, it's an issue about whether it shows up or whether you have an issue or not. That's the typical way you do it have another back to back deed, which clearly in most jurisdictions triggers a real estate stamp tax of some kind. So that's the smart, appropriate way to do it.

2000-37, looks to the regulations covering deferred like-kind of changes to provide similar rules for parking arrangement. Now, the problem is that it's not similar because you just they're just really fundamental mechanical differences in it. But it does provide for a 45 day identification period, 180-day closing period for the for the outbound transaction. And identifying your outbound transaction is typically easier. Easy because the property you intend to be the relinquished property. You usually change that. But it's got to close in 180 days.

Just so you can see exactly what it means. It's a safe harbor that the IRS says they will not challenge the qualification, the property as replacement property or relinquished property, depending on which way you're doing it. For purposes of 1031. Or the treatment of the exchange accommodation titleholder your EAT as the beneficial owner of the property for federal income tax property.

If it's held pursuant to a qualified exchange or combination agreement as to applying the revenue procedure, it's a very long, complicated document that you make sure that you draft properly in accordance with the Rev Proc 2000-37.

All right build-to-suit you can have a replacement property, the property not yet in existence at the time it's identified that's really cool. It's often called a build-to-suit reverse exchange it also is possible to do build-to-suit rather build the replacement property before you transfer another relinquished property.

You can have the taxpayer be a disqualified person to manage the property. In other words, you can have your buy a piece of property. You can manage the construction, supervise the improvement, act as a contractor. Typically, you don't want to charge. You typically make loans for the construction, either yourself or the bank. You typically guarantee the construction loan, do all kinds of stuff. You typically don't want to charge fees. You don't want to turn your costs into ordinary income. You typically provide your services tax free or charge free, which is allowable, believe it or not, under the build-to-suit regulations.

I can work for free, provide a lot of value. It gets rolled into the value of my replacement property. And I don't have to take ordinary income, even though I'm providing a pretty substantial and valuable services.

You can submit an accounting to the EAT who documents and uses the payments. You often have control over, frankly, the financing. Either you're lending it in or you get the bank relationship and you guarantee the bank loan. I mean it's all nuanced and depends on the deal specifically, but you can construct the improvements, make payments to independent contractors and subcontractors. The EAT doesn't typically pay the contractor fee. Like I said, you know, when you have ordinary income coming out of this. The revenue procedure specifically allows non-arms length provisions between the EAT and the taxpayer. You can work for free for your own benefit ultimately.

You're not receiving management fees, you're avoiding the ordinary income. Value becomes part of the built-in appreciation of a replacement property rolled over to the indefinite future, maybe years in the future, then 1014(b) eliminates it.

All great stuff and why we love 1031 transactions. So special purpose LLC owned by the EAT is how you typically hold it. You transfer the LLC on completion of it. It's by far and away the easiest way to implement a build-to-suit exchange. And they're permitted and very fun to do. As with foreign exchanges, the safe harbor parking is only for 180 day period. You're supposed to identify it, but it's easy.

Identify your outbound property because you know where it is, but you got to get it done in 180 days. Doing build-to-suit in 180 days. I've had people with bulldozers on the property line 12:01 at midnight. They crossed the property line and started the 180 day clock and They built large buildings in that period of time. It was in California where the weather is predictably good. I wouldn't want to do that in Boston or Chicago or places where the weather can be bad, but it's a there's a lot of stress in a build-to-suit because you got to negotiate the sale of relinquished property for the closing date that matches the completion to build-to-suit. You got to get someone that's willing to close exactly maybe 178 days out 179 days. And you got to also have something, you know, is going to come through with it.

All in all, lots of fun.

CERIFI CPEdge

Webinar

Using a Like-Kind (§ 1031) Exchange to Reduce Taxes: Real Estate and Beyond

Presented by Joseph B. Darby III, Esq.

1

Joseph B. Darby III, Esq.

Joseph (Jay) B. Darby III, Esq., has more than 30 years of experience in a wide range of income tax, estate planning, and related business matters.

His expertise in corporate and other entity transactions includes:

- Adjunct tax professor at both Boston University Law School and Boston College Law School, teaching advanced courses on corporate and partnership tax law and advanced individual tax strategies
- Teaches an advanced course in the BU Law School Graduate Tax Program on Section 1202 Qualified Small Business Stock and Like Kind Exchanges
- Has structured and implemented hundreds of acquisition and sale transactions, followed by termination and liquidation of businesses
- The author of treatise Tax Aspects of Mergers, Acquisitions, and Business Sales, Third Edition, published by ALM National Underwriters

2 CERIFI CPEdge

2

Learning Objectives

Upon completion of this webinar, participants should be able to—

- Describe the tax-free exchange rules under IRC Sec. 1031, in order to better advise their clients on strategies and compliance.
- Summarize this complex but important area of tax law which they may not engage with on a regular basis.
- List the latest developments and techniques that participants with significant experience in the area will also find useful and informative.

3

Using a Like-Kind (1031) Exchange to Reduce Taxes – Real Estate and Beyond

PART I

I. CODE §1031 LIKE-KIND EXCHANGES.

4

A. Overview

- A transfer of property in a sale or exchange transaction normally gives rise to taxable income or gain. Section 1001 of the Internal Revenue Code of 1986, as amended ("Code"),
- However, Congress recognized many years ago that certain types of business and investment assets—notably real estate, which historically has appreciated economically even while being depreciated for income-tax purposes—would over time produce a substantial built-in gain, which would discourage dispositions of assets solely because of the resulting tax costs.

5

A. Overview

- This, in turn, would discourage capital-asset replacement transactions that otherwise might have a strong economic benefit. This is referred to as the "lock in" effect.
- This led to the adoption of the predecessor provision to Code §1031, which basically permits taxpayers who are holding real property (for use in a business or for investment) to exchange such real property for like-kind property without recognizing currently the built-in gain.
- NOTE: Tax Cuts and Jobs Act, adopted effective January 1, 2018, dramatically reduced the scope of eligible Section 1031 transactions by reducing the scope of eligible property, and today the section applies only to exchanges of "real property" that is "held for productive use in a trade or business or for investment."

6

A. Overview

- Multi-Party Exchanges. A real property owner who wishes to exchange business or investment real property will rarely find an owner of replacement property who wants to acquire the relinquished property. Therefore, a multi-party exchange is almost always necessary.
- Pre-Starker Example: A agrees to sell Whiteacre to B, but only if B agrees to buy Blackacre from C and then "exchange" Backacre for Whiteacre. This was difficult to arrange, but sometimes B would agree (usually with great reluctance).

7

A. Overview

- Deferred Exchange. Years ago it was not clear whether a "deferred" exchange transaction would be respected under §1031, but in 1979 the Ninth Circuit held in Starker v. United States that a deferred exchange would be tax free where the replacement property was delivered five years after the transfer of the relinquished property.
- Code §1031(c) was then added in 1984 to introduce a "safe harbor" deferred exchange. This includes a 45-day identification period to identify the replacement property (the "ID Period") and a 180-day period to acquire the replacement property (the "Exchange Period").

8

B. Regulations and Guidance

- The IRS has issued detailed regulations governing many of the transactional issues under Code §1031, particularly those affecting multi-party and/or deferred like-kind exchanges.
- The Regulations tend to be surprisingly liberal on many key issues and provide useful guidance for completing successful like-kind exchanges.
- In addition, the IRS has provided clear guidance and "safe harbor" protection for various transactions that go beyond the mere "exchange" of real estate interests.

9

B. Regulations and Guidance

- These "safe harbors" cover and include such exotic transactions as:
  - "Reverse Starker" transactions, Rev. Proc. 2000-37, that allow the replacement property to be acquired and "parked" before selling the relinquished property:
  - Tenancy in Common arrangements, Rev. Proc. 2002-22, that allow a co-ownership arrangement to qualify as an interest in real estate rather than as an (intangible) partnership interest; and
  - Statutory (grantor) trusts (including a so-called "Delaware Statutory Trust" or "DST"), Rev. Rul. 2004-86 provide a second mechanism (in addition to a Tenancy in Common) to "fragment" real estate into very specific sizes and values.
  - Rev. Proc. 2008-16, provides taxpayers with a safe harbor for "vacation rentals" under which a dwelling unit will qualify as property held for productive use in a trade or business or for investment under § 1031 even though a taxpayer occasionally uses the dwelling unit for personal purposes.

10

C. The One Big Beautiful Bill Act

- The One Big Beautiful Bill Act ("OBBB") signed into law on July 4, 2025 did not introduce any changes to Code § 1031 – which is a significant "win" for real estate investors, given that the predecessor Trump tax bill, the Tax Cuts and Jobs Act in 2017, had dramatically narrowed the scope of eligible § 1031 transactions, and that a proposed $500,000 cap on deferred gains from prior administrations was not enacted.
- OBBB does increase and make permanent in 2026 the lifetime estate and gift tax exemption amount, which was increased to $15 million per individual and $30 million for married couples, adjusted thereafter annually for inflation.
- These OBBB provisions turn effectively estate planning into income tax planning for may taxpayers, and since Code § 1014, providing for step-up in tax basis on death to fair market value, was not modified (or eliminated), and this means that Like-Kind Exchanges can allow taxpayers to hold real estate with very low basis, include it in the estate and death, and effectively eliminate permanently the income and gain deferred by the Like-Kind Exchange. A VERY sweet deal!

11

Using a Like-Kind (1031) Exchange to Reduce Taxes – Real Estate and Beyond

II. TAXABLE SALES CONTRASTED WITH LIKE-KIND EXCHANGES.

12

A. Taxable Sales

- Code § 1031 is one of the five most taxpayer-friendly provisions in the entire Internal Revenue Code.
- To appreciate the benefits conferred by Code § 1031, it is useful to examine the tax consequences of a property sale in the absence of this valuable tax-deferral provision.
- A sale of property, including an "exchange" that does not qualify as tax-free under Code §1031, results in recognition of gain (or loss) equal to the excess of the fair-market value of the proceeds received over the seller's tax basis in the property. Code §1001.

13

A. Taxable Sales

- The character of the income or gain recognized on a disposition of property depends on the nature of the underlying asset.
- For example, real estate that is used in a trade or business or for held for investment, is subject to the allowance for depreciation, and is held for over one year, is a so-called "§ 1231 property."
- In general, § 1231 property will either generate ordinary loss (if there is a loss on the sale) or long-term capital gain (if there is gain on the sale, but subject to the "recapture rules," described below).

14

A. Taxable Sales

- By contrast, real property that is held as inventory and sold in the ordinary course of business will generate ordinary income (or loss). Code §1221(a)(3) and §1231(b).

  NOTE: A transaction that meets the requirements of a like-kind exchange under §1031 is automatically subject to tax deferral under that Code section – whether the taxpayer wants deferral or not! This can sometimes be a trap, because a taxpayer may be unexpectedly barred from claiming a loss.

15

B. Depreciation Recapture

- On the sale or other disposition of depreciable real property, all depreciation deductions claimed with respect to such property are "recaptured." Code §1250(b).
- There are in effect two "recapture" amounts for real estate. The first, for property placed in service before 1987, is the difference between the ACRS deductions claimed with respect to property and depreciation determined using the straight-line method. This amount of gain is treated as ordinary income.
- The good news is that real property placed in service after 1986 should have no "ordinary" depreciation recapture of this kind.

16

B. Depreciation Recapture

- Instead, real estate place in service after 1986 has what amounts to an alternative to "recapture," which is to be taxed at a "special" tax rate of 25% on the so-called "unrecaptured Section 1250 gain" as defined in Code Section 1(h)(6). Unrecaptured Section 1250 gain is the amount that would be "recapture" as ordinary income if the special carve-out for straight-line depreciation did not exit.
- Unrecaptured Section 1250 gain is taxed at a 25% rate, instead of ordinary rates (currently set at a maximum of 37%) or capital gains rates (currently set at a maximum of 20%).

17

Example 1: A Taxable Sale of Real Estate

- Assume that Taxpayer A buys Whiteacre for $1 million, allocates $900,000 of tax basis to depreciable improvements and $100,000 to (non-depreciable) land, and uses the property in a real estate rental business. Over approximately the next ten years Taxpayer A claims $225,000 of depreciation deductions under MACRS. Taxpayer A now receives an offer to buy Whiteacre for $ 2 million. Taxpayer A materially participates in the business, and so gain on the sale of Whiteacre is not subject to the Net Investment Income Tax of 3.8%, which is imposed on capital gains from passive activities.

18

Example 1: A Taxable Sale

Whiteacre	Taxable Sale
FMV on Sale	$ 2,000,000.00
Tax Basis on Sale Date	$ 775,000.00
Unrecaptured 1250 Gain (taxed at 25%)	$ 225,000.00
Long-Term Capital Gain (taxed at 20%)	$ 1,000,000.00
Tax ($56,250 + $200,000)	$ 256,250.00
Net Proceeds After Tax	$ 1,741,750.00

19

Example 2: Tax-Free Exchange of Real Estate

- Same facts as Example #1, except Taxpayer A structures the transaction as a Like-Kind Exchange ("LKE") of Whiteacre for Blackacre. The P & S for Whiteacre (the "Relinquished Property") is assigned prior to sale to a qualified intermediary ("QI"), and the $2 million net sales proceeds are then held by the QI and used (as directed by Taxpayer A) to acquire Blackacre (the "Replacement Property") for a total purchase price equal to or greater than $2 million (the so-called "up or over" requirement to avoid any recognition of gain on the LKE).
- If this transaction meets the other requirements of an LKE, then Taxpayer A will have a tax savings of $256,250, which is reinvested in the new property.

20

Example 2: Tax-Free Exchange of Real Estate

Whiteacre	Tax-Free Exchange
FMV	$ 2,000,000.00
Tax Basis	$ 775,000.00
Realized Gain (both	$ 1,225,000.00
Recognized Gain	$ 0.00
Tax	$ 0.00
Net Proceeds Available for Reinvestment in Blackacre	$ 2,000,000.00

21

Using a Like-Kind (1031) Exchange to Reduce Taxes – Real Estate and Beyond

III. LEGAL REQUIREMENTS OF LIKE-KIND (§1031) EXCHANGES.

22

A. Basic Elements of an LKE

- Code §1031(a)(1) reads as follows:

  "No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment."

- Almost every word or phrase in this sentence has important legal implications that will be addressed in separate sections below.

23

B. "Held for Productive Use in a Trade or Business or for Investment"

- There are two elements to the "held" requirement, (1) that it be "held", and (2) that it be held for "productive use in a trade or business or for investment."
- The "held" requirement means property may not be acquired solely to facilitate exchange or otherwise acquired for immediate transfer in a second transaction.
- See Rev. Rul. 75-292 (property acquired in a §1031 transaction and immediately contributed to a corporation under 351 is not "held" for qualified purpose). In substance, there is an implicit minimum time period for which the property must be held.

24

B. "Held for Productive Use in a Trade or Business or for Investment"

- The minimum holding period sufficient to meet the "held" requirement is a very interesting issue.
- In PLR 8429039, the IRS ruled that a minimum holding period of 2 years would be sufficient to establish that the "held" requirement is satisfied.
- For situations where property is held for less than two years, a one-year-and-a-day holding period may provide a relatively compelling argument that it has been "held," since that is the period that qualifies for long-term capital gain treatment under Code § 1222(3).

25

B. "Held for Productive Use in a Trade or Business or for Investment"

- In fact, however, there is no specific minimum holding period that determines whether the "held" requirement is satisfied.
- The Tax Court has stated that a taxpayer's intent to hold a property for productive use in a trade or business or for investment is a question of fact that must be determined at the time of the exchange. Bolker v Commissioner, 81 T.C. 782, 804 (1983), affd. 760 F.2d 1039 (9th Cir. 1985).
- Taxpayers bear the burden of proving that they had the requisite investment intent. Click v. Commissioner, 78 T.C. 225, 231 (1982).

26

B. "Held for Productive Use in a Trade or Business or for Investment"

- In Goolsby v. Commissioner, T.C. Memo. 2010-64, the taxpayers exchanged a relinquished property for two replacement properties, and two months later moved into one of the replacement properties. Taxpayers made only limited efforts to rent the property before moving in, and pulled a building permit to finish the basement within two weeks of acquiring the property. The Tax Court determined that the property was not acquired for investment purposes.
- By contrast, in Reesink v. Commissioner, T.C. Memo. 2012-118, the taxpayers were successful in proving that a "replacement property" was held for investment in connection with an LKE, even though the taxpayers, as in Goolsby, later moved into the property and converted it into a personal residence.

27

B. "Held for Productive Use in a Trade or Business or for Investment"

- The crucial difference was that in Reesink the taxpayers made significant efforts to advertise the property for rent. The taxpayers showed the house to at least two potential renters, but did not reduce the asking rental price of $3000 per month.
- The taxpayers sold their primary residence approximately six months after acquiring the replacement property in the purported exchange, and did not move into the replacement property until eight months after the exchange.
- Reesink demonstrates that the "held" requirement is 1) likely to turn on the specific facts and circumstances, and 2) may be interpreted favorably by the court even if the IRS disagrees.

28

B. "Held for Productive Use in a Trade or Business or for Investment"

- A former residence can be converted to investment property, and vice versa, based on the use and intentions of the owner, and thus made eligible for a 1031 exchange.
- A practical rule of thumb is to have at least one tax return showing that the real property is held for a qualifying use (e.g., by claiming depreciation) before you attempt to claim like-kind exchange treatment.
- One year of investment or business use would be the absolute minimum, and would probably be subject to close scrutiny and possible challenge by the IRS; three to four years of holding the property for an eligible purpose would be a much safer fact pattern.

29

B. "Held for Productive Use in a Trade or Business or for Investment"

- The second element of the "held" requirement, requiring that the property be held "for productive use in a trade or business or for investment" means that the property has to be held for these specific purposes.
- Code § 1031 does not apply to property that is used solely as a personal residence. Section 2.05 of Rev. Proc. 2005-14.
- Likewise, property held as inventory will not qualify under this exception, even if the property received in an exchange is otherwise "like-kind." See Code § 1031 (a)(2).

30

B. "Held for Productive Use in a Trade or Business or for Investment"

- *Moore v. Commissioner,* T.C. Memo. 2007-134, taxpayers exchanged one vacation home for another. Both were used by the taxpayers only for personal purposes. Taxpayers claimed that the exchange of the homes was eligible under § 1031 because the properties were expected to appreciate in value and thus were held for investment.
- The Tax Court held, however, that the properties were held for personal use and that the "mere hope or expectation that property may be sold at a gain cannot establish an investment intent if the taxpayer uses the property as a residence."

31

B. "Held for Productive Use in a Trade or Business or for Investment"

- Drop and Swap. The "held" issue frequently comes up when real property is held in a pass-through entity, such as a trust or a partnership, and the parties wish to break up their co-ownership in anticipation of a 1031 exchange.
- For example, the partners may wish to distribute the real property to themselves as co-owners, and then each do a separate like-kind exchange.
- Because of the "held" requirement, such a transaction is risky unless the partnership asset is distributed sufficiently far in advance.

