

CHECKPOINT LEARNING

Contact us at: cplsupport@cerifi.com
844.245.5970

CPE NETWORK TAX REPORT

DECEMBER 2023

VOLUME 36, ISSUE 11

EXECUTIVE SUMMARY	1	GROUP STUDY MATERIALS.....	24
EXPERT ANALYSIS AND COMMENTARY	3	A. Discussion Problems.....	24
PART 1. CURRENT DEVELOPMENTS	3	B. Suggested Answers to Discussion Problems	25
Experts' Forum	3	PART 3. BUSINESS TAXATION	26
A. IR-2023-193	3	Tax-Exempt Organizations	26
B. RIN 1506-AB49	6	SUPPLEMENTAL MATERIALS.....	35
C. <i>Short Stop Electric v. Commissioner</i> TC Memo		Basics of Tax-Exempt Organizations.....	35
2023-114	7	A. Introduction	35
SUPPLEMENTAL MATERIALS	8	B. Application for Exemption – Charities.....	36
Current Material: Experts' Forum	8	C. Charitable Purpose.....	37
A. IR-2023-193	8	D. Private Foundations	39
B. FinCEN Update, Rule (RN 1506 – AB49).....	9	E. Compliance.....	40
C. <i>Short Stop Electric, Inc., v. Commissioner</i>		F. Annual Filings	40
TC Memo 2023-114.....	10	G. Conclusion	40
GROUP STUDY MATERIALS	11	GROUP STUDY MATERIALS.....	41
A. Discussion Problems	11	A. Discussion Problems.....	41
B. Suggested Answers to Discussion Problems.....	12	B. Suggested Answers to Discussion Problems	42
PART 2. INDIVIDUAL TAXATION	13	GLOSSARY OF KEY TERMS	43
Refund Statute Expiration Date	13	CUMULATIVE INDEX 2023	44
SUPPLEMENTAL MATERIALS	21	CPE QUIZZER	48
Statute of Limitations for Tax.....	21		
A. Introduction.....	21		
B. Conclusion.....	23		

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

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

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

Topics for future editions may include:

- Beneficial Ownership Information
- Estate Tax Basics

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

EXPERTS' FORUM 3

The field of taxation is dynamic with constant changes and guidance from the government and courts. It is imperative for practitioners to keep abreast of major legislation, guidance, and cases to properly advise clients. This material covers some updates since the last monthly program.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including evaluating the ERC withdrawal process, determining when the ERC withdrawal process is not available, and assessing the beneficial ownership information filing deadlines. [*Running time 29:56*]

PART 2. INDIVIDUAL TAXATION

Refund Statute Expiration Date 13

There is not, generally, an unlimited amount of time for a taxpayer to request a refund or for the government to assess additional tax. Both taxpayers and the government have a need for closure; thus, absent certain circumstances, the law puts time limits on the actions of both the taxpayer and the government. These limitations are referred to as the statute of limitations, and practitioners must be cognizant of the limitations on both the taxpayers and the government.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues relating to the refund statute expiration date (RSED), including analyzing the general three-year rule, determining the applicability of the two-year RSED, and analyzing the reach-back rule. [*Running time 29:46*]

PART 3. BUSINESS TAXATION

Tax-Exempt Organizations 26

Tax-exempt organizations are becoming an increasingly larger part of the economy, which in turn makes them a larger part of many practices. It is important to have a basic understanding of the rules that may apply to the different types of tax-exempt organizations.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze a variety of basic issues related to tax-exempt organizations, including determining what is necessary to file a Form 1023 or Form 1024, differentiating a private foundation from a private charity, and analyzing the annual filing requirements. [*Running time 36:55*]

ABOUT THE SPEAKERS

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

Lawrence Pon is a Certified Public Accountant, Personal Financial Specialist, Certified Financial Planner, Enrolled Agent, United States Tax Court Practitioner, and Accredited Estate Planner in Redwood Shores, California. Mr. Pon has been in practice since 1986 and enjoys helping his clients reach their financial goals. He frequently speaks nationally on tax and financial planning topics to tax professionals, financial advisors, and the general public. Mr. Pon received his BS in Business Administration with emphasis in Accounting and Finance from the University of California, Berkeley, and an MS in Taxation from Golden Gate University in San Francisco.

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

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

Title of Course (Enter full title)	
Date of Class (MM/DD/YYYY)	
Time (Enter time of class)	
Location (Enter location of class)	
Learning Objectives (Refer to executive summary)	
Program Description (Refer to executive summary)	
Instructional delivery method	Group Live
Recommended CPE credit	3.0 Credits
Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	<ul style="list-style-type: none"> • Basic Accounting and Auditing professional experience • Basic Tax professional experience • Basic Governmental professional experience
Advance preparation	None required
Course registration and, where applicable, attendance requirements (1)	

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

© 2023 CeriFi, LLC. All rights reserved. This information is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Because laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research before acting on the information contained in this program.

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

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. Ian Redpath begins this month with a lengthy discussion regarding employee retention credit claims.

Let's join Ian.

A. IR-2023-193

Mr. Redpath

Hi, everybody. Welcome to the program. I'm Ian Redpath. Always great to have you here. This is the segment where we go over a number of things that have happened since we last met. Always, the IRS has something for us, and the courts, not really the legislature (they haven't been very busy), but we do have a number of important things that have come out of the Internal Revenue Service lately.

So, let's just jump right in then, and we're going to start with a topic that you're going to say, "I've been hearing this, I've been hearing this, I've been hearing this." Well, you're still going to hear it because this is rather important. This is IR-2023-193. Since the last time we spoke, the IRS has now unveiled their program for withdrawal of ERC (Employee Retention Credit) claims. The IRS says that they have—and I'll use the term that is used by Commissioner Werfel—he said that they are trying to combat, and the quote is, a "tsunami of false ERC claims that are the result of the aggressive marketing by these ERC mills." Of course, they added it this year to the Dirty Dozen. It kind of replaced [offers in compromise.] Upside/downside, I guess, we don't hear too much about offers in compromise. The offer in compromise mills have been off the radio and the television for a while, but they've been replaced by the ERC mills.

I've mentioned in other programs, I've had individuals call me. I had an accountant call me and said, "My client got a check for \$700,000. There's another check for \$500,000 coming. They're not entitled to it. We've reviewed it and reviewed it. We reviewed it way back when and decided they weren't entitled to it, but the ERC mill contacted the client and all this money's coming. [The mill] jumped right in, told them they were qualified." A lot of these are supply chain, and the claim that's being made is that the supply chain was disrupted. Well, the IRS has made it clear—and this is in a Chief Counsel Advisory that we have previously discussed—that the supply chain disruption has to be the result of a government closure. So, the IRS placed a moratorium from September 14 of 2023 until (and they used the term "at least") December 31 of 2023 for processing claims.

Now, if you have a legitimate claim for a client, I will again tell you, submit it. Get it into the queue. It will not be processed, but it will be submitted. They will begin reviewing those next year. So, if you're convinced your client has the right to it, by all means, file the claim. Get it in now. One of the things that Commissioner Werfel said in his summit back in July is that he's working with Congress to try to move forward, or move up, the statute of limitations on filing ERC claims. Right now, that goes to 2025, but I wouldn't be surprised if they do get Congress to move that forward maybe to sometime in 2024. You don't want to be in the middle of tax season and have to worry about doing an ERC claim from the past. So, I would certainly recommend, if you believe your client is entitled to it, please go ahead and file their ERC claim.

But [they've] got all of these fraudulent claims. I've mentioned in the past, an ERC claim letter looks like it's coming from the IRS, except it says it's from the Office of Employee Retention Credit Refund, New York, New York, and has a phone number to contact. It says, "We have reviewed and determined that you are entitled to..." In this particular case, I believe it was "\$727,000. Then, there's a sheet at the bottom that you would normally get if you were being asked to respond to something, and it says, "Please contact us immediately so that we may begin processing your

claim.” It gives the phone number and your claim number. This was sent to a CPA firm of all things. A CPA firm actually got this. They weren’t entitled to the ERC, but that’s how aggressive the [mills] are; they are just mass-sending these out. Now, we’re getting text messages, and clients are getting inundated with phone calls and text messages. They are really extremely aggressive.

I had an individual contact me (well, I shouldn’t say contact me, they ran into me) and, of course, I had lots of questions, and he was bragging. He said, “This company contacted me and, wow, they’re doing a great job. I’m getting over a million dollars back.” And I asked, “Is that on an ERC?” He said, “Yes, that employee retention credit. I’m getting over a million dollars back.” Then, he explained to me how upset he was with his accountant. “My accountant missed all of this, and I’m really upset.” Then, I just asked a couple of questions. “Are they going to amend your income tax returns to reflect that you’re taking this credit?” He said, “Well, no, this was just to file to get the credit back.” I said, “You know, you really should contact your CPA.” I happen to know who his CPA is, and that CPA is very qualified, with an excellent firm. I said, “Contact them before you do anything.” Well, I ran into the individual again and he said, “I sent in the claim so I get my million-plus dollars, and I’m going to talk to my CPA. I’ll talk to him during tax season when I bring my stuff in for next year, but I’m really mad.” I said, “I wouldn’t be mad because you may not really qualify,” and I explained to him about the ERC mills, and he was, of course, unaware of this. I asked, “It didn’t shock you when you got a random phone call that these people are going to get you all this money? You should contact your CPA right away.” Hopefully, he has. I just haven’t run into him since then.

Well, the IRS [has been contemplating], what do we do with people who have filed and now have gone to their accountant and the accountant says you’re not entitled to it? I’ll use that first example. There were two situations. One is they had already gotten a \$700-and-some thousand check and were saying they’re going to get another half a million. So, the IRS has established a withdrawal process and what the IRS says is that a taxpayer who filed an ERC claim can withdraw it and, absent fraud—and I’m saying fraud on behalf of the taxpayer; I’m not talking about fraud on behalf of the ERC mill—maybe this is a “taxpayer should have known” situation, but the IRS is well aware of what’s going on—they are indicating that they are going to be very liberal with the taxpayers. So, you can withdraw the submission and avoid (possibly avoid, but probably avoid) any interest and penalties. Again, this is an option to help small business owners who were pressured or misled by ERC mills. So, why withdraw? Well, penalties and interest will not be imposed if you withdraw that ineligible ERC claim. The IRS says if you withdraw it, we will treat it as if you never filed it. In other words, go back to square one, no issues. You never filed one, therefore, no harm, no foul. But they also indicate that for willful filers of fraudulent claims and anyone who assists or conspires in that conduct, withdrawing the fraudulent claim will not exempt them from criminal investigation or prosecution. What they’re saying to the ERC mills is if every single person you filed for was incorrect, [even] if everyone withdraws it, we can still go after you criminally. So, that’s really the import; it is not really meant to go to taxpayers unless the taxpayer clearly knew or should have known that it was a false claim.

So, who can withdraw the ERC claim? Employers that claim the ERC on an adjusted employment return, 941-X, 943-X, 944-X; employers that filed the adjusted return only to claim the ERC and made no other adjustments and want to withdraw the entire amount of the claim, not partially withdraw; and employers whose claim has not yet been paid or employers who have not yet cashed or deposited the refund check. So, even if you’ve got the check, as long as you haven’t deposited it (the client hasn’t deposited it), they could still qualify for this relief. Now, this might be something that you want to reach out to your business clients and warn them about and tell them this process is there. If they get a check, they really shouldn’t cash it until they’ve talked to you.

Employers not eligible—so not everybody can use the withdrawal process—they should probably file an amended return. The withdrawal process depends on whether the employer has been notified that they are under audit, or if the claim was submitted on their behalf by a payroll service provider. So, if you’re not under audit and no refund has been received (you filed a claim and nothing has happened), you filed it yourself, you haven’t cashed or deposited a refund, and you haven’t got notification that you’re under audit, the withdrawal request can simply be faxed to the IRS. The IRS has a special fax number to receive the request; and you can also mail a request, but the IRS points out that by mailing it, the process will be delayed.

So, to withdraw the claim, what do you have to do? Well, the employer submits a copy of the adjusted return with the claim—and this is unusual—in the margin, write “withdrawn” in the left margin of the first page of a copy of the amended return, have the authorized person sign and date the first page in the right margin. So, left margin “withdrawn,” right margin signed and dated, and then fax the signed copy to the IRS’s ERC withdrawal line. You can get the number at irs.gov/withdrawmyerc. Then, obviously, retain a copy for your records.

If you’re not under audit, you received the refund but haven’t cashed it yet, what should you do? Well, if you’re not under audit and have received a refund and have not cashed or deposited it, you complete the same process that we just talked about but mail the check and a copy of the amended return to the IRS at the mailing address (again, irs.gov/withdrawmyerc), and the employer should then write “Void” on the endorsement section of the refund check, and include a note that says “ERC withdrawn” with a brief explanation for the return of the check. Again, keep a copy. The brief explanation is, “We were contacted by a group, and we’ve discovered that we were not entitled to it. We relied on what they were telling us. We are withdrawing our claim and returning the check.”

What if you’re under audit or you have a notification that you’re going to be audited? Well, for employers who have been informed that they are under audit, the withdrawal request has to be submitted to the examiner or in response to the audit notice. So, if you get an audit notice and no examiner has been assigned yet, simply return it in response to that audit notice. Once someone is assigned, just simply send it to them. What if you submitted your 941s with a payroll service? Employers who used payroll service providers to file their ERC claims should contact the payroll company to determine if the provider will submit the withdrawal request on their behalf. And that is going to depend on whether the payroll company submitted the ERC claims on an individual basis or batched it with other clients.... By the way, if [the payroll service] refuses to, then follow the normal process that we discussed earlier, and attach a note that you use the payroll service and information about the payroll service.

So, the employers that submit a withdrawal request are going to get a letter from the IRS on whether their request is approved or rejected. If it’s accepted, then there’s nothing to do. You don’t need to file an amended return; there’s nothing more to do. If it’s rejected, what is the reason for the rejection of it? The IRS really hasn’t set up a process for what happens if they reject the withdrawal of your ERC claim. Can you file an appeal? That has not been made quite clear. But if they reject it, I would certainly send a letter. I would certainly respond to that by requesting a reconsideration of it.

Now, what if you’ve cashed the checks? If you’ve cashed them, well, this is a different program, and we don’t have it yet. This is called the settlement program. Commissioner Werfel has mentioned that he—“he” being the IRS, rather—is developing a settlement program that will allow taxpayers to make their repayments if they’ve cashed or deposited the check. What exactly is going to happen? We don’t know yet. It’s expected that this will be released probably in December. So, just keep an eye open for that, again, at some point. Maybe from the time we’re filming, it has already been released but, please, watch out for that. Now, the IRS has also updated its web pages on the withdrawal process, and the FAQs on the ERCs have been updated.

Now, for adjusted returns with other corrections and the ERC claim is being reduced, the IRS updated the withdrawal claim on the web page and noted that you cannot use the withdrawal process for that. You’ll need to file amended returns for that, and any returns received through the withdrawal will be rejected if that is what you’re doing. If the ERC was claimed on an original return, the FAQs [for] the ERC explained that the withdrawal process also may not be used when the ERC was claimed on the original return rather than an adjusted return. So, to correct the ERC, file an adjusted return and make the payment for any taxes due. This is really geared to the ERC claims that were made by these ERC mills where people have filed amended returns to claim that refund. Again, if you did that, if you filed it on your original return and decided now you’re not entitled to it, then just file the amended return. The FAQs state that if the IRS processes the return prior to receiving the withdrawal, the IRS will reject the request, and the taxpayer must file an adjusted return to correct that previously claimed ERC. So, if all that’s in there is the original claim and you file for withdrawal, the IRS will not process that.

It does address CPEOs, PEOs, and 3504 agents and states that the process is somewhat limited. It's limited to those who wish to withdraw the ERC claims for all clients, including any ERC claims made for themselves. If they're going to withdraw an ERC claim only for some clients, they have to file adjusted returns correcting the ERC amount. That applies to CPEOs, PEOs, and 3504 agents. So, there is a lot going on but, boy, it's really important with all the fraud, and so many clients have been caught up in this.

B. RIN 1506-AB49

So, FinCEN. We have an update from FinCEN and a new rule, RIN 1506-AB49. This is additional guidance on the BOI (beneficial ownership information) reporting. Part of the Corporate Transparency Act [CTA] established the Uniform BOI reporting requirements that some corporations will have to [furnish]. It authorizes FinCEN to collect the information, and they will then disclose it to the appropriate government agencies. It is not being filed with the IRS. It is not filed with your return, it's much like the FinCEN 114. It's filed differently, and it goes directly to FinCEN. Beneficial ownership information has to be reported by an entity, and it includes the full name or names, the dates of birth, and the addresses for all individuals who have substantial control, or who own or [control] at least 25 percent of the entity. FinCEN has updated its BOI FAQs to include new questions about beneficial ownerships, the initial reports, also what will be called FinCEN identifiers, and then, third-party service providers. So, with this change, we have some new frequently asked questions. They've also opened up a web page dedicated to BOI reporting, and also came out with a small business guide to reporting.

There are some proposed regs and because the BOI reporting requirement is effective January 1, 2024, businesses will not be able to report. There is no reporting right now. It's not open. Your reporting will be on a form which is yet to be released. It will be on a form developed by FinCEN, and they are in the process of reporting it. What you need to do is to start getting some information together. But you've got some time, because if the organization was organized before January 1 of 2024, you have until January 1 of 2025 to report. For any organization started after January 1, you have 30 days to report. This is part of the proposed regs. The proposed regs say that they will extend the *initial*—only the initial—reporting requirement for entities established after January 1, 2024, to 90 days. After January 1 of 2025, it will revert back to 30 days. That is only a proposal. They have just been asking for comments; they've extended the time for comments. So, it is in the proposed regs. Everybody believes that will be passed. And what does that mean? It means you set up an entity that has to report (so, it's a reporting entity), it is set up after January 1, you'll have 30 days to report. So, for the ones in existence, you've got some time, but you might want to gather the information as you're in tax season. Add some questions, for example, to your client organizers or whatever you call your input sheets. Anything after that, you got 30 days. Also, if there are any changes, you've got 30 days. You have 30 days to report any changes to this.

Your initial report is not due if you were established before January 1 of 2024, [in other words] you're in existence at the end of this year, then, basically, you've got a year to report. But for anything starting next year, you have 30 days. And again, it is expected that that will be pushed back to 90 days for the initial report.

In addition, they carve out—and this is in that final rule that I mentioned, not the proposed regs, but the final rule—they carve out 23 exemptions from reporting. So, there are 23; it's a long list. One of the exemptions is for large operating companies with 20 or more full-time U.S. employees, more than \$5 million in sales, and a physical operating presence in the U.S. So, you may find that you don't have to do any reporting if your business falls into one of the exemptions. Also, the CTA includes a requirement that FinCEN conduct a study to review the exemptions two years after the effective date.

We also have two bills that have been introduced in Congress, HR 4035 and Senate Bill 2623, both entitled, *Protecting Small Business Information Act of 2023*. This is kind of to try to backtrack on the CTA. So, a couple of things are going on that we really need to be aware of.

