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CPE NETWORK TAX REPORT

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Topics for future editions may include:

- Digital Assets
- Refund Statutes

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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum 3

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

Learning Objectives:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including determining the current status of employee retention credit claim processing, applying the new rules for PTIN renewal, and assessing the rules for paying prevailing wages and apprenticeship programs. [Running time 30:52]

PART 2. INDIVIDUAL TAXATION

Assessment and Collection Statutes 15

There are two related statutes that limit the ability of the IRS to both enforce the tax laws and collect revenue from taxpayers. In general, the IRS does not have an unlimited amount of time to assess and collect additional tax from taxpayers. They must assess a deficiency in tax within the appropriate time frame or they lose the ability to make an enforceable assessment against a taxpayer. Once tax is assessed, the IRS also does not have an unlimited amount of time to collect the tax due the government. If it is not collected within the statute of limitations period, the IRS may no longer collect the tax from the taxpayer, regardless of the legitimacy of the tax due. These statutes have various extensions and tollings that can extend the period. The statutes establish the Assessment Statute Expiration Date (ASED) and the Collection Statute Expiration Date (CSED). Practitioners need to be cognizant of both of these statutory limitations to properly advise clients.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues relating to the assessment and collection statutes, including assessing the application of the general Assessment Statute Expiration Date, determining the general Collection Statute Expiration Date, and analyzing the various tolling and extension provisions. [Running time 34:29]

PART 3. BUSINESS TAXATION

Self-Employment Tax – Partnerships 31

The application of self-employment taxes to partners in a partnership or an LLC taxed as a partnership is a key issue with the IRS. It is essential that practitioners are aware of the rules and exceptions that apply.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues related to self-employment tax for partners, including determining the application of self-employment taxes, assessing net earnings from self-employment, and analyzing exceptions to self-employment tax for partners. [Running time 34:43]

ABOUT THE SPEAKERS

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

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. Ian Redpath begins this month with a discussion about an IRS announcement. In IR-2023-169, the IRS stated that there is a moratorium on the processing of any new employee retention credit claims filed between September 14 through December 31, 2023.

Let's join Ian.

A. IR-2023-169

Mr. Redpath

Hi, I'm Ian Redpath. Welcome to the program. This is the segment where we go over a number of things that have happened with the courts and the Internal Revenue Service. Not so much with Congress right now, but certainly the courts and the Internal Revenue Service have been very active since the last time we got together. I'm going to apologize right now. I have a tickle in my throat, so I may have to occasionally take a little sip, and I'm sucking on a lozenge so that I can keep my voice throughout today's program.

The last time that we met, we talked about the fact that Commissioner Werfel had said that he is meeting with Congress in the hopes of getting some type of expedition, perhaps accelerating the statute of limitations, on the Employee Retention Credit [ERC]. Now, we all know that there are huge amounts of fraud. Some commentators have said that as many as 95 percent of all of the claims that are being filed don't qualify, especially recently, because there has been this effort now by the so-called ERC mills to use supply chain disruption as a basis. The IRS came out with a notice about that, as to what supply chain disruption means. It doesn't mean you just couldn't get things; there had to be some relationship to a government shutdown. So, this has been an ongoing issue.

What the IRS did, in IR-2023-169, the Internal Revenue Service stated that there is going to be a moratorium on the processing of any new claims. They [announced] a moratorium that began September 14 of 2023 and is going to continue until December 31 of 2023. They will not process any claims. As far as claims that are in the queue that have already been filed and are in the process, they're saying that they're going to extend [the processing time]. You can expect that the standard processing of 90 days will now be up to 180 days, and if it requires a further review or audit, it could be significantly longer than that.

So, we know that this has been an issue. We know that there are [questionable] claims. The IRS has been saying for a long time that there is significant fraud in this area. What do you do? Well, the IRS estimates that right now, they've got in the queue about 600,000 claims that were filed but haven't been paid yet, and they believe that they were misled by promoters because they don't qualify—again, almost all on the supply chain disruption issue. So, what do you do—because maybe you've got one. Well, if you are waiting on an ERC claim that has currently been filed, they're going to continue processing those claims. So, if it was filed before September 14, they will continue to process those. As I said, for normal processing now, you can expect it to take up to 180 days. Depending on the amount, it could take significantly longer, or if they believe that it's a supply chain issue, it could go under audit and take significantly longer. So, if it's already in there, you just have to wait. Again, anecdotally, tax professionals are claiming that when they're seeing a client who [worked with] a mill, about 95 percent of those are actually ineligible and, again, mostly supply chain.

What if you haven't filed yet? Well, obviously, you're going to have to review very carefully to make sure that it qualifies. Understand that even when they bring back the processing, this is going to take a significant amount of time as they are going to be reviewing and scrutinizing them heavily. However, during the interim, just because there

is a moratorium on them processing, knowing that they are working with the Internal Revenue Service—I'm sorry, with Congress—to attempt to potentially shorten that statute of limitations on filing, I would highly recommend that you get it in. File it. You know it's going to be delayed, you have to talk to the client and explain it to them, but at least you have it in the queue before any possible changes could come down. That would give you a good argument in court to say, "Wait a second, we filed before they changed the statute of limitations," for example.

What else could you do? Well, the IRS is in the process of developing a settlement program. I have talked to a number of CPAs, and I've gotten involved in a number of cases that they've asked me to look at where they went to an ERC mill [but] they did not qualify. Of course, the ERC mill got paid. And in one, the client hadn't cashed the checks yet. Well, send the checks back. And that's what the IRS says—if you haven't cashed it, send it back. The IRS also says that if you review a client who has filed, for example, with the idea that they used an ERC mill, or maybe you made a mistake when the first issue came out, or before they came out with guidance on supply chain disruption and maybe you felt it [qualified] under the prior guidance, you can withdraw that. You have every right—it doesn't matter where it is [in the process], even if it's in audit—you have the right to withdraw your ERC claim. So, keep in mind that you have some potential options here when it comes to that ERC claim.

The IRS is in the process of finalizing a settlement program if you've already received a refund. The client has the refund and now they know (or believe) that it's in error. I had one, about \$1.4 million, and it's totally in error. I had another one for over \$700,000. The client got the check, cashed the check, and talked to their accountant after—they never qualified. Same thing with the \$1.4 million. So, I've seen this on several occasions now with rather significant sums. I'm going to be reviewing one, and I don't believe the guy qualifies. Just knowing his business, I'm not sure how he qualifies, but he went to an ERC mill, and he told me that he got a check for over a million dollars. I asked him if he had his accountant review it. He said no, [and had done] nothing about amending the income tax returns for the payroll. I said, "You have to talk to your accountant." He said, "Would you talk to my accountant for me?" I said, "I'll be happy to talk with your accountant if they want to have me work with them." So anyway, I've talked to the accountant and, clearly, they think it's totally in error. He didn't qualify. They had told him before he didn't qualify—that's why they never filed. They didn't believe he qualified. Well, he got a million-and-some dollars. So, we'll have to see what to do with that one.

The IRS is coming up with a settlement program. They believe that settlement program should be coming online sometime probably in December of this year, so watch for that. The settlement program will allow businesses to avoid penalties and future compliance actions. They are really unsure how to deal with this, and one of the issues that the IRS is really unclear on is, what about the businesses that had a contingency fee? They paid the promoter on a contingency basis that was paid out of the ERC payment. The one situation I mentioned, they have paid a significant amount of money to the promoter, but they don't qualify. Well, they don't have all the money to pay back the government. That can be a significant issue. So, watch out for that and keep that in mind.

Again, if you have a client that qualifies, even though the IRS has a moratorium on its processing, I would certainly go ahead and still file it. Get it in. Understand the IRS is working with Congress to perhaps shorten the statute of limitations on filing, so if you actually qualify, go ahead. If you have a client who doesn't, if nothing has been done yet, or even if it's in audit, you can withdraw your claim for the ERC. Then lastly, you might want to wait, depending on the situation, and see what comes up with the IRS when they finalize the settlement program related to ERCs. So, that's what is going on with ERCs. A lot of stuff came out from the IRS on that, as it's an ongoing issue.

B. *Adam Steele, et al. v. U.S.*

T.D. 9980

Another ongoing issue relates to a case, *Steele v. the U.S. District Court*. In the *Steele* case, this was a question of the ability and the amounts that were being charged for PTIN numbers. So, the IRS came out and, in a regulation, T.D. 9980, the IRS said that they are reducing the user fees to be paid by tax preparers to obtain a preparer tax identification number, the PTIN. Under the new regs, the cost of obtaining or renewing your PTIN is going to be \$11, plus an additional \$8.75 for third-party contractors. The fee to obtain or renew was \$30.75 in 2022. So, the IRS had to come

up with a new [Cost] Model. This case was *Steele*. The issue was whether or not [to require PTINs or charge PTIN fees]—and it's kind of interesting what the government [decided]. Steele was filing for return preparers a motion to have the unreasonable amounts that were being charged placed into an escrow account. The Court ultimately said you can't put fees in there for the so-called ghost preparers, unregistered preparers, or foreign preparers. So, the IRS is just reducing the cost to a relatively nominal amount, \$11.

C. 35 North 4th Street, Ltd. v. U.S.

IR-2022-214

DC OH

We have an interesting case, *35 North 4th Street, Ltd. v. U.S.* This is a district court in Ohio. The district court here stayed a suit that the partnership filed against the IRS to vacate Notice 2017-10. Well, if you've listened to the program before, you've heard this, because there have been other cases involving this Notice. The courts have ruled (the Sixth Circuit Court ruled) that in Notice 2017-10, the IRS violated the APA, the Administrative Procedures Act. That Notice requires conservation easements as reportable or listed transactions. Well, they said that violated the APA. So, in this particular case, they wanted to have a moratorium to the Notice—they wanted the court to say the Notice is invalid nationwide. The IRS has proposed a new rule which really follows the old rule, it's just that they are following the APA to get there. So, the same rule, but following the right procedure, and you can find that at IR-2022-214. That was back in December of 2022, but they are following all the procedures, public forum, and public comment. So, what the court here said was, look, right now, the IRS has a new rule coming out. It's substantially the same as the existing rule. If it becomes final, it's going to supersede the existing notice, and it's supposed to come out—and here's the point—it's supposed to come out in December of 2023. We expect that the rule will be final in December of 2023. So, the court here said there is no reason to move on this case until after the new rule comes in and they see how it impacts it. The IRS has already said that they won't enforce it in the Sixth Circuit and, again, that's because of the case (and Ohio is in the Sixth Circuit), but they want to apply it nationwide. Again, the court said there's no reason to do anything at this point. We're not going to even hear your case until after we get the ruling from the IRS and see how that might apply.

D. Audit Report Number 2023-30-015

Interesting audit report, the Inspector General for Tax Administration Audit Report Number 2023-30-015. We have talked in other programs about the fact that the IRS was not—and they've announced that they are not—going to make direct contacts. But also (and we always take this for granted, right?), the IRS is not supposed to make contact with a client or with a person that they know is represented, whether they are represented by an attorney or a CPA. If you have a power of attorney on file, they are not supposed to be talking directly to the client. Well, the Treasury Inspector General basically said, based upon their audit—and this was an annual report that they're required to make—the IRS is not even paying attention to it.

There are two sections here. There is the Internal Revenue Code, Section 7521, and then the Fair Tax Collection Practices under Section 6304(a)(2). Well, according to the IRS—the audit rather, by the Inspector General—while the IRS has policies and procedures in place, they have no policies and procedures to ensure that it's being complied with. They're supposed to make sure that taxpayers know how to have authorized representatives, but how do they handle them when, in fact, the person is represented? And what they found was—they did a statistical sampling which they believed to be valid; they sampled 132 taxpayers, and they found eight taxpayers and twelve separate instances of revenue officers who didn't comply with the Code. They made direct contacts in violation of both of those provisions. And they said that, in addition, they reviewed quality control data pertaining to field collection and found 129 potential violations—48 taxpayers for whom the IRS did not comply with the law regarding representation. Of the 48, zero potential violations were referred to the labor relations specialist for investigation. The IRS knew about them, but they didn't self-report them for investigation. So, the Inspector General said, if they're represented by an accountant or by an attorney, you're not supposed to be contacting them directly. This does happen; you may or may not have been in this situation.

I had one situation where my client called me. Actually, I was out of town; they were blowing up my phone. When I finally checked my messages, there was just a slew of messages, starting at eight o'clock in the morning. And it was Homeland Security, IRS Criminal Investigation, Civil, and the FBI. They said, "We know you're represented by counsel, but you don't need your attorney," and they questioned the woman for eight hours. [It was] relatively abusive. I won't tell you what my conversation was with them on it. She had done nothing wrong. The worst thing was she was already overdue; she was beyond pregnant, and they questioned her for eight hours. They said, "We know you're represented by counsel, but you don't need an attorney." She said, "Oh, okay." And as she said to me when I finally got ahold of her, "They said I didn't need one, so I said okay. I trusted them." They're going to say she waived her right; [they] knew she was represented, but she waived her right. Well, no. That's a clear violation. So, I've seen this situation.

I had a colleague whom the Internal Revenue Service contacted. The guy said, "I'm represented by this person." And they said, "We know, but this is kind of a different issue, so it doesn't involve that person." Well, it's not a different issue at all. It was not a different issue. I mean, yes, you could say it's a different issue, but I guess if you're going to make that argument, it would be every issue on the tax return. He had a general power of attorney for the years in question and the returns in question, and they were saying, "Well, this is a different item on the return, so it's not covered." Again, if you have that happen, then you should contact the Internal Revenue Service. And you can either contact the Taxpayer Advocate's Office, or you can contact the Inspector General's Office, because again, the IRS has been—and [the Inspector General's Office] has shown that they have been—ignoring this rule.

E. IR-2023-156

If you are involved with anything [related to] the Clean Energy Credits, in IR-2023-156 the IRS has issued proposed regulations on what is "prevailing wage" and what is an "apprenticeship;" and, for example, if it's not a certified apprenticeship, then you have to be paying prevailing wage. And this deals with a whole series of credits, the alternative fuel, production tax, credit for carbon oxide sequestration, credit for clean hydrogen, investment tax credit, advanced energy project, the energy efficient commercial buildings deduction, and the prevailing wage for the new energy efficient home credit and the zero-emission nuclear power production credit. Basically, if it applies, you could go into it. Essentially, it adopts the general rules under the Davis-Bacon Act for what constitutes a prevailing wage. The prevailing wage is determined at the start of the contract, and then it has to continue through the course of the contract, but having to pay that wage is only binding when you file for the credit. So, until you actually file for the credit, it doesn't really apply. Well, obviously you're not going to go back and pay people, but if you end up not doing the credit and you didn't pay prevailing wage, so what? No harm, no foul.

They do not adopt the Davis-Bacon Act provisions related to certified payroll records, nor their \$2,000 monetary threshold. They adopt a definition of what is "employed"—and they adopt a broader definition than other places in the regs, so you'll have to look specifically at this. So, independent contractors could be considered to be employed for purposes of the prevailing wage for these purposes. Again, you're not required to update it if the wages change during the term of the contract. Wages, hourly rate contributions to bona fide fringe benefit programs, the rate of costs reasonably anticipated to provide those fringe benefits, and again, prevailing wage requirements, are not relevant for any other determination of what is a "wage," only what is a wage for this purpose. So, we have the same terminology, but they're applying it for different purposes.

Then, as I said, there is the apprenticeship program, [meaning] employed in a registered apprenticeship. If they are not employed in a registered apprenticeship, then that person has to be paid under the prevailing wages; you can't pay them less. And just like the prevailing wage, it doesn't become binding until you actually make a claim for the credit. There is a limited penalty waiver for failure of no more than 2.5 percent of the amount required under the prevailing wage requirement or 10 percent of all pay periods for the calendar year, if you make a correction the earlier of 30 days after becoming aware of it or the date the return claiming the increased credit is filed. Now, these are reliance regs, so you are allowed to—you don't have to—but you are allowed to rely on them going back to January 29 of 2023. Again, they are reliance regulations.

F. *Bonnie Lem v. Commissioner*TC Memo 2023-110

We have an interesting case out of the Tax Court, a Tax Court Memo, *Bonnie Lem v. Commissioner*. The IRS made a determination here to proceed with a levy for the liabilities and reject her request to put her account in currently not collectible [status]. She did not get a deficiency notice, she did not have a prior opportunity to dispute the underlying liabilities; however, she did have a CDP hearing, a Collection Due Process hearing. She didn't raise that issue at all at the CDP hearing. The Court said, "You didn't raise it at the CDP; therefore, you're deemed to have conceded on those issues. Therefore, the settlement officer met all the requirements of the law. They considered all the issues that you raised, the inability to pay, and your currently not collectible request." They said there is no showing that they abused their discretion. So, the important thing is, if you want to raise an issue, you better raise it at the CDP hearing because you're not going to be able to raise it later at court if you didn't raise it then. And her argument was, "Well, I never had the prior opportunity to dispute." They said that is not true; you could have raised it at the CDP hearing. Failing to do so is deemed that you conceded to it.