32

B. "Held for Productive Use in a Trade or Business or for Investment"

- Case law on multi-step transactions such as "drop and swaps" tends to be favorable to taxpayers, but the very existence of a body of case law shows that the IRS has been ready and willing to litigate this issue in the past.
- Maloney v. Com'r, 93 TC 89 (1989) (investment property held by corporation was exchanged for other investment property and then the corporation distributed the replacement property in a Code §333 liquidation; held, the first transaction was a Code §1031 exchange notwithstanding subsequent liquidation).
- Bolker v. Commissioner (81 T.C. 782 (1983), aff'd 760 F.2d 1039 (9th Cir. 1985)), (Tax Court and later the Ninth Circuit approved a Section 1031 like-kind exchange in a "drop and swap" scenario where a corporation distributed real property in a Code §333 liquidation to its sole shareholder, who on the same day then exchanged for other like-kind real estate; no minimum holding period (ownership alone satisfies the "holding" requirement) and intent to exchange into other like-kind property satisfies the qualified use requirement.

33

B. "Held for Productive Use in a Trade or Business or for Investment"

- Magneson v. Com'r, 81 TC 767 (1983), aff'd, 753 F.2d 1490 (9th Cir. 1985) (investment property exchanged for 10% individual interest in a second property that, under pre-arranged plan, was then contributed to a partnership for a 9-10% general partnership interest; second property satisfied "held" requirement; court suggested different result might apply if second property was immediately contributed for limited partnership interest or stock in a corporation instead of a general partnership interest.)
- The New York Division of Tax Appeals, In the Matter of Benjamin Hadar and Rachel Hadar (DTA No. 850122) and In the Matter of Ruth Shomron (DTA No. 850123), decided June 12, 2025, ruled that same-day "drop-and-swap" transactions (distributing property from a partnerships to individuals as tenants-in-common immediately before an exchange) was eligible for § 1031 treatment, provided the taxpayer maintains continuous investment intent, and thus no minimum holding period is required by statute.

34

C. "Like Kind" Property Defined – Real Estate

- All real estate is "like kind" to all other real estate. Reg. §1.1031(a)-1(b).
- Thus, improved real estate used in a trade or business can be exchanged under Code §1031 for unimproved land to be held for investment.
- This simple statement in the regulations opens up enormous creative opportunities for like-kind exchanges of property that qualifies as "real estate" under applicable state law.

35

C. "Like Kind" Property Defined – Real Estate

- A lease of real property with a remaining term of 30 years is considered "like kind" to a fee interest in real estate. Reg. §1.1031(a)-1(c).
- Shorter leaseholds are like kind to equivalent leaseholds. Rev. Rul. 76-301.
- An undivided interest as tenants in common in real property can be exchanged for sole ownership of another parcel of real property. Rev. Rul. 79-44; Rev. Rul. 73-476.

36

C. "Like Kind" Property Defined – Real Estate

- Example: Three individuals each own an undivided interest as a tenant in common in three separate parcels of real property held for investment. Each exchanged his undivided interest in the three separate parcels for a 100% ownership of one parcel. No boot was paid by any of them. Each taxpayer continued to hold as an investment the single parcel he had received.
- No gain or loss is recognized. Rev. Rul. 73-476.

37

C. "Like Kind" Property Defined – Real Estate

- Water rights are classified as "real property" rights in many states, especially western states, and these rights can be exchanged for a fee simple interest in real estate. Rev. Rul. 55 – 749; PLR 200404044.
- Timber rights – the right to harvest timber on a particular parcel of real estate – is often classified as a real estate interest, and the IRS has ruled that timber rights can be exchanged for a fee simple interest in real estate. TAM 9525002.
- A perpetual easement is another interest in real estate that is typically classified as real property, and the IRS has ruled that a perpetual easement can be exchanged for a fee simple interest in real estate. PLR 9601046.

38

C. "Like Kind" Property Defined – Real Estate

The IRS has ruled that—

- An agricultural easement in farm property can be exchanged for a fee simple interest in other farm property, PLR 9621012,
- A perpetual scenic conservation easement on ranch land can be exchanged for timberland, farmland, and ranch land, PLR 9621012,
- An agricultural easement can be exchanged doe a fee simple interest in real estate, PLR 9232030.
- However, note that foreign real property and US real property are not "like kind" for purposes of §1031. Code § 1031(h).

39

D. "Exchange" Requirement

- The "exchange" requirement is simultaneously a necessary and an exceedingly awkward element of Code §1031.
- The exchange requirement has always been part of Code §1031 and its predecessor provisions, and today it continues to be a required element in order to enjoy non-recognition benefits.
- However, the Starker Regulations enacted in 1991 (discussed below) and subsequent IRS guidance have largely transformed the "exchange" requirement into a structuring exercise that is all form and no substance.

40

D. "Exchange" Requirement

- The exchange requirement is conceptually straight-forward if only two parties are involved.
- However, the problem was always that it was extremely difficult to locate two parties who are both interested and willing to enter into a true bi-lateral exchange, and so §1031 exchanges were notably difficult to implement prior to 1991. As discussed above, it often involved talking the potential buyer of property into (very reluctantly) participating as a counter-party in an exchange.
- In 1991, the IRS issued the "Starker Regulations" which gave a formal blessing to the use of a "qualified intermediary" to facilitate an exchange.
- These rules are explored below in the discussion of "Multi-Party Exchanges."

41

D. "Exchange" Requirement

- A true "reverse Starker" exchange, in which the taxpayer acquires title to the replacement property before transferring the relinquished property, is still not expressly blessed by the Code and is not permitted under the so-called "Starker Regulations" adopted in 1991.
- However, in Rev. Proc. 2000-37, the IRS provided rules and procedures that allowed a taxpayer to acquire a replacement property, through an "Exchange Accommodation Titleholder" or "EAT," before selling the relinquished property, in a transaction that can be substantively similar to a "reverse exchange."
- These "Reverse Exchanges" are discussed more fully below.

42

E. Related Party Rule

- There is also a related-party rule, such that if the taxpayer exchanges property with a related party, and within two years either the related party or the taxpayer disposes of the property, the original exchange will not qualify for non-recognition under §1031, and the applicable gain will be recognized at the time of the second disposition of property. Code §1031(f)(1).
- There are exceptions to this related-party rule, including dispositions due to death, involuntary conversion, and those made for non-tax avoidance purposes.

43

F. Boot

- "Boot." Code §1031 allows the taxpayer to avoid recognition of gain only if the like-kind property is exchanged "solely" for property of a like kind.
- It is virtually impossible in the real world to find real estate exactly equal in value to the parcel that you are transferring.
- Accordingly, there is almost always an adjustment between the parties in the form of cash and/or assumption of debt.
- Receipt of any non-qualifying property is called "boot" and results in taxable income or gain being, up to the lesser of the total gain or the full amount of the boot.

44

F. Boot

- To avoid all recognition of gain in an LKE, an exchangor needs to engage in a transaction where the replacement property is the same size or larger than the relinquished property – hence the phrase "over or up."
- It should be emphasized, however, that even when "boot" is received, the remaining portion of the gain in excess of the boot amount will be eligible for Code §1031 treatment.
- Amount of Boot. Boot rules are mechanical to apply but complex. As noted above, boot causes recognition of gain in an amount equal to the lesser of (a) the full amount of gain realized in the exchange, or (b) the amount of the boot.

45

F. Boot

- The amount of boot is equal to the sum of the money plus the fair market value of the other non-qualifying property received in the exchange.
- The amount of a taxpayer's liabilities assumed by the other party in the exchange or the amount of any liabilities attaching to the property transferred by the taxpayer is treated as money received by the taxpayer in the exchange. Reg. §1.1031(b)-1(c).
- This is often referred to as "mortgage boot," and the general rule is that a taxpayer can increase the amount of debt in the exchange but any reduction in the net amount of debt will result in "mortgage boot."

46

F. Boot

- Consideration given in the form of cash or other property is netted against consideration received in the form of an assumption of liability or a transfer of property subject to a liability.
- Consideration received in the form of cash or other property is not, however, netted against consideration given in the form of an assumption of liability or a receipt of properties subject to a liability.

47 CPEdge

47

F. Boot

Examples of Boot Rules.

- Example 1: Taxpayer A exchanges property with a fair-market value of $200 and subject to a liability of $100 to B in exchange for property with a fair-market value of $150 and subject to a liability of $50. Since the transaction resulted in a reduction of $50 in the amount of liabilities to which the A's property was subject, he is deemed to have received boot to that extent. Therefore, up to $50 of the gain realized by A is taxable. However, B received no boot in the exchange since he experienced a net increase in indebtedness.

48 CPEdge

48

F. Boot

- Example 2: Taxpayer C, in a transaction qualifying under §1031, transfers property with a fair-market value of $300 and subject to a liability of $200 plus cash of $50 and securities worth $50 to D in exchange for property with a fair-market value of $250 and subject to a liability of $50.
- C has received boot in the amount of $50: indebtedness relieved ($200), less indebtedness acquired ($50) and less cash and securities given ($100).
- D has received boot in the amount of $100: the value of the cash and securities received.

49

F. Boot

- Example 3: Taxpayer E exchanges property with a fair-market value of $350 and subject to a liability of $150 to F in exchange for property with a fair-market value of $300 and subject to a liability of $200 plus cash in the amount of $100.
- E has received boot in the amount of $100: indebtedness relieved ($150) is offset by indebtedness acquired ($200), but E must recognize $100 of boot for the cash received.
- This illustrates that although a taxpayer may net boot given in the form of indebtedness against boot received in the form of indebtedness, he may not net boot given in the form of indebtedness against other forms of boot received.

50

F. Boot

- Capital Gain Treatment. Where boot is received in a §1031 exchange, the taxpayer typically recognizes capital gain. This is because, by definition, an asset qualifying under Code §1031 must necessarily be a capital asset (or a Code §1231 asset) in the hands of the exchangor.
- However, it is possible to realize ordinary income or unrecaptured Section 1250 gain in a §1031 exchange, in which case a recognition of boot can result in recognition of ordinary income or unrecaptured Section 1250 gain, as applicable.

51

F. Boot

- Alternative Minimum Tax. As a general rule, there are tax reasons that make it preferable not to hold real property in a "C" corporation.

  However, there are many "C" corporations that hold real property for a variety of special reasons.
- Be aware that if a "C" corporation engages in a Code §1031 transaction, the exchange may be tax free for regular tax purposes, but can still generate alternative-minimum-tax liability, because a like-kind exchange is a recognition event for purposes of "earnings and profits" preference under Code §56(g).

52

G. Basis and Depreciation

- Basis. The tax basis of property received in an exchange qualifying under §1031 is the basis of the property surrendered, decreased by the amount of money received, and then increased by any gain or decreased by any loss recognized on the exchange. Code §1031(d).
- The basis of the property received is also increased by the amount of brokerage commissions paid by the taxpayer. Rev. Rul. 72-456.

53

G. Basis and Depreciation

- Depreciation. The IRS takes the position that property received in a §1031 exchange is depreciated under the MACRS convention of current Code §168, even if the relinquished property was depreciated under the more favorable ACRS convention. PLR 8929047.

54

IV. MULTI-PARTY LIKE-KIND EXCHANGES.

55

A. Pre-1991 Transactions

- Before the issuance of the Starker Regulations in 1991, it was relatively difficult to implement a like-kind exchange.
- The "exchange" requirement was viewed as a rigid and limiting impediment.
- Although "deferred" exchanges were permitted by the Starker case (decided in 1979) and by the Starker Rules (enacted in 1984), most prudent taxpayers prior to were reluctant to structure a deferred exchange because of the practical economic risk that the counter-party might not reliably perform the replacement transaction obligations at the applicable future time.

56

B. Regulations – Qualified Intermediary

- The special exemption for a qualified intermediary in Reg. §1.1031(k)-1(g)(4) applies only if the taxpayer's right to receive money or other property from the qualified intermediary is limited to circumstances defined in Reg. §1.1031(k)-1(g)(6) ("Paragraph (g)(6)") that correspond with the Statutory Starker rules, described more fully below.

57

Using a Like-Kind (1031) Exchange to Reduce Taxes – Real Estate and Beyond

V. DEFERRED LIKE-KIND EXCHANGES

58

A. Statutory Starker Rules

- The "Statutory Starker" rules require that the party engaged in a deferred exchange must identify the replacement property within 45 days of transfer of the relinquished property (the "ID Period"), and must close the exchange within 180 days of the first transfer or the filing date of the transferor's return, whichever is earlier (the "Exchange Period").
- A "reverse Starker" exchange, in which the taxpayer acquires the replacement property before transferring the relinquished property, is still not expressly blessed by the Code and was not initially permitted under the 1991 Starker Regulations, discussed below.
- However, a transaction that is the functional equivalent of a "reverse exchange" was formally authorized and approved by the IRS in Rev. Proc. 2000-37.

59

B. Identification and Receipt Requirements

- The Regulations specify the manner for identifying replacement property. Failure to satisfy the identification requirements will cause an exchange to fall outside the "safe harbor" of the Regulations.
- This does not mean that the transaction is automatically taxable – the taxpayer can still argue that the transaction meets the requirements of an "exchange" under the general authority of §1031 and case law, including Starker – but few taxpayers want to "blow" the safe harbor.
- Identification procedures are nuanced and surprisingly complex.

60

B. Identification and Receipt Requirements

- Replacement property is identified in a written document signed by the taxpayer and delivered before the end of the 45-day ID Period to either—
  - (i) the person obligated to transfer the replacement property to the taxpayer or
  - (ii) any other person involved in the exchange other than the taxpayer or a disqualified person (as defined in Paragraph (k)). Reg. §1.1031(k)-1(c)(2).
- Significantly, if replacement property is received by the taxpayer before the end of the ID Period, the property will be treated as properly identified before the end of such period. Reg. §1.1031(k)-1(c)(1).

61 CPEdge

61

B. Identification and Receipt Requirements

- Replacement property is identified only if it is unambiguously described in the written document or agreement. Real property generally is unambiguously described if it is described by a legal description or street address or distinguishable name (such as "Empire State Building"). Reg. §1.1031(k)-1(c)(3).
- If the taxpayer is acquiring a TIC interest in property, the written identification should be reasonably accurate – e.g., "a 23% interest as a tenant-in-common of [described property]" because otherwise the identification may fail the "75% test" described below.
- The Regulations provide important flexibility by allowing taxpayers to identify more than one property as replacement property.
- There is the "Three-Property Rule," the "200% Rule" and the "95% Rule." These are described in further detail below.

62 CPEdge

62

B. Identification and Receipt Requirements

- Regardless of the number of relinquished properties transferred by the taxpayer as part of the exchange, the maximum number of replacement properties the taxpayer may identify is
  a) three properties without regard to the fair-market value of the properties (the "Three-Property Rule"), or
  b) any number of properties if the aggregate fair-market value as of the end of the identification period does not exceed 200% of the aggregate fair-market value of all the relinquished properties as of the date the relinquished properties were transferred by taxpayer (the "200% Rule").

63

B. Identification and Receipt Requirements

- If, as of the end of the ID Period, the taxpayer has identified more properties than permitted by the Three-Property Rule or the 200% Rule, then the taxpayer is treated as if no replacement property had been identified. Reg. §1.1031(k)-1(c)(4)(ii).
- However, this rule prohibiting "over identification" does NOT apply if the taxpayer satisfies the "95% Rule," described below.

64

B. Identification and Receipt Requirements

- The "95% Rule" states that the identification requirements will be deemed satisfied with respect to (a) any property received by the taxpayer before the end of the ID Period, and (b) any replacement property identified before the end of the ID Period and received before the end of the exchange period, but only if the taxpayer receives before the end of the exchange period identified replacement property constituting at least 95% of the aggregate fair-market value of all identified replacement properties. Reg. §1.1031(k)-1(c)(4)(ii).

65

B. Identification and Receipt Requirements

- An identification of property may be revoked at any time before the end of the 45-day ID Period if the revocation is made in a written document signed by the taxpayer and delivered, in the same manner as required for the original identification notice, to the person to whom the original identification notice was sent. Reg. §1.1031(k)-1(c)(6).

66

C. Receipt of "Identified Replacement Property"

- Once property is identified, the taxpayer will be deemed to have received the identified property if he (a) receives it before the end of the exchange period, and (b) it is "substantially the same property" as identified. Reg. §1.1031(k)-1(d).
- The regulations do not define "substantially," but Example 4 in the Regulations indicates an informal "75%" test. Thus, if B identifies real property P, consisting of two acres of unimproved land with the fair-market value of $250,000, and later receives one and one-half acres of property P for an assumed transactional value of $187,500, and the portion received does not differ from the basic nature or character of P as a whole, B is considered to have received substantially the same property as identified. (Note: This is a simplification of a much more complicated fact pattern.)

67

D. Special Rules for Identification and Receipt of Property To Be Produced

- The regulations confirm that it is possible to have a Code §1031 transaction where the replacement property is not yet in existence at the time it is "identified" as replacement property. Reg. §1.1031(k)-1(e).
- "Identification" of property to be produced requires a legal description of the underlying land, and as much detail as practicable at the time of identification about the construction of the anticipated improvements.

68

D. Special Rules for Identification and Receipt of Property To Be Produced

- In turn, whether there is receipt of the "identified replacement property" is determined by whether the taxpayer has received substantially the same "property" described at the time of the identification, allowing for variations due to usual or typical production changes.
- However, if substantial changes are made in the property to be produced during the building or re-building process, the replacement property received will not be considered to be substantially the same property as identified.

69

D. Special Rules for Identification and Receipt of Property To Be Produced

- The 180-day rule continues to apply to this type of transaction, so the property must be received within the 180-day period whether or not it is completed.
- Any additional production occurring with respect to the replacement property after the property is received by the taxpayer will not be treated as receipt of property of a like kind.

70

E. Receipt of Money or Other Property

- Reg. §1.1031(k)-1(f) and -1(g) provide general rules about actual or constructive receipt of money or other property received during the course of an exchange.
- The Regulations basically indicate that if a taxpayer does not comply with the Safe Harbors, described more fully below, the constructive-receipt doctrine remains a substantial problem.

71 CPEdge

71

F. Safe Harbors

- Safe Harbors. Perhaps the most valuable benefit provided by the Regulations is the Safe Harbor rules that provide security for the money to be used to acquire the replacement property, while the acquisition of the replacement property is being arranged.
- The regulations, Reg. §1.1031(k)-1(g), provide four (4) Safe Harbors in deferred exchanges that will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of Code §1031.

72 CPEdge

72

F. Safe Harbors

1. Security or Guaranty Arrangements. The regulations provide that constructive receipt will be determined without regard to the fact that the obligation of the transferee to transfer replacement property may be secured or guaranteed by (a) a mortgage, a deed of trust, or other security interest in property (other than cash or a cash equivalent), (b) a standby letter of credit which satisfies all the requirements of Temp. Reg. §15A.453-1(b)(3)(iii) and which does not allow the taxpayer to draw on the standby letter of credit except upon a default of the transferee's obligation to transfer replacement property, or (c) a guaranty of a third party. Reg. §1.1031(k)-1(g)(2).

