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# CPE NETWORK TAX REPORT

MARCH 2025 VOLUME 38, ISSUE 3

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# EXECUTIVE SUMMARY

## PART 1. CURRENT DEVELOPMENTS

**EXPERT'S FORUM**............................................. 3

The tax landscape is ever changing with new developments or proposals appearing on a regular basis. Practitioners need to be cognizant of changes to properly advise clients. This material covers some of those changes since the last segment. Ian Redpath, JD, LLM, reviews a recent Tax Court ruling where a taxpayer's constitutional challenge to the IRS Appeals Office was rejected. He discusses ongoing litigation on the Corporate Transparency Act and new IRS pilot programs expanding Alternative Dispute Resolution. Ian also covers employment tax guidance, including Section 530 safe harbor relief and Section 7436 Notices. He examines proposed regulations on executive compensation limits, final rules on basis-shifting partnership transactions, and updates on the global corporate minimum tax. Lastly, he explores IRS guidance on digital content and cloud transactions. *[Running time: 47:53]*

**Learning Objective:**

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

- Analyze recent tax topics including the Tax Court's reasoning in rejecting a constitutional challenge to the IRS Independent Office of Appeals, changes in IRS alternative dispute resolution (ADR) programs, the definition of covered employees under proposed tax regulations, worker classification, and final regulations on related-party basis shifting transactions.

## PART 2. INDIVIDUAL TAXATION

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Mike Giangrande, JD, LLM, focuses on retirement tax updates. He begins with key retirement topics, including the latest changes from the SECURE Act and SECURE 2.0, contribution limits, required minimum distributions, Roth conversions, and employer-sponsored retirement plans. He also discusses strategies such as the backdoor and mega backdoor Roth, new early withdrawal exceptions, and the latest IRS guidance on inherited retirement accounts. *[Running time: 1:26:33]*

**Learning Objective:**

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

- Identify key changes under the SECURE 2.0 Act, including updates to required minimum distributions (RMDs), excess contributions, and penalty-free withdrawal provisions.
- Recall key inflation adjusted limits for 2024 and 2025, such as IRA contribution limits, QCD limits, and the annual gift tax exclusion.
- Describe employer-sponsored retirement plan updates, including part-time employee 401(k) eligibility, Starter 401(k) plans, employer Roth contributions, and catch-up contribution changes.

## ABOUT THE SPEAKERS

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

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

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# PART 1. CURRENT DEVELOPMENTS

## Expert's Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, Ian Redpath reviews a recent Tax Court ruling where a taxpayer's constitutional challenge to the IRS Appeals Office was rejected. He discusses ongoing litigation on the Corporate Transparency Act and new IRS pilot programs expanding Alternative Dispute Resolution. Ian also covers employment tax guidance, including Section 530 safe harbor relief and Section 7436 Notices. He examines proposed regulations on executive compensation limits, final rules on basis-shifting partnership transactions, and updates on the global corporate minimum tax. Lastly, he explores IRS guidance on digital content and cloud transactions.

Let's join Ian.

**Mr. Ian Redpath**

Hi everybody, welcome to the program. This is Ian Redpath, and this is the segment where we go over a number of things that have happened with the courts, the IRS, nothing with Congress, but maybe that'll be coming up soon as we have a new Congress and a new President, and we'll see what happens.

We know that there's a lot of discussion about what's going to happen with the Tax Cuts and Jobs Act. Is it going to be renewed? Is it to be renewed in part? Certainly, there's a lot of bipartisan support for continuing some aspects of it. For example, the child credit and enhancing that. Also, you know, there's a lot of apparent bipartisan for changing or raising the SALT limitation, if not eliminating it. It looks like it's more raising it than eliminating it.

The President would like one bill that says, we're going to extend all the Tax Cuts and Jobs Act provisions. You know, this is one of the problems when we have these provisions that go into the tax code and they have sunset dates. We had the same problem back with Bush, George W. Bush. His tax cuts in 2001 and they expired in 2010, and President Obama did not sign the extenders until December 28th. I mean, we're almost talking 11:58, maybe not 11:59 but 11:58. Hopefully we don't have that, so, that we can plan accordingly. So, we know what's going on. Let's just hope that Congress takes action soon enough so that we know what's going on and we can plan for next year.

Let's start with the tax court case Tooke, T-O-O-K-E. This is an unusual case, but it shows you how far people will go in making challenges. So, the taxpayer in this case took a two-pronged constitutional challenge to the staffing and the structure of the IRS Appeals Office, the Independent Office of Appeals, as it's now known.

There was a collection due process hearing on unpaid taxes for a lot of different years. He was unsuccessful, and so what he did was he challenged, and the IRS had filed a notice of federal tax lien and final intent to levy. This is for taxes 2012 to 2017. He did not pay the liabilities for those years. He requested the CDP hearing, and his hearing requests were combined into one and transferred to a different appeals officer. At the hearing he raised concerns over the validity of appeals and its employees. He took the position that the appeals office ran afoul of the separation of powers, namely the Appointments Clause. He proposed an offer in compromise. That was rejected, and he was unable to get an installment agreement with the IRS. The manager of the office took the case as it was transferred, approved the draft notice of determination that upheld the federal tax lien and proposed levy.

So, now he takes the position that the appeals staff from the chief on down the ranks to its officers are "officers" of the United States, therefore, officers of the United States, subject to the appointment rules, and then second was a separation of powers issue that appeals was an independent agency whose chief is subject to an unlawful removal restriction.

So, basically, the tax court looked at this. The tax court said that number one, the chief of appeals neither directly or indirectly had anything to do with this CDP hearing. He was not impacted, and so the fact that he was not impacted either directly or indirectly, that he had no standing to bring this case. They didn't say that wasn't true. They just said, “Hey look, you don't have standing to bring this. You weren't affected by it. Your allegation, even if it's true, you weren't affected by it.” And then they said, “You know what, the appeals office is not within the idea of officers, officers and team managers.”

There's a prior decision, a case called *Tucker v. Commissioner* (135 T.C. 114), that maintained that the employees are not federal officers. He tried to take up what you would call a route to branch theory, everything flows through from the appeals chief. They said, you know, that just hadn't established that. They are not federal officers; they lack the type of authority like federal administrative judges would have, and they can't regulate the course of proceedings that occur before them. Therefore, they don't fall within that category. But good try, as we say.

The next one. Here we go again. It seems like every time we meet we're talking about the BOI and the Corporate Transparency Act. This *Texas Top Cop Shop* that, you know, the local judge made, a district court judge put a nationwide injunction that went to the Fifth Circuit. The Fifth Circuit first overturned it and then second came back and said, “No, we're going to keep it in place.” That was appealed to the Supreme Court. Justice Alito said, “No, you know, we're going to,” and they did, they said, “No, we're not going to enforce that.” So, they put a stay on that injunction issued by the district court judge. So, again, the Supreme Court paused the nationwide ban on enforcement of the Corporate Transparency Act.

The main thing here, of course, is the BOI, the Beneficial Ownership Information and the reporting to FinCEN. So, Justice Alito, you know, he issued an order that enjoined enforcement, he put a stay rather, excuse me, on the order enjoining enforcement until the Fifth Circuit has actually rendered a decision. So, you know, this is interesting because there's cases all over the place at the district court level, and now there's an 11th Circuit Court of Appeals case. So, there are cases out there dealing with this and they're all over the place.

You know, the BOI is constitutional, the BOI is not. Now, the vast majority of the cases, the BOI and the Corporate Transparency Act as a whole, the concern here is the BOI rules and reporting, since that time has already started, supposedly, that they're constitutional. The authority at this point would seem to say it is constitutional, but we had this injunction that was ultimately upheld by the Fifth Circuit. But the Supreme Court has said, “No, we're going to stay that enforcement.” And basically, by doing that, the Supreme Court, while it hasn't ruled anything, it seems to be that it would be leaning towards the fact that the Corporate Transparency Act is within Congress's authority under the Commerce Clause and the Necessary and Proper Clause of Article 1, Section 8 of the Constitution. So, that appears to be because the argument here is that this is necessary to prevent financial crime and to protect national security. And that the real burden of reporting is pretty minimal in relation to preventing financial crime and protecting national security.

And so, it would appear, and the government is arguing that there should be a strong presumption allowing that, that, this would be constitutional, beyond the merits of the case, the government took issue. And this is something that's going on in a lot of different cases, a lot of different situations. We've seen it regularly, especially, you know, I think we really started seeing this during the Obama administration. And we're seeing more and more and more of it. We saw it constantly under the Biden administration. And now again, in the Trump administration, we're seeing this where a one district court judge, and this is called “forum shopping,” you know, bring, find a way to bring a case in front of a judge in a district where you believe that judge is going to be favorable to you.

The problem here, the Alabama case, the judge issued an injunction against enforcement, but only as to the members of the plaintiff organization. Very, you know, very, very limited in scope. It would appear to the government that that's not an issue. I mean, obviously, they believe that BOI is constitutional, but that isn't an issue. What the government's taking umbrage to is the fact that how should one judge in Texas be able to grant a nationwide injunction when we also know there are other courts, other district courts, which have upheld this. Yet, one judge can issue an injunction that has nationwide effect.

Now, you could also argue that, well, if you don't, then you can have, well, in this part of the country, there's an injunction, in this part of the country, there's not. The Alabama case, it's these particular people. You could argue that that creates an issue, and, yes, but the problem is you get this forum shopping. You get one district judge who's favorable to the plaintiff's cause issues an injunction and says, "This applies to the whole country," even though other district judges have said it's constitutional.

So, the government is very concerned about that, these universal rulings, which is becoming, as the government pointed out, a recurring issue in the lower courts, that it takes a toll on the federal system by one judge. And what happens is plaintiffs now are searching for that judge. They bring an action in an area or they add a plaintiff so that they can get the case in front of a judge that they believe is going to be favorable to them. And so, you know, this is, this is a serious issue. And if this case goes forward to the Supreme Court, that is certainly one of the arguments that could be, that would be raised because the government is very concerned about this.

The plaintiffs in the *Texas Top Cop Shop*, et al, they said, you know, any benefit that could, could inure from the immediate compliance deadline, having to file it immediately, is really not a big deal. If it's offset by a few months, so what? The difference is going to be marginal at best. And they pointed out, and I'm not sure this number is true or where they got it from, but Texas.com pointed to tens of billions, "billion" with a "B," in unrecoverable compliance costs should the injunction be stayed and reports compelled while that suit is pending. I'm not sure where the tens of billions of dollars comes in, but maybe that's true. And again, they point out that for small businesses, there's about 32 million small businesses that need to file immediately under the BOI rules.

So, we get the Alabama case, puts an injunction, but only for the, against enforcement, but only to the plaintiffs, to the members of that organization. Then we have some other cases around the country where they say, "It's constitutional. You have got to file it." Then we've got the Texas case where the judge says, "I'm issuing a nationwide injunction until we've heard the case." Then the Fifth Circuit comes in and they stay the injunction. Then they change their mind and they come back and they go, "No, we're leaving that injunction in place." Then it goes to the Supreme Court. The Supreme Court says, "No, we're going to stay." "Stay" means that it's not going to be enforced. "We're putting a stay on that injunction. It's not going to be enforced. You have to file under the BOI rules with FinCEN."

So, now where do we stand as we speak? Well, I guess I say, as I speak, so make sure you check.

Where do you check? You check under the FinCEN website, and there's a BOI update tab. As of right now, FinCEN has said it's voluntary. They encourage filing, but it's voluntary.

If a, you know, once these cases work their way through, FinCEN will then add additional time if it's held to be constitutional. If it's not, and I think it ultimately will be held constitutional from the looks of it, if it's not constitutional, well, then nobody has to file. The people that filed voluntarily, okay, you know, you filed and voluntarily, that's fine, you filed. There is no filing requirement then.

So, you know, this is up in the air, but FinCEN is basically kind of throwing their arms up and say, "You know, with all this stuff going on back and forth and back and forth, you don't have to file. It's voluntary until these cases work their way through." So, just keep following the cases. Again, the *Texas Top Cop Shop*. Follow the cases through and also make sure you check the website, and the FinCEN website to see where that is going. But right now, FinCEN has said despite the Supreme Court putting a stay on that injunction nationwide, and by the way, it doesn't affect the Alabama case. So, if you have a client who's a member of that organization, that injunction is still in place. It's voluntary. Follow the FinCEN website and this case to see where it's going, but it's currently in, has yet to be determined.

All right. We have IR-2025-14, and the IRS launched three pilot initiatives that are attempting to make alternative dispute resolution both more accessible, but certainly more attractive to taxpayers. And the IRS says, you know what, people aren't using that. And the agency wants to provide faster relief, more cost effective. And this is trying to try to move from the lengthy traditional appeals and litigation processes.

The Government Accountability Office indicated that the use of these alternatives had fell by 65% between 2013 and 2022. So, now they want, they've put two new, three new pilot programs in and they focus on the fast track settlement and the post appeals mediation: the FTS and the PAM, Post Appeals Mediation, Fast Tracks Settlement. Those are two of its ADR programs. And the FTS and the PAM programs allow appeals to mediate disputes between the taxpayer and the IRS, even while the case is in examination.

The PAM program allows a mediator as introduced to foster settlement between appeals and the taxpayer. So, the IRS has listed the pilot changes. And again, it's to make FTS and PAM available to more taxpayers. So, it's to align the large business and international and small businesses self-employed and the tax exempt in offering FTS on an issue-by-issue basis.

At one time, if a taxpayer had one issue that was an ineligible issue, the entire case was ineligible. Now, you can have it for issue-by-issue. So, even though you have an issue that's not eligible for it, you can still apply for the other issues and leave that other issue for the more traditional approach. Provide requests to participate will not be denied without approval of a first-line executive. In other words, it has to go up the line. And clarifies that the requests for these are formally denied, you get an explanation as to why not just “It's denied.

Now, there's now Last Chance FTS and the Expanding PAM. So, this is called Last Chance FTS.

The Last Chance FTS, when taxpayers, when you file a protest in response to a 30-day or equivalent letter, appeals will call to inform you, or the taxpayer or your representative, of the potential application of FTS, the fast track to their case. And again, initially it's going to be a limited to selected cases under exam by the small business and self-employed revenue agents and tax compliance. The IRS said the final pilot removes the limitation that, and this is at one time, participation in the FTS program precluded you from participating in the PAM. This has now been changed. If you participate in the FTS, you don't like the result, you can end up still participating in the PAM.

So, these are changes that are to enhance the use of alternative dispute resolution to speed up the process. And so, again, it's something that if you have a case going through and you want to fast track it, you could be even eligible for fast track while it's still an exam. So, look at the, look at the IR-2025-14 and Announcement 2025-6 to see if you're eligible for the programs.

So, now we have Revenue Procedure 2025-10. This is further guidance for taxpayers that want the Safe Harbor relief, the Section 530, as it's called, relief in employment tax areas. Now, one of the problems that it would seem is that, you know, what is an employee? And so, what this guidance does is it clarifies the definition of an employee for Section 530 purposes.

And it says, you know what? It includes officers of the corporation, common law employees, agent drivers, commissioner drivers, full-time insurance salespeople, home workers, traveling salespeople, individuals under Section 218 or 218A agreement, and state or District of Columbia government employees. They fit now a more, a clearer definition of what an employee is. And remember that Section 530 relief allows taxpayers to seek the Safe Harbor if they've misclassified employees, if they filed all the required tax returns that is consistent with how you're treating them as non-employees, as independent contractors. The individuals who were consistently classified as independently contractors and the taxpayer had, and this is where really the rubber hits the road as they say, you have to have had a reasonable basis for not treating them as an employee. So, you still have to have that reasonable basis.

So, this guidance includes the scope of which employees can be included in Safe Harbor. It also talks about the meaning of filing all required tax returns, how an employer could be considered to be treated as a worker, as an employee by including payment or other information with other employment tax returns, and whether an employer meets the consistency requirement here. And then, again, what reasonable basis is. So, the key is what is reasonable basis. So, this updates, it modifies and supersedes Rev. Proc. 85-18. So, this is very important if you're dealing with employment tax and employment tax potential issues for a client. Make sure you look at this because it does modify and supersede much of Rev. Proc. 85-18.

And then we have Revenue Ruling 2025-3. So, in this revenue ruling, the IRS just talks about when they'll issue a notice of employment tax determination. Now, this notice of employment tax determination, which is referred to as a Section 7436 Notice, Section 7436 Notice. So again, you know, the requirement to withhold, the code defines the term wages and employment for employment purposes, for, you know, the withholding, but, you know, they're premised on the individual being an employee, if they don't apply when the person's an independent contractor or some other non-employee status. And remember, we also have that you need to look at, which is the statutory employee.

So, an independent contractor is subject to self-employment tax. So, who is an employee? Well, you know, the IRS has, they used to have the 20 common law rules, which they still have. They just changed them and they put up three categories of, you know, behavioral control. You know, it's all based on control. There's three factors that they will look at. And basically, if the employer directs and controls the work that has to be done, how the work is completed, those generally are employees. And again, you could have statutory employees. Those are certain employees that only for employment tax purposes are considered employees.

So, generally, then, if you're doing work for others, you're going to be considered to be an independent contractor. So, if the IRS finds that there's a misclassification of employees, then the employer can argue that Section 530 relief that we just talked about. And then also, Section 3509 allows the employer to remit unpaid taxes at a reduced rate if the employer has failed to withhold from any of its employees because the employer treated them as a non-employee. It also points out that the tax court has jurisdiction to review the determination after the IRS has issued the Section 7436 Notice.