G. *Takina v. U.S.*DC MO

Takina v. the U.S., this is a district court in Missouri. The taxpayer filed a return. The question is a claim for refund. Takina alleges that he mailed his tax return to both the Kansas City Service Center and Washington, D.C., headquarters. He sent them to both. The return is to be filed with the service center in Kansas City. Well, unfortunately, he has no proof. He had no proof of mailing to Kansas City. In fact, what they do have is an envelope postmarked May 3, which was too late. So, they said, "We have to go by the postmark. You have no other proof that you actually sent it in. And by the way, what you sent to Washington is not a filed return. So, even though you can prove you sent that in on time, to be properly filed, it has to be properly filed in the right service center—the place that it must be filed according to the instructions. You didn't do that." Therefore, it is not a proper claim for refund, and they denied the claim.

H. Program Manager Technical Advice 2023-04

Interesting, in Program Manager Technical Advice 2023-04, this was an individual who was court-martialed in the military. He had lost his pay during that period of time. His court-martial sentence was set aside on appeal, and he now is entitled to his restored payment. He alleged that under Section 139F, wrongful incarceration, individuals who are wrongfully incarcerated can exclude from gross income any civil damage, restitution, or monetary award. Well, the court said, this doesn't meet that. This is not a monetary award, per se. This is just paying you back your salary and, as a result, you are not entitled to an exclusion; it doesn't qualify. It's just getting back your salary, which would have been gross income.

So, I want to thank you for joining me today. A lot of interesting things are going on. I hope you'll be safe, and I hope you'll join me again next month on the Experts' Forum. Thank you again. Thanks for joining me, and please be safe.

SUPPLEMENTAL MATERIALS

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. IR-2023-169

IRS Commissioner Danny Werfel ordered an immediate moratorium on processing Employee Retention Credit (ERC) claims, beginning September 14, 2023, through at least December 31, 2023. This is in response to growing concerns inside the IRS and from tax professionals, as well as media reports, that there is rampant fraud and that a substantial number of new ERC claims are ineligible. Increasingly, this is putting businesses at financial risk by being pressured and scammed by aggressive promoters and marketing. This issue was on the IRS's "Dirty Dozen" tax frauds of 2023.

Payouts will continue during the moratorium period but at a much slower rate due to the more detailed compliance reviews. With the stricter compliance reviews in place during this period, existing ERC claims will go from a standard processing goal of 90 days to 180 days. This could be even longer if the claim faces further review or audit.

Taxpayers can expect requests for additional documentation to ensure that claims are legitimate. The IRS says this enhanced compliance review of existing claims submitted before the moratorium is critical to protect against fraud. It also is intended to protect the businesses from facing penalties or interest payments stemming from fraudulent claims pushed by promoters.

The IRS is currently finalizing details for a special withdrawal option for those who have filed an ERC claim but the claim has not been processed. This option will be available for taxpayers whose claim has not been paid yet. It will allow the taxpayers, many of them small businesses that were misled by promoters, to avoid possible repayment issues and paying promoters' contingency fees. According to the IRS, more than 600,000 claims awaiting processing will have this option available. Those who have willfully filed fraudulent claims or conspired to do so should be aware, however, that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

As the IRS continues working on additional details, there are several steps that the agency recommends for businesses, depending on where they are in the process:

- **For those currently awaiting an ERC claim, be patient.** For those who currently have an ERC claim on file, the IRS will continue processing these claims during the moratorium period but at a greatly reduced speed due to the complex nature of these filings and the need to protect businesses from being improperly paid. Normal processing times could easily stretch to 180 days or longer. The IRS cautions that many applications will be facing additional compliance scrutiny, which means the payments could take even longer to be processed. While the IRS works on compliance measures during this period, the agency cautions businesses to expect extended wait times due to the large volume of claims and the complexity of the applications.

Due to the large volume and the need for compliance checks to protect against fraud, the IRS is unable to expedite individual claims. The IRS believes many of the applications currently filed are likely ineligible, and tax professionals note anecdotally that they are seeing instances where 95 percent or more of claims coming in recent months are ineligible as promoters continue to aggressively push people to apply regardless of the rules.

For those currently with a pending application at the IRS, they should review the options below to see if any of those could help with their current situation.

- **For those who have not yet filed a claim, consider reviewing the guidelines and waiting to file.** For those considering filing a claim, the IRS urges businesses to carefully review the ERC guidelines during the processing moratorium period and to talk to a trusted tax professional—not a tax promoter or marketing firm looking to

make money generating applications that take a big chunk out of the ERC claim. The new question and answer guide can also help. A careful review of the rules will show that many of these businesses do not qualify for the ERC, and avoiding a bad claim will avoid complications with the IRS.

- **Withdraw an existing claim for businesses that have already filed.** For those who have filed and have a pending claim, they should carefully review the program guidelines with a trusted tax professional and check the new question and answer guide. For example, the IRS is seeing repeated instances of people improperly citing supply chain issues as a basis for an ERC claim when a business with those issues will very rarely meet the eligibility criteria. Under any scenario, if a business claimed the ERC earlier and the claim has not been processed or paid by the IRS, the business can withdraw the claim if they now believe it was submitted improperly, even if their case is already under audit or awaiting audit. More details will be available shortly.
- **Wait for the IRS ERC settlement program to be finalized.** If a business has already received an ERC that they now believe is in error, the IRS will be providing additional details on the settlement program later this year that will allow businesses to repay ERC claims. The settlement program will allow the businesses to avoid penalties and future compliance action. The IRS is continuing to assess options on how to deal with businesses that had a promoter contingency fee paid for out of the ERC payment.

B. *Adam Steele, et al. v. U.S.*

T.D. 9980

In T.D. 9980, the IRS said that they are reducing the user fees to be paid by tax preparers to obtain a preparer tax identification number, the PTIN. Under the new regulations, the cost of obtaining or renewing a PTIN is going to be \$11, plus an additional \$8.75 for third-party contractors. The fee to obtain or renew was \$30.75 in 2022. So, the IRS has come up with a new cost model.

In *Steele*, the return preparers' motion for partial final judgment in this long-running PTIN fees case seeking to immediately place in escrow the amount of fees which government conceded were unlawfully imposed, was denied. The preparers' motion for clarification of an earlier summary judgment decision, seeking to clarify whether PTIN fees could include costs relating to unidentified "ghost" preparers and/or costs of registering foreign preparers, was also denied.

C. *35 North 4th Street, Ltd. v. U.S.*

IR-2022-214

DC OH

This case involves the recent decisions concerning the IRS violating the Administrative Procedures Act notice provisions in adopting Notice 2017-10, 2017-4 IRB 544. That notice requires that conservation easements be reportable or listed transactions. The IRS has proposed a new rule which really follows the old rule; it's just that they are following the APA to get there. In other words, the same rule, but following the right procedure, and it can be found at IR-2022-214. It is substantially the same as the existing notice. If it becomes final, it is going to supersede the existing notice, and it is supposed to come out December of 2023. The court said there is no reason to move on this case until after the new rule comes out and they see how it impacts this case. The IRS has already said that they will not enforce the Notice in the Sixth Circuit, but the partnership does not want it to apply nationwide.

D. *Audit Report No. 2023-30-051*

The Treasury Inspector General for Tax Administration (TIGTA) has released the results of an audit initiated as a result of its requirement to annually report on the IRS's compliance with provisions of the law that restricts the agency from directly contacting taxpayers who are represented. For this latest review, the TIGTA analyzed the extent to which Small Business/Self-Employed Division Field Collection employees comply with the direct contact provisions of IRC §7521 and the Fair Tax Collection Practices of IRC §6304(a)(2) during interactions with taxpayers or their representatives.

According to the audit, the IRS has policies and procedures to help ensure that taxpayers are able to designate an authorized representative to act on their behalf in certain tax matters. It also has a process to handle the review and disposition of taxpayer allegations of direct contact violations. “However, the IRS has not developed a system to identify IRS employee violations of the direct contact provisions,” the TIGTA said. Auditors found that revenue officers “potentially violated taxpayers’ rights concerning directly contacting taxpayers who are represented before the IRS,” the audit noted. A review of a stratified, statistically valid sample of 132 taxpayers found eight taxpayers (12 instances) for whom revenue officers did not comply with the Code sections pertaining to direct contact provisions and the right to fair collection practices. The TIGTA also reviewed quality control data pertaining to Field Collection and found that for 129 potential violations, there were 48 taxpayers for whom the IRS did not comply with the law regarding the right to representation. The 48 potential violations were not referred to a Labor Relations Specialist for investigation as required.

These are significant issues to be addressed by the IRS.

E. IR-2023-156

The IRS issued proposed regulations [Proposed Reg. 100908-23] related to increased clean tax credits or deduction amounts for clean energy facilities that meet certain prevailing wage and apprenticeship (PWA) requirements. The Inflation Reduction Act (PL 117-169) included provisions for increased clean energy tax credits or deduction amounts if certain PWA requirements are met.

Specifically, the PWA requirements pertain to:

- Alternative Fuel Refueling Property Credit (Code Sec. 30C)
- Production Tax Credit (Code Sec. 45 and Code Sec. 45Y)
- Credit for Carbon Oxide Sequestration (Code Sec. 45Q)
- Credit for Production of Clean Hydrogen (Code Sec. 45V)
- Clean Fuel Production Credit (Code Sec. 45Z)
- Investment Tax Credit (Code Sec. 48 and Code Sec. 48E)
- Advanced Energy Project Credit (Code Sec. 48C)
- Energy Efficient Commercial Buildings Deduction (Code Sec. 179D)

The prevailing wage requirements pertain to:

- New Energy Efficient Home Credit (Code Sec. 45L)
- Zero-Emission Nuclear Power Production Credit (Code Sec. 45U)

The proposed regulations apply to:

1. Taxpayers who seek to satisfy PWA requirements for increased tax credits or deductions as well as those who seek to satisfy prevailing wage requirements for tax credits without apprenticeship requirements;
2. Taxpayers who initially failed to satisfy PWA or prevailing wage requirements and subsequently complied with correction and penalty procedures to satisfy requirements; and
3. Taxpayers intending to claim increased credit or deduction amounts pursuant to the IRA, including those intending to make elective payment elections for available credit amounts, and those intending to transfer increased credit amounts.

The proposed regulations provide guidance to taxpayers intending to claim the increased credit or deduction amounts and those intending to transfer increased credit amounts. Additionally, they provide guidance for taxpayers who initially fail to but want to cure the PWA requirement. Finally, the proposed regulations would provide rules concerning specific PWA recordkeeping and reporting requirements.

The IRS has issued proposed regulations on what is “prevailing wage” and what is an “apprenticeship.” For example, if it is not a certified apprenticeship, then the employer/taxpayer has to be paying the prevailing wage. Essentially, it adopts the general rules under the Davis-Bacon Act for what constitutes a prevailing wage. Prevailing wage is determined at the start of the contract, and it has to continue through the course of the contract, but having to pay that wage is only binding when the taxpayer files for the credit. So, it does not really apply until the taxpayer actually files for the credit. Obviously, taxpayers are not going to go back and pay people, but if they end up not doing the credit and did not pay prevailing wage, so what? No harm, no foul.

They do not adopt the Davis-Bacon Act provisions related to certified payroll records, nor their \$2,000 monetary threshold. They adopt a definition of what is “employed,” and they adopt a broader definition than other places in the regulations, so you will have to look specifically at these regulations.

Independent contractors could be considered to be employed for purposes of the prevailing wage for these purposes. Again, you are not required to update it if the wages change during the term of the contract. Wages, hourly rate contributions to bona fide fringe benefit programs, the rate of costs reasonably anticipated to provide those fringe benefits, and again, prevailing wage requirements, are not relevant for any other determination of what is a “wage,” only what is a wage for this purpose. So, we have the same terminology, but they are applying it for different purposes.

An apprenticeship program means employed in a registered apprenticeship. If they are not employed in a registered apprenticeship, then that person has to be paid under the prevailing wages; you cannot pay them less. And just like the prevailing wage, it does not become binding until you actually make a claim for the credit.

There is a limited penalty waiver for failure of no more than 2.5 percent of the amount required under the prevailing wage requirement or 10 percent of all pay periods for the calendar year, if you make a correction the earlier of 30 days after becoming aware of it or the date the return claiming the increased credit is filed.

These are reliance regulations, so you are allowed, but don’t have to, rely on them going back to January 29 of 2023.

F. *Bonnie Lem v. Commissioner*

TC Memo 2023-110

The IRS’s administrative determination to proceed with the levy for taxpayer’s liabilities and reject their request to put their account in currently-not-collectible (CNC) status was upheld on summary judgment. Although the taxpayer did not receive a deficiency notice or have prior opportunity to dispute underlying liabilities, they did not raise that issue during their CDP hearing and were deemed to have conceded same. The record showed that the settlement officer verified all requirements of applicable law and administrative procedure were met. The officer considered all other issues taxpayer raised, including inability to pay and the CNC request. There was no abuse of discretion.

G. *Takina v. U.S.*

DC MO

Takina alleges that he mailed his tax return to both the Kansas City Service Center and the Washington, D.C. IRS Headquarters. As a Missouri taxpayer, Takina needed to file his tax return with the Kansas City Service Center of the IRS; thus, the Washington, D.C., filing was improper. Even if the Court considered Takina’s unverified statement regarding the return he mailed to Washington, D.C., the only return the IRS accepted is the one filed at the Kansas City Service Center. As noted, that return was not postmarked until May 3, 2023, about a month after the postmark deadline. Because the IRS treats the tax return as constituting the refund claim, the Court looks to the date that Takina filed his tax return at the proper location—the Kansas City Service Center. The Court looks only to the postmark date

of the return sent to that location. The IRS considers a tax that was paid by automatic deduction as paid on April 15 of the year following the year in which the automatic deduction occurred. The claim was outside the refund statute. Thus, because Takina did not file a timely refund claim with the IRS, he did not comply with the statutory provisions allowing a taxpayer to file suit against the United States.

H. Program Manager Technical Advice 2023-004

Reconsidering a prior Program Manager Technical Advice (PMTA 2020-005), the Chief Counsel has determined that forfeited military pay restored to a service member after a court-martial sentence is set aside is includable in income as it is not excludable under §139F. Members of the military are paid as a matter of statute, not as compensation for services performed. Therefore, pay and allowances continue to accrue to a confined service member unless such service member's pay and allowances are forfeited by a court-martial sentence. When a service member's court-martial sentence is set aside or disapproved, the Uniform Code of Military Justice requires forfeited pay and allowances to be restored to the service member. This was a restoration of pay, not civil damages, restitution, or other award as required for the exclusion.

GROUP STUDY MATERIALS

A. Discussion Problems

- 1) Your client, Janine, comes to you to discuss the ERC claim she recently filed for her business. She was approached by a company that advertises on the internet for ERC claims. You have determined that her business is not entitled to an ERC. How will you advise her?
- 2) You are planning to renew your PTIN soon. How much will the renewal cost?
- 3) You have a client, SmithCo, that is heavily invested in clean energy. The CEO, Paula, has asked you about enhanced credits. Discuss the requirements and regulations that may apply.

Required:

Address all issues fairly presented above.

B. Suggested Answers to Discussion Problems

- 1) If you are convinced that Janine does not qualify, you should advise her to withdraw the ERC claim. The IRS is setting up a settlement program. However, while waiting for the settlement program to be finalized, you may wish to send a letter seeking to withdraw the ERC claim.
- 2) The PTIN fees have been lowered for 2023 to \$11.
- 3) In regard to clean energy, the PWA requirements pertain to:
 - Alternative Fuel Refueling Property Credit (Code Sec. 30C)
 - Production Tax Credit (Code Sec. 45 and Code Sec. 45Y)
 - Credit for Carbon Oxide Sequestration (Code Sec. 45Q)
 - Credit for Production of Clean Hydrogen (Code Sec. 45V)
 - Clean Fuel Production Credit (Code Sec. 45Z)
 - Investment Tax Credit (Code Sec. 48 and Code Sec. 48E)
 - Advanced Energy Project Credit (Code Sec. 48C)
 - Energy Efficient Commercial Buildings Deduction (Code Sec. 179D)

The prevailing wage requirements pertain to:

- New Energy Efficient Home Credit (Code Sec. 45L)
- Zero-Emission Nuclear Power Production Credit (Code Sec. 45U)

The IRS has issued proposed reliance regulations that apply to:

1. Taxpayers who seek to satisfy PWA requirements for increased tax credits or deductions as well as those who seek to satisfy prevailing wage requirements for tax credits without apprenticeship requirements;
2. Taxpayers who initially failed to satisfy PWA or prevailing wage requirements and subsequently complied with correction and penalty procedures to satisfy requirements; and
3. Taxpayers intending to claim increased credit or deduction amounts pursuant to the IRA, including those intending to make elective payment elections for available credit amounts, and those intending to transfer increased credit amounts.