[Note: Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule (RIN 1506-AB62) November 29, 2023, extending the deadline for companies created or registered in 2024 to file initial beneficial ownership information (BOI) reports to 90 calendar days from the original 30 calendar days.]

C. *Short Stop Electric v. Commissioner*
TC Memo 2023-114

We have an interesting case. This is a tax memo case, *Short Stop Electric v. Commissioner*. This was a closely held corporation, a cash-basis electrical service company. They had a loan which was from the owner (majority owner/president). So, he loans money. They haven't paid any of the interest, but what they did was they capitalized the interest by taking the unpaid interest and increasing the principal balance, and then, deducted it as interest paid. The Tax Court said no. Even though they booked it as interest paid by the corporation to the president on the so-called line of credit, the terms were just a fiction and reflected an improper attempt to relabel shareholder equity. It is a non-deductible; they really didn't pay it. And also, again, this was a cash-basis taxpayer. So, just capitalizing it does not make it deductible.

Well, I want to thank you for joining me today. We had a lot of interesting things going on, a lot of things we really need to be paying attention to. Obviously, the ERC is a huge thing and is affecting a number of clients out there nationwide. It is very important. Then, the FinCEN reporting for BOI. That is ever-changing but it's coming up on us very quickly, and I would recommend that you ask the questions you need to ask to get the reporting information, even though you have a delay before you have to report. Again, we don't even know what the form is going to look like, but at least we have an idea what information we're going to have to get in order to properly prepare the form. So again, I want to thank you for joining me. Always great to have you. Love having you here every month. As always, please be safe, and I'll see you next month.

SUPPLEMENTAL MATERIALS

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. IR-2023-193

The IRS has announced the details of the Employee Retention Credit (ERC) claim withdrawal process for taxpayers who wish to withdraw a previously filed ERC claim. The process is part of an IRS effort to combat the rampant fraud regarding false ERC claims. These are often the result of aggressive marketing tactics by “ERC mills.” The IRS included ERC scams in its annual “Dirty Dozen” of tax frauds. The IRS has updated its FAQs to reflect this program.

Previously, Commissioner Werfel announced that the IRS was placing a moratorium on the processing of new ERC claims from September 14, 2023, until at least December 31, 2023. It should be noted that this moratorium is only on the processing of new ERC claims. During this time, taxpayers may submit new claims that will be processed when the moratorium is lifted sometime in 2024. In a prior monthly segment, we discussed the July roundtable where Commissioner Werfel announced that the IRS is working with Congress to come up with a legislative solution to cut off claims. Presumably, this would be to reduce the statute to file ERC claims from April 15, 2025, to some earlier date. If a claim is legitimate, it might be wise to get it in the IRS queue.

The procedures set up by the IRS provide that using the withdrawal process, taxpayers who filed an ERC claim may withdraw their submission and possibly avoid any future repayment, interest, and penalties. It is based on the assumption that many taxpayers, especially small businesses, were misled by unscrupulous ERC marketers or promoters and filed ineligible claims.

The IRS indicates that penalties and interest will not be imposed if a taxpayer withdraws an ineligible ERC claim. In fact, the taxpayer will be treated as if they had never filed an ERC claim. Obviously, the IRS cautions that withdrawal of a willfully fraudulent ERC claim will not provide protection for either the taxpayer or those who assisted or conspired in the claim. There may still be potential criminal investigation and prosecution.

The following employers may withdraw an ERC claim:

- Employers that claimed the ERC on an adjusted employment return (Forms 941-X, 943-X, 944-X, CT-1X)
- Employers that filed the adjusted return only to claim the ERC and made no other adjustments
- Employers that want to withdraw the entire amount of their ERC claim
- Employers whose claim has not yet been paid or who have not yet cashed or deposited the refund check.

If an employer is not eligible to use the withdrawal process, they may still reduce or eliminate their ERC claim by filing an amended or adjusted return.

The withdrawal process varies depending on the taxpayer's situation. There is a difference when the taxpayer is under, or notified they are selected for, audit compared to those not under audit or notice. There are also differences when taxpayers use a payroll service to file the claim, when they file the claim themselves, or when they file through their accountants.

For employers who submitted an ERC themselves, have not received, cashed, or deposited the refund, and have not received notification that they are under audit, a withdrawal request may be faxed to the IRS. The IRS set up a special fax line to receive these requests. Mailed requests are also accepted but processing may be delayed. The employer must submit a copy of the adjusted return with the claim that it is to be withdrawn and (1) write “Withdrawn” in the left margin of the first page of the copy of the amended return; (2) have the authorized person sign and date the first page of the copy in the right margin; (3) fax the signed copy to the IRS's ERC withdrawal line found at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc); and (4) retain a copy for tax records.

Employers who are not under audit and have received a refund, but have not yet cashed or deposited it, must complete the same process detailed above but mail the check and the copy of the amended return to the IRS at the mailing address provided at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc). The employer should write “void” on the endorsement section of the refund check and include a note that says “ERC Withdrawal” with a brief explanation for the return of the check. A copy should be retained for tax records.

The place of filing is different if the taxpayer is under audit or received an audit notice. In that case, a withdrawal request must be submitted to the assigned examiner or in a response to the audit notice if no examiner is assigned. Note that the withdrawal request itself follows the details set forth previously for those not under an audit notice. Employers who used a payroll service provider to file their ERC claim should contact the payroll company to determine if the provider will submit the withdrawal request on their behalf. This will depend on whether the payroll company submitted ERC claims on an individual basis or batched with other clients. Employers that submit a withdrawal request will receive a letter from the IRS whether their request is approved or rejected. If a withdrawal is accepted, the employer may need to submit an amended return.

Werfel also announced that the IRS is developing a settlement program that will allow taxpayers to make repayments for an improperly received ERC payment that has been cashed or deposited. Details on the settlement initiative have not yet been released but are expected soon. The IRS has updated its ERC webpages to include the Withdrawal Process and FAQs. The updated webpages emphasize the following scenarios in which the ERC withdrawal process may not be used:

- Adjusted returns with other corrections and ERC claim reduced. The IRS updated its Withdraw an Employee Retention Credit (ERC) claim webpage and noted that taxpayers may not use the withdrawal process if the adjusted employment tax return (Form 941-X, Form 943-X, Form 944-X, or Form CT-1X) contains any other changes or the ERC claim is reduced and not withdrawn in its entirety. In these situations, the taxpayer must submit an amended return to the address provided in the instructions for the form. Any such returns received through the dedicated withdrawal process fax line will be rejected.
- ERC claimed on the original return. The FAQs on the ERC explain that the withdrawal process may also not be used when the ERC was claimed on an original tax return rather than an adjusted tax return. To correct the ERC claim, the taxpayer must file an adjusted return and make a payment for any tax due.
- Withdrawal requests received after a return is processed. The FAQs on the ERC state that if the IRS processes the return prior to receiving a withdrawal request, the IRS will reject the request. The taxpayer must then file an adjusted return to correct the previously claimed ERC.

In some situations, there is a limited use of the withdrawal process. This applies to CPEOs, PEOs, and 3504 agents. The withdrawal process is only available to certified professional employer organizations (CPEOs), professional employer organizations (PEOs), and Code Section 3504 agents who wish to withdraw ERC claims for all clients, including any ERC claim made for themselves. The FAQs clarify that CPEOs, PEOs, and Code Section 3504 agents who wish to withdraw ERC claims for only some clients must file an adjusted return with the corrected ERC amount.

B. FinCEN Update, Rule (RN 1506 – AB49)

The Financial Crimes Enforcement Network (FinCEN) has issued additional guidance on the beneficial ownership information (BOI) reporting requirements. On September 29, 2023, FinCEN updated its BOI FAQs to include new questions about beneficial owners, initial reports, FinCEN identifiers, and third-party service providers. FinCEN also has posted on its website a brochure regarding the new federal reporting requirement for BOI.

The Corporate Transparency Act (CTA) established uniform BOI reporting requirements for certain corporations, limited liability companies, and other similar entities created or registered to do business in the U.S. The CTA authorizes FinCEN to collect BOI information from reporting entities and disclose it to authorized government authorities and financial institutions, subject to certain safeguards and controls.

BOI is the identifying information of the individuals who directly or indirectly own or control a reporting entity. Beneficial ownership information that an entity must report includes the full legal names, dates of birth, and addresses of all individuals who have “substantial control” or who own at least 25 percent of the entity.

FinCEN issued final regulations implementing the CTA’s beneficial ownership information reporting requirements in September 2022. These regulations go into effect on January 1, 2024. Under the final rules, reporting entities created or registered before January 1, 2024, will have until December 31, 2024, to file their initial BOI disclosure reports. Entities created or registered after January 1, 2024, have 30 days after formation or registration to submit their initial BOI disclosure reports. Once an initial report has been filed, both existing and new reporting companies must update their reports within 30 days of any change in their beneficial ownership. The rule will establish a database of beneficial ownership information reported by a corporation or similar legal entity. FinCEN has said the required reporting and the information registry would help deter those who attempt to obscure their holdings through various corporate structures.

A reporting company may use an entity’s FinCEN identifier instead of identifying information about an individual beneficial owner when supplying BOI to FinCEN. A FinCEN identifier is a unique number that FinCEN will issue upon request after receiving required information. FinCEN does not require entities to obtain an identifier but says it can simplify the BOI reporting process while allowing entities or individuals to provide required information directly to FinCEN. The final rule amends FinCEN’s final BOI reporting rule. Under the rule, which is effective January 1, 2024, millions of U.S. companies will have one year to provide information about their beneficial owners, the people who ultimately own or control the company. The final rule provides criteria that must be met before a reporting company can use an intermediate entity’s FinCEN identifier instead of information about the individual beneficial owner.

In addition to the Small Business Compliance Guide, FinCEN has:

- Updated and added to its answers to FAQs about the BOI reporting requirements, and
- Created a webpage dedicated to BOI reporting that contains links to other available resources for entities with a BOI reporting requirement.

The BOI reporting requirements are effective January 1, 2024, at which time businesses will be able to begin reporting beneficial ownership information to FinCEN.

FinCEN had proposed regulations to extend the initial report for entities established after January 1, 2024, to 90 days until January 1, 2025, when it will be back to 30. [Note: Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a final rule (RIN 1506-AB62) November 29, 2023, extending the deadline for companies created or registered in 2024 to file initial beneficial ownership information (BOI) reports to 90 calendar days from the original 30 calendar days.]

C. *Short Stop Electric, Inc., v. Commissioner*

TC Memo 2023-114

A closely held, cash-basis electrical services corporation was not entitled to interest deductions for purported interest that it added to principal on a revolving line of credit, which the majority owner/officer extended to it. The corporation was effectively “capitalizing” unpaid interest. It was not making any payments of interest that could be deducted. The corporation was also not entitled to interest deductions for payments that a third party made to the corporate owner/officer directly in connection with the loan it received from the corporation. Although the corporation booked the third-party payments to the owner/officer as interest paid by the corporation to the owner/officer on a supposed line of credit, their loan terms were really just “fiction in practice” and reflective of an improper scheme to relabel shareholder equity.

GROUP STUDY MATERIALS

A. Discussion Problems

- 1) Your client, Natasha, used an “ERC mill” that filed an amended Form 941 to claim an ERC. She has told you that she is entitled to an ERC refund in excess of \$1 million. You have reviewed it and determined that she is not entitled to the refund.
- 2) Another client, Belle, filed an original ERC claim on Form 941. She has not received a refund, and you have determined that she is not entitled to it.
- 3) You have a number of clients that will have BOI filing requirements. One client has several corporations subject to the rules.

Required:

- 1) What must Natasha do to withdraw the ERC claim?
- 2) May Belle use the new IRS withdrawal process? If not, what does she need to do?
- 3) What are the applicable initial reporting dates for the BOI?

B. Suggested Answers to Discussion Problems

- 1) Since Natasha has not received the refund, she may follow the withdrawal process set forth by the IRS. She must submit a copy of the adjusted return with the claim that is to be withdrawn and (1) write “Withdrawn” in the left margin of the first page of the copy of the amended return; (2) have the authorized person sign and date the first page of the copy in the right margin; (3) fax the signed copy to the IRS’s ERC withdrawal line found at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc); and (4) retain a copy for tax records.
- 2) The FAQs on the ERC explain that the withdrawal process may not be used when the ERC was claimed on an original tax return rather than an adjusted tax return. To correct the ERC claim, the taxpayer must file an adjusted return and make a payment for any tax due.
- 3) For reporting entities established before January 1, 2024, the initial filing is December 31, 2024. For those established after January 1, 2024, the initial reporting date for the BOI was originally 30 days after the establishment of the entity. Based on proposed regulations, it seemed likely to be extended to 90 days for the initial filings if the entity was established before January 1, 2025. Thereafter, it returns to 30 days.

[Note: Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a final rule (RIN 1506-AB62) November 29, 2023, extending the deadline for companies created or registered in 2024 to file initial beneficial ownership information (BOI) reports to 90 calendar days from the original 30 calendar days.]

PART 2. INDIVIDUAL TAXATION

Refund Statute Expiration Date

The refund statute expiration date is the end of the time period in which a taxpayer can make a claim with the IRS for a credit or refund for a specific year. If a claim is not made within the specified time, the taxpayer may no longer be entitled to the credit or refund. There are general rules related to the refund statute expiration date, also known as the RSED. There are, of course, exceptions. Also, periods of financial disability may suspend the RSED. Ian Redpath and Larry Pon discuss the rules related to the refund statute and the refund statute expiration date.

Let's join Ian and Larry.

Mr. Redpath

Larry, welcome to the program.

Mr. Pon

Hi, Ian. Good to see you.

Mr. Redpath

It's always great to have you here; always great to get your insight.

When you think about the statute of limitations, I think we all kind of think about the general rules. We've heard them, but we really don't get into the thought process. What does this really mean? Until all of a sudden, you're faced with a situation where—wait a second—what is the statute of limitations? So, basically, let's start in the beginning. What is the *statute of limitations*? What does that mean, the *statute of limitations*? We hear that term in all sorts of different contexts. Many of our viewers are aware that, like the filing period for the tax court has been, now we've got a court case that says that's subject to equitable tolling. So, we have all these different issues going on. What does it mean? So, we're talking about the RSED (the refund statute expiration date). What does that mean?

Mr. Pon

First of all, let's take a step back. There are three basic statutes of limitations regarding taxes. The one we're talking about today is the refund statute expiration date. That's got specific rules there. Then there's the assessment statute expiration date, and then the collection statute expiration date. Their rules are all different. They're not the same. It can be quite confusing.

So, when we talk about the refund statute expiration date—well, this came up because we got a press release from the IRS reminding people to file their 2019 tax returns by July of this year. And you're thinking, "July?" Well, it's because the 2019 tax returns were postponed until July 15th, not April 15th. So, that made a change there. Basically, to claim a refund or a credit on an overpayment tax, you generally have three years from the due date to claim that refund.

Mr. Redpath

Can I go back to that, Larry? Because the point you're making is really important this year, because we've had—let me say the last two years, 2022 and 2023. We had the COVID times where everything got postponed. We've also had, recently, a number of situations where we've had disasters, and the IRS has said, "Oh, the filing date is moved."

For example, in New York, we had the filing date for the 2022 return [moved] because in certain counties—and this is one thing; it's always in certain counties. We had the due date moved back to May—from April to May—because we had an outrageous snowstorm, but only in certain counties. So, it didn't apply to the whole state. For example, South Carolina, Florida—South Carolina, for example, every county there, they're giving additional time to file because of the hurricane that went through. So, there [are] always those additional times. Does that add time then onto the statute?

Mr. Pon

Yes, so you should always go to the IRS website, [and] in the search box type, “disaster relief.” I’m looking here in California. So, California— [in] every county, except for three counties of California, you’ve got till October 16, 2023, to pay and file your 2022 tax returns. That also includes the 2023 estimated payments—January 15th for 2022, April 15th, June 15th, and September 15th. That’s not due until October 16th. It also gives us additional time to fund IRA contributions for 2022 and HSA contributions—October 16, 2023. Now, this includes a handful of counties in Alabama and Georgia. Recently, we had some more disaster declarations such as Maui. [In] Maui, they got until February 15th to file their 2022 tax returns. And then there’s the delay on their estimated payments. So, yes, that does extend the statute of limitations. However, there’s some technicalities about the IRS’s authority to do that. So, for the 2019 tax return, the IRS had to issue a notice. Going forward, the IRS is lobbying Congress to make this law automatic. Right now, it’s not automatic. So, officially, for this year’s taxes, because of this delayed filing, do we get that extended due date? Good question. It has not been announced yet. Probably in the pending legislation we’ll see that happen. So, it’s not all the time. You’ll need to check the guidance. You need to check the guidance on that.

Mr. Redpath

Right. So, what is the due date? Let’s start with the statutory due date under [Internal Revenue Code (IRC) Section] 6072(a). We know, but when are individual returns due?

Mr. Pon

Right. Since 100 years ago, it’s been April 15th. April 15th. The IRS can’t change the date, but they do have authority to extend that. We got an extension to October 15th. So, that’s the due date—April 15th. However, if that falls on a Saturday, Sunday, or legal holiday, it’s the next business day. For example, for the 2022 tax returns, April 15th was Saturday this year. On Monday, April 17th—it’s Monday, April 17th. However, it’s a holiday. It’s Emancipation Day in Washington, D.C., so then taxes are due on April 18, 2023, for the 2022 tax returns.

Mr. Redpath

In New York—going back even to the days of filing on paper—we used to always file in Massachusetts. So, it was, okay, it’s Patriots’ Day. So, let’s say that the 15th fell on Saturday and Patriots’ Day would be the following Monday. You’ve got till the next Tuesday to file. And that’s still kind of held true, even though Patriot’s Day is only really Massachusetts and Maine.

Mr. Pon

Massachusetts and Maine. But the Internal Revenue [Service’s] menu lists all the legal holidays recognized by the IRS and occasionally gets updated as we add new holidays.

Mr. Redpath

So, what’s the general rule then? We know we have this refund statute expiration date, and I think it’s really misunderstood. It’s misunderstood a lot where I’ve heard people say, “The IRS has three years to audit.” No, no, no, no. They don’t have three years to audit, so what does that mean? But you hear that all the time. The IRS says they have three years to audit your return or two years when you pay. No, that’s not what the statute is. So, what exactly is the general rule under [IRC Section] 6511?

Mr. Pon

Well, when it comes to [IRC Section] 6511(a), that’s the RSED (the refund statute). When you’re talking about audit, that’s the ASED (the assessment expiration date). Basically, you’ve got three years to claim a refund from the due date of the tax return, so that’s why that is so important. What is the due date? So, it’s very important there. Plus, there’s what’s called the lookback rule for two years of payment. You’ve got [within] two years of payment to get your money back. You could be beyond the three-year statute of limitations to get a refund, but if you paid taxes within the last two years, you can claim that refund if you’re due that refund.

Mr. Redpath

I think that's important, Larry, because some people will—they'll file the return, but they're not paying right now. They pay over a period of time. It's from the payment. It's two years from the payment or three years from the filing.