So, the 7436 Notice at the conclusion of an audit or after appeals consideration, if no agreement is reached and there's a worker misclassification, examination in connection with the audit, the audit, they did look at it. The IRS made a determination that the workers were employees and that Section 530 does not apply. And the IRS and the business disagree on the employment status of workers, whether 530 relief has been met or not, or whether 530 has actually been met. Those are issues that fall within this. So, the IRS is not going to issue a 7436 Notice when the employer did not claim that it was entitled to relief under 530. So, if there's an employment issue going on, you might want to look at that one also.

All right. We have a set of proposed regs, and this deals with the million dollar comp rule. And what this does is the IRS proposes, and this is REG-118988-22. Under this proposed regulation, they would amend the prior guidance on what's a covered employee for purposes of the million dollar comp rule. And it would expand it to include the five highest paid employees in a publicly traded corporation. So, it's not just now limited to the principal, the principal executive officer, principal financial officer, and the three highest compensated officers, but it also includes the five highest paid employees of any kind. And again, the effective date of this, December 31 of 2026. So, there's a way off.

All right. You're probably aware that, you know, there's been some discussion about a global corporate tax and the minimum corporate tax of 15 percent. The European Union, the UK and some other countries have adopted the 15% global minimum tax, but Congress has never approved it to bring the U.S. into compliance. And the U.S. has roughly a 10% global minimum tax as part of the Tax Cut and Jobs Act. So, countries that have adopted the 15% global minimum tax may be in a position then to top up the tax from U.S. companies. So, they would pay the 5%, the 10% to the United States and 5% to these other countries. So, again, these are the so-called "Pillar One" talks. They've pretty much stalled in a lot of countries. It's been unclear what's going on. There also is discussion relative to the digital taxes and what that situation is going to be internationally. So, that's going to be more of a wait and see.

All right. IR-2025-06, TD 100028. These are the final rules, and we've had this discussion in prior programs with the related party basis shifting partnership transactions as transactions of interests as then subject to the reportable transactions. So, in June of '24, they had the proposed regs, and that identified certain basis shifting by related parties as transaction of interest. So, the final regs are finalized, the proposed, with a couple of important changes. So, one of the major changes, the final rules increase the reporting threshold for transactions of interest, that's that basis, if there's a basis increase, that amount is raised from $5 million to $25 for tax years before 2025 and $10 million for tax years after. So, the proposed rate said $5 million. This put in $25 million before 2025, $10 million after 2025.

The second change, the reporting is limited to open tax years that fall within the six-year look-back window. So, the six-year look-back window, 72-month period before the first month of the taxpayer's most recent tax year, beginning before publication of the final regs.

These are the final regs. The taxpayers and material advisors have more time to file disclosure statements. So, you have an additional 90 days from the final rules, January 14th, 2025, publication date to disclose your transaction of interest in any open year. And again, any open year for which a tax return has been filed that falls within that six-year look-back rule. And then material advisors have 90 days to file their disclosures for anything made before the final regs. Now, the final regs exclude a lot of owners of publicly traded partnerships from these rules.

So, the final regs identify the basis shifting transactions. They include tax-free distribution of partnership property to a partner that's related to one or more other partners, or tax-free transfer of property interest by a related partner to a related transferee where there can be an increase to the basis of the distributed property or partnership interest.

So, if we go back, and it was Notice 2024-54, so, the basis shifting, according to that, basis shifting could occur, and basically the basis shifting, we're talking about three basic ways, a partner with a low share of the partnerships inside basis and a high outside basis transfers the interest in a tax free transaction to a related party or to a person who is related to another partner in that partnership. And this transfer generates a tax-free basis increase to the transferee partners share of the inside basis, which then often is subject to cost recovery, amortization or immediate expensing.

The partnership with the related partners distributes high basis to a partner with a low basis. The distributee partner then reduces the basis of the distributed asset and the partnership increases the basis of its other assets without any tax consequence to the distributee partner.

And then, a partnership with related partners liquidates and distributes low basis assets that's subject to accelerated cost recovery or to a partner who has a high outside basis because then they'll shift the basis over to that property. And high basis property that is subject to a longer cost recovery or no cost recovery at all to which the partners intend to a low basis because you're not going to take any depreciation on it. So, you'll get a lower basis.

So, the partnership liquidation rules, the first related partner increases the basis of the property with a shorter life or which is, again, which is then held for sale while the second related partner decreases the basis of the longer lived assets or non-depreciable property. What's basically there is the so-called 7701 Economic Substance Doctrine. And this will apply when you create inside/ outside disparities through various methods, including the rise and use of partnership allocations and distributions capitalized on this the disparity by either transferring partnership interest on recognized non-recognized transactions. So, you have a non-recognition transaction, and claim basis 732, 734 or 743. Now 734, 743, you have a 754 election in effect. So, if you have a corporation with a 754 election in effect, you're going to have to look at these things.

So, yes, the amount of the threshold has gone up. These are something very definitely to look at because, again, the proposed threshold of the positive basis adjustment was $5 million under a 732, 734, or 743 to be considered a transaction of interest. Now that is $25 million before 2025 and, and $10 million for transactions 2025 and after.

All right. So, the Department of Treasury has issued a notice, a Treasury Document 2024-31585. And if you do international work, the Treasury has released a list of countries which require or may require participation or cooperation with the international boycott. Now, what this notice does basically says there's no changes since October '24. The list includes Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, Yemen. And again, there's no change since October '24 and there was no change since May of '24 either.

So, again, these are boycott countries. It's an attempt, Section 999, it's attempted to defer or deter U.S. businesses from honoring the Arab boycotts of Israel. That's when it first came in, 1976. But under 999, tax payers could be denied some tax benefits if they participate and cooperate with an unsanctioned international boycott or cooperated with the country carrying out such a boycott. Now, it does not apply to any boycott approved by the U.S. by either law, regulation or executive order. So, if you have somebody doing business internationally, you should at least look at this list of boycott, and what can you do within the boycott situation. So, there's certain actions you can take, certain actions you cannot take.

All right. Let's look then at some regulations that have been issued, and TD 10022 and Notice 2025-6. So, the IRS has released a whole group of guidance addressing the characterization and rules for online taxable events, including the transfer of digital content and then income sourcing of cloud transactions. So, the final regs are effective January 14th of 2025, and they apply the tax codes international to modify the rules for classifying transactions involving computer programs, and again, including digital content. And the regs, again, provide for clarification and classification of cloud transactions.

So, prior to the modified rules, the treasury had four types of computer transactions: the transfer of a copyright, transfer of a copyrighted article, the provision of services for the development or modification of a computer program, and provisions of know-how related to the development of a computer program. So, unless one of these transactions was de minimis, they were treated as separate transactions and otherwise the transaction was treated as part of another transaction.

And so, the proposed regs carried over the four categories and the de minimis rule, but the IRS wanted to define the term "arrangement" to clarify that multiple transactions in an arrangement must be characterized separately. So, you know, what does that mean? How do we look at it? Do we look at it as a predominant character? So, under the final rules, digital content transaction means a transaction that constitutes the transfer of digital content or the provision of modifications and development of services or of know-how, as we mentioned; however, the IRS did not define a transaction. They said it's already well established under tax law, "what is a transaction?" Now, in a related, in that related notice that I mentioned, the IRS issued additional proposed rulemaking offering some additional proposals for determining when the income is going to be and where it is going to be sourced from cloud transactions, and that would affect those who earned the income from the transaction.

You know, the development of technology has certainly changed the whole concept of where did something take place. So, currently, the code does not give taxpayers a method for determining the place of performance for cloud transactions. So, the proposed rule states that the gross income from cloud transactions is sourced like service income, and the formula determining the place of performance of the cloud transaction is based on the three factors: intangible property, personnel, and tangible property.

So, the aggregation rule that is proposed, a taxpayer can aggregate substantially similar cloud transactions if the taxpayer knows or has reason to know that doing so would not materially distort the source of the income. If they know or should have known that it would, then they cannot aggregate.

All right. I want to thank you for joining me today. I know we're heading into the very depths of tax season. I hope it's been going well for you so far and that it will continue to do so with, you know, as little stress as possible. There's always stress, right, during tax season. But I want to thank you for joining me. Please, as always, be safe.

# GROUP STUDY MATERIALS

## A. Discussion Questions

1. Why did the Tax Court reject Tooke's claim regarding the Appeals Office's structure?

2. What changes do the IRS's ADR pilot programs make?

3. According to Ian Redpath, how will the definition of "covered employees" change under the proposed regulations (REG-118988-22) in regard to the deductibility of compensation in excess of $1 million?

## B. Suggested Answers to Discussion Questions

1. The Tax Court rejected Charlton Tooke III's constitutional challenge against the IRS Independent Office of Appeals on two grounds. First, the court ruled that Tooke lacked standing to challenge the appointment or removal of the Chief of Appeals because the Chief did not directly or indirectly influence his Collection Due Process (CDP) hearing. Without direct injury, Tooke could not claim a violation. Second, the court ruled that Appeals Officers and team managers are not "officers of the United States" under the Appointments Clause. It referenced *Tucker v. Commissioner*, which determined that Appeals Officers lack the authority to make final decisions and do not exercise significant discretion akin to administrative law judges. The court dismissed Tooke's "root-to-branch" theory that the Appeals Chief's role inherently tainted the proceedings.

2. The IRS introduced several changes in its new Alternative Dispute Resolution (ADR) pilot programs, including:

    - Aligning the Fast Track Settlement (FTS) program across multiple IRS divisions to allow issue-by-issue consideration.
    - Requiring approval from a first-line executive before denying an FTS or PAM request.
    - Providing formal explanations to taxpayers if their FTS or PAM requests are denied.
    - Introducing the "Last Chance FTS" program, which alerts taxpayers of FTS eligibility after filing a protest.
    - Removing the prior restriction that participation in FTS precluded eligibility for PAM, thereby encouraging more use of ADR options.
    - Clarifying that when requests for FTS or PAM are formally denied, taxpayers will receive an explanation for the denial.

3. Under the proposed regulations (REG-118988-22), the IRS plans to expand the definition of "covered employees" for purposes of the $1 million compensation deduction limit under IRC Section 162(m). Currently, the rule applies to the principal executive officer, principal financial officer, and the three highest-paid officers of a publicly traded corporation. The proposed change would extend coverage to the five highest-paid employees of any kind within a publicly traded corporation, regardless of their officer status. This change is set to take effect on December 31, 2026.

# PART 2. INDIVIDUAL TAXATION

## Retirement Tax Update

Welcome to the second segment of this month's program. In this segment, Mike Giangrande focuses on retirement tax updates. He begins with key retirement topics, including the latest changes from the SECURE Act and SECURE 2.0, contribution limits, required minimum distributions, Roth conversions, and employer-sponsored retirement plans. He also discusses strategies such as the backdoor and mega backdoor Roth, new early withdrawal exceptions, and the latest IRS guidance on inherited retirement accounts.

Let's join Mike.

**Mr. Mike Giangrande**

We had, you know, over the last four years now, two big retirement bills that made a lot of changes. That was the SECURE Act and then now the SECURE 2.0 Act. One was passed at the end of 2019, one was passed at the end of 2022. With the SECURE 2.0 Act, we did have a number of changes to employer-sponsored retirement plans. We had some RMD changes, in terms of age and such, and so, what we have for you is a chart for all those provisions of the SECURE 2.0 Act that went into effect for 2024. Obviously, those are the tax returns that we are just now getting ready to start preparing during our 2025 filing season.

So, on Page 4-1 to 4-2, we have those SECURE 2.0 Act provisions for you that are going into effect for the 2024 tax year. Just a quick reference chart. We're going to talk about many of these as we work our way through the chapter. I will tell you at the end of the chapter, just so we didn't make the beginning of the chapter so burdensome with a massive chart, we have the rest of the SECURE 2.0 Act provisions at the end of the retirement chapter showing their effective dates, because we have still in the next couple of years different items of SECURE 2.0 Act coming into effect.

So, let's start with our substantive stuff on traditional IRAs at Page 4-2. Our contribution limits for 2024 are $7,000, did not adjust for inflation for 2025, so we remain at $7,000 again for 2025. Those aged 50 and over still have a $1,000 catch-up contribution, and the $1,000 IRA catch-up contribution for taxpayers who are aged 50 and over did get a new provision in the SECURE 2.0 Act that it gets adjusted for inflation starting with the 2024 tax year. So, for 2024, we expected to see that $1,000 be, you know, $1,050 or $1,100, something of that nature, and that still hasn't happened. Inflation for '24 and '25 apparently wasn't enough to actually move the needle. So, at some point, we are going to see the catch-up contribution get over $1,000. It will start moving up slowly at some point, but even though it's adjusted annually for inflation, so far it has, the needle just hasn't moved yet.

When it comes to your IRA contributions, it's not really $7,000 is just the limit. It's the lesser of $7,000 or your earned income. You got to have enough earned income. If you've got one spouse that's working, one spouse that's non-working, our non-working spouse can piggyback on their spouse's earned income. And so, if you have essentially, at least $14,000 of income, then each spouse can contribute $7,000 into a traditional IRA.

Now, for taxpayers who are active in their employer sponsored plans, like a 401(k) or any other employer sponsored plan, they can still contribute to a traditional IRA, but their deduction can be limited if their AGI is over a certain dollar amount. And we have those AGI thresholds on Page 4-3. So, for example, in 2024, for a couple filing jointly, if your AGI is under $123,000, you can still contribute the full amount to traditional IRA and claim the full deduction, even though you're also putting in the employer's 401(k), or any other employer sponsored plan. And then your $7,000 deduction is phased out all the way once that married couple's AGI gets to $143,000.

Now, remember, you can always put in the maximum amount. If you're, so if you've got an AGI that's over the AGI threshold and you put into a traditional IRA, which you don't get a deduction, you still get the benefit of having tax deferred growth on that account, but you have basis now and you've got to track that basis year-over-year.

My advice there is when you first make a non-deductible contribution, you've got to file Form 8606. And then you've got to file Form 8606 again later on down the road when you take money out of that IRA for which you have basis, because the 8606 calculates using the aggregation rules, which we'll talk about in a short little while, calculates the amount of your distribution from your IRA that is allocated to non-taxable return basis, but in all those intervening years, the Form 8606 is not required.

What I do recommend, if your software allows you to do it, is if you've got a client with any basis in their IRA, to force that Form 8606 every year, because you will see the basis tracked on that form if you force the form. And I do like forcing the Form 8606, so I have an easy paper trail to see that. You know, I've had clients where they've lost their basis because it wasn't tracked on Form 8606 every year. It's just tracked on the tax professional’s supplemental worksheets, and they switch preparers two or three times and suddenly it's lost. And they say, “Well, gee, think I had a basis one time, I made a non-deductible contribution,” but they have no idea when or how much. So, force that Form 8606. That's what I do. I think it's a good idea.

Note the phase-out limit for people who are married filing separately. The AGI phase-out to lose the deduction is very, very short, lose it. It starts phasing out at your first dollar of income and it's totally phased out at only $10,000. One of things we do recommend, if you are a participant in an employer sponsored plan, you should always try to contribute to your employer sponsored plan first before making an IRA contribution, at least up to the point where you're maximizing the employer's matching. Then if you want to move over to an IRA, go for I, but you want to at least get that free money out of the matching program.

Now, if you are, as a taxpayer, are not a participant in an employer sponsored plan, but your spouse is, there's likewise an AGI phase-out for you. It's a bit higher. And that phase-out chart, the bottom of Page 4-3.

I'm going to move on to excess IRA contributions. So, if we make an excess, excess IRA contribution, we are subject to an excise tax of 6% on the excess contribution amount. That 6% excise tax applies every year that the excess appears in your account.

Now, when it comes to making excess IRA contributions, it's usually pretty hard, you know, because you know, most people have their IRAs with one company and that one company won't let you put more into the account than you're allowed to. It can be an issue though, because there's nothing to prevent you from going and opening up an IRA at, you know, Vanguard and opening one at Merrill Lynch and opening one at Schwab and then you match, put $7,000 in each one and they would, none of them is the wiser, but you obviously contributed too much, and then you're subject to an excise tax.

You can get out of being subject to the excise tax in one of two ways. One, you can withdraw the excess contribution plus earnings by the due date of your return, including extensions, or just pay that 6% excise tax on the excess contribution in the current year. And the excess can just be treated as an original contribution in the next year. So, by way of example, let's say you put $14,000, you're a single person, you managed to put $14,000 in your IRA this year by accident, and you say, “I don't want to go through the effort of pulling the money out with earnings just to put it back in.” So, you just say, “Screw it. I'm just going to pay the 6% excise tax.” You can do that and then just don't make any new contributions in 2025, and that $7,000 excess just becomes a 2025 contribution. That's how that works.

Let's move on to IRA, excuse me, IRA distribution. Start at the bottom of Page 4-4, excuse me, just got to cough for a second here. RMD generally must begin in the year taxpayer turns age 73. That does get bumped up for taxpayers who turn age 75 after, if they're born after 1959. If we miss an RMD, if we have an RMD we have to take and we don't take it for some reason, the penalty used to be 50% of our missed distribution. It is now only 25%. SECURE 2.0 Act knocked that in half, but what it also did was it reduced, it said, it's a 25% penalty on the missed distribution and we're going to reduce that even further down to 10% if the missed RMD is corrected during what they call a, quote, “correction window.”