73

F. Safe Harbors

2. Qualified Escrow Accounts and Qualified Trusts. This permits the parties to put cash or cash equivalent into a qualified escrow account or qualified trust to be held until the replacement property is acquired.

- A qualified escrow is an escrow where (a) the escrow holder is not the taxpayer or a disqualified person (as defined in Paragraph (k)), and (b) the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in escrow are expressly limited by the agreement to the Paragraph (g)(6) restrictions. Reg. §1.1031(k)-1(g)(3)(ii).
- A qualified trust is a trust where (a) the trustee is not the taxpayer or a disqualified person (as defined in Paragraph (k)) and (b) the taxpayer's right to receive, pledge, borrow or otherwise obtain the cash equivalent from the trustee is expressly limited by the agreement to circumstances set forth in Paragraph (g)(6). Reg. §1.1031(k)-1(g)(3)(iii).

74

F. Safe Harbors

- Additionally, Reg. §1.1031(k)-1(g)(3)(iv) states that rights conferred upon a taxpayer under state law to terminate or dismiss the escrow agent of a qualified escrow account or the trustee of a qualified trust or a qualified intermediary will not jeopardize the use of the safe harbor.
- Similarly, the application of the safe harbor is not affected by a taxpayer's rights to receive money or other boot directly from a party other than the escrow agent, trustee or qualified intermediary. Reg. §1.1031(k)-1(g)(3)(v).

75

F. Safe Harbors

3. Qualified Intermediaries. This exception is described above. Note that this is the only safe harbor for simultaneous as opposed to deferred exchanges.

4. Interest and Growth Factors. The transferor can receive interest or growth factors with respect to the funds in an escrow account without being deemed to have actual or constructive receipt of the funds. However, the right to receive the interest or growth factor, as with the cash, must be limited by an agreement to the Paragraph (g)(6) circumstances. Reg. §1.1031(k)-1(g)(5).

76

G. Paragraph (g)(6) Restrictions

- Paragraph (g)(6). Reg. §1.1031(k)-1(g)(6) describes required limits on a taxpayer's right to receive proceeds during an exchange transaction. It imposes these limits with respect to the second, third and fourth of the Safe Harbors described above.
- Paragraph (g)(6) states that the taxpayer cannot receive, pledge, borrow or otherwise obtain the benefits of money or other property until (a) the end of the ID Period, if the taxpayer has not identified replacement property before the end of the ID Period; (b) after the taxpayer has received all of the identified replacement property to which the taxpayer is entitled; (c) the occurrence after the end of the ID Period of a material and substantial contingency that (i) relates to the deferred exchange, (ii) is provided for in writing, and (iii) is beyond the control of the taxpayer and any disqualified person; or (d) otherwise, after the end of the exchange period.

77 CPEdge

77

H. Items Disregarded in Applying Safe Harbors

- Reg. §1.1031(k)-1(g)(7) provides that in determining whether a Safe Harbor applies, the taxpayer's receipt of or right to receive the following items will be disregarded:
  a) items received as a consequence of disposition which are not included in amounts realized, such as pro-rated rents, and
  b) traditional transactional items such as commissions and closing costs.

78 CPEdge

78

I. JBD3 Comments

- Hiring a Qualified Intermediary. A number of reputable companies provide services as qualified intermediaries for Code §1031 transactions. Some charge a flat fee (e.g., $5,000), while others profit from the deposit and use of money in the escrow account (e.g., a bank or financial services business).
- Identification. This seems like a simple procedure, but unsupervised clients will make mistakes. Advisers should caution their clients to follow strictly the procedures set forth in the Regulations.

79

Using a Like-Kind (1031) Exchange to Reduce Taxes – Real Estate and Beyond

VI. REVERSE EXCHANGES

80

A. Overview

- A "Reverse Starker" exchange, in which the taxpayer receives replacement property before he or she transfers the relinquished property, is now also permitted under a "safe harbor" promulgated by the IRS in Rev. Proc. 2000-37.
- Also called a "parking transaction," the taxpayer can acquire the intended replacement property in advance and can "park" the property with an "exchange accommodation titleholder" (EAT) until the taxpayer is ready to implement a conventional "forward exchange" using a qualified intermediary (QI).

81

A. Overview

- The taxpayer typically advances the funds to the EAT through a loan, and the EAT acquires the replacement property, which is then typically "leased" to the taxpayer for a nominal amount, e.g., $1, under a triple-net lease that transfers both the economic burdens and economic benefits to the taxpayer.
- However, legal title in the replacement property is held by the EAT, and, among other things, neither the EAT nor the taxpayer claims depreciation deductions on the lease property, until the exchange is completed."

82

A. Overview

- Rev. Proc. 2000-37 generally looks to the regulations governing deferred exchanges to provide similar rules for parking transactions (e.g., with respect to identification and other mechanical rules and procedures).

83

B. Rev. Proc. 2000-37

- Rev. Proc. 2000-37, 2000-2 C.B. 308, October 2, 2000, provides a safe harbor under which the Internal Revenue Service will not challenge (a) the qualification of property as either "replacement property" or "relinquished property" (as defined in § 1.1031(k)-1(a) of the Income Tax Regulations) for purposes of § 1031 of the Internal Revenue Code and the regulations thereunder or (b) the treatment of the "exchange accommodation titleholder" as the beneficial owner of such property for federal income tax purposes, if the property is held in a "qualified exchange accommodation arrangement" (QEAA), as defined in this revenue procedure.

84

B. Rev. Proc. 2000-37

- Build to Suit. The Regulations expressly provide for a Code §1031 exchange where the replacement property is not yet in existence at the time it is "identified" as replacement property. Reg. §1.1031(k)-1(e).
- Rev. Proc. 2000-37 specifically addresses and makes it relatively convenient to implement "Build-to-Suit" reverse exchanges.
- It specifically allows the taxpayer or a disqualified person to manage the property, supervise improvement of the property, act as a contractor, or otherwise provide services to the EAT with respect to the property.
- The taxpayer typically arranges a loan for the construction costs to be made to the EAT, or may make the loan itself.
- The taxpayer is specifically allowed to guarantee a construction loan made to the EAT. The QEAA typically calls for the EAT to appoint the taxpayer as the construction manager to handle all supervision of the construction activity.

85 CERIFY CPEdge

85

B. Rev. Proc. 2000-37

- The taxpayer is managing or controlling the construction process, and the taxpayer typically submits regular accountings to the EAT to document the cost of improvements.
- The taxpayer can construct improvements on its own or can make payments to independent contractors and subcontractors.
- The EAT typically does not pay the taxpayer any fee for the management of the construction contract, and this is because the Revenue Procedure specifically allows non-arms-length provisions between the EAT and the taxpayer.
- By not receiving management fees, the taxpayer avoids having ordinary income, and instead the value of the services become part of the built-in appreciation in the replacement property.
- A special purpose LLC owned by the EAT, and transferred to the taxpayer upon completion of the construction, is by far the easiest way to implement a build-to-suit reverse exchange.

86 CERIFY CPEdge

86

B. Rev. Proc. 2000-37

- As with forward exchanges, safe harbor parking arrangements are permitted to continue only for a period of 180 days or less.
- This often puts extra stress on build-to-suit reverse exchange transactions, since the taxpayer must negotiate a sale of relinquished property with a closing date that matches or dovetails with the completion of the build-to-suit project and acquisition of the now-completed replacement property, all of which musts occur within a 180-day window.

87

Instructor Contact Information

- Joseph B. Darby III, Esq.
- Jay@JosephDarbyLaw.com
- www.linkedin.com/in/joseph-b-darby-iii
- www.josephdarbylaw.com

Available for additional presentations of existing programs and development of new programs. One-hour presentations on 1202 stock, Opportunity Zones, Installment Sales, Like Kind Exchanges. Contact me for more details.

88

89

A. Discussion Questions

1. Why does Section 1031 exist, and what policy problem is it designed to address?
2. How does a taxable sale differ from a like-kind exchange in practical tax terms?
3. What does the “held for productive use in a trade or business or for investment” requirement mean, and why is it important?
4. Why are qualified intermediaries and safe harbors so important in modern §1031 practice?
5. What is boot, and why does it create confusion in §1031 transactions?
6. Why are reverse exchanges and build-to-suit exchanges valuable planning tools?

B. Suggested Answers to Discussion Questions

1. Why does Section 1031 exist, and what policy problem is it designed to address?

Section 1031 exists because Congress recognized that taxing every disposition of appreciated business or investment property could discourage economically desirable replacement transactions. The course describes this as the "**lock-in effect**." Real estate is especially vulnerable to lock-in because it often appreciates economically over time while also being depreciated for tax purposes, creating large built-in gains. Without deferral, taxpayers may continue holding outdated or less productive property simply to avoid a large current tax bill. Section 1031 addresses that problem by allowing taxpayers to exchange qualifying real property for like-kind real property without recognizing the gain immediately, so long as the statutory requirements are met. That approach promotes capital mobility and encourages reinvestment in more suitable property while preserving the government's eventual right to tax the deferred gain unless another nonrecognition event intervenes. The presenter also emphasizes that long-term planning can make §1031 even more powerful when paired with estate planning, because a basis step-up at death under §1014 may eliminate the deferred gain entirely. In that sense, §1031 is not just a deferral tool but a significant strategic planning provision.

2. How does a taxable sale differ from a like-kind exchange in practical tax terms?

A taxable sale forces immediate recognition of gain to the extent the amount realized exceeds adjusted basis. In the course example, Whiteacre is sold for $2 million with a tax basis of $775,000, producing significant gain, including unrecaptured §1250 gain taxed at a special 25% rate and long-term capital gain taxed at 20%. The result is a substantial immediate tax liability and reduced cash available for reinvestment. By contrast, if the same transaction is structured as a valid §1031 exchange into replacement property of equal or greater value, with the proceeds properly handled through a qualified intermediary, the taxpayer recognizes no current gain and retains the full exchange value for reinvestment. The economic advantage is straightforward: funds that would otherwise go to tax remain invested in replacement property. However, the gain is generally deferred, not forgiven, because the basis carries over into the new property. That deferred gain may later be recognized in a taxable disposition unless another exchange or a basis step-up at death intervenes. The comparison shows why §1031 can materially increase investment capacity even when the underlying economics of the deal are otherwise identical.

3. What does the "held for productive use in a trade or business or for investment" requirement mean, and why is it important?

This requirement is central to §1031 eligibility because the statute does not apply to all real estate. The property given up and the replacement property must both be held for a qualifying purpose: either productive use in a trade or business or investment. The course makes clear that personal residences and inventory generally do not qualify. The "held" requirement also has a time-and-intent component. There is no absolute statutory minimum holding period, but authorities discussed in the program show that intent at the time of the exchange is critical, and facts matter. For example, a property acquired and immediately converted to personal use may fail the requirement, while a property genuinely offered for rent and held for a period before personal conversion may still qualify. The presenter contrasts unfavorable facts from **Goolsby** with more favorable facts from **Reesink** to show how rental efforts, timing, and behavior can demonstrate investment intent. This requirement matters because it often becomes the battleground in challenged exchanges, especially where property use changes, former residences are involved, or partnerships attempt drop-and-swap planning. Good documentation and consistent conduct are therefore essential.

4. Why are qualified intermediaries and safe harbors so important in modern §1031 practice?

Qualified intermediaries and related safe harbors are essential because modern exchanges are rarely simple two-party swaps. Most taxpayers sell relinquished property to one party and acquire replacement property from another, creating a timing and control problem. If the taxpayer actually or constructively receives the sale proceeds, the transaction may fail as a like-kind exchange. The regulations solve this practical problem by permitting a **qualified intermediary (QI)** to stand in the middle of the transaction. The QI receives the rights under the sale contract, transfers the relinquished property, holds the proceeds, and acquires the replacement property on behalf of the taxpayer. In addition, safe harbors for qualified escrow accounts, qualified trusts, and security arrangements help ensure that the taxpayer is not treated as having access to the money during the exchange period. The program emphasizes the importance of the **Paragraph (g)(6)** restrictions, which limit the taxpayer's right to receive, pledge, or borrow the funds until specified events occur. In practical terms, these rules make exchanges workable and defensible. Without them, many transactions would carry unacceptable constructive-receipt risk and be much harder to complete with confidence.

5. What is boot, and why does it create confusion in §1031 transactions?

Boot is any non-like-kind property received in an otherwise qualifying exchange, most commonly cash or net debt relief. It matters because boot causes current gain recognition, even though the rest of the transaction may still qualify for §1031 deferral. The course stresses that boot rules are mechanical but often misunderstood. Taxpayers frequently assume that if most of the transaction qualifies, small deviations will not matter, but receipt of cash or a reduction in net liabilities can trigger taxable recognition up to the lesser of realized gain or the amount of boot received. Mortgage boot is especially confusing because taxpayers may not think of liability reduction as an economic benefit equivalent to cash, yet the regulations do. The presenter also explains that some items can be netted while others cannot, which is why the examples produce different outcomes depending on whether the taxpayer is trading up or down in debt and whether cash is paid or received. This area demands careful numerical analysis because a transaction that appears "mostly exchanged" can still generate surprise taxable gain. In practice, advisers often use the "up or over" concept to reduce the chance of boot and preserve complete deferral.

6. Why are reverse exchanges and build-to-suit exchanges valuable planning tools?

Reverse exchanges and build-to-suit exchanges are valuable because real-world transactions do not always happen in the order assumed by a standard forward exchange. Sometimes the taxpayer finds the ideal replacement property before a buyer is ready for the relinquished property. In that case, waiting may mean losing the desired asset. Under Rev. Proc. 2000-37, the taxpayer can use an **Exchange Accommodation Titleholder (EAT)** to "park" the replacement property until the relinquished property is sold, creating the functional equivalent of a reverse exchange. This solves a practical market problem by allowing the taxpayer to secure the replacement property first. Build-to-suit structures expand that flexibility further by allowing the replacement property to be improved while held through the EAT, so the taxpayer can receive more closely tailored property within the exchange framework. The course notes, however, that these arrangements remain highly technical and stressful because the 180-day timing requirement still applies. Financing, construction management, identification, title-holding structure, and final transfer all must be coordinated carefully. Even so, these structures are powerful because they allow tax planning to accommodate complex commercial realities rather than forcing transactions into a rigid sequence.

PART 2. THE ABC'S OF TRUMP ACCOUNTS

Trump Accounts

This webinar introduces practitioners to the new Trump account regime created by the One Big, Beautiful Bill Act and explains how these accounts may affect tax planning for families with minor children. The presenters, Renee Rodda and Mike Giangrande, explain that Trump accounts are traditional IRA-type accounts with special rules that apply during a child's "growth period," generally lasting until the end of the year before the child turns 18. The discussion focuses on how accounts are established, who may open them, the role of Form 4547 and the future online portal, and how the new rules differ from traditional IRAs. The program also examines the various contribution types, including pilot program contributions, qualified general contributions, employer contributions, and post-tax family contributions. In addition, the webinar explores planning considerations such as state conformity, basis tracking, Roth conversion opportunities, and the comparative advantages of Trump accounts versus Roth IRAs, 529 plans, and UTMA accounts.

Hello everyone, and thank you for joining us for the ABCs of Trump Accounts webinar. Today's webinar will be presented by myself and Mike Giangrande. For those of you who don't know me, I'm Renee Rodda. I am the Senior Vice President of Tax and Accounting Education for CeriFi, which is the parent company of Spidell. Mike, do you want to introduce yourself really quick?

My name is Mike Giangrande. I'm Spidell's federal tax editor. I've been doing this with Spidell for a bit over 10 years now and my practice is in Orange County, California.

And I do have to say, you know, I think, Mike, we've been very interested in Trump accounts and there's a lot of news coming out about these accounts. And it was very interesting to me, the White House recently held a press conference related to the Trump accounts. And we did learn that just in the first three days of filing season, almost 500,000 Trump accounts had been opened. And so I think what that's going to mean for practitioners is more and more questions coming from clients. It's clear that clients are taking advantage of these accounts and we want to make sure that we're giving you all the information you need to answer those questions from your clients.

Yeah, it's pretty amazing. I watched some of that press conference last week and to have over 500,000 people already requesting to have those open. Technically, as we'll learn here, it's an election to have the account opened. Pretty amazing that there's that many already. I didn't know you have that many people filing returns in three days.

I had the same thought, three days into filing season and we already have 500 well obviously I'm assuming not every account not every return has the election so you know well over 500,000 returns already filed.

Yeah, that's my software still doesn't have the appropriate form ready yet and half, you know, not half, but I still have forms that are in draft. So I'm surprised that people are able to file so fast, but.

Yes, fun fact for everyone about Mike. He is not the procrastinator, wait-until-the-deadline type of person. He likes to get everything done as soon as possible. So every year we hear the frustration of the returns that he can't file yet. While the rest of us are just sort of getting started, Mike's already hit full speed. So it's always an entertaining conversation we have in the first couple of weeks of filing, Mike, do you want to start? Go ahead.

I was going say, know, one of the great things about these Trump accounts, you know, I think that, you know, I've been very high on these because I'm, because I'm very high on starting investing early, invest early, invest often. You know, I really like to encourage clients to open that Roth IRA for their working teenager when they get there and start helping them put money in if they can. And, and Trump accounts really start, can help you start that investing journey for the kids in a tax deferred account much earlier. So I'm a big fan of where these accounts are going.

I agree, and I think you put together a great example that we'll get to later in the materials that shows how that exponential growth on those early investments can really benefit kids later in life, and I think that's incredible. But the other thing that I found very interesting as part of the press conference related to the accounts is not only have we seen, obviously, the contributions from the federal government related to these accounts, we've seen some significant large employers who are already agreeing to the employee contributions. And I think we're going to see that continue to grow as more and more individuals are taking advantage of these accounts and more discussion about states and other agencies making contributions as well. I think, it's not just contributions that parents are making for their kids that can grow, but some benefits that you can take advantage of even if you don't want to make any contributions on your own for the kids.

Yeah, that was huge. I was surprised at how many are rolling out. And so clearly the Trump administration is putting a lot of encouragement onto some of these bigger organizations. And I think that taxpayers are going to benefit from it, or at least their kids will.

Yeah, for sure. All right. Do you want to start with just sort of the overview of what the Trump accounts are?

Yeah, Trump accounts are defined as traditional IRA accounts with special rules during what is quote, know, air quotes here, the growth period. The growth period is a key term. Remember this because it's a traditional IRA with special rules during the growth period only. Once the growth period is over, these accounts are treated almost identical to an ordinary traditional IRA account. Now the growth period we want to define, I'll state it here, but we have more info on that when we get going, but essentially from the day you open the Trump account until December 31st of the year before the child turns 18, that is your growth period. So, January 1 in the year the kid turns 18, that's now a traditional IRA account and those, special rules, go away. The biggest exception though, or the one exception, is the aggregation rules do not apply. So, Trump account will never be aggregated with your other traditional IRAs and we'll get to some planning tips on that later. We've got a couple planning tips on it, but let's face it, it won't be an issue for most kids for another decade or so.