Mr. Pon

Right, exactly. So, if you file on April 15th or April 16, 2022, for the 2021 taxes, you've got till April 15, 2025, to file a claim for refund on those tax returns. So, it's three years from the date the return was filed. That's the three-year rule.

Let's go over an example for the two-year rule.

Mr. Redpath

Okay, so we're going to put up an example for the three-year rule beginning with Sheldon. So, what's happened with Sheldon?

Mr. Pon

Right, right. Sheldon timely filed his 2021 [Form] 1040 on April 16, 2022. Sometime in 2023, he realized that he failed to claim a deduction for charitable contributions on his Schedule A. He's got till April 15, 2025, to file a claim for a refund on his [Form] 1040, and that's three years from the date the return was filed. So, not only would he get a refund for that amount, [but] he would also get interest.

Mr. Redpath

What about the two-year rule because that's sometimes misunderstood? So, let's talk about Penny here.

Mr. Pon

Yes, Penny. Let's go to the example here. So, Penny filed her 2021 tax return on April 15, 2022. Well, her 2021 tax return was audited in 2023. So, the IRS—like we were talking about, the assessment—the IRS had until April 15, 2025, to audit [and] to assess a tax deficiency. Well, as a result of the audit, she was assessed a deficiency, and she paid the additional tax on December 14, 2023. Sometime in 2025, Penny realized that the additional tax she paid in December of 2023 was in error, so she believes the IRS should refund the additional tax paid. Well, she's got till December 14, 2025, to file a claim for refund.

Mr. Redpath

So, what if you don't file a return? What happens then?

Mr. Pon

If you don't file a tax return, then the claim must be filed within two years from the time that tax is paid. So, here's an example; it's called the late return reach-back rule. Let's say Amy filed her 2021 tax return on May 31, 2025. It's late because the tax return would have been due on April 15, 2022, and no extension was filed. So, she didn't file an extension. The 2021 tax return shows an overpayment of \$1,000 because the withholding was in excess of her tax liability. That's how she got the \$1,000 overpayment.

The question is, does Amy get this refund? So, we need to go through an analysis here to see if she gets a refund. (1) Was there a claim for refund filed? Yes. (2) Was it timely filed? Maybe, right? Was it timely filed, and if so, how much of the refund is allowable? So, let's take a look at that analysis here.

First of all, what's a claim for a refund? A *claim for a refund* is either a tax return or an amended tax return. So, she did file that claim for refund timely if it's filed within three years from the date the income tax return is filed, regardless of when the tax return is filed.

Now, here's the thing about withholding. Any tax withheld during the year—during the calendar year—is deemed to be paid on the 15th day [of] the fourth month following the close of the taxable year, so that means April 15th of the subsequent year. This is for purposes of the refund statute of limitations, not for estimated tax penalty. Those are different sets of rules.

Mr. Redpath

That's really important, I think, Larry, that the payment, the withholding is April 15th of the following year, even though we know that's not how it's looked at for estimated tax. For estimated tax, it was withheld for the year, and it's going to be allocated to the quarters. It's going to be considered pro rata for the estimated tax issue. But this is a totally different issue, and I think that gets confusing sometimes.

Mr. Pon

Right, so let's take a look at Amy's refund analysis here. Was there a claim for refund found? Yes, she filed a tax return, even though it's late. Was it timely filed? Well, yes, because it was filed. Yes, the original return/the claim was filed simultaneously within the three-year period. Then, number three is how much of this refund is allowable? Well, the answer is really none under [IRC] Section 6511(b), the reach-back rule because there were no taxes paid from May 31, 2023, reaching back to May 31, 2020.

However, if she filed the extension—if she filed the six-month extension—the reach-back period would be greater by six months. We get an extra six months in the reach-back [period], [and] then that thousand dollars would have been refundable because the withholding tax was deemed to be paid on April 15, 2020, within the extended reach-back period. This illustrates the importance of filing extensions, even though a return hasn't been filed. That extends the reach-back time period here.

Mr. Redpath

Yes. Sometimes people don't consider that, but just filing the extension can be very, very helpful in this type of situation.

The other thing, and this is something that I came across. I had someone come in the office, and they hadn't filed taxes for about 12 years—never filed a tax return. Honestly, these people were not—I don't blame them. I think they certainly had reasonable cause. They're not the most sophisticated people in the world. They both worked on a Native American reservation at a casino. Unfortunately, one was Native American, [and] one was not. But the way it worked was the state of New York didn't tax it. They got audited by the state of New York on a return, and the auditor said, "Well, you don't have to file anything." So, they didn't file anything. Well, the federal government doesn't have the same rules. So, federally then, we went back, and if you did it, they had withholding, federal withholding. They really didn't owe anything. In fact, they would have had a refund, except we went back, which is the norm if they haven't filed a return. We went back six years [and] looked at the transcripts because they really don't have any information. We looked at the wage transcripts and put everything together. Sure enough, they had refunds each year and owed no tax. No, because that election to apply the tax refund to the next year is an election. Well, the refund period had run [out]. Some of the refunds dropped off because the statute had run, and the IRS said, "Well, you're right. If we moved everything forward, they would actually get a refund. However, we're only moving it forward this far. Therefore, you owe money at the end of the day."

Now, not much; [the IRS] didn't penalize them. It was reasonable cause; they understood the confusion. [The taxpayers] didn't know the difference between an IRS audit and a state audit. So, it wasn't a problem from that standpoint. They owed a little tax, so they weren't that happy. But the IRS essentially got their money because, when you look back—and I've seen this happen a lot, where people have gone back and filed returns and just assumed that they can carry forward any refund from year to year because of the withholding. I had a similar case where the people just said, "Why do we have to file returns because everything's covered by our withholding?" No, it didn't quite work out that way when we went back and filed the make-up returns for them. So, that's something always to watch when you have that situation.

Mr. Pon

Yes, if you're due a refund, the IRS is not going to remind you saying, "Hey, we noticed you haven't filed a tax return. You're due a refund." They're not going to send you a letter for that. On the other hand, if you owe money, they'll send you a letter saying, "You owe us money."

Mr. Redpath

Right. Yes, they're not that good in saying, "We've got money that you might want back."

Mr. Pon

They're not going to do that. That happened to a client, too. He married a wonderful woman, and I said, "Oh, great. Let me see your last few years' tax returns." She confessed to me that she hadn't done her taxes for seven years. Sadly, she lost over \$15,000 of refunds. \$15,000.

Mr. Redpath

I think people just assume that that they can automatically get it back, and unfortunately, that just isn't the case.

Mr. Pon

Right, right.

Mr. Redpath

So, we have the two-year rule—reach-back rule number two. Can you go over that and then reach-back rule number three?

Mr. Pon

The reach-back rule number two basically means you're filing a claim for refund that's after the three-year period but still within the two-year period of when you paid the additional tax. That's reach-back rule number two.

So, let's use Leonard's example here. For 2021, he filed his tax return. On April 15, 2022, he owed \$2,000, so he paid that on April 15, 2022. Well, the IRS audits his 2021 return in 2023, so the IRS has until April 15, 2025, to assess an additional tax deficiency. He paid the \$700 on December 14, 2023. In 2025, he realized [there was] an error in the audit, and the IRS should refund him \$1,700. So, he filed a claim for a refund [of] \$1,700 on December 14, 2025.

Well, number one, the refund claim was not filed within the three-year period, which would have been April 15, 2025, so we don't meet the three-year rule. But the refund claim was filed within the two-year period of when the additional tax was paid. His [Form] 1040-X says \$1,700, but the most Leonard will get will be the \$700 because that's the additional tax he paid.

Mr. Redpath

Timing is important, right? So, let's look at number three—reach-back rule three.

Mr. Pon

Reach-back rule number three is a bit unusual. This is if the taxpayer did not file a claim. So, the refund cannot exceed the amount which would be allowable under [IRC Section] 6511(b)—reach-back rules number one and two—if the claim was filed on the date the refund [is] allowed. In this situation here, for reach-back rule number three, the IRS will initiate the refund, not the taxpayer.

Let's look at Raj here. He filed his 2021 tax return on April 15, 2022. He paid the \$6,000 due on April 15, 2022. The IRS has three years to audit him—April 15, 2025. They audit his 2021 tax return before April 1, 2025, but the IRS determined that his tax liability was overstated by \$3,000.

Mr. Redpath

Good for Raj. Boy, I don't get that one very often where the IRS says, "Hey, we owe you money."

Mr. Pon

I've had a few cases of that. They're mostly do-it-yourself returns or a very, very helpful revenue agent. I've had very helpful ones. An example I had was a horse case, and the revenue agent was a horse person. She knew everything about horses, and he forgot to claim a bunch of legitimate deductions. And hey, we got a nice refund there.

Mr. Redpath

That's great.

Mr. Pon

So, the IRS would allow the \$3,000 refund under the reach-back Rule number three. Go figure. It's rare, but we don't see it too often.

Mr. Redpath

Now, there's a special seven-year period that applies for bad debts and worthless securities, and some other things have some special rules. There's a concept called *equitable tolling*. What is that?

Mr. Pon

Equitable tolling is basically in a case where you have a financial disability. You have a financial disability. *Equitable tolling* is a common law doctrine that provides that the statute of limitations can be suspended. This came out of a Supreme Court case where a taxpayer was senile, basically. He made a mistake, but the error wasn't discovered until many years later. So, as a result of that, Congress added [IRC] Section 6511(h). *Limited equitable tolling*—that's when the individual is financially disabled. This is for someone who's unable to manage their financial affairs due to a medically determined physical or mental impairment that's expected to result in death or last more than 12 months.

Mr. Redpath

When I've applied that—which has been rarely, but I have a couple of times—it's gone to appeals or to tax court. Agents haven't always been as willing to do that, but I have had some success on that. But those are rare types of situations.

Mr. Pon

Yes, you have to have proof of the disability, the letters from the doctor or whatever. However, though, you're not financially disabled if you have a spouse or anybody else who's authorized to act on your behalf. So, if you've got someone else helping you, it'd be really hard to claim this.

Mr. Redpath

Especially a trust. If you have a trust and a trustee (who has to, you know, health, education, welfare, all of it), then it becomes much more difficult.

So, what is the sufficiency of a claim for refund? What do you have to show? I made a claim. What does that mean?

Mr. Pon

Well, you can't just say, "Hey, trust me; you owe me money," so [you've] got to provide some legal support and reason for the claim. If it's a factual matter, I would suggest providing some of the facts—"We totally forgot to include some deductions that were intended. Well, here's the proof of those deductions"—just to make it easier for the IRS to process it. And that can happen. Mistakes happen. I've seen a client that came to my office, and her tax preparer entered the wrong number for the [Schedule] K-1 income. I mean, they were off by a digit, and it was an obvious mistake. So, we showed the [Schedule] K-1 and all that; also, we showed what her income was to be able to justify it.

Mr. Redpath

It can also go the other way. I had a situation where the IRS, they entered—the person was panicked. What they did was [the IRS] entered their income—somehow [the person's] income got entered as their tax due.

Mr. Pon

Ooh! Well, a lot of those entries are manually inputted, and we're all human beings. We make mistakes.

Mr. Redpath

Whoops! Yes, that number was pretty high, but that was their gross income.

Mr. Pon

It is a pretty obvious mistake.

Mr. Redpath

Right? Now, that took about five minutes to get that one straightened out.

So, what is this? You know, people get confused, often, by a [Form] 1040-X or even a [Form] 1045. What's the difference between those two?

Mr. Pon

Well, a [Form] 1040-X is an amended return, and it covers any changes you're making to your originally filed tax return. A [Form] 1045 is something you would file pretty close to the time. There's a time limit of when you can file a [Form] 1045, and that generally applies to, like, a net operating loss carryback or any other carrybacks that might apply. And those do get processed rather quickly.

Mr. Redpath

I carry back, so I'm not going to amend my return for that year. I can file a 1045 and say, "Oh, I carried this back. I'm entitled to a refund."

So, there's a lot of confusion out there, Larry, and you hear the term *protective claim*. What is a protective claim, and what do you have to do to make one? What does that mean? I'm making a protective claim.

Mr. Pon

It could vary depending on what you're filing a protected claim for. It doesn't necessarily mean you have to file a tax form. It could just be a statement you send to the IRS. A protective claim has got to be filed within the statutory period, which [is] the three-year rule or the two-year rule. So, giving the IRS notice here, but we don't know what the numbers are. It could be conditional. We're uncertain in the amount and the outcome. Classic example: you're a partner in a partnership, and that partnership is going through either an audit or a tax court case, but it's probably not going to get resolved until after the statute of limitations expires. But you might be due a refund, so you want to file a protective claim. Or you're a beneficiary of a trust—same situation. It could be a lawsuit. There could be some kind of issue about what the income [is] or what the deductions are within the trust, and you're a beneficiary of the trust. Very common.

We've had, in the past, pending legislation or a pending Supreme Court case. We went through that a few years ago when there was a question of whether the Affordable Care Act was constitutional or not. Many people filed protective claims for refunds for the Medicare surcharge.

Mr. Redpath

I think that also happened [when] people were filing protective claims with the PPP [Paycheck Protection Program] loans. Can I take the deductions if I pay with a PPP loan? There were all sorts of issues there, and some people just used the protective claim way of handling that.

There's also a Form 843 that some of our viewers may be familiar with. What do we use that for?

Mr. Pon

That would be if you want to get a claim for refund or a request for abatement, but it's not for your income taxes, employer taxes, or income tax refunds. It's not for that, but it's used for unemployment tax, estate tax, gift tax, and certain excise tax. Most importantly, [it's used for] abatement of interest penalties and other additions to taxes where we file that [form]. The instructions of Form 843 have some pretty explicit guides on how to do that, but, no, it's not for your income tax.

Mr. Redpath

Where I see it is the abatement of interest and penalties. One of the things the IRS has said—and this is a common error—is someone says, “Well, I’ve got reasonable cause,” so they’ll file the [Form] 843 with the [Form] 1040.

No, you don’t file it with the [Form] 1040. You file it when you get your notice saying, “Hey, we’re assessing a penalty.” Then, you file the [Form] 843. So, that’s the request. If it hasn’t been assessed yet, you can’t claim a refund, nor can you request abatement of something that hasn’t been assessed.

Mr. Pon

Just think of the notice as your ticket. You need to get that ticket to be able to file the Form 843. If you don’t have the ticket yet, you can’t do it. It either won’t be processed, [or it will be] ignored or just denied.

Mr. Redpath

Absolutely.

Mr. Pon

Let’s talk about one more thing about the protective claims for refund that we’re dealing with right now regarding the employee retention credit [ERC]. The IRS is auditing them, and many of our clients have probably claimed the ERC when they shouldn’t have. During this tax season, many of us have filed amended business returns to adjust their deduction for wages, so they paid additional tax and interest. What if the ERC is denied and you have to pay it back? Well, you can get a refund on that wage adjustment. However, the IRS has until April 15, 2027, to audit the 2021 ERC claims, which is beyond the statute of limitations to claim a refund. So, to protect that, you should file a protective claim for a refund before the expiration of your RSED.

Mr. Redpath

Yes, very good point.

Larry Pon, thank you for joining me.

Mr. Pon

All right. Thank you, Ian.

SUPPLEMENTAL MATERIALS

Statute of Limitations for Tax

By Ian J. Redpath, JD, LLM

A. Introduction

Typically, a taxpayer does not have an unlimited amount of time to request a refund. This can result in a taxpayer being surprised to find they cannot receive a refund they are owed or apply a refund due from a prior year to tax owed in a subsequent year because they missed the statute of limitations. Both taxpayers and the government have a need, at some point, for a level of certainty and closure. The taxpayers' general statute of limitations is referred to as the Refund Statute Expiration Date (RSED).

A return claiming a refund is considered a claim for refund. Generally, for all taxes for which a return must be filed, a claim for a credit or refund must be filed within:

- (1) Three years of the time the return was filed [§6511(a)] except, if the return was filed before it was due, then the claim must be filed within three years of the return's due date [§6513(a)];
- (2) Two years from the time the tax was paid), if that period ends later; or
- (3) Two years from the time the tax was paid, if no return is filed by a taxpayer required to file a return [§6511(a)].

It should be noted that the IRS cannot waive the above time limits [*Knis, Eleanor A. v. U.S.*, (2000, Ct Fed Cl) 86 AFTR 2d 2000-7157]. However, they can extend the due date. If an agreement to extend the statute of limitations (during an IRS audit or appeal) is signed within the three/two-year period, then the taxpayer has extra time to file the claim for refund. The period is extended to six months after the expiration of the period within which an assessment may be made pursuant to the agreement to extend the statute of limitations.

A claim for refund is timely if it is filed within three years from the date the income tax return is filed, regardless of when the return is filed. Any tax withheld during any calendar year is deemed paid on the 15th day of the fourth month following the close of the taxable year (e.g., April 15th of the following year for calendar-year taxpayers). The IRS has numerous addresses for mailing in paper returns, depending on the state of residence and whether a payment is enclosed.

- Use certified mail, return receipt requested, if return is sent by U.S. mail. This will provide proof that it was received.
- The IRS accepts deliveries from FedEx, UPS, and DHL Express. An approved class of service must be used.
- Hand-delivering the return can be an option depending on where the taxpayer lives.

A claim is considered to be filed on the date it is postmarked under the "mail box" rule [§7502]. An original tax return or a claim for refund received after a due date (including an extended due date) but postmarked by the USPS on or before the due date is deemed to be filed on the date of the postmark. Privately metered mail qualifies for the timely mailing rule if the meter date is timely and if the document is delivered within the time ordinarily required for the delivery of a document properly mailed and postmarked at the same point of origin by the USPS. For foreign postmarks, documents officially postmarked may be accepted if postmarked on or before the last day for filing.

Under §6072(a), April 15 of the year following the close of the calendar year is the standard due date for filing an individual return. If the due date (or extended filing date) falls on a Saturday, Sunday, or legal holiday, the tax return is considered timely filed on the next day that is not a Saturday, Sunday, or legal holiday. IRM §25.6.1.6.18 lists legal holidays recognized by the IRS. They also recognize certain state holidays, such as Patriot's Day in Maine or Emancipation Day in the District of Columbia.

Example 1: Juan timely filed his 2021 Form 1040 on April 15, 2022. Sometime during 2023, he realized that he had failed to claim a deduction for charitable donations on Schedule A. He has until April 15, 2025, three years from the date the return was filed, to file a claim for refund.

Example 2: Natasha filed her 2021 Form 1040 on February 5, 2022. Sometime during 2023, she realized that she had failed to claim a deduction for charitable donations on Schedule A. She has until April 15, 2025, to file a claim for refund; this is three years from the date the return was due since she filed before the due date.

Example 3: Megan's 2021 tax return was filed April 15, 2022. The IRS audited the return in 2023, and additional tax was assessed. She paid the additional tax on December 14, 2023. Sometime during 2025, Megan realized that the additional tax paid in December 2023 pursuant to the audit was in error, and she believes the IRS should refund the additional tax paid. Megan has until December 14, 2025, to file a claim for refund—the latter of three years from April 15, 2022, or two years from December 14, 2023, the date the tax was paid.

Example 4: Jack filed his 2019 Form 1040 on February 5, 2023. He has until February 5, 2026, to file a claim for refund; this is three years from the date the return was filed even though it was filed late.