The correction window, I've got bullet pointed for you at the top Page 4-5, and it's the earlier of the date the IRS issues a notice of deficiency with respect to the excise tax, the date the IRS assesses the excise tax or the end of the second taxable year after the shortfall occurred. Now, I think the IRS is usually pretty slow issuing notices of deficiency and assessing excise taxes. So, essentially, you could have two years to figure out that you missed an RMD, "Oops," take the RM. It reduces your penalty down to 10%.

Now, what the IRS still does, and the IRS said that they are not going to change how they administer this, is if you miss an RMD, once you discover that you've missed it, take your missed RMD and file the Form 5329. The Form 5329 is going to calculate your penalty for you. And then what you're allowed to do at the bottom of the Form 5329 is you're allowed to, to not charge yourself the penalty and request a penalty waiver. If you request a penalty waiver based on reasonable cause, then the IRS allows you to not pay the tax upfront, and you only pay it if the penalty is, if the penalty waiver is denied by the IRS. The IRS rubber stamps that penalty waiver.

I've only ever heard of the IRS denying the penalty waiver to one person. It was never a client of mine. Every year, I have probably one client misses some amount of their RMD and I'm filing a Form 5329. I've never had it denied on the penalty waiver. So, file the Form 5329, request the penalty waiver, and what I have for you in middle of Page 4-5, where it gets toward the top, is actually a sample penalty waiver explanation that I've used many times before, just modify it for your clients, facts a little bit and it works great.

Moving on to qualified longevity annuity contracts. These are contracts, new types of annuities that came about starting in 2014. So, they're really not all that old, but what they allow taxpayers to do after modification by the SECURE 2.0 Act is taxpayers can move up to $200,000 from their IRA to this special kind of an annuity that has to begin paying out regular annuity payments to your client by age 85. And what's cool is the amount that you put into the annuity is not subject to the RMD rules in those intervening years.

So, let's say you got a client who's going to turn 73 years old, they're going to have an RMD requirement, they're active, they want to keep working and they don't want to pull from their IRA, but they've got maybe only a modest IRA at $200,000 conveniently.

What they can do is they can take their $200,000 IRA, move the funds into the qualified longevity annuity contract. They won't have an RMD on that $200,000. That money can continue to grow tax deferred and at age 85 start paying out an annuity to your client. And that's a good way to help stretch IRA funds for clients who are afraid of outliving their money. Got an example of that on Page 4-6, but I think I just went through enough of an example just talking about it, but I think illustrates the point.

For the other end of the spectrum, for other clients, I thought I'd just use an example of somebody who's got a very modest IRA, but it could also be very nice for people who are very high earners. Maybe they've done a great job investing for their retirement. They've got more of an RMD than they're ever going to want to spend every year. You know, I'm fortunate enough, like I said, I've got clients who are wealthy enough that I have clients in this bucket. A QLAC works okay for them because they're able to, for the married couple, they each have two strong IRAs, they can each put $200,000 away and then remove $400,000 from their RMD calculation every year. And then we'll start paying out a bit later at age 85, but the tax deferred growth between age 83 and age 85, that's a lot of nice tax deferred growth when you don't have to take a distribution.

Now the bummer of QLACs is traditionally they have not been really used that much. Like I said, they only came around in 2014, but one of the bigger problems with them is interest rates from 2014, only until a couple of years ago, were pretty low, historically low in some cases during a couple of years. So, the rates of return sort of sucked. So, nobody really wanted to invest in them. But if interest rates are going up, then they're still kind of high right now, QLACs might not be a bad idea for some clients.

You can purchase QLACs not only with IRA funds, but you can do it with 401(k)s, 403(b)s, 457(b)s. You wouldn't want to do it, although I think you can, but you wouldn't want to anyway out of a Roth, because, you know, Roths have no RMD requirement anyway, when you pull the money out as tax-free.

Now, every year that your client has money in a QLAC, they're going to get a Form 1098-Q. Think of a Form 1098-Q as being the same as the 5498 that comes out every June for your clients and their IRA. It's just an informational form, but it gives you some good information. For example, Box 1a of the 1098-Q set tells you the amount of a taxpayer's monthly annuity that they're going to get at the start of their annuity. So, if get a client who wants to start getting closer to where were at age 85, you can look at that Box 1a and do some income planning for them, because you know how much of a QLAC they're going to, annuity they're going to get. Box 1b tells you the start date, so you know when the annuities are going to start. Again, good for income planning for us.

Box 2 tells your client whether the annuity can be accelerated to a date shown before the, the date shown in Box 1b. So, essentially if there's an acceleration clause, that might be a good idea. You know, for a client who maybe they want a QLAC, but they want the ability to get to access their money if something happens. If they buy a QLAC that has an acceleration clause, that 1098-Q is going to tell you about it, and again, you can do some income planning for them. So, some other information there on the various boxes on the QLACs. Make sure you get -- I'm sorry, the 1098-Q. So, get a copy of the 1098-Q every year. Review it the same as you review the 5498 for your IRAs. Going to give you some good insight into your client’s IRA investments.

Qualified charitable distributions. You know, in our TCJA years with the high standard deduction, the qualified charitable distribution has been one of my absolute favorite planning strategies for my retiree clients because what this allows us to do is take charitable contributions and donate them from our IRA directly to a charity. When we do that, the dollar amounts that go from the IRA directly to charity count towards our client's RMD for the year, but also, they're not taxed on that RMD.

So, quick, by way of example, let's say a client's RMD is $60,000 for the year, but they send $15,000 to their church, directly from the IRA to the church. They can't touch the money. It's one of the requirements. In that case, your client's going to have a $60,000 IRA distribution but only $45,000 is taxed. Now, the rub is with the 1099-R. The 1099-R does not reflect the QCD, Qualified Charitable Distribution, at all. So, you've got to coordinate with your client very carefully and ask them, “Did you make a Qualified Charitable Distribution?” If so, what you need to do is your tax software is going to give you a way to indicate that you've done that, and it's going to put the little letters “QCD” next to the 1099-R distribution line for IRAs on Page 1 of that 1040, it tells the IRS that there's a reason why a taxable amount is less than what is shown on the 1099-R.

The maximum amount you can do as a Qualified Charitable Distribution in 2024 is $105,000, kicks up to $108,000 in 2025. Got to be at least age 70 and a half. Weirdly, even though the IRA, sorry, the RMD age has gone up, the age at which you can do QCDs has not changed. It's still 70 and a half. So, if you've got a client who's, you know, they're, they're maybe 70 and a half and they're using the higher standard deduction, the QCD becomes the only way they get to deduct their charitable contributions. So, it's a really great thing to do. Practice pointer on Page 4-7 with some of the other benefits there of the QCD strategy, there's a few others.

Now, one thing I want to comment on is, you know, IRA custodians don't always like processing QCDs because it's more work on their part. They don't get anything for it. So, one thing that I've seen as a resurgence probably in last 10 years are IRAs that have checkbooks to them. So, your client's got a checkbook that's attached to their IRA that can write checks out of it and send the check directly to charity. Now, everything that comes out of that checkbook becomes a IRA distribution, a taxable IRA distribution. So, one that can be a little dangerous with those checkbooks, so be careful with them. But the second planning pointer, though, is if your client has that, what's going to show up on the 1099-R is only what has cleared the bank by the end of the year. So, make sure if your client has one of those checkbooks and they want to make QCDs from that IRA with that checkbook, don't let them write those checks on December 31st and drop them in the mail. You really need to write those checks at least in the beginning of December or earlier and give those checks time to clear the bank by December 31st so that now that counts as a dollar amount coming out of their IRA on the 1099-R.

I mean, technically, according to the mailbox rule and how cash basis taxpayers work, your client should technically be able to write those checks on December 31st, put them in the mail and take the QCD, but now you're reporting what doesn't appear on the 1099-R, and you and I know that trying to say something different than what appears in the tax reporting forms is like trying to put a square peg in a round hole when dealing with the IRS. Sometimes it's just easier to go along to get along and report what's on the darn 1099-R.

A couple more points in the qualified charitable distributions. You cannot use QCDs to make contributions to private foundations or into donor advised funds. You do have, thanks to SECURE 2.0 Act, a limited ability to use QCDs for charitable gift annuities and Charitable Remainder Trusts. The limits are lifetime limits, but interestingly, they are adjusted annually for inflation. 2024, that dollar amount is $53,000, jumps up to $54,000 for 2025.

Let's talk about rollovers starting at the bottom of Page 4-8. So, rollovers can be done one of two ways from a retirement account. It could either be a direct trustee-to-trustee rollover or an indirect rollover where our client takes cash from one account and then deposits the fund to another eligible account within 60 days.

Quick comment on inherited IRAs. Inherited IRAs cannot do an indirect rollover. If you inherited IRA, it's sitting at, I don't know, Charles Schwab, you want to move it over to Fidelity, that can only be done in a trustee-to-trustee rollover. You cannot do an indirect rollover of an inherited retirement account. So, taxpayers though, who are eligible to do the 60 days, you can only do an indirect rollover once every 12 months. That's not once per calendar year, that's once every 12 months, based on the date of the first rollover.

Now, taxpayers who missed the 60-day indirect rollover window can self-certify that they missed the 60-day window, they self-certify to their, the custodian where they're depositing the funds into. If they missed their 60-day window for one of 12 very specific reasons outlined in Rev. Proc. 2020-46. I think it was really nice that the IRS did create the self-certification because it does, for them, it limited the number of private letter rulings they got every time people missed 60-day rollover window, and then we get private letter rulings like crazy. Now, if they self-certify, your client can still be audited, and the IRS can say, “Wait a minute, that’s, not one of the 12 reasons,” but the custodian accepting the rollover can still treat that as a rollover, put the money into an IRA, even though it's after the 60-day period.

On Page 4-10, what I've got to do is a simple chart here we give to you every year, which is a chart of our allowable rollovers. So, if you've got a client with one type of retirement accounts, say a 403(b), and you say, “Can I roll a 403(b) over into a 457(b), for example?” And the answer is, “Well, yes, but you've got to have separate accounts.” So, this chart says, can you roll this into that? And that's a simple, helpful little chart if you're looking to do rollovers.

Let's talk about SEP IRAs. So, SEP IRAs are, as the acronym says, Simplified Employee Pension Plan. They are available for any size business. They're easy to establish. There's no filing requirements for the employer, but they only accept employer contributions. So, employees are not allowed to make their own contributions in. So, that can be a good thing and a bad thing. The employee might say, “Okay, cool. I don't have to put any money in. The employer is going to contribute for my retirement,” but at the same time, if the employer decides to put in a piddly amount, which they can do, the employee can't, like a 401(k), make their own decision to put in more money. They'd have to go to a traditional IRA and put money into that.

So, they can be established up to the due date of the tax return including extensions after the close of the taxable year. You know, I don't know about you and your practice, you know, one of the, one of the cool things I've done in the speaking or been able to kind of see in my speaking, I should say, over the last roughly nine-ish years I've been doing this is that I've my practice mirrors so many of you out there, I think. And so, I'll say, know, I think when I see SEP IRAs, the vast, vast majority I see are the sole proprietors, you know, the consulting businesses and that sort of thing, but it is available to any size business.

On Page 1-, sorry, 4-11, I got a list of eligible participants. Eligible participants are anybody who's at least age 21, has worked for the employer in at least three out of the last five years, and received at least $750 in compensation for the year. So, if you're an employer and you've got a SEP IRA in place, any employee who meets these requirements must be a participant of the plan. Now, as an employer, you can always make participation easier. You can say, “I don't care how old you are or how much you've worked on day one, you are a participant in the plan.” You can do that. Most don't, but you can. You just can't make the requirements any harder to get into.

Employer contributions are completely discretionary and there's no minimum annual Safe Harbor. So, for a small business, this can be a good thing. If you've got a bad year, you didn't make any money, maybe you don't contribute.

You don't have to. You might piss off your employees if you don't make any contribution, but it is not legally required. And so that can be nice for, again, the sole proprietor who has a bad year, they don't have to put anything in.

Now, my clients who are sole proprietors who use SEP IRAs, they don't know how much they're going to put in at the beginning of the year, most of them. They wait until I finish a tax return, then I sit down and I tell them, “If you put X amount of dollars in, here's how much you're going to save,” and they make their decision that way. And that is a very effective way of getting people to contribute to their SEP IRAs for those sole proprietors.

Moving along to our SIMPLE IRAs, starting at Page 4-12, just like the SEP IRAs, these are cheap and easy to set up. They're available to businesses with up to 100 employees. So, it is for smaller businesses only, although I don't think of a business with 100 employees as being all that small personally, but I know that in the grand scheme of things, it is a small business.

They must generally be established by October 1st of the year that plans to be effective, exception there for a business that starts, say on October 15th, they can establish a SIMPLE IRA right away, but generally it's got to be done by October 1st of each year. And employers generally must make either a 3% matching contribution or 2% non-elective contribution. I say “generally,” because the SECURE 2.0 Act gives employers the option to increase each of these matches from 3% matching to 4% matching, or if they're using the non-elective version, they can go 2% non-elective to 3% non-elective and by doing so, it allows their employees to contribute more, and let's look at that real quick.

Eligible participants, it's on Page 4-12. Eligible participants for a SIMPLE is anyone who at least $5,000 in compensation during any two years before the current calendar year, and they expect to receive at least $5,000 in compensation during the current year. Again, an employer can choose to make the participation requirements easier for employees, but they can't make them any harder. So, on Page 4-13, what I have is a chart of the SIMPLE IRA contribution limits.

The SECURE 2.0 Act really kind of made this a bit complicated and you can see it by this chart. So, if you've got 26 to 100 employees, your contribution limits are dependent on whether you bump up from a 3% match to a 4% match, or if you're using the non-elective formula from a 2% to a 3%. If that's the case, then you get to use the contribution limits that apply to employers with 25 employees or fewer. Because if you've got 25 employees or fewer, thanks to SECURE 2.0 Act, your employees can make an additional contribution. Their contribution limits are higher. Then if you're age 50 plus, you get an additional contribution. Then if your age is 60 to 63 starting in 2025, there is a special additional contribution limit.

So, the SIMPLE contribution limits have gotten a little complicated with the SECURE 2.0 Act. And annoyingly so, if I can be honest, because the extra contribution limits bump up the max contribution by a little bit, but they add a whole lot more complexity just to get that little bit of extra contribution for the employees. Really kind of a stupid provision, if I'm being perfectly honest. They should have made it easier to contribute more, not really complicated to contribute a little bit.

Now, this one, though, I do like this one, and what the SECURE 2.0 Act does starting in 2024 is it allows employers to contribute an additional $5,000 per employee as a non-elective contribution at the employer's choosing. And the additional contribution cannot exceed $5,000, that is the maximum, has got to be applied on a uniform basis for all employees, and it cannot exceed 10% of compensation. And so, what's neat is this provision provides employers more flexibility in their SIMPLE plans.

And let's go through an example I've got here for us on Page 4-14 on how this, this is just a sample of how an employer might choose to use this provision. We've got Snowy Mountain Sports Incorporated. It’s a small sporting goods store with a SIMPLE IRA plan for its 20 employees. Pursuant to the terms of its plan, Snowy Mountain makes non-elective contributions of 2% of its employees' compensation into each employee's SIMPLE IRA.

Snowy Mountain wants to provide an additional incentive to its employees, so starting with the 2024 tax year, it adds a profit-sharing component to its SIMPLE IRA plan. The company will set aside a portion of its net profits to be contributed to its employees' SIMPLE IRA as an additional non-elective contribution with the following terms. All employees will receive the same percentage of their compensation as their profit-sharing contribution into the

SIMPLE IRA, not to exceed 10% and no employee can receive more than $5,000. So, essentially the employer can just add a little additional incentive for the employees using this non-elective formula. This one I like just because it gives employers an additional option for their retirement plan. I like options, especially options that are simple to administer as that one is.

Now moving on to Roth SEPs and Roth SIMPLEs. The SECURE 2.0 Act also now allows Roth versions of both SEP IRAs and SIMPLE IRAs, starting with the 2023 taxable year, which is a little laughable because I have yet to find, and I haven't looked in a couple of months, but I have yet to find a single financial institution out there that will allow you to open a Roth SEP or a Roth SIMPLE IRA. Quite simply, they are not offering them yet. I have no idea why. I think that they may be waiting for some IRS guidance that affects them on the back end, but it seems so simple.

I mean, Fidelity, Merrill, Schwab, don't know, Morgan Stanley, you name them, I don't care, Raymond James, John Hancock, I've looked at them all. None of them allow you to open a SEP Roth IRA yet, or a SEP Roth -- I'm sorry, a Roth SEP or a Roth SIMPLE IRA yet. And it seems so simple. They all offer Roths. They all offer traditional IRAs. They all offer SEPs. They all offer SIMPLEs. Why not offer a Roth SEP? But they have not done it yet. So, I don't know why they aren't doing it, but as soon as the financial institutions start offering these, I think they're going to be a really good option.

And now then the question becomes, how do you report the contributions? Take a SEP IRA, for example. The employer wants to make a contribution into a SEP Roth. So, one of the requirements is the employer can't offer only a Roth. They have to offer a traditional and a Roth if they're going to offer a Roth. And the reason for that is an employee has to elect to receive the employer contribution as a Roth contribution. So, the employer is going to say, “I'm going to put $5,000 into your SEP IRA, Joe.” Joe has to be the one that says, “I want it to go into my Roth.” If he doesn't want it to go into his Roth, there has to be a traditional SEP IRA for it to go into.

