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TAX REPORT

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CERIFI

EXECUTIVE SUMMARY

PART 1. QUARTERLY TAX UPDATE

Spidell's Quarterly Federal Tax Update..... 3

This segment provides tax professionals with a practical review of recent federal tax developments and planning considerations. The presenters distinguish proposed legislation from enacted law and examine developments involving digital assets, including staking rewards, lot identification, wash-sale proposals, and potential mark-to-market treatment. The program also addresses Trump account contributions and gift-tax reporting, valid income tax extensions, repayment of Social Security benefits, garnishment considerations, and the Saver's Match program. A substantial portion focuses on real estate advisory services, including rental-market evaluation, capitalization rates, cash flow versus taxable income, and buy-versus-rent analysis. Business topics include opportunity-zone transition rules, withdrawal of Section 163(j) real-property trade or business elections, bonus depreciation, cannabis-related deductions, Employee Retention Credit disputes, and correcting depreciation errors through amended returns or Form 3115. The presenters conclude with entity-structure considerations for reducing self-employment taxes while maintaining reasonable compensation and evaluating compliance costs. *[Running time: 1:34:34]*

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

- Identify recent legislative proposals, judicial decisions, and IRS guidance affecting individual and business taxpayers and distinguish proposed legislation from provisions currently in effect.
- Explain the federal tax considerations associated with digital assets, including staking rewards, specific identification of digital-asset lots, and proposed changes involving wash-sale and mark-to-market rules.
- Apply current tax rules and administrative guidance relating to Trump account contributions, income tax extensions, Social Security repayments, retirement incentives, and other individual taxpayer issues.
- Calculate and evaluate common real estate investment measures, including capitalization rates and cash flow, and distinguish economic cash flow from taxable income when advising rental-property clients.
- Analyze business tax planning opportunities involving Section 163(j), bonus depreciation, Employee Retention Credit claims, cannabis-related deductions, and correction of depreciation accounting errors.
- Evaluate entity-structure alternatives for self-employed taxpayers, including the potential benefits, reasonable-compensation requirements, compliance costs, and multi-year tax effects associated with operating through an S corporation.

PART 2. LIQUIDATING DISTRIBUTIONS IN A CORPORATION OR PARTNERSHIP

Liquidating Distributions in a Corporation or Partnership 76

This segment examines the federal tax treatment of liquidating distributions from both corporations and partnerships. The discussion begins with corporate liquidations and explains why distributed property is generally treated as sold at fair market value, producing corporate-level gain or loss. It explores limitations on recognizing losses, including related-party transactions, disqualified property, built-in losses, and anti-stuffing provisions. The segment also considers the importance of adopting a formal plan of liquidation, shareholder-level gain or loss, installment considerations, partial liquidations, Section 332 subsidiary liquidations, and Section 338 elections.

The program then contrasts these rules with partnership distributions. Participants review the required ordering of cash, unrealized receivables, inventory, and other property; the circumstances under which partners recognize gain or loss; and the operation of Section 751 hot-asset rules. The segment concludes with an overview of disproportionate distributions and the treatment of payments to retiring partners under Sections 736(a) and 736(b). *[Running time: 46:38]*

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

- Identify the federal income tax consequences of complete and partial corporate liquidations, including gain or loss recognition, shareholder basis considerations, and limitations applicable to loss property.
- Differentiate the tax treatment of corporate liquidating distributions from partnership liquidating distributions, including the ordering and basis-allocation rules applicable to partnership property distributions.
- Apply the rules governing partnership hot assets, disproportionate distributions, and retiring-partner payments to determine when amounts are treated as ordinary income rather than capital gain.

ABOUT THE SPEAKERS

Mike Giangrande, J.D., LL.M., is a California licensed attorney and has been a tax practitioner for over 20 years. He is licensed to practice before the United States Tax Court, has a B.S. in Accounting and an LL.M. (Tax) from Chapman University, and has a J.D. from Whittier Law School with a certificate of concentration in business law. Mike has spent time as an adjunct professor of law at Whittier Law School teaching various tax courses and he served as a member of the Orange County Assessment Appeals Board.

Renee Rodda, J.D., 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.

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

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—From a Declaration of Principles jointly adopted by a *Committee of the American Bar Association and Committee of Publishers and Association*

PART 1. QUARTERLY TAX UPDATE

Spidell's Quarterly Federal Tax Update

Federal tax law continues to evolve through legislation, IRS guidance, court decisions, and changing planning opportunities. In this quarterly tax update, instructors Mike Giangrande and Renee Rodda examine developments affecting individuals, businesses, investors, and tax professionals. Topics include proposed congressional legislation, digital asset taxation, Trump accounts, income tax extensions, Social Security benefits, retirement incentives, rental real estate analysis, opportunity zones, business interest limitations, cannabis taxation, Employee Retention Credit disputes, depreciation corrections, and entity planning for self-employed taxpayers. The program emphasizes practical implications, planning considerations, and strategies practitioners can use when evaluating client circumstances and advising on developing tax issues.

Mr. Mike Giangrande and **Ms. Renee Rodda**

Hello, and thank you for joining us. This webinar will be presented by me, Mike Giangrande and Renee Rodda. All right, let's start this quarter, the update.

Talking about some of the bills that are moving through Congress. I want to make sure I'm very clear at the outset here. These are only bills moving through the different chambers of Congress. None of these have become law yet. And so what we're going to see is we're going to talk about some congressional bills, a couple of bills coming out of the Senate. You will see some overlapping provisions in these bills because they're all still really working drafts. Can I say it that way? So, you'll see some duplicate provisions because, well.

These things have been introduced by different people. Now, I don't want to go through every single one of them, but I will point out some of the highlights. So, first on the house side of things, we've got the Survivor Justice Tax Prevention Act. You know, for example, that will exclude from gross income any compensatory damages paid to sexual assault victims. That one seems like a nice one for people who have gone through something very difficult, very terrible.

We've got the Doug LaMalfa Federal Disaster Tax Relief Certainty Act. That one would extend the current removal of the 10% of AGI and 100% per casualty loss thresholds for qualified disaster losses, and just replace them with a $500 per casualty threshold for pre-2027 tax years. So that's kind of a nice one, you know, if people have had disaster losses.

We also have the supporting early childhood educators deduction act, the clergy act, the taxpayer, sorry, the tax experience improvement act, the Taxpayer Notification and Privacy Act, the Barcode Efficiency Act, and the IRS Whistleblower Program Improvement Act.

The one I do want to mention really on paper though is the bullet points bottom of page one on the Taxpayer Experience Improvement Act. Because I think that some of the provisions here from a tax as a from a tax professional perspective, I like. I think these are things that most of us would probably agree that we think are good ideas.

So, for example, this one would create a dashboard that would be posted to the IRS's website to inform taxpayers of current call volumes, backlogs, wait times, and the availability of the callback service.

I would love that when calling the practitioner hotline, right? I can't tell you how many times I call. I'm sure you do have the same thing. Call a practitioner hotline only to be met with, we can't take your call, try back on another day. So much for priority service.

This act would also expand the online tools available to taxpayers by showing the status of their tax returns and any and any refunds due, as well as reasons why return processing has been suspended. Great idea, right there. I love that one. Would establish a callback service for all taxpayer interfacing phone numbers, not just you know the main call number, and would expand online accounts to allow taxpayers to view and/or respond to any return document notice or letters sent to the taxpayer during the preceding six-year process period, and then would also expand it to tax professionals as well.

I love all those ideas. I think those are all good things. I you know, if those all if those don't pass, I think that it was probably more of an issue with people at the IRS saying that they can't implement that in a timely fashion. That's my that's my guess.

Because we move over to the Senate bills, we do see the Taxpayer Assistance and Services Act and the Improving IRS Customer Services Act, both very, very similar to the those bullet points we just went through on the house side version, taxpayer experience improvement act.

So, we see a lot of carryover, like I said, on these experiences or on these bills dealing with taxpayer and tax professional experience dealing with the IRS. Also, we have the digital asset legislation, which is addition to the Digital Asset Parity Act. You know, one of the interesting things with digital assets is, you know, the IRS treats the digital assets very similar to securities, you know, buying and selling stock, everything's a capital transaction.

However, digital assets are very specifically not defined as a security. And that creates some weird mismatches between the way you know crypto or other digital assets are traded and the tax treatment versus just buying and selling stocks. You know, the biggest one, the most obvious one that I think most of us would see is the wash sale rule.

You know, wash sale rules only apply to securities. Digital assets are not securities, so you can harvest all your losses all day long and then rebuy your the same digital cryptocurrency immediately thereafter and harvest those losses. So, what the Digital Asset Parity Act would do is it wouldn't define digital assets directly as a security, but it would create specific provisions that would really bring the treatment of digital assets much closer to the treatment of securities.

And for example, one of those things would be in fact subjecting digital assets to wash sale rules. It would also allow, you know, traders of crypto to make a mark-to-market election. They can't use the mark-to-market election right now because that's only available to traders of securities, for example. So that's what this Digital Asset Parity Act is all about.

Again, not signed into law yet. So we will see some changes. But I I do expect that we will see something on digital asset legislation probably this year. If not this year, next year.

The reason why it wouldn't happen this year probably would be you know, it's an election year, it's in midterm elections, and tax bills don't tend to get a whole lot of movement in an election year. We've also got some bills making their way through the House Ways and Means Committee. I've got those listed on page four for you.

But I'm not going to go through all those. I'll let you go through those if you're interested. I do think it's good for us to talk about moving legislation, but we don't want to get too much into the nuts and bolts of it because of the fact that it isn't, you know, these things are not final, they're not passed in the law yet. But it's good to know what's coming so that we can be ready for them when, you know, something eventually is passed.

But let's move on to individual issues. And once again, we are kind of sticking with digital assets right now because we've got a couple digital asset issues that hit us this quarter. The first one was we've got the case of Paschall v commissioner. This one was a little interesting because we had a taxpayer and a court that held that staking rewards are includable in in in in income for the taxpayer during the year, despite the fact that there were restrictions placed on the crypto by the issuer.

And the reason the court said the taxpayer was still subject to tax was the taxpayer could still sell the coins that were rewarded to them at any time. So if you're unfamiliar with staking, what that means is the taxpayer has, let's say they have 10, you know, bitcoins or whatever the particular crypto they have is. And if they sort of stake them, they hold they commit to not selling them or or moving them, they'll get a reward, kind of like paying interest, and they'll get interest paid, you know, in more of that crypto.

And so here, when the taxpayers staked their crypto, they were prevented from moving that to another, you know, wallet somewhere or like moving it to another bank account or another bank. But even though they got rewards, the staking rewards, they could sell them if they wanted to.

So if I could try to draw an analogy for those of you who are not really spending much time in the crypto world, it would be like putting a hundred thousand dollars into bank, you know, bank number one, and the bank saying we'll give you a bonus interest rate, if you commit to not moving that $100,000 to another bank, you know, for one year, let's say.

Well, but during that time, you're still earning the interest, you just can't move the money right away. But it is still your money. You could spend it, but you can't move it. And that was kind of a rough analogy, I get. And here the court simply said was, well, you're still earned something, you could still sell it, so therefore you had taxable income, even though there were some restrictions on that. And that was the Paschall v. Commissioner case.

When it comes to did and I'll and I'll say that this was you know a similar argument that someone had had had made in a year prior and lost as well. We also had an expansion of our digital asset lot identification relief. Here in the IRS originally in a notice 2025-7 told traders of cryptocurrency and other digital assets that they could utilize a specific identification method by simply notating in their own books and records their specific identification of the lots they sold.

Because, like stock, digital assets, when you sell them, by default, you sell them on a first in, first out basis. You can elect to use a LIFO method. You can elect to use specific identification to identify to identify the lots that you are selling, which allows you to manipulate your gain to some extent because you can choose to sell maybe only those assets that have a higher basis, for example.

And so what's happening here is in this digital asset world, the digital asset platforms don't have systems in place yet to really allow traders to pick and choose which lots they want to sell yet. These platforms are all still being built out. Yes, they're a few years on, but they're still building these things out. It's not an easy thing to do.

So the IRS says is they extended their relief not only through 2025, but now through 2026 that allows taxpayers to use again, make notations in their own books and records, identifying which specific lots they are selling at which time. So, a little expansion of that relief, which I think is a good thing. At least it's a tax it's a taxpayer friendly thing, and that's always a good thing, in my opinion. Let's talk about Trump accounts.

Trump accounts are now fully live and active. If you've got clients who signed up for a Trump account, whether they filed the form 4547 during tax season along with their income tax return, or if they filled out the information directly at trumpaccounts.gov, they should have received activation emails sometime between May 28th and July 4th. And your client had the ability to activate their account.

I'll tell you, I wasn't going to open a Trump account for my two children who are young enough to do it because they're teenagers and they're kind of getting near the end of their growth period anyway. But for my youngest, my youngest son, he's 15 this year. I did decide, you know what, I'm going to open an account for him just so that I could sort of walk myself through the process and see the way it worked. So I went and I I I filled out the the form. I technically I did it online.

At Trumpaccounts.gov, but that's a that's a little bit of a misnomer. I did it, I think I did the entire process. Where is it? It's my cell phone. I did it all on my cell phone. I downloaded the Trump Account app. I was able to sign up online. I got an activation email within a couple of days because I did this after May 28th.

And then on July 4th in the morning, as I was getting ready to, you know, get some get some nice good meat on the smoker, I got an email saying, Hey, you can fund your Trump account. I was able to go on, just use my bank account, put a thousand dollars into my son's Trump account.

And just like that, we were up and running. What was interesting, I'll tell you, because they do have the smartphone app now. It's actually interesting. There's one feature of the app that I really like. I think it's really kind of neat. Is it if you ever use like a Venmo, on Venmo, if you want to get money from somebody, let's say you and I go out to dinner, you know, and it's sort of quintessential Venmo, right? I pay for dinner and then you're going to Venmo me your share or something like that. I could just sort of show you my QR code and you could vend them using the QR code.

Well, the Trump account app does something very similar. If I'm sitting there with, you know, maybe aunt and uncle and they want to put, you know, a couple hundred bucks in in the kids' Trump account, I could, you know, pull up the QR code and they could, you know, show it to them and could contribute to it. You could also share that that QR code. Send it to grandma and grandpa if they want. You know, grandma and grandpa say, hey, I want to give little Johnny, you know, $500 for his birthday, you know, what should you know, what should we do with that money? Should we just give it to him? We say, you know what, put it in his Trump account.

It's an IRA after all. You know, text them the QR code, they can open it up and put the money in directly. Kind of really cool. So I like that aspect. So there's a smartphone app. So for your clients, if they don't know about the smartphone app, have them download it. You can download that either at the Apple App Store at or at the Google Play Store. If you're if you're an Android user like me, I'm not an Apple user. Sorry for all you Apple people and then the other thing that I think the IRS did, which was nice, was there's two ways to sign up set up a Trump account to or to elect to set up a Trump account originally. You can either do it with the tax return, as we all know, we learned that during this last tax season.

You could fill out form 4547, file it with an income tax return. Or you can do it online at trumpaccounts.gov. Well, if you go to trumpaccounts.gov, what I think was smart thing they did was they simply link that to your IRS online account. So, if you click on the the link there at trumpaccounts.gov, it will actually just take you to your own Trump IRS online account.

You log in and you fill in essentially the form 4547 on your own through your online IRS account. And then you can check the status of that Trump account, you know, election and all that. So I think that's a good thing. I really like how much the IRS has been expanding, you know, the use of online accounts and what you're able to do with them over the last few years.

It's getting to be a really good system for dealing with the IRS.

Moving on to page six, the investment options that will be available are detailed there. Initially, there are going to be five different mutual funds that you can invest in: the iShares Core SP 500 ETF, the Vanguard Total Stock Market ETF, State Street SPDR portfolio SP 1500 composite stock market ETF, and the iShares Core SP total US stock market ETF. Each of those four will be available in the next few months, short months, hopefully. Because right now, all money going into Trump accounts all goes into the same exact mutual funds. And it's the one you see on your screen. That's the State Street SPDR Portfolio S&P 500 ETF. It's an index fund that follows the S&P 500.

So if the overall stock market goes up, the Trump account goes up and down, it goes down. So initially only that one fund and that that fund, when you do put it in, even once the other ones become available, when you make contributions to the Trump account, they're all going to go into that fund initially. And then as the authorized individual on the Trump account, you know, me with the app for my son.

You can then choose the other options if you want to move the money over to those other mutual funds when they become available. Now the IRS not too long ago actually gave us the answer to a question that we've all been asking since these things came out.

The question is, when you make a contribution to a Trump account for a child, does that count as a taxable gift? And so the IRS came out in Rev Proc 2026-25, just a few weeks ago, I think. A few short weeks ago, might even be two weeks ago. It's been going so fast lately. The IRS said contributions to a Trump account, because that the child cannot access that money until they're 18 years old, because of that future aspect, contributions to Trump accounts are treated as future gifts by default.

And when you make a future gift, which is not a completed gift today, you must, by default, file a gift tax return, even though you have not donated more to that person than the annual gifting limit. Now, I say by default, because what the IRS has done through Rev Proc 2026-25 is they created a special safe harbor. And if the taxpayer meets all the safe harbor requirements, then they do not have to file a gift tax return. Let's walk through these and then I'll tell you why the IRS did this.

So these are the bullet points in the middle of page seven. So if a taxpayer meets all the following safe harbor requirements, the IRS will treat each Trump account contribution made by the taxpayer during that calendar year only as a completed gift.

So, the taxpayer making the contribution is an individual, obviously. The only taxable gift made by gifts made by a taxpayer during the calendar year are cash contributions to one or more Trump accounts, each made before the calendar year in which the account beneficiary turns age 18. So, during the growth period of the Trump accounts.

Three, the taxpayers' total gifts during the calendar year to each individual who is an account beneficiary, including contributions to that beneficiary's Trump account, do not exceed the annual exclusion amount, gift tax exclusion amount, which is $19,000 in 2026.

The fourth requirement is that the contributions to the Trump account made during the calendar year do not generate for that calendar year either a gift or GST tax liability after applying the taxpayer's remaining applicable gift amount against the gift tax or remaining GST exemption amounts.

And the fifth requirement is disregarding the Trump account contributions made during the year. No gift tax return is required to be filed, and no gift tax return is otherwise filed for that calendar year by or on behalf of the taxpayer, whether for GST, portability, or other purposes.

So what the IRS said in their Rev Proc was that currently they process about 300,000 gift tax returns annually. And as of June 4th of this year, nearly 6 million elections to open Trump accounts have been made. If therefore, if we had to operate on the default rule where a contribution to a Trump account is a is not a completed gift, it's a gift of a future interest.

And therefore, requires a gift tax return. You would be looking at the IRS having to go from processing roughly 300,000 gift tax returns a year to approximately at least six million per year. That would create a massive administrative burden on the IRS.

So, the IRS created this Rev Proc. And what they said was: you know, most people essentially who are putting into these Trump accounts or can are putting in these smaller mouse for their kids. And these are people who are very unlikely to ever have estates large enough to file gift tax returns. I'm sorry, estate tax returns. So they're the estates are unlikely to be high enough to trigger an estate tax.

So therefore, we don't want to create an unnecessary administrative burden on the IRS by having all of these gift tax returns that will at the end, the end of your life, ultimately be unnecessary.

Now, I do want to walk through the example at top page eight, though, to show you how this the safe harbor works. Here we've got Joe contributes $5,000 cash to each of three Trump accounts established for the three minor children in his life. His two children, Allison and Brian, and his niece Candace. In 2026, Joe also makes an additional gift to Candace of $13,000 cash.

Joe makes no other gifts during the calendar year and is not required to, and does not file a gift tax return for 2026 for any other purposes. The $15,000 in contributions Joe makes to the three Trump accounts do not generate a gift or GST tax liability. And after taking into consideration Joe's remaining lifetime applicable exclusion amount or remaining GST exemption.

After these facts or under these facts, Joe satisfies the safe harbor set out in Rev Proc 2026-25, which means that each of Joe's Trump account contributions for 2026 are treated as a completed gift to Allison, Brian, and Candace for gift tax filing purposes. Therefore, Joe is not required to file a gift tax return for 2026. And here's where I think the next part of this example illustrates sort of what happens when the safe harbor is not met pretty simply here.

Alternatively, assume Joe's cash gift to Candace in 2026 equals $14,500. In this case, the total cash gifts to Candace are greater than the $19,000 annual gift tax exclusion available for 2026. So that's $14,005 cash gift plus $5,000 to her Trump account is $19,500. And in this scenario, Joe does not satisfy the safe harbor requirement.

And Joe must file a gift tax return for 2026, reporting all 2026 gifts, which means he's got to report the Trump account contributions to Allison, Brian, and Candace as gifts of future interests. So that's how that gift tax rule works and the safe harbor for contributions to Trump accounts.

Let's move on to valid income tax extensions.

I think most of us know that when you file an income tax extension for a client and it just has all zeros, that is technically not a valid extension. The IRS usually doesn't make an issue of it, but when they do, they really do. And so here, you know, a valid extension requires a reasonable estimate of the taxpayer's liability for the year.

Now I'm curious what you do in your practice. How do you handle those clients? Because we all have a handful of them who don't contact you during the tax season at all until about April 10th after you've been reaching out. And they say, yeah, file me an extension, but they've sent no information to you. How do you handle that?

Usually what I do, you know, I'll ask the client a question, you know, hey, is your income about the same as last year? If they say, Yeah, yeah, it is, or it's up or down a little bit, I'll use that to make a reasonable estimate of their liability. So sometimes I'm just taking last year's liability and slapping it on the extension and saying that's what we think this year's liability.

But there is an exception where a taxpayer does not have to make a reasonable estimate of their liability and still have a valid extension. And that exception involves taxpayers who make an extension payment online. If you if you've got a client who goes online to the IRS, makes a payment either through the through their IRS online account or makes a payment not using their online account and designates their payment as an extension payment, that payment, even if it's only one dollar counts as a valid extension by itself.

You don't have to actually file the Form 4868. You don't have to do anything else, just make an extension payment of some sort. Again, even $1. And so that is one exception when a reasonable estimate of liability is not required. And here's where a case got interesting this quarter. This was Karp v US. Here in Karp v US, the taxpayer only listed the payments they made, but they did not make an estimate of their liability itself.

And so the taxpayer, when the IRS challenged their extension and said, you didn't make a valid extension, the taxpayer made the argument, you know what, we just misunderstood the form. We put our payments and left our tax liability zero because at the end of the day, we expected to have a refund. So therefore, you know, it you know, our reasonable estimate of our liability, they were thinking of their liability on the net basis, not their gross liability, but their liability after the payments they made.

And the tax court found that to be reasonable and held in their favor. What I think was really interesting in Karp was they in fact did get a refund. So why did the IRS care whether their extension was valid? Because if they're getting a refund and they made all their estimated payments timely, then they would have no penalties for filing late anyway. Well, in this particular case, Karp filed their tax returns three years late.

So had their extension not been valid, then they would have been beyond the statute of limitations to make a refund claim and they wouldn't have gotten their refund. It's an interesting extension case, sort of a the IRS making an argument that they don't typically make. And I think that the the what the court didn't like on the IRS's part is they didn't like the fact that the IRS could cite no other scenario in history where the IRS tried making valid extension argument against the taxpayer who had a refund coming.

The court thought, you know, the IRS is just trying to pick and choose somebody here to keep in order to keep their money, not trying to, you know, have an accurate and consistent administration of the tax laws. And so that and that's why Karp won. I thought that was a very interesting case. But don't forget that exception when it when a valid estimate of liability is not required.

Let's talk about repaid disability benefits. So we had a case this quarter called Smith v Commissioner. And here the taxpayer was required to include in gross income benefits that they received from the Social Security Administration, even though he was later required to repay the benefits. Here, what happened was the taxpayer received two men, he received more benefits than he should have in 2022.

And he was required to repay those benefits in 2023 and 2024. So when he went and filed his 2022 tax return late, he just netted them out and said, Well, I repaid those benefits, therefore I didn't have to pay tax on them for the 2022 taxable year. But the rule says that you only get to net repayments made to the Social Security Administration against payments received during the tax during the year, if those payments are repaid during the same year.

If they're repaid later, then you can't do that. So he had to re he had to include in 2022 gross income all of the Social Security benefits he received, even though the he was not entitled to all of them. And then in 23 and 24, he had to then utilize the rules under section really 1341 for the repayment. So he was only liable for potential. I'm sorry, he was only eligible.

Potential relief in the tax year in which the repayment was made. Let's talk about garnishing Social Security. So that's a question that comes up infrequently, but it comes up occasionally. When can Social Security benefits be garnished? I tell you, it is one of the most protected types of payments that we see in the United States. Because Social Security benefits are generally protected from any kind of garnishment, levy, or other attachment by any kind of commercial creditor like credit card companies or medical debt collectors.

The federal government, however, can garnish Social Security benefits. States can to a more limited extent. And page 10, we've got the limitations for states. So state agencies enforcing garnishments can do so against Social Security benefits for child support and spousal support payments and for other types of restitution. And I've got the limits on how much they can garnish bullet pointed towards the bottom of page 10.

But what's key, I think, for us to understand when it comes to a client who's got social security benefits that are trying and someone's trying to garnish them is a creditor, even say a credit card company or a medical debt collector, they can't garnish Social Security directly. But once Social Security deposits that money into your client's bank account, all bets are off. And that creditor can levy your client's bank account.

Now, there is a 60 day look back period for Social Security benefits. So the bank's got to notify your client, your client's got to prove, no, the thing they're trying to levy is my social security benefits for the last two months. But if you got a client who's got money coming in from Social Security and other sources, it's unlikely that they're going to be able to stop that levy.

So one of the advices there, one of the tips is if you've got a client who's got creditors coming after them and they're on Social Security benefits is they may be better off opening up a separate bank account where only their social security benefits get direct deposited. That way, any potential levies against that account, you could look and say, nope, that's social security benefits. And you could try to protect your client from those garnishments from those levies. Let's talk about retirement issues starting on page 11. We had President Trump issued an executive order promoting retirement savings. This one was a little interesting, I thought.

Really what this one does is simply has the federal government create an informational online platform that will be available by January first of the coming year that's designed to model a federal thrift savings program. The federal thrift savings program, I can only really describe that as almost like a, you know, a federal government four hundred one K type plan. You know, my son just went into the Coast Guard last week, started boot camp. He's at boot camp right now.

And he's going to have, you know, be able to participate in the federal thrift savings program as you know a member of the, you know, one of the armed forces branches.

Saver's Match Program. Let's talk about that. So the Savers match was passed by the Secure 2.0 Act, if you remember this. We didn't give this one a whole lot of play back when it was passed because it doesn't go into effect until 2027.

And the Secure Act was passed in... I've already lost track of the secure and security 2.0 in terms of their the timing of when they were passed. But the savers match does is it was it was originally designed to replace the savers credit in 2027. The savers credit has been saved, but now we got a savers match and a savers credit that are going to operate interestingly side by side somehow.

But the federal government, when it comes to the Saver's Match program, the federal government will deposit up to $1,000 directly into an eligible retirement account. And how do we get to that $1,000? That is 50% of the first $2,000 the taxpayer contributes into their own retirement account.

So if you've got a client who's low income and they got a 401k and they put $2,000 into their own 401k, the federal government, you know, through our tax return preparation process, the federal government will then put another thousand dollars directly into that 401k for them. The federal match, though, does not count towards their annual contribution limit for that account.

So it doesn't have to be a 401k, it can be just a regular old IRA. But that's the Savers Match program. Now for 2027, I've got the savers match phase out chart, top of page 12 if you're interested. So you can see joint filers, the phase out range starts at only $41,000 of income goes away at $71,000 of income.

So it's pretty low-income filers here who can claim the Saver's Match program. We do have a few limitations, though. It's not available to taxpayers who are under the age of 18. Taxpayers cannot be another taxpayer's dependent. The taxpayer cannot be a full-time student. And the taxpayer generally cannot be a non-resident alien. Moving on, let's talk about some real estate advisory issues.

This topic does not cover, you know, new cases or rev rules or notices that have come out in the last quarter. But this is a topic that comes up. You know, real estate is one of those ones, topics that we see, you know, in our, you know, tax education business that always gets a lot of interest from tax professionals. You know, everybody wants to be able to advise their clients on, you know, rental real estate, for example.