Example 5: Assume in Example 4 that Jack does not pay the tax due until June 2, 2024. He would have until June 2, 2026, to file a claim of refund—three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

The government, as a general rule, must assess tax within three years after the taxpayer's return is filed or, if later, the due date of the return. As an alternative, the government must begin a proceeding in court for collection of the tax without assessment within that time [IRC§6501(a)]. This is called the Assessment Statute Expiration Date (ASED). For the ASED to start, the return must be sufficient in substance. An unlimited period may apply in certain circumstances, such as a substitute return filed by the IRS, a fraudulent return, or if no return is filed. A common extension period used by the IRS is six years after the return was filed if the taxpayer fails to report an amount that is more than 25 percent of the reported gross income. On the other hand, the assessment period may be shortened to 18 months after a request for prompt assessment is filed for a return of a decedent or a decedent's estate or a return for a dissolved or dissolving corporation. [IRC §§6501 (c), (d), and (e)]. Once the tax is assessed, the government has ten years to collect. This is the Collection Statute Expiration Date (CSED) [§6502].

There are some special limitation periods applicable to certain situations. For example, the three-year statute is extended to seven years for bad debts and worthless securities [§6511(d)(1)]. Note that the extended statute does not apply to non-business bad debts. If the deduction for a bad debt or worthless security results in an NOL carryback, the period to file a claim for refund is the later of seven years from the date for filing the return of the NOL or the period with respect to the special rules for NOL. If the claim for refund relates to an overpayment attributable to an NOL carryback, the three-year limitation period of time to file a claim for refund is three years after the due date (including extensions) of the tax return for the tax period that generated the NOL.

Example 6: Jaden has an NOL for the 2022 calendar year. He filed his 2022 tax return on April 15, 2023. His 2020 and 2021 tax returns showed positive income and tax liabilities, so he will carry back the NOL to those years. He can file a claim for refund for 2020 and 2021 up through April 15, 2026, to recover taxes paid as a result of the carryback from 2022.

There is a substantial compliance standard for returns. As mentioned above, under §6501, the assessment period stays open if the taxpayer fails to file a return, files an inadequate return, or files a false or fraudulent return. The return must be a valid return for the filing requirement to be met to start the running of the statute of limitations. The validity requires "substantial compliance." The following criteria are applied:

1. There must be sufficient data to calculate tax liability;
2. The document must purport to be a return;
3. There must be an honest and reasonable attempt to satisfy the requirements of the tax law; and

4. The taxpayer must execute the return under penalty of perjury. [*Beard, Robert D.*, (1984) 82 TC 766, aff'd (1986, CA6) 58 AFTR 2d 86-5290, 793 F2d 139, 86-2 USTC ¶9496; *Blount, Sherwood E.*, (1986) 86 TC 383, acq. in result (1986) 1986-2 CB 1]

The “substantial compliance” standard is commonly referred to as the “Beard” standard. The determination of whether a Form 1040 that lacks a required form or schedule is a valid return under the substantial compliance standard depends on the specific facts—there is no “bright line” test. The IRS says that a Form 1040 that meets items 2–4 above is sufficient to start the assessment period even if the supporting schedules required for any particular item are missing. An example would be a return in which the taxpayer claims itemized deductions but fails to include a Schedule A. The return will be valid if it provides sufficient data to calculate tax liability, despite the missing schedule [Service Center Advice 200010046; *Schlapfer v Commissioner*, TC Memo 2023-65].

There may be a limit on the amount that can be obtained by refund—even if owed to the taxpayer. If the taxpayer filed the claim during the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim. This is equal to three years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim. If the claim was not filed within such three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Thus, when tax is partially paid late, the claim could be limited to the amount paid late if within the two years. These are referred to as the “reach-back” rules.

Example 7: Jay’s 2021 tax return was filed on April 15, 2022, with a balance due of \$2,000. The balance was also paid on April 15, 2022. The IRS audited the return in 2023 and assessed a deficiency of \$700. He paid it on December 14, 2023. Sometime in 2025, Jay realized an error in his initial filing and the audit, and he assumed the IRS would refund his \$1,700. Jay filed a claim for refund in the amount of \$1,700 on December 14, 2025. The refund claim was not filed within the three-year period ending April 15, 2025, but was filed within the two-year period of the additional taxes being paid. The most she can obtain on refund is \$700, the amount paid within the two-year period.

If no claim is filed, the refund cannot exceed the amount that would be allowable under §6511(b) as if the claim was filed on the date the refund is allowed. In this situation, the IRS initiates the refund rather than the taxpayer.

Example 8: Raj filed his 2021 tax return on April 15, 2022, and paid the \$6,000 balance due on the same date. The IRS had until April 15, 2025, to assess a tax deficiency. It audited the return before April 15, 2025, and determined the tax liability was overstated by \$3,000. Raj did not file any claim for refund. The IRS may allow a refund of \$3,000.

IRC §6511(h) provides for limited equitable tolling relief when the individual is “financially disabled.” This means the taxpayer is unable to manage their financial affairs due to a medically determinable physical or mental impairment that is expected to result in death or is expected to last for a continuous period of not less than 12 months. Proof of such disability must be provided. A person is not considered financially disabled during any period that their spouse or any other person is authorized to act on behalf of the individual in financial matters.

A claim for refund may be made via an amended return (such as a Form 1040-X) or Form 1045 for things such as an NOL carryback. Form 843 cannot be used for income tax, employer FICA, or income tax withholding. It can be used for FUTA, estate tax, gift tax, certain excise taxes, fees, and abatelements of interest, penalties, and additions to tax.

B. Conclusion

These rules are very important for all practitioners to be aware of to ensure that clients are able to obtain refund relief when appropriate. The myriad of rules and exemptions must be navigated to obtain the maximum refund.

GROUP STUDY MATERIALS

A. Discussion Problems

You have three new clients. Sydney, Melissa, and Simon. Each has informed you that they are entitled to refunds for prior-year returns. The following information is relevant:

- 1) Sydney timely filed her 2021 Form 1040 on April 15, 2022. Sometime during 2023, she realized that she had failed to claim a deduction for charitable donations on her Schedule A.
- 2) Melissa filed her 2021 Form 1040 on February 5, 2022. Sometime during 2023, she realized that she had failed to claim a deduction for charitable donations on Schedule A.
- 3) Simon's 2021 tax return was filed on April 15, 2022, with a balance due of \$2,000. The balance was paid on April 15, 2022. The IRS audited the return in 2023 and assessed a deficiency of \$700, which he paid on December 14, 2023. Sometime in 2025, Simon realized an error in his initial filing and the audit, which resulted in a potential refund of \$1,700. Simon filed a claim for refund in the amount of \$1,700 on December 10, 2025.

Required:

Discuss the issues fairly raised by the above fact patterns.

B. Suggested Answers to Discussion Problems

- 1) Sydney has until April 15, 2025, to file a claim for refund, which is three years from the date the return was filed. When the return is filed on the due date or after, the actual filing date is used.
- 2) Melissa has until April 15, 2025, to file a claim for refund, which is three years from the date the return was due since she filed before the due date. The actual filing date is not relevant when the return is filed early.
- 3) The refund claim was not filed within the three-year period ending April 15, 2025. However, the refund claim was filed within the two-year period of the additional taxes being paid. Therefore, the most that Simon can obtain on refund is \$700, which is the amount paid within the two-year period.

PART 3. BUSINESS TAXATION

Tax-Exempt Organizations

Organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and that meet certain other requirements are tax-exempt under IRS Code Section 501(c)(3). There are detailed rules for creating such organizations, filing for exemption, required filings, ongoing compliance, and significant events. The state rules for tax-exempt organizations vary from state to state. Taxpayers often confuse the state requirements with the federal requirements. Ian Redpath and Shannon Jemiolo discuss the basic requirements and key issues related to tax-exempt organizations.

Let's join Ian and Shannon.

Mr. Redpath

Shannon, welcome to the program.

Ms. Jemiolo

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

Mr. Redpath

Always great to have you here. Today, a lot of our viewers may touch a little bit on tax-exempts, but I think that most firms, at some point, are going to have somebody come in the door and ask a question about a tax-exempt.

And it might be the other side. It might be—and I've had this—where a client said, "Hey, I want to make a large donation." The first thing I want to do is go and check the TEOS [Tax Exempt Organization Search] system and say, "What are they? Are they [Internal Revenue Code Section] 501(c)(3)?" Because there's a lot of fake organizations out there, especially now when we've had a lot of disasters. The IRS actually just came out the other day and warned taxpayers about fake charities. This is a huge, huge problem right now. So, I think, understanding the basics of tax-exempts—you may never set up a tax-exempt organization or never set up a charity, but I think understanding the basics is really important for anyone, especially, as I said, with all of these things that are going on out there.

I think there's a misunderstanding—so, yes, I know you're going to help us here to get through this. People think, and I've heard this before. I'll give you an example. I had an organization. The founders—I'll use that term—called me, and they said, "We can't understand." This happened to be in Vermont, and they said, "We don't understand. We can't get 501(c)(3) status. The IRS just keeps sending us questions and questions, and I don't understand this. We filed for not-for-profit status in the state." Okay. There's this belief that if you just do not-for-profit status under the state—if you file under their state law, that's it. We're done. We get tax-exempt status. I've seen organizations. I had one—they've never filed for tax-exempt status ever, and they've been operating literally since [the] 1960s.

Ms. Jemiolo

Oh, wow.

Mr. Redpath

They have never filed for tax-exempt status—state or federal. I told them what they had to do, and I guess they didn't want to listen to me because I never saw them again until about 10 years later. They came back, and they asked me the same question because something had come up. I told them what to do, and then somebody on their board who was an attorney amended their bylaws and said, "We are going to operate as a charitable organization." I said, "Well, that does it. You're now a charity."

There is so much misunderstanding out there. Would you clear this whole thing up about state not-for-profit versus a tax-exempt versus a charity?

Ms. Jemiolo

Absolutely. So, like you were saying with that one client, you do have to organize under state law. You do have to go through and file that paperwork. When you do that, you've got a couple of different options. You can file as a not-for-profit corporation, which is the most common one that we tend to see; a charitable trust; or, depending on the state that you're in, some states are going to have a third option with a charitable LLC. We tend to lump them all together as not-for-profit organizations, but they are technically separate. But that will only get you so far. That's not tax-exempt status with the IRS.

The IRS is going to require you to file with them specifically, and, depending on what you're trying to file with them as, you're going to need one of a couple of different forms. Now, the most common one—at least that I've seen; I deal with a lot of 501(c)(3)s—that one, you need a Form 1023. For most of your noncharitable organizations that are looking for tax-exempt status under a myriad of different code sections, it's a Form 1024.

Mr. Redpath

There's also a misunderstanding because the IRS gives you this, "Well, you don't have to file." So, here's a discussion. The one organization that I mentioned, I had a discussion with their attorney who said, "Well, they still have tax-exempt status." I said, "Why?" He goes, "The Service has never told us we lost our status." I said, "Well, you've never filed a [Form] 990 Series, so, therefore, after three years, you lose your status." He says, "But we haven't lost our status because they never told us." I said, "Well, they wouldn't have told you lost your status because you never applied for tax-exempt status."

Ms. Jemiolo

Yes!

Mr. Redpath

You know, if they don't know about you. There are some organizations that technically do not have to file. I don't know about you, but I always recommend file. File the 1024. If you want to be a 501(c)(3), unless you're a church, you don't have to file the 1023, but the 1024, I recommend always file it.

Get on file. That's the absolute best way to do it.

Ms. Jemiolo

It lets you show to the people who are going to donate to you, right? This says, "I am a legitimate organization. You can write this." This helps out on so many different levels.

Mr. Redpath

There's, as you said, the 1024. I think, for the most part, people see 501(c)(3)s, charities. Or, very commonly today, you see [IRC Section] 501(c)(7)s that are social clubs, this type of thing. But they're not charities; they don't get tax deductions. And, again, I think that's a misunderstanding. "Well, we're a tax-exempt. People can give us donations." Well, they can; they just can't write them off.

Ms. Jemiolo

We've seen that even come in a little bit under the [IRC Section] 501(c)(6) organizations, where—you mentioned social clubs—I guess maybe a little bit less social, but maybe a little bit more employment club. We've seen these things end up getting questioned, and in some cases disallowed, if this thing turns out to really not be an organization for the IRS's purposes when, really, they're meant to provide jobs to people. So, to me, it's so similar to those social clubs.

Mr. Redpath

They've been going after a lot of organizations, like referees for youth sports, and saying, "No, what you really are, you're just there to get jobs/employment for your members. That's all you're doing. And it's not really a tax-exempt

organization at all because that's what you're formed to do." And that's been, I think, the real push lately by the Service; it's on that. As you said, you're just finding jobs, but it's been really targeting sports—like referees, not sports organizations like a softball league, or a hockey league, or something like that. And those are often done as 501(c)(7)s, not [501(c)(3)s]. Some want [a 501(c)(3)]; some say, "Well, we don't want to do all the reporting requirements, so we're just going to do a [501(c)(7)]." But the referee-types of organizations, as you mentioned, they've been going after them.

There's also a [Form] 1024-A. This was the organization—the [IRC Section] 501(c)(4) [organization]—that we had all sorts of issues going on around election time a few years ago about these. The IRS came out and apologized and said, yes, they had intentionally slow-walked certain organizations. They were conservative organizations at the time. Again, that's the IRS saying it, not me. The IRS came out and said, "Yes, we did." And they have a different form, right?

Ms. Jemiolo

They do; they do. A 501(c)(4) organization is going to have to submit a Form 8976. It's a Notice of Intent to Operate Under Section 501(c)(4). Again, a *notice*, not necessarily a request for determination of status. It is just a notice, and they have up until 60 days after the organization is organized.

Mr. Redpath

You hit an important thing. That's really important because people think if they file the 8976, that's all they have to do, and the IRS says, "No, no, no. You also have to request recognition of your status." They even have a special form for them, the 1024-A. They don't even file the normal 1024. They do a 1024-A if they want to operate. But there's that confusion because you still have to file the 8976 within 60 days, but then you still have to file the 1024-A. Again, there's a lot of confusion, like you said, that people file the 8976 and go, "Oh, okay. Well, we notified you." "Yes, you did, but we didn't recognize you." And I think that's really a big difference.

In general, we're going to be referring [to it] quite often, so just [to] kind of throw it out there: Rev. Proc. 2023-5. That is the procedure at all tax-exempts for filing, etc. So, it's the general revenue procedure. It's updated every year. Last year, it was actually [Rev. Proc.] 2022-5, so they've kept the five for the last two years in a row. We'll see what they do in 2024, if they keep the keep the five.

There are other organizations that do other forms, like [Form] 1028 under [IRC Section] 521. So, there are certain organizations that do file other forms. And there's a lot of organizations—and you have to look at this—that file additional forms. In other words, like you just mentioned for the 501(c)(4) [organizations], they have some additional information. And you mentioned the [501(c)(6) organizations], and that's something to really watch out for.

Can you kind of give us a, "So, you want to be a charity?" And I'm going to say this right up front: if you don't deal with it regularly, you may end up with issues. I mentioned that one in Vermont, and they said, "We got accepted as a not-for-profit." Their purpose, they said, was to do anything that an organization organized under the not-for-profit laws of the state of Vermont can do. Well, that's not going to get you charitable status. The language the IRS is looking for—it did get them a lot of questions; it got them pages and pages and pages of questions—but the language they're looking for is very specific. If someone does it a lot, they know what kind of target words to throw in.

I worked with an organization once, and they kept getting more questions and more questions. I said, "Let's revise your purpose." I kept throwing *youth* in there, because they did; they dealt with youth. They never put it in there; well, it came right back. [As] soon as I hit the youth, youth, youth, [the IRS said,] "Oh, all right. Okay. Fine." They got the status right away. So, there is an art to the purpose and what you say.

Ms. Jemiolo

There is.

Mr. Redpath

So, fill us in. What's the 1023, and what should our viewers be looking for?

Ms. Jemiolo

The 1023 is the form to file for tax-exempt status with the IRS. Now, when it's filed, it does have to be filed electronically. They're not accepting paper forms for it anymore. But as long as you're all right on a computer and with the electronic fees, it's become a much simpler filing, at least in my opinion. You register for an account on **pay.gov**; it's the IRS's website. You can search for the 1023, and it'll pull it right up for you. Now, the one tricky part that can come in is that you're filing electronically, so you will have to include an electronic signature. I usually recommend [that] my clients print off Part X of the application; have the officer, the authority—whoever it is who's going to be signing for this—sign it; [and] scan it in. They'll accept that generally.

Mr. Redpath

Right. And there is—and many, many organizations are going to be using it—the [Form] [1023]-EZ. It's a streamlined, online, fill-in-the-blank type of 1023. So, can you fill us in on that one?

Ms. Jemiolo

Oh yes, it's fantastic. Just for comparison's sake, a 1023 has 14 pages with 11 additional schedules. The 1023-EZ has two pages. It's so much simpler. It, again, does have to be filed electronically, so if that was the issue with the original, that doesn't really go away here. But, like you said, it provides a series of questions on every step of the process, and it truncates everything down to two pages. Now, you do have to be eligible to file this form. It's not open to everybody for any reason. But, like you said, most organizations will end up qualifying for this.

Mr. Redpath

Especially when they start up because the first thing is [to] have gross receipts of \$50,000 or less and total assets of \$250,000 or less. But you're just organizing the company, or you just have organized the corporation, so the reality is you're probably going to hit that. Now, you do have to have some idea and put what you expect to be getting, but many organizations are going to fall into that when they start. In addition, some organizations don't have to file 1023, so who doesn't have to?

Ms. Jemiolo

As far as who doesn't have to, we're looking at churches—any kind of a church auxiliary or a convention, church association, a lot of churches—as well as any organization with gross receipts normally not more than \$5,000 in each tax year. They don't have to file.

Mr. Redpath

You say church; I say, what's a church? I'm being realistic about that because I don't know necessarily what a church is. The IRS has a whole series of rules to look at as to what is classified as a church. But our old view of a church is a traditional Catholic, Methodist, Jewish, Islam, etc. You can go online and get ordained in a lot of different organizations; that doesn't make you a church. This is, I think, where people get confused on this.

I actually had a case, which was down south. This individual did great things, but he got ordained online. He did wonderful things in the community. Yes, he had a building, and he called it a church. He sometimes had services. He wasn't [a church]; he was a ministry. Well, ministries have to file to get tax-exempt status. He hadn't filed anything because he said, "Well, I'm a church." No, you're not a church; you're a ministry. You don't have a particular dogma. You don't provide instructions like a Sunday school or Hebrew school. You don't provide this. Therefore, he literally almost met [none] of the requirements to be a church, which meant you had to file [1023], and you had your 990 filings, which a church doesn't have. So, if you have someone that comes in and says, "I'm a church," make sure you look very closely at that. The other one that you mentioned that bothers me a lot when I talk to a client is "normally not more than \$5,000." What does "normally not more than \$5,000" mean, so I don't have to file a 1023?

Ms. Jemiolo

That's a great question. It's like when you ask me what a church is—I'm out.