And then the year of the employee's inclusion in income becomes a lynch pin because a Roth contribution on the employer's part, whether it's a Roth SEP or a matching on the Roth SIMPLE is taxable income to the employee. So, it's got to be a hundred percent vested and it's got to be includable in income. How is it includable in income? Well, interestingly, the IRS came up with a weird solution because if you think about the way how, most SEP IRAs work, that employer probably decides in their SEP IRA contribution two days before they file their income tax return.

Well, by that time, W-2s for the year just closed have already been filed long ago. So, what happens is the employer gets the deduction in the year for which the contribution is for. So, for example, employer makes a $50,000 Roth IRA contribution for all of its employees. And it makes that contribution on March 10th of 2025. That employer gets that deduction as a 2024 contribution as long as it was for 2024. But the employees must pick up those Roth contributions as taxable income in 2025 when the contribution was actually made. And how does that get reported to the employee? It gets reported to the employee as a taxable income on a 1099-R. That's what the IRS said when they put out IRS Notice 2024-2 this time last year. So, very interesting, you got to use a 1099-R for that. So, if you got employees who are receiving employer contributions on a Roth basis, they're going to get a W-2 every year as well as a 1099-R from that employer.

Let's talk about employer sponsored plans. Starting in 2025, taxpayers who are age 60 to 63 are eligible for an additional catch-up contribution that's equal to the greater of 150% of whatever that 50 plus contribution is, or $10,000.

We got an example down on Page 4-17 real quick, make it easy. Drea turned age 60 in 2025 and is still working and participating in her employer's 401(k) plan. Drea can contribute, can contribute up to $34,750 to her 401(k) for 2025. We calculate that by taking the regular $23,000 contribution limit for Drea. We add to that the greater of 150% of the catch-up contribution amount, which is $7,500, I think, or $10,000. The greater of those is 150% of $7,500, which is $11,250, and gives us our, Drea's maximum 401(k) contribution of $34,750.

Starting in 2024, employers are allowed to offer an optional emergency savings account for employees. The emergency savings account is a -- funds into that account are contributed by the employee on a Roth-like basis, so they're post-tax. The employee can put in no more than $2,500 into the account. That's not an annual cap, that's aggregate, but once an employee puts in $2,500, if they pull the money out for emergency savings and not subject to any penalties or anything, and if they pull the money out, then they can replenish that $2,500, but they can never have more than $2,500 of their contributions into that account at any given time.

And this is sort of a retirement-linked account, because anything the employee puts into that account, the employer has to use as part of their calculation when doing the employer's matching, whatever their matching formula is for their retirement plan. Example of that, if you're interested on Page 4-18, but I'm going to skip it. I don't find emergency savings accounts to be that exciting. And I don't know how many employers are actually going to be using them.

Catch-up contributions for highly compensated employees. This provision was supposed to start in 2024. IRS delayed it until 2026. And what this provision says is, highly compensated employees who are age 50-plus can only make catch-up contributions into their retirement plan if it's into a Roth version of the retirement plan. This is a mandatory provision. This is not optional. Weirdly, you know, you think you're a high-income taxpayer is usually you're not allowed to put into Roths. Here, Congress is saying you must put into a Roth. It's a way to try to raise revenue for the bill that was passed by not allowing a deduction by your highly compensated employees. So, it is a mandatory provision. It won't take effect until 2026.

Highly compensated employees, they're defined based solely on wages paid to that employee from that employer during the prior calendar year. So, if you get a new hire employee, you paid him a million dollars a year, that first year they're an employee, they're not treated as a highly compensated employee for these purposes. The following year they will be, but not in that first-year employment. It's kind of weird there. But again, what's interesting here, and I think what might get some smaller employers caught off guard is if an employer is only offering a regular 401(k), for example, and they're not even offering a Roth 401(k), then their highly compensated employees who are age 50-plus won't be allowed to make a catch-up contribution because they can only make it if it goes into a Roth account. Well, if the employer doesn't offer a Roth account, then those employees don't get to make a catch-up contribution. So, for those smaller employers out there who may get caught in this, you're going to have to open a Roth 401(k) for your employees or offer it as an option.

Roth matching, so employers starting in 2024 can now offer to their employees to receive the employer match to 401(k)s, 403(b)s, and 457(b)s as Roth contributions. And just like the Roth SEP or the Roth matching or the SIMPLE, the Roth employer matching has got to be 100% vested when made, so it can't be subject to a vesting schedule, and it's taxable to the employee reported on a Form 1099-R for the year that it's actually made. So, if an employer makes that matching in January ‘25, for a 2024 year, that 1099-R will show up for the taxpayer, for the employee as a 2025 1099-R in January of ‘26, even though the matching was based on their 2024 income in my scenario.

RMDs from employer sponsored accounts are no longer a thing starting in 2024. The SECURE 2.0 Act eliminated the RMD requirement for employer sponsored Roth accounts starting for ‘24. That really just brings the employer sponsor like the Roth 401(k)s to match a Roth IRA. You know, where a Roth IRA doesn't have an RMD, neither does an employer sponsored plan anymore.

Also starting with deaths in 2024, surviving spouses can now elect to be treated as if they are the employee for purposes of applying the RMD rules. If the election is made and the surviving spouse, we'll get to begin taking RMDs on the date the surviving spouse reaches their RMD age. So, if you inherit a 401(k) from your spouse and you are as a survivor, the younger spouse, this is a good election for you because now you've got one of two ways to put off your RMDs until your own age, based on your own RMD age. You can either make this election to be treated as the employee, or you can roll the 401(k) into your own IRA, and if you do that, then obviously if it's in your own IRA, it would be based on your own RMD age.

Matching contributions for student loans starting in 2024, employers are allowed to offer matching contributions for student loans. What this is, is an optional provision that employers can provide. And it’s, what it says is, if an employer offers this, if the employee puts money into their, repaying their student loans, the employer will count that as if it was a retirement contribution for purposes of doing the employer matching.

Let's go through a quick example of this. This is the Lexi example, bottom of Page 4-21. Lexi's employer has a 401(k) plan and matches employee contributions at a rate of 5%. Lexi can only afford to contribute $1,000 to the 401(k) each year because she must also pay down her student loans. Under the new matching contribution rules for student loans, if Lexi's employer, Lexi’s employer's plan authorizes matching contributions for student loan repayments, Lexi's employer will treat her student loan repayments as an employee contribution to the 401(k) starting in 2024.

In 2024, Lexi contributes $1,000 to her 401(k) and pays down $5,000 of her student loan debt. Lexi's employer's matching contribution to her 401(k) is $300. $6,000 multiplied by 5% matching. If it's offered by an employer though, employers must offer it to all employees who are illegally -- who are, legally obligated on the student loan, even if the employee isn't the student. And we see that sometimes with parents who co-sign on a loan. So, if you've got a 60-year-old parent who's co-signed on their kid's student loan and the parent's employer offers this, then the parent can repay their kid's student loans and treat that as a retirement contribution for purposes of their employer matching if they want it. So, the employer cannot exclude them and say, “You weren't the student.”

Also, the employer cannot enact this provision only for certain types of education loans. For example, maybe an employer says, we'd like to encourage our employees to repay their student loans, but only for those employees who went and got finance loans because we're a finance company. Nope. If you offer it, you got to offer it to everybody, even the employee who maybe doesn't do professional services for you and has a degree in underwater basket weaving and repays their student loans, you've got to offer the same provision to them, same matching to them.

And I'm going to move on to our starter 401(k)s and our Safe Harbor 403(b)s. These are really the same thing with a different name. One's a 401(k), one's a 403(b). And so starting in 2024, employers are now allowed to offer very limited versions of these 401(k)s and 403(b)s. And so, first of all, employers are only allowed to offer these limited 401(k)s and 403(b)s if they did not previously offer a retirement plan.

So, an employer can't take a regular 401(k) they had in place for a number of years and decide to switch over to a starter 401(k). It's not allowed. And with the starter 401(k)s and Safe Harbor 403(b)s, employer matching is not required. And so for an employer, it's a great way to put an advertisement out on, you know, wherever, you wherever you put in your employment advertisements, say, “We have a 401(k), but I can tell you that it sucks, but we have a 401(k).” Because a starter 401(k) does not require any employer matching. Your contribution limits are the same as the IRA contribution limits, so, $7,000. And like I said before, it's only available if the employer hasn't previously offered a plan. So, if the contribution limits are only $7,000 and the employer isn't going to do any kind of matching, then what the heck's the point? Why not just tell your employees, hey, go get an IRA? Well, there are some places, California is one of them out here, where employers are required to have a retirement plan. If they don't, then they have to join a state-sponsored Roth IRA program for their employees. It's really annoying, called CalSaver. So an employer in California, for example, that wants to get around, doesn't want to deal with CalSaver, can do a starter 401(k) if they will.

Also, you can't technically double your IRA contribution limits, right, because you can put in $7,000 to the starter 401(k) and $7,000 for the traditional IRA. You can increase your contribution limits of the employees. Now, depending on their AGI, maybe they don't get a deduction for the IRA contribution, but at least they can double the contributions. So, benefits, other benefits of these plans listed on the box on Page 4-23 if you are interested.

Part-time employees, the SECURE 2.0 Act expanded the requirement in the first SECURE Act that requires employers to offer -- let me rephrase that -- requires employers to allow their long-term- part-time employees to participate in their retirement plan. So, if you're an employer and you've got long-term-part-time employees and you've got a 401(k), you've got to allow them to participate. Now, employer matching is not required for long-term-part-time employees, but the employees have to be given access to your 401(k) or whatever your employer plan is.

Now, starting in 2025, the SECURE 2.0 Act redefines the term long-term-part-time employee to be anybody with 500 plus hours of service for two consecutive years and also now applies to 403(b)s. Before it was a long-term-part-time employee, it 500 plus hours of service for three consecutive years. So, long-term employee apparently is only two years now.

Starting on Page 4-24, we've got our credit for small employer pension startup costs. This is a credit that's available for the first five years of a plan's existence. The credit is 100% of eligible costs in years one and two, reduced by 25% in each successive year until it gets down to zero. For small employers, there is potentially an additional credit here in this calculation that allows even employer matching contributions to be counted towards the credit, which is really nice for your small, small employers.

Employers should join multiple employer plans, otherwise known as MEPs are eligible for the first five years. They're part of the MEP, even if the multi-employer plan has been in existence for longer. No double benefit here, so, if you do, the employee's income tax deduction for contributions to the retirement plan must be reduced by the amount of any credit claimed.

Let's move on to Roth IRAs, starting at the bottom of Page 4-25. You have to excuse my voice this time of the speaking season after doing so many seminars, my voice starts to get a little raspy as it is right now.

Roth IRAs, contribution limits are the same as traditional IRAs, $7,000 for ‘24 and ‘25 with a $1,000 catch-up for those aged 50 and over. Unlike traditional IRAs, any IRA, AGI limit at which you're not allowed to put in. You know, with the traditional IRAs, we had two AGI charts over in that first couple of Pages of the retirement chapter, and if you remember, what those did is they eliminated the IRA deduction if you or your spouse was a participant in an employer-sponsored plan. If your AGI was too high, you got no deduction for putting into that traditional IRA, but you could still put into the traditional IRA if you wanted to. On the Roth IRA side of things, if your AGI is too high, you just can't put into it the IRA at all. You're just not allowed to put in. And so, you could end up with excess contributions that way. So, AGI phase-out charts for you there, chart, one chart on Page 4-26.

There is no age limit for contributions. You've just got to have earned income. That is the main limit. And on the lower end of the age scale, this is great. I love the Roth IRAs for the teenagers. I'll share with you, I've got three teenagers in the house at home, and all three of my kids at 12 years old, I made them start studying to become soccer referees at 13. At 13, they can become youth soccer referees. So, you know, referees for little mighty-mighty kids, and little tiny kids, referee games, you know, $35, $45 bucks a game, depending on where they're doing the refereeing. And so, I'm able to, so, I make my kids, I made my kids, each of my kids at 13 years old, go get a job, which is awesome because I can yell at my 13-year-old and say, “Get a job,” and he got one, and I'm able to use whatever they make, I'm putting into a Roth IRA for them. So, I'm able to do that. And so that's really great way for young kids to start on a Roth IRA. So, get that kid a job and put him to work so that you can then put into a Roth IRA for them.

Roth conversions, let's talk about those starting on Page 4-26. So, Roth conversions are where we're taking a traditional IRA or 401(k), SEP SIMPLE and we're moving the money into a Roth account. That conversion is a taxable event. Now, you can re-characterize an original contribution from one type of an IRA to another type by the extended due date of taxpayer return. That's not really a conversion; that's a re-characterization. But on Roth conversions, we want to talk about what happens when you have partial conversion. Because when you have a partial conversion, if you have any basis in any one of your traditional IRAs, whether s a traditional IRA, SEP, SIMPLE, they're all treated as a single IRA. Your 401(k)s and 403(b)s those are not, but your IRAs, SEP IRAs, SIMPLE IRAs are all treated as one IRA for purposes of applying the aggregation rules. And what the aggregation rules require you to do is apply basis on a, a pro-rata basis.

Let's let me go through an example. I think it will illustrate the point better. This is the Yasmin example on Page 4-27. Yasmin owns two traditional IRAs with the following attributes. IRA number one has $20,000 of non-deductible contributions. So, she has $20,000 of basis. She's got $10,000 of earnings and it's got a total value today of $30,000. IRA number two has only got deductible contributions that have been made into it over the years of 50,000, 20,000 of earnings, fair market value of $70,000. We have to treat those two IRAs as a single IRA when applying the aggregation rules, which means that we will look at the total column to say that she has $100,000 total IRA and of that $100,000, $20,000 of it is basis, the 20% is basis.

So, here Yasmin wants to convert her IRA number one into a Roth IRA. She believes, as many clients believe, which is why I wrote it this way, that she's only going to have $10,000 of taxable income because she has $20,000 of basis, which is a total of her non-deductible contributions. But she's failing to consider the aggregation rules that require her to treat all of her IRAs as one IRA. And so here, the distribution aggregation rules require her to allocate $30,000 total amount of her traditional IRA funds to be converted to a Roth IRA divided by a $100,000 current fair market value, multiplied by her $20,000 basis and so what she ends up with is she can only use $6,000 of her basis and $24,000 of her $30,000 conversion is taxable, not the $10,000 that she thought.

Now, how do you track all this basis when you've got you know different accounts how much you're using out of each account? Well, when you're treating them all as one account, it doesn't matter how much basis you're allocated to each account. Also, this is the calculation that is done on that Form 8606 that I had mentioned earlier. So, do that on the 8606.

Now, when you do a partial conversion, that's also the same as a backdoor Roth IRA, same rules. The backdoor Roth strategy allows high-income individuals to make a non-deductible contribution to a traditional IRA because their age is too high, and then immediately convert the money over to a Roth IRA.

So, for example, let's say I have, I mean, just using me as an example, I've got, you know I make too much to put into a Roth IRA, but I want to make Roth contributions. I also, let's say I have an employer and I have, I can't make a deductible IRA contribution because I'm a participant in an employer sponsored plan. What I can do is make a $7,000 non-deductible contribution to a traditional IRA, immediately convert those funds to a Roth IRA, and because I have $7,000 in basis, my $7,000 taxable conversion is essentially non-taxable because it's reduced by the basis. And that's a backdoor Roth strategy. And it works well if you don't have other IRAs. If you do have other IRAs, then you're going to run into the same aggregation rules and the same aggregation problem that Yasmin did in the example we just went through.

The other popular strategy is a mega backdoor Roth. Now, a mega backdoor Roth I don't see too often, but I tend to see it in some of the tech company clients that I have because some of the tech companies allow these. A mega backdoor Roth strategy is a way to essentially make very large non-deductible contributions into a 401(k) plan. And because you've got much larger contribution limits, you can do a much larger backdoor Roth, hence the term "mega backdoor Roth."

Let's go -- I have an example, before I get to the example. So, in order to take advantage of the mega backdoor Roth strategy, that first of all, the taxpayers got to be a participant in a 401(k) that allows after tax contributions. And here's where a lot of people get confused. Most people think that today your maximum contribution is, what, $23,000 into a 401(k), at least it was for 2024. And so, they think that that's the max, the total max contribution. That's not right. That's the maximum pre-tax contribution.

Most employer plans limit your total contributions into the plan to the pre-tax dollar amount. In 2024, that was $23,000. But an employer plan can allow you to put in up to the maximum-maximum amount, which in 2024 was $69,000. And the amount you pay, you contribute over $23,000 would be a non-deductible contribution. And by doing that, you're able to do a big, you know, a mega backdoor Roth.

Now in order for the mega backdoor Roth strategy to work again, first the employer's got to allow contributions beyond the pre-tax contribution limit, but also the plan's got to allow the taxpayer to make either an in-plan Roth conversion or an in-service withdrawal, so that you can do the mega backdoor without having to wait until you leave the employer first.

Now, one of the things you have to be careful of is when we talk about the maximum-maximum amount you can put into a 401(k) for the year, and in 2024, that dollar amount was $69,000 for those under age 50, that $69,000 limit is the limit for both employer and employee contributions combined. So, as an employee, you don't want to make all of your employee contributions up to that limit because you've left no more room in the bucket for employer matching contributions. And so, I've got a quick example I'd like to go through on this topic. Topic Page 4-29 on the mega backdoor Roth.

This is the example of Bill. Bill is over age 50 and works for an employer whose plan allows for after-tax contributions, as well as in-service withdrawals. Bill's employer offers both a traditional 401(k) and a Roth 401(k). Bill wants to contribute $60,000 into his 401(k) for the year, and in order to do that, he should first maximize his Roth 401(k) contributions first.