And so what we've done is we've put together a little bit of a real estate advisory tips for your discussion, I should say. Because clients who have rental real estate or want to start investing in rental real estate tend to lean on us first, right? When they go to their financial advisor, their financial advisors, for the most part, are advising them on stock market type things, not so much on real estate. Who's going to advise them on the rules for real estate? Well, the special rules and benefits of real estate investment are tax heavy. So obviously they come to us for the tax rules here.

You and even in your own practice, even if you've got a somewhat small practice, you probably see hundreds of rental properties in your practice. You know, in my practice, I would say I have, yeah, hundreds of rental properties that I see on an annual basis. So we are we as tax professionals are in a unique position. We can data mine our own tax returns and really be able to provide our clients with great insight into, you know, the rental properties themselves.

For example, what is when a client asks, What should I be paying for landlord insurance? Well, you might actually have a pretty good idea. You might not realize it, but you do because you see what everybody else is paying. What is a good interest rate on a rental property? What should a property manager cost? What are the benefits of having a property manager? You know, it's funny, you know, when you get clients who want to start investing in real estate, one of the ways that a lot of people do it.

Is they'll start with single family residential rental. And the reason they do that is what they'll usually do is they'll, you know, set they'll keep their original home and they'll buy a new home for themselves and then rent out the one that they've already owned. You know, in California, where I am, Proposition 13 means that you got a very low property tax rate or property tax base in that property you've owned for a while. So, it makes turning that property into a rental very beneficial for you.

So people will do that. And so what a lot of people will do is they'll want to they'll want to manage their property on their own. And what I advise my clients, and again, I from what just seeing hundreds of these every year, I tell people, you know, hire a property manager. even if the property is across the street from you. For one, it's nice to be able to remove yourself from the process. And the biggest aspect of that is I can't tell you how many clients I have that manage their own rental properties and are charging below market rents, sometimes far below.

I got clients that say, but the renter has been there for 20 years. they're so good. You know, if something breaks, so they fix it on their own. Yeah, because you're charging them $3,000 a month less than you should be charging them, right? Because in some of these properties, clients have owned for a long time when they have very low property taxes, they do that. So, you know, hire the property manager. That's my first piece of advice there. But how do you advise clients who are trying to get in? Well, first more the first thing is how do you evaluate a rental market?

You know, clients that are looking to invest outside of their immediate area maybe don't know the real estate market they're looking at. You know, most of us know, hopefully you know, you know, the neighborhood you live in, you know what the houses around you sell for. You know your neighborhood, maybe you know your town. But do you know the next town over? Do you know across the state, halfway across the country? You probably don't. So when you're looking to invest out your outside of your area, gaining an understanding of the local real estate market is net is super important.

And on page 13, there's a few things that you can find easily through publicly available information. So if a client says, I'm thinking of investing in a property in, I'm just going to say, you know, Little Rock, Arkansas, I'm just going to pick that. You know, how do you know what that market is like? Well, you can find online pretty easily, often through just, you know, Zillow or Redfin, you know, simple websites, what are the average rental rates versus acquisition costs, you know, in that area?

You know, what is the property appreciation history in that area, population growth patterns in that area, property tax rates, crime rates, what's the quality of schools and public amenities? What are the employment stats where you're looking? And is there any rent control in the area? Right? That could be based on local or state law. So maybe you're able to find, you know, you know, if you own more than four units, you've got to do, you know, A, B, and C extra. So that's pretty easily available information.

So when I've got a client who wants to invest in real estate, one of the things I tell them is find the market you want to be in first. Right? So define that area of the country where you say, you know what, I like the amount of rent I'm getting versus the cost I, you know, the cost of buying a rental. Property tax rates are decent, crime rates are, you know, low, so on and so forth. And then from there, decide, you know, how do you approach, you know, finding a rental property? The next thing I tell my clients is try to find your strategy.

What type of rental properties do you want to own? Because if you find one particular strategy that you like and you acquire a bunch of rental properties in that strategy, you will understand the economics of that strategy way better than if you tried to do, you know, own on multiple different types of properties. And what I mean by that is I've got one client. He only invests in like one to two bedroom properties right next to universities.

Because he knows he's always going to have renters coming. He's always going to have renters, always going to be renting to students. And he knows the risks that come with renting to students and what to look for. I've got other people who say they only want to invest in in duplexes, triplexes, and quadplexes, because financing is easier. And if they lose a renter, they're not losing the entire rents. They're only losing, you know, a portion of their rents.

Some people say, I only want to invest in middle to middle upper class kind of neighborhood, single family rentals, because you know, that type of clientele generally takes care of the property a bit more and the property is going to appreciate in value a little better than if you are, you know, in an older, you know, part of town that requires a lot more, you know, repairs and maintenance on maybe a hundred-year-old property. So find what you want, your client wants, what they're comfortable with.

And then start looking for particular properties. And then once you find once you find a handful of properties you in your in your area that you like, let's say your client decides they only want duplexes, you go find a bunch of duplexes in the area they've chosen that maybe they think are good values. Well, how do you evaluate the value? Well, that's where some financial analysis comes in where we can help our clients.

And so the most popular way to evaluate a rental property is to utilize what's known as a cap rate analysis. Now, there are tons of metrics for evaluating a rental property. Cap rate is simply one of the most popular. I use cap rate, I like it. I've got the formula for you on page 12. I'm going to cap rate analysis. I'm sorry, page 13 on what a cap rate analysis on the cap rate analysis itself.

It's net operating income divided by acquisition cost equals your cap rate. Cap rate is to be expressed as a percentage. Then the question for you as a tax professional is if you're advising a client, is what's a good cap rate? Well, a good cap rate is usually going to fall between four and ten percent. Now it may seem like a big range. You know, why would I want 4% when I can get 10%?

And when you're between four and 10%, that I'll tell you that generally falls to the quality or the or the not the quality, actually to the nature of the property because the cap rate analysis, remember net operating income divided by acquisition cost. If you buy a property in a lower income area, older area, generally a greater part of your investment return is going to come from monthly rent. And a smaller part of your return on your investment is going to come from appreciation of the of the property's value. An older property that at some point down the road is probably just going to have to be torn down and completely rebuilt.

It's not going to grow as fast. And that's just the reality of the situation. Where if you buy a home that's, you know, in an upper middle-class neighborhood that was built 10 years ago, that property is going cost you more to get in, but will hopefully appreciate faster over the life of your ownership.

So, a greater percentage of your rate of return on that property is going to come from capital appreciation, not so much from creating current cash flow.

And that's what will generate that distinction typically between say accepting a four percent cap rate versus a 10%. So the properties that are sort of lower end of the scale, you're going to want to be closer to 10%. Properties higher end of the scale, generally closer to, I mean it'd be great if you get them at 10%, but you'll find generally they're going to be closer to about 4%. That's just the way it goes. If you can find a that higher quality property, a higher that's going to give you good appreciation and going to return a 10% cap rate.

That sounds like you'd found a great, great property. There are other popular metrics here. one is a rate return on investment, internal rate of return, and then a gross rent multiplier. I've got those discussed on the box, middle of page 14. What I don't want you to do though, if you're providing an analysis for your clients, is don't give them too many metrics. Because there's, there's, there's a concept that I like to call paralysis by analysis. And as accountants, we can sometimes fall victim of this.

Where you try to analyze every possible metric to the point where you're paralyzed by indecision. Pick one. The one I pick, the one I think is the best, is the cap rate analysis. I may look at a couple others, but I focus mainly on the cap rate analysis because that gives me a very good view of the property I'm looking at. I've got a couple of examples using the cap rate analysis on pages 14 through 16.

I'm not going to go through them, but you can see how we walk through the analysis. What I do want to mention though is in my analysis, my first example on page 15, I've got a, you know what? Let's go through that one.

I'll try to go through this one fast. the ex this is the example stops starts at the bottom of page 14. Tommy has identified a rental property he's interested in acquiring. The property and Tommy's finances have the following characteristics: Single family residence in an upper middle-class neighborhood built in 2015. Acquisition cost is $440,000. Loan amount is $352,000 on a 30-year fixed fully amortizing, 7.25% interest rate, and anticipating $3,200 per month rent. And then we go through our financial statements and we see, you know, our we've got our rent. We anticipate being property taxes, property manager, insurance, HOA, and all that.

And we end up with a cap rate of 5.4% within our range, not bad. But also we've got a property that's producing a negative cash flow of $5,000. What I want to comment here on this example, and the reason I put it in here, is a lot of clients will look at that and they'll say, nope, it's not quote, cash flowing. You know, clients will say, I need the property to cash flow. I need to produce positive cash flow, which is a great thing. I get that.

But what I want to impart on you is a property that when you do a cap rate analysis returns a negative up front is not necessarily a bad thing. Think about a negative $5,000. Your client may be putting, might be putting $5,000 in an IRA every year. So if you're putting out $5,000 on a rental property up front every year for the first few years, isn't that like just putting money into an IRA? Because if you think about that property, you know, if interest rates go down, you could refinance. That'll improve your cash flow.

But also, if you've got a 30-free fixed rate mortgage, your mortgage rate's not going to change. But what is changing every year, hopefully? Hopefully, you're increasing rents 2% to 3% per year. So a small negative up front, if your client's cash flow from other income can sustain that and you like the property, you like the area, right? You raise rates within, say, three, four, five years, that property will start cash flowing. Right. So just like an investment starting a new business, you might have a small negative up front.

And that's not necessarily a bad thing. So I mean, obviously, if you can get a property that produces positive cash flow up front, that is ideal. But just because you have something that returns a small negative up front, I would say, you know, don't just turn it away and say, no, no, no, I don't want that. I have also for you on page 16 a downloadable Excel template template that I put together. This is my cap rate analysis. I use it's got a couple of tabs in there.

One tab has sample numbers and then one has just, you know, blanks with the formulas for you where you can just fill in, you know, and when I get a property I'm looking at, I go through that cap rate analysis. I f I fill in the, you know, I fill in the numbers that need to be filled in. Most of the template you know runs its formulas for me and I get a cap rate analysis pretty quick.

Things you need to know, you need to know what's you know, what what's a potential rent for that property? What's the you know, what's my acquisition cost? What's my interest rate. Usually you've got to fill a few things in.

Because the other thing I want to talk about is cash flow versus tax flow in this topic. Right?

You want to make sure we educate the clients on the difference between cash flow, which is actually their, you know, cash in, cash out, and what's hitting their income tax return. Because clients have a hard time understanding this, especially when we get to the concept of passive loss rules.

And so what I've got on page 17 is an example of the cash flow and the tax flow for you. And I'll tell you when I run a spreadsheet on my own rental properties, I do it like this, where I've got a cash flow column and a tax flow column. So I can see, you know, where I'm at. Because what you're going to find, particularly in the early years of a rental property, you're going to have a client whose cash flow is maybe, let's say, $5,000 a year, but their tax flow is maybe negative $3,000.

And the reason for that is you've taken depreciation, plus in the early years of a fully amortizing mortgage, almost all the payment is interest, which is deductible. So you're getting some nice bigger deductions up front. And so you can find yourself on a rental property in a perfect sweet spot where the property is producing positive cash flow but negative taxable income. And that is a great place to be. An example of that on page 17, if you're interested.

Now, what I've got also on page 18 is some tips for first-time rental owners. for example, you know, when you run your financials, expect periods of vacancy. Make sure you've got a little bit of a nest egg in there to cover rents or to cover the mortgage with no rents coming in for you know up to six months if you have to. Don't forget to read your HOA, CCRs thoroughly if you're in an HOA.

None there's nothing worse. I've had this happen to a couple clients in the past. There's nothing worse than buying a property you intend to use as a short-term rental without reading the HOA rules ahead of time, discovering that short-term rentals are not allowed in that development. Right? That's a gut check for some people because now their property they cannot use for what they want to use it for check with local agencies for special tax race rates or rental excuse me, rental restrictions. I said it earlier property managers are generally worth the cost. Understand the difference between tack cash flow and tax flow. Right. Try to teach your clients that it's a good thing.

Umbrella insurance, great thing to get when you've got rental properties. So some tips there for you on page 18. Another real estate issue that comes up for clients, usually these are clients who move around a lot, is the quest the question becomes, should I buy or should I rent? Most people want to buy their house when possible, I think, but that's not always the best financial decision. Right? When you move to a new city, when those clients ask, should I buy or should I rent? You know, there are benefits to buying and there are benefits to renting, benefits to buying, you get more stability, right?

Somebody can't decide to sell the property and kick you out at the end of your lease term when you want to stay there. You can customize the property. You might want to, you know, do some capital improvements. You're not going to do capital improvements on somebody else's rental. Of course, I'm sure if you want to install new flooring on a rental property, the owner is more than happy to let you do that. But why would you want to do that when you don't own the property? At some point of you know, if you own the property, you can pay it off. Can't really do that in a rental. You're always going to pay rents, you know, forever.

You also, when you own the property, you know, you got a nice tax shelter. When you sell, as long as you meet the home sale rules, the first $250,000 or $500,000, if you're married, of gain are tax-free. On the other side, when it comes to renting, you don't have to come up with a big down payment. That's usually why most people continue to rent. It's easier to move from place to place, and somebody else is on the hook for capital improvements. Right? When the air conditioning breaks, that's not your problem, that's their problem. They got to get and they've got to fix it fast. But how do you evaluate whether buying or renting is better.

So you, I will tell you, in the long run, buying is always going to be better. If you're comparing apples to apples properties, in the long run, buying will win out. Where this question usually becomes an issue is a client who maybe moves into your area and they become a new client and they say, you know, I've moved into this area to take a job. I'm only going to live here for about 10 years until I retire. And then I plan on moving, you know, to wherever it is for my retirement. Should I buy or should I rent?

And that's when you want to go through the analysis. When does buying and and renting make sense? I will tell you for most markets, if you're going to be renting for under five years, I'm sorry, if you're going to be living there for under five years, renting will almost always win out. Because when you buy, your property's gotta increase in value enough that when you sell it, you got to be able to cover the you got to have enough appreciation to cover the high commissions.

From the realtors when you sell it. So there's a really there is a high cost of exit on a on a on a property when you own it. So for under five years, you're generally going to find renting is more beneficial. Somewhere between five and ten years, you will generally reach that break-even point where buying becomes better than renting in most places, assuming there's no real estate, you know, crash or anything like that.

And so how do you evaluate those rentals versus buying. And what I've got for you, and I'm sorry I'm starting to run low on my own time here. I do have an example that runs on page 20. I'm sorry, nine pages 19 to 20 on buying versus renting over a 10-year time horizon. Because you've always got to have a 10 year pick a time horizon to run your analysis. And here I've got us you know a client who's moved to Phoenix, Arizona in my example, get a plan to live there for 10 years, and they've got a property they can either buy or they could rent.

And what's their cost over the 10 years? And in the example, I run an analysis. What I really want to get for you here is I also have another downloadable Excel template for you that you can use for this purpose. My downloadable Excel template, I will tell you, has the formulas and the numbers from this example. The formulas can be a little complicated, a little too hard to put into a word format on the example, but in the but on the for in the Excel template, you can see how it runs. And just like the other template.

What I've got for you is I've got, you know, sample numbers from this example and then a blank worksheet where you can just, you know, enter the numbers in and let it do the calculation on its own. So buy versus rent is another great way to add value to your clients, you know, who are saying, look, I don't plan on being here forever. Should I buy or should I rent? You say, look, I got a good, great way to walk through this analysis with you and good way to add value.

The last thing I want to talk about in last few minutes I have with you is opportunity zone guidance that has been released. So we have the TCJA opportunity zones, which essentially expire at the end of this year, at least the way those rules work. And then you've got our new opportunity zone rules enacted under OBBBA, which generally, for the most part, take effect next year.

And so, what the opportunity zone rules allow you to do is to take capital gain and defer that capital gain over a certain period of time if you take your capital gains and you invest them into an opportunity fund. And so here, what the IRS has done is they've created some transitional guidance that bridges the gap between the new rules under the OBBBA and the old rules under the TCJA. So when you generate capital gain from the selling stock or whatever it is you've got.

You've got 180 days, six months to invest that money into a qualified opportunity fund. Under the TCJA rules, if you made that election to defer your capital gain, then that capital gain that you've deferred is includable in your income on December 31st, 2026, the end of this year. So for a lot of people who invested in opportunity funds, they have an income event coming at the end of this year.

But in order to bridge these new rules and these old rules, what the IRS has done in this guidance is they said, let's say you sell a property, you sell cap you sell assets and generate capital gain here in the latter half of 2026. If you invest that prop that that capital gain in a qualified opportunity fund after 2026, then when you defer that capital gain, you're deferring under the new rules.

And you've deferred that capital gain recognition for five years under the new OBBBA rules. But if you say sell property, create capital gain today, and tomorrow, here at the end of July, tomorrow you invest in a qualified opportunity fund, then you've done so under the TCJA rules and you've only deferred recognition of your gain until December 31st of this year. Not much of a deferral. So the tip there is for the most part, if you're going to generate a capital gain event here at the end of 2026, the second half of 2026.

You're probably going to be better off if you want to put that money into a qualified opportunity fund to do so after the new year when you can do it and operate under the new OBBBA rules and defer that capital gain for five years.

Other issues that were addressed are also property acquisition requirements for the opportunity funds themselves as they're operating within the opportunity zones.

Okay, that's all I have for you. So I'm going to turn things over to Renee. We have a discussion of transition relief for business interest election withdrawals. So this is essentially relief for clients who elected out of the business interest expense limitation.

The reason I think we're going to see some of this is, and obviously the IRS was well aware that we were going to see some of this, but with OBBBA changing the rules for the taxable income calculation and for the bonus depreciation limitations, we're going to see far fewer taxpayers who want to elect out of the business interest limitation rules.

The clients who are eligible for this guidance that allows them to elect out of the elect out of electing out. Basically, it allows them to change their mind is Rev Proc 2026-17. The eligible businesses are really, for our purposes, real property trader businesses. So you're clients with real estate activities. farming businesses do qualify as well as regulated utility trader businesses, but I think we're really going to see this most often in real estate businesses.

So essentially, we saw prior to the enactment of OBBBA, we saw a number of businesses elect out of the business interest limitation rules. When clients elect out of business interest limitation rules, they're required to use ADS depreciation, which means they can't use bonus depreciation. The election is technically an irrevocable election.

However, this transitional guidance says that taxpayers who made the election in 2022 through 2024 can withdraw that election by the earlier of October 15th of 2026 or the statute of limitations for issuing an assessment for the year the election was made. So essentially what this means is gives us a little bit time.

To take a look at your clients who elected out of the business interest limitation to see whether they benefit more from being subject to the business interest limitation rules or from electing out. So, this election lets them make a late election to opt out. in addition to electing out of electing out of the business interest expense limitation, they also get to make an election.

To opt out of bonus depreciation for any class of property affected by the withdrawal. So essentially, the way to think of this is if your clients elected out of the business interest limitation, we know that their depreciation benefits are limited. So if we decide we want to revoke that election so they can take advantage of bonus depreciation.

We also want to look retroactively and say, well, wait a minute, are there some assets where we would have elected out of bonus depreciation for that class of property? So we get to make both of those decisions at one time. We also can do this by filing an amended return, even for partnerships.

So, for partnerships, we can file an amended 1065 rather than having to file an AAR to make the election. So a number of people have said to me, Well, why would clients have why would clients want to do this?

First of all, the adjusted taxable income limitation, which really dictates who is subject to the business interest limitation, has been adjusted. and ATI is now computed, excluding deductions for depreciation, amortization, and depletion. and meaning far fewer taxpayers are subject to the business interest limitation with those thresholds changing. And because we now have the ability to take a hundred percent bonus depreciation.

We're now compounding that with the fact that they might be missing out on taking some bonus depreciation. Take a look at the example that I have for you on page 26. Sunset Realty Group LLC is a calendar year partnership that owns and operates a portfolio of commercial real estate.

In 2022, it made an irrevocable election under Section 163(j) to be treated as an electing real property trade or business. The motivation for making the election was that Sunset could deduct 100% of its business interest expense without the ATI limitation, a significant benefit given its heavily leveraged portfolio. The trade-off was that by electing, Sunset was required to use the ADS depreciation system for non residential real property, residential rental property, and qualified improvement property, forfeiting bonus depreciation on those assets.

As a result of the OBBBA changes, it now makes sense for Sunset to withdraw the election, as the following comparison illustrates. So, in the left-hand column, we have the pre-OBA rules, and in the right-hand column, we have the OBBBA rules. So, adding back $10 million of annual depreciation to ATI increases Sunset's 163(j) ceiling, meaning that Sunset gets to fully deduct its $2.2 million in interest expense, even without electing out of the business interest expense limitation.

And then withdrawing that election also makes sense for Sunset because Sunset plans to make $5 million in qualified improvements to a shopping center in 2026. Being able to claim bonus depreciation rather than depreciating the property under ADS will provide an additional $4.67 million depreciation deduction because Sunset can claim 100% bonus depreciation rather than being limited by 15-year ADS, which would put them at about $333,000 of depreciation.

So I think one of the things that I recommend is it's not automatically we want to withdraw this election for everyone who made it, but if you have clients who are looking at making some improvements who would benefit from bonus depreciation and who might not even be subject to the limitation with the add backs for adjusted taxable income, then I think it's a good idea.

If you have clients who might still be subject to the limitation or who aren't really looking at making investments that they benefit some from significant bonus depreciation, then maybe it's not worth it. but it's not just a today decision, right? Remember, this is something we want to consider. What's it going to look like five years from now? So you really want to project forward, what does it mean for my clients today? And what does it mean for them 10 years down the line if we change this election?

As far as making the withdrawal, we have the instructions for you on page 26 and the sample election statement for you on page 27. Remember, once you've revoked the election, you then have to amend any succeeding taxable years and adjust partners' capital accounts for those changes. And then owners with amended K1s also have to amend their returns. So, this is something that has sort of more widespread ramifications.

We want to consider all of that when we're trying to decide if this is something you want to do for clients. But again, for some clients, we're approaching that October 15th deadline.

Let's go on to pages 27 and 28 and let's talk about the reclassification of cannabis or marijuana.

So, FDA approved marijuana and state licensed medical marijuana have been reclassed from Schedule 1 to Schedule 3. What that means is we no longer have a 280E limitation, and taxpayers can claim medical expense deduction. So we'll talk about both of those things in just a moment.

Recreational marijuana has not been reclassified. There is an ongoing rulemaking process that would fully resolve or remove marijuana from Schedule 1 and place it into Schedule 3. But for right now, recreational marijuana is still a Schedule 1 drug. That's important because we do see some businesses that both sell both recreational marijuana and FDA approved or state licensed medical marijuana. So that becomes important when we're talking about both the 280E limitations and the medical expense deductions.

So for purposes of 280E, this is big news for your clients who have marijuana businesses because it means they now get to take all of their business deductions. They are no longer limited to cost of goods sold. So that's going to be significant tax savings for these businesses. We do know we have some questions where the DOJ is going to issue some guidance to clarify how we take deductions for businesses that are selling recreational and medical marijuana, right?

If we have both parts of the business that recreational marijuana is still limited to cost of goods sold. And the other part of the business would get the full business deduction. So those are things that we're going have to keep in mind as far as how we take those deductions for clients. The other thing is that clients are going to be allowed deductions for the full taxable year. So this change happened on April 22nd of 2026.

So for the first taxable year that includes April 22nd of 2026, your clients get the deductions retroactive to the beginning of the year. The guidance does also clarify that these limitations have not applied to businesses selling hemp. So, some people said, well, the guidance doesn't really address hemp. Hemp was not subject to these limitations. It was only cannabis or marijuana products that had that higher level of THC that were subject to these limitations.

So it's a benefit for your clients who have marijuana businesses. It's also a benefit for your clients who purchase medical marijuana because they now qualify to take medical expense deductions for those purchases. They have to pay for the cannabis during the tax year and not be reimbursed by insurance, just like any other prescriptions that they would deduct. They have to have a prescription from a licensed physician, and their total medical expenses have to exceed 7.5% of their AGI.

Again, this is not for recreational marijuana, right? We're talking about something where we have a prescription from a doctor. There is one hitch here because remember, there are some states that allow medical marijuana, although it's not legal for federal purposes.

So California and Colorado are the two that always come to mind for me. you have physicians located in California and Colorado who will recommend marijuana to their clients without writing a formal prescription?

The question is: because doctors are reluctant to write prescriptions for something that's illegal for federal purposes, can a client who has a recommendation from a physician qualify to take a medical expense deduction without a true prescription? And that's something we're going to need some guidance on to see whether that qualifies for a deduction, but we'll certainly keep an eye on that.

Where we're not going to see a change is banking. Again, banks are regulated by the federal government. It is illegal for banks to take funds from a cannabis business. So don't expect to see any more banking opportunities. We have some limited credit unions that allow banking for these businesses, but for the most part, these are going to continue to be cash businesses.

All right, let's switch gears on pages 29 and 30 and let's talk about the employee retention credit. I keep thinking that I'm going to cover something on the employee retention credit in one of these webinars. That's going to be the last time we're going to talk about the employee retention credit, but that pesky employee retention credit just isn't going away.

So, we have a new issue that's popped up related to the employee retention credit.

We know that the employee retention credits were complicated. We covered a lot of questions about the gray areas for partial shutdowns and whether clients qualified. We also know there was a lot of fraud related to the employee retention credit. There were businesses out there telling employers that anyone with an employee qualified for the employee retention credit. So, because the credit was complicated, the IRS had demands on them during the pandemic.

There were a lot of legitimate claims that were erroneously disallowed. You know, the IRS was understandably very cautious, cautious. Cautious. Wow. That was a hard word, apparently. the IRS was very cautious. And so they erred on the side of disallowing claims rather than allowing them. And now you have a number of clients who have claims that they feel are valid credits, and you're fighting to get those credits reinstated.

The problem is that now on top of the initial problems, we have layoffs, resignations, and government shutdowns that have caused massive backups with the IRS. The problem is that there is a rule that says if a refund claim isn't resolved within two years of an IRS disallowance, the IRS can't issue the refund. So then the only avenue for the taxpayer to get the refund that they believe they're entitled to is to file a suit, which is very expensive.

So there is some guidance that is granting a relief to taxpayers. So, if taxpayers are waiting for the IRS to consider their response to a notice of disallowance on a 105C or a 106C, and they have six months or less remaining before their two-year window expires. So think about it this way.

Your clients have 24 months from the time they get that notice. If your client got a notice 18 months ago, then we want to apply now for this relief. When your client applies for the relief, the period for the IRS to issue the refund will be extended if both the taxpayer and the IRS agree to sign a 907.

So if your clients want to get some extra time for that refund, they're going to have to agree for to some extra time for the IRS to challenge their claim. Again, I think if your clients are confident in their credit, no reason to not grant that extra time. There is a link on page 30 to show you how to apply for this relief. You're going to select notice CP320B. The IRS has not indicated how long the review process is going to take. So we're waiting for them to review the credit claims.

Now we're going to be waiting for them to review these extension requests. So I think for me, what I want to make sure you're all aware of is clients who had employee retention credits that were rejected want to look at how long ago did that rejection take place. Because once they get past 18 months, I would file the CP320B to request the extension of time. If the IRS is coming forward and giving this extra time, it's because they know there's a lot of taxpayers in this backlog.

The IRS says that they are sending notices to taxpayers they've identified as eligible. I would not rely on the IRS notifying your clients. I would be a little bit proactive and take a look to see which clients might qualify, especially when we're talking about some of these really big credits. We don't want to lose the ability for your clients to get the credit. And then if we're in a scenario where the window closes and their only option is to file suit.

Now it has to be a really big credit in order for it to be worth them filing a lawsuit.

And, you know, I think we all knew that this was coming. We were going to start seeing these lawsuits where taxpayers whose credits were disallowed are now filing suits to defend their credit claim.

What I think is interesting is we see we have seen two cases recently where two courts adopted different tests to determine whether the taxpayers' business disruptions were due to the government order orders that were at issue. And I think this is one of those things that we knew was an issue. What was a partial shutdown that was significant enough for your clients to qualify for the employer retention credit? So their business can stay open.

But they had a partial shutdown. and what's interesting is we've seen a split in the circuit. So that's something you might want to consider when you're looking at filing. You know, what is the standard that's being applied in your circuit? Do you have some options as far as jurisdiction for where you want to file?