Reference should be made to these proposed regulations.

PART 2. INDIVIDUAL TAXATION

Assessment and Collection Statutes

There are general rules related to the assessment and collection of taxes by the IRS. However, there are also exceptions to those general rules. There are statutes of limitation and issues that can extend or suspend those time limits. The rules can become very complex and can be greatly impacted by fraudulent tax returns, underreporting income, failure to pay, and so forth. Ian Redpath and Larry Pon discuss key issues related to the assessment and collection statutes.

Let's join Ian and Larry.

Mr. Redpath

Larry, welcome to the program.

Mr. Pon

Hi, Ian.

Mr. Redpath

Always great to have you here; always great to get your insight. We previously did a program on the return, and filing a return, and filing for a refund. So, let's look at the other side of it, which is the assessment and then what the IRS can do to collect once there is an assessment of the tax.

We're going to be dealing with several different statutes today but looking at it from [the perspective of] what do we have to worry about from the IRS coming after us or coming after our clients, so to speak. Let's start off with the assessment statute and the confusion that a lot of people have. I hear this all the time. "Oh, the IRS has three years to audit." Well, no, that's assessment, and that's a huge difference—whether they come in and assess or they come in and audit. One of the things that I think people often find is the IRS coming in and saying, "Oh, by the way, would you sign this extension of the statute of limitations? Because we're going to audit you now."

So, let's start. What is that assessment statute under [Internal Revenue Code (IRC) Section] 6501(a)?

Mr. Pon

Let's talk about the general rule. The general rule is the IRS can assess tax within three years after the tax return was due, including extensions, or, if it was filed late, within three years of filing the tax return, whichever is later. So, that's the general rule.

Mr. Redpath

So, just to follow up with that, obviously, if you have an extension, we know what that is. But let's say the due date is the filing date, April 15th. We'll use the normal date. But I'm really diligent, and I file on the day it opens up. I file it in January. As soon as the IRS opens the website, I'm in there and I'm filing my return. Is it three years from that date?

Mr. Pon

If you file early, it's still deemed as if you filed on the due date, so if you filed on February 1st, it's still treated as if you filed on April 15th.

Mr. Redpath

Right, and I think that's important. Filing early, it's April 15th; filing late, it's....

Mr. Pon

Whenever you file.

Mr. Redpath

Right. The other thing I've seen—and I've seen a lot of cases on this—what happens when your due date is April 15th, but that falls on a Saturday, so you don't file your return until Monday or maybe even Tuesday? What happens in that case?

Mr. Pon

It's still three years from that date. We don't want to count it so close, but that's something to consider too, right? But there are some exceptions to this three-year rule, so let's talk about those exceptions. The first one is you didn't file a tax return. That's number one. So, the IRS filed it for you, the substitute for return. Well, guess what? The three-year time limit doesn't even begin until you file a tax return. So, if you don't file a tax return, there is no statute of limitations for assessment.

Mr. Redpath

And that's something some people do get confused with. When that substitute return is filed [they think,] oh, well, okay, they filed a return. Yes, but you didn't.

Mr. Pon

Right. No, you didn't file, so that doesn't start the ASED [assessment statute expiration date] statute. The second one is, like you said earlier, you agree to extend the time limit. You sign an agreement or a statutory waiver, and that could be [when you are] in the middle of an audit or running out of time. The IRS wants you to sign this form to extend the time, and there are pros and cons of should I do that or not? But that's an agreement you make with the IRS to extend the statute.

Mr. Redpath

That's a really good point, Larry. There are pros and cons. The IRS has a standard procedure that basically says, "Look, if the statute is going to run within six months, we're going to ask you to extend the statute." And the risk that you run is, okay, what happens if you refuse to extend the statute? What's going to happen? There's a thing out there, and many people haven't seen it, called a *jeopardy assessment*. The IRS has the ability to say, "Okay, this is what you owe us, and we're going to try to collect it. And now you can take whatever actions you want after that." It's called a *jeopardy assessment*. Now, in theory—and I'm saying in theory because I'm sure I've had more than one case where the absolute reason they did a jeopardy assessment was the statute was running up—but in theory, they can't use that to do a jeopardy assessment. They have to show that you're going to take off. Your assets are being depleted. We're not going to be able to collect because you're using up all your assets.

It does happen. I had really an outrageous case where the IRS came in, and they did a jeopardy assessment. I wasn't involved until later. I got involved [when the taxpayers] were charged criminally. Then, of course, [for] every criminal case, a civil case follows to collect. But the IRS, what they had done is, they did a jeopardy assessment that kind of related to the initial [case], which was the criminal, and they did a civil jeopardy assessment. They used all of the income and gave them none of the deductions. They said, "Well, we looked at it. We did an audit. We got all your income, and we're disallowing all your deductions. Here's your assessment." Okay, that's a little suspect on that. But nonetheless, they did it. We did argue that was, in essence, a jeopardy assessment, and they weren't entitled to do that. But there were some other issues related to the criminal case that we had to avoid. But they should not be using that as a threat—I'll say it that way—because technically, that jeopardy assessment is supposed to be something that's rarely used. Unfortunately, I've seen too many times where the IRS—it would appear that it's because of the statute.

But the question then becomes, well, if you don't extend the statute, what does that mean? Well, it means you're probably going to end up with a very accelerated audit, and you may not end up in a situation where it's favorable to you because the IRS is going to, when they get to that point, they're going to say, "This is the information we have; here's your assessment. Now, figure it out later." Unfortunately, that's an issue you have to think about. I have, and it's always a question. I've been in the middle of a very complicated audit, and I said, "Okay, we'll extend the statute on this condition, only for the items we haven't agreed upon. We've agreed on all of this. These items are still in discussion." Now, sometimes, I've had them say, "Nope, everything's open or nothing." And other times, I've had

them agree to say, “We’ll limit the extended statute. It’s limited to these items.” The items we had. So, that’s really something to consider. I’m not going to say it’s 100 percent that you’re going to be successful, but it’s certainly something you might want to consider if you’re asked because, essentially, if it’s late in the process—the IRS, because they have three years to assess, not three years to audit—you’re going to find that you’ll often be asked, just as a matter of course, “Well, we want you to extend the statute.” And, as you said, there are pros and cons to doing it. The con is that they’re going to do an accelerated audit, that it’s going to be accelerated and not in your favor.

Mr. Pon

Right. You get more information in Publication 1035, which is *Extending the Tax Assessment Period*. That’s a good resource to take a look at.

Mr. Redpath

You said if you don’t file a return, of course, statutes don’t run. If you don’t file a return, the statutes are not going to run. But this becomes, I think, a question that is often missed. It’s a question of art. I’ll put it to you. There is an extended statute, and the extended statute goes to six years. When does that apply?

Mr. Pon

We’ll go into that in a little more detail here, but that’s if you report 25 percent or less of your income on your tax return. So, instead of a three-year assessment statute, it’s a six-year statute assessment period. However, if you file a false or fraudulent tax return with the intent to avoid tax, that’s unlimited. There is no statute of limitations there, and, of course, the burden of proof is on the IRS.

Mr. Redpath

Once they claim fraud, the burden switches to the IRS, but they will often do that in the six-year statute. [They] say, “If we don’t get you on the six-year [statute], we’re going to get you under fraud anyway because you failed to claim all this income.” I think there’s two interesting aspects of this. The one interesting aspect is that you failed to report in excess of 25 percent of what you reported as gross income. Therefore, it’s not that you fail to report more than 25 percent of your gross income. It’s the amount you failed to report exceeds 25 percent. So, if you had \$25,001 that you didn’t report, your gross income is \$125,001. Well, it doesn’t exceed 25 percent, but it exceeds 25 percent of the \$100,000 you reported. So, it’s not in excess of 25 percent of your gross income. It’s in excess of 25 percent of what you reported on that.

And the other question—it seems counterintuitive—is the IRS said this is only in income, failing to report income. It’s not overstating your deductions. Now, [if] you overstate your deductions, they may go after you for fraud, but as far as this statute is concerned, it doesn’t look at overstating deductions. Now, the net result of not including income and overstating your deductions can be exactly the same, but this statute only kicks in for failing to report more than 25 percent of your gross income of what you reported.

Now, this went back and forth. Congress finally had to amend the law because people said, “Well, wait a second. Deductions, that’s kind of like a return of capital, so if I way overstate my basis, does it kick in the six-year statute?” Where do we stand on that one?

Mr. Pon

They fixed that, didn’t they? Because your net capital gains is part of your gross income; so, if your basis is overstated, that can kick you into the six-year statute of limitations instead of the three-year.

Mr. Redpath

Also, it’s gross income, so it would include things like exclusions—like if you took a [Section] 1202 exclusion. But that is gross income less your exclusions; so, you have to keep that in consideration because they’ll come after you for that also.

Now, we’ve got particular times where time limits can be suspended. What are these things that will kick in suspensions of these time limits?

Mr. Pon

So, a couple of examples here. One of them is the IRS issues a Notice of Deficiency. You've got 90 days to agree to the proposed assessment or you file a petition [with] the tax court. That's the 90-day letter. The suspension period starts on the day the letter's mailed and ends 60 days after a final tax court decision. That could be a long period of time. That could be a year, or even two years, or even more. So that's a big deal right there. The other one is you file for bankruptcy. We file for bankruptcy, and the assessment period is suspended when the Notice of Deficiency is issued. If it's less than 90 days before filing the bankruptcy petition, then it starts the same day the bankruptcy petition is filed, but it's not until after you file the bankruptcy petition and before the bankruptcy automatic stay terminates. Again, that could be a long period of time when it comes to bankruptcy. Or [there is] this catch-all provision where assessment periods can be further suspended by the time allowed by law.

Mr. Redpath

That's for assessment, and that's, as you said, to issue that 90-day letter. And the 90-day letter is the assessment; that is the assessment. There are some issues now in the courts as to whether or not that's subject to equitable tolling. Can you extend that 90 days? The tax court has always said that it's a statutory provision that grants jurisdiction, so if you go more than 90 days, you can't get jurisdiction.

I saw one case where, and unfortunately it was beyond the period, but the IRS had actually—when you get the 90-day [letter], they stamp a date [by which] you're supposed to file in the tax court. That date was wrong. The 90 days had already run up, and the tax court said, "Hey, we're sorry. You can count. You can't rely on the IRS stamp. You should be able to count 90 days." So, you see cases where they're a day late—all sorts of issues.

Recently, we've had some action where the IRS has challenged, and the tax court has said, "Nope. No jurisdiction because you went beyond 90." I think it's going to the Supreme Court, but we do have at least one court of appeals case where they said, "Hey, this is subject to equitable tolling. It's not jurisdictional." And so, the tax court can look at that and go, "95 days. 100 days. Why didn't you file within that period?" So, I think that's an interesting approach.

Mr. Pon

Yes, there have been a couple of recent cases. One was they didn't pay attention to the time zone, so that they were late there. The other one was they filed 11 seconds late, and the tax court says, "Nope, we don't have jurisdiction." So yes, don't wait for the last second, literally. I mean, don't do that.

Mr. Redpath

Until now, the tax court's been very, very rigid on that 90 days. We'll see what happens now because we've got at least one court of appeals that said, "Nope, it's not jurisdictional. It's subject to equitable tolling." Now, being late, that may not be subject to equitable tolling. That may be a lawsuit against the attorney who was filing it. But there are circumstances.

I actually had a client—I shouldn't say I had a client—I had a CPA who said to me, "Hey, I want to send this case to you. It's going to tax court." And I said, "Oh, okay. When is the 90 days up for the 90-day [letter]?" "Oh, no. We've got plenty of time, plenty of time." I said, "Okay, well, when do you want to meet?" The CPA set the date. They came in. I said, "90 days was up two weeks ago." I said, "I don't think equitable tolling is going to apply because the CPA didn't bother." And I asked—I said, "When's the 90 days?" "Oh, we've got plenty of time." Well, when they called me, it was already up. It was a little late. I don't think we'd have gotten that. I don't think, even if equitable tolling had applied, we would have gotten it for that.

So now, you've got the assessment. You've gone through a collection due process. You've gone through everything. Now, you have this [amount] owed. There is a collection statute that applies, correct? So, what is the collection statute expiration date?

Mr. Pon

This is known as a CSED (the collection statute expiration date). The IRS generally has ten years from the date the tax is assessed—that’s why the assessment is so important—to collect the tax, and any associated penalties and interest. Now, you could have multiple tax assessments, and each will have its own CSED. For example, the original tax return was filed. There’s a statute of limitations on the amount of tax due if you haven’t paid. Well, if you file an amended return for the additional tax, that has its own CSED. We talked about the SFR (substitute for returns). Even though the ASER statute doesn’t start, but the CSED does start with the SFR (substitute for return) balances. Now, if your return gets audited and you don’t pay the additional [amount] due, that has its own CSED. Any civil penalty amounts. Certain penalties and interest. It’s a pretty strict ten-year statute of limitations there, and I have taken advantage of this for many clients. We negotiated a very good or low installment payment, and I told them, “Keep paying it.” And time flies. The ten years can go pretty darn quick, and then you can see it. You can look at the transcript and it shows—I think it says “amount written off” or something like that. It just disappears.

Mr. Redpath

I don’t think people always pay that much attention to the transcript, but it’s essential when there’s a collection lawsuit involved.

And, you know, we were talking off camera. I had a case where we got \$3.5 million dollars that was thrown off because when the IRS—and the action is actually brought by the U.S. Attorney because it’s a civil case—and when they brought the action, they had missed the statute on \$3.5 million. Now, [it was a] very complicated case, but, as you said, there’s various times where the time limit is tolled. But when does it toll? When does it not? When exactly [does it toll], for example, with an offer in compromise? It’s not just when you apply for it. When exactly does the statute start to toll? I had one situation where the IRS was trying to collect, but [the taxpayer] had made payments. It was interesting because the IRS determined the total amount of tax due, the penalties on that, the interest on that, and then applied their payments. I said, “No, you have to apply the payments as they were made,” which reduced it. I mean, obviously, with the interest, it reduced it significantly. How did we get that resolved? [We] went to the taxpayer advocate and said, “They’re just not applying the tax correctly.” Well, how do we know that? Because we got a transcript. We could see how they calculated it, and it was just totally wrong and saved them a lot of money. Again, this is Form 911, requesting service [*Request for Taxpayer Advocate Service Assistance*].

Now, there are times where the statute is *tolled*, basically meaning it’s being suspended. So, what are some of those things that will suspend the collection statute?

Mr. Pon

Yes, let’s talk about what suspends your statute. We’ve seen our clients do this. The example was, I looked at this client. He owed a lot of money; he owed a million dollars in taxes. It was, like, 25 years old because he kept doing all these things that kept extending it. So, let’s go down the list of things that would extend the statute of limitations, add time, suspend the CSED.

Number one, you request an installment agreement. When the request is reviewed, the CSED is suspended, so whatever that period of time is. If you later withdraw it, or an IRS rejects the installment agreement, or you propose terminating, it extends the CSED by another 30 days. Now, if you go to appeals, the CSED is suspended throughout the appeal process. So, that’s number one—request an installment agreement. That’s why we want to take advantage of this, but we want to do it quickly. Get the information in to the IRS and work with the revenue officer—getting it done as quickly as possible because we don’t want extra time added there. An example is, one of my clients was assessed \$350,000. We managed to negotiate a \$100-a-month installment agreement, and time flies. That 10 years went pretty darn fast, and that \$350,000—well, it’s down to \$330,000, I guess—it’s gone.

The other one is filing for bankruptcy. We see clients do that all too often. They don’t even qualify for it, but they file it anyway because they find these lawyers who would file the bankruptcy petitions for them. I’m not a bankruptcy expert, but I know enough to say, “You don’t qualify.” But they do it anyway. They file a petition, so from the petition date to when the court discharges it, dismisses, or closes the bankruptcy, that CSED is suspended. That could be many, many months. It extends it another six months when the bankruptcy concludes.

Mr. Redpath

So, the conclusion plus six months.