Let me start that again. Bill wants to contribute $60,000 into his Roth 401(k). He wants to make all Roth contributions. So, first, he should maximize his Roth contributions first. He's over age 50, so he could put in $30,500 in 2024. And then what he should do is make after-tax non-deductible contributions of $29,500, and then he takes that $29,500 and converts that over into his Roth 401(k), or even over into a Roth IRA. And that's how the mega backdoor withdrawal works.

Let's talk about early withdrawal penalties. So, the general rule is distributions from a retirement account before age 59 and a half is subject to a 10% early withdrawal penalty. Now, there are a lot of exceptions that apply, but I want to caution you that most exceptions apply to both IRAs and employer-sponsored plans, but not all.

There are some exceptions that only apply to either IRAs or they apply only to employer sponsored plans. And I've had clients get caught up in this. They'll pull money out of a 401(k) and say, “Oh, it's something to do with an exception, right?” It's like, “Well, no, that particular exception only applies to IRAs.”

So, I have a website link for you, middle of Page 4-29, that takes you to the IRS website. It's got a nice chart that has all the early withdrawal penalty exceptions for IRAs as well as employer sponsored plans. Use that as a good reference for yourself when a client asks if a distribution is subject to an early withdrawal penalty exception.

Now, we did get some new exceptions that were created by the SECURE 2.0 Act, and I do want to mention those. They're listed at the bottom of Page 4-29. There are exceptions for distributions for purposes of buying qualified long-term care insurance, so qualified long-term care distributions. Substantially equal periodic payment rules got changed a little bit. There are now new exceptions for domestic abuse, terminal illness, some expansion of the rules for qualified public safety employees, new exceptions for presidentially declared disasters with some limitations in there, such as the $22,000 limit per disaster. There is an emergency savings account distribution exception, and then there's an exception for corrective distributions on excess contribution.

I don't want to go through each of these in detail. I just want to mention them. Those are new this year. We did talk about those, I think, in detail the last two years, first when the SECURE 2.0 came out and then last year we dug into a lot of those in detail. But the IRS did give us some new guidance this year with regard to emergency personal expenditures and victims of domestic abuse. Those are two of our new early withdrawal exceptions under the SECURE 2.0 Act.

When it comes to emergency personal expenses, we can pull out up to $1,000 to meet an unforeseeable or immediate financial need relating to personal or family emergency services. Now, the term “unforeseeable immediate financial need” is not statutorily defined in the code. So, what the IRS did was the IRS came out and gave us a little bit of guidance and said, we already knew this was going to be pretty broad, but what they said was emergency financial need is if you need to pull money out for a taxpayer or a family member for medical care, accidents or casualty losses, imminent foreclosure or eviction of a primary residence, burial or funeral expenses, auto repairs, and any other necessary emergency personal expense.

In my mind, the way I read that is any darn reason you want. And my cynical self says the way this rule works is everybody in the country who takes, who takes an early withdrawal from a retirement account is going to use the first $1,000 as being used for an emergency personal expenditure and is therefore subject to the 10% exception. And we're all going to save our client who does that $100 of early withdrawal penalties by treating $1,000 of that early withdrawal as an emergency personal expenditure. That's how I think everybody's really going to use it.

And let's talk about the wonderful topic of inherited IRS starting on Page 4-32. So, the first SECURE Act passed at end of 2019 created new rules for inherited accounts for deaths after 2019. If you've got a client who's receiving a 1099-R every year, right, distribution Code 4 for inherited, and they inherited their account from somebody who died before 2020, the old rules still apply to your client. There's nothing to change about those distributions that are coming to your client.

They're sort of on a set it and forget it mode right now. Anyway, just leave them as is. But for deaths after 2019, we have three beneficiary classifications that we need to be aware of. First is we have our non-designated beneficiaries, we have our designated beneficiaries, and then we have our eligible designated beneficiaries. Our non-designated beneficiaries are a catch-all category, meaning if somebody is not defined as either a designated beneficiary or an eligible designated beneficiary, then by default they are quite simply a non-designated beneficiary.

Non-designated beneficiaries generally have to pull out the entire balance of their inherent retirement account by the end of the year, by the end, by December -- let me rephrase that -- by December 31st of the year containing the fifth-year anniversary of the decedents date of death. Now, who are these two types of eligible and designated beneficiaries and designated beneficiaries? Well, let's start with eligible designated beneficiaries.

Eligible designated beneficiaries are the only types of beneficiaries who can take RMDs based on their own life expectancy. And there's only five types of eligible designated beneficiaries. We've got surviving spouses, minor children of the decedent who are actually a hybrid. Minor children of the decedent are people who are defined as being under the age of 21 when their parent died, because they have to be not just a minor child, but a minor child of the decedent. They can take distributions based on their own life expectancy until they reach age 21. Once they become age 21, they essentially become a designated beneficiary, and now they've got to take distributions, RMDs every year typically until they reach age 31, and they've got to distribute the entire account by the end of the year in which they turn age 31. That's a weird little hybrid for minor children.

The third type of eligible designated beneficiary is a beneficiary who is not more than 10 years younger than the decedent. I think where we see this most is when somebody leaves an IRA to a sibling, right? It doesn't matter if they're older, they just can't be more than 10 years younger. If they're more than 10 years younger, then they would simply be a designated beneficiary.

And the last two types of eligible designated beneficiaries are those who are disabled and those who are chronically ill. And the IRS's regulations that they put out on this topic, they define disabled as somebody who was disabled as of the decedent's date of death. So, if you're somebody who inherit, you, you inherit an account from somebody who died yesterday and tomorrow your doctor says, "You are, as of today deemed disabled." Guess what? You're not an eligible designated beneficiary. You had to be disabled as of the decedent state of death in order to be classified as an eligible designated beneficiary and take distributions based on your own life expectancy.

Now, a caution I want to lay down for you here is the IRS put in their regulations, is that when it comes to employer sponsored plans, the regulations contain a provision that effectively allows an employer's defined contribution plan, like a 401(k) type plan, to use different rules. For example, they can force either the five-year or the 10-year distribution rule on all beneficiaries. So, even though maybe a surviving spouse is an eligible designated beneficiary, an employer's 401(k) can say, "You got to drain that entire account, surviving spouse, within five years."

They can do that. And for that reason, these rules can be a little frustrating for us as tax professionals, because we can advise a client, "Here's what the rules say." And they client comes back and says, "What? My deceased spouse's 401(k) administrator is telling me I've got to pull all the money out. And you're saying, well, I don't understand why that's not the rule." And the reason is, "Well, the regulations allow the employer to do that."

So, it's best to have your client go to the employer plan, say, "What are the distribution options that the employer's plan allows," and then you make your decision there. But certainly, for IRAs, the rules as written are going to apply to IRAs. Example of this on Page 4-33, if you're curious, I'm not going to go through it though. I think I sort of explained that pretty simply.

Let's talk about designated beneficiaries. So, individuals who are not classified as eligible designated beneficiaries and individuals as well as see-through trusts are generally going to be our designated beneficiary category. And these taxpayers must distribute the entire account, the entire inherited account by December 31st of the year containing the 10-year anniversary of the decedent's date of death.

Now, during that 10-year period, the decedent, I'm sorry, the person inheriting the account must take RMDs during the 10-year period if the decedent had reached their RMD age at their date of death. If the decedent did not yet reach their RMD age, then the designated beneficiaries can just leave every dollar in that inherited account, in the inherited account, and take every penny out on December 31st of the year containing the 10-year anniversary of the decedent state of death, if they want. Now, that might not be the best income planning strategy to have a whole bunch of income coming in in one year, but if you wanted to do it, you could do it.

The IRS has provided relief a couple of times for the RMD rules, and ultimately with the final regulations, which came out last July said, is that for the most part, if you inherited a retirement account from somebody who died in 2020, 2021, 2022, 2023, 2024, your first RMDs have to come out of the account in 2025.

You don't have to make up prior year RMDs, but you just have to start taking RMDs in 2025. So, despite the fact that there was this 10-year rule, there was a lot of confusion surrounding how that rule would work. So, the IRS put off the RMD rules a few times. So, starting 2025, now you've got to take your first RMDs. The 10-year rule is not stretched any further. It's still December 31st of the year containing the decedent's 10-year -- sorry -- of the year containing the10-year anniversary of a decedent state of death, but you at least got to get a way, you got a way with not having to take RMDs for a few years in there.

Now, very recently, right at the end of December, I think it was, the IRS put out yet more RMD relief, but that new RMD relief is for a much, much narrower subset of beneficiaries. For example, what the IRS is now saying, because when the, I guess – let me back up for one second.

When the IRS issued its final regulations on the RMD rules last July, at the same time, they also issued a new set of proposed regulations to address new issues they hadn't previously addressed. And so, one of those issues in those proposed regulations, for example, deals with the situation is what if a surviving spouse inherits a retirement account from their spouse, and then they die before they take any distributions.

Now, their beneficiaries, when do they have to start taking RMDs? And what the IRS said was, "Well, okay, we'll let the proposed regulations run their course until they're finalized. We'll let that subset of people wait until 2026 before they have to take their first RMDs." And there's a couple other scenarios in there as well, but again, it's a very, very narrow subset of people with really unique situations. So, we've got some more information on that coming out in the next couple of months, but it's, suffice to say, that's pretty narrow subset of people.

Let's talk about inherited Roth accounts. Inherited Roth accounts are subject to 10-year distribution rule for designated beneficiaries and do not have an RMD requirement, no matter how old the decedent was when they died. And the reason for that is because you don't have an RMD requirement for a Roth account, you technically never reach an RMD age. So, if you inherit a Roth account from somebody, you don't have to pull that money out of the Roth account. No RMDs during your 10-year period. If you're a designated beneficiary, you can simply wait until December 31st of year 10 to pull that money out. And I think that's probably a really good option. Now, now you're going to get 10 years of tax deferred growth out of that account, and then you pull it all out of December 31st and it's all tax free. So, keep that money in the tax for account as long as possible.

Okay, we are on to helpful charts. So, one thing we give to you every year in our retirement chapter is a handful of helpful charts. And we have those starting on Page 1, I'm sorry, 4-35. On that Page, we start with our maximum deductible contributions to IRAs, Keogh plans and SEPs. That goes all the way back to the 1963, all the way back to the dawn of time. Those, that's a two-page chart.

Then on Page 4-37 is another chart, set of charts, I should say, that I do reference on a very regular basis in my practice. And these are our retirement plan limitation charts for all the different retirement plans we've talked about here: IRAs, 401(k)s, SIMPLEs, SEPs, Solo 401(k)s, that sort of thing. What are the maximum contribution limits? That's on Page 4-37. Good chart to grab.

I'm going to move on to Social Security issues. So, FICA and some employment tax chart we've got for you on Page 4-38. We show you a few years there. We really see how our maximum wage and income base has really bumped up for FICA purposes; right. In 2021, it was just under $143,000 and in 2025, it's already up all the way to $176,000. So, just a quick chart there for you.

Our 2025 cost of living adjustment for Social Security is two and a half percent. So much lower, I think, than a lot of seniors would like. You know, based on their inflation formulas, Social Security does, our adjustment wasn't nearly as big as it was, what, two years ago, I think it was 8.9%. Ask your seniors and they'll tell you the food prices are still too high for only two and a half percent, but that's their COLA.

Now, as a quick practice pointer, we do want to advise you to create your own SSA account if you don't have one or have your clients create their own account and make sure you download your annual Social Security statement. I don't think Social Security even mails them out anymore. So, you got to have an account online, download the statement. I download mine every year. I make sure that the that I'm getting full credit for the Social Security taxes that I pay. So that maximizes the Social Security I'm probably not going to get when I retire, but you should at least review it. That way, if there are any errors, it's easier to catch them when you're only one year behind than if you're trying to figure out there was an error 15 years later. So, check that out.

Medicare premiums. On Page 4-40, what we have for you is our usual Medicare premium surcharge charts for Part B and Part D. You know, again, you know, I talked about, I think yesterday I talked about tax planning on the fringes, you know, where we have, you you're doing tax planning around, you know, your income tax brackets, your long-term capital gain rate brackets. Another great one is the Medicare premium surcharge charts.

I will tell you, I was very embarrassed dealing with a client last year. It might've been the year before, but somewhat recently, where a client of mine, who usually put money into a SEP IRA every year, decided not to because their financial advisor said, “You've put too much money into your SEP, I really want you to have more post-tax money, so don't put any more money into the SEP.” And I just said, “Okay. He's giving you pretty good advice, go ahead, take that strategy.”

And then my client came back to me, a few months later and said, “Mike, why didn't you have me put money into the SEP IRA?” And I told her, said, “Well, because your financial planner didn't want you to.” And she said, “But Mike, I got hit with a Medicare premium surcharge. If you had just told me to put only $2,000 into the SEP IRA, I would have not got hit with that additional premium surcharge.”

And I'm sure you've all had this happen to you; right? That sinking feeling in my stomach where I knew I had made a planning mistake and because I just didn't take the time to look at her Medicare premium chart to see where she was. And I was so embarrassed. I had been giving her really good advice over many years. So, you know, I didn't lose a client there, but for her especially, but now everybody else as well, that's a lesson well learned that I'm not going to be taking for granted. Make sure you review these Medicare premium charts to see, to see if there's any planning you can do to keep your client in the lower Medicare bracket, because they will much, much appreciate that extra work you're doing there.

Let's talk about the unified exclusions let’s move there. For 2024, the unified exclusion is was $13.61 million. People who died in 2025, bumped up just shy of $14 million. Scheduled to get cut in half. So, for 2026, you can expect it to be probably just north of $7 million if the TCJA provision sunsets. We've already talked, I think yesterday during our tax planning chapter, the chances of that seem to be pretty slim, of a sunsetting, but scheduled right now to be cut roughly in half.

Let's talk about portability though, because we have such a large exclusion amount, it does still make sense to file an estate tax return to claim portability. You know, far fewer clients, you know, are filing estate tax returns when the exclusion is now this year in almost $14 million. But the deceased spouse's unused exclusion portability provisions allow a surviving spouse to inherit the unused portion, excuse me, the unused portion of their predeceased spouse's estate and gift tax exemption.

So, if you're filing a Form 706 only to make the portability election, meaning your estate's not big enough that you have to file an estate tax return, but the surviving spouse is choosing to file one for their pre-deceased spouse so that the surviving spouse can take their deceased spouse's unused exclusion, then the due date of the Form 706 is five years from the decedent state of death. So, you've got quite a little bit of time. I don't recommend waiting that long. I'd rather prepare a tax return while it's a little bit fresher in my head than five years, but you've got five years.

Now, one common misconception that people have is people seem to think that if you're filing an estate tax return, only to claim portability, so, once again, your estate's small enough that you don't have to file one at estate tax term, you're choosing to file one to claim portability, there is a common misconception among tax professionals that somehow that 706 you file is an abbreviated version. And that's not true. If you file a 706 to claim portability, you have to file a complete 706, but what you are allowed to do is estimate estate values.

So, you don't have to go get appraisals and everything. Now I recommend that you do. I think it's a good idea to be as accurate as possible within reason, but you don't have to. You do get to estimate values. So, maybe, you know, and, and again, I've got a caveat on this one. If for some reason you are anywhere near that exclusion amount, and they said 2025, it's $13.99 million, if your estate is, say, $12 million, I definitely recommend you go get appraisals of things. Because if you've got a $12 million estate, particularly if some of your assets are things like real estate and such, then estimating values, the IRS may estimate values differently and think that your estate is actually bigger and you should be filing a 706 within the nine-month period.

So, so, please, if you're anywhere near that, treat it like a real 706. I think the only people who should be estimating values are people who maybe, you know, all of their assets are stocks that are easily valued anyway and they're nowhere near the unified exclusion amount. That's what I think makes more sense to use the estimated values.

We have some information for you on Page 4-43, just some tips on filing, you know, what you're supposed to do if you are filing after the original due date, you're using that five-year process. You, you want to write "Filed pursuant to Rev. Proc. 2022-32," right, for example. So, we've got some tips for you on Page 4-30 -- Page 4-43 when it comes to filing that return.

Let's talk about Charitable Remainder Trusts, specifically Charitable Remainder Annuity Trusts that allow a trust grantor to receive a charitable contribution deduction today for the net present value of the remainder interest in the trust while providing an annual income stream to the grantor. Typically, what someone's going to do is they're going to take an appreciated asset, maybe it's a rental property or something, they're going to put it into a Charitable Remainder Trust, take a big charitable contribution deduction today, that account, that asset's going to be sold in the trust, you get a charitable contribution today, get an income stream from the assets of the trust, and then at the end when your client dies, then all the assets of the trust go to the charity.

So, there's, there's definitely a solid estate planning and income planning use for these Charitable Remainder Trusts. But the IRS did issue proposed regs in 2024 targeting Charitable Remainer Annuity Trust that invest specifically in certain annuity contracts, specifically what they call "Single Premium Immediate Annuities." This is a new abusive strategy, I'm going to call it, that the IRS has defined now in proposed regulations as being a listed transaction which requires special reporting.

And so, I've got some information in the material here. It's really unique, so I'm not going to dig really into it, but what I want to say is if you've got clients who are coming to you saying that someone is selling them on a Charitable Remainder Trust, it's got this great option and I can put this annuity in it. And as soon as you hear "Charitable Remainder Trust and annuity," think to yourself, "Wait a minute. The IRS is targeting these transactions," and see if your client's transaction sort of matches what's going on in the materials that I have here, and then you'll know what to do and how to treat that transaction. The IRS is really attacking some of these because they're being a bit overly aggressive on them.