Mr. Redpath

Right, yes. That's the problem. I always recommend, even if you're a small organization, just do the 1023. You can then file the [Form] 990-N; it's online. It's not like there's going to be a huge cost to do the 1023 because you're going to qualify for the 1023-EZ. And that way, it's established—there you are. You've got your recognition, and you can move forward. I hate the idea of not filing.

I don't know about every state, and I can't answer for every state. But I know that most states that I've dealt with, when you go in—and I think this is a misunderstanding—the states say, “Well, just because you got federal doesn't mean you have state.” Some states say, “You get federal, [and] we recognize it for state purposes,” but some states don't. They go, “You've got to file at the state also, and oh, by the way, send us your determination letter from the federal.” And, for some states, it's income tax. New York, as you know, they say, “Well, sales tax, but only if you're a charity.” Other tax-exempts aren't exempt from sales tax, only the charities. Some states say you have a separate property tax that you have to apply for. So, you have to apply [for] income tax exemption, potential sales tax exemption, and property tax exemption in some states, or you're tax exempt for federal purposes, but you're not for state. We want our share of the income.

I've met many organizations, as I've said, who have never filed anything for many years because you're really not asking. What you're doing is you're saying, “We have an organization; recognize our status.” That's all you're asking them, and the determination letter is, “We recognize your status. You already set up the organization; we recognize it.” The IRS has gotten a little tough, though, [on organizations] going back and saying, “Well, we've been operating this way for 20 years. *Mea culpa*. Would you grant us retroactive [status]?” In the past, the IRS was kind of like, “Okay. No problem.” What's going on right now with that?

Ms. Jemiolo

Right now, the IRS is being fairly stringent with it. They're willing to go 27 months out—27 months out from the date the organization was created. Anything more than that—getting your 20 years—they're going to look for something that shows that there's a good cause for granting this; otherwise, they really don't want to do it anymore.

Mr. Redpath

Yes. It used to be pretty, you know, *mea culpa*. It was always the same thing because I think I still use standard language for everybody, and it said something like, “The organizers were idiots, and they just continued on this way.” Something like that. I was a little more eloquent than that, but the idea was, “Hey, they didn't know what they were doing.”

Ms. Jemiolo

Yes.

Mr. Redpath

“They've been operating, but it's always been a good cause, and nobody's been taking any money.”

One of the problems you get is, I had one where the IRS said, “Okay, could you give us the financial statements going all the way back?” Well, Sally was the treasurer, and she died 15 years ago. Who knows where the records are? We don't have any. We've got records for the last two years, you know—that type of thing. And so, like you said, the 27 months.

Mr. Redpath

Now, if you have a client that comes in and says, “I want to donate to an organization,” the organization does have to tell you, “Look, we're tax exempt pending our status approval.” Because an organization that's filed a 1023 can accept during that 27-month period—they can accept donations, and the individual can get a deduction. However, if [the IRS doesn't] grant it, you have to go back and amend the return because [the organization] didn't qualify.

One of the things we see a lot now, especially—and why I say *now*; we've had so many disasters—I mentioned the fake charities, but we also see a lot of real charities. You can ask for expedited requests.

Ms. Jemiolo

Yes, absolutely.

Mr. Redpath

“Give us our status now, so we can start raising money, and people can rely on it.” So, where does that fit?

Ms. Jemiolo

We can file for expedited request with the IRS, but we’re going to have to give a pretty good reason to the IRS about why they should take ours and make everybody else continue to wait. They’re going to look for a couple of specific things. Either a grant is pending—something coming to that applicant—and if they don’t get that grant, it may have an adverse impact on the organization’s ability to continue operating. Secondly, they’re going to look for [the purpose]—maybe the purpose of a newly created organization is to provide disaster relief, like you were saying, to victims of different emergencies. They need this now to happen so they can start doing that. The third thing they’re going to look at is have there been any undue delays in issuing a letter caused by problems within the Service itself. Something where this is a Service issue, not the client issue. Lastly, it might just be something that you can justify to the IRS. Get them to feel like, yes, this is a justified expedition under the circumstances.

Mr. Redpath

Yes, I think that one’s kind of broad, and you never know. The other ones are pretty [specific.] [With] the undue delay issue, you have to show that the IRS is being obstreperous. I think that was the issue that we were seeing when the IRS was slow-walking certain applications, and they admitted to it. But that’s the type of thing where expedited requests [are justified]. “Look, you’re just slow-walking this. You keep asking us the same questions, or you’re asking us irrelevant questions. You’re not operating in a timely manner.” So, I think [with] that one, you’re going to have to show a lot of reasons why the IRS is actually delaying it. Not that it’s taking a long time. It may be very legitimate that it’s taking a long time. It may be, as I mentioned with the one, because your language isn’t right. The IRS is trying to help you by saying, “Okay, well, what are you really saying you’re going to do? We’re not sure.” But the other two are clear. “Geez, there just was a hurricane. We want to help rebuild.”

Ms. Jemiolo

Right.

Mr. Redpath

Or “We got this big grant, and we’ve got to get this through.” You’ve got to refile, and you should note on the application, “Request for expedited relief.” So, that’s something. And again, you can always appeal an adverse ruling.

Now, the TEOS system (the Tax Exempt Organization Search Tool). Great thing out there. What is the purpose of that, and how can we use that?

Ms. Jemiolo

Oh, my goodness, I love the TEOS tool. The TEOS tool allows you to go onto the IRS’s website, and you can look across a lot of different files for, essentially, whether or not the organization is tax exempt. Are they listed with the IRS, or has their status been revoked? All of that information is on the TEOS system. It’s friendly on a computer, but it’s also mobile friendly. So, you can check this while you’re out and about. Also, for most organizations, once they file with the IRS, their 990, or whatever version of the 990 they’re filing, [is] also going to be linked to their name on that system. You have everything right there at your fingertips.

Mr. Redpath

The 990-N won’t appear, so you can’t pull it up. But it’s going to tell you that it’s been filed, so you will know that they’re in compliance. You don’t have to go to things like GuideStar and everything to get the 990s. Now, everything’s not up. This is kind of what I call a work in progress, but I’m going to give this one caveat. I got a call from an organization, irate, because they had a donor, and the donor said they went on the [TEOS] system, and [it] said they weren’t listed. I said, “Well, I’ve got a copy of your determination letter. You have a copy of a determination

letter.” I called the IRS, and they said, “Yes, oh—a mistake. We’ll get you up. We’ll get the company up there.” So, I just simply told the organization, “You’ve got a copy. Show them your determination letter. Give them a copy. They can call this number at the IRS, and they will verify that it’s a 501(c)(3). So, the donors can be satisfied that, yes, the IRS is telling me.” If it’s on there, I know because the IRS has said we can rely on anything that’s up on there. So, I know I can rely on it if it’s up there. If it’s not up there, then I’m going to say, “Well, show me your determination letter,” and I’m going to call the IRS and say, “Okay, here’s their EIN (employer identification number). Here’s their determination letter. You tell me—is it just something that’s off?” But I think it’s important that you can rely on this now, the TEOS system.

Ms. Jemiolo

Oh, absolutely.

Mr. Redpath

And that allows contributors—Rev. Proc. 2018-32 [says] if it’s listed up there, you can rely on it unless you have specific knowledge that it’s been revoked. But other than that, you have the right to rely. Again, there are certain people that can’t. If you’re a substantial donor to the organization [or] if you’re in control of the organization, then you can’t rely on [the TEOS system], but for the most part, you’re going to be able to rely on it.

So, can you kind of distinguish—because this is a confusion sometimes—what is a private foundation versus a public charity?

Ms. Jemiolo

A private foundation is going to be controlled by members of a family, we often see, or just by a very small group of individuals. Public charities, these are the ones that—I tend to think about these when I’m thinking about 990s, and public charities, and what I’m giving money to. These are the ones where they get most of their financial support from the general public or from government.

Mr. Redpath

You think American Heart Association, [American] Lung Association, Boy Scouts, Girl Scouts.

Ms. Jemiolo

Right.

Mr. Redpath

These types of organizations all fit into the public charity because [of] their broad support. And private foundations, like you said, you think of things like The Rockefeller Foundation, the Ford Foundation, the [Bill & Melinda] Gates Foundation. These private families that have set up [foundations]. Warren Buffett has a foundation. A lot of private individuals or families set [them] up—again, Ford, Rockefeller. If you think of a lot of money, there’s usually a foundation somewhere there. But they can be 501(c)(3)s too. You can make donations, deductible donations, to a private charity—a private foundation rather. They can receive donations. However, there’s a difference in what they file annually, correct?

Ms. Jemiolo

There is.

Mr. Redpath

Where do we have to look there?

Ms. Jemiolo

A private foundation is going to file a [Form] 990-PF. PF—private foundation.

Mr. Redpath

And that is totally different because there [are] lots of excise taxes that apply on various transactions because it’s so closely held—I’m going to use that term. Also, they have, for example, a minimum investment. This is a concept you

don't see in a 990 in general, but they literally have to make distributions, and they can have penalties [of] up to 200% if they don't make the distribution. So, okay, you didn't make it this year, but you can make it next year. Well, if you don't, then you get [a] 100% penalty. You didn't make it the next year; you got a 200 [% penalty]. [It] can be just really oppressive what they can get on penalties for 990.

So, we filed a 1023. We say we want to be a public charity, so we're going to file a 990 after that. There's a five-year rule. When you get your status, the IRS says you get five years free. You don't have to prove anything. You don't have to prove you have public support. But in the sixth year you do. So how do you "prove this?"

Ms. Jemiolo

Oh, well, you're going to do this with a Schedule A. It's one of the attachments for that Form 990.

Mr. Redpath

And then, if you fail it—and this is one thing that people have to look at, because you're really taking a period of time. It's not every year, but you're going back. If you pass the test this year, you actually pass it for two years, so [for] every year, you get two years. Pass it this year, [then] you can fail it the next year, and you're still going to be considered a public charity. But the next year, you'd better pass it.

Ms. Jemiolo

Right, but it does give some nice wiggle room.

Mr. Redpath

Yes, and there's another rule that says you don't meet the general rules of one third, but 10%—but you've got to give a reason. Why are you falling below? And you can't do this every year—say, "Oh well, we didn't meet the main requirements, so we're going to fall under the 10% exception." That's kind of—okay, you can get away with it. And maybe you say, "Look, we totally changed what we were doing. We're changing our fundraising. This is why we fell below the public support, but we're doing this to get it back."

Here's a concern, if you fail that 990. You get your five years free. If you do fail it, you file the 990-PF for that year. If you fail and you've failed for two years, it's a 990-PF. You've become a private foundation. You are no longer publicly supported. And, oh, by the way—here's what people sometimes do; the IRS sees this a lot—the next year, they'll do the test and say, "Oh, we passed." So, they'll file a 990. No, once you fail, you're a private foundation. You have to file a new 1023 and request to be recognized as a public charity. You've got to start all over again and ask to be a public charity, so people have to keep that in mind. You don't get to pick and choose and decide, "Oh, I'm going to file this [form] this year. Because I failed, I'll do the PF, but next year I pass, [so] I'll do the 990." It doesn't work that way. Once you fail, you're a private foundation. You have to ask the IRS to recognize you as a public charity.

There are three basic forms, 990, EZ, and the N. Can you fill us in on those?

Ms. Jemiolo

Oh yes. The Form 990 is the general form, but it's fairly lengthy. The 990-EZ is a shorter form, but you're going to see restrictions on who exactly can file it. For most organizations, those restrictions are fairly easily met.

Mr. Redpath

The 990-N, they used to call it the postcard, because basically, it says, "This is the organization. These are the owners. [These are] our gross receipts, and thank you very much." Just basic information about the organization. You're not filing all the financials. It's just, here's the basic information about us. We have nominal gross receipts—boom. We don't pass the test to file the 990 or the 990-EZ, so all we can do is just give the basic information. And it's small organizations that are not going to have to—again, they don't meet the filing requirements for the 990 or 990-EZ.

And there's a [Form] 990-T. What is that?

Ms. Jemiolo

A 990-T is just if the organization has unrelated business income exceeding \$1,000. As long as it's less than \$1,000, it's not something we need to worry about; but to the extent it exceeds, a 990-T is going to need to be filed.

Mr. Redpath

And that's just a basic income tax return.

Ms. Jemiolo

Yes, basically.

Mr. Redpath

For example, a tax-exempt cannot use [IRC Section] 179—well, yes, you can. If you have unrelated business income, you can use 179 against that. Or a charitable contribution—well, you can take a charitable contribution deduction if you're paying it out of the income from the unrelated business that you have.

The one change with the 990-T that people need to be aware of is the fact that, if you have separate activities being conducted, you need to file—there's a separate form, and then you combine them as you move them forward onto the 990-T. But you need to file the separate schedules for each organization. The idea, though, is you can't offset losses [from] one [activity] against the income of another, so they're going to hit you with that. In the past, people just combined everything, and then [said], "Okay, this is what I owe tax on." Now, you can't. The ones that have positive income are going to pay tax; the ones that have negative income just have a loss. You're not going to be able to offset those.

Shannon, a lot of good information today that people need to pay attention to, and I want to thank you for being here. Always appreciate your input, and we'll have you again on another show. So, Shannon Jemiolo, thank you very much for being here. Really appreciate it.

Ms. Jemiolo

Thank you so much for having me.

SUPPLEMENTAL MATERIALS

Basics of Tax-Exempt Organizations

By Ian J. Redpath, JD, LLM

A. Introduction

It is a common misconception that being a tax-exempt organization means the organization is a charity and can accept tax-deductible contributions. In fact, the opposite is true—a charity is a subset of tax-exempt organizations, and many organizations are tax-exempt without being a charity.

Generally, tax-exempt organizations will first obtain non-profit status under a state's not-for profit law. All states have separate laws governing setting up and operating not-for-profit organizations. Trusts do not usually have to do so but may need to register with the state's charities bureau or similar division, normally part of the state's Attorney General's Office. Some states allow for not-for-profit limited liability companies (LLCs).

If an organization wants to operate either as a private foundation or a public charity, it will generally have to seek recognition of such status by the IRS. This recognition comes in the form of a determination letter, which can be applied for by filing Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. If not seeking charitable status recognition from the IRS, such as those recognizing tax-exempt status under IRC §§501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25), the entity may be required to submit a completed Form 1024, *Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code*. Organizations that seek to operate under IRC §§501(c)(9) or (17) must apply for recognition of tax-exempt status. Other organizations may choose to seek a determination letter recognizing exemption under §501 by filing Form 1024 but are only required to do so in certain cases. This will not eliminate the annual filing requirements. It should always be considered best practice to seek a determination letter from the IRS. In many situations, organizations are required to provide a copy of their federal determination Letter when applying for recognition under state tax-exempt laws. Note that states vary, but many require separate applications for income, sales, and property taxes. Some states will accept the federal determination letter without a separate application process. In 2019, the IRS issued several adverse determination rulings for recognition under §501(c)(6). A number of applications have pushed the boundaries of acceptable activities. Others adverse determinations were for applications by sports referee associations. (The IRS noted that these organizations may provide a general benefit for the sport but essentially exist to provide jobs for the referees.) The warning organizations should take from these adverse determinations is to make sure their activities are within the narrower context of §501(c)(6).

Practitioners should note that many “form” documents such as articles of incorporation and/or by-laws for not-for-profit organizations include language in the purpose section that says something similar to “The organization may engage in any activities allowed under the not-for-profit law of State X.” This type of statement will not get charitable status with the IRS. The language will have to be significantly revised to gain approval from the IRS.

Organizations filing under IRC §501(c)(4) will use Form 1024-A. The IRS has established procedures to effectuate the intent of IRC §506. The IRS requires an IRC §501(c)(4) organization to submit a notification to the IRS on Form 8976 [Notice of Intent to Operate Under Section 501(c)(4)] no later than 60 days after the date the organization is organized. The Form 8976 must be submitted electronically. There is no paper form. [Reg. §1.506-1T(a)(1)] The 60-day period for submitting the notification may be extended for reasonable cause. [Reg. §1.506-1T(a)(4)] A fee of \$50 must be submitted to Pay.gov with the notification to complete the organization's notification. If it is not submitted, the organization will receive a non-payment notice within five days. If not paid within 14 days, the form will be rejected. [Reg. §1.506-1T(a)(3) and Rev. Proc. 2016-41, 2016-30 IRB, as supplemented by Rev. Proc. 2023-5, 2023-1 IRB 265]

The notification of an organization's intent to operate under §501(c)(4) does not serve as a request for determination of its status, nor is it the IRS's acknowledgment of receiving this notification an indication that a determination of status has been made. If the organization wants to obtain a determination letter recognizing its tax-exempt status, it must file Form 1024-A, *Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue*

Code, to seek a determination letter. (Rev. Proc. 2023-5, 2023-1 IRB 265) In a memo, the IRS's Tax Exempt & Government Entities Division provided interim guidance on what penalties may apply if an organization, exempt under §501(c)(4), has not timely filed Form 9976. IRC Section 6652(c)(4)(A) imposes a penalty of \$20 per day, up to a maximum of \$5,000, for each day after the due date that an organization doesn't submit Form 9976. Section 6652(c)(4)(B) imposes a penalty on organization managers who, in response to a written IRS request, don't submit Form 9976 by the date specified in the written request. The memo says the guidance, which will be incorporated into IRM 4.75.12 (Exempt Organizations Examination Procedures—Required Filing Checks and Package Audit Procedures) by March 1, 2023, is effective as of March 1, 2021. (Tax Exempt/Government Entities Division Memo TE/GE-04-0321-0006) Remember that these are two separate filing requirements; filing a Form 1024-A does not eliminate the need to file a Form 9976.

B. Application for Exemption – Charities

Charitable organizations that wish to attain exemption from income taxation and be recognized as an IRC §501(c)(3) public charity apply for such an exemption by filing Form 1023 with the IRS. (Form 1023 and its instructions are available on the IRS website) The IRS responds by issuing a ruling or determination letter to the organization if its application and supporting documents establish that it meets the particular requirements of IRC §501(c)(3). Thereafter, the continued qualification for tax exemption is determined by filing Form 990, *Return of Organization Exempt From Income Tax*. As long as the organization continues its tax-exempt function, it will remain tax-exempt. The filing fee for Form 1023 is \$600, and it must be filed electronically. To submit Form 1023, organizations must do the following:

1. Register for an account on Pay.gov.
2. Enter "1023" in the search box and select Form 1023.
3. Complete the form.

The electronic signature requirement for an electronically submitted Form 1023 can be met by including in the uploaded PDF file a copy of the handwritten signature of the officer, director, trustee, or other authorized official whose name is typed into Part X of the Form 1023 on Pay.gov. Signers should sign above their typewritten name on a copy of Part X of the completed application or on a separate sheet of paper that includes the same information as in Part X (name of signer, title or authority of signer, date, and penalties of perjury statement as set out in Part X).

The IRS has an interactive online Form 1023. The program provides step-by-step instructions for completing the form and obtaining the necessary documentation required to file it. The program is designed to provide a series of questions on each step of filling out Form 1023. This is part of the IRS "Stay-Exempt" website, which provides detailed information on both new and existing IRC §501(c)(3) organizations. This is part of the long-awaited cyber assistant web-based programs.