The two cases that I have here are tri-state memorial, where the court found that the government orders could amount to a partial suspension by delaying, interrupting, or stopping just a portion of the business's operations.

In the other case, the Northeast case, the taxpayer was not successful. But in that case, the taxpayer was a mental health care provider. They were required to shut their offices, but they started doing telehealth and Zoom meetings, and their business actually grew during the period in question.

Now, there was really nothing in the guidance that said we couldn't have a business that grew during this period and have clients still qualify for the credit. But what I think is very clear is the court took a much more favorable opinion of the business that was really hurt during the pandemic versus in the case of Northeast, where Northeast said, well, we could have grown more but for the government shutdown.

What's interesting is when we look at the cases, the courts definitely agreed that the definition of due to was ambiguous. In tri-state, the court adopted a very expansive definition, and they basically said, but for the governmental orders, the taxpayers' operations would not have been partially suspended.

In the Northeast case, where the taxpayer's business grew, the court applied a much more limited interpretation. And they said that the taxpayer had to establish that the government orders and not the pandemic in general were the cause of the disruption to the taxpayers' business operations.

And so I think here, especially because this was a medical operation, the question was: could they have operated in a limited capacity or did they choose to use the telehealth option? And did that really limit their ability to grow the business? For me, the Northeast case is a gray area, both because of the type of the business, the shutdown, and the growth of the business during the period that applied. but I think I expect, especially because many of these cases involve large amounts, we're going to see more cases and we're going to see them going to a higher level, especially where we have these splits among the circuits.

We're going to have to watch to see what happens with these cases. But I think something worth considering if your clients are thinking about filing a suit to defend a credit, you know, especially if it's a more of a gray area, how kindly are the courts going to look on upon them?

All right, on pages 32 and 33, we have a discussion of correcting depreciation errors. I think this is something that we often see practitioners dealing with when you get a new client and you realize that the clients didn't take depreciation on priority or returns and we know that with the allowed or allowable rule, we don't want them to lose the benefit of that depreciation that they should have taken on the prior year returns.

And so I get a lot of questions about how do we fix depreciation that wasn't taken on a prior year return? And you've got a couple of options. you can file an amended return or an AAR, or you can apply for a change in accounting method. Now, if you look on page 33, or actually it's on page 32. Sorry, have a no, it is on page 33. Too many pages here.

We do have a list of the errors that can be corrected on an amended return if the statute of limitations is still open. mathematical or posting errors where the taxpayer has not adopted a permissible method of accounting for depreciation, adjustments in the useful life, really anything where we realize, gosh, we didn't take the right depreciation that we should have taken if we can't file an amended return, then we have to file a 3115 to apply for a change in accounting method. We might also have to make a 41A adjustment.

Basically, we have to look at the income and expense that should have been taken in a prior year to make sure we're not duplicating any deductions or counting any income twice. the good news is that the change from an impermissible depreciation method is an automatic consent change.

So if your client forgot to take depreciation. filing the 3115 is an automatic consent change. We do have the reminder for you there that you're going to want to file the 3115 with the return in the year you're making the election and send a copy of the 3115 to the IRS and on the new top. and I think this is also one of those areas where I always recommend that you use these materials as a reference tool later.

So you might not have a client today where you have to take advantage of this change in accounting method. But when you get a new client and then you think, gosh, I know I had instructions somewhere, you can go back and take a look at these materials to see where you can take advantage to make sure that your clients can get that change in accounting method and get the full benefit of the depreciation that they should have claimed.

What you don't want to do is just adjust returns for clients where the statute of limitations is closed. We have a case on pages 34 and 35 where that happened, and the IRS disallowed about a quarter of a million dollars of amortization deductions because the cli the taxpayer did not file the 3115 and request the change in accounting method. So some practitioners just always file the 3115. That's certainly something you can do.

It's one of those better safe than sorry situations. On pages 35 and 36, I have a discussion of self-employment tax. and those of you who attend these webinars have heard me say this a number of times before. But, you know, I've really been encouraging practitioners to think above and beyond basic compliance and ways to really help your clients save some money.

And when we see clients who are self-employed and we look at the tax obligations that they have, and we consider the fact that maybe, especially for high-income taxpayers, they might be able to save themselves some self-employment tax by using a corporate structure. Typically, we use an S Corp. Sometimes we'll recommend a C Corp. I'll talk about that in just a moment.

But generally, with your high-income clients, by taking advantage of the S Corp, we can use the flow through nature of the S Corp. We pay them a salary. It does have to be at least a reasonable salary. We can't just pay them minimum wage, for example. We still have to pay a reasonable salary. And believe me, I know we could have a whole conversation about what's reasonable. There is no guidebook where I can send you to say this is a reasonable salary. You have to look at their industry.

But we all know they're going to want to pay themselves as little as possible. but let's see the example that I have for you on pages 35 and 36. So starting on page 35, Frank and Olive live in California. They're married and file jointly. Frank is a consultant and runs his business as a sole proprietor. And Olive is a partner in a small law firm. In 2025, they each had $250,000 of net earnings from self-employment.

And if you look at the calculation of their tax burden, we have their Schedule C and partnership income, their investment income. We have their self-employment tax, et cetera, their taxable income. All the way down at the bottom, their ultimate federal and state tax burden is $151,192. Look at page 36, where we have the same facts, but Frank and Olive have decided to operate their businesses as S corporations.

They've each determined that $100,000 is a reasonable salary for themselves. And they take the rest of their net earnings out of their businesses as distributions. So Frank's taxable wages are $100,000. Olive's taxable wages are $100,000. They are going to make retirement contributions. So that's going to reduce their K1 income a little bit. They're going to get a deduction there. They still have the $10,000 of investment income. So now their total taxable income.

Is $454,700 before we start taking deductions. So now we take those deductions that brings the income down to $361,000, $448. So their taxable income is a bit higher, but when we look at the tax liability, the total tax liability drops to $135,454. Because when we look at the Social Security and Medicare tax paid on their earnings, we're only paying that on those wages. We're saving that self-employment tax. they are paying payroll taxes as an employer at the entity level, but they're still saving significant tax.

So they're saving about $15,640. When you're looking at this for your clients and you're saying, okay, does this benefit my clients? And really trying to help them do some tax planning, I see that I have high net worth individual with significant self-employment tax, does it benefit them to form the S-Corp and pay themselves through the S Corp? I have a list of the planning considerations you want to go through.

So, first of all, think about additional costs like entity level taxes and compliance costs, right? So consider things like $800 minimum tax, the small state level tax that you might have on an entity. And I'm speaking from California, depending on what state you're in, you might not have the $800 minimum tax.

You might not have any tax on the S Corp. but here in California we do. So that's something you want to consider. You want to consider the additional compliance costs. They're going to have to form the entity. And then you're going to have additional filing requirements. You're going to file an entity tax return. they're going to have payroll taxes that they have to worry about. So we to consider those costs and net those against the savings to see what they're really saving.

Like we mentioned previously, anytime we're looking at making a big election for a client or forming an entity, I like to look at a multi-year analysis. So what do we think this is going to look like in three years, in four years? Is this really going to benefit these clients? Compare the reasonable salary to the Social Security Wage and Income Base. So the Social Security Wage and Income Base is currently $184,500.

In this case, the taxpayer's reasonable salary was $100,000. So basically that's $84,000 where we're saving those additional taxes. If the reasonable salary is $160,000, that's a much smaller gap. So, are we really saving them that much money? For clients who are bad at paying estimates, let's think about how this works. So if you have a client who's paying themselves wages.

Now we're paying some in through withholding on the wages. and we want to minimize the wages and maximize what's flowing through to them that we have to pay estimates on. For me, this planning point, we had a little bit of a disagreement about this one because the alternative is they don't form the entity, everything flows through on the Schedule C and they owe estimates anyway.

So even if they're bad at paying estimates, doing this benefits them because paying some of the tax on the earnings through withholding is going to benefit them, especially if they don't pay any estimates. and don't forget about state-specific items like past serenity tax, because if your state has enacted a past serenity tax, now they get another benefit from forming that S corporation that makes that tax savings even larger. What about a C Corp? Is there ever a scenario where we want to consider a C Corp?

My answer to that is yes. If you have clients, you know, our gut reaction is usually we don't want to be in a C Corp because we don't want to have the double level of tax. But if you have clients who are continually reinvesting in the business, it's a little difficult for them to say, Well, I'm going to pay tax on all of that income that's flowing through to me, even though I'm leaving it all in the business. And even more, if you have clients.

Who have a business where their stock qualify as qualified small business stock, and really their goal is to reinvest in the business, grow the business, and then sell it. Now we get the benefit of paying less tax on the money we keep in the corporation to fund future growth. And we're going to benefit from that qualified small business stock. So that might be something that's really worth it.

Some clients just struggle with that flow-through concept. They don't like the idea of income that doesn't come to them, but they have to pay tax on it. and maybe they're considering using a medical reimbursement plan. Any of those scenarios for me might be worth considering the C Corps. All right, let's go on to page 38 and let's talk about IRS business tax accounts. With the staffing shortages at the IRS, we continue to see difficulties getting through on the practitioner hotline, correspondence being delayed.

So I really do recommend anytime you can handle something online, do it. Take advantage of it. And the IRS is expanding the services that are offered through their business tax account services. this is addressed for you on page 38, so you can see.

For partnerships and tax exempt orgs, also state and local and tribal governments. I don't know how many of those you have as your clients, but we can view balances, make payments, see payment history, download certain notices, view eligible transcripts, request a tax compliance check, see the business name and address on file with the IRS. So we can handle a lot of things through that business tax account.

There is a discussion of IRS payment plans for you on pages 38 and 39. Just some reminders.

If you have clients that need to take advantage of a payment plan, if you have individuals whose debts are less than $50,000 or businesses that owe trust fund taxes that are less than $25,000, they can request a payment plan without full financial records. So that makes this much easier to do. Most individuals can apply online. We have the link on page 38. Unfortunately, businesses can't.

The nice thing about the online application is you get immediate notice about whether it's been approved. If you can't apply online, you can use the 9465. that takes longer to get approved. It's going to take about 30 days and longer towards the end of filing season. So, you know, obviously, like I said, I like taking advantage of the online tools anywhere that that's possible. We have a box for you on page 30.

That shows the payment methods and setup fees. Using direct debit saves money. In some cases, you have to use direct debit. If your debt is over $25,000 for individuals and $10,000 for businesses, you have to use direct debit. But if we're trying to get an encourage them to use that direct debit. Liabilities of $10,000 or less are eligible for guaranteed installment agreements if they meet the conditions that are listed on page 40.

If your client's liability is over $50,000, they do have to submit a full financial statement. But when they pay that liability down to under $50,000, then they qualify for that streamlined agreement where they don't have to keep providing those additional financial statements. And if they can pay within 180 days, they don't have installment fees, but interest and penalties do accrue.

So we talk about clients' options for installment agreements and what to do if they owe money. The IRS has created a new online tool. It's really designed to help taxpayers who don't have knowledge. But as practitioners, we can use it also to see what options are available there for clients. We have a link on page 41. It walks through a series of questions to point out what help is available. It doesn't require personally identifiable information.

So it is a great tool to take advantage of. On page 41, there is a new tax professional management office. This office is going to oversee the Return Preparers Office and the Office of Professional Responsibility. Those offices are going to remain independent. I don't think we're going to see any impact on how the IRS oversees tax professionals, just sort of a reorganization of the IRS as a whole, but we are waiting on more information.

Speaking of changes at the IRS, we got the executive order saying that we were going to see less paper checks coming from and going to the IRS. We're still waiting for a lot of guidance in that area, but we have now seen that 941 refunds will now be issued by direct deposit. If your clients don't want direct deposit, you can check the box on line 15B to have that deposit applied to the next return.

I have just a couple of items to point out to you based on questions that we've received since the last QTU. The first one was an interesting question from a practitioner who had a client who was widowed. She has a 26-year-old disabled daughter who provides more than 50%. She provides more than 50% of the support. The daughter lives with her full time, but the daughter earns $12,000 per year.

The question is whether the parent is head of household? The answer is yes. I think for me, the support test was clear here. again, this answer assumes that the daughter isn't married and filing jointly with the spouse. But I think for me, the question for the practitioner was because the child was working full-time, does that mean that she still meets the dis definition of a disabled individual?

And the answer is yes, that's important because since she's 26, if she wasn't disabled, she wouldn't meet the age test, right? unfortunately, if your child still is with you beyond the age of 26 when they are not disabled, they are no longer going to qualify for head of household, even if you are fully supporting them. and so that was an interesting question that we wanted to include for you here.

The other question we've had quite a bit has to do with identity verification letters and the fact that a lot of you are getting them. And the reason is the IRS is sending more of them. What's tricky about these is even if you hold a POA for your clients, practitioners can't respond to identity verification letters. Your clients have to respond to them. The fastest and easiest way is for the client to go online through their own IRS account when it's available. Otherwise, have them cut call the number on the notice.

I have had a couple of situations where there's been some confusion between the taxpayer and the individual on the phone. And unfortunately, the taxpayer ultimately had to end up going into the local IRS office.

SUPPLEMENTAL MATERIALS

Proceed to the next page for Spidell's Quarterly Federal Tax Update July 22, 2026

SPIDELL'S QUARTERLY FEDERAL TAX UPDATE® JULY 22, 2026

TAX BILLS MOVING THROUGH CONGRESS

Although there have been rumors of a third reconciliation bill that may contain some tax provisions, nothing official has been proposed by press time.

However, there has been some tax legislation that is moving through Congress. Many of the House and Senate bills dealing with improving IRS customer service have overlapping provisions, which means they have a higher likelihood of being enacted.

HOUSE BILLS

All of the House bills listed below have passed the House and are awaiting action in the Senate, where the fate of the bills is unknown.

Survivor Justice Tax Prevention Act (HR 2347)

The act would exclude from gross income compensatory damages paid to sexual assault victims.

Doug LaMalfa Federal Disaster Tax Relief Certainty Act (HR 5366)

This act would extend the current removal of the 10% AGI and $100 per-casualty loss thresholds for qualified net disaster losses and replace them with a $500 per-casualty threshold for pre-2027 tax years. The bill would also exclude any qualified wildfire relief payments paid to compensate qualified wildfire disaster victims after 2025 for expenses not otherwise covered by insurance for qualified wildfire disasters declared after 2014 and before 2027.

Supporting Early-Childhood Educators' Deductions Act (SEED Act) (HR 5334)

The SEED Act would allow early childhood educators to claim both the above-the-line deduction (currently capped at $350) and the itemized deduction for educator expenses incurred after 2025.

Clergy Act (H.R. 227)

The act would provide certain clergy members two years to revoke their decision to exempt their ministerial earnings from FICA taxes.

Taxpayer Experience Improvement Act (HR 7971)

The act would require the IRS to:

- Establish a dashboard posted to the IRS website to inform taxpayers of call volumes, backlogs, wait times, and availability of callback services;
- Expand the online tools available to taxpayers by showing the status of their returns and any refunds due, as well as reasons why return processing was suspended;
- Establish a callback service system for all taxpayer-interfacing phone numbers by calendar-year 2028; and
- Expand taxpayer online accounts to allow taxpayers to view and/or respond to any return, document, notice, or letter sent to the taxpayer during the preceding six-year period and to expand access for tax professionals as well.

Taxpayer Notification and Privacy Act (HR 6495)

The act would require the IRS, under specified circumstances, to notify the taxpayer of each item of information sought from a third party (not currently required) and provide the taxpayer with at least 45 days to respond before the IRS contacts such third party.

BARCODE Efficiency Act (HR 6956)

The act would require the IRS to require scannable barcodes on paper-filed returns prepared electronically to speed up the IRS's scanning process for faster return and refund processing.

IRS Whistleblower Program Improvement Act (HR 7959)

The act would require appeals concerning whistleblower awards to be heard *de novo* by the Tax Court, protect a whistleblower's identify in Tax Court proceedings, allow interest to be paid if the IRS delays acting on a whistleblower's claim, and expand the attorney fees that may be deducted related to whistleblower actions.

SENATE BILLS

Taxpayer Assistance and Services Act (S 3931)

This bill was introduced in late February 2026. Highlights of the act's proposals include:

- Increasing the threshold for the simplified Foreign Tax Credit from $300 ($600 MFJ) to $1,000 ($2,000 MFJ) with annual inflation adjustments going forward;
- Allowing voluntary withholding on payments made to independent contractors;
- Establishing a safe harbor for the failure-to-pay penalty for individuals;
- Upgrading "Where's My Refund" tools so taxpayers know when to expect their refunds and what to do if they are delayed;
- Upgrading IRS online accounts so taxpayers and their representatives can review their returns and correspondence and respond to the IRS online;
- Protecting taxpayers by strengthening standards for paid tax preparers, including requiring paid, noncredentialed tax return preparers to meet certain requirements, such as taking up to 18 hours of continuing education courses annually;
- Expanding IRS callback options so taxpayers can request a return call more often and from more IRS phone numbers;
- Allowing the U.S. Tax Court to hear cases relating to refunds; and
- Increasing the independence of the National Taxpayer Advocate and the IRS Independent Office of Appeals.

Improving IRS Customer Services Act (S 4302)

In mid-April, this bill was reintroduced. Highlights of this bill include:

- Establishing a dashboard to inform taxpayers of backlogs and wait times and requiring the IRS to establish a callback system by 2028;
- Expanding electronic access to information about returns and refunds;
- Expanding callback technology and online accounts; and
- Setting up systems to inform individuals facing economic hardship of available payment options.

DIGITAL ASSET LEGISLATION

Several bills have been introduced recently that, if enacted, would finally address many outstanding tax issues related to digital assets. The bills discussed below target many digital asset issues and are not strictly tax bills, but they would have a significant impact on tax issues if passed.

Many tax commentators thought that the Digital Asset Protection, Accountability, Regulation, Innovation, Taxation, and Yields Act (Digital Asset PARITY Act; HR 8899) would be the most likely legislative vehicle to be enacted. However, on June 9, the House Ways and Means Committee held a hearing on numerous draft bills that would address various aspects of digital asset taxation. These bills are similar, but not identical, to many of the provisions contained in the Digital Asset PARITY Act.

At this stage, there is clear momentum to enact legislation to address these issues. However, it is unclear if the legislation will be enacted this year, especially given the November midterm election.

Digital Asset PARITY Act

The Digital Asset Protection, Accountability, Regulation, Innovation, Taxation, and Yields Act (Digital Asset PARITY Act; HR 8899) was introduced in the U.S. House of Representatives on May 19, 2026.

Key provisions of the bill include:

- Treating regulated dollar-pegged stablecoins like digital dollars rather than property. This would mean that most taxpayers will no longer be required to track the stablecoin's basis. This provision would not apply to dealers or traders in stablecoin;
- Clarifying source-of-income rules for digital asset trading;
- Extending existing securities lending tax rules to qualified digital assets, which means that digital asset lending would not be treated as a taxable sale;
- Applying wash sale and constructive sale rules to digital assets;
- Allowing mark-to-market elections for digital asset traders and dealers;
- Creating an elective framework for staking and mining rewards, which would treat rewards as income while allowing deferral of taxation to address liquidity and phantom income concerns;
- Modernizing charitable contribution rules, which would distinguish between highly liquid digital assets and speculative or illiquid tokens to prevent abuse while supporting legitimate charitable giving; and
- Directing the U.S. Treasury Department to study a viable *de minimis* threshold that would exempt small digital asset transactions from reporting requirements.

A summary of the bill is available at:

Website
https://d12t4t5x3vyizu.cloudfront.net/maxmiller.house.gov/uploads/2026/05/Digital-PARITY-One-pager.pdf

Bills heard by Ways and Means Committee

The House Ways and Means Committee held a hearing on the following bills addressing the taxation of digital assets. However, to date, no action has been taken on these bills.

The Less Tax Paperwork for Digital Asset Owners Act (H.R. 9178) proposes to:

- Exclude gain or loss on regulated U.S. dollar stablecoins and digital assets used to pay a network fee; and
- Create an election for a simplified accounting method for digital assets.

The Applying Existing Tax Anti-Abuse Rules to Digital Assets Act (H.R. 9172) proposes to subject digital assets to the "wash sale" and "constructive sale" rules.

The Tax Clarity for Mining and Staking Act (H.R. 9175) proposes to:

- Treat newly minted digital assets as ordinary income but allows taxpayers to elect to treat newly minted digital assets in a manner similar to self-created property;
- Limit deferrals on mining and staking elections to five years; and
- Allow grantor trusts that hold digital assets to receive staking rewards without jeopardizing their tax status.

The Charitable Deductions for Digital Asset Donations Act (H.R. 9173) proposes to:

- Exempt digital asset donations from the qualified appraisal requirements if the donated property meets certain criteria; and
- Limit charitable deductions for donations of digital assets that are not widely traded to the amount that the charity receives when selling the digital asset.

The Providing Analogous Rules for Digital Assets ("PAR") Act (H.R. 9176) proposes to allow:

- Foreign persons to more easily invest in U.S. digital asset markets;
- Taxpayers to lend their digital assets without triggering a taxable event; and
- Digital asset dealers and traders to use mark-to-market accounting, which is available for dealers and traders of similar financial assets.

The Digital Assets Voluntary Disclosure Program Act (H.R. 9174) proposes to establish a voluntary disclosure program for taxpayers who failed to comply with tax law related to digital assets to come back into compliance.

The End Digital Assets Tax Shelter Act (discussion draft) proposes to prevent U.S. resident taxpayers from evading tax on digital assets based on an improper interpretation of rules for determining Puerto Rican-source income.

INDIVIDUALS

DIGITAL ASSET STAKING REWARDS

Taxpayers were required to include staking rewards generated from Cardano tokens (a type of cryptocurrency) they had received during the taxable year, even though the taxpayers were restricted from moving the tokens to other digital asset accounts or platforms. (***Paschall v. Comm.***, TCM 2026-46)

The taxpayers held the Cardano tokens on eToro USA, a digital asset platform. During the tax year at issue, eToro offered an automatic staking service which, unless an account holder opted out, automatically allocated staking rewards to account holders each month based on the number of tokens they already held in their account. At the end of the 2021 tax year, eToro sent Form 1099-MISC to the taxpayers reporting $33,354 in income attributable to the staking rewards. The taxpayers did not receive the 1099-MISC and failed to include the staking rewards in their gross income.

The taxpayers argued that due to eToro's restrictions preventing them from moving the tokens and staking rewards to another wallet, they did not have complete "dominion and control" over the tokens and rewards, and therefore they were not required to include the income in their gross income.

However, the Tax Court held that the taxpayers still had the option to sell the tokens and rewards at any time and therefore had actual or constructive receipt of the income. This amounted to an accession to wealth that was includible in their gross income.

DIGITAL ASSET LOT IDENTIFICATION RELIEF EXTENDED

IRS Notice 2026-20 extends for an additional year, through December 31, 2026, the temporary relief for digital asset lot identification initially provided by IRS Notice 2025-7. During this relief period, eligible taxpayers may bypass the requirement to communicate specific lot selections to their custodial broker.

Under IRS regulations, when a taxpayer fails to make an adequate identification of units sold through a broker, the default rule is that the first-in-first-out method (FIFO) of identification must be used. (Treas. Regs. §1.1012-1(j)(3)(i))

The IRS recognizes that many digital asset brokers do not have systems in place to track a taxpayer's specific identification of assets sold. For digital assets sold during the 2026 calendar year, taxpayers can make an adequate identification by:

- Identifying in the taxpayer's own books and records by reference to any identifier, such as the purchase date and time or the purchase price for the unit sold, that is sufficient to identify the basis and holding period of the digital assets sold; or
- Recording a standing order on the taxpayer's own books and records (e.g., an e-mail to their broker), provided that the recorded standing order includes sufficient information to identify any digital asset units sold.

To qualify for relief, the taxpayer must make the identification using either of the methods outlined above prior to the time of sale, disposition, or transfer.

TRUMP ACCOUNTS

Accounts are live and active

On May 28, 2026, the Department of the Treasury started sending activation e-mails to authorized individuals who elected to open Trump Accounts. Everyone who made an election to open a Trump Account should have received an activation e-mail before July 4, 2026, when the accounts began accepting contributions. (https://home.treasury.gov/news/press-releases/sb0508)

Authorized individuals who have made an election either using IRS Form 4547, Trump Account Election(s), or online at trumpaccounts.gov on behalf of an eligible child must activate their Trump Account before contributions can be made.

Caution

The Department of the Treasury has warned taxpayers to avoid scams. Official activation instructions will only be sent via e-mail from no-reply@TrumpAccounts.Treasury.gov. The Department of the Treasury will not reach out via telephone, text, or mail.

Authorized individuals who receive official activation e-mails should follow the instructions in the e-mail to set up and activate the child's Trump Account.

Practice Pointer

Authorized individuals who have not received their activation e-mail should check the status of their Trump Account election through their IRS account online to make sure the election was successfully filed. They can also call the Trump Account call center for help at (866) 872-4547.

Smart phone app

Also on May 28, 2026, the Department of the Treasury launched a smart phone app available through the Apple App Store and the Google Play Store. The app can be downloaded now, and once the Trump Accounts receive funding, taxpayers can use the app to check on the status of their investments.

Additionally, the app includes six "learning pods" aimed at increasing users' financial literacy.

The Department of the Treasury's announcement of the release of the mobile phone app does not contain details on whether the app's features will be expanded, such as whether the app can be used to manage investments or whether children will be able to access the app to view and learn about their own investments.

IRS online account

The IRS's online account features have been expanded to incorporate Trump Accounts. Taxpayers who visit trumpaccounts.gov to open a Trump Account and/or make a pilot program election are directed to their own IRS account online to complete and submit Form 4547 electronically.

Additionally, taxpayers can use their IRS account online to view the status of their Trump Account elections.

Investment funds

The Department of the Treasury has announced the initial investment funds taxpayers can choose from to invest their Trump Account funds. (https://home.treasury.gov/news/press-releases/sb0551)

At launch, all contributions to Trump Accounts will be invested in the State Street SPDR Portfolio S&P 500 ETF (SPYM). This fund tracks the performance of the S&P 500 index. The following additional low-cost index ETFs are available for taxpayers to choose from to diversify their exposure across major market segments:

- iShares Core S&P 500 ETF (IVV);
- Vanguard Total Stock Market ETF (VTI);
- State Street SPDR Portfolio S&P 1500 Composite Stock Market ETF (SPTM); and
- iShares Core S&P total U.S. Stock Market ETF (ITOT).

The ability to invest in these additional funds won't be available for at least a couple of months, so all Trump Account contributions will remain in the State Street SPDR Portfolio S&P 500 ETF (SPYM) until the additional funds are available.

Gift tax implications

The IRS has issued guidance addressing whether contributions to a Trump Account constitute completed gifts. (Rev. Proc. 2026-25)

Contributions to a Trump Account made by a person who is not the account beneficiary is a gift of a future interest because the account beneficiary generally does not have access to the funds until January 1 of the year the beneficiary turns age 18. However, pursuant to the IRS's new guidance, if a taxpayer meets all of the following safe harbor requirements, the IRS will treat each Trump Account contribution made by the taxpayer during that calendar year as a completed gift:

- The taxpayer making the contribution is an individual;
- The only taxable gifts made by the taxpayer during the calendar year are cash contributions to one or more Trump Accounts, each made before the calendar year in which the account beneficiary turns age 18;
- The taxpayer's total gifts during the calendar year to each individual who is an account beneficiary, including contributions to that account beneficiary's Trump Account, do not exceed the annual exclusion ($19,000 for 2026);
- Such contributions to Trump Accounts made during the calendar year do not generate for that calendar year either a gift or GST tax liability after application of the taxpayer's remaining applicable credit amount against the gift tax or remaining GST exemption; and
- Disregarding the Trump Account contributions made during the year, no gift tax return is required to be filed, and no gift tax return is otherwise filed for that calendar year by or on behalf of the taxpayer, whether for GST, portability, or other purposes.

The reason this safe harbor is so important is that gifts of future interests ordinarily trigger a gift tax filing requirement, even if the only gifts made by the taxpayer during the year are below the annual gift tax reporting threshold. (IRC §2503(b)(1); Treas. Regs. §25.2503-2(a)) Treating these contributions as a completed gift (for this safe harbor purpose only) relieves the donor from filing a gift tax return.