Mr. Pon

Exactly. The third one is the very common one because we see those commercials all the time on TV, or radio, or billboards. You file an offer in compromise [OIC]. So, the CSED is suspended when the IRS reviews the OIC application, and if it's rejected, it suspends the CSED for another 30 days. Like my lawyer did—he did it a few times, and he kept adding to it. If you appeal the rejection, the CSED is suspended until the appeal concludes. Again, that can take a bit of time too.

The next one is request for a CDP (collection due process) hearing. The CSED is suspended when the request is received until withdrawn or they make a final determination, which includes time for appeals. And at the final determination, [if] the CSED is less than 90 days, it extends the CSED for 90 days after the final determination.

Mr. Redpath

Larry, a lot of these cases, when I've been involved with the collection side of it, is going through the transcript. And I'll find, probably, all of these. Maybe not the bankruptcy, but other than that, I'll see where they may have requested an installment agreement. The one that I mentioned where we got the millions set aside, it was really complex trying to figure out exactly when the statute was suspended and when it wasn't. Some of these things were literally so close. The IRS screwed up. They had missed the timing on a lot of it, obviously—and that was great for my client—but the fact is that these rules get highly complex. Especially because, for example, this person had an installment agreement; then they failed to pay. Then they appealed. Then they had an offer in compromise. The offer in compromise got rejected. Then they appealed the offer; then they got accepted. Then they failed to pay on the offer in compromise, after a while, but they paid. It was like a puzzle trying to connect all the dots to see exactly what the time period actually was. And after we connected all the dots for the various [things], we said, "Wait a second. You missed this. You missed this. You missed this." The court said, "Sorry, IRS, you miscalculated." But all of that came from the transcript. It was the transcript that did it.

Mr. Pon

Well, let's talk about the transcripts. Those entries on the transcript are manually input by an IRS employee. IRS employees are human beings just like us, so they make mistakes. My suggestion is use an Excel spreadsheet—use the date feature of your Excel spreadsheet and input the date, add the 10-year statute of limitations on it, and then make the adjustments for all these things that add to the CSED. That way, you can compare what your entry is with what's on the transcript.

So, the transcript is not 100 percent right, but you want to prove it. Double check it, document it, and then the IRS will accept it. You have to go through the Taxpayer Advocate's office to point it out, but my advice—if you're going to do that—is provide all the evidence, all your calculations. Don't just say, "You're wrong." That's not going to fly. Or just don't say, "Oh, it expired two years ago." Prove it. Just use the Excel spreadsheet step by step by step. That's pretty easy.

Mr. Redpath

That's a great point, Larry. In the case that I mentioned—because it's so egregious—there were a couple of errors like that. I was fortunate enough that the law firm that had handled their offers in compromise, that had handled their installment obligations, they were the ones that retained me, so they had all the documentation. There were a couple of situations where we were able to argue the timing was incorrect based upon what they had filed. Now, those were only nominal, but you're absolutely right. Never think that it's 100 percent correct. Of course, we always think it's correct when it's in our client's favor, but when it's not, we want to be able to argue.

Mr. Pon

Let me go over a few more items that extend the CSED. We talked about the OIC, the bankruptcy, installment agreements—[there are] a few more here. Another one is if you file a request for innocent spouse relief. CSED is suspended until you file a waiver or [the] 90-day period expires to petition the tax court, whichever is earlier. If you

petition the tax court, it suspends the CSED until the court makes [its] final decision, and then you add another 60 days to that. Now, that only affects the filing spouse. It doesn't extend the CSED for the other spouse. If you're in a combat zone, the CSED is suspended [from] when you enter a combat zone to when you leave plus 180 days.

A couple more situations that can add more time to your CSED. One of them is if you're in the military, in certain types of service, the CSED is suspended for the period of military service plus 270 days from when the military notifies the IRS. This is under the Servicemember's Civil Relief Act of 2003 (SCRA), so take a look at that if that applies in your client's situation.

I didn't know this until I read this. If you live outside the United States—we have many clients who are working overseas—your CSED is suspended if you live outside the U.S. continuously for six months or more, and the CSED may be extended by at least six months when you return to the U.S. The reason I don't know about this is because I've never had the situation where people who owed money [lived outside the United States], so I never had this issue applied. But that's good to know—good to know that if you live outside the United States.

Well, they talk about two more items here before we wrap up. One is gift tax returns—the importance of filing gift tax returns. Because, yes, most of our clients aren't going to owe any gift tax; however, if you don't file a gift tax return, there's no statute of limitations. The IRS can audit—most especially when your client passes away—the decedent. They can audit, they can adjust it, [and] they can change the numbers. And who knows what the lifetime exemption is going to be when your client passes. That's subject to change.

So, to get the statute of limitations, start with the gift tax return. You've got to file the Form 709, but also have what's called *adequate disclosure*. Once you have adequate disclosure, then, once the three years are up, the IRS can't audit the gift tax return. So, that's pretty important; gift tax returns are important.

I last thing I want to talk about is, of course, we always have to talk about SECURE 2.0. So, SECURE 2.0 made a couple of very taxpayer-friendly changes to the statute of limitations. One of the assessments of additional tax is if you make an excess contribution to your retirement account. You put money in a Roth IRA, but you weren't eligible. You put too much in an HSA, or too much in an IRA, or whatever, right? That's a 6 percent excise tax. That applies for every year the money is there. The previous law says the statute of limitations doesn't start until you file a Form 5329. Well, most people don't do that. SECURE 2.0 changed the law. The statute of limitations is now six years as long as you file the Form 1040. So, that's a big change there.

And the other one is the assessment of excise tax for not taking your required minimum distribution. The statute of limitations on that excise tax is now three years. Before it was none because the clock didn't start until you filed the [Form] 5329, and most people don't do that. Now, it's the [Form] 1040. You've got to file the [Form] 1040 to start the statute of limitations.

Why is it so important for us to talk about statutes of limitations? Well, like for ASER, once you're past the statute of limitations on the ASER, the IRS can't assess you for any additional tax. So, that's really important. Most importantly for CSED, once you're beyond the statute of limitations for collections, the IRS can't collect any more money from you. Like [in] your client's case, they had over \$2.5 million just disappear. We've had many clients who've had hundreds of thousands of dollars just disappear after an expiration.

Mr. Redpath

And that statute is something to keep in mind because when you're doing an offer in compromise, the IRS is going to say, "Okay, well, your net worth plus what we can collect during the remainder of the collection period." I had a client, and I said, "Okay, bottom line is that you've got a year and a half left, and all of this tax is going away. Do you want to file an offer in compromise today?"

Mr. Pon

That's going to stretch out that time. It doesn't make sense, right?

Mr. Redpath

I think he rode off into the sunset and said, “They haven’t caught me yet. They haven’t gone after me, so let’s just let it ride.”

Mr. Pon

Let it ride.

Also, if the CSED expires but you had an automatic payment plan or something like that—if they collected money from you, or your client just wrote a check after the expiration of CSED—you can apply to get it back. You’ve got to watch out for the two-year rule with that, so within two years, you can get it back.

Now, we’ve been talking about statutes of limitations here. Also, you’ve got to watch out for your state’s statute of limitations. I’ve got to bring up California. California did not have a CSED. It was unlimited. The California CSED is now 20 years. However, the two-year rule for California on the RSED—it’s not two years; it’s one year. So, check your state because your state may have different rules than the federal rules.

Mr. Redpath

And they very often do.

Larry Pon, thank you very much for joining me. A lot of great information today. Something for all of our viewers to pay attention to with their clients. So, Larry, thanks a lot for joining me. Appreciate it.

Mr. Pon

Thank you, Ian.

SUPPLEMENTAL MATERIALS

Statute of Limitations for Tax Filings

By Ian J. Redpath, JD, LLM

A. Introduction

Generally, there is not 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; therefore, absent certain circumstances discussed later, 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.

B. ASED

The Assessment Statute Expiration Date (ASED) is the end of the time period in which the IRS can assess tax for a tax year. As a general rule, the government 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, it must begin a proceeding in court for collection of the tax without assessment within that timeframe [IRC §6501(a)]. In certain circumstances, such as substitute returns, fraudulent returns, or if no return is filed, an unlimited statute of limitations may apply. If a taxpayer fails to report an amount that is more than 25 percent of their reported gross income, the IRS will commonly extend the statute of limitation to six years after the return was filed. On the other hand, the assessment period may be shortened to 18 months after a request for prompt assessment is filed for the return of a decedent or a decedent's estate or a return for a dissolved or dissolving corporation [IRC §§6501(c), (d), and (e)]. Any return filed before the due date is deemed filed on the due date.

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. The IRS also recognizes certain state holidays, such as Patriots Day in Massachusetts and Main Emancipation Day in the District of Columbia. IRC Section 7508A gives the IRS the ability to specify a period of up to one year that may be disregarded in performing certain acts for taxpayers affected by a federally declared disaster.

Example: Juan timely filed his 2021 Form 1040 on June 1, 2022. The IRS has until June 1, 2025 (three years from the date the return was filed) to assess additional tax for the year.

Example: Megan's 2021 tax return was filed January 20, 2022. The IRS has until April 15, 2025 (three years from the date the return was due) to assess additional tax.

As mentioned previously, the three-year assessment period is extended to six years when the taxpayer omits gross income that exceeds 25 percent of reported gross income or when an estate omits items includible in the gross estate that exceed 25 percent of the reported gross estate. An extended six-year assessment period also applies to certain understatements of income that are attributable to foreign financial assets [§6501(e)]. Rather than the normal three years, the IRS can assess the tax or begin a court proceeding to collect the tax without assessment at any time within six years after the return was filed [§6501(e)(1)(A) and Reg. §301.6501(e)-1(a)(1)(i)].

Example: Jane reports \$100,000 of gross income on her return but omits \$26,000 of gross income that should have been reported. Because the omission exceeds 25 percent of the amount that was reported, the six-year limitation period applies. Note that it does not exceed 25 percent of the total income of \$126,000 but does exceed what is reported.

Where this six-year statute applies, it applies to the entire return, not just the omitted income. The IRS can determine a deficiency that includes something that is attributable to another item unrelated to the omission [*Colestock, Stephen G.*, (1994) 102 TC 380; Program Manager Technical Advice 2016-004]. Once the taxpayer has proven that the IRS assessed the tax more than three years after the return was filed, the burden shifts to the IRS to prove the extended statute applies [*Hoffman, Peter M.*, (2002) 119 TC 140]. The test is whether the taxpayer omitted income that was in fact includible in income. It makes no difference that the taxpayer believed the income was not includible when filing the return. The extension also applies regardless of when the IRS discovered the income [*Benson, Eric B.*, (2004) TC Memo 2004-272, RIA TC Memo ¶2004-272, *aff'd sub nom Benson, Burton O. v. Com.*, (2009, CA9) 103 AFTR 2d 2009-1511, 560 F3d 1133].

One of the more controversial areas in the extended statute is its application to basis. The issue confronting the IRS was whether a misstatement of basis that results in an omission of income is the type that triggers the extended six-year statute. Clearly, an understatement of gross income will result from an overstatement of unrecovered cost or other basis that results in an omission from gross income. But is that contemplated within the extended six-year assessment period?

The words “omits from gross income” have been said to be so clear and unambiguous that no construction of them is required [*Hale, C. P. Est.*, (1942) 1 TC 121]. However, they do not refer to any precise item on the tax return. There is a line for entering “total income,” but that is not the same as “gross income” for these purposes. The Tax Court bases its determination on whether an item is properly an item of gross income on the appropriate contemporary statutory definition of gross income [*Green, Leslie H.*, (1946) 7 TC 263, *aff'd* (1948, CA6) 36 AFTR 1174, 168 F2d 994, 48-2 USTC and *Harlan, Ridge L.*, (2001) 116 TC 31]. In 2010, the IRS adopted Reg. §301.6501(e)-1(a)(1)(iii). This was to be in compliance with changes made to §6501. In those regulations, the IRS extended the six-year omission rules to the overstatement of basis.

For the statute of limitations to start, the return must be sufficient in substance. There is a substantial compliance standard for returns. As mentioned above, under IRC §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 in order for the filing requirement to be met for starting 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 on which itemized deductions are claimed but which does not 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. See also *Schlapfer v Commissioner*, TC Memo 2023-65.]

The statute of limitations does not apply if the IRS can establish that a taxpayer has:

1. Filed a false or fraudulent return;
2. Willfully attempted to evade tax; or
3. Failed to file a return.

False or fraudulent filing or tax evasion involves willfully filing false tax information, failing to file, or attempting to evade taxes. [IRC §6501]

If a taxpayer fails to file a return voluntarily, the IRS can assess tax under the Substitute for Return (SFR) program. If the return was filed under the SFR program, it does not begin the running of the ASSED three-year time limitation. Thus, the IRS can assess additional tax at any time. If the taxpayer subsequently files a return, the ASSED will run from then.

The IRS and the taxpayer may consent to an extension of time to assess all taxes imposed by the Code, except estate taxes [IRC §6501(c)(4)]. To obtain an extension, both parties must execute a written consent before the initial period of assessment has expired. Form 872, *Consent to Extend the Time to Assess Tax*, is used to extend the period of assessment to a specific date. The tax will be assessed within the period of time agreed upon. This period may be further extended by agreement of the parties [Reg. §301.6501(c)-1(d)]. If the IRS proposes a waiver to extend the ASSED, it is possible to negotiate the proposed time limitation to assess or refuse to sign the waiver. Remember that the IRS may not make a jeopardy assessment simply because the statute is running out.

There are some special rules for various circumstances under IRC §6501. For example, if a taxpayer files an amended return within 60 days of the expiration of the ASSED, then the statute is extended for an additional 60 days after the return is received. This applies if the return shows additional tax due. In the case of a deficiency attributable to the taxpayer taking a net operating loss carryback or a capital loss carryback [including deficiencies which may be assessed pursuant to the provisions of §6213(b)(3)], such deficiency may be assessed at any time before the expiration of the period for the taxable year of the net operating loss or net capital loss which results in such carryback.

The period may be suspended. For example, when the IRS issues a Notice of Deficiency, the taxpayer has 90 days (150 days if outside the U.S.) to agree with the proposed assessment or file a petition with the Tax Court. The suspension period starts on the day after the letter is mailed and ends 60 days after a final Tax Court decision. If a taxpayer files for bankruptcy, the assessment period is suspended.

C. Collection Statute Expiration Date (CSED)

The IRS generally has ten years from the date tax is assessed to collect the tax and any associated penalties and interest [IRC §6502]. The tax may be collected by levy or by a proceeding in court but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

- (A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or
- (B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period is extended until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable. The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in §6335(a) is given.

There are multiple tax assessments which have their own CSED. For example:

- Original tax amounts owed on tax return
- Additional taxes on amended tax returns
- Substitute for return tax balances

- Additional taxes due from an audit
- Civil penalty amounts
- Certain penalties and interest

To discover the CSED:

- Get an account transcript and look under the Transactions section of the transcript;
- Find the three-digit IRS transaction code with a date below it. This date is the CSED plus any additional time added by law.

Sample IRS Account Transcript: Transactions Section

TRANSACTIONS				
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20122205	05-23-2012	\$7,000.00
n/a	09211-113-44914-2			
806	W-2 or 1099 withholding		04-15-2012	\$100.00
170	Penalty for not pre-paying tax	20122205	05-23-2012	\$50.00
	10-15-2026			
276	Penalty for late payment of tax	20122205	05-23-2012	
196	Interest charged for late payment		05-23-2012	\$0.00
971	Notice issued	20122205	05-23-2012	\$0.00
	CP 0014			
971	Pending installment agreement		04-17-2012	\$0.00
971	Installment agreement established		06-12-2012	\$0.00

Collection Statute Expiration Date (CSED)

Note: This transcript is fictional. It complies with the law which requires us to keep taxpayers' returns and return information confidential (IRC 6103).

It is important to review the information on the transcript to ensure its accuracy. Do not assume the IRS is correct. Certain things may toll the statute, and more than one action can suspend the running of the collection period. However, overlapping situations run simultaneously; the time for multiple events is not added more than once where one event may overlap another. Some of the examples are from the Taxpayer Advocate [<https://www.taxpayeradvocate.irs.gov/tax-terms/collection-statute-expiration-date-csed/>], and examples are:

- If you request an Installment Agreement (IA), the time the request is pending pushes out, or suspends the running of, the initial ten-year collection period. An IA request is often pending until it can be reviewed and an IA is established, or the request is withdrawn or rejected. If the requested IA is rejected, the running of the collection period is suspended for 30 days. Similarly, if you default on your IA payments and the IRS proposes to terminate the IA, the running of the collection period is suspended for 30 days. Last, if you exercise your right to appeal either an IA rejection or termination, the running of the collection period is suspended from the time the appeal is pending to the date the appealed decision becomes final.
- If you file for bankruptcy, the running of the collection period is suspended during the time the bankruptcy is pending. Generally, a bankruptcy is pending from the time a petition is filed to the date the bankruptcy is discharged, dismissed, or closed. Further, the running of the collection period is extended for an additional six months upon the conclusion of the bankruptcy.
- If you submit an Offer in Compromise (OIC), the running of the collection period is suspended from the date the offer is pending to the date the offer is accepted, returned, withdrawn, or rejected. If your Offer is rejected, the collection period is suspended for an additional 30 days and, if you file an appeal of the rejection, during the period the appeal is pending.