No, and I think that's a good point. I think we're going to talk about that aggregation and what it means when we get past the growth period for these kids and where you want to be cautious. But I also think it's important, a number of people have said to me, well, this really only benefits very young kids. And clearly it benefits young kids more, but even teenagers can still benefit from some contributions today. So long as we leave them in there and we don't touch them, and we let them continue to grow. And I think that's something for people to keep in mind as we talk through this.

Totally agree.

I think Mike talked a little bit about the growth period. He's going to talk about some special rules that apply during the growth period a little bit later. There is a discussion on page one about California.

Now, I included the California discussion. at Spidell, or Mike and I, are based in California, and so we tend to follow that California conformity to federal law pretty closely. But I think this is something you're going to have to consider for every state. And each state is going to handle this differently, and I think we're going to have to push these states to come out with guidance on how they're going to treat these accounts. We did reach out to the Franchise Tax Board to see what California is going to do.

As I was telling Mike, we've sort of agreed to disagree with the franchise tax board on these accounts. The franchise tax board is saying that these are treated like 408A IRA accounts. We believe that they are defined as 408A IRA accounts. And that's important in a state like California where California conforms to the Internal Revenue Code as it read on the specified date with a lot of exceptions.

And there are a number of states that work that way. And most of those states pick up the 408A provisions because they never want to be in a situation where an IRA account is out of conformity for state purposes versus federal purposes. So typically they automatically follow those 408A provisions. California is one of those states.

If we say this is defined as a 408A account, that would mean that it would be a tax deferred account for state purposes as well. California is saying it is treated like a 408A account, which means it is not tax deferred during that, well, really at any period, well, during the growth period, because at the end then it is converted to an IRA and then California would conform. But that's going to create some differences.

So essentially California is saying, that the only place they're going to conform, and you can see this here in the box on page one, is the $1,000 contribution from the federal government. They will treat that like a tax refund, which means it is tax exempt for California purposes. So that contribution would not create income for the child, and it would be the only contribution that doesn't create basis in the account.

So, what's going to be different is all other contributions are going to be accessions to wealth for the child in the year of the contribution and earnings in the account each year are going to be income to the child. Now, I think that's important because in states where you have nonconformity, this could increase kiddie tax. So if we have kids that are already subject to kiddie tax, then this is going to be additional income on top of that.

In most cases, I don't think it's going to be a problem because we're going to talk about taxable income to the kid. It's going to be below the filing threshold amount. So really what that means is you're going to get a bigger benefit on the state side where they don't conform because you have basis from all of those years during the growth period. And they're going to get a bigger benefit because those amounts were taxable in their minor years and they have significant basis in the account for state purposes. So no matter what state you're in, you're going to want to watch for that conformity. Again, it's something that's going to be a bigger issue later on, but we are going to have some income currently each year related to these contributions.

And I think it's important to note that there's going to be no tax filing forms, no 1099s coming for that. So for us in California, it's going to be treated like an HSA. Technically, you're supposed to take your HSA monthly statements, figure out what your interest and dividends and capital gains were if your HSA money is invested, and pay tax on that and make that change on your California schedule CA. That's essentially what you're going to have to do for a child's Trump account if the income is high enough to require filing for the kid.

What else I think is interesting though, Mike, is that we're going to talk about the fact that there's going to be reporting related to these accounts that's going to reflect the basis in the accounts, but that's going to be the federal basis, not the state basis, and practitioners are going to have to stay on top of that.

Exactly.

All right, do you want to talk about setting up the account?

Sure, so there's only one way to set up a Trump account, right? You can't go down to, you know, Schwab, Merrill Lynch, Vanguard, and open up a Trump account the way you can go in there and say, hey, I want to open a new IRA account. Trump accounts can only be opened by the federal government after an eligible individual files an election to open that account with the federal government.

And so, you file that election and you can only file it for somebody who is an eligible individual being the child. Sorry, I refer to the parent as the eligible individual. That's an authorized individual. And then you have the eligible individual. So the eligible individual is anybody for whom an election is made to establish a Trump account who hasn't reached age 18 by the end of the year, which that's the end of the growth period. And you've got to have a social security number.

So, you've got a child, parents file an election, the federal government will open the account. The federal government initially will be treated as the banker, can I say, the Schwab or the Merrill. Subsequently, you'll be able to roll the money over. But initially, the federal government is the trustee of the account. You're the custodian making the decisions as the parent.

So, when the election is made by an authorized individual, who is an authorized individual? Who can open a Trump account for a kid? And there's an ordering rule here. First, legal guardians. If there's no legal guardian, then any parent. If there's no parents, then an adult sibling. If there's no adult siblings, grandparents can open the account. Which means a kid cannot go, a 12-year-old can't go and open their own Trump account if they want. So generally, for the most part, we're going to see this being the parents.

But a grandparent can't just decide, I'm going to open the account for my grandchildren if the kid has parents. And so those are the ordering rules there. What else do we want to talk about on the established.

I think you're also going to see an issue with divorced parents here. Because if we have a divorce situation where they have joint legal and physical custody, meaning they're both guardians, if one parent opens the account, that parent is then in control. So it's sort of a race to who does it first. I think it's just going to be one more thing for certain divorced couples to bicker over.

Right, and the reason that's important is because the last bullet point we have there you could only have One Trump account per kid you cannot have two.

Yeah. So I think that's going to potentially be an issue. Now, if one spouse has the legal guardianship, then the other spouse can't open a Trump account on behalf of the child. So those will be interesting things, because when you say this is an ordering rule, we only go to the next level of the order if the proceeding item doesn't exist. So I think that'll be an issue with those divorcing couples.

Yes, it will be.

We do have the 4547 to use to make the election to open the Trump account. There will be an online version of this form at trumpaccounts.gov. You know, I think the 4547 is ready for the current filing season, like you said, depending on your software or how people are filing. And I think that for most people initially, they're going to do this with the 4547 with the tax return. I think you made a good comment about some clients like to do things on their own, they're sort of self-actors. So they may use that online version once that becomes available. But I think typically we're going to see the 4547 filed with the tax return.

Yeah, I think using the form 4547 is a nice convenience during tax season. You're sitting there with a client, you're talking to them, we had a new baby this year. Hey, that's great, do you want to open a Trump account? I'll fill out the election for you. And the form, which we do have reproduced on page four for you, is little more than parents' name, address, social, the child's name, address, social, your relationship to the kid. It's a very, very simple form.

So it's really a convenience where I think you want to use that Trumpaccounts.gov is Where you know you have a baby mid-year and you want to get a head start on opening a Trump account, right? It's after filing season technically you can file the form 4547 as a standalone form.

But I think the fastest way to do the election is just to do it online once you're outside of filing season. And I don't want to get too far ahead of ourselves, but where that really I think will matter for us is that one of the special rules we'll talk about later during the growth period is if you want to put money into a Trump account, you're going to have to do it by December 31st to count for that year. So, a regular IRA, you can put money in by April 15th, count it for the prior year. Trump accounts don't allow that.

If you want it in a Trump account, you've got to put it in during the calendar year. So if you have that baby, let's say in October, for example, and you want to open an account and put money in that first year right away, you kind of got to jump on your horse, get on that trumpaccount.gov, open that account and get the contribution in. You really don't want to wait until filing season.

Yeah, that's a great point. I think we've really covered whether we would use the form or do it online. And I think, again, when we talk about getting those accounts started for children that are born sort of after filing season, especially in the initial years to take advantage of that extra thousand dollars from the federal government.

But there are annual contribution limits. So if we start the account in the current year versus waiting for it till the next year, we can sort of accelerate those contributions early in the life of the account, which helps for it to grow faster.

Absolutely. Yeah. And so one of the big questions we get, we get it, gosh, multiple times a day is can anybody open up a Trump account? Any child, can an account be open for anybody under age 18? Or are they only for people who were born in 2025 and later? It's a real misconception that we're seeing right now. People think that if the kid's born before 2025, they can't open an account. And that's not true.

It's only that $1,000 of pilot program contribution. Now, if you want to receive that $1,000, that is a separate election than the election to open the account. Election number one is to open the account. Election number two is if the kid is born in 2025 or later to say, hey, federal government, please give me $1,000 of free money. Those elections are both done on the form 4547. And on that form, you see it on page four down in line seven.

It literally the checkbox is all it is. Yes, give me my free money. And I expect it'll be the same if you do it online. We don't know what the online looks like yet. If you go to trumpaccounts.gov right now, you're really just met with a landing page that lets you put in an email address for more information later. And that really gets into, you know, what happens if you file that form 4547 now? Or, you know, do you get that? Is the account open right away?

Do you get your first contribution right away? You want to take that?

Good point, Mike, right? Because the accounts won't be opened right away. So we'll start seeing statements about accounts being opened in May. But there's not going to be any contributions made to these accounts until after July 4th of 26. So that's written specifically into the law. So, when we say these accounts are opening, they are, and the systems are getting up and running. But it's going to be a bit of time before we see actual contributions being able to be made to the accounts. Right.

Do you want to talk a minute about rollovers?

Yes. So, I mentioned earlier that when you file that initial election to open a Trump account, the federal government is a trustee, right? Think of the federal government as being in the shoes of like again, Charles Schwab, Merrill Lynch, Morgan Stanley, the Vanguards of the world. Subsequently, if you decide you don't want the federal government to be the trustee, you can go open your own rollover Trump account at whatever financial institution is going to offer these and you can roll over the money from the federal government over to again I don't want me to pick on Charles Schwab I just see so many of their statements in my client base over to the say the Charles Schwab account and so one of the big questions or guys let me get the requirements we'll get to the questions when you do that you have to do a direct trustee-to-trustee rollover only you can't none of the 60 day business, right? Direct trustee- to-trustee rollover and you must rollover all of the funds and the first account must be closed.

And then let's say you do that with Schwab and you say, don't like my guy Schwab anymore, I want to go over to Merrill Lynch. Then same process, go open the account at Merrill Lynch, you have to roll over the entire account and close the previous one because every kid can only have one trust account or one Trump account. And then that becomes a question, the next question is, should you open a rollover Trump account? Thank you for the slide transition there.

You know, I have an opinion on this, Renee. I think that, you know, one of the things we're going to talk about a little later is the eligible investments during the growth period. one of things we're going to see is the investments are very limited. You're only allowed to invest essentially in very low fee index type funds and not even like industry index funds. I'm talking like broad stock market S and P 500 index type funds. So whether the federal government acts as a trustee, or it's the Schwab, Morgan Stanley, Vanguard, your menu of investments is going to be very, very limited. So I think that if you'd create a rollover account, it's going to be more of a matter of convenience, right? I want to go to Schwab because maybe I have my investment accounts already there so I can log in and see everything in one place. I think that's what I think it's going to be the minimal benefit of creating a rollover Trump account, in my opinion.

I think it's going to come down to, especially after the initial contributions, tracking the account along with their other investment accounts. What's the easiest way for them to make future contributions to the accounts? So it's not going to be a situation where we think the account is going to perform so much better with their investment advisor. It's just going to be more convenient for them.

Also, as we've seen in another area, I don't mean to go to something else, but if you think about the Secure 2.0 Act authorized Roth-SEP IRAs starting in 2023, I still know of no major financial institutions offering them because they're waiting for IRS and federal government guidance on creating these accounts. So, if you think you want to create that Trump account and roll it over, it might be one, two, three, four years, who knows how long. And so the major financial institutions are even offering them as an option.

Let's talk on page seven about the social security number requirements. So, I want to be very clear that the requirement is not just that the child has to have a social security number, but it has to be a social security number that's valid for employment. So, we do sometimes see those social security cards that say not valid for employment. Those numbers would not qualify for Trump accounts. So has to be a true valid social security number to qualify for these accounts. And then we put together some FAQs based on questions we've been getting. We've been teaching update seminars and webinars from November through the end of January. It's been a busy time of year, but the good thing about that is that we're seeing a lot of questions from practitioners which is part of what caused us to create this webinar.

And I think we've talked about some of these already. If you look on page seven and onto page eight, the first one is the age restrictions. And I think Mike touched on this, that you can open these for children that were born prior to 2025. And I think when we talk about these accounts and the fact that really the goal is to put some money into these accounts and not touch it for years to come, right? The initial contribution isn't really what's benefiting the kids. It's that tax-free growth that they get year after year. So, for me, even if we have an older kid, it's still worth opening the account so long as they're actually going to leave the money in there. I think that's something important to point out. We talked about the requirement for having a social security number.

Mike mentioned the fact that children can't open their own accounts. But I think question five and question six, they touch a little bit on these older children and opening accounts. But I think the point in question five is really good because even if the family doesn't think that they're going to be making contributions on behalf of the child, because we're seeing a lot of employers opt to make contributions on behalf of employees, opening that account opens the door for those parents to receive those benefits.

And so then the employers are funding these accounts for the kids. I think we're also going to see more charitable type contributions that are coming from states and other agencies and having the account open makes the child eligible for those contributions, even if the parents aren't putting any money in.

Yeah, and I know we're going to talk about the qualified general contributions later, but if you think about the way this works, take Michael and Susan Dell, right? They're putting in six and a quarter billion dollars into making charitable contributions. They're going to go into zip codes and just say, you know, in this zip code, if this zip code has a, you know, median family household income of $150,000 or less, every kid in that zip code who has a Trump account is going to get 250 bucks. Automatic. You don't have apply for it. You don't have to do anything. You're just going to see that deposit, but you have to have the account open. And we'll talk about those kinds of contributions in a little while, but the point is you've got to have the account open or you don't get anything.

You want to touch on growth period, Mike?

Yeah, so I said earlier the growth period starts in the date the Trump account is opened and it ends on December 31st of the year the child turns age 17. And so, we said earlier these are traditional IRA accounts with special rules during the growth period and the special rules are detailed in the bullet points in the bottom of page eight. So first and foremost funds in a Trump account can only be invested in eligible investments, right? Generally conservative index funds.

Other items, and we're going talk about these in more detail as we go, is we've got a separate contribution limit than traditional IRAs, so they've got their own limits. Distributions generally are just flat out not allowed. A couple of very minor exceptions, we talked about one already, it's the rollovers. Contributions made by parents, grandparents, the kid themself if they're working, are not deductible. Some contributions are tax free going in, but contributions that are just sort of the family or the kid putting the money in. No deduction there during the growth period, even though it's a traditional IRA.

Trump accounts do have different reporting requirements. And then the biggest one is the fact that there's no earned income requirement, right? Which is why it's a traditional IRA that allows you to put money in when the kid is a newborn. There's no earned income requirement, which is going to really be the thing that helps us create that leveraged growth.

I should have I should have changed the slide. I let you down on that one. I'm taking just nine and 10. We have a discussion of the aggregation rules and Mike touched on this a bit earlier in the conversation. But I do think that this is a really important point. Because when we look at later when these accounts are treated like regular IRAs, I think that these young adult children are going to be need to be careful with what they do with these accounts, because if they roll them into their existing traditional IRA, now they are subject to those aggregation rules. So as long as they keep them separate, these accounts are treated separately. So if they wanted to do something like a Roth conversion, now we're not looking at the aggregation rules. It's a separate account. And I think that's definitely something important to consider.

Yeah, and if you're not familiar with the aggregation rules, if you're out there listening to us, we do have an example on page nine that sort of discusses them in the context of a backdoor Roth IRA, which is where we tend to see that a lot, those come into play. So they are there if you're interested. We're not going to go through the example here, but we also have a couple of planning pointers on page 10, because if you do have a Trump account that you create for a kid and most contributions that go in are from family, let's say it's the parents and grandparents, you're going to find that you're going to have an account with a lot of basis.

And so when that kid is old enough, preferably when they're no longer subject to the kiddie tax rules, doing a Roth conversion at that point is actually going to be a really cool strategy. But we probably won't start seeing any of these for, I'm going to say a minimum of five years, probably 10 years and more when we start seeing accounts that have got real substantial growth. But, that's where one strategy I think is going to emerge is once that kid is beyond the age when the kiddie tax rules apply to them, doing a Roth conversion to take advantage of all that basis and those accounts is going to be a big deal.

Yeah, and I think a couple of things to keep in mind that are in this planning pointer box, aside from keeping the account segregated to give you more options on those Roth conversions, some accounts are going to have a provision that require the account to be rolled into the other traditional IRA account. So you want to see where these accounts are held and what the financial institutions have as far as rules. And you also want to keep in mind that once they get to the end of the growth period, they're not going to be able to move this to another account and keep it segregated from other IRAs. So if they have an account as you're approaching the end of the growth period, you really want to consider if it's still sitting in the treasury account, do we want to move it before the end of the growth period to a Schwab or a Merrill or a Vanguard account?

So we can still keep it separate, but we have some more control over it as they get older. And I think those are things to consider as we get to the end of the growth period for those kids.

You have talked quite a bit about the eligible investments. So I think that we don't need to really cover this except that these limitations do go away after the end of the growth period. So these are only there until that year before the kid reaches the age of 18. So even if we keep the account separate, once they've reached the age of 18, we have some more investment options. These only exist during the growth period.

Right.

I think the reporting requirements are interesting here. And we talked about this a little bit earlier. It's going to be similar to the 5498 that we have for IRAs. They'll get an annual information reporting statement. Like Mike mentioned, if we have states where the earnings are going to be taxable each year, you're not going to get the information you need there from the 5498. You're going to have to look at the actual statements for the account.

I think, right? We haven't seen the format of the form. It's possible that it will be on there. But I do think this is a place where it's important to point out that they're going to include basis on these forms. That's going to be the federal basis. And Mike made a great chart showing the different types of contributions and which ones create basis and which don't.

The one comment I think that might make things a little easier for us in California anyway, the way California is working, if they're only going to exclude the initial Trump $1,000 contribution, that pilot program from income and everything else is taxable, all the earnings, then what that will mean is at the end of the growth period, it will actually be pretty easy to calculate basis. Your basis is going to be the fair market value of the account at the end of the growth period minus that $1,000 pilot contribution if you got that, if everything else is taxable. So tracking basis will be, at least in California, it'll be easier because California has made everything taxable.

Yeah, I mean, it's really only going to be an issue for kids that are subject to kiddie tax. And again, I don't think California is going to be the only state that does this. I think we're going to have to watch each state sort of individually. And we all know we have certain states that are more aggressive when it comes to state income tax, similar to California, your New York's, New Jersey's, Illinois, you know. And again, so we'll have to see how each of those states decides to treat these things.

There's five types of contributions. They're on the chart on page 12. One type, first type of contributions are pilot program contributions. Again, only available for those kids born 2025 through 2028. $1,000 tax free, no basis. The second kind of contributions are our qualified general contributions. These are contributions made by state, local governments, tribal governments, or 501(c)3 organizations that want to put money into Trump accounts.

These organizations cannot put money into individual accounts. What they have to do is that they run this money through the federal government and they have to create a class of people based on certain criteria and then the federal government's going to take that money and put the funds into all the accounts that are open that meet that criteria. For example, we talked about Michael and Susan Dell.

They put six and a quarter billion dollars into this program and they said, we want to put $250 into every Trump account for a child who does not get a pilot program contribution. So they're born before age, before 2025 and who live in a zip code with a median taxable income of under $150,000. If you meet that criteria, even if you make more than $150,000 as a parent, as long as they meet the zip code, the median income is $150,000 or less, and you got a Trump account open, you can expect one day, later on this year probably, just to have $250 deposited automatically into that account, and that's tax free, does not give you basis.