Comment

Currently, the IRS processes about 300,000 gift tax returns annually, and as of June 4, 2026, nearly 6 million elections to open Trump Accounts have already been received. The purpose of the safe harbor is to ease the IRS's administrative burden by preventing the filing of millions more gift tax returns from taxpayers who are, according to the IRS, unlikely to have estates large enough to ever trigger an estate tax liability.

Example of safe harbor gift rules

Joe contributes $5,000 cash to each of three Trump Accounts established for the three minor children in his life: his two children, Allison and Brian, and his niece, Candace. In 2026, Joe also makes an additional gift to Candace of $13,000 cash.

Joe makes no other gifts during the calendar year and is not required to and does not file a gift tax return for 2026 for any other purposes.

The $15,000 in contributions Joe makes to the three Trump Accounts do not generate a gift or GST tax liability, after taking into consideration Joe's remaining lifetime applicable exclusion amount or remaining GST exemption.

Under these facts, Joe satisfies the safe harbor set out in Revenue Procedure 2026-25, which means that each of Joe's Trump Account contributions for 2026 is treated as a completed gift to Allison, Brian, and Candace for gift tax filing return purposes. Therefore, Joe is not required to file a gift tax return for 2026.

Alternatively, assume Joe's cash gift to Candace in 2026 equals $14,500. In this case, the total cash gifts to Candace are greater than the $19,000 annual gift tax exclusion available for 2026 ($14,500 + $5,000 = $19,500). In this scenario, Joe does not satisfy the safe harbor requirements of Revenue Procedure 2026-25, and Joe must file a gift tax return for 2026 reporting all 2026 gifts and report the Trump Account contributions to Allison, Brian, and Candace as gifts of future interests.

VALID INCOME TAX EXTENSIONS

A valid income tax extension requires that an individual taxpayer make a reasonable estimate of their tax liability for the year. (Treas. Regs. §1.6081-4(b)(4)) IRS Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, contains the following relevant lines:

Line 4:	Estimate of total tax liability for the year	$_____
Line 5:	Total payments made for the year (withholding and estimates)	$_____
Line 6:	Balance due (line 4 minus line 5)	$_____
Line 7:	Amount the taxpayer is paying with their extension	$_____

If the IRS determines that the estimate is unreasonable, then the taxpayer's extension is null and void. (2025 Form 4868 Instructions) In most cases dealing with invalid extensions, taxpayers typically file Form 4868 without providing any estimate of total tax liability despite the taxpayer having a substantial tax liability for the year and a large balance due when they file income tax returns. (See, e.g., ***Laidlaw v. Comm.***, TCM 2017-167 and ***Crocker v. Comm.*** (1989) 92 T.C. 899)

Practice Pointer

Taxpayers who make an electronic payment to the IRS online and designate their timely payment as an extension payment are deemed to have made a valid extension without having to make an estimate of their tax liability. This is true even though Treas. Regs. §1.6081-4(b)(4) and the Instructions to Form 4868 specifically require individual taxpayers to make an estimate of their tax liability in order for their extension to be valid.

Tax professionals may consider advising clients who are not diligent about providing any tax information before the original return filing deadline to make an extension payment online, even if the payment is only $1.

The most recent case dealing with the issue of whether an extension was valid contains two interesting twists. First, the taxpayer argued that they did make an adequate estimate of their liability but that they simply filled out Form 4868 incorrectly, and second, the taxpayers overpaid their liability for the year. (***Karp v. U.S.*** (May 21, 2026) Ct. Fed. Cl., Case No. 1:23-cv-00926)

In the ***Karp*** case, the taxpayers' Form 4868 reflected the following:

Line 4:	Estimate of total tax liability for the year	$0
Line 5:	Total payments made for the year (withholding and estimates)	$511,788
Line 6:	Balance due (line 4 minus line 5)	$0
Line 7:	Amount the taxpayer is paying with their extension	$0

The taxpayers listed $0 on line 4 of their Form 4868 as the estimate of their total tax liability. They believed the estimated tax of $0 was correct because they had made substantial payments that covered their tax liability for the year. In fact, their total tax liability for the year at issue was less than the $511,788 in payments they made during the year. Thus, the taxpayers listed the amount they thought they would still need to pay for the year at issue.

The court held that while the taxpayers made a technical error by estimating net rather than gross tax liability for the year, they correctly estimated that they would owe zero additional tax when they filed their income tax return, and the technical error was not unreasonable enough to make the automatic extension void.

It is noteworthy that during oral arguments in the ***Karp*** case, the IRS admitted that they were not aware of any case in which a party *underestimated* their tax liability, paid the government too much money, and was still denied an automatic extension.

Comment

If the taxpayer ultimately had an overpayment of their liability, then why did the IRS care whether their extension was valid? Despite the extension, the taxpayers in ***Karp*** filed their income tax returns three years late. If the extension was invalid, then the taxpayers' return would have been filed too late to make a refund claim. If the extension was valid, then their refund claim was timely filed. Because the taxpayers' extension was held to be valid, their refund claim was allowed.

REPAID DISABILITY BENEFITS

A taxpayer was required to include in his gross income benefits received from the Social Security Administration (SSA) even though he later had to repay the benefits. (***Smith v. Comm.***, TCM 2026-25)

The taxpayer applied for Social Security Disability Insurance benefits in April 2022 following a disabling injury. The taxpayer received SSDI benefits retroactive to March 2022 through April 2023, at which point the SSA ceased making benefit payments because it learned that the taxpayer had been working since April 2022. According to the SSA, that meant the taxpayer never should have been entitled to receive SSDI benefits (42 U.S.C. §423(d)) The taxpayer was required to, and did, repay the benefits he received.

The taxpayer did not report any of the benefits on his 2022 tax return. The IRS determined that 85% of the benefits were reportable for 2022, but the taxpayer argued that they should be excluded because he repaid the amounts to the SSA. The Tax Court held that the repayments the taxpayer made in 2023 and 2024 did not affect his 2022 tax liability because the payments he received during 2022 are reduced only by "any repayment made by the taxpayer **during the taxable year** [emphasis

added]." (IRC §86(d)(2)(A)) Therefore, the taxpayer was only eligible for potential relief in the tax year in which the repayment was made, which was 2022.

WHEN CAN SOCIAL SECURITY BENEFITS BE GARNISHED?

In general, Social Security benefits are protected under the Social Security Act from garnishment, levy, or other attachment by commercial creditors like credit card companies and medical debt collectors. (Social Security Act §207)

However, there are limited situations in which federal agencies can garnish or levy Social Security benefits, and state agencies can garnish benefits for child support, spousal support, and restitution. (Social Security Act §459; Taxpayer Relief Act §1024; Debt Collection Improvement Act §31001)

Federal agencies that can garnish benefits include:

- **Social Security Administration (SSA):** If a taxpayer received an overpayment of Social Security benefits, the SSA can reduce future benefit payments to recover the overpaid amount at a rate of 50% (or 10% of Supplemental Security Income) until the overpayment is repaid (www.ssa.gov/manage-benefits/resolve-overpayment);
- **IRS:** The IRS can garnish up to 15% of Social Security benefits to collect unpaid federal taxes without a court order. This does not apply to SSA disability insurance benefits (www.irs.gov/individuals/social-security-benefits-eligible-for-the-federal-payment-levy-program);
- **Department of Education (through the Treasury Offset Program):** The Department of Education can garnish up to 15% of benefits if a taxpayer defaults on their student loans; and
- **Other federal agencies (through the Treasury Offset Program):** Examples include overpayments of other government benefits (i.e., SNAP/food stamps) or debts owed to agencies like the Small Business Administration or Department of Veterans Affairs for non–disability-related debts. Generally, the Treasury Offset Program can impose a 15% offset without a court order. (https://fiscal.treasury.gov/system/files/files/top/TOP-rules-reqs-fact-sheet.pdf)

However, federal garnishment is limited in that the taxpayer must be left with at least $750 per month in benefits. (31 USC §3716) This number was determined with the passage of the Debt Collection Improvement Act in 1996 and has never been indexed for inflation.

State agencies enforce garnishments for child and spousal support payments and restitution. Garnishment of Social Security benefits is limited to:

- 50%, if the beneficiary is supporting a spouse and/or child other than the spouse and/or child whose support has been ordered;
- 60%, if the beneficiary is not supporting another spouse and/or child; or
- 55% or 65%, respectively, if the garnishment order or other evidence submitted indicates that the original support ordered is 12 or more weeks in arrears.
  (15 USC §1673(b); also see https://secure.ssa.gov/poms.nsf/lnx/0202410215)

Benefit protection

As stated above, a commercial creditor cannot directly garnish Social Security benefit payments. But once the payments are deposited into the taxpayer's bank account, the account can be levied by commercial creditors.

When a financial institution receives a levy notice that is not from a federal or state agency as described above, there is a 60-day lookback period that protects the last two months of benefits that were directly deposited into the account (or loaded onto a debit card). This means that benefits deposited by paper check or transferred from another account are not protected by the lookback period. (www.fdic.gov/consumer-compliance-examination-manual/vi-4-garnishment-accounts-containing-federal-benefit)

For any funds in an account that are in excess of the protected amount, the financial institution must follow its customary procedures for handling garnishment/levy orders.

☑ Planning Pointer

Taxpayers who are in danger of garnishment should consider maintaining a separate bank account to receive Social Security benefits to help keep them separate from other forms of income and make it easier to distinguish protected funds.

RETIREMENT

EXECUTIVE ORDER PROMOTING RETIREMENT SAVINGS

On April 30, 2026, President Trump signed an executive order titled "Promoting Retirement-Savings Access for American Workers by Establishing TrumpIRA.gov." (Executive Order 14403) The order directs the Treasury Department to launch an informational online platform by January 1, 2027, that is designed to emphasize features modeled after the federal Thrift Savings Plan program:

- Low fees (net expense ratios capped at 0.15%);
- No minimum contributions or balances; and
- Diversified index-based options such as target-date funds.

The online platform will be available at:

💻 Website
www.trumpira.gov

As of publication, the website contains a landing page with limited information. Taxpayers can leave an e-mail address to be notified directly when the full website is officially launched.

Saver's Match program

The Saver's Match, enacted under the SECURE 2.0 Act of 2022 and codified in IRC §6433, was designed to replace the current nonrefundable Saver's Credit under IRC §25B beginning in the 2027 taxable year. Instead of a tax credit that reduces liability, the federal government will deposit up to a $1,000 match directly into an eligible individual retirement account.

Any retirement savings matching contributions received under IRC §6433 are not counted toward the taxpayer's annual retirement plan contribution limits.

The $1,000 federal government matching is available to eligible taxpayers as a 50% match on the first $2,000 contributed to an eligible retirement account, subject to modified AGI phaseouts.

2027 Phaseout Range (IRC §6433(b))	
Filing status	**Phaseout range**
Joint filers	$41,000–$71,000
Head of household	$30,750–$53,250
Single filers	$20,500–$35,500

The phaseout ranges are adjusted for inflation starting in 2028. (IRC §6433(h))

Some key limitations of the retirement savings match, among others, that tax professionals should keep in mind include:

- The match is not available for taxpayers under the age of 18 at the close of the tax year;
- The taxpayer cannot be another taxpayer's dependent;
- The taxpayer cannot be a full-time student (as defined in IRC §152(f)(2)); and
- The taxpayer cannot be a nonresident alien for any portion of the taxable year unless the taxpayer is treated as a resident of the United States due to an election under IRC §6013(g) or (h). (IRC §6433(c))

REAL ESTATE

REAL ESTATE ADVISORY

Advising owners of residential rental properties

Clients with investment dollars to spend often inquire about jumping into real estate. Not surprisingly, one of the first phone calls they make is to their tax professional. Equally unsurprising is that most individual investors start their real estate journey in residential rentals. Some of the advice you can provide to a client at the start of their real estate investment journey is contained in this section.

Practice Pointer

Tax professionals regularly report hundreds of rental properties on Schedule E or through partnerships each year in their respective tax practices. Data mining your own practice in this area is a great way to provide real insight for your clients and provide a great real estate tax planning revenue stream for your practice.

Who else is better positioned to be a single source of advice to a new rental investor regarding what landlord insurance or property managers should cost each year, among all the other great information that can be gleaned from seeing hundreds or thousands of real estate rentals each year?

Tax professionals can also provide capitalization rate (cap rate) analyses for their clients or lookback return on investment (ROI) analyses to determine whether the investment has been good or should be sold. Such analyses provide real insight for clients, add value to your services, and create a new revenue stream for your practice.

Practice Pointer

This discussion focuses on advising clients who are interested in investing in residential rentals because residential rentals are the most common starting point for most individuals who seek to invest in real estate.

Clients who are business owners and looking to invest in real estate should not overlook using their investment dollars to acquire real estate used in their business. Clients who own the real estate upon which their business operates tend to have more flexibility to weather economic downturns, among other benefits.

Evaluating rental markets

Clients often want to begin their rental real estate investing by finding properties within driving distance. They choose rentals close to home because the client either doesn't want to hire a property manager, so the property must be close enough to manage themselves, or they are just comforted by the fact that they can drive to the property to inspect it.

Clients willing to invest outside their local area must evaluate various rental markets to determine where they want to invest. Using publicly available information, such as that from Zillow or Redfin, taxpayers can analyze various population centers. There are endless factors to consider, but some of the easiest information to find includes:

- Average rental rates versus acquisition costs;
- Property appreciation history;
- Population growth;
- Property tax rates;
- Crime rates;
- Quality of schools and public amenities;
- Employment statistics; and
- Rent control (could be based on state or local law).

Using capitalization rate to analyze residential rental property

Once a client has determined their rental strategy and narrowed their geographic area, they can begin an initial property search. At this point, performing a capitalization rate analysis of various properties is recommended.

Planning Pointer

Concurrently with performing a capitalization rate analysis of available properties in the client's desirable areas, the client should engage a real estate agent and also obtain a lender's pre-approval so that they are ready to make an offer once they have located a suitable property.

Capitalization rate: Also known simply as the "cap rate," this metric is the most commonly used method to evaluate the rate of return on a residential real estate rental and is expressed as a percentage:

Net operating income (NOI) ÷ Acquisition cost = Cap rate

Net operating income: NOI is measured on an annual basis when performing a cap rate analysis and is measured as the net income from the property, not including depreciation or debt service (loan payments).

Acquisition cost: This is measured by the overall cost of the investment. Taxpayers who acquire properties requiring significant repairs must factor in the cost of the repairs. Likewise, taxpayers who acquire short-term rentals must factor in the cost of furnishing the rental property.

What is a good cap rate?

Generally, the higher the cap rate, the better the investment. An acceptable cap rate should generally be between about 4% and 10%. But that doesn't mean that a 4% cap rate is automatically bad.

Remember, newer residential properties in middle- and upper-income neighborhoods are generally going to return a lower cap rate in exchange for anticipated greater capital appreciation over time. They are also generally more expensive to acquire up front, which also reduces their cap rate. So, accepting a lower cap rate is not a bad thing, as long as the client understands the analysis and what they should expect from their investment.

Other analysis metrics

The cap rate is far from the only real estate analysis a client could undertake, but it is the most common. Other common analyses include (among many others):

- Return on investment;
- Internal rate of return; and
- Gross rent multiplier.

New investors who get caught up in the endless analysis metrics can end up with paralysis by analysis, so focusing on too many metrics may be counterproductive.

For example, return on investment (ROI) ((gain on investment – investment cost) ÷ investment cost) factors capital appreciation into the gain on investment to determine the overall quality of a real estate investment over the life of the investment. The cap rate analysis does not factor in anticipated capital appreciation. An ROI analysis can help reduce very different properties down to an apples-to-apples comparison.

As previously discussed, properties in middle- to upper-income neighborhoods may return a lower cap rate because there is a higher up-front acquisition cost and higher expected capital appreciation of the property over time. So, an ROI analysis will help determine whether a lower cap rate is acceptable over the long term. However, any ROI analysis requires many assumptions regarding real estate growth over a long period of time. No matter how good the ROI analysis is at the front end of the investment, it will always be subject to assumptions about the future of the real estate market.

Example #1 of cap rate analysis

Tommy has identified a rental property he is interested in acquiring. The property and Tommy's financing have the following characteristics:

- Single family residence in upper-middle income neighborhood, built in 2015
- Acquisition cost: $440,000
- Loan amount: $352,000 (30-year fixed, fully amortizing)
- Loan rate: 7.25%
- Anticipated rental rate: $3,200 per month

(continued)

Example #1 of cap rate analysis (continued)

After doing his due diligence and determining his operating expenses, Tommy estimates his annual cash flow and net operating income to be:

Rental income		$38,400
Property taxes	$4,400	
Property manager	3,840	
Insurance	750	
HOA dues	1,800	
Anticipated repairs and maintenance	3,800	
Operating expenses		(14,590)
Net operating income (NOI)		23,810
Loan payments (principal and interest)		(28,812)
Net cash flow:		($ 5,002)

The cap rate on this property is:

NOI	$ 23,810
Acquisition cost	÷ 440,000
Cap rate	5.4%

The cap rate falls within a range that Tommy feels is acceptable, especially after performing a return on investment analysis and determining that the property should benefit from substantial capital appreciation over the life of his investment.

However, the property is expected to produce negative cash flow of $5,002 per year. Most investors will balk at any rental property expected to produce negative cash flow. The negative cash flow can be offset by increasing his down payment, but this is usually equally unfavorable for clients.

But consider Tommy's analysis from an alternative viewpoint. A taxpayer in Tommy's position can put up to $7,500 into an IRA each year (2026 figures). For less than an annual IRA investment, Tommy can have a real estate investment that:

- Will benefit from the same gain deferral as an IRA (because there is no tax liability as the property grows in value);
- Gain will be taxed at capital gains rates (as opposed to ordinary income from IRA distributions);
- He can use a like-kind exchange if he wants to change his property without cashing it out, deferring gain further;
- He will have a tenant paying rent and building equity for him; and
- He has a fixed rate mortgage, so if he raises rental rates 3% each year, he will begin producing positive cash flow within about five to eight years (depending on whether he is able to keep his repairs and other costs under control).

Additionally, if Tommy has other sources of passive income, the burden of his annual loss will be mitigated by tax savings resulting from offsetting income from his other passive investments. Of course, tax loss will differ from cash flow.

Example #2 of cap rate analysis

Tammy has identified a rental property she is interested in acquiring. The property and Tammy's financing have the following characteristics:

- Quadplex in low-income neighborhood, built in 1958;
- Acquisition cost of $440,000;
- Loan amount of $352,000 (30-year fixed, fully amortizing);
- Loan rate of 7.25%; and
- Anticipated rental rate of $1,200 per month, per unit ($4,800 total).

After doing her due diligence and determining her operating expenses, Tammy estimates her annual cash flow and NOI to be:

Rental income		$57,600
Property taxes	$4,400	
Property manager	5,760	
Insurance	750	
HOA dues (N/A)	0	
Anticipated repairs and maintenance	8,000	
Operating expenses		(18,910)
Net operating income (NOI)		38,690
Loan payments		(28,812)
Net cash flow:		$ 9,878

The cap rate on this property is:

NOI	$ 38,690
Acquisition cost	÷ 440,000
Cap rate	8.9%

The cap rate is on the higher end, and the property is expected to produce positive cash flow for Tammy annually.

The property is older, so there is no HOA, but the anticipated repairs and maintenance are higher. Also, because the property is located in a low-income area, Tammy expects the property to produce less capital gain over the life of her investment. However, Tammy's goal is to produce additional cash flow now and not wait for capital appreciation.

Practice Pointer

We have created a cap rate analysis template in Excel that is available for download at:

Website
www.spidell.com/files/2026/caprate.xlsx

Comparing cash flow and tax flow

Tax professionals should strive to help their clients understand the difference between the cash flow generated from a rental property and the tax flow. Clients understand the cash flow concept pretty well but struggle to understand how it translates to Schedule E of their income tax return. If

the property produces negative taxable income, then the struggle becomes more difficult to understand if their tax losses are suspended.

The difference between cash flow and tax flow stems from the fact that:

- Only the interest portion of loan payments are deductible;
- Depreciation is a total mystery to most clients; and
- Passive loss rules are an even bigger mystery to most clients.

Example of cash flow versus tax flow

The facts are the same as the example above of Tammy's quadplex. The property's allocation is 50% land and 50% building.

The following analysis compares her cash flow (as seen in the prior example) with her tax flow (as reflected on her Schedule E):

	Cash flow		**Tax flow**	
Rental income		$57,600		$57,600
Property taxes	$4,400		$4,400	
Property manager	5,760		5,760	
Insurance	750		750	
HOA dues (N/A)	0		0	
Repairs and maintenance	8,000		8,000	
Operating expenses		(18,910)		(18,910)
Net operating income (NOI)		38,690		38,690
Loan payments		(28,812)		N/A
Interest (year 1, fully amortizing loan)		N/A		(25,408)
Depreciation		N/A		(8,000)
Net cash flow/net taxable income		$ 9,878		$ 5,282

In this example, even though Tammy's property produces $9,878 of positive cash flow per year, it will only produce additional taxable income for Tammy in Year 1 of $5,282.

The key reason is that in a fully amortizing loan, the first payment is almost all interest, which is deductible. Each successive payment is allocated slightly more to principal pay down and slightly less to deductible interest.

Tammy's depreciation deduction of her original acquisition cost will remain constant over the 27.5 year residential rental useful life.

So, the nature of a fully amortizing loan is that the taxpayer gets the best of both worlds in the early years of their rental property ownership: Most of their loan payment is deductible (because most of it is deductible interest), and they can claim depreciation deductions for the property.

Tips for first-time rental owners

The following tips may be helpful to first-time landlords and new real estate investors. These tips come from decades of experience advising on and owning rental properties:

- Expect periods of vacancy and unexpected repairs, so plan to have cash on hand to help weather the vacancy storm — nothing will go exactly as planned;
- Read HOA CC&Rs thoroughly for rent restrictions;
- Check with local agencies for special taxes, rental restrictions (especially if investing in a short-term rental), and required business licenses for landlords;
- Visit the neighborhood in person before buying, even if it's across the country;
- Property managers are generally worth the extra cost, even if the property is across the street. Far too many clients who self-manage their rentals don't raise the rents regularly and after a few short years find themselves missing out on thousands of dollars of revenue each year;
- Understand the difference between cash flow and tax flow;
- Consider an umbrella insurance policy in addition to just a landlord policy; and
- Travel expenses to visit rental properties are deductible, but travel expenses to scout properties prior to acquiring a rental property are generally not deductible. They can, however, be capitalized into the acquisition cost of the property.

Buy or rent?

Most taxpayers want to own their home and strive to purchase a home when possible. But is buying always the best financial decision? Taxpayers who don't plan to keep a home long-term may be better off renting. The benefits of home ownership include:

- Stability regarding monthly payments (a 30-year fixed rate mortgage payment doesn't change, but rents will increase each year);
- Homeowners can customize their home and make capital improvements as they see fit;
- At some point, a homeowner can pay off their home and free themselves of monthly payments, reducing financial needs down the road;
- A homeowner doesn't fear that their home will be sold from underneath them; and
- Home sales provide a tax shelter on sale because up to $250,000 of the gain on sale is excludable from income ($500,000 for MFJ) if certain requirements are met.

On the flip side, renting has its own set of benefits, including:

- Someone else is on the hook for capital repairs (new roof, broken air conditioner, etc.);
- It's easier to move from place to place; and
- A rental doesn't require a large down payment.

In order to truly evaluate whether buying or renting is more financially advantageous, tax professionals can run a comparison of the total net costs over the taxpayer's expected time horizon (the period of ownership). When running a comparison, be sure to compare similar properties against one another (apples to apples).

Evaluate rental costs

Start by evaluating rental costs first. It's generally the easier figure to estimate because the calculation is as easy as estimating total rent paid over the selected time horizon, plus renters insurance (factoring in anticipated annual rent increases). Ignore security deposits (because those are paid back at the lease conclusion) and costs that would apply whether you rent or buy (utilities, HOA dues, etc.).

Evaluating home ownership

Estimating home ownership costs is more detailed. Use the following calculation:

Down payment
\+ Closing costs on purchase
\+ All mortgage payments over selected time horizon
\+ Taxes
\+ Insurance
\+ Maintenance
\- Equity built during time horizon
\- Home appreciation (net of estimated selling expenses)
\+ Opportunity cost of down payment (estimated investment return on down payment if money stayed in investment account)

Rules of thumb

Before diving into a sample analysis, keep the following rules of thumb in mind:

- Home ownership will prevail the longer the time horizon, so even where renting may be more financially advantageous in your analysis, there will be a breakeven point where the analysis will benefit home ownership;
- Short stays of roughly five years or less almost always favor renting because of the high transaction costs of buying and selling real estate; and
- Periods of high inflation benefit buying (with fixed mortgage rates) more than renting.

Sample analysis

Example of buy versus rent analysis

Jane took a new job in Phoenix. She expects to live there for 10 years until she retires and plans to move out of the area at that time. She found a $500,000 home that is available to rent or buy.

If renting:

- Monthly rent: $2,800 (plus 3% increase per year);
- Renter insurance: $300 per year ($25 per month)
- **Total rental costs over 10 years: $400,284**

(continued)

Example of buy versus rent analysis (continued)

If buying:

- Down payment (20%): $100,000
- Closing costs on purchase: $5,000
- Monthly mortgage payments ($400,000 loan × 6.5% 30-year fixed rate): $2,528
- Annual property taxes: $3,600 (plus 3% estimated increase per year)
- Annual homeowner insurance: $1,200 (plus 3% annual increase)
- Estimated annual maintenance: $3,000 (plus 3% annual increase)
- Equity built (principal payments on loan) over 10-year time horizon: $60,895
- Estimated home appreciation over 10 years: $740,122 estimated value after 10 years using 4% real estate appreciation factor, net of 6% selling expenses of $44,407, minus $500,000 purchase price = $195,715 appreciation
- Estimated opportunity cost: 7.5% lost compounded investment return per year = $106,103;
- Estimated additional tax deductions generated by mortgage interest and property taxes in excess of standard deduction: $20,000 × federal tax rate of 24% = $4,800 annual income tax benefit of ownership
- **Total net ownership costs after 10 years: $301,954**

The net ownership benefit over 10 years in this scenario equals $98,330.

The precise calculations require complex formulas. The link below contains an Excel template file with formulas that will allow you to perform the calculations with a few simple data inputs based on your client's factual scenario. The Excel file contains a worksheet with sample figures taken from this example.

There are many assumptions in this analysis, which is a necessity when estimating figures over a period of years. The Excel spreadsheet allows you to change assumptions (such as rate of return, mortgage interest rates, etc., as market conditions change).

To download the Excel spreadsheet template with a rent versus buy analysis, go to:

Website
www.spidell.com/files/2026/buyvsrent.xlsx

BUSINESS

OPPORTUNITY ZONE GUIDANCE RELEASED

Deferral and inclusion of capital gains

The IRS has provided transitional guidance for the Qualified Opportunity Zone (QOZ) program in light of changes made by OBBBA. (Notice 2026-40) The notice clarifies the interaction between the "old" rules established by the Tax Cuts and Jobs Act (TCJA) and the "new" rules codified by OBBBA, specifically addressing, among other things, investor inclusion timelines and property acquisition requirements. See the chart comparing key QOZ tax features under the TCJA versus OBBBA at the end of this section.

What is an inclusion event?

An inclusion event triggers recognition of gains deferred under an IRC §1400Z-2 QOZ election. They include:

- A reduction in a taxpayer's equity interest in the Qualified Opportunity Fund (QOF) as a result of a transfer of a QOF investment;
- A property distribution from a QOF even if it doesn't reduce the taxpayer's ownership interest in the QOF (this is to prevent a taxpayer from "cashing out" their investment);
- Claiming an IRC §165(g) worthless stock or a worthlessness deduction with respect to an investment in the QOF; or
- The QOF's loss of its special designation as a QOF.

Examples of events or transactions that will trigger the recognition of gain include, but are not limited to, the following:

- Termination or liquidation of a QOF or QOF owner;
- Decertification of a QOF, either voluntarily or involuntarily;
- An entity classification change of a QOF under the check-the-box rules;
- Transfers between spouses or incident to a divorce;
- A distribution by a QOF partnership to a partner to the extent the distribution is of cash or property with a fair market value in excess of the partner's outside basis in the QOF partnership. However, with respect to distributions by a partnership that owns a QOF, such distribution will only be an inclusion event for the indirect QOF owner if the distribution is a liquidating distribution;
- A gift of a QOF interest;
- A taxable disposition of interests in an S corporation that invests in a QOF corporation or partnership if the change in ownership interests exceeds 25%;
- A distribution to a partner of a QOF partnership of property that has a value in excess of the partner's qualifying QOF partnership interest; and
- Certain QOF corporate distributions.