- If you request a Collection Due Process (CDP) hearing, the running of the collection period is suspended from the date the IRS receives the CDP request to the date the taxpayer withdraws the request or the date the CDP determination becomes final, including any court appeals. If less than 90 days remain until the CSED when the determination becomes final, the collection period is extended to 90 days from the date of the final determination.
- If you file an Innocent Spouse claim, then only the running of the requesting spouse's collection period is suspended from the date the Innocent Spouse Claim was filed until the earlier of the date a waiver is filed, or until the expiration of the 90-day period for petitioning the Tax Court, or if the Tax Court is petitioned, the date the Tax Court decision becomes final, plus, in each instance, the collection period is extended an additional 60 days.
- If you petition the Tax Court, it suspends the CSED until the Court makes the final decision plus 60 days. Note, it does not extend it for a spouse.
- If the taxpayer is in a Combat Zone, it is suspended when the taxpayer enters the Combat Zone to when the taxpayer leaves plus 180 days.
- In the military, certain types of service suspend it for the period of military service plus 270 days from when the military notifies the IRS of the change in status.
- The CSED is suspended if the taxpayer lives outside the U.S. continuously for six months or more. It may be extended by at least six months after return to the U.S.
- If a taxpayer does not file a tax return or fraudulently files one, then the IRS can file an SFR and assess tax. The 10-year collection period starts, plus any additions of time. If the taxpayer later files a tax return and the IRS accepts it, then separate rules apply: If a return shows less tax due, the CSED stays the same; however, if the return shows more tax due, the IRS may assess the increased tax and the original CSED stays the same, but there is a new CSED for additional tax due.

Special rules apply to Gift Tax Returns. The three-year assessment period starts when Form 709 is filed. It requires adequate disclosure of:

- Description of property transferred;
- Any consideration received by the transferor;
- Identity and relationship between transferor and transferee;
- If property is transferred in trust:
 - Trust's tax identification number,
 - Brief description of terms of trust,
 - Copy of trust instrument, and

Detailed description on method to determine FMV [See *Schlapfer v Commissioner*, TC Memo 2023-65.].

D. Criminal Cases

The statute of limitations for most tax crimes is governed by IRC §6531 and is for three years. However, it is six years for the following offenses:

1. Defrauding or attempting to defraud the government;
2. Willfully attempting to evade or defeat any tax or the payment thereof;

3. Willfully aiding or assisting in the preparation or presentation of a fraudulent return, affidavit, claim, or document;
4. Willfully failing to pay any tax or file any return by the applicable due date;
5. Willfully signing a return or other document under penalties of perjury that the taxpayer does not believe is true and correct as to every material matter;
6. Willfully providing to the IRS information that the taxpayer knows is false as to any material matter; and
7. Forcing or threatening a U.S. government employee acting in an official capacity.

If a person who committed a federal tax crime is outside of the United States or is fleeing from justice, the statute of limitations does not run (is tolled) during that time. Merely being outside of the U.S. on a vacation with no intent of fleeing authorities is enough to toll the statute of limitations. It should be noted that the FBAR requirements are under 18 U.S.C. §3282, and the statute of limitations generally is five years from the due date.

E. Conclusion

Practitioners need to take care to ensure they are knowledgeable about the various statutes of limitation that can apply when the IRS assesses or attempts to collect tax. The IRS has only limited times to take action. Practitioners cannot assume that the IRS is correct.

GROUP STUDY MATERIALS

A. Discussion Problems

A new client, Josie, filed her 2019 tax return on June 1, 2022. She was audited in December 2022, resulting in additional tax being assessed. Josie filed an action in the Tax Court that is now pending.

Required:

- 1) What was the appropriate ASED in this matter?
- 2) What is the general CSED in this matter?
- 3) What is the effect of the Tax Court filing?

B. Suggested Answers to Discussion Problems

- 1) The ASED in this situation begins with the filing of the return. The return was filed in June 2022, so the IRS had three (3) years from that date to assess additional tax. The additional tax was assessed within the general three (3) years of her filing the return. Note, it is three (3) years to assess, not to audit. The ASED did not run when Josie had not filed.
- 2) The general CSED is ten (10) years from the assessment of tax. The transcript should be checked to verify the time.
- 3) The filing in Tax Court will toll the CSED.

PART 3. BUSINESS TAXATION

Self-Employment Tax in Partnerships

Is partnership income subject to self-employment tax? As with most tax-related issues, there is no simple answer. Distributions from a partnership or LLC *may* be subject to self-employment tax in addition to other income taxes. Self-employment tax generally applies to a general partner's distributive share of ordinary business income and to guaranteed payments for services made to general or limited partners. However, a limited partner's distributive share is generally not included in self-employment income or subject to self-employment tax. Pending court cases may impact the answer to this question going forward. Ian Redpath and Bob Lickwar discuss key issues related to partnership income and distributions.

Let's join Ian and Bob.

Mr. Redpath

Bob, welcome to the program.

Mr. Lickwar

Hey, Ian, great to be here.

Mr. Redpath

It's always great to have you here. It's always great to have your insight, especially in partnerships. As we know, you're the guru. So, there is a lot going on right now and we'll mention it, but we've got two major cases right now in the Tax Court that will either be decided by the end of the year, or more than likely I think, 2024 before we get a decision. But this has always been controversial I think, really, since the start of LLCs. We have started seeing all of these issues with self-employment tax coming up, and I think a lot of it is driven by the S corporation. We know one of the major reasons people do S [corps] is because they have the ability to flow through a significant amount of income not subject to self-employment tax because net earnings from self-employment, by definition, do not include the earnings of an S corp. They get a W-2—is it unreasonably low? There are the compensation issues, there are all sorts of issues there with the S corps, but we have had—regularly—issues of partnerships. Is it a partnership? Are they limited partners? Are limited partners subject to self-employment tax? Are LLC members?

So, we really have two things we're dealing with, FICA (which is misunderstood) and self-employment tax. FICA is 6.2 percent on the first \$160,200 for 2023, and [1.45] percent on everything. Then, an additional 0.9 percent Medicare tax imposed on wages in excess of \$200,000, or \$250,000 on joint returns, and it's collected through withholding. Of course, a business is going to end up paying for their employees. They're going to match that. They're not going to match that 0.9 percent, but they are going to match the employee's contribution. That's on wages, and "wages" are defined as all remuneration for employment—and that is defined in the Code. The form of payment is irrelevant. It doesn't matter what you get as a form, it's if you get paid. You have to be an employee.

This, all of a sudden, became an issue—especially with an LLC. Can you be an employee? It's still happening (and I've still seen it) where LLCs are giving W-2s to the members, they are giving them FICA, and then trying to flow everything else through as not subject to self-employment tax, or they're trying to come up with some unique thing of saying, "No, it's not a guaranteed payment. Well, it's a guaranteed payment, but that's all we're going to pay on, self-employment tax; we don't pay on anything else." The other thing you see is fringe benefits. Boy, talk about screwing yourself up when you start including these people in your fringe benefit packages and treating them as if they're just employees for fringe benefits.

We know that the IRS has the 20 factors. They boiled it down to three: behavioral control, financial control, and relationship of the parties but, to me, it's still the 20 common law rules; all they did was characterize them. It really is a question of control. Now, what about a partner? What about a partnership? We know that a partner, under [IRC] 707, can engage in a transaction not as a partner, and the IRS has said, under 707(a), treat them as they would a

transaction [with] a non-partner. Well, a lot of practitioners said, “That’s great. I can take that, and it gives me the ability to treat them like an employee, give them a W-2 and fringe benefits,” and the IRS has continually said, no, no, no.

I’m going to date myself here because I wasn’t around for this, but I have researched it many times, Revenue Ruling 69-184. What does the IRS say? And it’s been since 1969. This isn’t new. It’s not like you and I are sitting here talking about groundbreaking theory. So, what does Revenue Ruling 69-184 say, now that I’ve given us kind of the foundational background on FICA?

Mr. Lickwar

Well, basically, what it says is that partners and partnerships are not employees, and they shouldn’t be getting W-2s. Yet, as you appropriately mentioned, we see today that it still happens all the time. My real concern is you mentioned fringe benefits. I’m going to throw retirement plans in there as part of fringe benefits. Would the IRS come in and disqualify a plan because you’ve misclassified wages, or have you included the self-employment income as part of the owner’s pay? If that’s the case, maybe you can make an argument, but I’m very concerned with it. I don’t know why people continue to do it, but they continue to do it.

Mr. Redpath

Right, and I’ve even seen that treated as QBI wages. It’s not QBI wages.

Mr. Lickwar

Absolutely. It’s crazy. When you talk about S corporations and you say, “reasonable compensation,” I don’t even know what reasonable is anymore. We saw there was a TIGTA report last year where 60,000 or more S corporations who didn’t pay any salary to owners just kind of skirted on through, and there were significant earnings there. So, the IRS was pretty much scolded for that, and what basically happened is they said, “No, we have it under control, TIGTA. We’ll take care of the issue. We have controls in place already, so we’re not going to take your suggestions.” They were even letting S corporation returns with foreign partners through. So, what do we do? Because right now, LLCs are extremely popular business ventures for a lot of reasons: 754 [election], transferability of interest issues, admission of partners, whatever the case may be, LLCs are extremely important. Are we stuck with treating the entire distributive share as SE [self-employment]-taxable?

Let’s go back to 1997 where we actually had what I thought was a pretty interesting set of rules, a good set of rules, that basically said if you’re managing the LLC or if you’re a material participant or you can bind the LLC into a debt situation, then guess what? Your income is SE income. Congress threw a fit for whatever reason (maybe because they didn’t like the result because that’s not how their law firms were filing their partnership returns), and said, “That’s it. Moratorium on the regs.” It’s pretty interesting to note if you have an SE audit today, the IRS will actually use those regs and we, as practitioners, use those regs. We call them regs, but they’re not really regs; they were proposed regs that were brought back.

You raise a very interesting point, Ian. “Is line 1 equal to line 14?” I would suggest that the answer should be no. I’m not sure how those two cases are going to turn out, and they involve partners who were both general-type partners and limited-type partners. We’ll see what the Court says, but there’s a lot on the table there. We’re talking about \$40 million, and that’s the income over a couple of years in one case. Maybe it’s \$37 million. Whatever the number is, it’s a gigantic number.

I’ve always thought that a pretty reasonable approach to the SE dilemma would be the partners at the S corporation-type scenario, where you pay a reasonable guaranteed payment to a partner and the rest is, basically, a return of capital not subject to SE tax. Now, that leads to the same gamesmanship that occurs with S corporations but, when you boil it down, it seems to make sense. Why do I say that? I say that because I look at cases over the years in the C corp context. *Pediatric Surgical* was a case back in the early 2000s where the IRS basically went in and said, “Hey wait a minute, docs. You guys have paid yourself too much because you have three doctors who aren’t partners, who are their own profit centers, and you’re really earning a dividend. So therefore, you can’t just zero out the C corporation.” I think you should be able to make the same argument in the LLC context given similar facts and circumstances but be forewarned, the IRS is not going to buy that. They’ve won a case called *Castigliola*, they’ve issued a Field Service

Advice with an investment banking firm that went from S corp to LLC status, so they're not just going to buy off on that. Do I think it's a reasonable argument? I do, but I don't think it's going to work. It just seems like until we get guidance, we're kind of stuck in a morass.

Quite frankly, every [Schedule] K-1 that I see come through has line 1, non-separately stated income, equal to line 14, SE income. I don't think anybody's seeing anything different. The big firms have tried it; they've lost cases. *Renkemeyer* basically was a bad case on bad facts. You had three attorneys rendering all the services that generated the fee income for the partnership saying, "Wait a minute now, we're limited partners. That's not SE income." But you work there every day. "Well, no, that doesn't matter. We're limited partners." It's not going to work.

I'm really curious to see how these two cases play out in the hedge fund area. Even if the cases don't work out and it's not SE income, my question would then be, will the amount be subject to the Net Investment Income Tax under 1411 anyway? And isn't that the way to really solve all of this from Congress's perspective? But they are loathe to do it, and why are they loathe to do it? Well, they probably have S corporations somewhere, they're paying a reasonable salary, and the rest they're taking out, but the LLC is left kind of holding the bag.

One thing that I do see, and I want to mention with respect to retiring partners. Retiring partners who are no longer at the partnership can't believe it when they receive a K-1 for a 736(a) retirement payment and it's subject to SE tax, and I get the phone call that says, "But I'm not working anymore." Well, unfortunately, that's the way the rule works. If you adopt a retirement plan, for the partners that meet certain tasks, such as full payout of the capital account, and the partner never shows up again, well, maybe you can avoid SE tax. The problem is these firms don't have the money to buy back that full capital account. That's always the fly in the ointment. I'd say with that in mind, based on *Renkemeyer* and some of the other cases like *Castigliola*, I think practitioners have a really tough time separating SE income from ordinary, non-separately stated income.

Mr. Redpath

Yes, absolutely, and I think some of the issues you've raised, you can't necessarily rely on the fact that you may be treated as a limited partner under state law—you might be treated *like* one. That's why those '97 regs tried to come out with, "Well, maybe you can do some work," but as you said, there was a moratorium. The moratorium is long gone, but nothing has been formalized on those.

There are situations where a partner will not be subject to SE. For example, if capital isn't a material income-producing factor, and the person doesn't do anything (for example, they got an interest as a gift and they are not doing anything), the law says, yes, they could probably be treated as if they are not a partner for SE purposes.

Mr. Lickwar

I agree.

Mr. Redpath

Limited partners—and that's where the problem is—defining a limited partnership. Limited partners are not subject to SE on their distributions, but what does that mean? You mentioned the case. Well, yes, even if that had been an S corp, they would have said, "The fact is, everything is being earned from you. Your reasonable comp is all of it, and it's all subject to FICA." So, in the S corp case, they would have still had FICA on everything, right?

Mr. Lickwar

Correct.

Mr. Redpath

Last summer, we had that whole same issue on service-based [income] with President Biden and his wife. Remember, they set up S corps and they put all of their fees for speaking and all of their book royalties into two different S corps. They paid themselves a salary and the rest they took, not subject to self-employment tax. The IRS said, "Wait a second. Everything you make is due to you. It's your speaking, your books; therefore, it's all wages subject to FICA."

They paid their back amount, so it was all good, but what they did is very common. It's not like they were doing something that no one is doing. They did something that is very common in the practice, but common doesn't make it right.

The other thing we see out there, the law says real estate earnings, interest, and dividends are not subject to self-employment tax because they're not from the "trade or business" aspect, and net earnings from self-employment require it to be from a trade or business. That rental exception is one that, depending on the type of business you have, is that something that you can fall into? If you're just renting space in your office building, I'm sorry, that's going to be subject to self-employment tax because that's not a trade or business; that's not a rental real estate trade or business. (Royalties can be the same way if you happen to be getting some royalties but, remember, if you do have that situation, you can pull those out and not subject them to self-employment tax.) I think the difference is if you have an office building and you're renting some office space, that does not rise to the level of a trade or business to make that not subject to self-employment tax. You have to watch out for that. Whether the partner qualifies as a limited partner, that's where the problem is, right?

Mr. Lickwar

It is, and isn't it amazing how this entire 1402 exception for limited partners evolved? Remember, this was originally a shutdown provision from Congress because you had employees who were working for the government who weren't receiving earnings credits for social security, and who were investing in limited partnerships to get a share of SE income when the base was \$7,000. They paid the tax, gladly, to get their 40 quarters for purposes of social security. Congress said, "Wait a minute. This doesn't seem right. We're going to shut it down." And look at what it has become. It's amazing. The differentiation between "limited" and "general," or between "limited" and "LLC member," I think, is probably more obvious than [we realize]—and I think you gave us the outline. If you are, basically, just an investor who's sitting back, not managing the affairs, not contributing to the management of the affairs, [even if you are] voting to replace a manager, does that really mean you're running the business and have SE income? I think it's more obvious than we think. I believe if you have two classes of interest (which we do in the cases pending), it's going to be one that the Court really has to make a decision once and for all to say this is good or this is bad, depending on what you're doing. Can you function in those capacities and, if you can function in those capacities, how do you differentiate one from the other? That is really the issue.