Form 1023-EZ, available on the IRS website, is two pages long, compared with the 14-page Form 1023 that has 11 additional schedules. Most small organizations, including as many as 70 percent of all applicants, qualify to use the streamlined form. Most organizations with gross receipts of \$50,000 or less and total assets of \$250,000 or less are eligible. The EZ form must be filed online. The instructions include an eligibility checklist that organizations must complete before filing the form. This form must be filed using pay.gov, and a \$275 user fee is due at the time the form is submitted. In addition, there is a 30-question eligibility worksheet. Answering "yes" to any of the questions means the organization does not qualify to use the streamlined application and must file the full Form 1023 instead.

In general, organizations eligible to file the Form 1023-EZ must meet the following conditions:

- A. Have gross receipts of \$50,000 or less and total assets of \$250,000 or less.
- B. Be a corporation, trust, or association (i.e., no LLCs).
- C. Be organized and operated in the United States (i.e., no foreign organizations, including those with foreign mailing addresses).

- D. Qualify as an IRC §501(c)(3) private non-operating foundation or publicly supported public charity under IRC §§509(a)(1), 170(b)(1)(A)(iv), 509(a)(1)/170(b)(1)(A)(vi), or 509(a)(2) (i.e., private operating foundations, churches, schools, hospitals, supporting organizations, and those testing for public safety organizations may not use the form).

The eligibility worksheet and revenue procedure discussed previously set forth a more comprehensive list of the requirements. Although eligible to file Form 1023-EZ, an organization may choose to file Form 1023 instead.

C. Charitable Purpose

To receive an exemption as an IRC §501(c)(3) organization, a charity must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. From a state law perspective, tax-exempt organizations (TEOs) may be organized as corporations, trusts, LLCs, or associations, but the vast majority of TEOs are organized as non-stock corporations.

Churches, integrated auxiliaries of churches and conventions, associations of churches, or any organization that has gross receipts in each tax year of normally not more than \$5,000 do not need to file Form 1023 to receive tax-exempt status, although they may choose to do so. Presumably, by applying, the organization will receive an IRS determination letter that recognizes their IRC §501(c)(3) status and indicates that contributions to them are tax deductible. Such a letter might be helpful to even very small charities that solicit for charitable contributions since potential donors will have proof that the organization is a public IRC §501(c)(3) charity when they make their donations and grants.

IRC §501 requires TEOs to serve a public (not private) purpose. Accordingly, as previously discussed, an IRC §501(c)(3) organization must be organized exclusively to promote one or more of the following eight purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

The term “charitable,” when used with reference to such organizations, is used in its generally accepted legal sense and includes the following:

- A. Relief of the poor, the distressed, or the underprivileged
- B. Advancement of religion
- C. Advancement of education or science
- D. Erection or maintenance of public buildings, monuments, or works
- E. Lessening the burdens of government
- F. Lessening of neighborhood tensions
- G. Elimination of prejudice and discrimination
- H. Defense of human and civil rights secured by law
- I. Combating community deterioration and juvenile delinquency

To be organized exclusively for a charitable purpose, the assets of a TEO must be permanently dedicated to an exempt purpose. If a TEO dissolves, its assets must be distributed for an exempt purpose, to the federal government, or to a state or local government for a public purpose. (There is an exception for a particular kind of public charity, a social club, which may actually distribute its assets to its members if it dissolves.) To establish that a TEO’s assets will be permanently dedicated to an exempt purpose, the TEO’s articles of organization should contain a provision insuring their distribution for an exempt purpose in the event of dissolution.

A favorable determination by the IRS on an application for recognition of tax-exempt status will be retroactive to the date that the IRC §501(c)(3) organization was created if it files a completed Form 1023 within 27 months from the end of the month the organization was formed. Regulation §301.9100-2(a)(2)(iv) provides that organizations are allowed an automatic 12-month extension as long as the application for recognition of tax exemption is filed within the extended 27-month period. The IRS also may grant an extension beyond the 27-month period if the organization is able to establish that it acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. If the organization does not file Form 1023 within its first 27 months, it will not be treated as tax-exempt under IRC §501(c)(3) for any period prior to the filing of an application for recognition of tax exemption. Contributions to a charity are generally not deductible for income, gift, or estate tax purposes until the organization has received a determination letter from the IRS indicating that it is a tax-exempt organization; however, contributions made prior to receipt of a favorable IRS determination letter may be deducted prior to the organization's receipt of a determination letter from the IRS if the organization has timely filed its Form 1023 application to be recognized as tax exempt. Contributions to an organization that does not file its exemption application within the 27-month limitation will be deductible only if made after filing.

Contributions to IRC §501(c)(3) charities are allowed as charitable deductions, subject to various limitations related to the kinds of property contributed and the adjusted gross income of the contributor. Publication 78, *Cumulative List of Organizations*, is a list of organizations eligible to receive tax-deductible charitable contributions. This list is updated monthly. The searchable online version is available on the IRS website. If the organization is not listed, interested parties may write or call the tax-exempt organization division to inquire about an organization's status.

Internal Revenue Service
Exempt Organizations Determinations
P.O. Box 2508
Cincinnati, OH 45201
(877)829-5500

The Tax Exempt Organization Search (TEOS) tool is available on the IRS website. This provides access to more information and a simplified search process. TEOS also features two major enhancements:

- Users can access more types of information than were previously available using EO Select Check.
- The search process has been simplified and allows users to look across multiple data files for information in one search.

In addition, TEOS is mobile friendly, which allows access to the search tool using smartphones or tablets. With the new tool, users can view images of an organization's:

- Forms 990, 990-EZ, 990-PF, and 990-T (501(c)(3) filed with the IRS. New filings are added monthly.
- Favorable determination letters issued by the IRS when an organization applied for and met the requirements for tax-exempt status.

TEOS can be used to find whether an organization is eligible to receive tax-deductible contributions, has had its tax-exempt status revoked because it failed to file required forms or notices for three consecutive years, and for a small organization, whether it filed a Form 990-N (e-Postcard) annual electronic notice with the IRS.

Reg. §1.170A-9(f)(5)(ii) provides that a grantor or contributor may generally rely on the continued validity of a determination letter or ruling described above until the IRS makes a public announcement of the entity's change in status, unless the grantor or contributor was responsible for or aware of the act resulting in loss of classification. Similarly, under Reg. §1.509(a)-7, once an organization has received a favorable determination letter or ruling, the treatment of contributions and grants, and the status of grantors and contributors to that organization, generally will not be affected by a subsequent revocation of the organization's classification as a public charity until the date on which the IRS publicly announces the change of status, unless the grantor or contributor had prior knowledge of the revocation or was in part responsible for or aware of the act or failure to act which gave rise to the revocation. (See Rev. Proc. 2018-32, 2018-22 I.R.B 1019 and Rev. Proc. 2023-5, 2023-1 IRB 265)

Likewise, grantors and contributors may generally rely on TEOS to determine whether a grant or donation will be deductible. It should be noted that the databases do not include separate listings for subordinate organizations covered by a group exemption letter. Grantors and contributors may consider an organization that is discoverable by searching TEOS or EO BMF (Exempt Organizations Business Master File) Extract as one to which donations are deductible until the date of a public announcement stating that the organization ceases to qualify as such an organization. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website relating to exempt organizations, or by any other means chosen by the IRS.

The period for which a grant or contribution is deductible may be extended upon specific exercise of authority under IRC §7805(b)(8). However, it is important to remember that this may not be relied upon by any contributors with knowledge of the revocation. Grantors and contributors may also rely on any classification of an organization as a Type I, Type II, or Type III supporting organization as listed in the TEOS or EO BMF Extract. “Deductibility codes” indicate whether an organization is a supporting organization, as described in IRC §509(a)(3), and whether the organization is a Type III non-functionally integrated supporting organization. This assists grantors and contributors in determining the appropriate percentage limitations on deductibility of contributions to the organization, and it also assists private foundations and the sponsoring organizations of donor-advised funds making grants to them in determining whether they would be required to exercise expenditure responsibility. Such reliance on the IRS databases does not apply for foundations and sponsoring organizations with actual knowledge that a revocation has occurred or were aware of (or responsible for) the act(s) that led to the revocation.

Safe harbors are provided to ensure that a grant or contribution will not cause the grantor or contributor to be considered to be responsible for, or aware of, an act that results in an organization’s loss of public charity classification, or that a grant or contribution is considered an unusual grant. Grantors and contributors will not be considered responsible for or aware of an act that results in the loss of classification due to a change in financial support if the aggregate of grants or contributions received from such grantor or contributor for the tax year of the recipient organization is 25 percent or less of the aggregate support received by the recipient organization for the four immediately preceding tax years. This does not apply to a grantor or contributor who is in, or obtains because of the contribution or grant, a position of authority or who otherwise has the ability to exercise control over the recipient organization.

D. Private Foundations

Private foundations may, and often are, charities. They are not public charities but, nonetheless, are able to receive tax-deductible donations. At the core of the tax rules applicable to private foundations is a set of excise taxes that impose penalties for certain types of abusive conduct, either by the private foundation, its managers, or both. These excise taxes generally begin with an “initial tax” and the opportunity to correct the mistake that was the cause of the initial penalty through a process known as “correction.” Private foundations failing to “correct” abusive conduct are subject to a far more severe second-tier tax. In addition, as part of a plan to pay for the bureaucracy needed to monitor and audit the excise taxes (which was never put in place), there is a 1.39-percent excise tax on the private foundation’s net investment income.

Public charities and private foundations can be IRC §501(c)(3) organizations. The difference between the two is not the charitable activities they conduct but their sources of support. An IRC §501(c)(3) organization is presumed to be a private foundation unless it meets the requirements to be recognized as a public charity. If an IRC §501(c)(3) charity is to be recognized as a public charity, it must meet one of a number of tests. Generally, a private foundation is a charity receiving its support from one source—generally an individual, a family, or a corporation. Hence, unlike a public charity, a private foundation will not have a continuing flow of public contributions to sustain its operations.

“Private foundation” is statutorily a default term: every charity is deemed to be a private foundation unless it qualifies as a public charity. Certain private foundations that are “active” but are funded by few sources may qualify as “private operating foundations,” which are subject to some, but not all, of the special rules that affect private foundations.

A private foundation is any organization described in IRC §501(c)(3) other than certain exceptions created by statute. IRC §501(c) is a listing of organizations exempt from tax under IRC §501(a)—all of which are private foundations unless they meet one of the exceptions that would make them a public charity.

Essentially, there are four types of organizations that are *not* private foundations:

- A. Public charities by definition,
- B. Organizations that meet the “public support” test,
- C. Supporting organizations, and
- D. Organizations testing for public safety.

[IRC §509(a)(1) through (4)]

E. Compliance

If an organization claims in its Form 1023 that it will operate as a public charity, the IRS will recognize it as such for its initial five years. Thereafter, the determination is made on Schedule A of Form 990. If the organization fails the test, it must then file Form 990-PF as a private organization. If it wants to have its status as a public charity recognized again, it must reapply.

For purposes of Form 990, Schedule A, an organization must meet the public support test once every two years. If it fails the test for two consecutive years, it files a Form 990-PF for that year and going forward until its status as a public charity is reinstated by the IRS. This is true even if the organization passes the support test the following year. Remember, the tests do not apply to the first five years after the determination letter.

F. Annual Filings

All tax-exempts must file Form 990, Form 990-EZ, or Form 990-N. A private foundation must file Form 990-PF. Failure to file a Form 990 series return will result in automatic termination of the organization’s tax-exempt status. The organization will have to apply for reinstatement; it is not automatic.

G. Conclusion

One of the fastest-growing areas of the economy is the not-for-profit segment. It is important that practitioners have a basic understanding of the rules applicable to tax-exempts so they can properly work with many client situations or potential clients.

GROUP STUDY MATERIALS

A. Discussion Problems

You have a group of clients that have approached you about setting up a charitable organization to help delinquent youth.

Required:

- 1) What are the steps and forms to be filed to ultimately obtain a determination letter?
- 2) What is the main difference between a private foundation and a public charity?
- 3) What are the annual filing requirements?

B. Suggested Answers to Discussion Problems

- 1) The first step is to set up the appropriate organization under state not-for-profit law. This is usually a corporation, but not always. A determination must be made if it will operate as a private foundation (few donors, not publicly supported) or a public charity. To apply for charitable status, Form 1023 or the streamlined online Form 1023-EZ should be used. If the organization says it will operate as a public charity, the IRS will recognize that status for its first five years of operation. Thereafter, the organization must pass the public support test once every two years. That determination is made on Schedule A of Form 990. Once a determination is made by the IRS, the practitioner must determine what is required by the state(s) in which it operates. Some states accept the IRS determination letter. Others require separate applications and may require separate filings for income, sales, and property tax purposes.
- 2) A private foundation can be a charity, just not a public charity. Public charities obtain their funding from the general public. There are specific rules that determine public support. There are numerous excise taxes that apply to private foundations that are not applicable to public charities. If a public charity fails the public support test, it defaults to a private foundation.
- 3) Most tax-exempts must file one of the Form 990 series annually. Failure to file for three consecutive years results in an automatic termination of exempt status.

GLOSSARY OF KEY TERMS

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

ASED—Assessment Statute Expiration Date

Beneficial Ownership Information (BOI)—Beneficial Ownership Information is the identifying information of the individuals who directly or indirectly own or control a reporting entity. Beneficial ownership information that an entity must report includes the full legal names, dates of birth, and addresses of all individuals who have “substantial control” or who own at least 25% of the entity.

BOI—Beneficial Ownership Information

CSED—Collection Statute Expiration Date

CTA—Corporate Transparency Act

FinCEN—Financial Crimes Enforcement Network

Form 843—Claim for Refund and Request for Abatement

Form 8976—Notice of Intent to Operate Under Section 501(c)(4). Form 8976 and the corresponding fee may only be submitted electronically. There is no paper form.

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

RSED—Refund Statute Expiration Date

Tax Cuts and Jobs Act (TCJA)—Public Law No. 115-97, an act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, was signed into law by President Trump on December 22, 2017. Although not the official name for the new legislation, it is most commonly referred to as the Tax Cuts and Jobs Act (TCJA).

CUMULATIVE INDEX 2023

BY TOPIC

Topic	Month–Page	Topic	Month–Page
20 common-law rules.....	Jul-36	F Reorganization.....	Jan-35
332 liquidation.....	Oct-31	Form 211.....	Jul-6
ASED.....	Dec-14	Form 433.....	Jun-21
Asset Purchase.....	Jan-35	Form 433-A.....	Jun-21
Assessment.....	Nov-15	Form 433-F.....	Jun-21
Assessment Expiration Date.....	Dec-14	Form 656.....	Mar-5, Jul-6
Capital Account.....	Feb-33	Form 709.....	Nov-21
Central Bank Digital Currency.....	Mar-19	Form 911.....	Nov-19
Charitable Remainder Annuity Trust.....	May-5	Form 941.....	May-33, Jul-3
Citator.....	Jul-24	Form 941-X.....	May-33, Jul-3, 5
Clean Energy Credits.....	Nov-6	Form 990.....	Dec-33
Clean Vehicle Credit.....	Oct-4	Form 1023.....	Dec-27
Collection due process.....	Nov-18	Form 1024.....	Dec-27
Collection due Process Appeal.....	May-17	Form 1040-NR.....	Aug-15, Sep-16
Collections Appeals Program.....	May-17	Form 1040-X.....	Dec-19
CRAT.....	May-5	Form 1042.....	Sep-19
Cryptocurrencies.....	Mar-19	Form 1045.....	Dec-19
Cryptocurrency.....	Jan-4, Feb-3	Form 1065.....	Jan-3
Davis-Bacon Act.....	Nov-6	Form 1099-DA.....	Jan-5
Deference.....	Jul-19	Form 2553.....	Mar-35
Department of Labor Regulation.....	Jan-9	Form 3115.....	Mar-6, Jun-5
Digital Assets.....	Feb-3, Mar-15	Form 5329.....	Feb-22, Nov-21
Dirty Dozen.....	May-3	Form 5471.....	May-6, Aug-14
Doubt as to Collectibility.....	Jun-16	Form 5500.....	Feb-15
Doubt as to Liability.....	Jun-16	Form 720.....	Aug-5
ECI.....	Aug-15, Sep-16	Form 8275-R.....	Jun-35
Effectively Connected Income.....	Aug-15, Sep-16	Form 8288.....	Sep-19
Electronic Comm.		Form 8300.....	Oct-3
Uniformity Act.....	Jul-7, Aug-7	Form 8508.....	Oct-3
Electronic Return Originator.....	Oct-18	Form 8594.....	Oct-28
Employee Retention Credit		Form 8805.....	Sep-19
(ERC).....	May-3, Oct-4, Nov-3, Dec-3	Form 8825.....	Nov-34
Equitable Relief.....	Aug-32	Form 8833.....	Aug-20
FBAR.....	Mar-18, Aug-14	Form 8840.....	Aug-20, Sep-15
FDAP.....	Aug-15, Sep-16	Form 8843.....	Aug-20
FinCEN.....	Dec-6	Form 8857.....	Aug-32
Fixed, Determinable, Annual,		Form 8869.....	Mar-35
or Periodical.....	Aug-15, Sep-18	Form 8976.....	Dec-28
FOIA.....	Mar-6	Form 12153.....	May-18, 22

Topic	Month–Page	Topic	Month–Page
Form 14242.....	May-35	Proposed Beneficial Ownership Information	Jun-6
Form 15254.....	Jan-25	PTIN	Nov-4
GAAP Basis.....	Feb-33	Publication 1035.....	Nov-17
Green Card.....	Aug-15	Required Minimum Distributions.....	May-7
Golsen rule.....	Jul-23	Resident	Aug-14
Google Analytics	Oct-16	RSED	Dec-14
Guaranteed payment	Nov-31	S Corporation.....	Jan-35, Mar-31
Inadvertent Termination	Mar-32	Safe Harbor.....	Sep-35
Independent Contractor.....	Jul-34	Sand Dollar	Mar-19
Individual Retirement Account (IRA)	Jan-6	Schedule K-2	Jan-3
Innocent Spouse Relief.....	Aug-31	Schedule K-3	Jan-3
Installment Agreement.....	Jun-20	Schedule NEC.....	Sep-16
Interpretive.....	Jul-19	Section 6045	Mar-18
IRS Publication 971	Aug-32	Secondary Authority.....	Jul-18
JCX-1-23.....	Mar-5	Senate Bill 1338.....	Jul-7, Aug-7
Last-In-Time Rule	Jul-25	Separate Liability Approach.....	Aug-32
Legislative.....	Jul-19	Simplify Automatic Filing Extensions	
Levy	May-18	Act of 2023	Jul-7
Lien.....	May-18	Smishing	May-3
Lookback Rule.....	Dec-14	Spearpishing	May-4
Memorandum Docket	Jul-23	Split or Allocation	Aug-32
Meta Pixels	Oct-15	Stablecoins.....	Feb-3, Mar-19
Mission-Critical Functions	Jul-3	Statute of limitations.....	Nov-15, Dec-13
New Qualified Clean Vehicles	Feb-5	Stock Purchase.....	Jan-35
NFT.....	Mar-16	Streamlined Installment Agreement	Jun-21
Nonfungible Tokens	Feb-3, Mar-16	Substantial Presence Test	Aug-16, Sep-14
Nonresident.....	Aug-14, Sep-13	Summary Opinion.....	Jul-23
Offer in Compromise.....	Mar-5, May-5	Syndicated Conservation Easement.....	May-5
Office of Professional Responsibility	Aug-3	Tangible Property Regs	Sep-30
Partial Asset Disposition.....	Sep-34	Tax-Exempt Organizations and Government	
Partnership	Jan-19	Entities (TE/GE) division	Sep-7
Phishing	May-3	Tax Exempt Organization Search (TEOS)	Dec-26
Physical Presence Test.....	Aug-16	Tax Return Information	Oct-19
Prevailing wage	Nov-6	Technical Guides	Sep-7
PLR.....	Mar-36	Traditional Innocent Spouse Claim	Aug-32
Primary Authority.....	Jul-17	Treaty.....	Aug-16
Private Equity	Jan-35	VCSP	Jul-38
Private Foundation.....	Dec-32	Virtual Currency	Feb-3, Mar-15
Private Letter Ruling.....	Mar-32	Voluntary Classification Settlement Program ...	Jul-38
Procedural	Jul-19		