Gain recognition is not triggered if the QOF investment is transferred to:

- A surviving spouse or other beneficiary after the death of the investor;
- An estate or an irrevocable trust upon the death of the investor;
- A grantor trust of the QOF investor;
- An entity's S corporation election, revocation, or termination (unless the S corporation converts to a partnership or disregarded entity); or
- Mergers, to the extent no boot is received.

Pre-OBBBA (TCJA) gains that are recognized on December 31,2026, cannot be deferred again under the new OBBBA rules. However, gain triggered by a specific inclusion event (such as a distribution in excess of basis or sale of a QOF interest) are eligible for a new deferral election if reinvested in a QOF within 180 days of the capital gain event.

Taxpayers who made an eligible investment in a QOF before January 1, 2027, remain eligible to elect to step-up the basis in their QOF investment to its fair market value if they hold their QOF investment for at least 10 years. (IRC §1400Z-2(c))

Pursuant to the OBBBA rules, for taxpayers who invest eligible capital gains after December 31, 2026, the inclusion year in which the deferred gain must be recognized is the taxable year that includes the earliest of:

- A sale or exchange of the QOZ investment;
- An inclusion event (see box above); or
- The date that is exactly five years after their QOF investment was made.

These OBBBA rules apply even if the taxpayer's capital gains were realized before January 1, 2027, but were invested after December 31, 2026.

☑ Planning Pointer

Taxpayers who realize capital gains in the latter half of 2026 should wait until after December 31, 2026, to invest in a QOF. Doing so will allow them to take advantage of OBBBA's new five-year deferral period as long as the investment is made within 180 days.

If a taxpayer invests eligible capital gains into a QOF before January 1, 2027, then they still must recognize their capital gains on December 31, 2026.

Taxpayers who hold QOF investments made before January 1, 2027, and hold their investment for at least 10 years can elect to step up their basis to their investment's fair market value on the date they sell or exchange their investment with no other time limitation, meaning that they do not recognize any post-acquisition gain. (IRC §1400Z-2(c), in effect prior to OBBBA amendments).

Taxpayers who hold QOF investments made after December 31, 2026, and hold their investment for at least 10 years can likewise elect to step up their basis to the fair market value of their investment, but the basis step-up must be made on the earlier of the date the taxpayer sells or exchanges their investment or 30 years from the date of their investment. (IRC §1400Z-2(c))

Taxpayers must evaluate whether it makes sense for them to sell their QOF investments in 2026 and reinvest in 2027. Although the taxpayer must pay tax on the original gain deferral, any gains recognized on the sale/transfer of the QOZ investment can be deferred again if the investment is made in 2027 (as long as it's made within the 180-day window). Factors to consider include whether the taxpayer has other losses to offset, how much gain must be recognized in 2026, and the anticipated post-2026 appreciation of the original investment versus the new QOF investment.

Eligible capital gains

Capital gains that are eligible for the deferral election under IRC §1400Z-2 are gains that are treated as capital gain for federal income tax purposes (or are qualified IRC §1231 gains), and the gain does not arise from the sale or exchange with a related person. (Treas. Regs. §1.1400Z2(a)-1(b)(11))

The definition includes existing QOZ investments by a taxpayer that, when sold, generate taxable capital gains.

OBBBA did not change the definition of eligible capital gains.

Special rules for QOZ businesses

A QOF must hold at least 90% of its assets in QOZ property, which includes QOZ business property. A big question for many taxpayers and their tax professionals was whether property purchased for use in a TCJA-designated QOZ would still qualify as QOZ business property after the QOZ designation expires.

Under OBBBA, tangible property acquired by a QOZ business after December 31, 2026, must be purchased after the "applicable start date" of the QOZ to qualify as "Qualified Opportunity Zone business property."

OBBBA defines the applicable start date as January 1 following the date a zone is certified and designated after the enactment of OBBBA (July 4, 2025). Pre-OBBBA QOZs operated under rules created by the TCJA and therefore do not have an applicable start date as defined by OBBBA. Consequently, assets purchased after December 31, 2026, for use in a pre-OBBBA QOZ generally cannot qualify as QOZ business property.

In order to allow for business continuity in pre-OBBBA QOZs, IRS Notice 2026-40 establishes two ways in which the assets can still qualify as QOZ business property:

- The working capital safe harbor; and
- The ordinary course replacements exception.

Under the working capital safe harbor, property acquired after December 31, 2026, is classified as QOZ business property if:

- The purchase was undertaken as part of a written working capital plan adopted on or before December 31, 2026; and
- The entity must have received at least 10% of the estimated working capital by December 31, 2026, and spent or committed at least 5% (via binding agreements) by that date.

Under the ordinary course replacements exception, tangible property acquired after December 31, 2026, to replace or modernize existing business property to continue existing operations in a pre-OBBBA QOZ is classified as QOZ business property. This does not apply to the expansion of a trade or business or new business lines.

Pre-OBBBA QOZ designations are set to expire on December 31, 2028, (December 31, 2027, for Puerto Rico). However, IRS Notice 2026-40 provides that investors still qualify for the benefits of investing in the QOZs through December 31, 2047, even though the original QOZ designation has expired.

Key QOZ Tax Features: TCJA vs. OBBBA		
	TCJA for investments made prior to 1/1/2027	**OBBBA for investments made after 12/31/2026**
QOZ designations	All QOZs expire at end of 2028 (but IRS Notice 2026-40 clarifies that investors still qualify for the benefits of investing in the QOZs through December 31, 2047)	New QOZ designations may be made on an ongoing basis, each effective for a 10-year period OBBBA created new Rural Qualified Opportunity Zones that can provide greater tax incentives for investors (noted below)
Investment deferral	Deferred gain recognized by earlier of: • Inclusion event; or • December 31, 2026	Deferred gain recognized by earlier of: • Inclusion event; or • Five years from date of investment
Partial basis step-up	10% basis step-up if property held for five years 15% basis step-up if property held for seven years prior to 12/31/2026	10% basis step-up if property held for five years (30% if property is in Rural Qualified Opportunity Zone)
Post-acquisition basis step-up	Taxpayers may elect to permanently exclude post-acquisition gains held for at least 10 years	Same as TCJA, but the FMV basis adjustment is capped at the value on the earlier of the sale date or 30 years after investment

QOZ designation and statutory limitations

The QOZ rules generally limit a state's QOZ designations to 25% of its total low-income communities. (IRC §1400Z-1(d)) QOZs that were previously designated under the TCJA do not count against the 25% quota for the new round of nominations starting in 2026. (Notice 2026-40, Section 3) For zones certified by the Secretary of the Treasury during 2026, the "applicable start date" is January 1, 2027, and the designation period will remain in effect through December 31, 2036.

The IRS's guidance regarding designating QOZs is relevant to states and their representatives who are responsible for nominating population census tracts for designation as QOZs.

TRANSITION RELIEF FOR BUSINESS INTEREST ELECTION WITHDRAWALS

Revenue Procedure 2026-17 provides transition guidance for taxpayers that previously elected out of the business interest limitation rules but that now want to withdraw that election to take advantage of OBBBA's favorable depreciation rules. Businesses that are eligible to elect out of the business interest limitation rules are:

- Electing real property trades or businesses;
- Electing farming businesses; and
- Excepted regulated utility trades or businesses.

When one of these taxpayers elected out of the business interest limitation rules, they were required to use ADS rather than MACRS for purposes of computing their depreciation deductions and therefore are prohibited from claiming bonus depreciation in the future.

Without the relief offered by Revenue Procedure 2026-17, taxpayers would be unable to obtain any relief from making their election out of the business interest limitation rules because once an election is made, it is irrevocable and must be applied for all future tax years.

Key provisions of Revenue Procedure 2026-17 allow taxpayers to:

- Withdraw a prior IRC §163(j)(7) election made for tax years beginning in 2022, 2023, or 2024 by filing an election withdrawal by the earlier of:
  - October 15, 2026; or
  - The statute of limitations period for issuing an assessment for the taxable year for which the amended return is being filed, or in the case of an administrative adjustment request (AAR), the last day of the IRC §6227(c) period during which the partnership may file an AAR;
- Make a late election under IRC §168(k)(7) to opt out of bonus depreciation for any class of property affected by the withdrawn election; and
- File an amended Form 1065, U.S. Return of Partnership Income, rather than an administrative adjustment request (AAR) to make the above elections.

Why withdraw the election?

Because OBBBA eased the business interest expense adjusted income limit and allows taxpayers to claim 100% bonus depreciation, many taxpayers that previously elected out of having the business interest expense limitation apply are no longer finding these elections advantageous.

For instance, for most taxpayers subject to the business interest expense limitation, the limitation kicks in because their business interest expense exceeds 30% of their adjusted taxable income (ATI). The amount of their business interest expense in excess of 30% of their ATI cannot be claimed in the current year but must be carried forward and included in their NOL deduction in the following year.

For the 2022 through 2024 tax years, ATI was computed without taking into account any deductions for depreciation, amortization, and depletion. This had the effect of dramatically increasing the amount of business interest expenses subject to the limitation, especially for highly leveraged businesses. As a result of OBBBA, ATI is now computed by excluding deductions for depreciation, amortization, and depletion, which can frequently result in a higher ATI.

In addition, OBBBA reinstated 100% bonus depreciation for property acquired after January 19, 2025, rather than being limited to 80% and 60%, respectively, for property placed in service in 2023 and 2024.

Example of withdrawing the election

Sunset Realty Group, LLC is a calendar-year partnership that owns and operates a portfolio of commercial real estate. In 2022, it made an irrevocable election under IRC §163(j)(7)(B) to be treated as an electing real property trade or business. The motivation for making the election was that Sunset could deduct 100% of its business interest expense without the ATI limitation, a significant benefit given its heavily leveraged portfolio.

The trade-off was that by electing, Sunset was required to use the ADS depreciation system for nonresidential real property, residential rental property, and qualified improvement property, forfeiting bonus depreciation on those assets.

As a result of the OBBBA changes, it now makes sense for Sunset to withdraw the election as the following comparison illustrates. Adding back $10 million of annual depreciation to ATI significantly increases Sunset's §163(j) ceiling, allowing Sunset to fully deduct its $2.2 million in interest expense.

	Pre-OBBBA (EBIT)	**Post-OBBBA (EBITDA)**
Operating income before depreciation	$ 8,000,000	$ 8,000,000
Depreciation deduction	($10,000,000)	($10,000,000)
EBIT-based ATI	($ 2,000,000)	
EBITDA-based ATI		$ 8,000,000
§163(j) limit (30% of ATI)	$ 0	$ 2,400,000
Business interest limit	$ 2,200,000	$ 2,200,000
Interest deductible under §163(j)	$ 0	$ 2,200,000

Withdrawing the election also makes sense for Sunset because it plans to make $5 million in qualified improvements to a shopping center in 2026. Being able to claim bonus depreciation rather than depreciating the property under ADS will provide an additional $4.67 million depreciation deduction because Sunset can claim 100% bonus depreciation rather than being limited to $333,333 using 15-year ADS.

Making the IRC §163(j)(7) election withdrawal

A taxpayer withdrawing their §163(j)(7) election must write "FILED PURSUANT TO REV. PROC. 2026-17" on the top of their amended return or AAR. In addition, they must attach a statement that:

- Is titled "Revenue Procedure 2026-17 Section 163(j)(7) Election Withdrawal." Or, for taxpayers that are both withdrawing a §163(j)(7) election and making a late election under §168(k)(7) on the same return, amended Form 1065, or AAR, the statement must be titled "Revenue Procedure 2026-17 Section 163(j)(7) Election Withdrawal and Late Section 168(k)(7) Election";
- Includes the electing taxpayer's name, address, and taxpayer identification number; and
- Includes a statement that, pursuant to Revenue Procedure 2026-17, the electing taxpayer is withdrawing its election under IRC §163(j)(7)(B) or §163(j)(7)(C) or Treas. Regs. §1.163(j)-1(b)(15)(iii), as applicable and, if applicable, making a late election under §168(k)(7) on the same return, amended Form 1065, or AAR.

Sample election withdrawal statement

Using the example above, Sunset Realty must attach the following statement to its return:

Revenue Procedure 2026-17 Section 163(j)(7) Election Withdrawal

Taxpayer Name: Sunset Realty Group, LLC
Address: 1234 Wilshire Boulevard, Suite 500, Los Angeles, California 90017
Taxpayer Identification Number (EIN): XX-XXXXXXX
Tax Year of Original Election: Taxable year ending December 31, 2022
Form to Which Attached: Amended Form 1065 (Taxable Year Ending December 31, 2022)

I. Statement of Withdrawal

Pursuant to Revenue Procedure 2026-17, Sunset Realty Group, LLC ("the Partnership") hereby withdraws its election under IRC §163(j)(7)(B) and Treas. Regs. §1.163(j)-9 to be treated as an electing real property trade or business ("ERPTOB") for the taxable year beginning January 1, 2022, and ending December 31, 2022.

The Partnership made the original ERPTOB election on its timely filed Form 1065 for the taxable year ending December 31, 2022, filed on [original filing date, including extensions]. The withdrawal is made in accordance with the procedures set forth in Section 4 of Revenue Procedure 2026-17. Upon the effectiveness of this withdrawal, the Partnership will be treated as if the §163(j)(7)(B) election had never been made for the 2022 taxable year.

Taxpayers must also file amended returns or AARs, as applicable, for any succeeding taxable years to reflect any adjustments to taxable income resulting from withdrawing the election (e.g., depreciation deductions).

In addition, if the taxpayer is a partnership, the partner's capital accounts must also be adjusted to reflect the impact of the withdrawal.

Passthrough entity owners

A taxpayer that receives an amended Schedule K-1 as a result of an amended federal income tax return or amended Form 1065 filed to withdraw the election should similarly file an amended federal income tax return, amended Form 1065, or AAR, and write at the top, "FILED PURSUANT TO REV. PROC. 2026-17." The taxpayer also must attach a statement that the affected taxpayer is filing as a result of receiving an amended Schedule K-1 from an electing taxpayer that filed an amended federal income tax return or an amended Form 1065 in accordance with Revenue Procedure 2026-17.

CANNABIS RECLASSIFICATION

The U.S. Department of Justice (DOJ) issued an order on April 22, 2026, immediately rescheduling FDA-approved marijuana products and state-licensed medical marijuana from Schedule I to Schedule III, which means that:

- The IRC §280E limitations on cannabis businesses no longer apply to expenses associated with such products; and
- Taxpayers who purchase cannabis products for medical use can now claim a medical expense deduction.

The order is available at:

Website
www.justice.gov/opa/media/1437441/dl

What the order does and doesn't do

The order specifically reclassifies from Schedule I to Schedule III, marijuana, marijuana extracts, and delta-9-tetrahydrocannabinol and other compounds derived from the marijuana plant (other than the mature stalks and seeds) that fall outside the definition of hemp, but only if they are:

- Included in an FDA-approved drug product; or
- Subject to a state-issued license to manufacture, distribute, and/or dispense marijuana or products containing marijuana for medical purposes.

It's important to recognize that the DOJ's order does not legalize recreational use at the federal level, override state laws, or end all restrictions. This order also does not reclassify recreational cannabis as a Schedule III drug, which means:

- The IRC §280E limitations still apply to expenses related to selling recreational marijuana; and
- Purchases of marijuana without a doctor's prescription do not qualify for medical expense deductions.

However, the DOJ is expediting the ongoing rulemaking process to fully remove marijuana from Schedule I and place it into Schedule III. The DOJ began an administrative hearing on this issue on June 29, 2026, and it is expected to last through mid-July.

Goodbye, IRC §280E limitations

Rescheduling FDA-approved marijuana products and medical marijuana as a Schedule III drug is significant for taxpayers involved in the cannabis industry. Under IRC §280E, businesses trafficking in Schedule I or II drugs under the Controlled Substances Act cannot claim any business-related deductions or credits, except cost of goods sold (determined under IRC §471 as it existed prior to the introduction of IRC §280E in 1982 and not IRC §263A).

According to a DOJ press release, the Treasury Department will be issuing additional guidance on the impact of the rescheduling, which will:

- Clarify how cannabis businesses selling both recreational marijuana and medical marijuana (or FDA-approved marijuana products) can apportion their deductible expenses between their two lines of businesses; and
- Allow business expenses related to FDA-approved marijuana products and medical marijuana to be deducted beginning with the business's full taxable year that includes April 22, 2026 (the effective date of the DOJ's order).

Application of IRC §280E to hemp businesses

On their FAQs page for the cannabis industry, the IRS clarifies that IRC §280E does not apply to businesses legally growing and selling hemp that contains 0.3% or less of THC.

The FAQs are available at:

Website
www.irs.gov/businesses/small-businesses-self-employed/cannabis-industry-frequently-asked-questions

Hemp was removed from the Controlled Substances Act under the Agricultural Improvement Act of 2018 and is no longer considered to be a Schedule I substance. Businesses growing and selling hemp can deduct expenses and are not subject to the IRC §280E limitation.

Medical expense deduction?

In order to claim a medical expense itemized deduction for purchases of state-approved medical marijuana, the taxpayer must:

- Pay for the cannabis during the tax year and not be reimbursed by insurance;
- Have a prescription from a licensed physician; and
- Total medical expenses must exceed 7.5% of the taxpayer's AGI.
  (IRC §213)

In states that currently allow medical marijuana, the marijuana can be obtained if a doctor makes a "recommendation" for the patient to use marijuana, rather than a prescription. This is because doctors are prohibited from prescribing a Schedule I drug.

We will have to await further IRS guidance to see if these physician recommendations will qualify the taxpayer for the medical expense deduction, or whether taxpayers purchasing medical marijuana under a doctor's "recommendation" will now be required to get a prescription in order to qualify for the deduction.

Effect on banking?

Despite reclassification as a Schedule III drug, cannabis remains illegal at the federal level without separate legislation, so it's unlikely that the reclassification will open up more banking opportunities to cannabis businesses.

ERC DISALLOWED CLAIMS AND STATUTE OF LIMITATIONS ISSUES

Recognizing that the two-year timeframe for resolving a disallowed Employee Retention Credit (ERC) claim may be nearing for many taxpayers (due to no fault of the taxpayer's), the IRS has established a process to apply for an extension of the two-year statute of limitations period.

The two-year deadline

Although ERCs were only available for the 2020 and 2021 tax years, some taxpayers are still waiting for their ERC refunds.

Unfortunately, given the complicated nature of the credit as well as the myriad demands placed on the IRS during COVID-19, many legitimate ERC claims were erroneously disallowed and, due to a variety of factors (e.g., IRS firings, layoffs, resignations, and government shutdowns), have yet to be resolved.

Not only may this place a financial strain on the taxpayer, but if the matter is not resolved within two years of the initial ERC disallowance, the IRS is prohibited from issuing a refund (even if the client is entitled to it), and the taxpayer can no longer pursue any other administrative or judicial

relief. (IRC §6532(a); IR-2026-58) Requesting an appeal before the IRS's Independent Office of Appeals does not extend the two-year period.

The two-year period starts when the IRS issues either:

- Letter 105-C, which fully disallows the ERC; or
- Letter 106-C, which partially disallows the ERC.

Many taxpayers would prefer to pursue the claims administratively rather than undergo costly litigation but may feel compelled to pursue litigation given the impending two-year deadline.

Who is eligible for relief?

Taxpayers that meet the following criteria are eligible for relief from the two-year timeline:

- The taxpayer is waiting for the IRS to consider their response to the notice of disallowance on Letter 105-C or 106-C; and
- The taxpayer has six months or less remaining before their two-year period expires.

Although OBBBA repealed the ERC for the third and fourth quarters of 2021 if the claim was not originally submitted by January 31, 2024, taxpayers whose ERC claims were disallowed can still pursue their claims if the claims were originally submitted by January 31, 2024.

How to apply for relief

All taxpayers running up against the two-year period to file a refund suit can request an extension. The period will be extended if both the taxpayer and the IRS agree to sign Form 907, Agreement to Extend the Time to Bring Suit.

However, the IRS has set up a special process for eligible taxpayers (described above) awaiting resolution of their ERC disallowance protest. Such taxpayers may submit Form 907 requesting an extension via the IRS Document Upload Tool by going to the link below and selecting Notice CP320B, Need information to determine if you're due a refund, from the drop-down menu:

Website
www.irs.gov/dutreply

The IRS will review the request and will send a written response indicating whether the IRS has agreed to the extension. Countersigned Forms 907 will be sent to taxpayers or their authorized representative.

The IRS has not indicated how long the Form 907 request review period will take. This means taxpayers may want to consider filing these requests as soon as they become eligible, so they do not run out of time to pursue litigation should the request for an extension be denied.

The IRS is sending Notice CP320B to taxpayers identified as eligible for this new Form 907 submission method. Step-by-step instructions are available at:

Website
www.irs.gov/cp320b

However, taxpayers that do not receive Notice CP320B but believe they meet the eligibility criteria outlined above can still submit the claim.

Relief is limited

The IRS will not consider, as part of this Document Upload Tool, Forms 907 submitted for disallowances unrelated to Letter 105-C or 106-C. Taxpayers should submit these requests through the IRS's normal processes.

ERC CONFLICTING TAX CASES

Two different courts reached two different conclusions regarding whether two different health care providers that provided essential services during the COVID-19 pandemic qualified for the Employee Retention Credit (ERC). Both taxpayers claimed that they were partially suspended due to governmental orders but had their refund claims denied by the IRS. However, the two courts adopted different tests to determine whether the taxpayers' claimed business disruptions were "due to" the governmental orders at issue.

Taxpayers considering filing a suit for refund of an improperly denied ERC claim due to a partial suspension due to a governmental order should be aware that there is a split among the courts and should evaluate the most favorable jurisdiction to bring their action.

Partial suspension

In ***Tri-State Memorial Hospital vs. U.S.***, a hospital claimed that it qualified for the ERC because its operations were partially suspended due to governmental orders that required it to modify which services were provided and how, resulting in a loss of over $46 million in anticipated revenues during the first three quarters of 2021.

The court's decision was limited to whether the IRS's motion to dismiss should be granted. In rejecting the government's motion to dismiss, the court agreed that Tri-State alleged sufficient facts that, if proved, established that its operations were partially suspended due to government orders. (***Tri-State Memorial Hospital v. U.S.*** (May 28, 2026) U.S. Dist. Ct., East. Dist. of Wash., Case No. 2:25-CV-0181-TOR)

The court found that the Washington Governor's proclamation placed significant requirements and restrictions on health care facilities that resulted in a "partial suspension," which the court and parties agreed was defined as "a temporary delay, interruption of a portion of an employer's business."

The court rejected the government's argument that a "partial suspension" requires that the disruption impact more than a "nominal portion" of the operations and requires a "temporary closure of a significant portion of operations."

The court also rejected the government's argument that under the IRS's guidance, a taxpayer must show that more than 10% of its operations (in terms of gross receipts or employee hours) were impacted in order to be considered a partial suspension. While the IRS could adopt this safe harbor as one means of demonstrating a partial suspension, the 10% threshold was not a statutory prerequisite.

The court agreed with Tri-State that the requirements imposed under the government orders could amount to a partial suspension by delaying, interrupting, or stopping a portion of its operations. These orders included, but were not limited to, requiring Tri-State to:

- Limit its nonessential procedure services;
- Cancel patient visits when patients exhibited symptoms of or tested positive for COVID-19 within 10 days of an appointment;
- Reduce the number of beds available; and
- Convert profitable clinic space to less profitable testing and vaccination clinics.

In contrast, in ***Northeast Health Services***, the taxpayer provided mental health services and argued that it was required to close and significantly modify its provision of services, shifting to a telehealth model and establishing new protocols for hiring, retaining, and supervising staff as a result of the Massachusetts Governor's and Department of Public Health's orders. (***Northeast Health Services, LLC. v. U.S.*** (May 28, 2026) U.S. Ct. of Fed. Claims, Case No. 24-2096T) According to the taxpayer, this prevented it from expanding its operations and caused it to face operational disruptions.

Although the court did not specifically address whether the taxpayer suffered a partial suspension because it based its ruling on other grounds, it's important to note that certain metrics provided by Northeast Health Services indicated that its business grew or remained relatively consistent throughout the pandemic. For instance, it netted 74 new employees over the three quarters at issue, and its profits grew from under $5 million in Q1 2021 to over $5 million in Q3.

The meaning of "due to"

Both courts agreed that the meaning of "due to" the government order was ambiguous and that the courts and administrative agencies in other contexts have frequently disagreed about the term's meaning.

The ***Tri-State*** court adopted an expansive definition of the words "due to" a governmental order to mean that "but for" the governmental orders the taxpayer's operations would not have been partially suspended. The court found that Tri-State alleged procedures and protocols that were implemented as a result of the government orders disrupted its operations and that these changes to their procedures and protocols would not have occurred "but for" the government's orders. Therefore, the court found that the taxpayer's suit should be able to proceed.

In contrast, the court in ***Northeast Health Services*** agreed with the government that the phrase "due to" required a much more limited interpretation. The court found that the taxpayer must establish that the government orders, and not the pandemic generally, were the proximate cause of the disruption to the taxpayer's business operations. The court granted a summary judgment ruling in the IRS's favor and found that Northeast Health Services failed to establish that it would qualify under this standard because:

- The taxpayer, a mental health service provider, was an essential service and therefore was exempted from the Governor's orders requiring nonessential service businesses to temporarily close their operations;
- The spacing, safety, and hygienic protocols outlined in the governmental orders at issue were not mandatory; and
- The loss of or reduction in clients, staff, and governmental licensing agents due to COVID-19 and school closures were the result of the pandemic generally and not the government orders to which Northeast was subject.

CORRECTING DEPRECIATION ERRORS

Depreciation errors made on prior-year returns can be corrected by either filing:

- An amended return (or an administrative adjustment request (AAR) in the case of partnerships that have not elected out of the centralized partnership audit regime (CPAR)); or
- An application for change of accounting method.
(IRS Publication 946, How to Depreciate Property)

As long as the statute of limitations remains open, taxpayers can file an amended return (or an AAR for CPAR partnerships) to correct the following types of depreciation errors:

- Mathematical or posting errors;
- Where the taxpayer has not adopted a permissible method of accounting for depreciation;
- An adjustment in the useful life of a depreciable asset for which depreciation is determined under IRC §167;
- A change in use of an asset in the hands of the same taxpayer;
- Making a late depreciation election or revoking a timely valid depreciation election (including the election out of bonus depreciation); or
- Any change in the placed-in-service date of a depreciable asset.
(IRS Publication 946)

Generally, taxpayers adopt a method of accounting for depreciation by using a permissible method of determining depreciation when they file their first tax return, or by using the same impermissible method of determining depreciation in two or more consecutively filed tax returns. (Rev. Proc. 2019-43)

If the taxpayer can't (or won't) file an amended return (for example, because the statute of limitations has expired), then the taxpayer must file Form 3115, Application for Change in Accounting Method.

The IRS has provided the following examples of changes in accounting method for depreciation:

- A change from an impermissible method of determining depreciation if the impermissible method was used in two or more consecutively filed tax returns;
- A change in the treatment of an asset from nondepreciable to depreciable or vice versa;
- A change in the depreciable method, period of recovery, or convention of a depreciable asset; or
- A change from not claiming to claiming bonus depreciation if the taxpayer previously did not elect out.
(IRS Publication 946)

Form 3115, Application for Change in Accounting Method

A taxpayer cannot change accounting methods from year to year without permission from the IRS. (IRC §446) The taxpayer must file Form 3115. The taxpayer may also have to make an adjustment to prevent amounts of income or expense from being duplicated or omitted. This is called an IRC §481(a) adjustment.

All IRC §481(a) adjustments are aggregated in the year of change, for example, where multiple changes of accounting method are made in the same year. When all IRC §481(a) adjustments produce a decrease in taxable income, it is known as a "net negative §481(a) adjustment." Conversely, when all IRC §481(a) adjustments produce an increase in taxable income, it is known as a "net positive §481(a) adjustment."