The next type of contribution is employer contributions. Employers can either have contributions as an employee benefit that they put in up to $2,500 per year. That's per employee, so if you've got two kids, that employee can either split it up half and half, pick a kid that's their favorite, whatever they want to do, but $2,500 per employee, not per account.

Now, the interesting thing here is when it comes to the pilot programs and the qualified general contributions, those do not count towards your annual contribution limit, which today is $5,000. The employer contributions do count towards the kid's $5,000 annual limit. Then you've got rollover contributions, that's just a rollover.

And then all your other contributions, which is your parents, your grandparents putting money directly in, non-deductible and does create basis.

Yeah, and I think it's interesting to note, we're already seeing Charles Schwab, Uber, Charter Communications, BNY Mellon, State Street, MasterCard, Visa, Block, Robinhood, SoFi, Chime, Russell Investments, and Dell have all said that they're going to match employee contributions to Trump accounts. In different forms, so we don't know exactly what they look like for all of those. And then additional companies came out, Steak and Shake, Broadcom, Intel, IBM, JP Morgan, Chipotle, Coinbase, and Comcast.

So I think we're going to see more and more employers announcing that they're going to do these matches. And so I think we're going to see some interesting options for families to make small contributions and have them doubled because their employers are making contributions.

All right, I think you covered some of these, so we'll just take a look at these slides, kind of working through them. Mike mentioned the $5,000 annual contribution limit. The chart that's on page 12 is a good summary of the rules, so you can kind of lay that out.

That chart will show which contributions count towards that $5,000 annual limit. And that's the employer and then the other contributions count towards the $5,000. That $5,000 is going to get an annual inflation adjustment, but not until 2027. So it's going to be $5,000 for the first year of the program.

And then timing of contributions. During that growth period the contributions have to be made by December 31st. Mike mentioned this to you earlier. And so that is something that's tricky about these accounts. It's not like IRAs where you can talk to your clients during filing season and you have some extra time to make those IRA contributions.

If you have clients who have kids mid-year and they want to create that new account, they're going to need to make that contribution by December 31st for that first year. And then I think going forward, it's not going to be hard to have the conversations during filing season about contributions.

The employer contributions are addressed on page 13. So, employers can offer pre-tax benefits that allow contributions of up to $2,500 per year per employee into the employee's children's Trump account. These are going to be earnings of the employee or well, for certain purposes in certain states, because some states aren't going to conform, they will be earnings of the employees. So, you'll have to take a look at that.

The thing that I think is interesting about the $2,500 limit, it applies per employee. So, if you have one child, you can get $2,500 for that child from the employer. If you have five children, then that $2,500 would be split, $500 per child. Or I guess you could elect to allocate it all to one child. I don't think it says it has to be split equally. But those employer contributions do count towards that annual contribution, which I think is why we have that $2,500 limit. Because I think in most cases, we're going to see the matching here.

Do you want to talk about the general contributions, Mike? I think you really covered this with your conversation about Michael and Susan Dell and the rules here. So, I don't know that we need to cover anything else about these. What do you think?

No, but you know, the point here is get the account open. Somebody might put some free money in the account. We do have information on page 14 on, you know, how classes are allowed to be made and stuff. For us doing tax returns for the recipients, for, you know, most individuals, that's not really an issue. If you've got a client who's a billionaire and wants to create one of these, maybe you want to walk through those requirements with them, but everybody else, the goal is just open the account if you're eligible, somebody might put free money in. I can't reiterate that enough.

Yep. So Mike talked about the rollovers. They have to be trustee-to-trustee transfers. The only weird exception here is you can do a rollover to an ABLE account. So the ABLE accounts are those accounts that are sort of similar to 529 plans, but for disabled individuals. But you can only roll these accounts into an ABLE account during the calendar year the child turns 17. So really that last year before the growth period ends. So I think the point is we leave them in this Trump account and then as they're reaching the end of the growth period, they can roll them into the ABLE account.

But it does create a small window of action there if that's something that you want to do. Definitely not a large window. Do you want to talk about these FAQs that we have on page 15?

Yeah, let me hit some of the highlights. So, we talked about the fact that Trump accounts have their own contribution limits. So, if you've got a working teenager, that does mean you can max out both their traditional IRA or their Roth IRA more likely and the Trump account. You can max them both out if the kids got earned income and has another account. So, they do have a separate account during that growth period. Another question people have been asking us is does a parent who puts say $5,000 to their kids Trump account, does that count towards your annual gift tax limit? We think the answer to that is yes, right? You're giving a gift just like putting in money into a 529 account. We do know of people out there saying, well, but the kid can't touch that money until later, because there's no distribution allowed out of a Trump account. Does that mean, therefore, the gift is not a completed gift and therefore doesn't count towards the annual limit? We don't see that, but the IRS, I'll tell you, just has not made any comments on that. So maybe hold off on that for now in terms of waiting for IRS guidance.

Can a child make their own contributions? Yes, remember a kid can't open their own account, but if they're working, they can put their own money in there. I think those are the real highlights of those FAQs there.

Yeah, agreed. You know you talked a bit about the distributions and I think really the general rule is once the money goes in, it's not coming out during that growth period. So that is definitely something families need to keep in mind. This isn't sort of an account that will put the money in and we hope to grow it, but if we have some sort of an emergency, we can take the money back out. There's very limited exceptions for when you can take the money out.

So, you can roll the account to another Trump account. You can do those ABLE rollovers that we talked about a minute ago. If excess contributions are made, so if we make contributions above the $5,000 limit, then we can take that excess amount out, but only the excess amount. And then the only other time funds can be taken out is upon the death of a child. So certainly something we hope we never have to deal with, but that's really the only time when the money can come out during the growth period. After the growth period, then we have those distribution rules following traditional IRA rules, which again means the money could come out, but unless there's some sort of an exception that applies, we're going to have an early withdrawal penalty.

What you put in here on page 16 and onto page 18 is really a great example, Mike. If you put $5,000 per year in for the child's first 10 years of life. And then we have a growth rate of about 7%, which is a fairly conservative rate considering, you know, over time rates are going to go up and down again, with the investment options being limited. I think 7% is probably a safe number to use for this type of analysis.

Very conservative, yeh.

That would give them almost $7 million by the time they reach age 75. Now, again, they may take that money out prior to reaching age 75, but if they truly leave it in there until they've reached retirement age, this is a huge nest eggs for kids with a very small contribution upfront.

And certainly there will be inflation during that 75-year period, but a kid today, their RMDs will start to age 75. I mean, don't you wish somebody put $5,000 a year into an IRA for you at age zero and even now in our late 40s. That would be pretty good account today.

It is. Well also keep in mind you, especially if you have a family where the employers are matching, then the parents can put in $2,500 and the employers are putting in the other 2500. And now we're really looking at a huge benefit for those kids.

Absolutely.

I like your chart on page 17. Do you want to talk about that?

Yeah, so what I did was I took a comparison of four investment account alternatives for kids. Our Trump accounts, and I compared them to Roth IRAs, 529s, and UTMA accounts. I chose Roth IRAs specifically because working teenagers, we usually advise a Roth IRA because they either have no tax liability or very low tax liability, so Roth's a better account, but technically you could do a traditional IRA as well. And we simply have a comparison chart of those.

And so what I want to say just in general to try to shorten it a little bit is, you know, I think Trump accounts are a new great tool, a great alternative, but they aren't the best thing for all purposes. And I think where that's a great way to illustrate that is comparing those to a 529 account. There's no deduction when they go put money in. Some states offer deductions and credits, but California where we are doesn't. But the no deduction money going in. Both accounts and money is going to grow tax deferred.

But when that kid say 18, 19 years old and wants to pull the money out for college, what's the difference? Well, that 529, if you use them all the money for tuition and eligible expenses, nothing's taxable. The Trump account, yeah, there's a little bit of an exception to the 10% early withdrawal penalty for some college expenses, but the earnings are all going to be taxable. Remember, you have a basis there. Earnings will be taxable and you still may get hit with early withdrawal penalties on some.

If your goal is specifically to invest for education only, and I know I've clients that are grandparents that I only want my money for my grandkids to go towards a college education. You know, in that case, a 529 is still going to be better. But if you want to help the kids start investing for retirement early, there is no better option than the Trump account.

Yeah, and I think for me, you did touch on this earlier saying that you can do the Trump account and the IRA. You could do the Trump account, the IRA and the 529. You're not limited to any one and you don't have to max out every one. And so I think this chart's good because it lets people sort of decide, OK, if I'm looking at putting away some money for my kid today, what are my options? Not just the benefit today, but 15 years from now, what does that mean if we want to access the money for the kids? And so I think that chart is really helpful for that purpose.

Yeah, absolutely. And then after the chart on page 19, we've just got some tips for you and bullet points there. If you want to do this, maybe this account is better. So just some tips there for helping you choose the different type of investment accounts. The reality is if you open any one these investment accounts for your kid, they're getting a head start and kudos to you and your client for doing it. Again, Trump accounts just offer one more cool alternative. But what I wouldn't mind mentioning is a strategy I talked about earlier is when you got these Trump accounts, you're going to have a lot of basis in these theoretically because you're going to be putting in parents, grandparents putting in contributions. And in that case, doing a Roth conversion after the kid turns 18 at end of the growth period is going to be a great, I think, a good strategy. Because they're still going to be in a low tax rate, you're going to have very little earnings, why not get it into a Roth right away?

My only caution there is that, IRA distributions are unearned income. And if the kid is still subject to the kiddie tax rules, for example, they're a student under the age of 24, the kiddie tax rules will kick in. So, you really would want to wait until they're just outside that kiddie tax realm and then do the Roth conversion. I definitely see in 10 years time, Roth conversions of Trump accounts being a very common and very good strategy.

Yeah, and I think again, like you mentioned earlier, even if your clients don't want to make contributions to these accounts, if they open them for the kids and the kids may qualify for other contributions, there's really no cost to them for opening the account and having them available for the kid to receive contributions from the general fund. So I think that's certainly something to keep in mind.

Okay everybody have a wonderful and profitable tax season and we'll see you soon.

Bye bye.

SUPPLEMENTAL MATERIALS

Proceed to the next page for The ABCs of Trump Accounts.

WHAT ARE TRUMP ACCOUNTS?

Trump accounts were created by the One Big, Beautiful Bill Act (OBBBA; P.L. 119-21). The Trump account provisions can be found in new IRC §530A. They are a type of traditional IRA account designed to be a savings mechanism for children to provide them with a financial headstart when they reach adulthood.

SPECIAL RULES DURING GROWTH PERIOD

Even though Trump accounts are a type of traditional IRA, they are subject to special rules during their "growth period," which is defined as the period of time from when a Trump account is open for a child until December 31 of the year before the child turns age 18. At the end of the growth period, the special rules cease to exist, and the Trump account operates exactly the same as a traditional IRA with one exception: The aggregation rules under IRC §408 do not apply to an account that is designated as a Trump account even after the end of the growth period.

In this webinar, we will explore all the special rules for Trump accounts, including the rules for opening and operating these accounts.

IRS guidance

The IRS has issued initial guidance on Trump accounts in IRS Notice 2025-68, available at:

Website
www.irs.gov/pub/irs-drop/n-25-68.pdf

SETTING UP TRUMP ACCOUNTS

A Trump account can only be established for the exclusive benefit of an eligible individual (a child), defined as any individual:

- For whom an election is made to establish a Trump account;
- Who is not age 18 before the close of the calendar year in which the election is made; and
- Who has a Social Security number before the date of the election.

ELECTION TO OPEN UP A TRUMP ACCOUNT

The Treasury Department will only open up a Trump account if an "authorized individual" makes an election to have an account opened. Authorized individuals are the following (in this order):

- Legal guardians;
- Parents;
- Adult siblings; and
- Grandparents.
  (Notice 2025-68)

Authorized individual ordering rules

Notice 2025-68 provides ordering rules for authorized individuals who can elect to open a Trump account for a child. So, if a court has appointed a legal guardian for a child, then only the legal guardian is an authorized individual who can elect to open a Trump account for a child.

For example, if an adult sibling is making the election, they would be representing that there was neither a legal guardian nor parent of the child available to make the election. (Form 4547 Instructions)

The authorized individual who opens the Trump account will serve as the custodian of the account either until the end of the growth period or until the child actually turns age 18. IRS Notice 2025-68 doesn't specifically address when the custodial period ends, but it's worth noting that the custodial period ends for other custodial IRA accounts and Uniform Transfers to Minors Act (UTMA) accounts when a child turns age 18. Once the custodial period ends, the child will take ownership of their own account.

Comment

The rule that only one Trump account can be open at a time for each eligible individual can become tricky, especially in the case of divorced parents. For example, either parent is authorized to elect to open a Trump account for their child if a legal guardian has not been appointed by a court for the child. (Notice 2025-68, Q&A A-1) So, the first parent to open the account will control the account. The federal government will not open a second account for the same child.

Once the IRS processes an election to open an initial Trump account, the IRS will not process another election to open an initial Trump account for the same child.

The IRS has requested comments as to whether additional guidance is needed for selecting a new responsible party (for example, if the custody or guardianship of a child changes or in other appropriate circumstances).

Authorized individuals who want to open a Trump account for a child must make an election either using IRS Form 4547, Trump Account Election(s), or through an online application tool at:

Website
www.trumpaccounts.gov

Form 4547 has been released in time for the current filing season. The application tool will be available online sometime in the middle of 2026.

Practice Pointer

After the election is made (and after the Treasury Department coordinates with the trustee of the initial Trump account), the Treasury Department or its agent will send information to the authorized individual who made the election to activate the account through an authentication process and complete the opening of the initial Trump account.

The Treasury Department or its agent will send this information starting in May 2026 for taxpayers who file Form 4547 during the current filing season.

Form 4547, Trump Account Election(s)

Form **4547**
(December 2025)
Department of the Treasury
Internal Revenue Service

Trump Account Election(s)

Go to *www.irs.gov/Form4547* for instructions and the latest information.

OMB No. 1545-2336

If you have a child that is eligible for a Trump account, and you want to open a Trump account for that child, complete Form 4547.

- For each child that is eligible and for whom you want to open a Trump account, complete Parts I, II, and IV.
- For each child that is eligible to receive a $1,000 Pilot Program Contribution, check the box in Part III, line 7, in order to receive the contribution.

Part I Parent/Guardian or Other Authorized Individual Information

Note: The parent/guardian or other authorized individual listed in Part I will be the responsible party for the Trump account.

First name	Middle name	Last name	Social security number

Home address (number and street). If you have a P.O. box, see instructions.	Apartment number	Date of birth

City, town, or post office. If you have a foreign address, also complete spaces below.	County	State	ZIP code	Phone no.

Foreign country name	Foreign province/state/county	Foreign postal code	Email address

Part II Child's Information

If more than two children, see instructions.

		(i) Child 1	(ii) Child 2
1a	First name		
b	Middle name		
c	Last name		
2	Social security number		
3	Date of birth		
4	Relationship		
5	**Home Address** Check here if address is same as Part I. Otherwise, complete lines 5a through 5f. If you have a foreign address, complete lines 5g, 5h, and 5i.	☐	☐
a	Number and street		
b	Apartment number		
c	City, town, or post office		
d	County		
e	State		
f	ZIP code		
g	Foreign country name		
h	Foreign province/state/county		
i	Foreign postal code		
6	Check box if you are authorized to open the Trump account for the child. See instructions.	☐	☐

Part III Pilot Program Contribution Election

For a child to qualify to receive the $1,000 Pilot Program Contribution to their Trump account, the child must have been born in 2025–2028, must be a qualifying child of the individual opening the Trump account, must be a U.S. citizen, and must have a valid social security number. See instructions.

		(i) Child 1	(ii) Child 2
7	Check box if child qualifies for, and you want the child to receive, a Pilot Program Contribution	☐	☐

Part IV Consent to Disclose Information

By completing this form, you authorize the IRS, Treasury, and their agent(s) to create and maintain a Trump account with respect to the eligible child(ren) listed on this form. You also authorize the IRS, Treasury, and their agent(s) to disclose the fact that a Trump account has been established for the eligible child(ren) listed above to any parent, guardian, or authorized individual of the eligible child who is permitted to make an election to request creation of the Trump account.

Sign Here

Under penalties of perjury, I declare that I have examined this form, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name	Firm's EIN
Firm's address	Phone no.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 95927O Form **4547** (12-2025) Created 12/30/25

Practice Pointer

Form 4547 can be filed either with an authorized individual's income tax return or as a stand-alone form. Allowing the Form 4547 to be filed as a stand-alone form allows authorized individuals to elect to open a Trump account for a child at any time during the year.

The instructions to Form 4547 specifically state that taxpayers should not attach Form 4547 to Form 1040-X, Amended U.S. Individual Income Tax Return, and that taxpayers should not amend Form 1040, 1040-SR, or 1040-NR to attach Form 4547.

Trumpaccounts.gov

The trumpaccounts.gov website will not be fully set up until mid-2026, but taxpayers can access a landing page now that allows them to register their e-mail address to receive website updates. A screenshot of the landing page is reproduced below.

Practice Pointer

If authorized individuals can elect to open a Trump account using either Form 4547 or through trumpaccounts.gov, then which one should they use? As discussed previously, Form 4547 can be filed as a stand-alone form, so it can be filed at any point during the year.

While the IRS hasn't specifically commented on this topic, it appears that Form 4547 provides a convenient way for tax professionals to help their clients open a Trump account during the income tax preparation process. But, where an authorized individual wants to open a Trump account for a child outside of the regular income tax preparation process, even though Form 4547 can be filed during the year as a stand-alone form, the Form 4547 instructions point taxpayers to trumpaccounts.gov. So, for example, where a child is born midyear, the fastest and easiest way to open a new Trump account will be by using the trumpaccounts.gov website.

PILOT PROGRAM CONTRIBUTION ELECTION

In addition to making an election to open a Trump account, taxpayers can use the same Form 4547 or the online application tool to elect to receive $1,000 pilot program contributions, but only for children born in 2025 through 2028. The first pilot program contributions will begin after July 4, 2026 (if applicable), even if an authorized individual makes the election on a timely filed 2025 income tax return. This is because OBBBA specifically states that contributions to Trump accounts cannot begin until one year from OBBBA's date of enactment, which is July 4, 2026.

Only the taxpayer who is an authorized individual who anticipates that the child will be their qualifying child under IRC §152 can make the pilot contribution election. (Notice 2025-68, Q&A B-1) However, the $1,000 pilot program contribution will still be honored even if it turns out that the child for whom the contribution is made is not the electing taxpayer's qualifying child.

Funding the pilot program contributions

OBBBA allocates $410 million to carry out the pilot program. In addition, Michael and Susan Dell announced in early December 2025 that they have pledged an additional $6.25 billion toward special funding contributions to Trump accounts. Michael Dell founded Dell Technologies.