Gift tax issues. Annual gift tax exclusion for 2024 was $18,000, bumps up to $19,000 for 2025. We did get an interesting CCA at the end of 2023, so, I wanted to include it here, so we didn't talk about it last year, is we had a taxpayer who created an intentionally defective grantor annuity trust, so intentionally defective grantor trust, and what they forgot to do is include a tax reimbursement provision in the original trust. And so what they did was they went back to the tax, not the tax court, back to the state court and asked the court for permission to amend the irrevocable trust, which they were allowed to do under state law, but only if all the beneficiaries agreed. And here, they did, because all the beneficiaries were getting something from nothing, they were happy to do it, but what the IRS said in their chief counsel advice memorandum was that when the beneficiaries agreed to reimburse the grantor for the taxes they'd be paying on assets that they don't have access to, that the beneficiaries were therefore giving up a right that was legally given to them and therefore, the tax reimbursement provision created a taxable gift from the beneficiaries back to the grantor, which was really an interesting scenario, very unique.

You know, intentionally defective grantor trust can have tax reimbursement provisions written into them, but if you forget to put it in at the start with, and then you go back and you fix it, the IRS is going to want to treat that, the taxable gift from the beneficiaries, back to the grantor. I've got two other cases I'm going to skip in here, but they're somewhat interesting. The Huffman case deals with family stock sale issue and Section 2703 issues, if you're familiar with those, stocks, family stock sales that were deemed gifts. And then a second situation where family loans were deemed to be gifts. This is a situation where you make loans to a family member's business, but never actually demand a repayment and in fact, there are no payments for many, many years. The IRS is going to want to reclassify those as gifts and not loans. And that's what we saw there in that case.

Lastly, in the retirement chapter, taxpayers can make up to five years of gifts all at once into a beneficiary's 529 account. Gift tax returns are required in the first year you make that super funding, but if your client doesn't have a gift tax filing requirement in subsequent years during that five-year period because of other gifts they make, they don't have to file a gift tax return just to report each year of that five years in the 529.

I'm a bigger fan of education gifting as an alternative to cash gifts into a 529 account. You know, too often I'll have a client that says, “You know, hey, my, you know, nephew or my grandson or daughter, you know, got admitted into, you know, name your big school, you know, Stanford, and I want to make a gift into a 529 account for them.” And I say, “Well, why bother, right? A 529 account is best when you benefit from the tax-free growth.”

So, you put the money in when the kid is small, but if the kid's 18 years old, they've already got admitted to the school, you're going to put money into the 529 account and 13 months later, they're going to pull it out to pay for tuition? What you'd be better off doing is just paying the tuition directly as it comes due, or least however much you want to help with. Because when you pay tuition directly to the university, that does not count as your annual, towards your annual gift. And you can save that annual gift for that, that student if you want to give them some spending cash.

And because it's not considered an annual gift, you can pay all the tuition if you want and not be subject to the gifting rules. So, 529 Super funding and 529 accounts, I'm a big fan of, but they're better when the kid is small. The kid's near college or already in college, just pay the tuition directly. It's a better option.

I've got some tips for filing your final 1040 here. Well, you wouldn't be filing the final 1040. I mean, that's not for yourself, but for filing clients with the 1040. The IRS though, I tell you, they do have delayed processing of refunds for deceased taxpayers. So, try not to have a refund if you can avoid it for somebody who's deceased. I mean, if you know they died mid-year, turn off any estimates or anything. You'd rather pay the IRS on April 15th than have to wait eight and a half years for a refund. They're not quite that slow, but not far from it.

Fiduciaries can't find themselves personally liable, so watch out for that. Medical expenses, if they're paid within one year of death, you can deduct them on the 1040, but you've got to elect to deduct them on the 1040 and make sure you don't also deduct them on the 706, if a 706 is required. Final medical expenses cannot be reported on a 1041, though, for the estate's income tax return or for a trust.

# RETIREMENT TAX UPDATE

## NEW RETIREMENT PROVSIONS GOING INTO EFFECT IN 2024

The following chart shows the SECURE 2.0 Act provisions that are going into effect in 2024. See page 4-53 for a chart of SECURE 2.0 Act provisions going into effect in 2025 and later.

| SECURE 2.0 Act Provisions Going Into Effect in 2024 | |
|---|---|
| **Change made** | **SECURE 2.0 Act section** |
| *Contribution-related provisions* | |
| $1,000 IRA catch-up contribution indexed for inflation | 108 |
| Additional nonelective contributions to employee's SIMPLE accounts | 116 |
| Contribution limits for SIMPLE plans increased | 117 |
| Option to offer non-highly compensated employees emergency savings accounts linked to their employer retirement account | 127 |
| *Distribution-related provisions* | |
| Waiver of 10% early distribution penalty for:<br>• Emergency personal expense distributions;<br>• Emergency savings account distributions; and<br>• Domestic abuse victims | <br>115<br>127(e)<br>314 |
| Qualified charitable distributions to an IRA: $100,000/$50,000 amounts indexed annually for inflation | 307 |
| RMD requirement removed for employer-sponsored Roth accounts | 325 |
| Employee's surviving spouse may be treated as if they are the employee for RMD purposes | 327 |
| *Roth provisions* | |
| Direct trustee-to-trustee rollovers from §529 plan to Roth IRA if §529 account was held for at least 15 years | 126 |
| *Employer- and plan-related provisions* | |
| Employer can treat employee's student loan repayments as employee retirement contribution | 110 |
| Employers may offer "starter" 401(k) or "safe harbor" 403(b) plans | 121 |
| Employer may perform the top-heavy test separately on nonexcludable and excludable employees | 310 |
| | *(continued)* |

| SECURE 2.0 Act Provisions Going Into Effect in 2024 (continued) | |
|---|---|
| **Change made** | **SECURE 2.0 Act section** |
| *Miscellaneous provisions* | |
| Employers may unilaterally transfer larger number of former employee's retirement accounts from a workplace retirement account into an IRA | 304 |
| Treasury to establish a retirement savings "lost and found" | 303 |
| Revises family attribution rules where spouses with separate businesses reside in community property states | 315 |
| Employer plans may be amended to increase participant benefits to be adopted by the due date of the employer's tax return instead of the end of the plan's year | 316 |
| Employers may replace SIMPLE IRA plans with SIMPLE 401(k) or other 401(k) plans that require mandatory employer contributions during the plan year | 332 |
| Changes to annual funding notices provided to defined benefit pension plan participants | 343 |
| Grants provided through Department of Labor to promote employee ownership and succession planning for businesses through existing and new programs | 346 |
| Employer plans may self-correct errors made with respect to auto-enrollment and auto-escalation features of retirement plans | 350 |
| Conforms 403(b) plan hardship withdrawal rules to the 401(k) hardship rules | 602 |

## <u>TRADITIONAL IRAs</u>

### IRA Contribution Amounts

Individual taxpayers can make contributions to an IRA up to the lesser of $7,000 for 2024 (also $7,000 for 2025) or the individual's earned income. Taxpayers age 50 or older can also make an additional catch-up contribution of $1,000. If neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan, then the entire contribution is deductible. (IRC §219(b))

Married couples can make a deductible IRA contribution of up to $14,000 for 2024 (also $14,000 for 2025) if the combined compensation of both spouses is at least equal to the contributed amount. (IRC §219(c))

| Maximum IRA Contribution | | |
|---|---|---|
| | **Amount** | **Catch-up (age 50 and over)** |
| **2024 (Notice 2023-75)** | $7,000 | $1,000* |
| **2025 (Notice 2024-80)** | $7,000 | $1,000* |
| * The $1,000 IRA catch-up contribution for taxpayers age 50 and older is indexed for inflation, effective for taxable years beginning after December 31, 2023. (IRC §219(b)(5)(C)) However, as shown in the chart, the amount didn't increase for 2024 or 2025 | | |

**Practice Pointer**

For taxpayers located in federally declared disaster areas for which the IRS has granted payment and filing postponement relief, taxpayers eligible for the relief have until the postponement deadline to make their contribution for the prior year. Tax professionals working with taxpayers located in disaster areas should keep this in mind. Remember, the taxpayer generally does not have to be directly impacted by the disaster to qualify for this relief.

### Taxpayer Active In Employer-Sponsored Plans

Taxpayers who are active participants in an employer-sponsored retirement plan will have the deductible portion of their traditional IRA contributions reduced or completely eliminated if their AGI is over the following income limits:

| AGI Phaseout Ranges for Taxpayers Active in Employer-Sponsored Plans | | | |
|---|---|---|---|
| **Beginning taxable year** | **Single, HOH, MFS (did not live with spouse)** | **MFJ** | **MFS (lived with spouse at any time during year)** |
| 2024 (Notice 2023-75) | \$77,000–\$87,000 | \$123,000–\$143,000 | \$0–\$10,000 |
| 2025 (Notice 2024-80) | \$79,000–\$89,000 | \$126,000–\$146,000 | \$0–\$10,000 |

**Caution**

The AGI phaseout range for married taxpayers filing separate returns is \$0–\$10,000 unless the couple lived apart at all times during the tax year. In that event, the couple is treated as if they are not married for IRA contribution purposes. (IRC §219(g)(4)) Thus, only each individual's AGI and status as an active participant is taken into account, and the reduction begins at the AGI threshold applicable for unmarried taxpayers.

☑ **Planning Pointer**

It is generally better to contribute to an employer-sponsored retirement plan before contributing to an IRA, at least up to the point of maximizing employer matching contributions.

### Taxpayer Is Not An Active Participant, But Spouse Is

If the individual is not an active participant in an employer-sponsored retirement plan but the individual's spouse is, the IRA deduction limit is phased out for taxpayers with the AGIs listed here:

| AGI Phaseout Ranges for Nonactive Participant Individual with Active Spouse | | |
|---|---|---|
| **Beginning taxable year** | 2024 (Notice 2023-75) | 2025 (Notice 2024-80) |
| **AGI phaseout range** | \$230,000–\$240,000 | \$236,000–\$246,000 |

## EXCESS IRA CONTRIBUTIONS

### Excise tax on excess contributions

Excess contributions from one year may be treated as IRA contributions in a later taxable year, but the 6% excise tax applies to each year the excess contribution remains in the IRA. (IRC §§219(f)(6), 4973(a)) This correction occurs automatically for any year for which a taxpayer fails to contribute the maximum allowable amount to the taxpayer's IRA.

However, if the statute of limitations has expired in the year of the excess contribution and a deduction was taken for the contribution in that year, the excess contribution is instead remedied by reducing the allowable deduction for the later year. (IRC §219(f)(6)(C))

***Example of carryover of excess contribution***

Shannon is over age 50 and earned $6,000 in wages in 2024 and contributed $8,000 to an IRA. Assume that Shannon does not withdraw any amount after the contribution. She has an excess contribution for 2024 of $2,000 and must pay a penalty of $120 (6% × $2,000) for 2024.

In 2025, she earns $15,000 in compensation and makes a $1,000 contribution to her IRA. Shannon will be treated as having made an additional contribution of $2,000 for 2025 and will be allowed to deduct $3,000 as her 2025 IRA contribution.

### Withdrawing excess contributions by due date of return

Taxpayers can avoid the 6% excise tax on excess IRA contributions if the excess amount is withdrawn, plus earnings on the excess contribution, by the due date of the taxpayer's return, including extensions. (IRC §408(d)(4))

The calculation of net earnings on excess contributions is computed using Worksheet 1-3 from IRS Publication 590-A.

***Comment***

Excess IRA contributions should not be confused with nondeductible IRA contributions.

Taxpayers can make IRA contributions up to the annual limit even if they don't receive a deduction for the contribution. Nondeductible contributions increase the taxpayer's basis in their IRA equal to the amount of the nondeductible contribution.

Excess contributions deal strictly with situations where a taxpayer has contributed more than they are allowed to contribute to an IRA.

## IRA DISTRIBUTIONS

The mandatory age to begin taking required minimum distributions (RMDs) is age 73. The RMD age is increased to age 75 for taxpayers born after 1959. (IRC §401(a)(9)(C)(i)(I))

### Missed RMDs

Taxpayers who fail to timely take their RMD are subject to an excise tax of 25% of the RMD shortfall. (IRC §4974(a)) The excise tax is reduced to 10% if the taxpayer corrects the shortfall and files a tax return reflecting the excise tax by the earlier of the following dates (referred to as the "correction window"):

- The date the IRS issues a notice of deficiency with respect to the excise tax;
- The date the IRS assesses the excise tax; or
- The end of the second taxable year after the shortfall occurred. (IRC §4974(e))

***Sample waiver explanation (attachment to return: explanation on Form 5329, Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts, line 52)***

The taxpayer is elderly and made a mistake by not taking the full amount of the 2024 required minimum distribution. Upon discovery of the shortfall, taxpayer took a distribution on February 5, 2025, of $10,000, the full amount of the required minimum distribution.

The taxpayer has already taken the full required minimum distribution amount for 2025 and has taken steps to ensure that the failure does not occur in the future.

The taxpayer will not report the missed $10,000 as a taxable distribution in 2024. Instead, the taxpayer will report both the $10,000 and the 2025 required minimum distribution as income in 2025, as will be reported on Form 1099-R.

**Statute of limitations on excess contributions and RMD failures**

The three-year statute of limitations for purposes of imposing the excise tax on excess accumulations in an IRA stemming from a failure to take the requisite RMDs begins on the date the IRA owner files their Form 1040 for the tax year in which the RMD was not taken. (IRC §6501(l)(4)) If the individual was not required to file a tax return for that year, the date will begin on the date the individual would have been required to file a return, including extensions, if the individual were required to file a return.

For excess contributions to an IRA, the statute of limitations period is six years from the date Form 1040 is filed, except in cases of a bargain sale to the IRA, in which case the statute of limitations period begins to run from the date Form 5329 is filed.

Prior to the date of enactment of the SECURE 2.0 Act on December 29, 2022, if the tax return was never filed, or Form 5329 was never filed, then the statute of limitations never began to run.

**Qualified longevity annuity contracts**

Qualified longevity annuity contracts (QLACs) are investment vehicles that allow taxpayers to remove assets from their IRA and hold them until later retirement years. (Treas. Regs. §1.401(a)(9)-6, Q&A 17)

The cornerstone of the QLAC is the removal of RMD requirements for assets placed in a QLAC. They make it easier for retirees to address the risk of outliving their assets by using a limited portion of their retirement savings to purchase a policy in a retirement plan that will provide guaranteed income for life starting at an advanced age. Distributions from the QLAC must commence no later than age 85 (although the contract may specify an earlier age).

***Example of stretching IRA***

Juan is 74 years old and his IRA contains $1.5 million. Juan's RMD is $58,824 ($1,500,000 ÷ 25.5 life expectancy factor). Juan receives Social Security benefits and other sources of passive income, so he does not need to use the money from his IRA to live on. He put $200,000 in a QLAC, which reduced his current-year RMD by $7,843 ($200,000 ÷ 25.5 life expectancy factor).

In addition to reducing his RMDs, if the annuity pays 3.5% over the next 11 years, Juan's $200,000 will be worth over $260,000 when he is 85 years old and must begin drawing on the annuity.

**Maximum QLAC investment**

The premiums paid for all QLAC contracts for the benefit of any individual cannot exceed $200,000 (indexed for inflation starting in 2025; the 2025 amount is $210,000 (Notice 2024-80)).

**Eligible accounts**

QLACs may be purchased under:

- Defined contribution plans;
- Traditional IRAs;
- IRC §403(b) plans; and
- Governmental IRC §457(b) plans.

***Comment***

QLACs cannot be purchased with funds from an inherited IRA.

**QLAC requirements**

Under a QLAC, a plan may provide that if the purchasing retiree dies before (or after) the age when the annuity begins, the premiums they paid but have not yet received as annuity payments may be returned to their accounts.

**Form 1098-Q**

Form 1098-Q, Qualifying Longevity Annuity Contract Information, is an annual information statement prepared by the issuer of a qualified longevity annuity contract (QLAC).

Form 1098-Q is very similar to Form 5498, IRA Contribution Information, which is issued annually by the trustee of an IRA to its owner. Where Form 5498 can help provide information to taxpayers and tax professionals, such as the fair market value of the IRA for purposes of calculating RMDs or the taxable portion of IRA distributions where basis is present, Form 1098-Q also provides helpful planning information.

Form 1098-Q provides the taxpayer with the following:

- **Box 1a:** The amount of the taxpayer's monthly annuity on the annuity's start date;
- **Box 1b:** The annuity's start date;
- **Box 2:** Whether the annuity can be accelerated to a date before the date shown in box 1b;
- **Box 3:** The total premiums paid for the annuity; and
- **Box 4:** The fair market value of the annuity as of December 31 of the reporting year.

The information contained in Boxes 1a and 1b is helpful for income and estimated tax planning as the taxpayer gets closer to the annuity start date.

Box 2 may be checked, indicating whether the annuity start date can be accelerated, which can come into play if the taxpayer cannot wait until the annuity start date shown in Box 1b to access their money. The QLAC contract will dictate the terms of annuity acceleration, but Box 2 tells the taxpayer that there may be an acceleration option available to them.

Box 3 indicates whether the taxpayer has maximized their QLAC contributions or can contribute more. Taxpayers can move up to $200,000 from their IRA into a QLAC. If the sum of Box 3 on all QLAC contracts owned by the taxpayer is less than $200,000, then the taxpayer can still make additional QLAC investments if they want.