A net negative §481(a) adjustment, which produces additional deductions for the taxpayer, is taken into account entirely in the year of the change. A net positive §481(a) adjustment, which produces additional income for the taxpayer, is generally taken into account over a period of four years — the year of change and three subsequent years.

When it comes to depreciation, the change from an impermissible method of depreciation to a permissible method of depreciation is an automatic consent change. An automatic consent change is one for which the IRS will automatically grant their consent. A common depreciation scenario occurs in the year property is sold, and the taxpayer (or more appropriately, their tax professional) determines that the taxpayer did not claim all their available depreciation deductions in prior years.

Example of impermissible to permissible depreciation

Natalia sold her residential rental on December 31, 2026. She purchased the property on June 1, 2022, for $800,000 cash, with 80% allocated to the building and 20% to the land. Natalia did not claim depreciation in the prior four years.

The first step is to calculate the depreciation deductions that should have been claimed (the "allowable depreciation") and reduce the basis in the property accordingly.

Depreciation Calculation			
Year	**Depreciable basis**	**Percentage**	**Allowable depreciation**
2022	$640,000	1.970	$12,608
2023	$640,000	3.636	$23,270
2024	$640,000	3.636	$23,270
2025	$640,000	3.636	$23,270
2026	$640,000	3.636	$23,270
Total			**$105,688**

On the 2026 tax return (the year of the sale), Natalia will claim the $105,688 of depreciation on Schedule E, and Form 4797, Sales of Business Property, and Schedule D will report the sale, showing the reduced basis of the property at $694,312 ($800,000 – $105,688).

Note: There may also be prior-year suspended passive losses that will get released in the year of sale.

Practice Pointer

Taxpayers must file Form 3115 in duplicate:

- The original must be attached to the filer's timely filed (including extensions) federal income tax return for the year of the change; and
- A copy of the signed form must be sent to the IRS's Ogden, Utah, processing center. The exact address depends on whether the taxpayer is filing Form 3115 as an automatic or nonautomatic change and whether it is being delivered by mail or private delivery service. Refer to the Form 3115 instructions for the correct address.

The Ogden, Utah, filing can be faxed for nonautomatic change requests. Refer to the Form 3115 instructions for the current fax numbers.

Consequences of failing to obtain IRS consent

For taxpayers that realize they failed to claim available depreciation or amortization and try to fix the issue prospectively by simply starting to claim available depreciation or amortization in the year the error occurred, doing so is a change of accounting method and requires IRS consent. One taxpayer learned this the hard way in a 2025 Tax Court case. (***Conmac Investments, Inc. v. Comm.*** (June 6, 2025) U.S. Ct. of Appeals, Eighth Circuit Case No. 24-1605)

The taxpayer in ***Conmac Investments, Inc.*** was an Arkansas company that owned, leased, and managed farms.

The taxpayer purchased farmland over the course of multiple years from 2004 through 2013. As part of buying the farmland, the taxpayer negotiated with the sellers to receive rights to "base acres," which deal with the right to receive subsidy payments from the U.S. Department of Agriculture based on the number of acres assigned to farmland growing specific crops. (See 7 U.S.C. §8702(2)) A farm with base acres can generate more income than a farm with no base acres.

The taxpayer did not claim depreciation deductions for amortization of its base acres on its federal income tax returns for the years 2004 through 2008. After learning that other farmland buyers allocated part of their farmland purchase price to the value of base acre payments and amortized them, the taxpayer also began amortizing its base acres starting in 2009. The taxpayer did not file Form 3115, Application for Change in Accounting Method, at any time.

The IRS disallowed nearly $250,000 of amortization deductions claimed by the taxpayer for the years at issue because changing from treating the base acre payments as nonamortizable to amortizable was a change in accounting method for which the taxpayer failed to obtain IRS consent.

USING A CORPORATION TO SAVE SELF-EMPLOYMENT TAXES

One of the most significant tax challenges faced by sole proprietors, single member LLCs taxed as sole proprietors, and partners is grappling with paying both income taxes and self-employment taxes. How often does a client, particularly a newly self-employed client, fall behind on their income tax obligations? The answer is: far too often. Consider the following example.

Example of self-employment tax burden

Frank and Olive live in California, are married, and file jointly. Frank is a consultant and runs his business as a sole proprietor, and Olive is a partner in a small law firm. In 2025, they each had $250,000 of net earnings from self-employment and calculated their tax burden as follows:

Frank's net Schedule C income	$250,000
Olive's net partnership income	250,000
Investment income	10,000
Total income	$510,000
One-half of self-employment tax	(28,532)
SEP IRA contributions	(40,000)
SE health insurance	(18,000)
Adjusted gross income	$423,648
QBI deduction (both SSTBs)	(78,394)
Standard deduction	(31,500)
Taxable income	$313,574
Calculated income tax liability	$ 60,952
Self-employment tax	57,062
Additional Medicare tax	1,906
Net investment income tax	380
Total federal tax	$120,300
Total California tax	30,892
Total federal and state income and SE tax burden	$151,192

Potential savings

High-income self-employed taxpayers can save self-employment tax by using a corporate business structure, usually an S corporation. In a corporate business structure, workers must be paid reasonable salaries and wages. The lower a reasonable salary or wage a taxpayer can pay themselves, the greater the savings. This is because Social Security and Medicare taxes are only charged against wages, not against flowthrough income reported on Schedule K-1 (for S corporations).

S corporations are generally preferrable over C corporations because C corporations are subject to income tax at the corporate level and then again on any dividends paid to their shareholders.

Example of potential self-employment tax savings

The facts are the same as the previous example, except that Frank and Olive operate their respective businesses as S corporations. They each have determined that $100,000 is a reasonable salary for themselves, and they take the rest of their net earnings out of their businesses as distributions.

Frank's taxable wages	$100,000
Frank's K-1 income[1]	122,350
Olive's taxable wages	100,000
Olive's K-1 income[1]	122,350
Investment income	10,000
Total income	$454,700
SE health insurance	(18,000)
Adjusted gross income	$436,700
QBI deduction (both SSTBs)	(43,752)
Standard deduction	(31,500)
Taxable income	$361,448
Calculated income tax liability	$ 72,442
Net investment income tax	380
Total federal tax	$ 72,822
Total California tax	32,123
Frank's Social Security and Medicare tax	15,300
Olive's Social Security and Medicare tax	15,300
Total federal and state income and SE tax burden	$135,545

[1] K-1 income is net of $20,000 retirement contribution made through corporation and employer's half of Social Security and Medicare tax on $100,000 taxable wages ($7,650)

[2] The full Social Security and Medicare tax paid on Frank and Olive's wages must be factored into the analysis in order to compare all the same taxes paid in both examples

The annual tax savings achieved by electing corporate tax treatment is $15,647 ($151,192 calculated in the first example, less $135,545 calculated in this second example). Only the federal and state income taxes (totaling $104,945) are reported on the taxpayer's income tax return. Any Social Security and Medicare taxes are paid through regular payroll.

Planning considerations

When performing an analysis of whether a corporate structure makes sense for your client, remember the following:

- The potential tax savings are offset by other additional costs that the taxpayer must also consider, which should be factored into a complete analysis, including:
  - Entity-level state taxes; and
  - Additional compliance costs (including the time and cost of filing corporate income tax returns, payroll processing, and payroll tax returns);
- The tax savings analysis should be prepared over a period of years. The extra time and effort may not seem large when viewed in a single year window, but using the example above, annual savings of over $15,000 when viewed across a 10-year window becomes $150,000 of tax savings over a decade;
- The greater the gap between a client's reasonable salary and the Social Security wage and income base, the greater the tax savings will be. For 2026, the taxable wage base is $184,500;
- Don't overlook that if a client is forced to pay themselves as an employee, the fact that Social Security and Medicare taxes are paid through payroll means that clients that are bad at making their quarterly estimates will have a smaller tax bite at tax time; and
- Don't forget state-specific considerations, such as the ability to use passthrough entity elective tax elections for S corporations and any state taxes that may be imposed against the S corporation.

What about a C corporation?

Most small business owners should still prefer to operate as an S corporation versus a C corporation for two main reasons:

- S corporations avoid the double taxation trap (at least at the federal level);
- S corporation income reported on Schedule K-1 is eligible for the qualified business income deduction under IRC §199A; and
- Flowthrough entities have the ability (in most states) to take advantage of passthrough entity tax elections.

Despite these three key benefits of an S corporation, a small business still might prefer to be classified as a C corporation because:

- Taxpayers that plan to keep most of the business earnings in the business to fund future growth should prefer the flat 21% C corporation tax rate. The low tax rate on earnings helps keep more cash available for growth;
- C corporation stock can be classified as qualified small business stock (QSBS) and provide a very favorable income exclusion when the stock is sold, provided other QSBS requirements are met;
- Some clients just can't grasp the flowthrough concept and can only think in terms of cash flow. Tax planning only works if a client understands and can implement the advice given. Some clients are simply better off receiving a paycheck from their business and reporting taxable dividends when paid; and
- C corporations offer significant advantages over S corporations (especially for a greater than 2% shareholder) when using an IRC §105 medical reimbursement plan. These plans allow the business to reimburse employees (and often their family members) for qualified medical expenses — such as deductibles, copays, coinsurance, prescriptions, dental, vision, and sometimes over-the-counter items — on a tax-free basis to the recipient while providing a deductible business expense to the employer.

PRACTICE AND PROCEDURE

IRS CONTINUES EXPANDING BUSINESS TAX ACCOUNT SERVICES

The IRS now allows partnerships, federal, state, and local governments, Indian tribal governments, and tax-exempt organizations to use the Business Tax Account (BTA) self-service features.

The BTA is a secure, centralized platform that allows eligible users to manage their federal tax responsibilities online. Through BTA, users and designated officials can:

- View tax balances, make payments, and see payment history;
- Download select digital notices;
- View eligible transcripts, such as payroll and income;
- Request a tax compliance check; and
- See the business name and address on file with the IRS.

For the entities listed above, the designated officials are:

- **Partnerships:** A general partner or managing member of an LLC;
- **Governmental entities:** An elected official, the Director of Taxation, or an appointed official;
- **Tax-exempt organizations:** An officer of the organization, a board chairperson, or a trustee of a trust;
- **Indian tribal government:** President, vice president, treasurer, or secretary, CEO, CFO, COO, tribal leader, chairperson, or governor.

For more information or to set up a Business Tax Account, visit:

Website
www.irs.gov/businessaccount

SETTING UP IRS PAYMENT PLANS

Taxpayers who can't immediately pay the amount of tax they owe may be eligible to enter into an installment agreement with the IRS. For tax debts under $50,000, taxpayers generally are not required to submit financial records to the IRS to set up an installment agreement, although the taxpayer must agree to provide updated financial information when requested. The threshold is decreased to $25,000 for businesses that owe trust fund taxes.

Most individuals can set up a payment plan online, including an installment agreement, using the IRS's Online Payment Agreement application at:

Website
www.irs.gov/payments/online-payment-agreement-application

Note: Business taxpayers cannot apply for a payment plan online, at least not yet.

When a taxpayer completes the online installment agreement application, they receive immediate notification of whether the IRS has approved their payment plan.

Taxpayers may also enter into installment agreements in person, by phone, or mail using Form 9465, Installment Agreement Request. Taxpayers who owe more than $50,000 must submit Form 9465 and cannot apply online, but taxpayers who owe less than $100,000 can apply online for a short-term payment plan (180 days or less). Form 9465 can be filed with the return or as a stand-alone form if the return has already been filed.

The IRS will generally let the taxpayer know within 30 days of receiving the installment agreement request whether it is approved or denied. However, if the request is filed after March 31, the IRS may take longer than 30 days to respond. (Instructions to Form 9465)

When a taxpayer requests an installment agreement, the IRS is generally prohibited from levying, and the collection period is suspended while the installment agreement is pending.

Installment agreement fees

Taxpayers can reduce the applicable set-up fee if they apply online and/or pay through direct debit. The fees charged are as follows:

Installment Agreement Fees	
Payment method	**Applicable set-up fee**
Check, money order, or credit card	$178 if applying by phone, mail, or in-person $69 if applying online $43 set-up fee for low-income taxpayers (may be reimbursed)
Direct debit (automatic monthly payments from the taxpayer's checking account)	$107 if applying by phone, mail, or in-person $22 if applying online $0 set-up fee for low-income taxpayers
Payroll deduction installment agreement (IRC §6159(c); Treas. Regs. §301.6159-1(c)(1)(iii)(A))	$178 (use Form 2159, Payroll Deduction Agreement)

A low-income taxpayer is a taxpayer with adjusted gross income, for the most recent tax year available, at or below 250% of the federal poverty guidelines, which can be found at:

Website
https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines

There is also a fee to revise an agreement or reinstate an installment agreement after default. The fee is:

- $10 if the revision is made online; or
- $89 if the revision is made by phone, e-mail, or in person ($43 for low-income taxpayers, which may be reimbursed).

Guaranteed installment agreements

Taxpayers with liabilities of $10,000 or less (excluding interest and penalties) are eligible for a guaranteed installment agreement if they meet the following conditions:

- Full payment is made within three years;
- The taxpayer agrees to comply with all Internal Revenue Code provisions while the agreement is in effect;
- The taxpayer is financially unable to pay the liability in full; and
- During any of the preceding five taxable years, the taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has:
    - Filed all required tax returns;
    - Paid all tax required to be shown on any income tax return; and
    - Not entered into another installment agreement under IRC §6159 for payment of any income tax.

  (IRM 5.14.5.3)

These arrangements are referred to as "guaranteed installment agreements" because the IRS must enter into an installment agreement under the above rules if the agreement provides for full payment. The IRS may enter into partial payment installment agreements at their discretion.

Liability is less than $50,000

The IRS may accept streamlined installment agreements, which are agreements that do not require financial statements to be submitted or a lien to be filed. (IRS Tax Topics No. 202, Tax Payment Options, available at: www.irs.gov/taxtopics/tc202)

The aggregate unpaid balance of assessments (including assessed penalties and interest) must be $50,000 or less. If preassessed taxes are included, the preassessed liability plus the unpaid balance of assessments must be $50,000 or less.

Full payment must be made within 72 months, or the agreement must be fully paid prior to expiration of the collection statute of limitations (generally 10 years from the date the tax was assessed), whichever comes first.

Taxpayers may pay down their balance to $50,000 to take advantage of this option.

Liability is over $50,000

Generally, if the liability is greater than $50,000, the taxpayer must submit a Collection Information Statement (Form 433-A, 433-B, or 433-F) along with a paper Form 9465 to provide information on bank accounts, real estate holdings and other assets, credit card debt, monthly expenses, employment information, etc. (IRS Tax Topics No. 202, Tax Payment Options)

Short-term payment plan

Taxpayers who can pay the full amount owed within 180 days can arrange to pay without incurring any installment payment fees. (www.irs.gov/payments/payment-plans-installment-agreements) However, interest and any applicable penalties continue to accrue until the liability is paid in full. Taxpayers can set up a short-term payment plan using the Online Payment Agreement system in the link above, or by calling the IRS at (800) 829-1040.

Payments

Installment payments must be made by direct debit for balances over:

- $25,000 for individuals; and
- $10,000 for businesses.

IRS LAUNCHES DEBT HELP TOOL

The IRS announced a new online Tax Debt Help tool to guide taxpayers to potential payment and resolution options available through the IRS and to identify next steps based on their situation. (IR-2026-53) The new self-help tool is designed so that taxpayers don't need specialized knowledge to resolve their own tax debts and to reduce telephone and in-person taxpayer visits.

The Tax Debt Help tool walks users through a series of straightforward questions about their financial situation and tax debt. Based on taxpayer responses, the tool will guide them to potential payment and resolution options, including payment plans, temporary delay of collections, or an offer in compromise for those who qualify.

To protect taxpayer privacy, the tool does not require taxpayers to enter personally identifiable information. Taxpayers can explore available options without providing details such as Social Security numbers, names, or addresses.

Taxpayers can access the tool at:

Website
www.irs.gov/payments/get-help-with-tax-debt

IRS UNVEILS NEW TAX PROFESSIONAL MANAGEMENT OFFICE

The Return Preparer Office (RPO) and the Office of Professional Responsibility (OPR) will be operating under a new Tax Professional Management Office, effective June 28, 2026. (e-News for Tax Professionals, Issue No. 2026-23) According to the IRS, this is being done to simplify and modernize how they interact with the tax professional community.

This reorganization will not change the distinction between credentialed tax professionals and uncredentialed tax preparers. The RPO and OPR will continue to operate independently, and the merger will have no impact on how the IRS oversees the tax professional community.

The RPO oversees preparer tax identification numbers (PTINs), enrollment programs, IRS-approved continuing education providers, and the Annual Filing Season Program for tax return preparers.

The OPR oversees those professionals who practice before the IRS, such as attorneys, CPAs, and Enrolled Agents, to ensure they are in compliance with Treasury Department Circular No. 230, Regulations Governing Practice before the IRS.

We do not believe that this merger will impact the Tax Practitioner Hotline because this is currently overseen by the Taxpayer Services Unit.

We will provide additional information concerning this restructuring as it becomes available.

DIRECT DEPOSIT OF FORM 941 REFUND IS NOW AVAILABLE

Following Executive Order 14247, Modernizing Payments To and From America's Bank Account, which mandates the transition to electronic payments for all federal disbursements, the IRS will now issue Form 941, Employer's Quarterly Federal Tax Return, tax refunds by direct deposit. (Instructions to Form 941) Instead of a direct deposit refund, taxpayers can still choose to have a Form 941 overpayment applied to their next return by checking the appropriate box on line 15b.

In addition, the form instructions note that taxpayers can now access Form 941 return transcripts for tax years 2023 and later using IRS Business Tax Account.

YOUR PRACTICE ISSUES

HEAD OF HOUSEHOLD

Question

My widowed client has a 26-year-old disabled daughter. My client provides more than 50% of her support, and she lives with him 100% of the time. The disabled daughter works part-time and earns about $12,000 a year. Does the daughter's income prevent my client from claiming her as a dependent and using head of household filing status?

Answer

Yes. We believe that your client can continue claiming his daughter as a dependent and continue using the head of household filing status based on the information provided.

Under IRC §152(a), a dependent is either a qualifying child or a qualifying relative. A qualifying child must meet several tests:

- Relationship test;
- Principal residence test;
- Age test;
- Support test; and
- Disqualifying joint return test.

To summarize the tests as they apply to your client's situation:

- The relationship test is met because a daughter satisfies this test;
- The principal residence test is met because your client and his daughter maintain the same place of abode for more than half the year;
- The age test is met because even though she is age 26, IRC §152(c)(3)(B) treats the age test as having been met if the person at issue (the daughter) is permanently and totally disabled at any time during the year;
- The support test is met because you're the daughter does not provide more than one-half of her own support and because she is treated as meeting the age test, the income test that applies to a qualifying relative is irrelevant; and
- (We assume) based on your facts, that your daughter is not filing a joint return with a spouse, so the disqualifying joint return test is met.

The issue that seems to concern you is whether the daughter's limited work means that she is no longer classified as permanently and totally disabled. In order to be classified as permanently and

totally disabled, the daughter must not be able to engage in any substantial gainful activity because of a medically determinable physical or mental impairment expected to result in death or to last at least 12 continuous months. This is a factual inquiry and must be evaluated on a case-by-case basis. IRS Publication 524 states:

"Full-time work (or part-time work done at your employer's convenience) in a competitive work situation for at least the minimum wage conclusively shows that you are able to engage in substantial gainful activity."

You must evaluate your client's daughter's disability in this light to determine whether she is permanently and totally disabled for income tax purposes.

IRS IDENTITY VERIFICATION LETTERS

Question

A few of my clients have received identity verification letters from the IRS asking them to verify their identity before the IRS will process the returns that we filed. Is the IRS sending out more of these letters and what's the best way to approach them?

Answer

Yes. The IRS has sent out many more identity verification letters over the last few years than ever before. The most recent data available by the IRS indicates that it suspended processing over 1.9 million tax returns pending identity verification for the 2024 filing season. We believe at least the same amount of letters have gone out for the 2025 and 2026 filing seasons. (www.taxpayeradvocate.irs.gov/news/tax-tips/identity-verification-and-your-tax-return/2026/03/)

The letters are generally Letter 5071C, Letter 4883C, Letter 5447C, or Letter 5747C. Each letter is largely the same with minor variations among them.

Even with Form 2848, Power of Attorney and Declaration of Representative, tax professionals cannot verify a client's identity for them. The fastest and easiest way for a client to verify their identity is to verify it online through their own IRS account online when available. Otherwise, having your client call the IRS at the phone number on the notice is the easiest and fastest way to verify their identity.

In no circumstance should your client ignore the notice. The IRS will not process your client's return until their identity has been verified.

GLOSSARY

Administrative adjustment request (AAR): a mechanism under IRC §6227 by which a partnership can correct errors on a partnership return for a prior year

Alternative depreciation system (ADS): required by the IRS to be used in certain circumstances to calculate depreciation on depreciable business assets. ADS typically will increase the number of years for property depreciation, which will decrease the annual deduction. The longer recovery period usually better reflects the asset's income streams

Bonus depreciation: for assets whose original use commences with the taxpayer, an added amount of depreciation that can be deducted, always in the first year that the depreciable item is placed in service. OBBBA extends 100% bonus depreciation permanently for property acquired after January 19, 2025. California has never conformed to bonus depreciation

Capitalization rate: a.k.a. cap rate, a method most commonly used to evaluate the rate of return on a residential real estate rental, expressed as a percentage: net operating income (NOI) ÷ acquisition cost = cap rate

Circular 230: contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other individuals who represent taxpayers before the IRS. The rules apply to federal tax practice standards overseen by the Office of Professional Responsibility

Constructive sale rule: under IRC §1259, the rule expands the types of transactions that can be considered sales that would be subject to a capital gains tax. The purpose is to prevent investors from locking in investment gains without paying capital gains

Depreciation: an annual allowance that reflects the reduction in the value of an asset due to wear and tear, deterioration, or obsolescence, resulting in an income tax deduction in order to recover the costs or other basis of specific property

Digital asset: per the IRS, any digital representation of value recorded on a cryptographically secured distributed ledger or similar technology

Employee Retention Credit (ERC): a program that provided employers with refundable tax credits against their quarterly payroll taxes. Under OBBBA, no ERC claim is allowed and no refunds will be processed after July 4, 2025, for claims filed after January 31, 2024, related to wages paid after June 30, 2021. California does not conform to the federal ERC. The refund is not included in taxable income for California purposes, and there is no adjustment for the wage expense claimed

FIFO: first in, first out; a valuation method whereby the assets acquired first are sold first

Generation-skipping tax (GST): a.k.a. generation-skipping transfer tax under IRC §2601, a federal tax on a gift or inheritance that prevents the donor from avoiding estate taxes by intentionally skipping children and leaving their assets to their grandchildren

Grantor trust: a trust where the grantor effectively retains control over the assets in the trust, which will cause the existence of the trust to be ignored for income tax purposes. Also known as a living trust

IRC §280E: passed by Congress to limit and deter trafficking in controlled substances. Prohibits all deductions for amounts paid or incurred during the taxable year in carrying on a trade or business if such trade or business consists of trafficking in controlled substances

IRC §481(a) adjustment: computed as of the beginning of the taxable year of accounting method change. The adjustment reflects the cumulative difference between the present and the proposed methods and is used to prevent amounts of income or expense from being duplicated or omitted when the change is made. All IRC §481(a) adjustments are aggregated in the year of change

Like-kind exchange: a transaction or series of transactions that allows for the reciprocal transfer of property without generating a current tax liability when the first asset is sold

MACRS: the Modified Accelerated Cost Recovery System, a method of depreciation whereby taxpayers can recover basis in tangible property over an identified life through annual tax deductions, allowing for larger deductions in the early years of an asset's life and lower deductions in later years. MACRS replaced the accelerated cost recovery system (ACRS) for property placed in service post 1986

Mark-to-market: measures the fair value of accounts that vary over time. The intent is to provide an accurate assessment of a company's current financial situation. At the close of the fiscal year, the company's financial statements must represent the current value of its accounts, so companies must make adjustments to reflect, for example, defaulted loans, discounts to customers, etc.

Mining: a validation of transactions in cryptocurrency networks. Successful miners obtain new cryptocurrency as a reward

Net investment income tax (NIIT): a 3.8% Medicare surtax on certain net investment income of individuals, estates, and trusts that have income above a statutory threshold amount. A child's income is included in the parent's computation of NIIT

Qualified business income (QBI): as pertains to IRC §199A, the net amount of qualified items of income, gain, deduction, and loss for a taxpayer's qualified trade or business QOF

Qualified Opportunity Fund: an investment vehicle organized as a corporation or partnership that holds a minimum of 90% of its assets in Qualified Opportunity Zone property

Qualified Opportunity Zone: a population census tract that is a low-income community that is designated by the IRS as a Qualified Opportunity Zone

Qualified Rural Opportunity Fund: new under OBBBA; allows for reduced testing requirements and increased benefits for rural areas. QROFs are eligible for a basis step-up of 30% instead of the customary 10% for investments held for at least five years

Qualified small business stock (QSBS): generally stock in any C corporation whose assets do not exceed $50 million and which was originally issued after the enactment of the Revenue Reconciliation Act of 1993, and was acquired by the taxpayer at its original issue in exchange for money or as compensation for services. A qualified small business must have at least 80% of its assets utilized in the active conduct of a qualified trade or business

Saver's Match: enacted under the SECURE 2.0 Act; designed to replace the current nonrefundable Saver's Credit beginning in the 2027 tax year. Instead of a tax credit that reduces liability, the match will deposit up to $1,000 directly into an eligible individual retirement account. The matching is available to eligible taxpayers as a 50% match on the first $2,000 contributed to an eligible retirement account, subject to modified AGI phaseouts, and is not counted toward annual contribution limits

Schedule I drug: drug or other substance with a high potential for abuse that currently has no accepted medical use in the U.S. (e.g., heroin, LSD, marijuana (currently))

Schedule II drug: drug or other substance with a high potential for abuse that has current accepted medical use in the U.S. with severe restrictions (e.g., oxycodone, fentanyl, methadone)

Schedule III drug: drug or other substance with the potential for abuse, but less than that for substances under Schedule I or II. The drug or substance is currently accepted for medical use in the U.S. (e.g., testosterone, products with less than 90 milligrams of codeine, anabolic steroids)

Specified service trade or business (SSTB): for purposes of IRC §199A, any trade or business described in section 1202(e)(3)(A) (not including engineering or architecture), or any business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities. Qualified trades or businesses for the §199A deduction do not include service businesses unless taxable income is below the top of the phaseout range

Stablecoins: cryptocurrencies that attempt to peg their market value to an external reference such as the U.S. dollar or gold. They are designed to reduce volatility relative to unpegged cryptocurrencies such as Bitcoin

Staking: the buying and holding of certain cryptocurrencies with the goal of earning rewards

Tax Debt Help: new online IRS tool to help taxpayers resolve their own tax debts and reduce telephone and in-person taxpayer visits

Tentative minimum tax (TMT): the difference between the taxpayer's alternative minimum taxable income and their AMT exemption, which is taxed using the relevant rate schedule

Trump Account: created by OBBBA as a new type of IRA, applicable beginning after December 31, 2025. Such accounts cannot be a Roth IRA. They can only be created by the Secretary of the Treasury or be a U.S. account for the exclusive benefit of a child under age 18 that is funded through a qualified rollover

Wash sale rule: a wash sale occurs when a person sells or trades a security at a loss and within 30 days buys a "substantially identical" security or stock. The rule prevents the person from claiming a loss on the sale

A. Discussion Questions

1. How should tax professionals approach proposed legislation when advising clients?
2. What planning issues should practitioners consider for clients who actively buy, sell, or stake digital assets?
3. How can tax professionals add value when advising clients considering rental real estate?
4. What factors should be evaluated before withdrawing a Section 163(j) real-property trade or business election?
5. What should practitioners learn from the continuing disputes involving the Employee Retention Credit?
6. When does an S corporation provide a meaningful planning opportunity for a self-employed client?