There are more than 3.5 million births (on average) that occur in the U.S. annually. If an election is made to open a Trump account and receive a $1,000 pilot program contribution for every child born in the United States, then the program will require $350 million of funding annually. With only $410 million allocated to the pilot program by OBBBA, additional funding will be required by early 2027 to continue the pilot program.

While an additional $6.25 billion has been pledged by the Dells to be deposited in certain Trump accounts, this money is not to be used for the pilot project contributions. This money will be classified as a qualified general contribution, discussed beginning on page 13.

QUALIFIED ROLLOVERS

A Trump account can only be set up initially by the Secretary of the Treasury. Subsequently, account custodians can open a rollover Trump account held at a private financial institution, but it must be funded through a trustee-to-trustee transfer of the entire balance of an existing Trump account, and the old account must be closed. (IRC §530A(e); Notice 2025-68, Q&A A-6)

Similarly, if a rollover Trump account is established at a private financial institution, and then a subsequent rollover Trump account is created at a different financial institution, then only the entire balance of the account can be rolled over, and the account at the first financial institution must be closed.

Practice Pointer

This means each eligible individual can only have one Trump account at a time.

Should a taxpayer create a rollover Trump account?

An open question that doesn't have a great answer at this early stage is whether it makes more sense to roll over funds from a federal government–managed Trump account to a Trump account managed by a private institution, such as Charles Schwab, Fidelity, Merrill Lynch, Morgan Stanley, etc.

With the little information we have so far, the answer is a matter of convenience. For example, a taxpayer who already has existing IRAs and other investments with a private financial advisor may prefer to have their account managed along with their existing investments.

Having a Trump account managed by a private institution may allow a financial advisor to more easily help make investment decisions, but as we'll discuss later, all Trump accounts have limited investment options during the growth period, so it's highly unlikely that a privately managed account will perform much differently than a federal government–managed account.

It's unlikely that private financial institutions will offer rollover Trump accounts in the short-term, so it may be a while before they are available in the marketplace.

SOCIAL SECURITY NUMBER REQUIREMENT

The child must have an SSN issued to them before the date of the Trump account election. (IRC §6434(e)) A valid SSN for purposes of electing to open a Trump account is one that is valid for employment and that is issued by the Social Security Administration (SSA) before the Trump account election is made.

If the child was a U.S. citizen when they received the SSN, the SSN is valid for employment. If "Not Valid for Employment" is printed on the Social Security card and the child's immigration status has changed so that the child is now a U.S. citizen or permanent resident, the taxpayer should ask the SSA for a new Social Security card without the legend. However, if "Valid for Work Only with DHS Authorization" is printed on the Social Security card, the child's SSN is valid only as long as the DHS authorization is valid.

Failure to provide the child's Social Security number is treated as a mathematical error. Mathematical errors can be corrected directly by the Department of the Treasury without formal notice or the necessity of providing the taxpayer with an opportunity to appeal the IRS's changes.

OPENING A TRUMP ACCOUNT FAQs

Q1: What are the age restrictions for opening a Trump account?

A1: Trump accounts can be opened for any child from the time they are born up until December 31 of the year before the child turns age 18, so long as the child has a Social Security number.

Q2: Can I open a Trump account for a child who has an ITIN?

A2: No. Only a Social Security number is acceptable.

Q3: Can I open a Trump account for a nonresident U.S. citizen child?

A3: Yes, as long as the child has a Social Security number.

Q4: Can a child open their own Trump account?

A4: No. Only an authorized individual can open a Trump account, and children are not defined as authorized individuals. Authorized individuals are only legal guardians, parents, adult siblings, and grandparents, in that order.

Q5: My child is not a newborn, so they can't receive pilot program contributions, and I don't plan on making contributions to a Trump account for them. Should I still elect to open a Trump account?

A5: Yes. Even though a child who is born before 2025 cannot receive a pilot program contribution, there are two other types of tax-free contributions a child can receive into their Trump account:

- Qualified general contributions; and
- Employer contributions.

We will discuss each of these types of contributions later. For now, it's important to recognize that both of these tax-free contribution types require that the child first have a Trump account opened for them.

Q6: Should I open a Trump account for a working teenager?

A6: It depends. As with the prior question, the answer is generally yes because you may be able to receive tax-free contributions, but it's unlikely that we'll see many employers adopt benefit plans that provide tax-free contributions or qualified general contribution funding in the short-term. So, a working teenager who is 16 or 17 years old, for example, is unlikely to see any tax-free benefits flowing to them before the end of their growth period.

It may be better to make contributions to a Roth IRA for a working teenager than open a Trump account. But, don't forget that a working teenager can make the maximum IRA contribution and also make the maximum Trump account contributions in the same year. See the table "Features of Common Investment Account Types for Minor Children" on page 17 for a comparison of account options.

THE "GROWTH PERIOD"

The growth period of a Trump account is defined as the period of time from the account's creation until December 31 of the year before the child turns age 18. On January 1 of the year the child turns age 18, the Trump account automatically becomes a traditional IRA account with one important distinction: A Trump account is not subject to the IRA aggregation rules under IRC §408(d)(2) (discussed below). (IRC §530A(h)(4))

The special rules that apply **only** during the growth period include:

- Funds in a Trump account can only be invested in eligible investments (generally conservative index funds);
- Different contribution limits apply (discussed on page 13);
- Distributions are generally not allowed (discussed on page 16);
- Contributions made by individuals are not deductible (but pre-tax employer contributions are allowed up to $2,500 per employee, annually) (discussed on page 13); and
- Trump accounts have different trustee reporting requirements from other IRAs.

After the growth period ends, these special rules cease to apply, and the traditional IRA rules under IRC §408 generally apply. For example, there is no earned income requirement to make contributions to a Trump account prior to the end of the growth period, but once the growth period ends, the earned income requirement for contributions kicks in.

AGGREGATION RULES

Trump accounts that are not rolled over into a traditional IRA account are never counted in the IRA aggregation rules, even after the growth period ends. (Notice 2025-68)

Under the aggregation rules, all of a taxpayer's IRA accounts are treated as a single IRA. So, if a taxpayer has basis in any IRA account, the aggregation rules require that distributions from any of the taxpayer's IRA accounts are allocated a portion of basis equal to the ratio of the taxpayer's basis in all their IRA accounts over the total aggregate value of their IRA accounts. The IRA aggregation rules can best be understood through an illustration of the backdoor Roth IRA rules:

Example of aggregation rules

Grace has two IRAs. IRA #1 has a balance of $100,000 and no basis. IRA #2 has a balance of $20,000 and has $12,000 of basis.

On June 30, Grace takes a distribution from IRA #1 of $30,000. The taxable portion of her IRA distribution is calculated as follows:

Aggregate basis in all Grace's IRAs	$ 12,000
Aggregate FMV of all Grace's IRAs	÷ 120,000
Ratio of basis to value	0.1000
Distribution taken from IRA #1	× 30,000
Basis allocated to distribution	(3,000)
Taxable distribution	$ 27,000

Under the aggregation rules, it doesn't matter that Grace's entire distribution came from IRA #1 that had no basis. She still must treat all of her IRAs as a single IRA when calculating the taxable portion of her distributions.

However, if Grace's IRA #2 was a Trump account, then she would not aggregate her two IRAs. Therefore, the entire distribution from IRA #1 would be taxable because she doesn't have any basis in IRA #1. The fact that Trump accounts are exempt from the IRA aggregation rules remains even after the end of the growth period.

☑ Planning Pointers

There are a couple of hidden planning pointers contained within Notice 2025-68 with regard to the IRA aggregation rules. First, as the example of Grace illustrates, it may be more beneficial to keep the Trump account open without rolling over the funds into another IRA in order to keep the account segregated from other IRAs for purposes of the IRA aggregation rules. For example, after the growth period, if Grace rolls over her Trump account into another traditional IRA account, then the account is no longer classified as a Trump account, and the aggregation rules will apply.

Second, Notice 2025-68 allows financial institutions to write a provision into their governing instruments that a Trump account's assets will be automatically transferred to a traditional IRA that is not designated as a Trump account at the end of the account's growth period. (Notice 2025-68, Q&A A-10) Taxpayers who want to keep their Trump accounts away from the IRA aggregation rules should ensure they don't hold their Trump account at a financial institution that institutes this type of provision.

Third, Notice 2025-68 provides that Trump accounts must be established by the federal government, but they can be rolled over using direct trustee-to-trustee rollovers into a Trump account maintained by the financial institution of the account owner's choosing. However, Trump accounts can only be rolled over into another Trump account during the growth period. Therefore, at the end of the growth period, a Trump account is locked into its financial institution for life. If a taxpayer wants to maintain their account as a designated Trump account long term, then they must complete their rollover before the end of their growth period. After the growth period, the account can still be rolled over into another retirement account, but it loses its designation as a Trump account and therefore becomes subject to the aggregation rules of IRC §408 if it's rolled over into another IRA.

ELIGIBLE INVESTMENTS DURING THE GROWTH PERIOD

During the growth period, no part of the Trump account funds may be invested in any asset other than an eligible investment. (IRC §530A(b)(1)(C)(iii)) An "eligible investment" means any mutual fund or exchange-traded fund (ETF) that:

- Tracks the returns of a qualified index;
- Does not use leverage;
- Does not have annual fees and expenses of more than 0.1% of the balance of the investment in the fund; and
- Meets such other criteria as the Secretary determines appropriate.
  (IRC §530A(b)(3)(A))

A "qualified index" means the Standard and Poor's 500 stock market index, or any other index which is comprised of equity investments in primarily U.S. companies and for which regulated futures contracts (as defined in IRC §1256(g)(1)) are traded on a qualified board or exchange (as defined in §1256(g)(7)). (IRC §530A(b)(3)(B))

The term qualified index does not include any industry- or sector-specific index but may include an index based on market capitalization. (IRC §530A(b)(3)(B))

Once the growth period ends on December 31 of the year before the child turns age 18, the Trump account converts to a traditional IRA account and is subject to all the same rules as every other traditional IRA account (except for the aggregation rules previously discussed). At that point, the account owner can expand their investments.

Practice Pointer

Taxpayers and tax professionals should not have to spend any mental energy evaluating whether an investment is an eligible investment during the growth period. The account trustee will provide a menu of eligible investments for the account custodian to choose from.

The account trustee will be the federal government initially but can be a private financial institution if the taxpayer chooses to create a rollover Trump account.

TRUSTEE REPORTING REQUIREMENTS DURING THE GROWTH PERIOD

The IRA reporting rules under IRC §408(i) do not apply to a Trump account during the growth period. (IRC §530A(h)(1)) During the growth period, the trustee of a Trump account must report to the IRS and to the account beneficiary information with respect to:

- Contributions accepted (including the amount and source of any contribution over $25 made by a person other than the Secretary, the account beneficiary, or their parent or legal guardian);
- Distributions (including distributions which are qualified rollover contributions);
- The fair market value of the account;
- The basis with respect to the account; and
- Such other matters as the Secretary may require.
  (IRC §530A(i)(1) and (3))

During the growth period, a trustee that receives a qualified rollover contribution must report to the IRS, within 30 days after the date of the qualified rollover contribution, information regarding:

- The account beneficiary (name, address, and Social Security number);
- The new Trump account (trustee name and address, account number, routing number); and
- Such other information as the Secretary may require.
  (IRC §530A(i)(2) and (3))

Comment

The trustee reporting requirements should be similar to the reporting requirements for Form 5498, IRA Contribution Information, that currently apply to IRA accounts. The IRS hasn't provided any detailed information on these new reporting requirements other than what's discussed here. It's possible that the IRS may create a new reporting form or may simply expand the Form 5498 to accommodate the additional Trump account reporting requirements. In either event, the new information reporting likely won't be issued until 2027, so the IRS has some time to flesh out how it wants this new information reported.

It is noteworthy, however, that most contributions into Trump accounts, such as those contributions made by parents and other family members, are not deductible and therefore create basis in the Trump account. The new information reporting requires that trustees report basis, which should help tax professionals track basis easily.

CONTRIBUTIONS TO TRUMP ACCOUNTS

Trump accounts cannot accept any contributions before July 4, 2026. (IRC §530A(b)(1)(C)(i)) Taxpayers who elect to create a Trump account for a child and elect to receive the $1,000 pilot

program contributions will not receive the contributions into the account before July 4, 2026, even if the taxpayer makes the election on Form 4547 early in the current tax return filing season.

There are five types of contributions that can be made to Trump accounts. The types of contributions and their unique features are detailed in the following chart.

Trump Account Contribution Types and Their Features					
	Pilot program contributions	**Qualified general contributions**	**Employer contributions (pre-tax)**	**Qualified rollover contributions**	**Contributions from other sources (post-tax)**
Who can make the contribution	Treasury Department	Federal, state, District of Columbia, or tribal governments or IRC §501(c)(3) organizations [81]	Employers	Account owners	Anyone, including the account beneficiary, parents, grandparents, etc.
Contribution limit	$1,000 (one-time)	No limit	$2,500 (per employee, per year, not per Trump account), with inflation adjustments after 2027	No limit	Aggregate account limit ($5,000 per year in 2025 and 2026)
Contributions count toward annual $5,000 aggregate limit	No	No	Yes	No	Yes
Contribution creates basis	No	No	No	Basis carries over from old account to rollover account	Yes
Is the contribution taxed to anyone?	No	No	No	No	No
Is the contribution deductible by anyone?	No	No	No	No	No

CONTRIBUTION LIMITS

The aggregate limit for contributions to Trump accounts by individuals and employers is $5,000 per year for 2025 and 2026 (adjusted for inflation beginning in 2027). The Trump account contribution limits during the growth period are separate from the IRA contribution limits, so account contributors can contribute up to the maximum eligible to both an IRA and a Trump account each year during the growth period.

TIMING OF CONTRIBUTIONS

Unlike IRAs, however, Trump account contributions must be made by December 31 to count as contributions for that year during the growth period. (Notice 2025-68, Q&A C-4) Trump accounts do not allow contributions after the end of the year to be counted toward the prior taxable year during the growth period.

EMPLOYER CONTRIBUTIONS

Beginning with the 2026 taxable year, employers can make contributions to a Trump account on behalf of their employee or employee's dependent. Employer contributions of up to $2,500 are excluded from the employee's income if made pursuant to a separate written Trump account contribution plan, similar to an IRC §129 educational assistance program. (OBBBA §70204(b); IRC §128) The $2,500 limit is adjusted for inflation beginning with the 2028 taxable year.

Practice Pointer

Employer contributions to Trump accounts count toward the $5,000 annual contribution limit.

QUALIFIED GENERAL CONTRIBUTIONS

Qualified general contributions can be made by either the federal, state, or local or Indian tribal governments, or by IRC §170(c)(1) or 501(a) organizations. (IRC §530A(f))

These contributions are made to the Secretary of the Treasury, who then distributes them to the Trump accounts of account beneficiaries who are members of a qualified class.

Unlike contributions made by parents, relatives, and employers, which are capped in aggregate at $5,000 annually, there is no annual contribution limit that applies to qualified general contributions. (IRC §530A(c)) This means a qualified general contribution deposited to a specific Trump account can be in any amount if the recipient meets the qualified class criteria outlined by the contributor (and approved by the Secretary of Treasury, as discussed below).

For example, in late 2025, Michael and Susan Dell, of Dell Computer fame, pledged a historic contribution of $6.25 billion to fund specified Trump accounts (discussed below). This is likely to be the first of many such announcements from public and private donors that will be made over the next year(s).

Qualified class

A qualified class for purposes of the Trump account qualified general contributions is very restrictive. It includes all account beneficiaries who are in the growth period when the contribution is made. The growth period is defined as the period of time from the account's creation until December 31 of the year before the account beneficiary turns age 18.

Per the terms of IRS Notice 2025-68, donors can further restrict this class to beneficiaries who:

- Live in one or more states (including the District of Columbia) or other qualified geographic area specified by the general funding contribution. A "qualified geographic area" means any geographic area in which not less than 5,000 account beneficiaries reside and which is designated by the Secretary as a qualified geographic area; or
- Were born in one or more calendar years specified by the general funding contribution. (IRC §530A(f)(3)(B); IRS Notice 2025-68, Q&A H.2)

This means donors cannot limit their contributions to specific beneficiaries, or to beneficiaries based on race, ethnicity, income, or other type of criteria. (IRC §530A(f)(3)(B); IRS Notice 2025-68, Q&A H.3)

For example, according to news accounts, the Dells' contribution will provide $250 to each Trump account of qualified children who are:

- Under age 11;
- Live in ZIP codes with a median family income of $150,000 or less; and
- Won't receive the $1,000 pilot contribution (only available to those children who were born in 2025 through 2028).
  (Beaty, Thalia, "Michael and Susan Dell donate $6.25 billion to encourage families to claim 'Trump Accounts'" (December 2, 2025) Associated Press)

Note that under the Dells' contribution, while the geographic area criterion was limited by median family income, all qualified children under age 11 who live in that geographic area qualify for the contribution regardless of the amount of their family's income, as long as a Trump account is established for the child (whether there is a set date by which the account must be established to qualify for the contribution is currently unknown).

Comment

Ray and Barbara Dalio have also pledged $75 million to provide $250 to certain children in Connecticut who live in ZIP codes with a median family income of $150,000 or less. (Bedner, Eric "Dalios donate $75M to Trump trust fund accounts for 300,000 CT children" (December 17, 2025) Stamford Advocate) Ray Dalio is a billionaire and founder of Bridgewater Associates, which is the world's largest hedge fund.

The Treasury Department may issue specific guidance as to what qualifies as a qualified geographic area in the future.

How contributions are made

Unlike account contributions made by parents and relatives, etc., these contributions are not made directly into a recipient's Trump account. Rather, these contributions are made to the Secretary of the Treasury, who then distributes the contributions to the Trump accounts of account beneficiaries who are members of a qualified class. (IRC §530A(f)(3)(B); IRS Notice 2025-68, Q&A H.2)

The contributor must apply to the Secretary of Treasury and specify the amount of the contribution, the qualified class, and, at the taxpayer's election, a consent to disclose the identity of the contributor. For the 2026 and 2027 calendar years, the contribution must equal at least $25 per account beneficiary in the qualified class.

The Treasury Department will provide more information about how and where to make this application before the application process opens on July 4, 2026.

Taxation of qualified general contributions

Qualified general contributions made to a Trump account are excluded from an account beneficiary's gross income when received. (IRC §139J)

However, qualified general contributions do not create basis in a Trump account. (IRC §530A(d)(2); IRS Notice 2025-68) This means that when these amounts are distributed to the beneficiary, they will be taxed as ordinary income.

ROLLOVER CONTRIBUTIONS

Qualified rollover contributions are not subject to tax. For this purpose, a qualified rollover contribution is from one Trump account to another Trump account in a direct trustee-to-trustee transfer.

In addition, qualified ABLE rollover contributions made from a Trump account to an ABLE account established for the same beneficiary are also not subject to tax if made in a direct trustee-to-trustee transfer during the calendar year the beneficiary turns age 17. (IRC §530A(d)(3) and (4))

CONTRIBUTION FAQs

Q1: Can a child who has earned income maximize contributions to both an IRA and a Trump account?