**IRA to charity (qualified charitable distributions)**

Taxpayers may exclude "qualified charitable distributions" (QCDs) from their AGI. (IRC

§408(d)(8)) The inflation adjusted figured is $105,000 for 2024 and $108,000 for 2025. (IRS Notices 2023-75 and 2024-80)

QCDs are:

- Made directly by the IRA trustee to a charitable organization; and
- Made on or after the date the taxpayer reaches age 70½.

**✐ Practice Pointer**

QCDs offer taxpayers the following benefits:

- QCDs count toward the taxpayer's RMDs for the year;
- Taxpayers who have basis in their IRA can allocate all of their QCD to earnings, thus leaving additional basis available to be allocated to other distributions;
- QCDs are not taxable, thus reducing the taxpayer's AGI when used as part of the taxpayer's RMD, which can help with other tax attributes tied to AGI, such as the percentage of Social Security benefits subject to tax, the net investment income tax, the medical expense deduction threshold, and many others;
- In addition to tax attributes tied to AGI, the lower AGI resulting from QCDs can also help taxpayers stay in a lower Medicare premium surcharge bracket (aka income-related monthly adjustment amount);
- By excluding QCDs from taxable income, charitable contributions made through QCDs effectively become deductible even if the taxpayer doesn't itemize deductions; and
- Starting with the passage of the SECURE 2.0 Act, QCDs can also be used to purchase a qualified charitable annuity (discussed below).

***Comment***

Some IRA trustees provide their clients with checkbooks attached to their IRA accounts. Charitable contributions made using checks attached to an IRA account count as distributions made directly by the IRA trustee.

***Comment***

Even though the age at which RMDs must begin is now age 73, taxpayers can still make qualified charitable distributions starting at age 70½ (the RMD age prior to the 2020 taxable year).

Distributions may not be made to a:

- Private foundation; or
- Donor-advised fund.

**✐ Practice Pointer**

When making qualified charitable distributions, be sure to include the initials "QCD" on the dotted line next to taxable IRA distributions on Page 1 of Form 1040. Most tax software products should insert these initials if you have done your data input correctly.

The initials "QCD" tell the IRS that the taxable IRA distributions won't match what's reported on Form 1099-R. Remember, Form 1099-R does not contain any codes or other indications that a taxpayer sent a portion of their distribution directly to a charitable organization. For this reason, tax professionals should always make a point to ask their clients if they made charitable contributions directly from their IRA.

**Limited distributions allowed to gift annuities and charitable remainder trusts**

The SECURE 2.0 Act allows for one-time qualified charitable distributions from IRAs of up to

$50,000 to be contributed into charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, applicable to distributions made in taxable years ending after December 29, 2022. (IRC §408(d)(8)(F))

The election is only available if the annuity or trust is funded exclusively by qualified charitable distributions, and in the case of the charitable gift annuity, if the annuity commences fixed payments of 5% or greater not later than one year from the date of funding.

The $50,000 contributed to the split entity trusts/annuities described above counts toward the taxpayer's overall $100,000 qualified charitable distribution limitation. These amounts are each adjusted annually for inflation. For 2024 they are $53,000 and $105,000. (IRS Notice 2023-75) These amounts are $54,000 and $108,000 for 2025. (IRS Notice 2024-80)

**Client letter for IRA to charity QCDs**

To download a copy of Spidell's client letter, go to:

**💻 Website**
www.caltax.com/cl-iracharity

**ROLLOVERS**

Rollovers are used to transfer funds from one eligible retirement account to another. Rollovers can be direct trustee-to-trustee transfers or the taxpayer can take a distribution from one retirement account and deposit the funds into another eligible retirement account within 60 days. (IRC §§402(c)(3), 3405) See page 4-10 for a chart of allowable rollovers. Failure to meet the requirement means that the amount withdrawn may be treated as a taxable distribution and is subject to the 10% early withdrawal penalty.

**Missed 60-day rollover window**

Taxpayers who, due to one or more specified reasons, missed the 60-day time limit to roll over distributions from a retirement plan can self-certify that they missed the window due to an allowable reason. (Rev. Proc. 2016-47)

Generally, a 10% additional tax applies to distributions made from qualified plans and IRAs if the recipient has not attained age 59½ on the date of distribution. (IRC §72(t)) If the taxpayer meets certain criteria after missing the 60-day rollover window, the taxpayer can avoid the penalty by one of three methods:

- File a private letter ruling (PLR) with the IRS;
- Use the automatic approval procedures under Revenue Procedure 2003-16; or
- Use the self-certification process.

**The self-certification process**

Under this procedure, the taxpayer can make a written certification to a plan administrator or IRA trustee by using a model letter provided in Revenue Procedure 2016-47 (and modified by Revenue Procedure 2020-46). The plan administrator or IRA trustee can, absent actual knowledge to the contrary, rely on the certification.

The certification must state that a contribution satisfies all of the following conditions:

- The IRS must not have previously denied a waiver request with respect to a rollover of all or part of the distribution to which the contribution relates;
- The taxpayer must have missed the deadline because of the taxpayer's inability to complete the rollover for one of the 12 reasons specified in Section 3.02 of Revenue Procedure 2020-46, including error by the financial institution, error by the post office, and death in the taxpayer's family; and
- The contribution must be made to the plan or IRA as soon as possible after the application reason (or reasons) no longer prevent the taxpayer from completing the rollover contribution. This requirement is deemed satisfied if the contribution is made within 30 days after that time.

The taxpayer's self-certification is not a true waiver of the 60-day requirement because the IRS can still deny the waiver on audit if they determine that the taxpayer did not meet the requirements.

**Automatic approval**

The IRS will waive the penalty without a request for a PLR if all of the following occur:

- A financial institution receives funds on behalf of a taxpayer prior to the expiration of the 60- day rollover period;
- The taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period (including giving instructions to deposit the funds into an eligible retirement plan); and
- Solely due to an error on the part of the financial institution, the funds are not deposited into an eligible retirement plan within the 60-day rollover period.

(Rev. Proc. 2003-16)

Automatic approval is granted only if:

- The funds are deposited into an eligible retirement plan within one year of the beginning of the 60-day rollover period; and
- It would have been a valid rollover if the financial institution had deposited the funds as instructed.

### Comparison Chart of Allowable Rollovers

| Comparison Chart of Allowable Rollovers | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **Rollover To** | | | | | | | |
| **Rollover From** | **IRA** | **SEP- IRA** | **SIMPLE IRA** | **Roth IRAs (traditional, SEP and SIMPLE)** | **457(b)** | **403(b)** | **Qualified Plan** | **Designated Roth Account** |
| **IRA** | Yes | Yes | Yes, after two years | Yes, must include in income | Yes, must have separate accounts | Yes | Yes | No |
| **SEP-IRA** | Yes | Yes | Yes, after two years | Yes, must include in income | Yes, must have separate accounts | Yes | Yes | No |
| **SIMPLE IRA** | Yes, after two years | Yes, after two years | Yes | Yes, after two years. Must include in income | Yes, after two years. Must have separate accounts | Yes, after two years | Yes, after two years | No |
| **Roth IRAs (traditional, SEP, and SIMPLE)** | No | No | No | Yes | No | No | No | No |
| **457(b)** | Yes | Yes | Yes, after two years | Yes, after December 31, 1997. Must include in income | Yes | Yes | Yes | Yes, must include in income, must be an in-plan rollover |
| **403(b)** | Yes | Yes | Yes, after two years | Yes, after December 31, 1997. Must include in income | Yes, must have separate accounts | Yes | Yes | Yes, must include in income, must be an in-plan rollover |
| **Qualified Plan** | Yes | Yes | Yes, after two years | Yes, after December 31, 1997. Must include in income | Yes, must have separate accounts | Yes | Yes | Yes, must include in income, must be an in-plan rollover |
| **Designated Roth Account** | No | No | No | Yes | No | No | No | Yes, if a direct trustee-to-trustee transfer |

**Warning:** The comparison chart shows general information that may not be applicable to all plans. Not all accounts allow rollover contributions. (Treas. Regs. §1.402(a)(31)-1, Q&A 13) Check with your pension administrator for additional requirements. A trustee-to-trustee transfer is required in some instances. A 60-day rollover rule may apply. (www.irs.gov/retirement-plans)

## SEP AND SIMPLE IRAs

### SEP IRAs

Simplified Employee Pension (SEP) plans are, as the name implies, simplified defined contribution pension plans. A SEP does not have the start-up and operating costs of a conventional retirement plan and allows for a contribution of up to 25% of each employee's pay or self-employment income in the case of a sole proprietor or partner in a partnership. (IRC §408(k))

SEP IRAs:

- Are available to any size business;
- Are easily established;
- Have no filing requirement for the employer; and
- Only accept employer contributions.

Employers make contributions to a separate SEP IRA for each eligible employee (and owner), and contributions are always 100% vested to the participant.

### Deadline to establish SEP IRA

Taxpayers can set up a SEP IRA as late as the due date (including extensions) of the business income tax return for the year established. For example, a sole proprietor business that wants to establish a SEP IRA for the 2024 tax year has until October 15, 2025, if the taxpayer files an income tax extension for 2024.

### Eligible participants

Eligible SEP IRA participants are those who meet all of the following requirements:

- At least age 21;
- Has worked for the employer in at least three of the last five years; and
- Received at least $750 in compensation for the plan year.

Employers can choose to have less restrictive participation requirements than those listed here. Employers cannot exclude employees who meet the eligibility requirements, except for:

- Employees covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees' union and the employer; and
- Nonresident alien employees who do not have U.S. wages, salaries, or other personal services compensation from the employer.

> **☑ Planning Pointer**
>
> When considering whether to open a SEP IRA, consider the fact that SEP IRAs only accept employer contributions, so employees cannot contribute.
>
> The benefit of a SEP IRA for the employer is that other than limiting employer contributions to 25% of an employee's compensation, the amount of the employer contributions is discretionary. In a bad year, an employer can choose to contribute very little or nothing at all.
>
> Contrast this with other types of employer-sponsored retirement plans where the employer generally must make some form of contribution every year, even if the employer is not profitable.

**SIMPLE IRAs**

A Savings Incentive Match Plan for Employees (SIMPLE IRA plan) allows employees and employers to contribute to traditional IRAs set up for employees. (IRC §408(p))

SIMPLE IRA plans are cheap and easy to set up, just like SEP IRAs, because they do not have the start-up and operating costs of a conventional retirement plan.

SIMPLE IRAs:

- Are available to small businesses — generally with 100 or fewer employees;
- Are easily established;
- Are unavailable to employers that have any other retirement plan;
- Have no filing requirement for the employer;
- Can accept both employee and employer contributions; and
- Employers must contribute every year either:
    - A matching contribution up to 3% of each participant's compensation (not limited by the annual compensation limit); or
    - Make a nonelective contribution of 2% for each eligible participant.

Under the "nonelective" contribution formula, even if an eligible employee doesn't contribute to their SIMPLE IRA, then that employee must still receive an employer contribution to the participant's SIMPLE IRA equal to 2% of their compensation up to the annual limit of $345,000 for 2024 ($350,000 for 2025). (IRS Notices 2023-75, 2024-80)

Employers make contributions to a separate SIMPLE IRA for each eligible employee (and owner), and contributions are always 100% vested to the participant.

**Deadline to establish a SIMPLE IRA**

Businesses can set up a SIMPLE IRA plan effective on any date from January 1 through October 1 of each year, provided the employer did not previously maintain a SIMPLE IRA.

New employers that come into existence after October 1 of the year the SIMPLE IRA plan is set up can set up a plan as soon as administratively feasible and are not bound by the October 1 deadline in the year the business comes into existence.

Businesses that previously maintained a SIMPLE IRA can set up a new SIMPLE IRA plan effective only on January 1 of a plan year.

SIMPLE IRA plans cannot have an effective date that is before the date the employer actually adopts the plan.

**Eligible participants**

Eligible participants are those who:

- Earned at least $5,000 in compensation during any two years before the current calendar year; and
- Expect to receive at least $5,000 during the current calendar year.

An employer can choose to use less restrictive participation requirements but not more restrictive ones. For example, an employer can eliminate or reduce the prior- or current-year compensation amounts.

**SIMPLE plan contribution limits**

| Employee Contribution Limits for SIMPLE IRAs and SIMPLE 401(k)s | | |
|---|---|---|
| | **2024** | **2025** |
| **26–100 employees[1]** | | |
| SIMPLE IRA | $16,000[2] | $16,500[3] |
| *Catch-up (ages 50+)* | $*3,500* | $*3,500* |
| *Special catch-up (age 60–63)* | *N/A*[5] | $*5,250*[5] |
| **25 employees or fewer** | | |
| SIMPLE IRA | $17,600[4] | $18,150[4] |
| *Catch-up (ages 50+)* | $*3,850*[4] | $*3,850*[4] |
| *Special catch-up (ages 60–63)* | $*N/A*[5] | $*5,775*[5] |

[1] If the employer has increased either its compensation deferral match from 3% to 4% or its nonelective contribution from 2% to 3% (whichever one applies to the employer's plan), then use the SIMPLE IRA contribution limits applicable to employers with 25 employees or fewer. (IRC §408(p)(2)(E))

[2] IRS Notice 2023-75

[3] IRS Notice 2024-80

[4] 110% of the amount applicable to employers with 26–100 employees. (IRC §408(p)(2)(E)(ii))

[5] 150% of the regular ages 50+ catch-up contribution limit, starting with the 2025 taxable year. (IRC§414(v)(2)(E))

**Counting employees**

For purposes of determining whether an employer has 25 or fewer employees for the SIMPLE contribution limits of SECURE 2.0 Act §117, only employees who earn at least $5,000 of compensation are counted. For example, an employer with 30 total employees for the year, but only 25 employees who earned at least $5,000 for the year, is deemed to have only 25 employees for purposes of this SIMPLE contribution rule.

**Transition period**

Employers that increase the number of their employees who earn more than $5,000 of compensation above 25 employees will have a two-year transition period before they must make the election to continue to offer the additional 10% limitation (and increase their contribution levels). (IRC §408(p)(2)(H))

**Additional employer nonelective contributions**

For taxable years beginning after December 31, 2023, employers can make additional nonelective contributions to employees' SIMPLE accounts for each eligible participant employee who receives at least $5,000 of compensation from the employer for the tax year.

The additional contribution:

- Cannot exceed $5,000 (indexed for inflation starting in 2025) per employee;
- Must be applied on a uniform percentage basis for all employees; and
- Cannot exceed 10% of compensation. (IRC §408(p)(2)(A)(iv))

The compensation taken into account for purposes of this additional contribution limit cannot exceed the qualified plan compensation limits set in IRC §401(a)(17), which is currently set at $345,000 for 2024 and $350,000 for 2025. (IRC §408(p)(2)(A))

**☑ Planning Pointer**

This provision provides employers with more flexibility in their SIMPLE plans. For example, an employer with a SIMPLE plan can use this provision to make year-end employee bonuses directly into the SIMPLE plan (within the limits detailed above) or to add a profit sharing component to their SIMPLE plan.

Additionally, employers can make the contributions by the due date of their business income tax return and count the deduction for the prior taxable year.

***Example of additional employer SIMPLE contributions***

Snowy Mountain Sports, Inc. is a small sporting goods store with a SIMPLE IRA retirement plan for its 20 employees.

Pursuant to the terms of its plan, Snowy Mountain makes nonelective contributions of 2% of its employees' compensation into each employee's SIMPLE IRA.

Snowy Mountain wants to provide an additional incentive for its employees, so starting with the 2024 taxable year, it adds a profit sharing component to its SIMPLE IRA plan.

The company will set aside a portion of its net profits to be contributed to its employees' SIMPLE IRAs as an additional nonelective contribution with the following terms:

- All employees will receive the same percentage of their compensation as their profit sharing contribution into their SIMPLE IRA, not to exceed 10%; and
- No employee can receive more than $5,000.

This type of additional nonelective SIMPLE IRA contribution is allowed pursuant to the provisions of the SECURE 2.0 Act.

**Roth SEP IRAs and Roth SIMPLE IRAs**

The SECURE 2.0 Act allows for the creation of Roth SEP IRAs and Roth SIMPLE IRAs. (IRC §§408(p)(12), 408A) Any employer contributions made to an employee's Roth SEP IRA or Roth SIMPLE IRA are included in the employee's taxable income. (IRC §402(h)(1))

***Comment***

Employers cannot unilaterally decide to make contributions to the employee's Roth SEP IRA or Roth SIMPLE IRA. The employee must elect to receive their employer's contributions on a Roth basis, and such election must be made before Roth contributions are made on the employee's behalf. (Notice 2024-2, Q&A K-2 and K-3)

Employers are also not required to offer Roth employer contributions to participants of SEP IRAs and SIMPLE IRAs. (Notice 2024-2, Q&A K-1)

### Year of employee's income inclusion

When an employer makes a Roth SEP IRA or Roth SIMPLE IRA contribution on behalf of an employee, the employer's contribution is reported in the employee's taxable income for the taxable year that includes the date on which the contribution is made. (Notice 2024-2, Q&A K-4) It does not matter that the employer matching contribution or nonelective contribution is treated as if it were made for the prior taxable year of the employer pursuant to IRC §404(h)(1)(B) or §404(m)(2)(B).

### Report on Form 1099-R (not W-2)

The employer must report its Roth SEP IRA and Roth SIMPLE IRA contributions on Form 1099-R in the same manner as the reporting that would have applied if the employee had engaged in a Roth conversion. (Notice 2024-2, Q&A K-5) The employer's contributions are not reported on Form W-2.