B. Suggested Answers to Discussion Questions

1. How should tax professionals approach proposed legislation when advising clients?

Tax professionals should clearly distinguish between enacted law, administrative guidance, judicial authority, and proposed legislation. The webinar illustrates this principle by beginning with several bills moving through Congress and emphasizing that none should yet be treated as law. That distinction is critical because clients may hear about proposed deductions, exclusions, or procedural changes in the media and assume they are already available.

A useful approach is to discuss proposed legislation as a planning variable rather than an established rule. Practitioners can explain what a proposal would do, identify clients who could be affected, and create contingency plans without preparing current returns as though the proposal were effective. For example, proposed digital-asset rules could change the treatment of wash sales or permit additional elections. A practitioner might therefore tell an active cryptocurrency investor that the rules should be monitored while continuing to apply existing law until legislation is enacted.

Professionals should also avoid allowing anticipated legislation to drive irreversible transactions unless the client understands the uncertainty. When a proposal is particularly relevant, scenario modeling can be useful: one projection under current law and another if the proposal takes effect. This approach informs clients without overstating legislative certainty and positions the practitioner to respond promptly if the provision becomes law.

2. What planning issues should practitioners consider for clients who actively buy, sell, or stake digital assets?

Digital assets require careful attention to income recognition, basis identification, documentation, and potential legislative changes. The webinar first addresses staking rewards, explaining that restrictions on an underlying asset do not necessarily postpone taxation when a taxpayer receives rewards that can be sold or otherwise controlled. A practitioner should therefore determine when the client obtained dominion over the reward and ensure appropriate income recognition and basis records.

Lot identification is another important area. Because taxpayers may acquire the same digital asset at many different prices, the particular unit treated as sold can materially change the reported gain or loss. The temporary relief discussed in the program allows taxpayers to document specific identification in their own books and records when platform functionality is inadequate. That makes contemporaneous recordkeeping especially important.

Practitioners should also monitor potential changes to rules traditionally associated with securities. The webinar notes proposed legislation that could subject digital assets to wash-sale restrictions and potentially permit mark-to-market elections for qualifying traders. Those changes could significantly affect year-end loss harvesting and trading strategies.

The broader lesson is that cryptocurrency should not be treated as a single annual reporting item. Active investors need transaction-level records, basis tracking, documentation of lot selections, and ongoing monitoring of legislative and IRS developments.

3. How can tax professionals add value when advising clients considering rental real estate?

Tax professionals are well positioned to help clients evaluate rental real estate because they routinely see the interaction among financing, operating costs, depreciation, taxes, and investment returns. The webinar suggests beginning with the market rather than immediately evaluating a particular property. Relevant factors include expected rents, acquisition prices, historical appreciation, population trends, employment conditions, property taxes, schools, crime rates, and local rental restrictions.

After selecting a market and investment strategy, the practitioner can help analyze individual properties. One useful metric is the capitalization rate, calculated as net operating income divided by acquisition cost. The webinar describes a broad range of approximately 4% to 10%, while emphasizing that the appropriate rate depends on the nature of the property and expected sources of return. Higher-quality properties in stronger appreciation markets may reasonably produce less current income.

Practitioners should also distinguish cash flow from taxable income. Depreciation and mortgage-interest deductions may produce a tax loss even when a rental generates positive economic cash flow. Conversely, slightly negative early cash flow does not automatically make a property unattractive if the investor has adequate reserves and reasonably anticipates increasing rents or appreciation.

The advisory role therefore extends beyond tax return preparation. By integrating tax and financial data, the practitioner can help clients make better-informed acquisition decisions.

4. What factors should be evaluated before withdrawing a Section 163(j) real-property trade or business election?

The decision should be based on a multi-year comparison rather than an assumption that withdrawal is automatically beneficial. According to the webinar, Rev. Proc. 2026-17 provides transitional relief allowing certain taxpayers that made qualifying elections in 2022 through 2024 to withdraw those elections within the applicable deadline. The potential benefit results from changes to adjusted taxable income and the renewed importance of bonus depreciation.

A real-property trade or business that elected out of the Section 163(j) business-interest limitation generally accepted a trade-off: greater ability to deduct interest but required use of ADS for specified property, which may prevent bonus depreciation on affected assets. Under the changed ATI calculation discussed in the presentation, depreciation, amortization, and depletion are added back, potentially allowing more businesses to deduct their interest even without the election.

The practitioner should therefore model both alternatives. Factors include current debt levels, projected interest expense, planned capital improvements, bonus-depreciation opportunities, future acquisitions, and the likelihood that the Section 163(j) limitation will apply in later years.

Administrative consequences also matter. Withdrawal may require amended returns, revised partnership capital accounts, amended Schedules K-1, and amended owner returns. A tax benefit should therefore be large enough to justify the compliance burden. The webinar appropriately emphasizes evaluating both today's result and the projected position several years into the future.

5. What should practitioners learn from the continuing disputes involving the Employee Retention Credit?

The Employee Retention Credit demonstrates the importance of documentation, limitation periods, and jurisdiction-specific legal analysis. The webinar notes that legitimate claims have sometimes been delayed or disallowed amid widespread ERC fraud concerns and IRS processing backlogs. For practitioners, simply filing a response to a disallowance is therefore not enough; the age and procedural status of the claim must be actively monitored.

The program explains that a taxpayer generally faces a two-year period following an IRS refund disallowance. If that period expires without appropriate action, the taxpayer may lose the administrative path to a refund and be forced to pursue litigation. Relief involving Form 907 and the process referenced through CP320B can potentially extend the relevant period when both parties agree. Practitioners should identify affected clients before they reach the final months of that window.

The substantive qualification issue can be equally complex. The webinar discusses differing judicial approaches to whether governmental orders caused a partial suspension. One court applied a broader "but for" approach, while another required a more direct showing that the government order—not merely the pandemic—caused the operational disruption.

For clients with significant disputed credits, practitioners should preserve contemporaneous evidence, review the governing legal standard, monitor deadlines, and assess whether the economic value of the claim justifies potential litigation.

6. When does an S corporation provide a meaningful planning opportunity for a self-employed client?

An S corporation can provide a significant planning opportunity when a self-employed client consistently earns substantially more than a defensible reasonable salary for the services the owner performs. In a sole proprietorship or certain partnership structures, business earnings may be subject to self-employment tax. With an S corporation, the shareholder-employee receives wages subject to payroll taxes, while qualifying remaining pass-through income generally is not subject to self-employment tax.

The webinar illustrates the concept with two high-income taxpayers who each earned $250,000 from their businesses. After restructuring as S corporations and paying each owner a $100,000 reasonable salary, the example produced meaningful overall tax savings.

However, the gross payroll-tax savings should never be the only consideration. An S corporation introduces entity-formation costs, payroll administration, separate income-tax returns, bookkeeping requirements, state-level taxes and fees, and additional professional-service costs. A state such as California may impose entity-level costs that reduce the expected benefit.

Reasonable compensation is also essential. A taxpayer cannot simply assign an artificially low salary to maximize distributions. The compensation should reflect the owner's duties, experience, time devoted to the business, and market compensation for comparable services.

Accordingly, practitioners should perform a multi-year analysis comparing anticipated tax savings with compliance costs and business realities before recommending an S corporation.

PART 2. LIQUIDATING DISTRIBUTIONS IN A CORPORATION OR PARTNERSHIP

Liquidating Distributions in a Corporation or Partnership

Liquidating a business can create tax consequences that differ substantially depending on whether the entity is a corporation or partnership and on the types of assets being distributed. In this program, instructor Ian Redpath examines the federal income tax rules governing liquidating distributions, including corporate gain and loss recognition, shareholder treatment, loss limitations, plans of liquidation, and selected subsidiary liquidation rules. The course also addresses partnership distributions, basis ordering, disproportionate distributions, Section 751 hot assets, and payments to retiring partners. Through practical examples, participants will learn to recognize tax issues that can materially affect the timing, character, and amount of taxable income.

Mr. Ian Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. Today we're going to talk about liquidating distributions. Now we're going to talk about liquidating distributions in both corporations and partnerships.

Now, when we look at a corporation, you might be thinking, well, what about an S-corp? Well, an S-corp is just that, it's a type of corporation. And the rules in subchapter S simply say, all of the rules of subchapter C apply unless otherwise provided. Well, when it comes to liquidations, nothing else applies. So, therefore, the general rules of corporate liquidations apply.

Now, the same thing applies for contributions to capital, redemptions, reorganizations. So the rules are significantly similar. Now, what's the difference is what we talk about at the corporate level is going to flow through, be picked up by the shareholders on their tax return. So when we talk about the tax effect on the shareholder, remember that they're going to be increasing their basis for the income that they pick up on the liquidation. But the rules as far as what gain loss recognition are the same.

It's just, again, it flows through, basis is increased, and so when we talk about the effect on the shareholder, keep that in mind that their basis in an S-corp is going to be increased. But the rules, the rules are the same.

So let's start off and talk about corporations. So the corporations, when we have a liquidating distribution the corporation, general rule, is that gain or loss is recognized. So essentially, this follows the general concept of corporate taxation: that there are two levels of tax, double taxation.

And that's the case on a liquidation. So gain or loss is recognized by the corporation on a distribution in complete liquidation. So, when it liquidates out, it is going to simply essentially go out of business. If it distributes its assets, gain or loss is going to be recognized.

Now, there's two ways that this could have been done. They could have sold assets, and we'll talk about why, where that may be an advantage in a minute, but they could have sold assets. When they sell the assets, well, obviously, they're going to recognize gain or loss at the corporate level. And then they distribute out the cash, less the tax that they paid.

Now, when they distribute out the cash, obviously the shareholders are going to have to pay tax on the cash that they got or less their basis. Well, what happens if they distribute property? They just distribute out the property rather than selling it. It's going to have the exact same effect.

So it's going to be treated as if they sold it for fair market value. So there's going to be gain or loss recognized at the corporate level. Now, with losses, we have some potential issues that we always have to look at because while you will always recognize the gains at the corporate level, you may not always recognize losses on the distribution.

Wait, you got to recognize gains and not necessarily recognize the loss? Yeah. Without proper planning, what could happen is you could end up having a liquidating distribution where the corporation's going to recognize gains and not have losses to offset it.

In theory, they could have, in essence, a loss on the liquidation and still end up having to pay tax on the assets that have a gain because there are limitations on the ability of the corporation to take a loss on a liquidating distribution.

So the general rule losses can be limited or disallowed, generally disallowed, if property distributed to a related party or property that is distributed has built-in losses. Now, the a subsidiary liquidation, and we'll talk about that, minority shareholders in a subsidiary liquidation are going to recognize gain or losses. and so it's going to be treated as any other type of liquidation.

So, again, property is treated as if it's sold for its fair market value resulting in a gain or loss at the corporate level. So, what are these limitations that we just mentioned? So, the limitations: losses are disallowed on liquidating distributions to related parties. There's the key to related parties.

What you don't want to do is distribute out property that has a loss to a related party. Now, this is where I mentioned earlier that one of the things you may want to do is make sure that you sell. So sell the asset that has a loss. If you sell it and distribute out the cash, you're going to be able to recognize the loss at the corporate level. And that loss then can offset any gains.

So, if in fact you have lost property, you either make sure that you distribute it to unrelated parties, or that you sell it and then distribute the cash so you can recognize the loss at the corporate level on the final return, on that liquidating return.

Now, the losses will be limited on distributions to related parties if the distribution is not prorata. Now, in this case, prorata does not mean that you're getting your 20%, your 30%, your 50%, your 60%, whatever it is, your 70. What it means is that you're getting the shareholders receive their proportionate share of each asset. That's highly unusual.

Most people don't want to say, well, we've got this real estate, so now we're all going to own an interest in the real estate. We're all going to own an interest in the building. We're all going to own an interest in the cars. I mean, you know, normally that's not how you would distribute out in liquidation, right? You take this, you take that, you get the cash, the receivables, I'm going to take the building, that's normally how you would end up with a liquidating distribution or the property is disqualified property.

Now, disqualified property, what does that mean? It is any property acquired by the corporation in a 351 transaction. And I'm going to expand that to say a 351 transaction or a tax-free exchange during the five-year period ending on the distribution. So you go to the distribution and you look back and you go back five years.

And if that property was contributed to capital and it was a non-taxable transaction, then that loss on that property, that property is disqualified. Now, the interesting thing about this particular provision is it doesn't matter what the property was valued at when it was contributed.

If the property, even if the property's fair market value was significantly greater than its basis, so there was no built-in loss on the date on the time that it was contributed, if at the time it's distributed, it has a loss that loss is going to be disallowed. So it becomes irrelevant what the intro what the value was at the time of the contribution.

So again, choosing the right properties to distribute to which shareholders, and determining to which shareholders are we going to not just distribute, but take this, we're going to sell it at the corporate level.

In addition to this, there is a limitation when you have property that is when it's in what's called an anti-stuffing rule, but property that has a built-in loss. And what this is, is that property is put in. It has a built-in loss already. There's already a loss in it.

The purpose is tax avoidance. In what sense? You're putting this in to offset the gains on the liquidation. I've got all, I've got property out here that has losses. I'm going to liquidate the corporation so I'm going to put that loss property into the corporation and then liquidate the corporation so I can use the loss to offset gains on the liquidation.

The IRS can come in and go, wait a second, you stuffed your company with loss property. Now, here's where it does matter because it looks at when you put it in, did it have a loss? And so, to the extent that it had a built-in loss at the time it was contributed, that loss will not be allowed.

And what the IRS says is anything that's contributed within two years of adoption of the plan is considered to be, presumed to be for the purpose of tax avoidance. And so, you have anything that was put in, you look at the at the situation of your client, if they had something that was put in within two years, and at the time it was put in was anti-stuffing, in other words, it's had a a basis, and that doesn't matter who it's distributed to.

Okay, that's just a general rule that you can't stuff regardless of who you distribute it to. So that's a very broad situation. Now, if you look at the adoption of a plan, why is the plan so important?

If you've noticed, you're basically not paying attention to E&P. So, we know the general rule, okay? The general rule of section 301 says that to the extent of a dividend, distributions are ordinary income. Thereafter, they are return of capital and capital gain.

And so we have to look at the definition, and this is in section 316 of the code. The definition of a dividend is a distribution from the earnings and profits of the corporation, the most recent, the current year, first, and then the accumulated E&P to the inception, going back to the inception of the corporation, or this wouldn't really apply February, 28th of 1913. You'd have to have a pretty old corporation.

But any distribution is a dividend. That's why we follow the rules for redemptions. So, the general rules under section 302 of the code for redemptions, we follow the redemption rules because if we have E&P, how can we get sale treatment?

Well, under the limited rules, generally found in section 302, you can end up getting sale treatment even though you have earnings and profits, and it would normally be a dividend.

So why is this important? Because the IRS can come in and say, any distribution you made, if you didn't have the plan any distribution if you had E&P as a dividend.

So, you want to come in and say, no, no, no, these distributions aren't dividends. These distributions are distributions in liquidation. Therefore, E&P isn't important. They are distributed pursuant to a plan of liquidation. So, it's important that you have a plan. The plan should be written in the corporate record books, the government can ask for your plan.

The plan of liquidation sets the date and says all of these distributions after this are in liquidation. Now, the general rule is you're going to have to liquidate within a three-year period. But you notice that this gives you a significant period of time in which to be winding up the company and making distributions that aren't affected by dividends because they are considered to be liquidating distributions.

So now the general rule gain or loss is recognized on the receipt of property by the shareholder their basis in the stock. Now, this is generally going to be capital gain.

Basis in the assets received, you look at the fair market value on the date of the distribution. Now there is a special rule, it's called a 12-month liquidation. You have a plan of liquidation and you liquidate within that 12 months.

Now, if you think of it this way: if you have sold any assets on an installment basis, that installment note when it's distributed, has to be fair market valued, and that becomes the value of the note when it's distributed and gain will be recognized at the time of the distribution.

But if you have a 12-month liquidation, you're going to be able to treat any sales of assets by the corporation within that twelve-month period. Plan 12 months must have must be completely liquidated. Any of those distribution, you can then treat the payments on those as payments for your stock, and in essence get installment treatment on your gain on the sale of your stock, that deemed sale, that second level of tax.

So the corporation was going to recognize all the gain on the distribution, but you know you're going to treat this as if this was for your stock so this gives you a a a real advantage what you're going to do is you are going to allocate a portion of your basis allocate a portion of your basis to the note and then just apply the installment treatment to it; just the general rules of an installment sale.

So, this is a this is an advantage. One of the things it generally doesn't apply to is the sale of inventory. However, there's an exception to that. A bulk sale of inventory will apply. What's a bulk sale? Selling essentially all of your inventory at one time to one seller. And that may very well be the case if the company's liquidating that they sell all of their assets to one seller at one particular time.

So that's the general rules related to a liquidation. However, we also have a, what is a partial liquidation. Now, this used to be its own code provision under the liquidation rules. Now it's under the redemption rules. It's called a 302. Remember, I said that's the basic rules we look at for redemptions.

A 302(b)(4), why "b", that's the sub chapter of 302(b)(4). And this provides potential of a company. Reducing, and it's a genuine contraction of business at the corporate level. With redemptions, we almost always look at redemptions and say, what we're looking at for a redemption is we're looking at the corporation, not the corporation, but the corporate stock, the shareholder is reducing their stock ownership.

That's what's why it's a redemption. It's given sale treatment. You're selling shares back to the corporation. But in a 302(b)(4), you're getting a distribution because there's a contraction at the corporate level. So what could this be? This could be the type of situation where a company, let's say that they have two trades or businesses.

So you have to have at least two trades or businesses that have been engaged in for at least five years, not necessarily by you. But you can't have obtained it in a taxable transaction within the last five years.

What this means is that you can then, you have two businesses: buggy whips and tennis rackets. You know, there's not a not a great business in buggy whips, but you've got a long-term name and you've been doing it. You've got this factory that's been around for a hundred and some years. It burns down. And you go, you know what?

The company says it's not worth making buggy whips anymore. We don't want to rebuild. We're going to collect the insurance and we're going to distribute that out to our shareholders.

Now, it doesn't apply to corporate shareholders, it applies only to non-corporate shareholders. So, a non-corporate shareholder in that circumstance, they had two businesses. They operated both actively for five years. One went away, one stays. Because of the contraction of business, that distribution is going to be considered for sale treatment, it's going to be a partial liquidation of the company.

And so even though the company may have E&P, they're going to be able to avoid dividend treatment for those non-corporate shareholders. Now, another example, it could very well be that the company has decided that it's going to quit a genuine line of business. It's been selling many different things, but one line of business that it's been in is jewelry.

Well, it's decided there's no, it's not a valid market for them anymore. And so they liquidate all of their inventory in the jewelry business, and they go out of that business and they distribute the proceeds to non-corporate shareholders. Well that's another example where 302(b)(4) could be used.

Now remember that the liquidating corporation must file Form 966, and that's filed within 30 days of the adoption of the plan. That's why it's so important. You've got the plan. Yeah, I said the IRS is going to request it. Form 966 is supposed to be filed within 30 days of the adoption of the plan of liquidation.

Now there's another type of liquidation that you can see. this often comes in where you have a a takeover where a company, acquiring company, has taken over a target. What they have obtained is the stock. And so a parent subsidiary situation. The parent, under section 332, the parent corporation is a tax-free. It does not recognize gain or loss on the liquidation of the subsidiary. The subsidiary recognizes no gain or loss on its transfer to the parent. Now, the basis, the basis of the assets, unless there's a 338 election, carries over, the parents' basis in the subsidiary stock disappears, all of the tax attributes: NOLs, credits, capital loss carryovers, the E&P account. Carry over. Now what is that 338 election?

That's an election that allows you to do what a hypothetical transaction where you set up a hypothetically the subsidiary sells to a hypothetical new company, all of its assets at fair market value. It then liquidates.

Well, why would you do that? Because when you purchased or obtained the subsidiary, let's say it was valued at five million dollars, and the seller said, I'm only selling you my stock. I want 1202 treatment. I want to exclude 100% of the gain because my gain is under fifteen million. So I'm going to exclude my gain.

Well, what happens here is that you buy the stock, but you really want the assets because you paid five million for the stock, but the basis of the assets within the corporation is only a million. Well, I want to step it up to their fair market value because that's what I paid. And so if I just simply do a 332, I'm not going to get a step up in basis.

So, I'm not going to recover that $5 million basis until, when? Until I dispose of the stock in the subsidiary. So what the corporation can do, the parent corporation, is if they elect 338, they would be able to say, there was a hypothetical sale at fair market value to a new company.

And then that's at 5 million. We now do the 332 of new company. And so now I get a $5 million basis in the assets. But it doesn't come without a tax consequence. That transfer to the new company is considered a sale of the assets. And on the final return of the subsidiary, they're going to have to pick up the gain. Now that might be okay.

Again, you might have assets that have losses, right? So the gain isn't that much. But the bigger issue here is going to be in our example, you got a $4 million gain. Well, what if the subsidiary had all these losses? And you go, well, wait a second, I can use a lot of my NOLs. I got credit carryovers. I have things I can use to offset that gain. So now it may be more practical to do.

But it's become less practical again as we've had the more and more where we see that it's it's not worth the cost. Well, you know, I mean, if it we know that this is going to go through and section twelve two and the changes to 1202 have made it more it and it it's going to be more, I should say, because really the new rules kicked in July of 2025.

So we have a three, four, and five. So, 50% exclusion at three-year holding period, a four-year holding period it moves up to 75%, and then a 100% exclusion. They also raised it from 10 to 15.

Even if you're under the old rules, you're still going to get a a nice exclusion. But under the new rules, you know, you could potentially, if you've held it for five years, you could potentially get a full exclusion of the gain. So not a bad deal.

So more and more sellers are going to say, I want to sell you my stock. I'm not going to sell you my assets. I don't want to pay ordinary income, I'm going to sell you the assets.

So now let's look at partnerships.

So distributions from partnerships can be either proportionate. The partner receives his or her share of the ordinary income producing assets. What are those? Those are called the 751 assets. Disproportionate the partner's share of certain ordinary income producing, the 751 assets increases or decreases.

Now it's very important as to what that gain is going to be recognized as. Is it capital gain? Normally it would be capital gain. But 751 can come in and say part of your gain is ordinary because of these ordinary income assets.

The disproportionate, so remember that you're considered to own your interest. You own a 30% interest, 20% interest, 50%. You own your proportionate interest of all the assets. Well, that includes all of the ordinary income assets. So, if I'm allowed to get capital gain treatment, essentially what's going to happen is I'm going to convert what is ordinary into capital gain. IRS doesn't like that.

Now don't confuse proportionate and disproportionate because often we look at it and we go, proportionate, 50, 30, 20. You're liquidating the 30 out, you pay them off, you give them cash equal to 30% of the business, their interest. That's got to be proportionate, right? No, that's not.

Proportionate distributions on liquidations are rare. Most distributions on liquidations are disproportionate. Why? Well, because what you're looking at is the 751 assets. What did the person own before? What does the person own after? So what we're looking at here is before the distribution, before the distribution, I owned thirty percent of all of the hot assets. But after the distribution, I own zero.

That's disproportionate. The other partners, they owned 50 and 20, their share went up. So the distribution to me is disproportionate, and that will kick in the rules of 751. And I'm going to have to recognize some ordinary income. I can't get capital gain treatment on that. So just like a corporation, but you could be liquidating out one partner or liquidating the entire partnership. It really doesn't matter because the rules are basically the same. In fact, the ordering rules are the same with a partnership, whether it's a current or liquidating distribution relative to ordering. And the ordering rules, what is it that we're going to do.

So the ordering rules: cash comes out first. This is great because you can cash out of a partnership without having to pay tax necessarily if you have enough basis to cover that. Then unrealized receivables and inventory, and then all other assets. Now the basis is allocated to the assets within a category essentially.

Based upon their adjusted basis to the partnership, unless it's a liquidating distribution where you have nothing left to put on it. So, if all I have left to shift over is 10,000, but the value of the asset, the basis of the asset, I should say, to the partnership was 30, well, all I can put on it is 10. So, it's actually going to go down.

Now, cash, unrealized receivables, and inventory, but this is a required ordering. There is a special rule that applies to unrealized receivables and inventory.

So, no gain or loss is generally recognized by the partnership. Unlike a corporation, no gain or loss is recognized. The partner reduces their basis by following these ordering rules, cash first.

The basis is going to be absorbed by the distributed assets. But there's a special rule that we have to follow. So, gain will be recognized if the cash distributed exceeds the partner's basis.

Loss, you never recognize a loss in a current distribution, but loss will be recognized only if the only thing you get is cash, unrealized receivables, and inventory. If you get any other property, you can't recognize a current loss.

Now, we have to think about that. You can never recognize a loss in a current distribution, because you still have your interest. There's a special rule for inventory and unrealized receivables. That rule says you can't give those a greater basis than they had to the partnership.

So, what does that mean? It means that what was the basis to the partnership? That's the most you can take from your interest. So you start with your interest basis.

You take out cash. You now slide your basis over to the assets distributed. But you can't slide over any more basis to unrealized receivables and inventory than what it was to the partnership. Cash basis partnership, the receivables are zero. So if you have any basis left and you got no other assets, you take a loss. If you've got any other assets, you got to apply it. Take the basis and slide it over.

Here's a great example. This happened. What happened was the company, the partnership dissolved, the individual left. They cash unrealized receivables. Now, when they reported, because you have to report, they reported that he received a piano.

It said nominal value. What does that mean? Well, he had a $300,000 loss. Took it on the return. IRS came in, they audited, they said, that piano that you got. He goes, it was just junk. You know, I did, I took it, you know, it's not worth anything really, maybe fifty dollars, I don't know. He goes, it's just junk.

It was just in a warehouse. Well, is it cash? Nope. Is it a receivable? Nope. Is it inventory? Nope. Is it property? Yep, but it's junk. No, no, it's not junk to you. It's worth $300,000. You had to slide that basis over. That piano was worth $300,000. They said, you can get your loss, but not till you sell the piano. Sell the piano, get your loss. But you're not getting a loss because you got other property.

That was an extreme example, but nonetheless, that's what happened. So we always have to be careful in making sure what we transfer over to the partner.

Now, the next thing we look at is these, as I mentioned, these hot assets.

So we've got this disproportionate distribution. The disproportionate distribution is the one involving the so-called, as I said, hot assets. This, again, hot assets.

Alright, disproportionate distributions, as we said, the hot assets. So essentially, what are these? Ordinary income is preserved, and so therefore, it could happen in a 736 on a retirement. It happens on a sale. So unrealized receivables in inventory, but the definition this has its own definition of what a receivable is.

It's not just a receivable. For this purpose, a receivable is anything essentially that would generate ordinary income.

And so the potential recapture, 1245 recapture, we'd never think of it, but that is a hot asset. That is an income-producing, ordinary income-producing asset. And so essentially think of it as anything that produces ordinary income other than inventory, and inventory has its own rules also.

So inventory, broadly that it basically includes any asset that would yield ordinary income if the asset were sold either by the partner or the partnership. So it includes traditional inventory, but it also includes property that if sold would not be treated as capital or 1231. So again, there's a special rule for distributions.

In sales, all inventory is hot. In a distribution, inventory is only hot if it is substantially appreciated. That means that the fair market value of the inventory is more than a hundred percent of its basis. But for sales of partnership interests, any inventory, whether or not appreciated, is treated as a hot asset.

So again, it the idea is if it was sold and generated ordinary income, this is going to become a hot asset and you're going to have to recognize ordinary income.

And so again, proportionate and disproportionate. So I get a disproportionate distribution because I got cash, right? I got cashed out. So what I have to do then is I have to say, okay, hypothetically, I got a proportionate distribution. I got my 30% of all the hot assets. Well, we know that's not reality, right? In reality, I didn't get that. So now what do I do? I now hypothetically, real tax consequence, I sell back to the partnership all of those hot assets that I hypothetically got in return for what I really got, cash.

Well, what happens? I sold the receivables, ordinary income, sold the inventory, ordinary income. So now that portion of my distribution, I'm going to recognize ordinary income. Thereafter, I get capital gain. Now remember on the other side of the transaction, the partnership bought those assets. So they get a step up in basis in the receivables and the or in the inventory. There's now less recapture potential, right? Because it's already been recaptured.

So you have to make sure to make the adjustments on the partnership side also. So now they're going to recognize ordinary income on a portion of that distribution from the partnership not getting the capital gain treatment.