A1: Yes, but only during the growth period. The growth period ends on January 1 of the year the child turns age 18. At that point, the Trump account becomes subject to the same rules as traditional IRA accounts, and the taxpayer's aggregate contributions to all IRAs cannot exceed the IRA contribution limit (the lesser of earned income or the inflation adjusted annual limit).

Q2: Do contributions to Trump accounts by parents, grandparents, and other family and friends count toward the annual gift limit?

A2: Yes.

Q3: Can a child make direct contributions to their own Trump account?

A3: Yes, but the contributions are nondeductible during the growth period. After the growth period ends, contributions follow the traditional IRA contribution rules.

Q4: Can a child's employer make pre-tax contributions to the child's Trump account?

A4: No. A Trump account contribution program may be offered via salary reduction under an IRC §125 cafeteria plan if the contribution is made to the Trump account of the employee's dependent, but not if the contribution is made to the Trump account of the employee. (Notice 2025-68, Q&A I-3)

Q5: Can a 501(c)(3) organization or charitable fund make a qualified general contribution on behalf of a specific child, or on behalf of children under a certain income level?

A5: No, qualified general contributions can only be made to a qualified class of children, which can only be based on a geographic area (of no less than 5,000 people) or a specific age group. It cannot be targeted to a specific individual or individuals in a specific income group.

Q6: Do contributions from a 501(c)(3) organization or charitable fund count toward the $5,000 annual contribution limit?

A6: No. Contributions from 501(c)(3) organizations or charitable funds do not count toward the annual contribution limits.

DISTRIBUTIONS FROM TRUMP ACCOUNTS

No distributions are allowed from Trump accounts during the growth period, except for:

- Qualified rollover distributions;
- Qualified ABLE rollover distributions, which can only be made during the calendar year when the account beneficiary turns age 17 to the beneficiary's ABLE account and do not count toward the ABLE account contribution limits;
- Distributions of excess contributions; and
- Distributions upon the death of the child.

> ***Comment***
>
> Hardship distributions or early distributions for any other reason cannot be made from a Trump account during the growth period. The investment is totally locked up until the end of the growth period.

After the growth period, distributions from Trump accounts are subject to the rules that apply to distributions from traditional IRAs, including the rules for early withdrawal penalties before age 59½ (unless an exception applies) and RMD rules.

If the child dies during the growth period, the account immediately ceases to be a Trump account as of the date of death, and the account's fair market value (reduced by basis) is includible in the gross taxable income of the person named as the account's beneficiary in the event of the child's death. As an IRA account, someone other than the child should be named as a beneficiary in the event of the account owner's death.

If the child dies after the end of the growth period, then the regular inherited IRA rules should apply, although Notice 2025-68 doesn't explicitly state this.

TRUMP ACCOUNT PLANNING

Trump accounts are a great new alternative to get a jump start on investing for minors. Taking advantage of the time value of money right from birth can provide life-changing financial stability. For example, assume a parent opens a Trump account for their child in the year the child is born and contributes $5,000 per year for 10 years. With a consistent 7% rate of return until the child reaches their required minimum distribution (RMD) age (75 years), the child's Trump account value will grow to nearly $7 million with only $50,000 of total contributions during the child's first 10 years of life.

Contrast this with a child who only receives the $1,000 federal government seed money. With the same 7% rate of return, the initial $1,000 will grow to nearly $160,000 by age 75.

Most contributions to Trump accounts are post-tax, but there are three types of contributions that can be made pre-tax:

- Federal government pilot program contributions of up to $1,000 per child;
- Qualified general contributions (such as the Michael and Susan Dell contributions); and
- Pre-tax contributions made through employer IRC §128 benefit programs of up to $2,500 per year.

COMPARISON TO OTHER INVESTMENT OPTIONS

For planning purposes, it's worth exploring four investment account types available for children under the age of 18:

- Trump accounts;
- Roth IRA accounts;
- §529 college savings accounts; and
- Uniform Transfer to Minors Act (UTMA) accounts.

> ***Comment***
>
> Trump accounts and UTMA accounts are available exclusively to taxpayers under age 18. Roth IRAs and §529 college savings accounts are available to all taxpayers but are commonly used as an investment option for minors.

Whether a client should invest in one of these types of accounts over another for their minor children involves balancing the features and benefits of each account and determining which one satisfies the client's goals the best. The following chart details these features and benefits.

Features of Common Investment Account Types for Minor Children

	Trump account (during growth period)	**Roth IRA***	**§529 account**	**UTMA**
Contribution limits	$5,000. Annual limit (not counting contributions made by the federal or state governments or by charitable organizations). Adjusted for inflation after 2027	Lesser of earned income or $7,000. Annual limit, adjusted annually for inflation	Aggregate lifetime limit varies by state. Lowest aggregate limit in 2025 was $235,000 and highest is $575,000	Not applicable
Contribution limit aggregated with other types of accounts	No	Yes. Aggregated with other IRAs, including non-Roth IRAs	No	No
Tax treatment of contributions	Generally, post tax, which provides basis. Limited pre-tax money available	Post tax	Post tax	Post tax
Contributions subject to gift tax limits if made by anyone other than the child	Yes	Yes	Yes	Yes

(continued)

Features of Common Investment Account Types for Minor Children (continued)				
	Trump account (during growth period)	**Roth IRA***	**§529 account**	**UTMA**
Earned income requirement	No	Yes	No	No
AGI limit for contributions	No	Yes, (but generally isn't an issue for minor children)	No	No
Earnings are tax-deferred	Yes	Yes	Yes	No
Earnings are subject to kiddie tax rules	No	No	No	Yes
Investments	Limited. See page 10	Self-dealing and prohibited investment rules that apply to all IRAs apply here as well, but there are few other limitations on investment options	Investment options are limited to those available by the sponsoring state. Taxpayers generally have very limited input on investment decisions	No restrictions
Tax treatment of distributions	Distributions of basis are tax-free, earnings are taxed as ordinary income. Distributions are treated as *pro rata* distributions of basis and earnings	Tax-free if taken after age 59½	Tax-free if used for qualifying expenses. If not used for qualifying expenses, then only earnings are taxable	Tax-free. Earnings are taxed annually, so distributions themselves don't result in a taxable event
Can funds be rolled over into a different type of account?	Yes. Funds can be rolled over into an IRA or employer-sponsored plan after age 18	No	Yes. Limited ability to roll over §529 funds into a Roth IRA or ABLE account	Not applicable. UTMA accounts are taxable accounts, so money can be moved freely
Early withdrawal rules and penalties	No distributions allowed before year child turns age 18. The funds are totally locked with limited exceptions	10% penalty applies to earnings distributed before age 59½ unless an exception applies	No early withdrawals rules. 10% penalty applies on earnings if withdrawal not used for eligible expenses	Not applicable. UTMA accounts are taxable accounts, so money can be withdrawn freely

* Traditional IRAs are also available to minor children who have earned income, but because working minors are typically in low tax brackets, Roth IRAs are a much more common (and generally better) alternative

Weighing the features of each of these types of accounts, the following tips may help decide which is best for your client:

- If the child is eligible for $1,000 pilot program seed money from the federal government or other qualified contributions (such as the Dell contribution), then there is no reason to not open a Trump account;
- Employers can offer pre-tax money to fund up to $2,500 per year into employee Trump accounts. If employers offer this benefit, then there is no reason to turn down free employer money;
- Taxpayers looking to get a head start on tax-deferred investing for their child without a specific college savings goal should prefer a Trump account, especially if:
    - The child has no earned income;
    - The taxpayer's employer offers pre-tax contributions as an employee benefit; or
    - The taxpayer wants to avoid kiddie tax rules;
- Taxpayers who specifically want to invest for education should prefer §529 accounts because distributions are not taxed at all if the funds are used for eligible expenses;
- If the child has earned income, such as a working teenager, then a Roth IRA is generally a better choice, at least up to the amount of the child's earned income because all distributions are tax-free if the child waits until age 59½. Note, however, that taxpayers can contribute up to the maximum contribution limits for both a Trump account and a Roth IRA in the same year; and
- If taxpayers want the child to have access to their money before age 18, if the taxpayer wants to avoid ordinary income tax rates when the child eventually accesses the funds, or if the taxpayer wants to make nontraditional investments, then an UTMA account may be preferred.

ROTH ROLLOVER AT THE END OF GROWTH PERIOD

Trump accounts automatically convert to regular traditional IRA accounts at the end of their growth period. One option that is sure to emerge as a key planning strategy will be to convert the Trump account to a Roth IRA.

Caution

Taxable IRA distributions are treated as unearned income and are therefore subject to the kiddie tax rules. Taxpayers should make sure they wait until the child is no longer subject to the kiddie tax rules before engaging in a Roth conversion if their parents are in a higher marginal income tax bracket.

Example of Roth conversion after growth period

Ali was born in 2026 and her parents immediately set up a Trump account for her. She received $1,000 of pre-tax federal government seed money and her parents contributed $3,000 to her Trump account every year until the end of her growth period.

At the end of the growth period, Ali's Trump account balance is $115,000, made up of $54,000 of post-tax contributions made by her parents ($3,000 per year, multiplied by 18 years) and $61,000 of earnings and pre-tax contributions.

Ali does not have any other IRA accounts.

Ali can convert the $115,000 balance of her Trump account to a Roth IRA, but only the $61,000 of earnings and pre-tax contributions are taxable.

If Ali's parents are in a higher income tax bracket than her, then she should wait until the kiddie tax rules no longer apply before engaging in the Roth conversion.

A. Discussion Questions

1. What are Trump accounts, and how do they differ from ordinary traditional IRAs?
2. How is a Trump account opened, and why do the ordering rules matter in practice?
3. Why is the growth period so important in understanding the tax and planning consequences of Trump accounts?

B. Suggested Answers to Discussion Questions

1. What are Trump accounts, and how do they differ from ordinary traditional IRAs?

Trump accounts are a new type of child-focused savings vehicle created by the One Big, Beautiful Bill Act and codified in IRC §530A. The webinar explains that they are technically traditional IRA accounts, but they operate under a special set of rules during what the law calls the "growth period." That period begins when the account is opened and lasts until December 31 of the year before the child turns 18. During that time, the account is subject to unique rules that do not apply to ordinary IRAs. For example, there is no earned income requirement for contributions during the growth period, distributions are generally prohibited, investment choices are restricted to certain low-fee index-type investments, and special contribution rules apply. Once the growth period ends, the account generally becomes subject to the ordinary traditional IRA regime. One major distinction remains, however: a designated Trump account is not subject to the IRA aggregation rules under IRC §408, even after the growth period ends, unless it is rolled into a different IRA and loses its designation. The webinar presents Trump accounts as a hybrid tool: part retirement savings account, part long-term child investment vehicle, with planning value driven by early tax-deferred compounding and special contribution opportunities.

2. How is a Trump account opened, and why do the ordering rules matter in practice?

A Trump account cannot be opened directly by walking into a financial institution and requesting one. Instead, the Treasury Department opens the initial account after an authorized individual makes an election, either by filing Form 4547 or later through the trumpaccounts.gov portal. The supplement explains that authorized individuals are ranked in a specific order: legal guardians first, then parents, then adult siblings, then grandparents. That ordering matters because only one Trump account may exist at a time for a child. In ordinary family situations, this may not cause much difficulty, but the webinar notes that it can become highly significant in cases involving divorced parents or other complicated custody arrangements. If multiple adults might otherwise want to control the account, the first person with authority to make the election effectively wins control as custodian. The materials also stress that the child must have a valid Social Security number for employment before the election is made. In practical terms, advisers need to understand not only who may act, but also how timing affects opportunities to secure pilot contributions, employer-related benefits, or other qualified contributions. Because these accounts are likely to matter most when opened early, practitioners should be prepared to guide families quickly and accurately through the election process.

3. Why is the growth period so important in understanding the tax and planning consequences of Trump accounts?

The growth period is the defining feature of the Trump account structure because most of the account's special rules apply only during that time. The supplement defines the growth period as the period from account creation until December 31 of the year before the child turns 18. During those years, the account operates differently from a standard traditional IRA in several important respects. First, contributions do not require earned income, allowing very young children, including newborns, to benefit from tax-deferred accumulation. Second, investment choices are limited to specific eligible investments, generally broad, low-fee index funds. Third, distributions are almost entirely prohibited, which means the account is designed for long-term accumulation rather than short-term use. Fourth, different contribution rules apply, including unique treatment for pilot program contributions, employer contributions, qualified general contributions, and family-funded post-tax contributions. When the growth period ends, the account transitions into a traditional IRA framework, but the exemption from aggregation rules remains if the account retains its Trump designation. That makes the end of the growth period a major planning milestone. Practitioners must consider whether to preserve the Trump account designation, whether to pursue a Roth conversion later, and whether the child's circumstances make it better to continue the account separately rather than combine it with other retirement accounts.

GLOSSARY

Aggregation rules—IRA tax rules that generally treat all of a taxpayer's IRAs as one account, except that designated Trump accounts are excluded unless rolled into another IRA.

Authorized individual—A person permitted to elect to open a Trump account for a child, following the order of legal guardian, parent, adult sibling, then grandparent.

Boot—Cash, non-like-kind property, or certain net debt relief received in an exchange that triggers current gain recognition to the extent required by §1031 rules.

Exchange Accommodation Titleholder (EAT)—The titleholder used in a reverse exchange safe harbor to park replacement property before the relinquished property is sold.

Growth period—The period from the opening of a Trump account until December 31 of the year before the child turns age 18.

Like-Kind Exchange—A transaction under IRC §1031 in which qualifying real property held for business or investment is exchanged for other like-kind real property without current gain recognition.

Qualified general contribution—A contribution made through the Treasury by specified governments or qualifying organizations to a class of eligible Trump account beneficiaries.

Qualified Intermediary (QI)—An independent facilitator used in modern exchanges to receive proceeds and acquire replacement property without causing taxpayer receipt of funds.

Qualified rollover contribution—A direct trustee-to-trustee transfer from one Trump account to another, with the entire balance moved and the old account closed.

Relinquished Property—The property the taxpayer transfers as part of a §1031 exchange.

Replacement Property—The like-kind real property the taxpayer acquires in the exchange.

Trump account—A child-focused savings account under IRC §530A that operates as a traditional IRA with special rules during the growth period.

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

1. Which of the following is a basic requirement for nonrecognition under §1031?

   A. The property exchanged must be inventory
   B. The exchange must involve like-kind real property held for business or investment use
   C. The taxpayer must receive cash equal to the deferred gain
   D. The replacement property must be held for personal use

2. Under the deferred exchange safe harbor, the taxpayer generally must acquire the replacement property within:

   A. 45 days
   B. 90 days
   C. 180 days
   D. One year

3. Which of the following may create mortgage boot?

   A. Increasing debt on replacement property
   B. Reducing net debt in the exchange
   C. Using a qualified intermediary
   D. Identifying three properties

4. Which arrangement is commonly used to hold replacement property in a reverse exchange safe harbor?

   A. Grantor retained annuity trust
   B. Exchange Accommodation Titleholder
   C. Family limited partnership
   D. Disregarded nominee lender

5. If a taxpayer identifies more replacement properties than permitted under the Three-Property Rule or 200% Rule and fails the 95% Rule, the result is generally that:

   A. Only the excess properties are ignored
   B. The identification is treated as invalid
   C. The exchange automatically becomes a reverse exchange
   D. Boot is limited to the value of the excess properties

Continued on next page

6. Which of the following best describes the like-kind standard for qualifying real estate under §1031?

   A. Improved real estate is not like-kind to unimproved land
   B. U.S. real property is like-kind to foreign real property
   C. Most domestic real property is like-kind to other domestic real property
   D. Only rental apartments are like-kind to other rental apartments

7. A taxpayer sells relinquished property, properly identifies replacement property on time, but receives the exchange proceeds before the replacement property is acquired. What is the principal tax risk?

   A. The property automatically becomes inventory
   B. The taxpayer may have actual or constructive receipt, jeopardizing §1031 treatment
   C. The 45-day period is extended automatically
   D. The exchange becomes a related-party exchange

8. Which statement about related-party exchanges under §1031 is most accurate?

   A. They are always prohibited
   B. They are permitted, but a later disposition within two years may trigger loss of nonrecognition treatment
   C. They are allowed only for foreign real property
   D. They eliminate the need to satisfy the held-for-investment requirement

9. Which of the following is most likely to qualify as replacement property identified in a build-to-suit exchange?

   A. Property not yet in existence, if identified with reasonable specificity including the underlying land
   B. Property described only as “any commercial building in the city”
   C. Property the taxpayer hopes to locate after the 45-day period expires
   D. Property intended solely for the taxpayer’s personal residence

10. Under the 200% Rule for identifying replacement property, the taxpayer may identify:

    A. Any number of properties, regardless of value
    B. No more than two properties of any value
    C. Any number of properties, as long as their aggregate fair market value does not exceed 200% of the relinquished property’s value
    D. Only properties located in the same state as the relinquished property

Continued on next page

11. Which person has first priority to open a Trump account for a child under the ordering rules?

    A. Grandparent
    B. Parent
    C. Legal guardian
    D. Adult sibling

12. . During the growth period, Trump account contributions generally must be made by:

    A. April 15 of the following year
    B. October 15 of the following year
    C. December 31 of the contribution year
    D. The due date of the child's return

13. Which statement is correct regarding qualified rollovers of Trump accounts?

    A. A 60-day rollover is permitted if the full amount is redeposited
    B. Only part of the balance may be rolled to a new Trump account
    C. The rollover must be trustee-to-trustee, for the full balance, and the prior account must be closed
    D. Rollovers are prohibited until the child turns 18

14. Which savings vehicle is generally preferred when the client's primary goal is college funding?

    A. Trump account
    B. Roth IRA
    C. 529 account
    D. UTMA account

15. Which of the following is generally not allowed during the growth period:

    A. Distribution of excess contributions
    B. Distribution upon the child's death
    C. Qualified ABLE rollover during the year the child turns 17
    D. Hardship withdrawal for family financial need

CeriFi CPE Network
Tax Report
Volume 39, Issue 04 **May 2026**

SUBSCRIBER SURVEY

Evaluation Form

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

How would you rate the topics covered in the May 2026 issue of **CeriFi 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
Segment 1						
Segment 2						

Which segment of this issue of **CeriFi CPE Network Tax Report** did you like the most, and why?

Which segment of this issue of **CeriFi CPE Network Tax Report** did you like the least, and why?

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

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

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

	Overall	**Knowledge of Topic**	**Presentation Skills**
Mr. Jay Darby	|_____|	|_____|	|_____|
Mr. Mike Giangrande	|_____|	|_____|	|_____|
Ms. Renee Rodda	|_____|	|_____|	|_____|

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

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

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

Were program materials accurate? Yes ☐ No ☐ _____

Were program materials relevant and contribute to the achievement of the learning objectives? Yes ☐ No ☐_____

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

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

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

Specific Comments:

_____

_____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

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

CeriFi CPE Network

CPE Group Attendance Sheet

Firm/Company Name: _____

Account #: _____

Location: _____

Program Title: CeriFi CPE Network XXXXXXXXXXXXXXX, Month/Season YYYY 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 CeriFi CPE Network newsletter, and earned the number of hours shown.