Mr. Redpath

Yes, and that's what the Court is going to be faced with. I did want to mention one thing. If you are claiming that you have rental that doesn't rise to the level of a trade or business, which it could be, [say] you just rented an office space, that is going to be entered on [Form] 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation. That is for real estate rentals which don't go into your self-employment computation. So, if you're [planning on] pulling this out, then you better be filing an 8825 to say, "This is the rental income that I am pulling out." And it doesn't matter whether it's the passive activity rules, that has nothing to do with it. It's just reporting it for purposes of saying it isn't subject to self-employment tax because it does not rise to that level. And you might say it's not even a partnership; just because you own real estate together doesn't create a partnership in and of itself. So, rental can get excluded. Then, you get into all sorts of things about the services, and are you providing extraordinary services, et cetera.

Let's go back to an issue that you mentioned just briefly, guaranteed payments, because you have guaranteed payments for services, and guaranteed payments on a return of capital on your capital invested. What are "guaranteed payments?" I think you mentioned a guaranteed payment is really kind of like a salary, but you can't be an employee, so you can't have a salary.

Mr. Lickwar

Yes, it's kind of like a salary, but it doesn't necessarily have to be. The rule basically says it's a payment determined without regard to partnership income. So, I could have a partnership that doesn't pay a salary to the individuals who are running the business, but they give one of the partners an advance on their 50-percent share of income early in

the year. And, as it turns out, because they make a large purchase at the end of the year, they have zero taxable income, so that \$20,000 advance doesn't have to be returned. Now, that has just become a guaranteed payment, even though it's not an exchange or not called for as a salary within the partnership agreement.

So, the rules are extremely mechanical, but guaranteed payments for services certainly are subject to SE tax. Guaranteed payments for capital are more in the nature of interest where they will not be subject to self-employment tax. The problem, though, in trying to minimize our liability for SE tax with guaranteed payments, is that the IRS says reasonable compensation can only be paid by a corporate entity, not a partnership entity (not an entity taxed as a partnership). I wish they would bend on that a little bit. Certainly, a strategy you can think about is having S corps hold interests in partnerships if you're looking for flexibility, but the question becomes, to avoid some tax and how much is that going to be? Does all the added complexity really [make it] worth the while? Certainly, there are strategies; whether the IRS rules that those are good or bad is anyone's guess.

Mr. Redpath

I think a lot of confusion is on that guaranteed payment for use of capital. The regs, 1402(a)-1(b), seem to indicate that would be subject to self-employment tax regardless, but many practitioners take the position, as you just mentioned, of "No, that is interest, so it should be treated like interest and, therefore, not subject to SE tax." The problem is exactly how did you come up with that number? What does it relate to? I've seen some people try to use the reasonable investor test (what would a reasonable investor expect as a return?) and just pull that out and not subject that to self-employment tax. The IRS, again, that is one of those areas that they have left as somewhat nebulous: is it really interest, or should we characterize it as interest, or is it just a guaranteed payment that should be included as self-employment earnings? So, I think that's an area where there isn't a whole lot of authority to just pull it out and say, "Okay, we have come up with a reasonable number as a return on investment or for the use of capital, and that is not going to be subject to self-employment tax."

Mr. Lickwar

I think a helping factor there, though, is a few years ago they separated service and capital payments on line 4 of the K-1, so that kind of gives us a little bit of comfort there. I think, certainly, it would be really nice if they would back off on the position that there is no reasonable comp in an LLC setting. I mean, that's a business arrangement among the parties. Maybe they just don't want to be bothered with the issues that they need to be bothered with [concerning] C corps and S corps—and that's reasonable, as well.

Mr. Redpath

Right, I think so. You mentioned retirement payments and you brought up the '97 proposed regs. Just kind of summarize what those really did and what those said.

Mr. Lickwar

Well, they threw everybody into a tizzy, that's for sure. But what they said is, let's just give this a common-sense approach here. If you're working for more than 500 hours in the business, your income is subject to SE tax. If you can bind the partnership by signing on to an obligation that indebts the partnership, then it sounds like you're there every day and you're managing; therefore, you're subject SE tax because you're actually working the business. They were perfectly commonsense but, unfortunately, common sense doesn't always prevail, and it did not in this case even though, anecdotally, we (and the IRS) kind of go back to them every day. We [ask], "Are you working more than 500 hours?" If yes, then it's SE-taxable. We're not supposed to do that, but we do.

Mr. Redpath

Right and, well, that's the reality of it. Of course, the other thing is, even if you're not, if it's member-managed and you're a member, that means you, technically, have authority to enter into contracts. By default, you have that right; therefore, you're not a limited partner.

Mr. Lickwar

Yes, that's correct, and limited partners need to be really careful about what they do because they don't want to break that limited partner protection at the entity level. So, you have to be really cautious there.

Mr. Redpath

Then, you have that exception that says if there are other people who have the same interests and 20 percent is owned by members who satisfy the limited partnership test, then you could be treated as a limited partner. There are all sorts of exceptions to the rule that could apply. You could work more than 500 [hours]. Where I have used that, initially, when it first came out, was in the area of making bifurcated interests. People had different types of LLC interests... trying to use the regulations, the proposed regs, to come up with, "Okay, this is not subject to self-employment tax, but this is. So yes, we have a bifurcated interest."

Mr. Lickwar

Yes, and if you have limited partners who aren't working and you have a similar interest, I think that's viable. I think if everybody has the same interest as an LP and a GP, you just bifurcated it for obvious reasons. I think that's going to be problematic from the Service's perspective.

Mr. Redpath

The Tax Court—and this is something where I think it's going to be interesting to see where they go, because you mentioned *Renkemeyer*, which is one of the major cases with limited partners. Those were the lawyers and, I'm sorry, they clearly weren't limited partners; even under the '97 proposed regs, they wouldn't have qualified as limited partners. But the Tax Court said here that the intent of the limited partnership rule was to exclude from self-employment tax things that are just, basically, the same as an investment. They just made an investment—same as if they had made an investment in a stock—so therefore, the dividends are not subject to self-employment tax. This should not be subject to self-employment tax because, again, they are simply investors. The Tax Court said it shouldn't apply to the extent that partners perform services for the partnership in their capacity as partners. Those lawyers paid themselves a relatively nominal amount for their ownership interests, and the revenues all derived from their services. The Court went back to Revenue Ruling 69-184 and said, "Sorry, but partners are not employees for purposes of FICA, FUTA, or withholding."

We had another case, *Riether*, with a similar type of argument. These people (it was a physician and his spouse) owned a diagnostic imaging business. They paid themselves wages, they got W-2s, and [they said] the income from the LLC was unearned income not subject to self-employment tax. Again, in *Riether*, they didn't buy it. So, when you combine *Renkemeyer* and *Riether*, I'm thinking they're going to come up with the same decision in relationship to the cases that are currently before the Court.

You mentioned one, *Soroban Capital*, and that's the New York hedge fund. Now, the IRS—the Tax Court, I should say—the IRS asked for summary judgment. "Sorry, this is subject to self-employment tax." The Court denied the summary judgment and said, "No, we're going to trial on this. We're going to decide it." So, maybe the Tax Court said, "We've got to make a decision here. We've got to try to clarify some things." Depending on how that comes out, I wouldn't doubt we'll see an appeal of this case.

Mr. Lickwar

I would agree with that, as well.

Mr. Redpath

But again, the IRS is just arguing that all these new pass-through entities under state law, LLCs, LLPs, and LLLPs just complicate enforcement. The IRS is asking for a functional test. They're saying it should be determined [differently]. What you're treated at for self-employment tax, look at the nature of the activity of the partnership, not just the nature of their interests.

Mr. Lickwar

Facts and circumstances, Ian. What are you doing? Can you bifurcate interest? That's really what they want, yes.

Mr. Redpath

Can you just bifurcate an interest and say, "Okay, this is a limited interest, so I don't have to pay anything on distributions on that"?

Mr. Lickwar

A few years ago, when we got the Tax Cuts and Jobs Act, one of the original proposals was a 70–30 split. In other words, you look at your non-separately stated income: 70 percent subject to SE tax, and 30 percent a return on capital (to kind of simplify it up). I actually thought that was an interesting approach. It obviously died on the vine, but it seems as if something like that would take care of those really good arguments because, obviously, it's not all black and white, there's a lot of gray, and there are different facts and circumstances. Maybe that's an answer that Congress would consider.

Mr. Redpath

The other case that's out there is *Sirius Solutions, LLLP*, and that's, again, the application of the limited partnership exception to an LLLP. Basically, they're saying, "We formed it under state law, we formed it under the LLLP statutes, so therefore, by definition, there are limited partners." They're trying to just say whatever state law would characterize us as, that's what we should be. And the IRS is saying, "No, whatever you might be called under state law isn't determinative of what you are for self-employment tax purposes."

Mr. Lickwar

I think at least one or two of the partners in *Sirius* they are going to find were actual limited partners. The question is, what happens to the other 11 or 12 that are involved?

Mr. Redpath

Right, and the thing is, in theory, everybody could be a limited partner (I guess in theory). They could elect a board that operates everything, and they could not manage. I mean, I could see where that could happen, but probably not, because you have to have somebody liable for the debts. You generally have to have some type of a general partner, depending on the state law. So, I agree with you, it may not be all [of the partners]. It probably won't be all. That case, *Sirius*, is scheduled for June of 2024. It's going to be awhile before we get the decision on that one. In the meantime, I guess we're still flipping a coin, right?

Mr. Lickwar

We're going on the case law we have, and maybe we're getting creative in structuring. We'll see what the IRS says about those at some point in time.

Mr. Redpath

I think the good news is the IRS has not been overly aggressive in auditing in this area.

Mr. Lickwar

If there are big numbers, they're going to take it on. It seems that if there are smaller numbers, they're not going to take it on. That is not a green light to everybody out there to go ahead and do something.

Mr. Redpath

No, we're not saying play the audit lottery, but they haven't, at least to date, been attacking the small partnerships who have tried to work with it. And I'm not saying they're trying to do something wrong; I'm saying they're trying to do a reasonable interpretation of the law. Right or wrong, well, it's kind of hard to be right or wrong when the IRS doesn't give you a whole lot of guidance. So, that's one of the problems.

Bob, thanks a lot for joining me today. A lot of issues for our viewers to consider in the self-employment tax of partnerships and LLCs. So, Bob Lickwar, as always, great to have you on the program. Loved your insight, and I hope you'll join me again for another program soon. To our viewers, thank you very much for joining us. We'll see you on another program very soon. Please be safe.

Mr. Lickwar

Thanks, Ian.

SUPPLEMENTAL MATERIALS

Self-employment Taxes and Partners

By Ian J. Redpath, JD, LLM

A. Introduction

A consistent issue with the IRS is the application of self-employment taxes to partners in a partnership or an LLC taxed as a partnership. These issues are especially prevalent with LLCs taxed as partnerships because many practitioners and payroll companies attempt to circumvent self-employment taxes for some or all members. This may be attempted by treating members as employees to obtain treatment similar to an S corporation or treating members as limited partners under the limited partner exception.

There are two types of employment related taxes on persons – FICA and self-employment (SE) Tax. FICA (Federal Insurance Contribution Act) taxes are imposed on the wages of employees using the following rates:

Social Security: 6.2 percent on the first \$160,200 (2023) and

Medicare: 1.45 percent on everything

This is matched by the employer. The employer then deducts their contribution as a cost of doing business. In addition, a 0.9-percent additional Medicare tax is imposed on all wages in excess of \$200,000 (\$250,000 for joint returns, \$125,000 for married filing separate returns). This is not matched by the employer. FICA is collected through withholding on the employee. It is the long-standing position of the IRS that partners are not employees for purposes of FICA, FUTA or withholding [Rev. Rul. 69-184 (which predated the existence of LLCs)]. Partners and those treated as partners (in LLCs taxed as partnerships) are subject to self-employment tax on their net earnings from self-employment.

The tax on net earnings from self-employment is at the same rates as FICA. However, since there is no employer, the partner/taxpayer pays double the amount to approximate the combination of FICA from the employee and employer. The partner/taxpayer then takes a deduction for AGI for one half of the SE tax to approximate the deduction of FICA by the employer. The SE tax is determined on Form 1040, Schedule SE and the deduction for one half of the SE tax is entered on Form 1040, Schedule 1, Part II, line 15.

B. FICA and Employees

For federal employment tax purposes, the term “wages” is defined as all remuneration for employment [§§3121(a) and 3306(b)]. The form of payment is immaterial: it is whether the payment was actually received as compensation for employment [Regs. §§31.3121(a)-1(b) and 31.3306(b)-1(b)]. Many times, the IRS sees an LLC taxed as a partnership treating its members as employees and providing a Form W-2. This is often done with the idea that under state law an LLC is an entity separate from its members. The “wages” are then subjected to FICA. In addition, it is not unusual to see the “employees” (partners) taking fringe benefits available to employees, not partners.

In *Riether*, 919 F. Supp. 2d 1140 (D.N.M. 2012), a district court considered whether partners in an LLC taxed as a partnership for federal tax purposes could avoid paying self-employment tax on their entire distributive share of partnership income solely because they received a Form W-2 from the LLC for the year and, thus, were not self-employed. The court, relying on Rev. Rul. 69-184, held that the taxpayers should have treated all of the LLC’s income as self-employment income, rather than characterizing some of it as wages.

C. Net Earnings from Self-Employment

Section 1402 provides in part as follows:

“(a) Net earnings from self-employment. The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) from any trade or business carried on by a partnership of which he is a member...”

(c) Trade or business. The term “trade or business,” when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in §162.

It does not include the earnings of an S corporation owner-employee as being self-employment income. Additionally, the activity must rise to the level of a trade or business. So, if an activity is classified as a hobby under the rules of §183 and the regulations thereunder, then the net earnings are not subject to self-employment tax.

Sole proprietors are subject to SE tax on their net earnings from self-employment. This will apply to a single-member LLC that is disregarded for most federal tax purposes. If the member is an individual, they are subject to SE tax on the LLC’s net income.

D. General Partners

Net earnings from self-employment do not include income from securities, such as dividends on stock or interest on bonds, notes, certificates, or other evidences of indebtedness issued with interest coupons or in registered form. The exclusion does not apply to dividends or interest received in the course of trade or business as a dealer in stocks or securities. The IRS generally considers interest on funds invested for short-term working capital needs to be included in the ordinary course of business.

Section 1402(a)(1) provides an exception for rentals from real estate and from personal property leased with the real estate (including rentals paid in crop shares) net of deductions. They are excluded from self-employment income as long they are not received in the course of a trade or business of a real estate dealer, or the rental does not rise to the level of a trade or business. Form 8825, *Rental Real Estate Income and Expenses of a Partnership or an S Corporation*, is used to report real estate rentals. All rental real estate activities are reported on Form 8825, whether from a trade or business or held for the production of income. Mere co-ownership of property that is maintained and leased or rented is not a partnership. However, if the co-owners provide services to the tenants, a partnership exists. If the parties are mere holders of undivided interests in real estate, no partnership exists. The determination of a real estate professional is at the individual level; the status of a rental is determined at the partnership level. Regardless of passive activity status, it is reported on Form 8825 (and for an individual, on Schedule E, *Supplemental Income or Loss*).

Generally, payments for the use or occupancy of entire private residences or living quarters in multiple-housing units are generally rentals from real estate. Payments for the use or occupancy of rooms or other space, where services are rendered for occupants, will not constitute a rental from real estate. These services include the use or occupancy of rooms (as opposed to the entire private residence) and the furnishing of hotel services and are not covered by the real estate rental exclusion. Services are considered rendered to the occupant if they are primarily for the occupant’s convenience and are other than those services usually or customarily rendered in connection with the rental of rooms or other space for occupancy only (for example, maid service). Heat, light, and cleaning the public entrance, exits, stairways, and lobbies are not services rendered to the occupants. Likewise, the collection of trash is not considered [See Reg. §1.1402(a)-4(c)(2).].

E. Guaranteed Payments

Guaranteed payments, whether received for services or for the use of capital, are included in an individual's net earnings subject to SE tax unless they are received from an LLC that is not engaged in a trade or business [Reg. §1.1402(a)-1(b)]. A limited partner is subject to SE tax on guaranteed payments only to the extent they are received for services [§1402(a)(13)]. Note that a member's treatment of a payment for SE tax must be consistent with the treatment on the partnership's tax return. In *Howell*, T.C. Memo 2012-303, the court concluded that payments treated as guaranteed payments on the return filed by the LLC were guaranteed payments subject to SE tax on the member's return, despite the member's argument that she provided only minimal services to the LLC. A guaranteed payment is subject to SE only if the recipient is an individual or a disregarded entity (such as a single-member LLC or a grantor trust), the income of which is taxed to an individual. Other recipients, such as C corporations, S corporations, or partnerships, are not subject to SE tax. If a guaranteed payment is received by an LLC, the income will pass through to the members and may be subject to SE tax under generally applicable rules, but not because the income received by the LLC was a guaranteed payment [§1402(a)].