So let's look now at retirement payments. And briefly, so you have 736(b) is a payment for the portion of the partner's interest in the partnership assets distributed to them and subject to the general rules of partnership distributions. The remaining is a 736(a) payment. That's treated like a guaranteed payment. It's ordinary income and deductible by the partnership.

And so that guaranteed payment, you know, there's a difference then in how the retirement payment, 751 is still going to apply even to these distributions. If you have a distribution in, even though it's in a the liquidation of a partner or the retirement of a partner, 751 is still going to kick in. We still have to look at 751.

So again, 736 contains special rules concerning the liquidating payment with a retiring partner. And 736(a), they're not going to be treated like distributions. They're going to be guaranteed payments, which allows a deduction to the partnership. Now, payments made with respect to goodwill are generally classified as 736(a) unless the partnership agreement specifies that a withdrawing partner will be paid for their share of the goodwill.

So we've covered a lot of areas here on liquidating distributions from both corporations and partnerships. I want to thank you very much for joining me. I always appreciate you being on a program with me. And as always, please be safe.

A. Discussion Questions

1. Why can advance planning be especially important when a corporation holds both appreciated and loss property before liquidation?

2. How do corporate and partnership liquidations differ in their basic approach to entity-level gain or loss?

3. Why are Section 751 hot assets important when a partner receives a disproportionate liquidating distribution?

B. Suggested Answers to Discussion Questions

1. Why can advance planning be especially important when a corporation holds both appreciated and loss property before liquidation?

A corporate liquidation may appear straightforward—dispose of the assets, distribute the proceeds, and terminate the company—but the tax consequences can differ significantly depending on how particular assets are handled. The transcript emphasizes that appreciated property generally creates corporate-level gain whether it is sold or distributed because property distributed in liquidation is ordinarily treated as though it were sold at fair market value. Loss property can be more complicated because special limitations may prevent the corporation from recognizing certain losses.

This asymmetry creates a planning concern. If the corporation distributes appreciated assets and recognizes gain while simultaneously losing the ability to deduct losses on other distributed property, the corporation could incur taxable gain even though the liquidation has relatively little overall economic appreciation. The course therefore suggests examining whether loss property should instead be sold before liquidation, allowing the corporation to recognize the loss and distribute cash afterward.

Related-party distributions, non-pro-rata distributions, recently contributed property, and built-in loss property require particular attention. The anti-stuffing rules described in the course are designed to prevent taxpayers from placing loss property into a corporation shortly before liquidation merely to shelter gains. Effective planning therefore requires reviewing asset basis, fair market value, acquisition history, shareholder relationships, and the timing of contributions before deciding which assets should be sold and which should be distributed.

2. How do corporate and partnership liquidations differ in their basic approach to entity-level gain or loss?

The most important conceptual difference presented in the course is that a corporation and a partnership generally approach distributed property very differently. In a complete corporate liquidation, appreciated or depreciated property is generally treated as though the corporation sold the property for fair market value. Subject to special loss limitations, this produces corporate-level gain or loss. Shareholders then separately determine their gain or loss by comparing the value of what they receive with their basis in their stock. This structure reflects the potential for two levels of taxation associated with a C corporation.

Partnership distributions generally begin from a different premise. The partnership ordinarily does not recognize gain or loss merely because property is distributed. Instead, tax consequences are often managed through the partner's outside basis and the basis assigned to distributed assets. The transcript describes an ordering system in which cash is considered first, followed by unrealized receivables and inventory, and then other property.

Gain is generally triggered when distributed cash exceeds the partner's outside basis. Loss recognition is much more restricted and depends on whether the distribution is liquidating and what kinds of property the partner receives. Consequently, partnership taxation frequently defers gain or loss by transferring remaining outside basis into distributed property, whereas corporate liquidation rules are generally much more likely to produce immediate entity-level recognition.

3. Why are Section 751 hot assets important when a partner receives a disproportionate liquidating distribution?

Section 751 hot assets are important because they protect the ordinary-income character of certain economic gains inside a partnership. Without these rules, a partner could potentially dispose of an interest containing unrealized ordinary income and obtain capital-gain treatment merely because the transaction was structured as a partnership-interest disposition or disproportionate distribution.

The course focuses on unrealized receivables and inventory, while also noting that the concept of unrealized receivables is broader than ordinary accounts receivable. Items that would produce ordinary income, including certain depreciation recapture potential, may fall within the hot-asset framework. For partnership-interest sales, inventory can generate Section 751 consequences regardless of whether it is appreciated. The course explains a more specialized rule for distributions involving substantially appreciated inventory.

A disproportionate distribution can occur when a partner's share of hot assets changes as a result of the transaction. For example, a 30% partner who is completely cashed out previously held an indirect 30% share of the partnership's hot assets but owns none afterward. The rules effectively analyze the transaction so that the portion attributable to the partner's hot-asset interest retains ordinary-income treatment. The balance can then receive the otherwise applicable tax treatment, including possible capital-gain treatment. The partnership must also reflect corresponding basis consequences.

GLOSSARY

Adjusted Taxable Income (ATI)—A modified measure of taxable income used in determining a taxpayer's business-interest deduction limitation under Section 163(j).

Alternative Depreciation System (ADS)—A depreciation system using specified recovery periods and methods that applies to certain property and elections and may restrict access to bonus depreciation.

Bonus Depreciation—An accelerated depreciation provision permitting taxpayers to deduct a specified percentage of qualifying asset cost in the year the property is placed in service.

Built-In Loss—A loss inherent in property when its adjusted tax basis exceeds its fair market value.

Capitalization Rate (Cap Rate)—A real estate performance measure calculated by dividing a property's net operating income by its acquisition cost or value.

Earnings and Profits (E&P)—A corporate tax measure used to determine the extent to which a distribution may be treated as a dividend.

Employee Retention Credit (ERC)—A refundable employment-tax credit enacted in connection with the COVID-19 pandemic for qualifying employers meeting applicable eligibility requirements.

Form 3115—The federal Application for Change in Accounting Method used when a taxpayer requests or reports certain changes in accounting methods, including correction of certain impermissible depreciation methods.

Hot Assets—Partnership assets subject to Section 751 that can produce ordinary income, including unrealized receivables and certain inventory or other ordinary-income property.

Liquidating Distribution—A distribution made as part of the complete or partial termination of an owner's interest in a corporation or partnership.

Outside Basis—A partner's adjusted tax basis in the partner's partnership interest, used in determining the tax consequences of distributions, sales, and other partnership transactions.

Qualified Opportunity Fund (QOF)—An investment vehicle organized to invest in qualifying property located in designated opportunity zones and through which eligible taxpayers may obtain specified capital-gain tax benefits.

Reasonable Compensation—An appropriate salary paid to an employee-owner for services performed, considering duties, experience, industry norms, time devoted to the business, and other relevant factors.

Specific Identification—A basis-accounting method under which a taxpayer identifies the particular units or lots of an asset treated as sold rather than relying on a default ordering convention.

Staking Rewards—Digital assets received by a taxpayer for committing cryptocurrency to activities that support a blockchain network, potentially creating taxable income when the taxpayer obtains sufficient control over the rewards.

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

1. In the Social Security repayment example discussed in *Smith v. Commissioner*, when could repayments generally be netted directly against benefits received?

   A. Whenever repayment occurs within three years
   B. Only when the repayment and receipt occur in the same year
   C. Only if the taxpayer itemizes deductions
   D. Only after receiving IRS permission

2. Under the Saver's Match program described in the segment, what is the maximum federal match discussed?

   A. $500
   B. $1,000
   C. $2,000
   D. $5,000

3. Which formula is used in the segment to calculate a rental property's capitalization rate?

   A. Net operating income ÷ acquisition cost
   B. Acquisition cost ÷ gross rent
   C. Mortgage balance ÷ net operating income
   D. Appreciation ÷ annual mortgage payment

4. Why might a rental property with slightly negative current cash flow still be attractive?

   A. Negative cash flow guarantees a tax refund.
   B. The property may appreciate and rents may increase while financing costs remain relatively stable.
   C. Mortgage principal payments are fully deductible.
   D. Rental properties never experience vacancies.

5. Why can a rental property generate positive cash flow but negative taxable income?

   A. Rental income is excluded from federal taxation.
   B. Principal payments are deducted twice.
   C. Property appreciation is deductible each year.
   D. Depreciation and deductible interest may reduce taxable income without creating equivalent current cash outflows.

Continued on next page

6. Under the opportunity-zone transition discussion, why might timing an investment until after 2026 be advantageous for certain late-2026 capital gains?

   A. It permanently eliminates all capital gain.
   B. It may allow the taxpayer to operate under the newer rules providing a longer deferral period.
   C. Opportunity-zone investments are prohibited during 2026.
   D. Investments after 2026 are exempt from all investment risk.

7. What is a major consequence of electing real-property trade or business treatment for purposes of Section 163(j), as discussed in the segment?

   A. The taxpayer must use ADS for specified property and may lose bonus depreciation on affected assets.
   B. All rental income becomes tax exempt.
   C. The taxpayer must terminate all existing debt.
   D. The business can no longer claim any depreciation deduction.

8. Why should practitioners monitor an ERC claim after an IRS disallowance?

   A. The IRS automatically approves every claim after 18 months.
   B. ERC claims never have a limitations period.
   C. An employer must dissolve its business if a claim is denied.
   D. A two-year period can limit the IRS's ability to issue the refund, potentially leaving litigation as the taxpayer's remedy.

9. When a taxpayer has used an impermissible depreciation method and an amended-return solution is unavailable, what procedure does the segment identify?

   A. Ignore the error because depreciation is optional.
   B. File Form 3115 for a change in accounting method.
   C. Increase the asset's selling price.
   D. Reclassify the asset as inventory.

10. What is a principal tax-planning reason for a profitable self-employed taxpayer to consider an S corporation?

    A. S corporations eliminate all federal income tax.
    B. All owner compensation becomes tax-free.
    C. A reasonable salary is subject to payroll taxes, while qualifying S corporation distributions generally are not subject to self-employment tax.
    D. S corporation owners are prohibited from receiving wages.

Continued on next page

11. Which form does the transcript state generally must be filed within 30 days after adoption of a corporate plan of liquidation?

    A. Form 1065
    B. Form 1120-S
    C. Form 966
    D. Form 8594

12. What is the general ordering rule for property distributed by a partnership?

    A. Other property, inventory, cash
    B. Inventory, cash, unrealized receivables
    C. Cash, unrealized receivables and inventory, then other property
    D. All assets are treated as distributed simultaneously

13. When does a partner generally recognize gain from a partnership distribution under the rules discussed?

    A. Whenever property is distributed.
    B. When cash distributed exceeds the partner's adjusted basis in the partnership interest.
    C. Whenever inventory is distributed.
    D. Only when the partnership itself recognizes gain.

14. What is the principal purpose of the partnership “hot asset” rules discussed in the course?

    A. To convert ordinary income into capital gain.
    B. To ensure ordinary-income characteristics are preserved when certain partnership interests or assets are shifted.
    C. To eliminate tax on unrealized receivables.
    D. To make all partnership distributions tax-free.

15. Under the retiring-partner rules described in the transcript, how is a Section 736(a) payment generally treated?

    A. As a tax-free return of capital in all cases
    B. As a payment governed only by capital-gain rules
    C. As a corporate dividend
    D. As a guaranteed-payment-type amount producing ordinary income to the recipient and generally a deduction to the partnership

CeriFi CPE Network
Tax Report
Volume 39, Issue 08 **September 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 September 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. Mike Giangrande	|_____|	|_____|	|_____|
Ms. Renee Rodda	|_____|	|_____|	|_____|
Mr. Ian Redpath	|_____|	|_____|	|_____|

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 Tax Report, September 2026 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!

Copyrighted Materials

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

“Group Live” Format

CPE Credit

All 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.

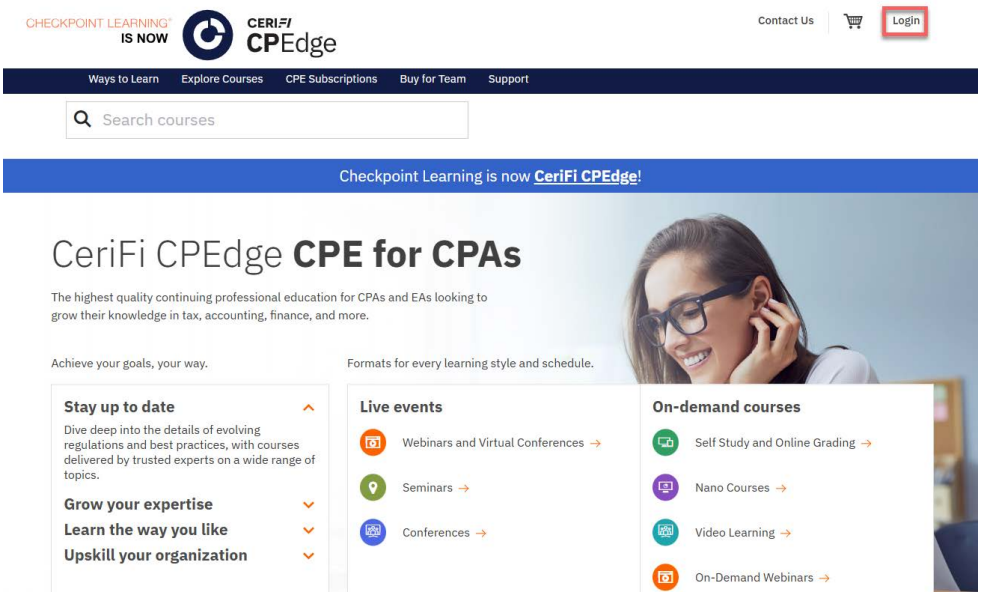
- E-mail your completed quizzer and survey to:

  grading-cpedge@cerifi.com

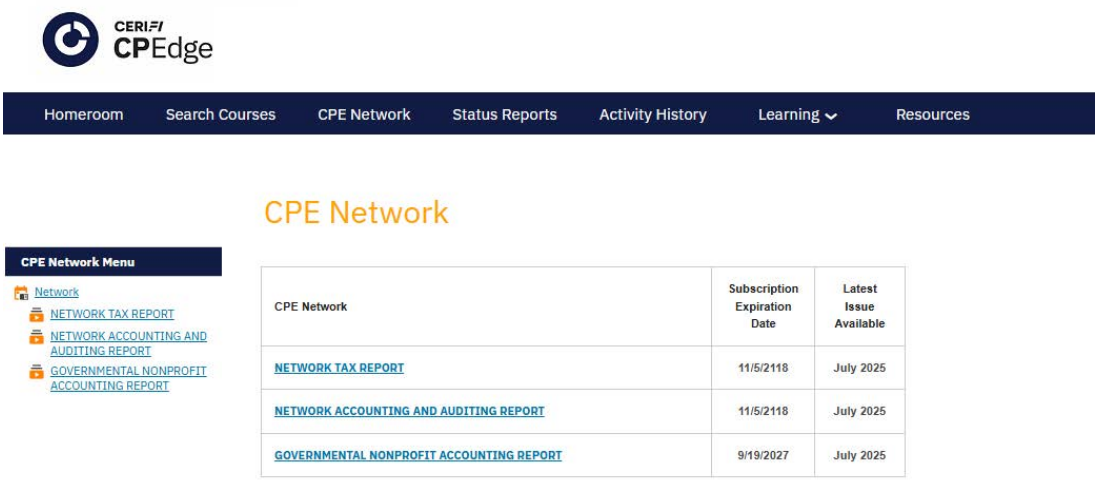
Self-Study—Online

Follow these simple steps to use the online program:

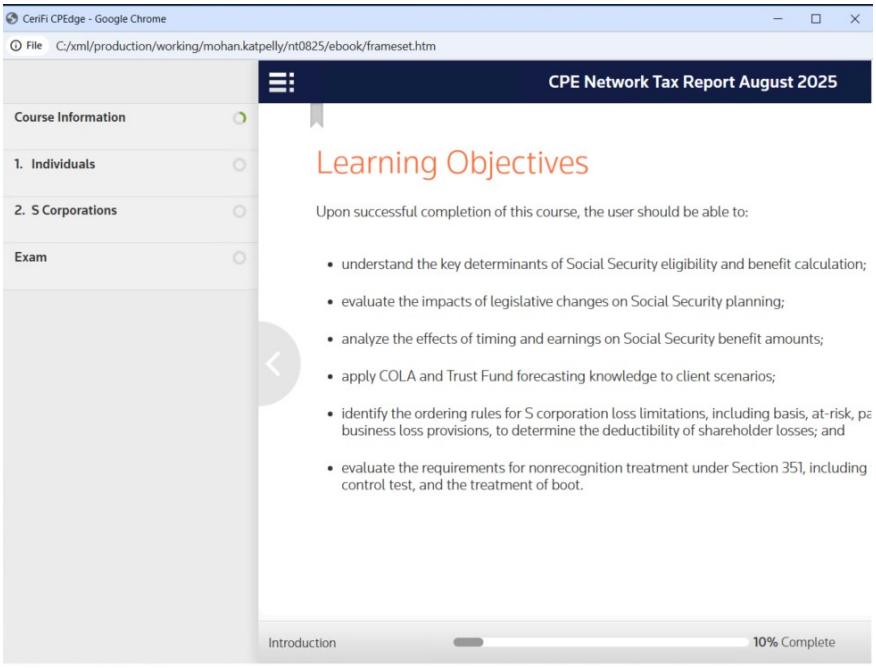
- Go to **https://cerificpedge.com/**.
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

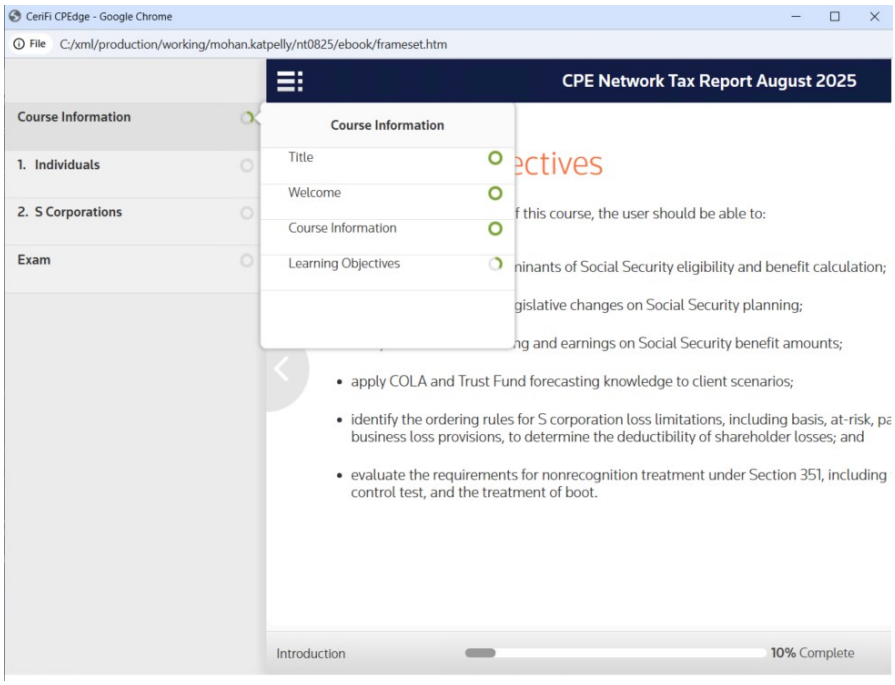


The Chapter Menu is in the gray bar at the left of your screen:



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

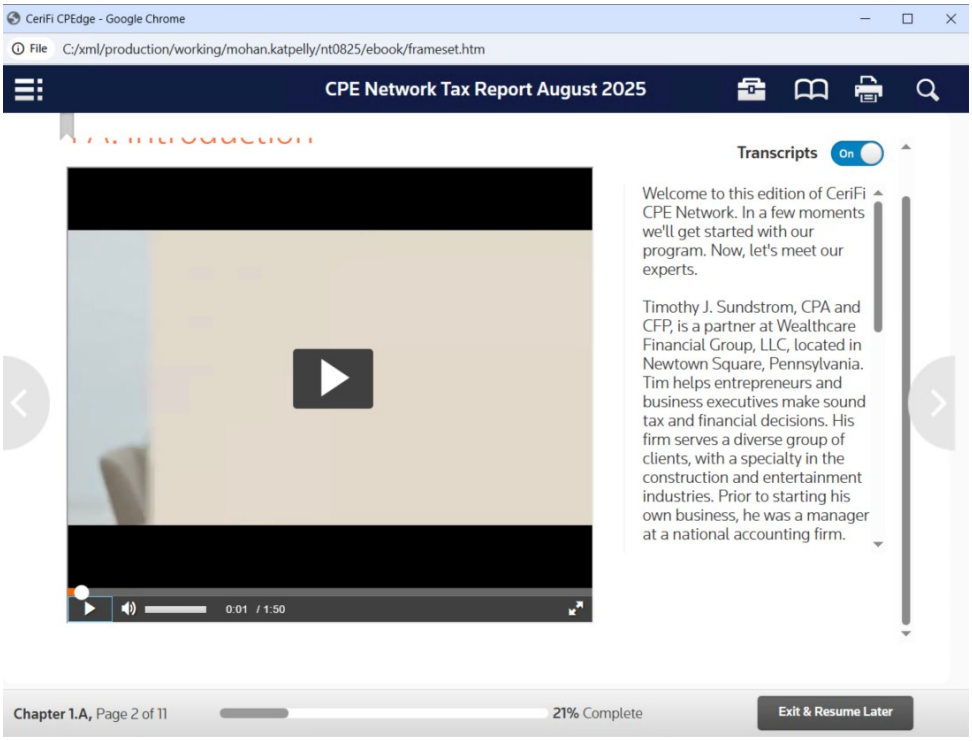


- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the self-study questions. This streamlined approach allows administrators and users to more easily access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

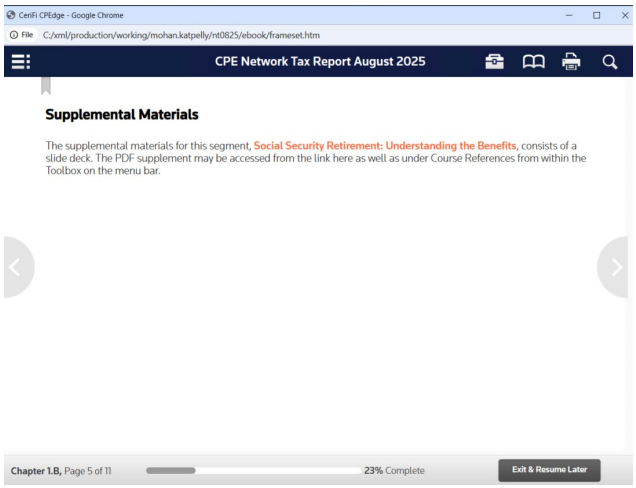
Video segments may be downloaded from the player by clicking on the download button. *Tip: you may need to scroll down to see the download button.*

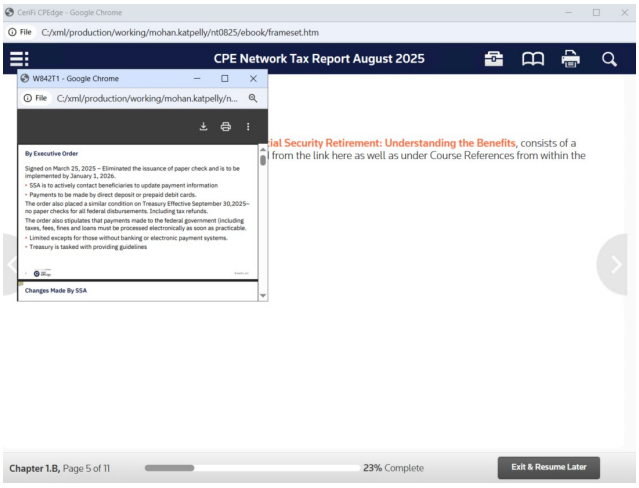
Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts**

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.

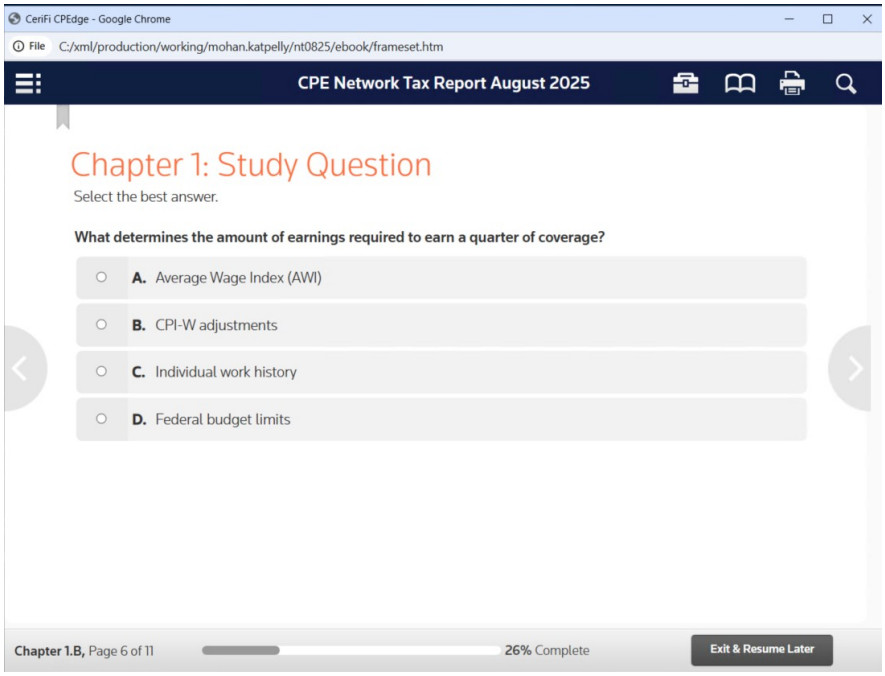


The supplemental materials are available via the toolbox and the link will pop up the pdf version in a separate window.



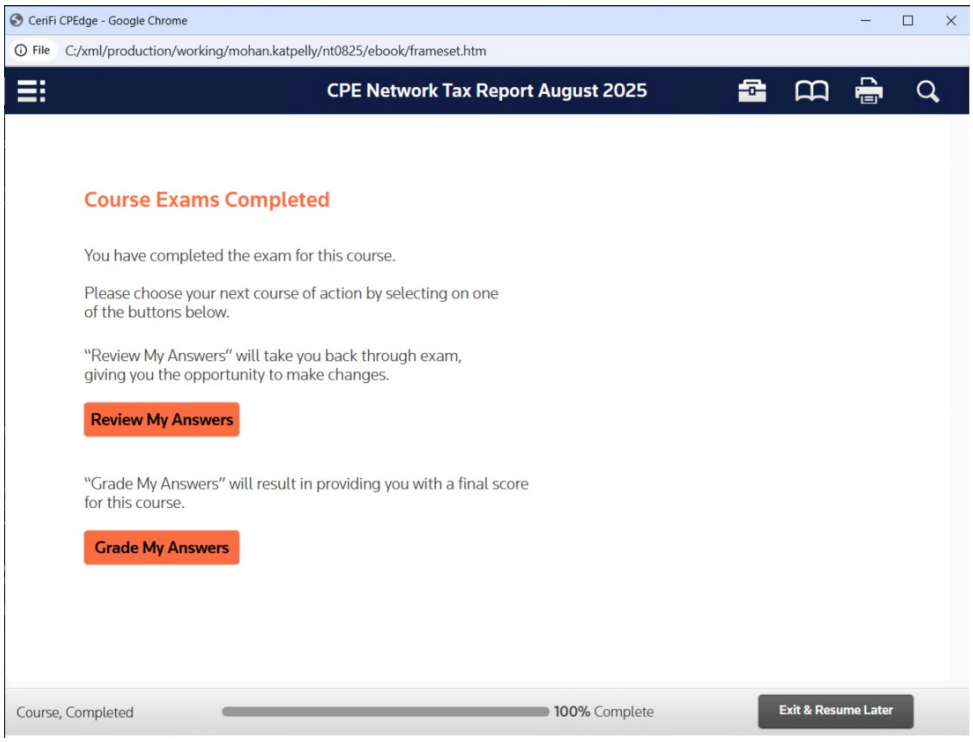


Continuing to click the arrow to the right side of the screen will bring the user to the self-study questions related to the segment.



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