Instructor Name: _____ Date: _____

E-mail address: _____

License State and Number: _____

grading-cpedge@cerifi.com

CPE Session Requirements

- Must be 3 CPE credits (min. 2.5 hours); see User Guide.
- Record actual time attended if participant arrives late or leaves early.

Within 30 days, submit all of the following to grading-cpedge@cerifi.com

- Advertising/Promotional Page
- CPE Group Attendance Sheet
- Subscriber Survey Evaluation Form

CeriFi 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 CeriFi CPE 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 CeriFi 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?**

CERIFI CPE NETWORK USER GUIDE

REVISED August 2025

Welcome to CeriFi CPE Network!

CeriFi 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 CeriFi CPE Network program on their own computers at a time and place of their convenience. No instructor is required for self-study.
- **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), CeriFi CPE 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 the 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.) CeriFi CPE 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 CeriFi CPE Network for your training solutions.

Thank you for your business and HAPPY LEARNING!

“Group Live” Format

CPE Credit

All CeriFi 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:** CeriFi CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by CeriFi CPE Network. CeriFi CPE 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 CeriFi CPE 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 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 CeriFi 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 CeriFi CPE 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 CeriFi CPE 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 CeriFi CPE 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

The entire transcript is available as a pdf 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 CeriFi CPE Network by the following means:

Email: grading-cpedge@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 CeriFi 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:** CeriFi CPE Network products ‘group live’ sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designated by CeriFi CPE Network. CeriFi CPE 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 CeriFi CPE 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 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 CeriFi CPE 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 CeriFi CPE 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 CeriFi CPE 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 CeriFi CPE 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

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 CeriFi CPE Network by the following means:

Email: grading-cpedge@cerifi.com

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

Advertising /		Complete this form and circulate to your audience
Webinar Delivery		Use this form to track the attendance (i.e., polling
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

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:

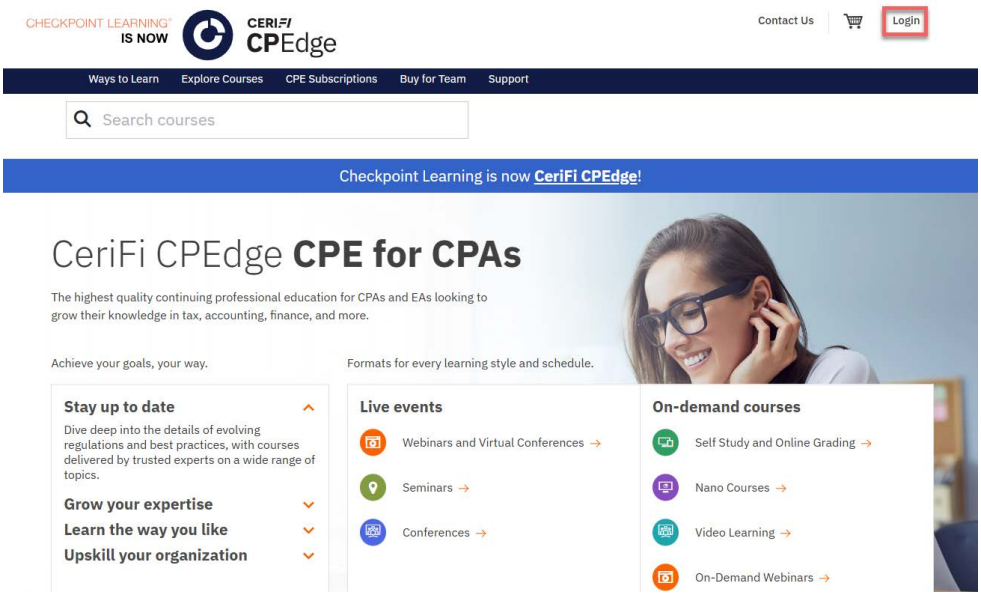
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

  grading-cpedge@cerifi.com

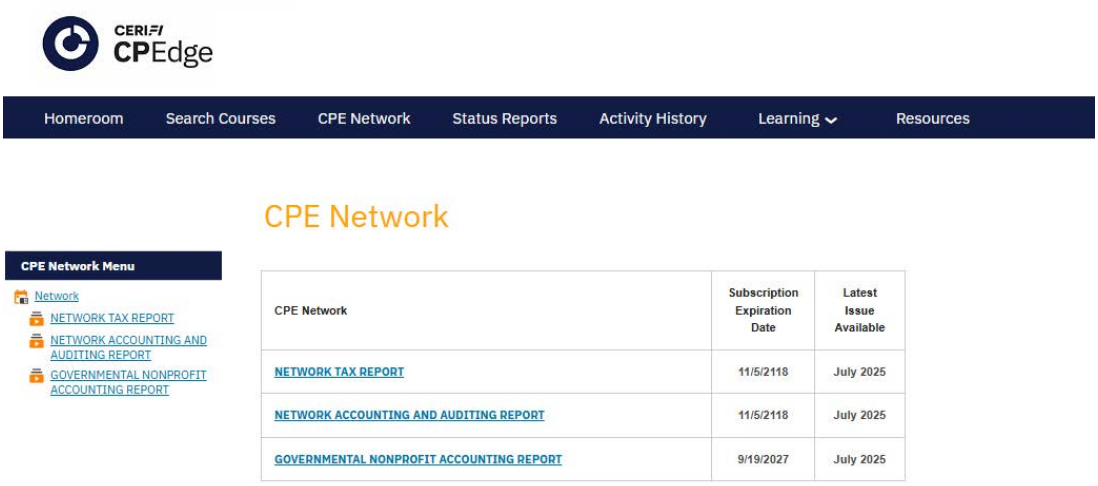
Self-Study—Online

Follow these simple steps to use the online program:

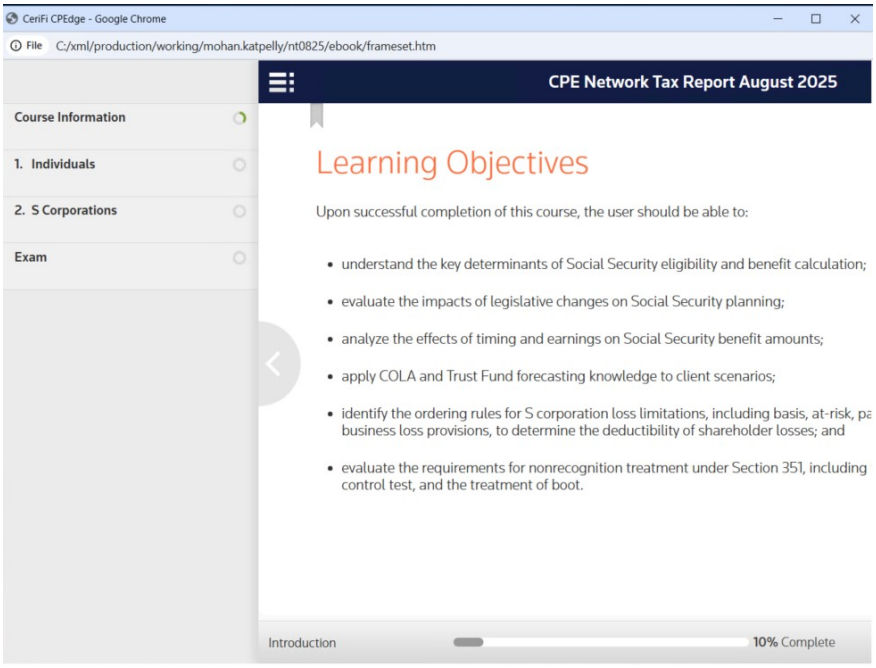
- Go to **https://cerificpedge.com/**.
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

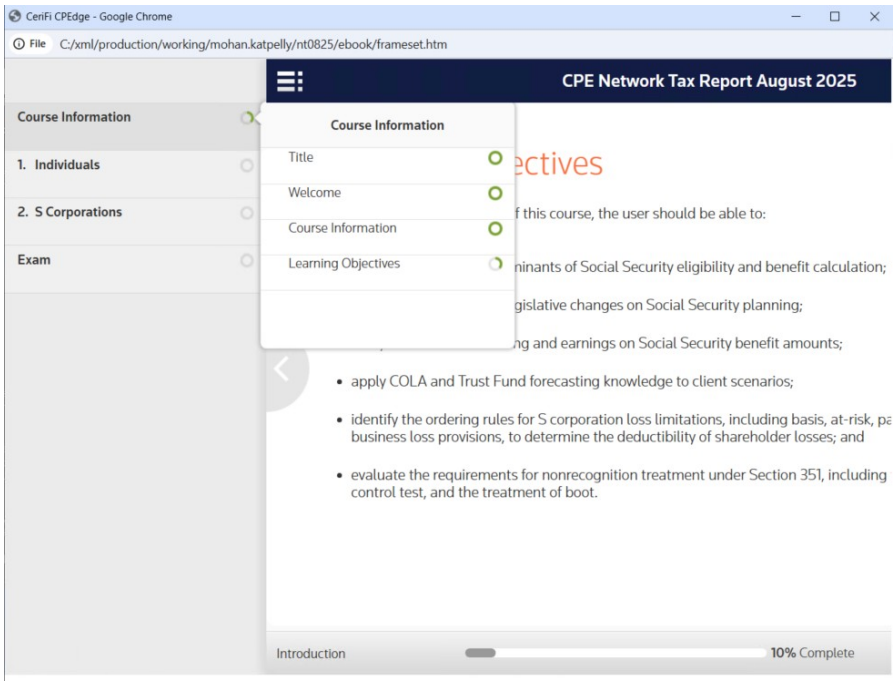


The Chapter Menu is in the gray bar at the left of your screen:



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

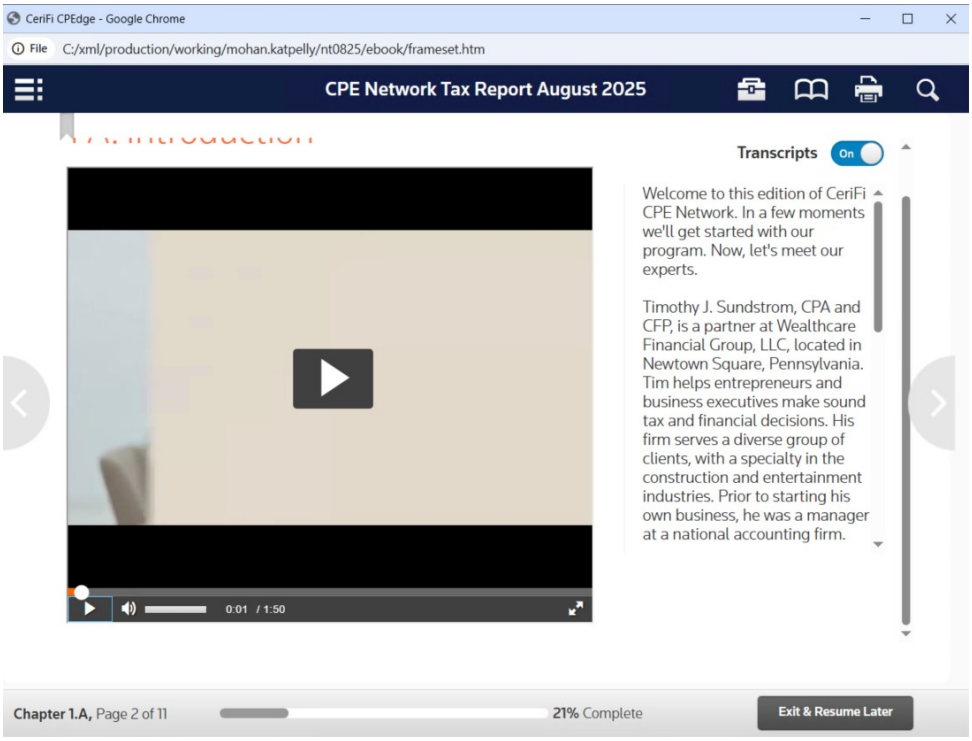


- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the self-study questions. This streamlined approach allows administrators and users to more easily access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

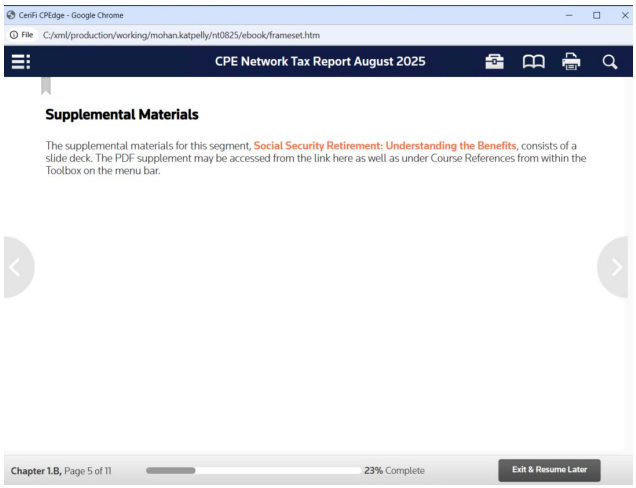
Video segments may be downloaded from the player by clicking on the download button. *Tip: you may need to scroll down to see the download button.*

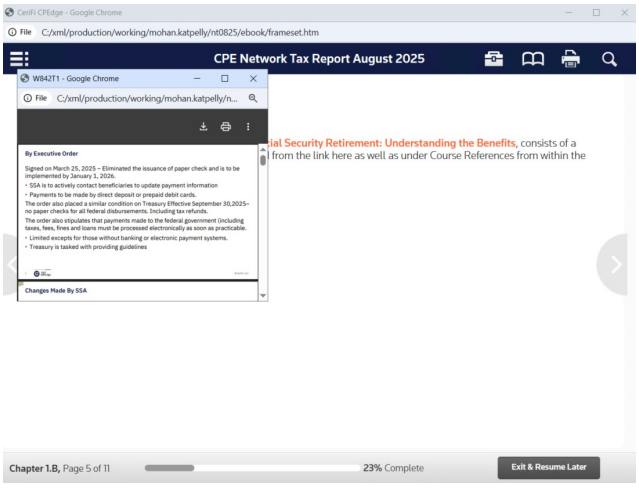
Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts**

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.

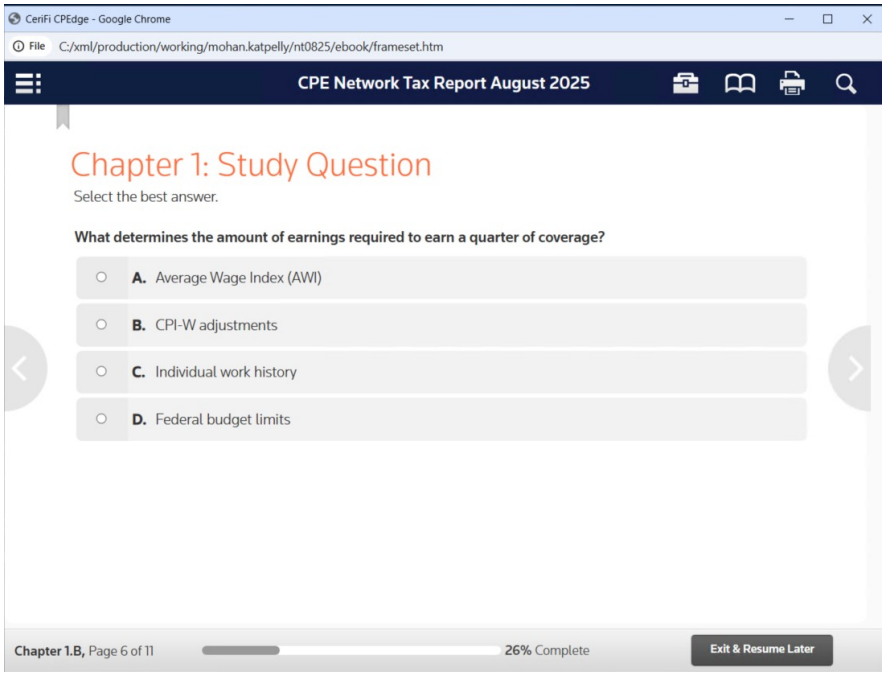


The supplemental materials are available via the toolbox and the link will pop up the pdf version in a separate window.



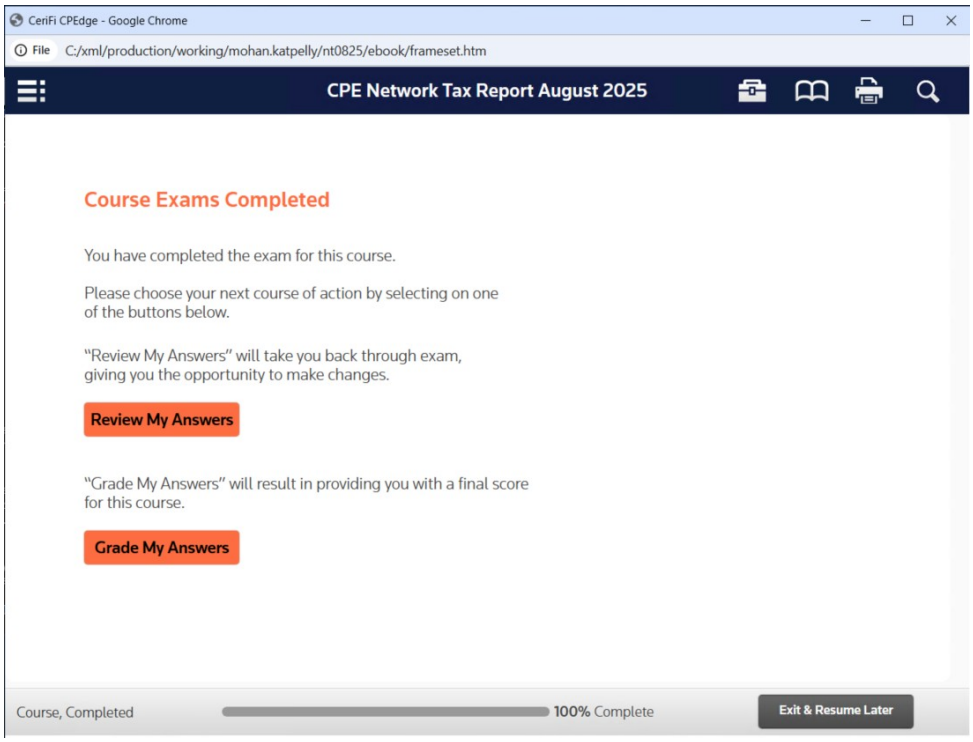


Continuing to click the arrow to the right side of the screen will bring the user to the self-study questions related to the segment.



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 quizzer grade is displayed and you may view the graded answers by clicking the button labeled **view graded answer**.

Additional Features Search

CeriFi CPE 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**.

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

Appendix: Forms

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

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

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	cpedgesupport@cerifi.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	844.245.5970	cpedgesupport@cerifi.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	844.245.5970	cpedgesupport@cerifi.com	• Billing • Existing orders • Cancellations • Webinars • Certificates