BY CITATION

Citation	Month–Page	Citation	Month–Page
35 North 4th Street, Ltd. v. U.S.	Nov-5, 9, Dec-10	IR-2023-134.....	Sep-6
338(h)(10).....	Oct-27	IR-2023-135.....	Sep-5
501(c)(3).....	Dec-26	IR-2023-152.....	Oct-7
6511(a).....	Dec-14	IR-2023-153.....	Oct-6, Nov-7
Adam Steele, et al. v. U.S.	Nov-4, 9, Dec-6, 9	IR-2023-157.....	Oct-3, Nov-4, Dec-6
Administrative Procedure Act	Jul-20	IR-2023-160.....	Oct-4, Nov-5
AM 2023-005.....	Sep-5	IRC 707.....	Nov-31
Ann. 2023-18	Aug-5	IRC 7202.....	Jun-19
Auer	Jul-19	IRS Announcement 2022-26	Jan-6
Berenblatt v. Commissioner	Jul-6	IRS Announcement 2023-11	Jun-7
Bond, et al. v. U.S.	Aug-7	IRS Announcement 2023-12	Jun-5
Bonnie Lem v. Commissioner	Nov-7	IRS Notice 2022-41	Jan-5
Brown v. Commissioner	Mar-5	IRS Notice 2022-61	Jan-9
Calvin A. Lim, et al. v. Commissioner	Mar-5	IRS Notice 2023-3	Feb-6
Cardiovascular Center		IRS Notice 2023-7	Feb-6
LLC v. Comm.	Jul-4, Aug-4	Luis A. Castro, et al. v. Commissioner.....	Feb-7
CCA 202335014	Oct-4, Nov-6	Microsoft Corp. v. IRS	Mar-6
Cory H. Smith v. Commissioner.....	Mar-4	Minemyer v. Commissioner	Mar-7
Culp v. Commissioner	Sep-4	Moore v. United States	Jan-8
Donoghue v. Reddig	Jan-7	News Release 2023-71	May-3
Fact Sheet 2023-17	Sep-3	News Release 2023-72	Jun-3
Fact Sheet 2023-20	Oct-3, Nov-3, Dec-3	Notice 2014-21	Mar-18
Farhy v. Commissioner.....	May-6	Notice 2023-30	Jun-5
Foreign Investment and Real Property		Notice 2023-31	May-6
Tax Act (FIRPTA)	Jul-25	Notice 2023-59	Sep-5
Frank W. Bibeau v. Commissioner.....	Jul-5	Notice 2023-62	Oct-7
Gardner DDS PA TM v.		Poselli v. IRS	May-7
Commissioner.....	Jul-3, Aug-3	Private Letter Ruling 202248017.....	Jan-7
Hallmark Research Collective v.		Proposed Reg., REG-121709-19	Jun-4
Commissioner	Jan-7	Protecting Small Business Information	
Hrach Shilgevorkyan v. Commissioner	Mar-4	Act of 2023	Dec-6
HR 4035.....	Dec-6	Rev. Proc. 2013-14	Oct-16
In re Grand Jury	Mar-3	Revenue Procedure 2022-19.....	Mar-31
Inflation Reduction Act	Feb-15	Revenue Procedure 2023-11.....	Feb-6
Intan S. Ismail, et ux. v. Commissioner.....	Jan-6	Revenue Procedure 2023-26.....	Sep-6
IR-2022-89.....	Jan-3, 11	Revenue Ruling 69-184	Nov-32
IR-2022-201.....	Jan-6	Revenue Ruling 2019-24.....	Mar-18
IR-2022-227.....	Feb-4	Revenue Ruling 2023-2	May-7
IR-2023-53.....	May-8	Revenue Ruling 2023-7	Jun-5
IR-2023-56.....	May-6	Revenue Ruling 2023-8	Jun-4
IR-2023-64.....	May-7	Revenue Ruling 2023-14.....	Sep-6
IR-2023-74.....	Jun-7	Robert A. Di Giorgio, Sr., et ux. v. Comm.....	Jun-6

Citation	Month–Page	Citation	Month–Page
Schlapfer v. Commissioner.....	Jul-6, Aug-6	Section 6672	Jun-19
Schleier	Jul-24	Section 6694	Jun-33
Seaview Trading, LLC.....	May-7	Section 6751(b).....	Jun-4
Section 25C.....	Sep-5	Section 704(b) book.....	Feb-33
Section 45	Jan-9	Section 731	Jan-20
Section 48(e).....	Feb-21	Section 734	Jan-20
Section 104	Jul-24	Section 734(b).....	Jan-22
Section 119	Mar-4	Section 741	Jan-20
Section 125	Jan-5	Section 743	Jan-24
Section 126	Jan-6	Section 754	Jan-23
Section 139F	Nov-7	Section 7122	Jun-16
Section 162	Sep-17	Section 7203	Jun-15
Section 174(a).....	Jun-4	Section 6713	Oct-18
Section 179	Sep-31	Section 7216	Oct-18
Section 482	Mar-6	Section 7521	Nov-5
Section 530	Jul-4	Sections 338.....	Oct-27
Section 530 of the Revenue Act of 1978	Jul-39	SECURE 2.0.....	Feb-15
Section 1202	Nov-17	SECURE 2.0 Technical Corrections Bill.....	Jul-7
Section 6501(a).....	Nov-15	Senate Bill 2623.....	Dec-6
Section 6015(b).....	Aug-32	Takina v. U.S.	Nov-7
Section 6015(c).....	Aug-32	TC Memo 2022-113	Jan-6
Section 6015(f)	Aug-35	TC Memo 2022-120	Feb-7
Section 6015(e)(7)(B).....	Aug-37	TC Memo 2023-6	Mar-4
Section 6159	Jun-20	TC Memo 2023-11	Mar-5
Section 6213	Jan-8	TC Memo 2023-12	Mar-4
Section 6304(a)(2)	Nov-5	TC Memo 2023-42	Jun-7
Section 6320	Mar-5	TC Memo 2023-44	Jun-6
Section 6330	Jan-8, Mar-5	TC Memo 2023-64	Jul-4
Section 6330(d).....	Sep-4	TC Memo 2023-65	Jul-6, Aug-6
Section 6331(k).....	Jun-20	U.S. v. Parks	Jan-9
Section 6334	Jun-17	U.S. v. Schwarzbaum	Jun-8
Section 6662	Jun-33	William F. Anderson, et ux. v. Commissioner ...	Jun-7

BY SPEAKER

Speaker	Month	Speaker	Month
Bluestein, Gary	May-Jun	Maroney, Renata.	Aug-Sep
Davis, Karen	May, Oct	Pon, Lawrence.....	Aug, Nov, Dec
Jemiolo, Shannon.....	Mar, Jun, Jul, Dec	Redpath, Ian	Jan-Oct, Nov, Dec
Johnson, Bruce	Sep	Renn, Ed.....	Jul
Lickwar, Robert C.	Jan-Mar, Nov	Urban, Greg.....	Jan-Feb, Oct

Tax Report

Volume 36, Issue 11

December 2023

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

1. According to Ian Redpath, what should the practitioner do if a client has a legitimate ERC claim that has not yet been sent to the IRS?
 - A. Submit it to the IRS now to be added to their queue for processing.
 - B. Wait to submit it until after the IRS moratorium ends.
 - C. Hold it until Congress moves up the statute of limitations.
 - D. Suggest that the client postpone filing it until the middle of tax season.
2. According to Ian Redpath, all *except* which of the following are ways that an ERC mill is likely to contact potential clients?
 - A. Mass-mailed letters
 - B. Phone calls
 - C. Text messages
 - D. In person, with two forms of IRS ID
3. According to Ian Redpath, the IRS indicates that willful filers of fraudulent ERC claims can expect which of the following?
 - A. Fraudulent filers can use the IRS withdrawal program and be treated as if the claim had never been filed.
 - B. Withdrawal of the fraudulent claim will protect the filer and any conspirators from prosecution.
 - C. Withdrawing a fraudulent claim will not exempt the filer from criminal investigation.
 - D. Small business owners misled by ERC mills will face the harshest penalties and have no withdrawal option.
4. According to Ian Redpath, unless an entity qualifies for an exemption, beneficial ownership information must be reported to FinCEN for all individuals who own or control at least how much of the entity?
 - A. 10 percent
 - B. 15 percent
 - C. 20 percent
 - D. 25 percent
5. According to Ian Redpath, in the *Short Stop Electric* case, the Tax Court decided that the corporation's treatment of interest on a loan from the owner was which of the following?
 - A. Deductible because the corporation capitalized it
 - B. An improper effort to relabel shareholder equity
 - C. Properly booked as interest paid by the corporation and paid on schedule
 - D. Correctly accounted for because the loan had factual and valid terms

Continued on next page

6. According to Ian Redpath and Larry Pon, per the refund statute expiration date, a taxpayer claiming a refund on a tax overpayment generally has how long from the return's due date to claim that refund?
 - A. 90 days
 - B. Two years
 - C. Three years
 - D. Six years
7. According to Ian Redpath and Larry Pon, which of the following might result in the IRS extending the due date for individual tax returns by several months or more in certain parts of the country?
 - A. The individual return due date of April 15 falls on a weekend.
 - B. A devastating hurricane, snowstorm, or similar disaster strikes.
 - C. The IRS wants to delay the assessment statute expiration date.
 - D. Congress wants to allow individuals extra time to fund IRA and HSA contributions.
8. According to Ian Redpath and Larry Pon, how does a taxpayer typically make a *claim for refund*?
 - A. By filing either a tax return or an amended return
 - B. By reaching out to the IRS to schedule a tax return audit
 - C. By waiting to file future returns until the IRS contacts the taxpayer
 - D. By asking the CPA to send a refund request letter to the IRS
9. According to Ian Redpath and Larry Pon, which of the following is a common law doctrine providing that the statute of limitations may be suspended in certain circumstances?
 - A. Protective claim
 - B. Abatement request
 - C. Equitable tolling
 - D. Lookback rule
10. According to Ian Redpath and Larry Pon, which of the following examples most likely represents the intended use of Form 843?
 - A. Emily is requesting a child tax credit.
 - B. Lucy is requesting a refund of property taxes.
 - C. Stuart is requesting an extension of time to file his return.
 - D. Zack is requesting an abatement of penalties and interest.

Continued on next page

11. According to Ian Redpath and Shannon Jemiolo, what is the first thing a potential donor should do to determine whether an organization is listed as tax-exempt with the IRS?
 - A. Use the Tax Exempt Organization Search (TEOS) tool.
 - B. Ask the organization to provide a copy of its bylaws.
 - C. File an expedited request for the information with the IRS.
 - D. Contact the organization to ensure that it is recognized as a church.
12. According to Ian Redpath and Shannon Jemiolo, after it is organized, how long does an organization have to file Form 8976, Notice of Intent to Operate Under Section 501(c)(4)?
 - A. 60 days
 - B. Two years
 - C. Three years
 - D. Five years
13. According to Ian Redpath and Shannon Jemiolo, which of the following is one of the eligibility requirements for the use of Form 1023-EZ?
 - A. The organization must prepare and mail a paper form for the IRS to accept it.
 - B. The organization must have gross receipts of under \$50,000.
 - C. The organization is required to have total assets exceeding \$250,000.
 - D. The organization must have been in operation for at least 20 years.
14. According to Ian Redpath and Shannon Jemiolo, a newly created organization plans to accept donations for victims of a recent earthquake and would like its status as a charity approved as soon as possible. What can the organization file with the IRS to help with this?
 - A. A grant application
 - B. A determination letter
 - C. An expedited request
 - D. An appeal request
15. According to Ian Redpath and Shannon Jemiolo, which of these characteristics is correct for distinguishing between a public charity and a private foundation?
 - A. Private foundations receive most of their financial support from the government.
 - B. Private foundations are required to file Form 990-PF annually.
 - C. Public charities are often created and controlled by the members of a family.
 - D. Public charities are subject to numerous excise taxes because they are so closely held.

SUBSCRIBER SURVEY**Evaluation Form**

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

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

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Refund Statute Expiration Date	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Tax-Exempt Organizations	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

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

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

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

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lawrence Pon	<input type="text"/>	<input type="text"/>	<input type="text"/>
Shannon Jemiolo	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

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

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

Were program materials accurate? Yes ☐ No ☐ _____

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

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

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

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

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

Specific Comments: _____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

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

CPE Network®

Firm/Company Name: _____

Account #:

Location:

Program Title: _____ Date: _____

[illegible]

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

Instructor Name: _____

Date: _____

E-mail address:

License State and Number:

CHECKPOINT LEARNING NETWORK

CPE NETWORK[®]

USER GUIDE

REVISED August 29, 2023

Welcome to CPE Network!

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

This User Guide has the following sections:

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

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

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

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

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

Copyrighted Materials

CPE Network program materials are copyrighted and may not be reproduced in another document or manuscript in any form without the permission of the publisher. As a subscriber of the **CPE Network Series**, you may reproduce the necessary number of participant manuals needed to conduct your group study session.

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@cerifi.com

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

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

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@CeriFi.com

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

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

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Print

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

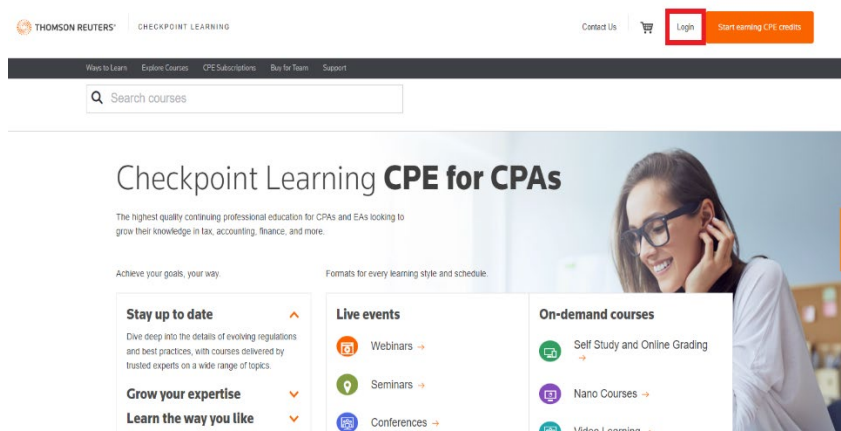
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

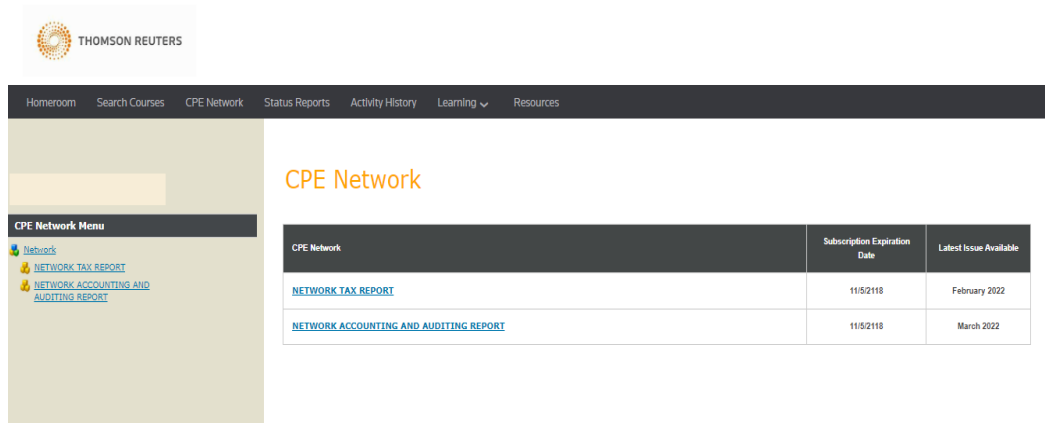
Self-Study—Online

Follow these simple steps to use the online program:

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

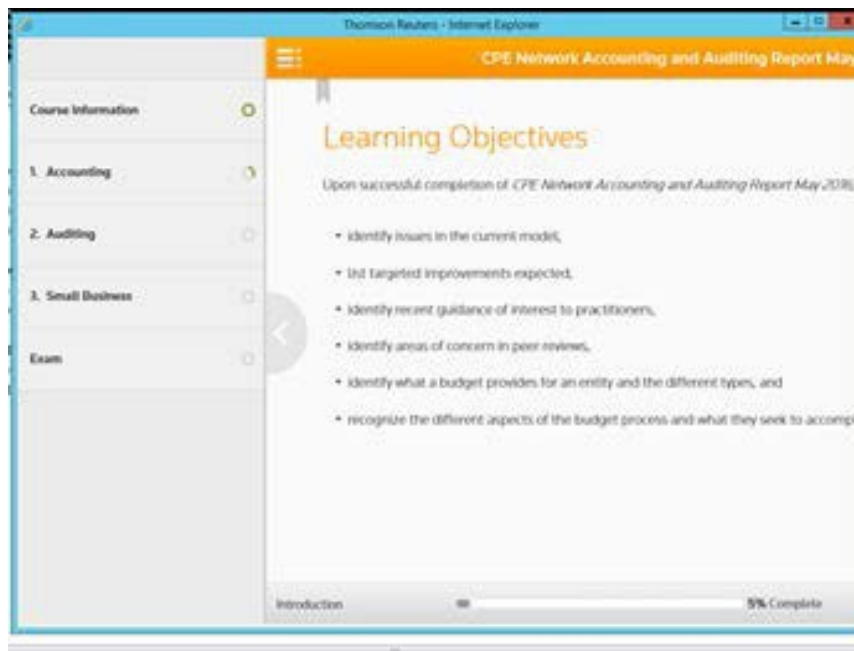


- In the **CPE Network** tab, select the desired Network Report and then the appropriate edition.