One common practice is to use the IRS "reasonable investor" test to say that a partner should be able to get a "reasonable return" on capital invested using a guaranteed payment for use of capital. This is then treated as "interest" not subject to SE. There is no specific authority for this position and consideration should be given if there is a reasonable basis for this treatment.

F. Retirement Payments

Certain retirement payments to partners are not subject to SE tax, provided they meet specific requirements. The payments must be made under a written retirement plan that provides for bona fide retirement payments on a periodic basis to members generally, or to a class or classes of members, and the payments must continue at least until the member's death. To constitute bona fide retirement payments, the payments must be paid on account of retirement and measured by and based upon such factors as years of service and compensation received. Eligibility to receive such retirement payments generally must be based on age or physical condition or a combination of age or physical condition and years of service [Reg. §1.1402(a)-17(b)(1)].

G. Limited Partners

There is significant controversy as to the application of SE tax to limited partners. In general, limited partners are not subject to SE because they are merely investors. A true limited partnership is formed under a state limited partnership law. It contains two classes of partners:

- General partners who are personally liable for partnership debts and manage the business, and
- Limited partners whose personal liability for partnership debts is limited to their investment.

The limited partner exception to the self-employment tax predates LLCs and their variants such as LLPs, etc. The IRS and courts have attempted to categorize the LLC member as a general or limited partner.

In 1997, the IRS issued proposed regulations that adopted a narrow definition of the limited partner. They were never finalized but never withdrawn. The IRS says taxpayers may rely on them if they choose [Proposed Reg. §1.1402(a)-2(h)].

The proposed regulations establish a three-part test to determine whether an LLC member (or other individuals) is the functional equivalent of a limited partner for self-employment tax purposes. Under the proposed regulations, an LLC member is classified as a limited partner unless the individual:

1. Has partial or total personal liability under state law for the LLC's debts, or
2. Has statutory or contractual authority to contract on behalf of the LLC, or
3. Participates in the LLC's business for more than 500 hours during the tax year.

Part 1 of the test poses no problem since LLC members are not personally liable for LLC debts. LLCs are either member-managed or manager-managed. For Part 2, in a member-managed LLC, each member has the legal authority to enter into contracts on the LLC's behalf. The operating agreement must spell out the manager-managed arrangement. In Part 3, the member cannot work more than 500 hours per year in the LLC business.

The proposed regulations contain three exceptions. The first exception applies where an LLC has multiple ownership classes. One class is the functional equivalent of a general partnership interest owned by manager-members providing services to the LLC. The other class is the functional equivalent of a limited partnership interest at least 20 percent owned by members who satisfy the three-part test. Manager-members can own shares in both classes, and distributions to them from their interest in the limited partnership class are not subject to SE tax. The next exception applies where an LLC has only one class of membership interest, and a member fails the three-part test solely because he or she works more than 500 hours in the LLC. The member is deemed a limited partner for SE purposes if at least 20 percent of the LLC interests are owned by other members who satisfied all three parts of the proposed regulations test immediately after acquisition by that member of that member's interest. This allows a member to work more than 500 hours in the LLC's business and avoid SE. The last exception is for "service LLCs"—those LLCs substantially engaged in health, law, engineering, architecture, accounting, actuarial science, or consulting. Under the proposed regulations, members of such service LLCs who provide more than de minimis services to the LLC cannot be treated as limited partners. Thus, most service LLCs cannot rely on the proposed regulations [See *Renkemeyer, Campbell & Weaver, LLP*, 136 TC 137.].

H. Two Current Tax Court Cases

In *Soroban Capital Partners LP v. Commissioner*, Dkt. Nos. 16217-22, a New York hedge fund manager filed a motion for summary judgment on February 7 asking the Tax Court to rule that limited partners in a state-law limited partnership are exempt from SE on their annual distributive share of allocations under the LP exception. The IRS asserts applying a "functional test," which would determine whether limited partners in a partnership or entity treated as a partnership for U.S. federal income tax purposes should be subject to SE taxes by looking at the nature of their activities in the partnership, rather than only the nature of their partnership interest. The case is heading for trial.

In the second case before the Tax Court, *Sirius Solutions, LLLP v. Commissioner*, the Court is looking at the LP exception applied to an LLLP. The LLLP is formed under a state's limited partnership statute, and so, would appear to fall within the LP exception. It is scheduled for trial in June 2024.

I. Conclusion

The application of SE taxes to partners has been an area of confusion and lack of proper compliance. Practitioners need to make sure they are properly applying the law and any exception that may pertain.

GROUP STUDY MATERIALS

A. Discussion Problems

You prepare the taxes for Jamie and Zelda, two of the partners in JMZ, LLC, which is taxed as a partnership. Jamie is an active member of the partnership. He operates as its Partner in Charge and devotes full-time to the operation. Zelda does not actively participate in the business and is essentially a “silent partner.”

Required:

Address the following:

- 1) If either or both Jamie and/or Zelda are subject to SE tax, what is the applicable rate for 2023?
- 2) What are “net earnings from self-employment” for a partner?
- 3) What should be looked at for Zelda to apply the limited partner exception?

B. Suggested Answers to Discussion Problems

- 1) The rate of SE tax is the same as FICA applied to the net earnings from self-employment. The Social Security rate is 12.4 percent on the first \$160,200 (2023) and the Medicare rate is 2.9 percent on everything. In addition, a 0.9-percent additional Medicare tax is imposed on all wages in excess of \$200,000 (\$250,000 for joint returns, \$125,000 for married filing separate returns). The tax on net earnings from self-employment is at the same rates as FICA. However, since there is no employer, the partner pays double the amount to approximate the combination of FICA from the employee and employer. The partner then takes a deduction for AGI for one half of the SE tax to approximate the deduction of FICA by the employer. The SE tax is determined on Form 1040, Schedule SE and the deduction for one half of the SE tax is entered on Form 1040, Schedule 1, Part II, line 15.
- 2) The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by §1402(a) which are attributable to such trade or business, plus a taxpayer’s distributive share (whether or not distributed) of income or loss described in §702(a)(9) from any trade or business carried on by a partnership of which they are a member. The term “trade or business,” when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in §162.
- 3) The limited partner exception from self-employment tax may be applicable to a pure investor. Two cases are pending in the Tax Court that may provide more clarity in this area. One thing to review is the possible application of the 1997 proposed regulations. One concern is, if the LLC is member-managed, then there must be some provision to limit Zelda’s ability to contract on behalf of the LLC.

GLOSSARY OF KEY TERMS

ASED—Assessment Statute Expiration Date

Conservation Easement—Conservation easement is the generic term for easements granted for preservation of land areas for outdoor recreation, protection of a relatively natural habitat for fish, wildlife, or plants, or a similar ecosystem, preservation of open space for the scenic enjoyment of the public or pursuant to a federal, state, or local governmental conservation policy, and preservation of a historically important land area or historic building. Conservation easements permanently restrict how land or buildings are used. The donor gives up certain rights specified in the deed of conservation easement, but retains ownership of the underlying property.

CSED—Collection Statute Expiration Date

Form 709—United States Gift (and Generation-Skipping Transfer) Tax Return

Form 911—Request for Taxpayer Advocate Service Assistance

Form 5329—Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts

Form 8825—Rental Real Estate Income and Expenses of a Partnership or an S Corporation

Independent Contractor—An independent contractor is a taxpayer who contracts to do work according to his own methods and who is not subject to control except as to the results of such work. An employee, by contrast, is subject to the control of the employer as to the methods to be used to obtain the desired results.

Jeopardy Assessment—Jeopardy assessments are made when collection of any tax is in jeopardy after the due date for filing a return and paying the tax has passed. Jeopardy assessments under IRC Section 6861 are for income, estate, gift, and certain excise taxes, and jeopardy assessments under IRC Section 6862 are for all other taxes.

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.

PTIN—Preparer Tax Identification Number

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).

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Pon, Lawrence	Aug, Nov
Redpath, Ian	Jan-Oct, Nov
Renn, Ed	Jul
Urban, Greg	Jan-Feb, Oct

Tax Report

Volume 36, Issue 10

November 2023

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

1. According to Ian Redpath, which of the following is correct regarding IR-2023-169 and the processing of new claims for the Employee Retention Credit (ERC)?
 - A. It shortened the standard response period to 30 days to decrease the backlog of pending claims.
 - B. It eliminated the possibility of settlement for taxpayers who claimed the ERC in error and received funds.
 - C. It announced a moratorium on processing new claims filed between September 14 and December 31, 2023.
 - D. It decreed that ERC claims based on supply chain issues are valid and will be paid unilaterally.
2. According to Ian Redpath, what is the base cost for obtaining a preparer tax identification number (PTIN) after the verdict in the *Steele* case?
 - A. \$8.75
 - B. \$11
 - C. \$23
 - D. \$30.75
3. According to Ian Redpath, Audit Report Number 2023-30-015 notes that IRS representatives have been ignoring which of the following?
 - A. The rule against contacting taxpayers directly when they have representation (a CPA, lawyer, etc.)
 - B. The rule that allows all taxpayers to request a collection due process (CDP) hearing
 - C. The statute of limitations on returns filed that claim the ERC credit
 - D. The Administrative Procedures Act and Notice 2017-10
4. According to Ian Redpath, under what circumstances are employers required to pay a *prevailing wage* under IR-2023-156 and the Davis-Bacon Act?
 - A. Their main business purpose is related to clean energy.
 - B. They file for any of the series of Clean Energy Credits.
 - C. They employ individuals in a registered apprenticeship program.
 - D. They employ individuals as independent contractors.
5. According to Ian Redpath, which of the following is correct regarding the advice relayed in Program Manager Technical Advice 2023-04?
 - A. Taxpayers who withdraw an ERC claim before it is processed may still have to undergo an audit.
 - B. Taxpayers must file their returns to the correct service center to be considered timely filed.
 - C. Taxpayers are deemed to have conceded on issues not raised at their CDP hearing.
 - D. Taxpayers cannot exclude backpay from an overturned court-martial from gross income under IRC Section 139F.

Continued on next page

6. According to Ian Redpath and Larry Pon, how long does the IRS generally have to assess taxes after the date the tax return is due (including extensions) or the date it was filed (if filed late), according to IRC Section 6501(a)?
 - A. Two years
 - B. Three years
 - C. Five years
 - D. Ten years
7. According to Ian Redpath and Larry Pon, in theory, under what circumstances should the IRS make a *jeopardy assessment*?
 - A. The IRS may not be able to collect taxes (e.g., assets are being depleted).
 - B. The statute of limitations on assessments is about to run out.
 - C. The taxpayer refuses to allow the IRS to extend the statute of limitations on assessment.
 - D. The taxpayer's return will be subject to an accelerated IRS audit.
8. According to Ian Redpath and Larry Pon, how long does the IRS generally have to collect taxes from the date they are assessed?
 - A. 90 days
 - B. Three years
 - C. Five years
 - D. Ten years
9. According to Ian Redpath and Larry Pon, which of the following is essential during a collection lawsuit?
 - A. Looking at and double checking the IRS transcript
 - B. Filing for bankruptcy under Title 11
 - C. Filing for an offer in compromise (OIC) with the IRS
 - D. Requesting a CDP hearing
10. According to Ian Redpath and Larry Pon, how long do taxpayers have to apply for a refund of money collected by the IRS after the collection statute expiration date (CSED)?
 - A. 90 days
 - B. Two years
 - C. Three years
 - D. Ten years

Continued on next page

11. According to Ian Redpath and Bob Lickwar, which of the following is true under Revenue Ruling 69-184?
- A. Partners are not employees.
 - B. Partners should receive W-2s.
 - C. Partners qualify for a partnership's fringe benefits and retirement plans.
 - D. Partners should not consider their compensation self-employment (SE) income.
12. According to Ian Redpath and Bob Lickwar, how do the amounts reported in line 1 (non-separately stated income) and line 14 (SE income) of Schedule K-1 typically relate?
- A. Line 1 is usually higher.
 - B. Line 14 is usually higher.
 - C. The two lines are usually equal, even though that may be incorrect.
 - D. It depends on the size of the partnership.
13. According to Ian Redpath and Bob Lickwar, which of the following statements best describes *guaranteed payments* made to partners?
- A. To be considered guaranteed payments, they must be set up like a salary.
 - B. If guaranteed payments are made for services, they are subject to the SE tax.
 - C. Guaranteed payments are only related to capital or interest and not subject to the SE tax.
 - D. Guaranteed payments are not taxed because partnerships do not pay reasonable compensation.
14. According to Ian Redpath and Bob Lickwar, when CPAs and the IRS use the common-sense approach of the 1997 proposed regulations, working for a partnership more than how many hours indicates the income should be subject to the SE tax?
- A. 100 hours
 - B. 300 hours
 - C. 500 hours
 - D. 1,000 hours
15. According to Ian Redpath and Bob Lickwar, has the IRS been aggressive about auditing the amount of SE tax paid by partners in partnerships?
- A. Yes, the IRS audits the majority of partners' tax returns for this issue.
 - B. No, the IRS does not audit for this issue unless the return involves big numbers.
 - C. No, the IRS does not audit for this issue unless there are claims of fraud.
 - D. No, the IRS typically does not audit specifically around this issue.

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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 November 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"/>
Assessment and Collection Statutes	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Self-Employment Tax – Partnerships	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Which segments of the November 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 November 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"/>
Robert Lickwar	<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 ☐ _____

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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.

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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:

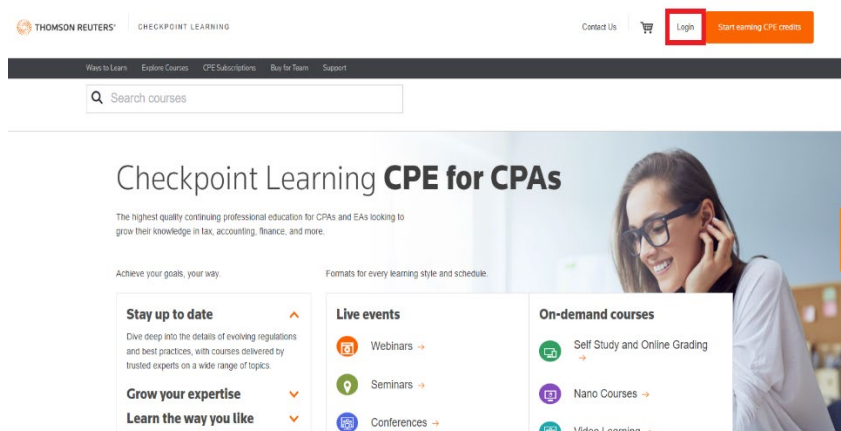
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

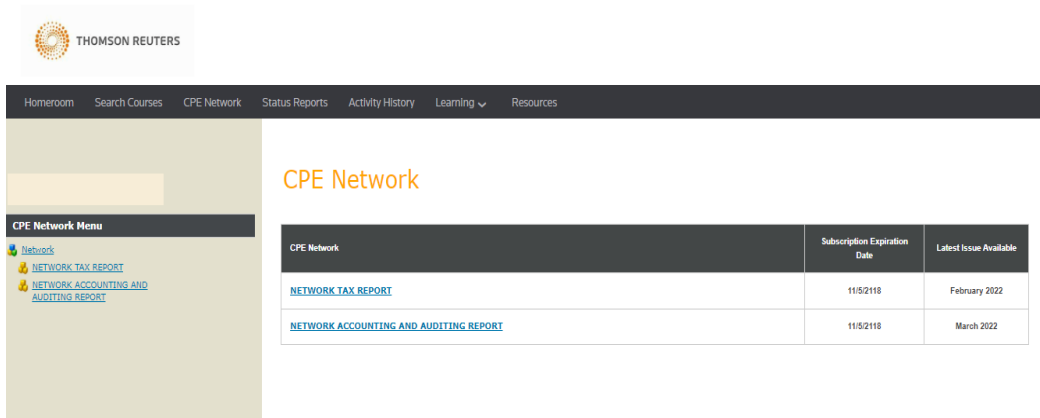
Self-Study—Online

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”).