CPE Network	Subscription Expiration Date	Latest Issue Available
NETWORK TAX REPORT	11/5/2118	February 2022
NETWORK ACCOUNTING AND AUDITING REPORT	11/5/2118	March 2022

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



Learning Objectives

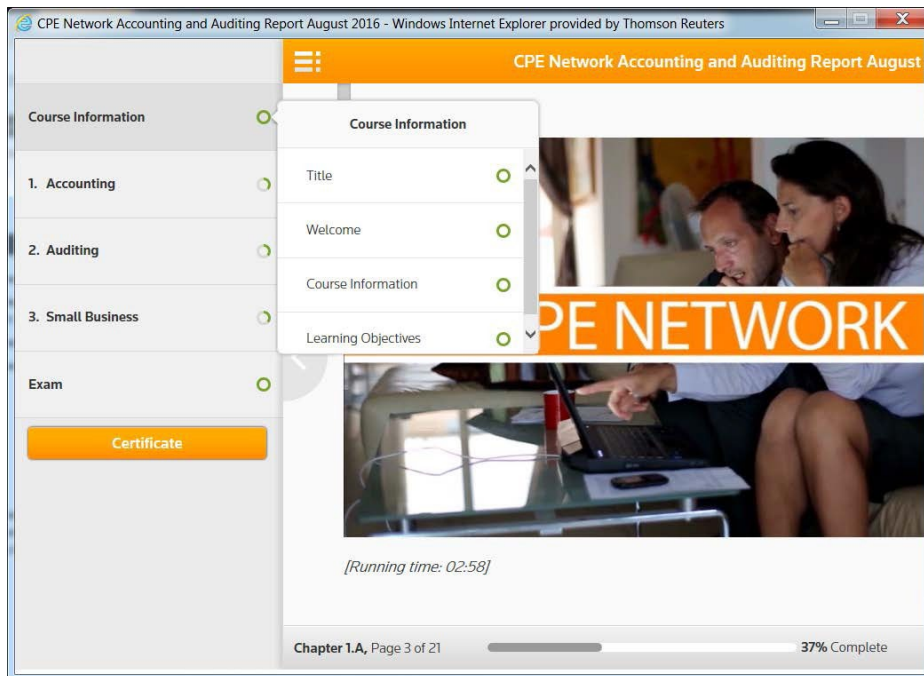
Upon successful completion of *CPE Network Accounting and Auditing Report May 2018*, 1

- identify issues in the current model,
- list targeted improvements expected,
- identify recent guidance of interest to practitioners,
- identify areas of concern in peer reviews,
- identify what a budget provides for an entity and the different types, and
- recognize the different aspects of the budget process and what they seek to accomplish

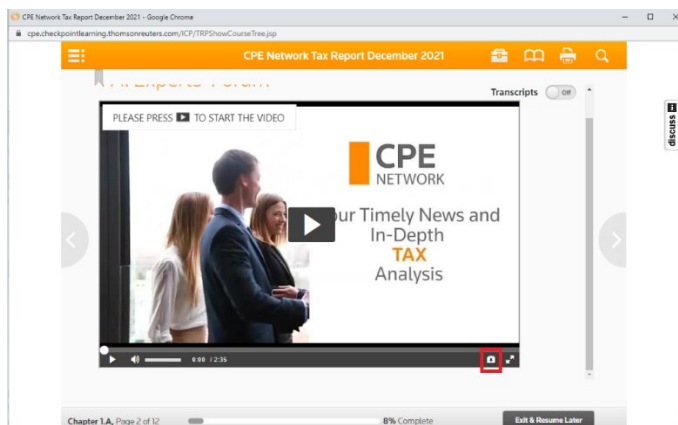
Introduction 5% Complete

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

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



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



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

Thomson Reuters - Internet Explorer

CPE Network Accounting and Auditing Report May 2016

Transcripts ☒

Chapter 1

Liabilities and Equity: Another Look at the Model

Both the FASB and the AICPA have targeted improvements to the guidance related to liabilities and equity instruments. The current debt-equity model in U.S. GAAP is very complex, making it difficult for both preparers and accountants to implement.

For more on the targeted improvements in this area, let's join Paul Munter, professor in practice for the University of Colorado at Boulder, and CPE Network's Debi Grove Casey.

Ms. Grove Casey

Today, we want to talk a little bit

Please note that the transcript [Liabilities and Equity Transcripts](#) can also be found as a link and in the Tools section.

Chapter 1.A, Page 4 of 21 8% Complete [Exit & Resume Later](#)

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

D:\xml\production\working\U6015494\N... Network Accounting and Auditing Report May 2016

Transcripts ☒

Chapter 1

Liabilities and Equity: Another Look at the Model

Both the FASB and the AICPA have targeted improvements to the guidance related to liabilities and equity instruments. The current debt-equity model in U.S. GAAP is very complex, making it difficult for both preparers and accountants to implement.

For more on the targeted improvements in this area, let's join Paul Munter, professor in practice for the University of Colorado at Boulder, and CPE Network's Debi Grove Casey.

Ms. Grove Casey

Today, we want to talk a little bit

Please note that the transcript [Liabilities and Equity Transcripts](#) can also be found as a link and in the Tools section.

Chapter 1.A, Page 4 of 21 8% Complete [Exit & Resume Later](#)

CHAPTER 1: ACCOUNTING

Liabilities and Equity: Another Look at the Model

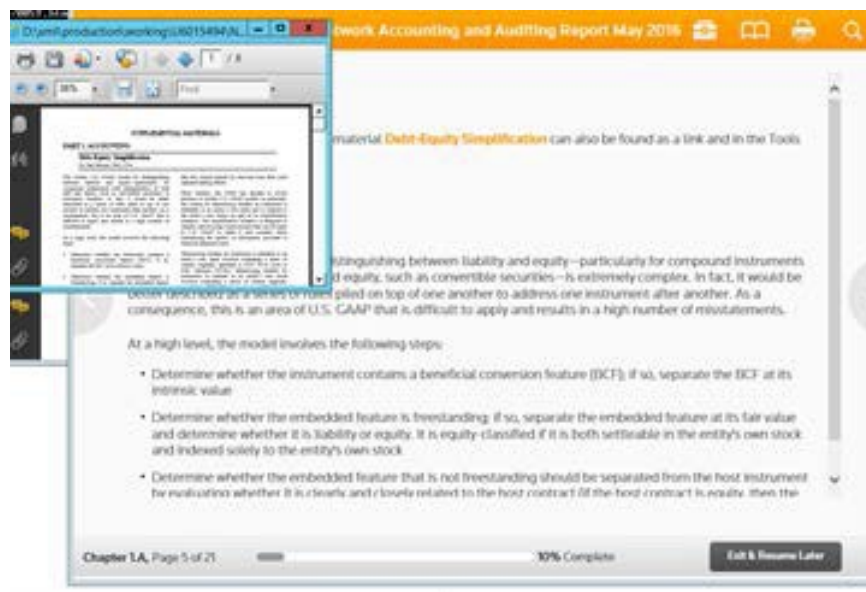
Both the FASB and the AICPA have targeted improvements to the guidance related to liabilities and equity instruments. The current debt-equity model in U.S. GAAP is very complex, making it difficult for both preparers and accountants to implement.

For more on the targeted improvements in this area, let's join Paul Munter, professor in practice for the University of Colorado at Boulder, and CPE Network's Debi Grove Casey.

Ms. Grove Casey

Today, we want to talk a little bit

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



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

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

The screenshot displays a web-based interface for a CPE (Continuing Professional Education) report. The header bar is orange and contains the text "CPE Network Accounting and Auditing Report July 2016" along with icons for a menu, a printer, a book, a document, and a search function. Below the header, the main content area is titled "Suggested Answers to Discussion Problems". It contains three numbered items:

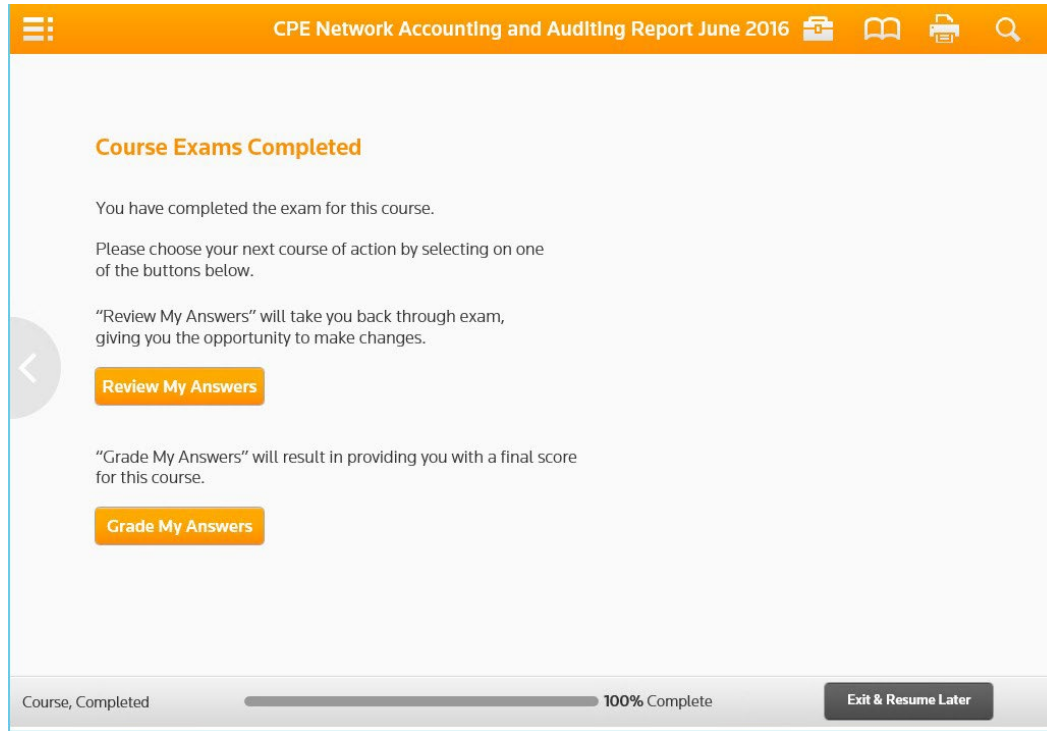
1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:
 - Held-to-maturity
 - Trading
 - Available-for-sale

An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions should be made at acquisition and, preferably, formally documented. It is not appropriate to use "hindsight" to classify securities transactions, perhaps by considering changes in value after acquisition.
2. The trading securities category includes securities that are bought and held principally for the purpose of selling them in the short term. Trading generally reflects active and frequent buying and selling, and trading securities are generally used with the objective of generating profits on short-term differences in price. "Short-term," in this context, is intended to be measured in hours and days, rather than in months or years, according to ASC 320. However, an entity is not precluded from classifying as trading a security it plans to hold for a longer period, as long as that designation occurs at acquisition.
3. Impairment is recognized in earnings when a decline in value has occurred that is deemed to be other than temporary, and the current fair value becomes the new cost basis for the security. An investment is considered to be impaired if the fair value of the investment is less than its cost basis. Cost includes adjustments made for

At the bottom of the page, there is a footer bar. On the left, it says "Chapter 3.A, Page 20 of 20". In the center, there is a progress bar that is filled to the right and labeled "100% Complete". On the right, there is a button labeled "Exit & Resume Later".

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

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



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

Additional Features Search

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

Search Results are displayed with the number of hits.

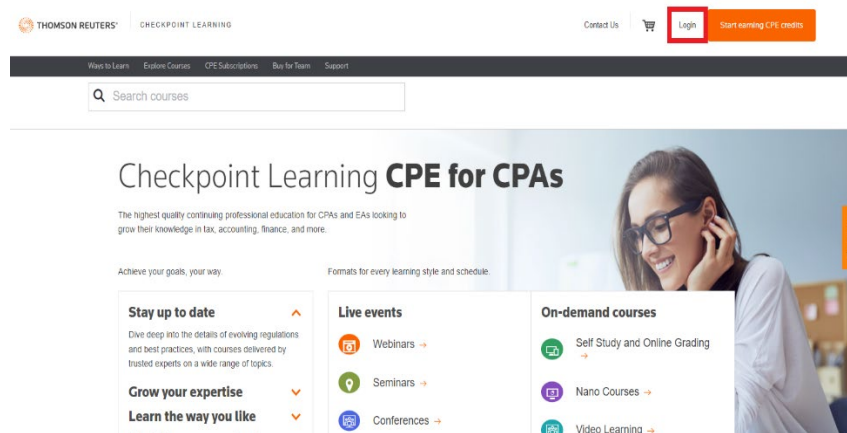
Print

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

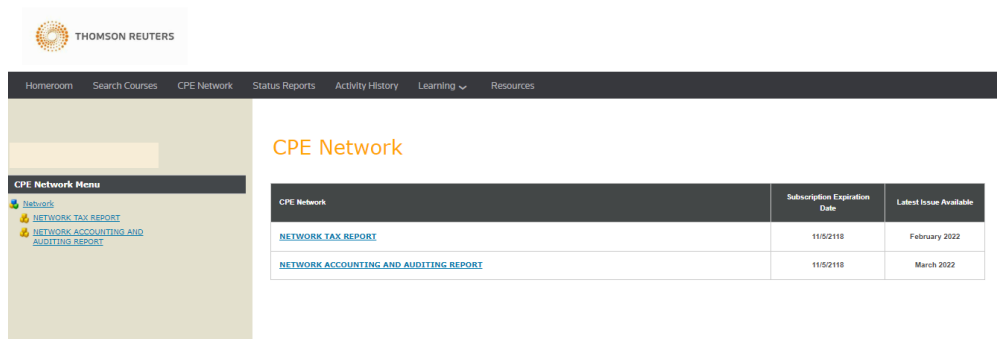
Transitioning From DVDs

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

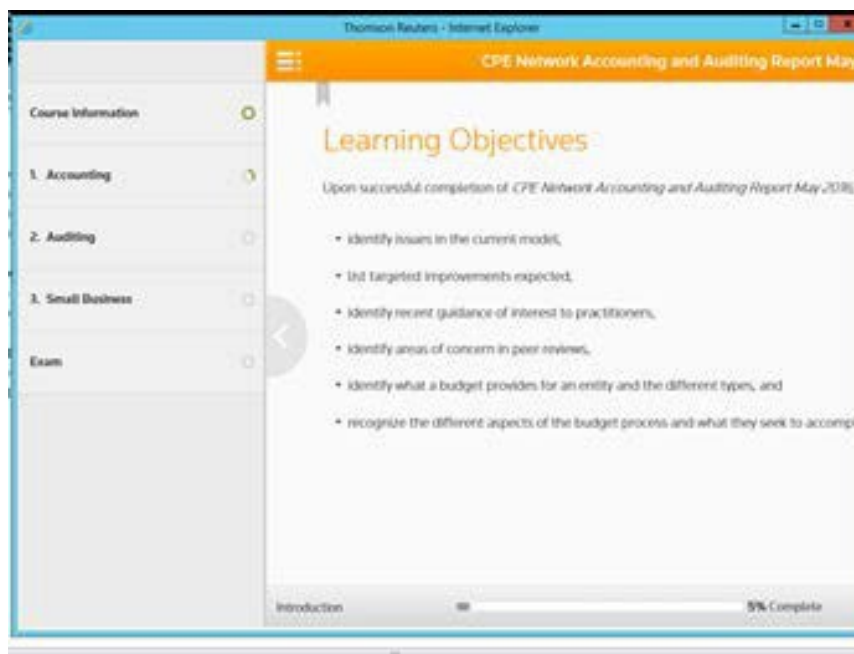
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

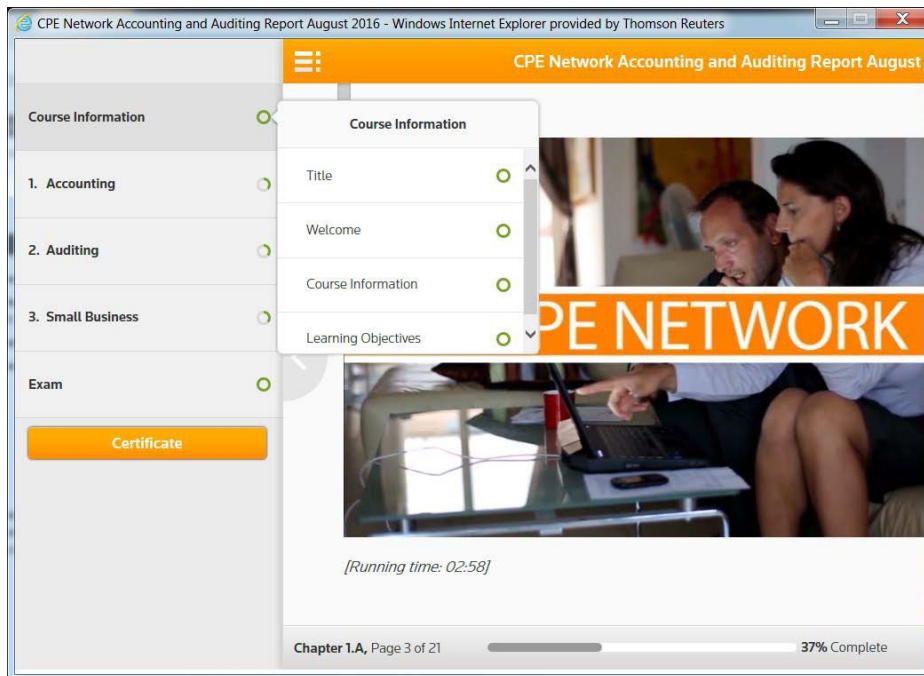


The Chapter Menu is in the gray bar at the left of your screen:

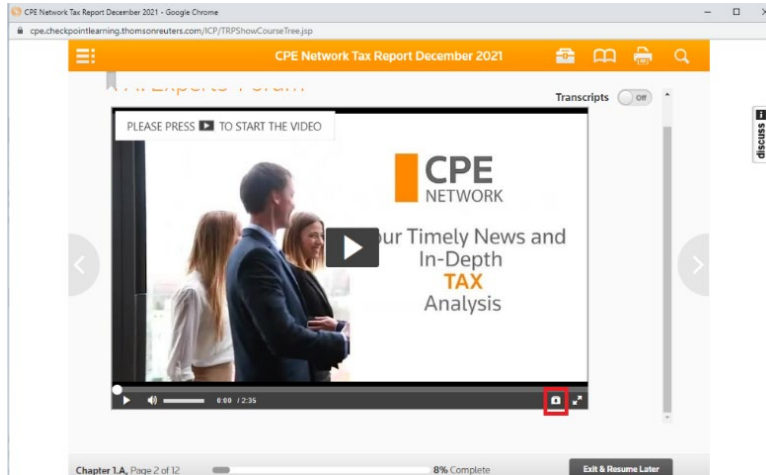


Click down to access the dropdown menu and move between the program Chapters.

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



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



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

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

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

Appendix: Forms

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

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

Getting Help

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

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Browser-based• Certificate discrepancies• Accessing courses• Migration questions• Feed issues
Product Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Functionality (how to use, where to find)• Content questions• Login Assistance
Customer Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Billing• Existing orders• Cancellations• Webinars• Certificates