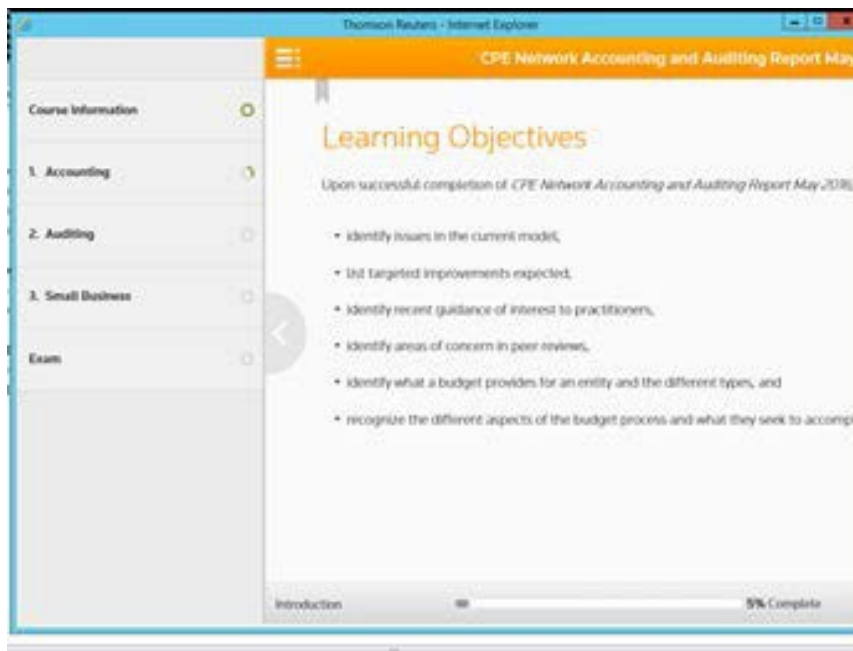


- In the **CPE Network** tab, select the desired Network Report and then the appropriate edition.



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

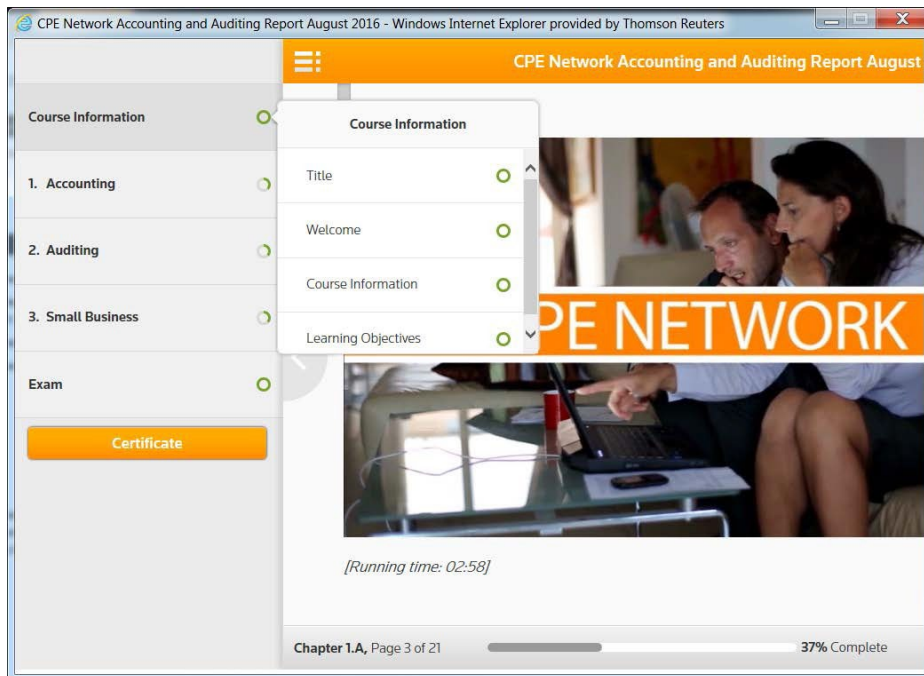
Upon successful completion of *CPE Network Accounting and Auditing Report May 2018*, 1

- 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 0% 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 1A, 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.

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

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

CHAPTER 1A: ACCOUNTING

Liabilities and Equity: Another Look at the Model

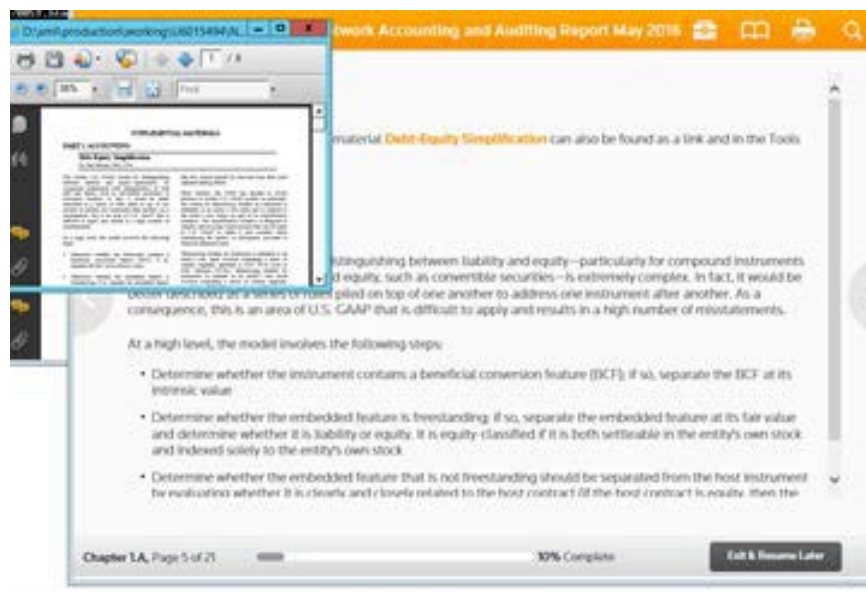
Both the FASB and the AICPA have targeted improvements to the guidance related to liabilities and equity instruments. The current debt-equity model in U.S. GAAP is very complex, making it difficult for both preparers and accountants to implement.

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 several icons: a hamburger menu, a calendar, a book, a printer, and a search icon. Below the header, the main content area has a light gray background. At the top of this area is the section title "Suggested Answers to Discussion Problems" in bold. Below the title is a numbered list of three items. Item 1 discusses ASC 320 requirements for classifying debt and marketable equity securities into three categories: Held-to-maturity, Trading, and Available-for-sale. It includes a paragraph explaining that classification is based on the intended holding period and that decisions should be made at acquisition. Item 2 describes the trading securities category, noting that these are held for short-term profit. Item 3 discusses impairment, stating it is recognized when a decline in value is deemed other than temporary. At the bottom of the page, a footer bar shows "Chapter 3.A, Page 20 of 20", a progress indicator at "100% Complete", and a button labeled "Exit & Resume Later".

Suggested Answers to Discussion Problems

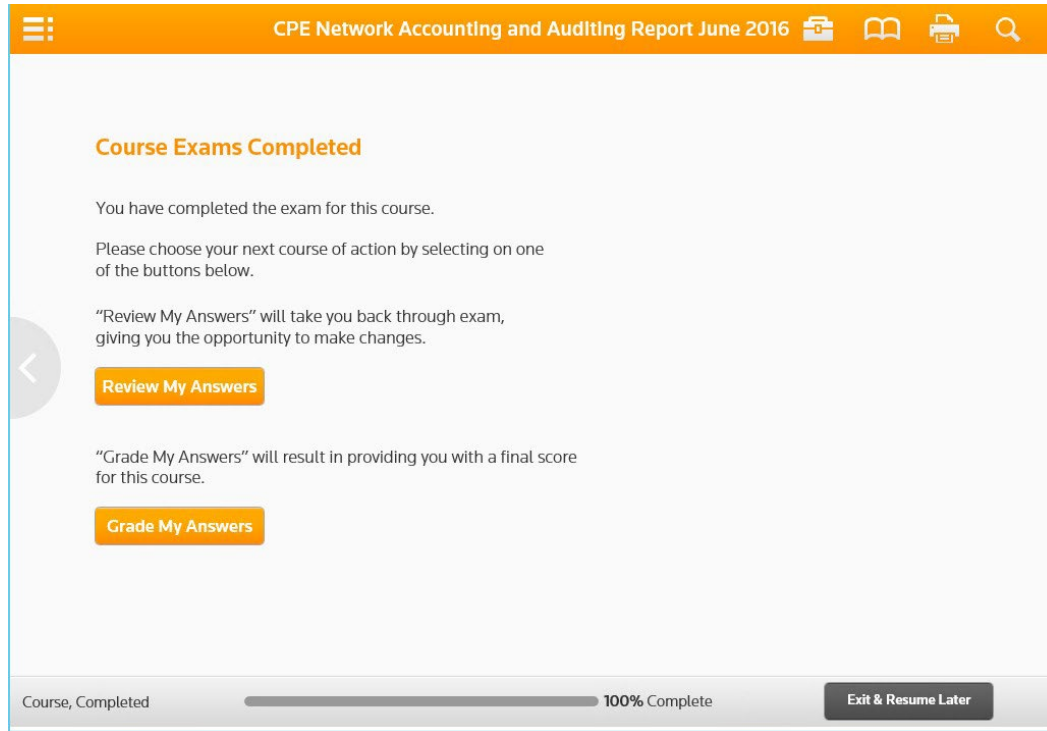
1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:
 - Held-to-maturity
 - Trading
 - Available-for-sale

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

Chapter 3.A, Page 20 of 20 100% Complete 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.

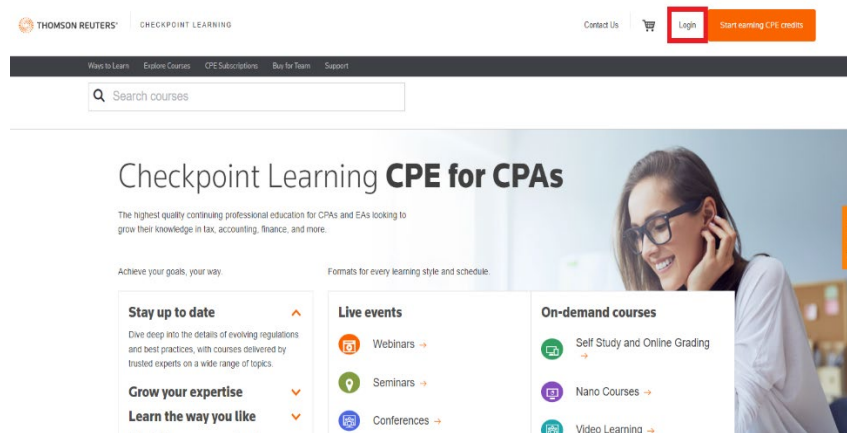
Print

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**.

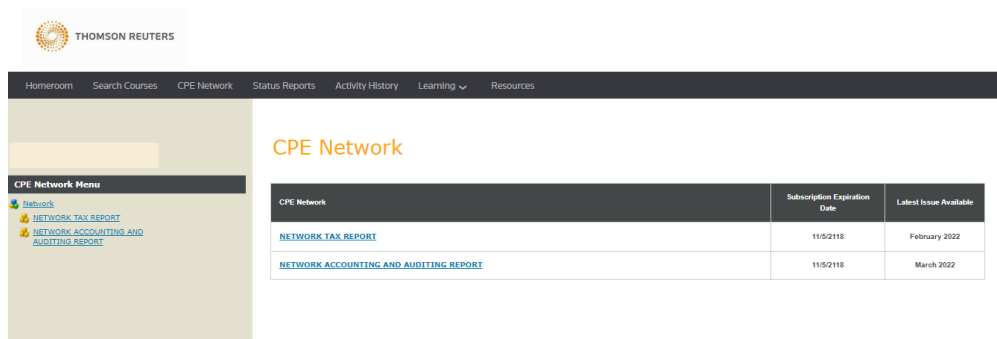
Transitioning From DVDs

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

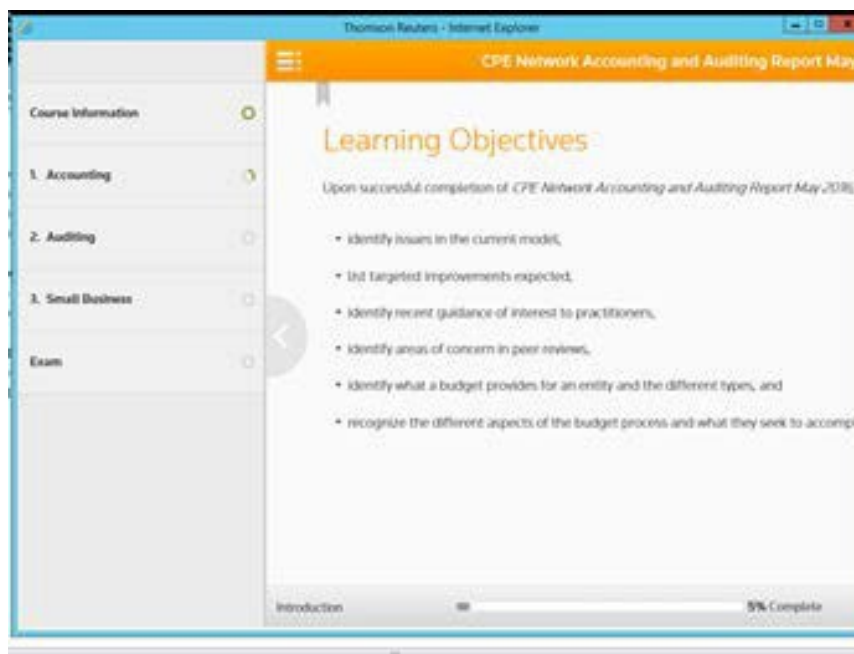
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

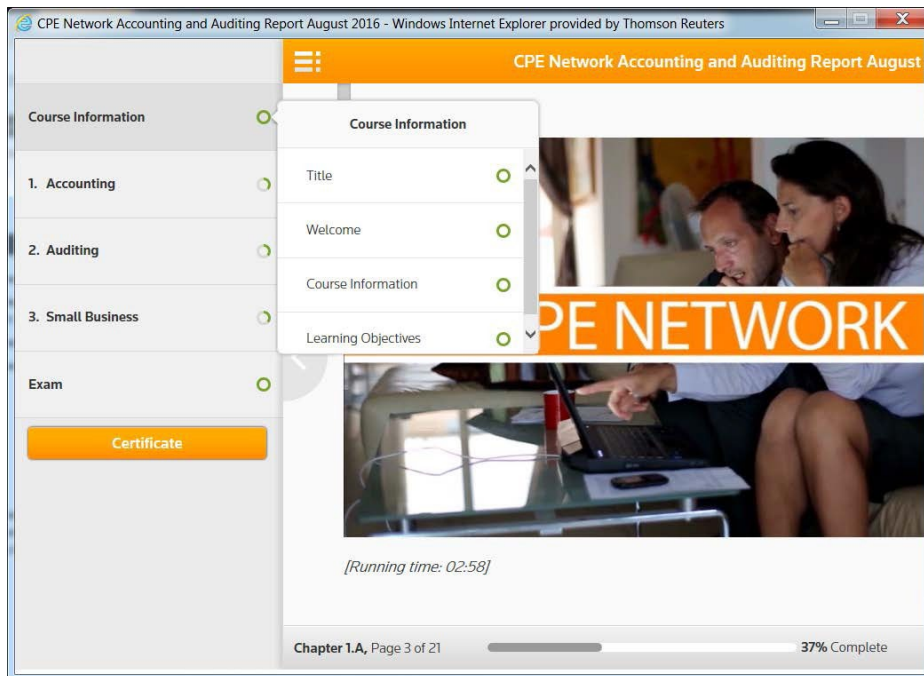


The Chapter Menu is in the gray bar at the left of your screen:

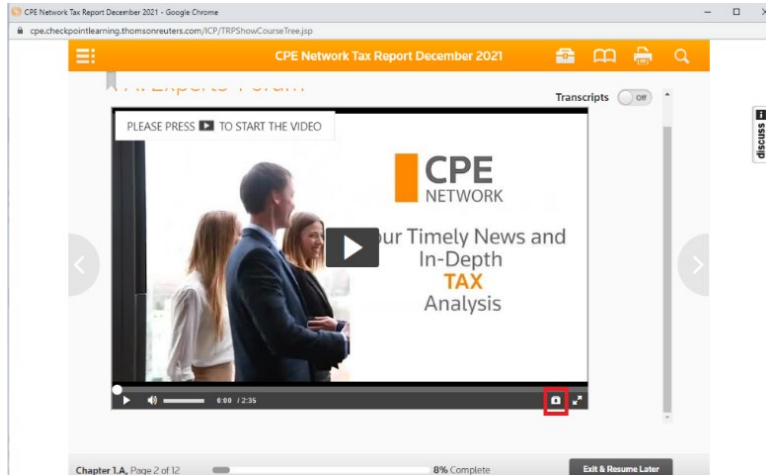


Click down to access the dropdown menu and move between the program Chapters.

- **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