Employer contributions to an employee's Roth SEP IRA or Roth SIMPLE IRA are not subject to Social Security, Medicare, or FUTA taxes. (Notice 2024-2, Q&A K-6) However, employees should consider adjusting their income tax withholding or consider making estimated tax payments to account for the additional taxable income generated from employer Roth contributions.

***Example of employer Roth SEP IRA contributions***

Joe is an employee of SmallCo, which offers a Roth SEP IRA to its employees. Joe has elected to receive his employer's SEP contributions as Roth contributions. On March 10, 2025, SmallCo makes a Roth SEP IRA contribution of $5,000 for Joe for the 2024 taxable year.

SmallCo will deduct the $5,000 contribution it made for Joe on its 2024 income tax return and must report the $5,000 on Form 1099-R issued to Joe for the 2025 taxable year. If Joe is under age 59½, then SmallCo should use code 2 in Box 7 of the Form 1099-R. If Joe is age 59½ or older, then it should use code 7 in Box 7.

Joe should consider increasing his 2025 withholding, or he should make an estimated tax payment to account for the additional $5,000 of taxable income he must recognize in 2025.

This is the same treatment that will apply for employer contributions to a Roth SIMPLE IRA or employer contributions into an employee's Roth qualified employer plan (discussed later).

**SEP IRA vs. SIMPLE IRA Comparison Chart**

| | **SEP IRA** | **SIMPLE IRA** |
|---|---|---|
| Eligible employers | Any | Must have ≤ 100 employees who earn $5,000 or more<br>Employer cannot maintain any other retirement plan |
| Funding responsibility | Accepts discretionary employer contributions only | Can accept employee contributions with a mandatory employer match or mandatory nonelective employer contributions |
| Contribution limits | For 2024, the lesser of:<br>• $69,000; or<br>• 25% of annual compensation (or self-employment income) | For 2024, $16,000 ($17,600 for employers with ≤ 25 employees or where employer increases its matching contributions).<br>(See page 4-13) |
| Catch-up contributions for older workers | N/A | Ages 50+ (2024):<br>• $3,500 for employers with > 25 employees;<br>• $3,850 for employers with ≤ 25 employees<br>Ages 60–63:<br>• Available starting in 2025 |
| Deadline to establish plan | Due date of employer's income tax return, including extensions | October 1 of the year in which the plan is being established |
| Roth option available at employer's discretion | Yes | Yes |
| Vesting | All contributions are 100% vested immediately | All contributions are 100% vested immediately |
| Minimum participation requirements | • At least age 21;<br>• Has worked for the employer in at least three of last five years; and<br>• Received at least $750 in compensation in 2024<br>Employers can choose to have less restrictive participation requirements than those listed here | • Earned at least $5,000 in compensation during any two years before the current calendar year; and<br>• Expects to receive at least $5,000 during the current calendar year<br>Employers can choose to have less restrictive participation requirements than those listed here |

## EMPLOYER-SPONSORED PLANS

### EMPLOYER PLAN CATCH-UP CONTRIBUTIONS FOR AGES 60–63

For taxable years after December 31, 2024, employees who are ages 60 through 63 during the taxable year and who are participants in employer-sponsored plans have an increased catch-up contribution equal to the greater of:

- 150% of the regular catch-up contribution limit that applies to employees ages 50-plus; or
- $10,000 (indexed for inflation beginning in 2026).
  (IRC §414(v)(2)(B)(i))

***Example of catch-up contribution for ages 60–63***

Drea turns age 60 in 2025 and is still working and participating in her employer's 401(k) plan. Drea can contribute up to $34,750 to her 401(k) for 2025, calculated as follows:

| | | |
|---|---|---|
| Regulation contribution limit | | $23,500 |
| 150% of regular catch-up contribution for taxpayers ages 50+[1] | $11,250 | |
| $10,000 | $10,000 | |
| Greater of above | | 11,250 |
| Andrea's maximum 401(k) contribution | | $34,750 |

[1] $7,500 × 150%

### EMERGENCY SAVINGS ACCOUNTS

Employers can offer their non-highly compensated employees emergency savings accounts that are linked to their employer retirement account, effective for plan years beginning after December 31, 2023. (IRC §402A(e)) These new emergency savings accounts are treated as Roth-like accounts. Employees can access these funds to meet unexpected financial needs, and withdrawals from these accounts are not subject to early withdrawal penalties. (IRC §72(t)(2)(J))

Employers that choose to offer an emergency savings account can auto-enroll their employees at a maximum rate of 3% of the employee's compensation. Additionally, employees must be allowed to opt out completely or elect a different contribution rate. (IRC §402A(e)(1) and (4))

The portion of an account attributable to the employee's contribution is capped at $2,500 (or lower as set by the employer's plan). The $2,500 cap is indexed for inflation beginning with the 2025 taxable year; however, the 2025 amount remains at $2,500. (Notice 2024-80) The $2,500 cap is not an annual cap — it is the cap for total employee contributions to the account.

***Example of emergency savings account cap***

Beginning in 2024, Mary's employer chose to create an emergency savings account for its employees under this SECURE 2.0 Act provision with a 3% automatic enrollment.

Mary's compensation is $95,000 per year. Mary did not make any withdrawals from the account in 2024, so her employer stopped withholding from her paycheck once the aggregate contributions to the account withheld from Mary's salary reached $2,500.

Mary's employer cannot withhold any more compensation from her salary until she makes a withdrawal from the account.

Assume Mary does not make any withdrawals from her emergency savings account in 2024 or 2025, then she withdraws $2,000 from her emergency savings account in April 2026. At that point, Mary's employer will once again begin withholding at a rate of 3% from her salary until the $2,000 withdrawal is restored.

Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions. (IRC §402A(e)(3)) However, the employer's match will be deposited into the retirement plan, not the emergency savings plan.

Once the cap is reached, the additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap.

**☑ Planning Pointer**

Employees whose employers offer emergency savings accounts should plan ahead and stay on top of the account balance. Once an employee's account reaches the maximum $2,500 employee contribution limit, paycheck withdrawals will stop and so might the employer match. The following example is illustrative.

***Example of emergency savings account planning***

Assume the facts are the same as the previous example where Mary's employer stopped withholding emergency savings contributions from her paycheck during 2024 once her contributions reached the $2,500 maximum.

Assume further that Mary's employer matches all employee elective retirement contributions to the company's 401(k) plan at a rate of 10% and that Mary contributes $12,000 to her 401(k) each year.

Under the SECURE 2.0 Act's emergency savings account provision, Mary's employer must treat the emergency savings account contributions as an employee elective retirement contribution. So, Mary's employer's matching 401(k) contribution for 2024 is calculated as follows:

| | |
|---|---|
| Mary's 401(k) elective deferrals | $12,000 |
| Mary's emergency savings account withholding | + 2,500 |
| Subtotal | 14,500 |
| Employer 401(k) matching rate | × 10% |
| Employer 401(k) match | $ 1,450 |

If an employer chooses to set up an emergency savings account, then employees must be permitted to make withdrawals from the account at least once per calendar month. (IRC §402A(e)(7)) Distributions from these accounts are not subject to the 10% early distribution penalty. (IRC §72(t)(2)(J)) The first four withdrawals from the account each plan year cannot be subject to any fees or charges solely on the basis of such withdrawals. (IRC §402A(e)(7))

At separation from service, employees must be allowed to take their emergency savings account as cash or roll it into their Roth defined contribution plan (if they have one) or IRA. (IRC §402A(e)(8))

## CATCH-UP CONTRIBUTIONS FOR HIGHLY COMPENSATED EMPLOYEES

Beginning with the 2026 taxable year, catch-up contributions must be made to employer- provided qualified retirement plans on a Roth basis (after-tax) for employees with compensation in excess of $145,000 (indexed for inflation starting in 2025; the 20225 amount remains $145,000). (IRC §414(v)(7); Notice 2024-80)

This provision of the SECURE 2.0 Act affects employer-sponsored 401(k), 403(b) and governmental 457(b) plans. This new rule does not apply to SEP or SIMPLE plans.

> ***Comment***
>
> Under the SECURE 2.0 Act, the provision for catch-up contributions for highly compensated employees was originally slated to go into effect in 2024. On August 25, 2023, the IRS announced that they will provide a two-year transition period for this provision. (IR-2023-155; IRS Notice 2023-62) This means that employers are not required to comply with this provision until 2026.

### Mandatory provision

The SECURE 2.0 provision requiring highly compensated employees to make catch-up contributions on a Roth basis is a mandatory provision. This means that an employer that only offers a traditional 401(k) without a Roth option cannot accept catch-up contributions from their highly compensated employees.

For the 2024 taxable year, the inflation-adjusted catch-up contribution amount for taxpayers ages 50 and older is $7,500. The 2025 amount is $7,500. (IRS Notices 2023-75, 2024-80)

### Highly compensated employees

A highly compensated employee for purposes of the mandatory Roth catch-up contribution is defined as an employee whose wages (as defined in IRC §3121(a)) for the preceding calendar year from the employer sponsoring the plan exceed $145,000. (IRC §414(v)(7)(A))

This definition gives rise to a couple of interesting observations:

- Highly compensated employees for purposes of the Roth catch-up contributions are based strictly on the amount of wages paid in the prior calendar year by that employer — so, unlike IRC §414(q), a 5% owner of the business is not automatically deemed to be a highly compensated employee; and
- High earners who are new employees will get a free pass in their first year because only wages paid by the employer sponsoring the plan in the prior year are counted toward the $145,000 wage limitation.

Employee wages include all compensation for employment, including the cash value of all compensation (including benefits) paid in any medium other than cash. (IRC §3121(a); Treas. Regs. §31.3121(a)-1T)

## ROTH MATCHING CONTRIBUTIONS

Employers offering 401(k), 403(b), and 457(b) defined contribution plans can provide participants with the option of receiving matching contributions on a Roth basis (after-tax). (IRC §414(v)(2)(B)(ii)) Such contributions must be nonforfeitable.

> ✐ **Practice Pointer**
>
> Employer matching contributions to a traditional 401(k) are not taxable to the employee.
>
> However, employees who elect to receive matching contributions and elective contributions on a Roth basis will have additional taxable compensation for the amount of the contributions their employer makes to their retirement plan.
>
> This provision will provide a new planning avenue for clients with regard to their employer retirement plans. For example, many employers offer both a traditional and a Roth 401(k), where employees can choose whether their deferred compensation is contributed to the traditional 401(k) (pre-tax), the Roth 401(k) (post-tax), or some combination of the two. In either scenario, however, before the SECURE 2.0 Act, all employer matching contributions and elective contributions had to be into the traditional 401(k).
>
> Now, employees will have the option (if the employer's plan allows it) to have the employer's matching and elective contributions be into the Roth 401(k) as well.

### Reporting taxable compensation to the employee

The tax reporting for employer Roth matching contributions are similar to the Roth SEP and Roth SIMPLE IRA provisions previously discussed on page 4-14:

- Employer nonelective or matching contributions made on a Roth basis are includable in the employee's taxable income;
- Employees must elect to receive their employer's contributions on a Roth basis;
- Employers are not required to offer their contributions on a Roth basis;
- Employer nonelective and matching contributions are not taxable as wages to the employee and are therefore not reported on the employee's W-2. Instead, they are reported on Form 1099-R to the employee (Notice 2024-2, Q&A L-9); and
- The Form 1099-R must be issued to the employee for the taxable year in which the contribution is allocated to the employee's account. (Notice 2024-2, Q&A L-2)

## RMDs FROM EMPLOYER-SPONSORED ROTH ACCOUNTS

Starting with the 2024 taxable year, employer-sponsored Roth accounts no longer have an RMD requirement. (IRC §402A(d))

**☑ Planning Pointer**

Participants in employer-sponsored retirement plans (401(k)s, 403(b)s, 457(b)s, pension, profit sharing, stock bonus plans), must begin taking distributions at a specified age (their RMD age).

See page 4-4 for a discussion of the RMD age based on the taxpayer's year of birth. (IRC §401(a)(9)(A))

Taxpayers who are still working are not required to begin taking distributions from their current employer's retirement plan until April 1 of the year following the year the taxpayer retires or is otherwise separated from employment. (IRC §401(a)(9)(C)(i); Treas. Regs. §1.401(a)(9)-2, Q&A2)

This rule delaying RMDs for taxpayers who are still working does not apply to IRAs, plans sponsored by prior employers, SEP IRAs, SIMPLE IRAs, or if the taxpayer owns more than 5% of the business. (IRC §401(a)(9)(C)(ii); Treas. Regs. §1.408-8, Q&A2 and 3)

The "more than 5% owner" rule applies to taxpayers if they directly or constructively own more than 5% of any of the employers maintaining the plan at issue ending within the calendar year the taxpayer reaches their RMD age. (IRC §401(a)(9)(C)(ii))

## SURVIVING SPOUSE ELECTION TO BE TREATED AS EMPLOYEE

Starting with the 2024 taxable year, if the beneficiary of an employee's retirement plan is the employee's surviving spouse, then the surviving spouse has the option of electing to be treated as if they are the employee for purposes of applying the RMD rules. (IRC §401 (a)(9)(B)(iv)) In other words, if the election is made, the surviving spouse must begin RMDs from the employer plan on the date that the surviving spouse was required to begin taking distributions.

**✎ Practice Pointer**

This provision allows a surviving spouse to take RMDs from their deceased spouse's employer plan based on their own life expectancy without having to first roll over the deceased spouse's account into their own IRA.

## MATCHING CONTRIBUTIONS FOR STUDENT LOANS

Starting with the 2024 taxable year, for purposes of calculating an employer's matching contribution to certain defined contribution plans, an employer can treat an employee's student loan repayments as if the student loan repayment is an employee retirement contribution. (IRC §§401(m)(4)(A)(iii) and (4)(D), 403(b)(12)(A), 408(p)(2)(F))

***Example of student loan repayment retirement plan match***

Lexi's employer has a 401(k) plan and matches employee contributions at a rate of 5%. Lexi can only afford to contribute $1,000 to the 401(k) each year because she must also pay down her student loans.

Under the new matching contribution rules for student loans, if Lexi's employer's plan authorizes matching contributions for student loan repayments, Lexi's employer will treat her student loan repayments as an employee contribution to the 401(k) starting in 2024.

In 2024, Lexi contributes $1,000 to her 401(k) and pays down $5,000 of her student loan debt. Lexi's employer's matching contribution into her 401(k) is $300 ($6,000 × 5%).

A qualified student loan payment is any indebtedness incurred by the employee solely to pay the employee's qualified higher education expenses (as defined). Governmental employers are also permitted to make matching contributions to a 457(b) plan or another plan with respect to such repayments. (IRC §457(b))

Employers who offer matching retirement contributions for student loan repayments cannot limit the matching to only certain qualified loans, such as qualified education loans for an employee's own education, for a particular degree program (e.g., Bachelor of Arts, Juris Doctor, or MBA), or for attendance at a particular school. (Notice 2024-63, Q&A A-4)

In the case of employees who repay another's student loans, such as a parent who has co-signed on a student loan for their children, as long as the employee was legally obligated to make loan repayments and actually made loan repayments, then the employee cannot be excluded from receiving matching retirement plan contributions. (Notice 2024-63, Q&A A-1)

Employers who make student loan matching part of their retirement package must do so for all employees eligible to make contributions under the retirement plan. As such, employees cannot be excluded on an individual employer, business unit, division, location, or other similar basis. (Notice 2024-63, Q&A A-5)

***Comment***

An employer can rely on an employee certification of payment for purposes of making the matching contribution. (SECURE 2.0 Act §110(c); IRC §401(m)(13)(C))

Employers can make matching contributions under the following plans:

- 401(k) plans;
- 403(b) plans;
- SIMPLE IRAs; and
- 457(b) plans.

For purposes of the nondiscrimination test applicable to elective contributions, plans may test separately the employees who receive matching contributions on student loan repayments. (SECURE 2.0 Act §110(c); IRC §401(m)(13)(B))

***Comment***

Allowing employees to treat their student repayments as elective deferrals for purposes of employer matching contributions is designed to assist employees to begin to start building toward their retirement. Currently, many employees are unable to contribute to their retirement savings because of their need to pay off their student loans.

Employers must amend their plans to allow for such matching contributions.

## STARTER 401(k) AND SAFE HARBOR 403(b) DEFERRAL-ONLY PLANS

Starting with the 2024 taxable year, employers that previously did not offer a retirement plan to their employees can offer "starter" 401(k) or "safe harbor" 403(b) plans that:

- Only allow employee deferral contributions (employers cannot contribute to the plan);
- Automatically enroll employees in the plan at a deferral rate between 3% to 15% that is applied uniformly to all employees. Employees can opt out of enrollment or can choose a different rate; and
- Caps the total annual deferrals to an employee's account at the IRA contribution limit, which for 2024 is $7,000 with an additional $1,000 in catch-up contributions beginning at age 50. (IRC §§401(k)(16), 403(b)(16))

***Comment***

If a starter 401(k) or safe harbor 403(b) plan only accepts employee contributions and only up to the IRA limits, then an obvious question many employers may ask themselves is: What's the point?

The benefits are not directly obvious, but they include:

- Employees can contribute to both a 401(k) and an IRA. By having a starter 401(k)/403(b) plan, an employee can effectively double their IRA contributions. The employee's income level will depend on whether their IRA contributions are deductible based on existing rules;
- The plan is far easier to administer due to the uniform automatic enrollment contribution rate (e.g., 3%) and not having to comply with year-end testing requirements;
- Employers can claim the Credit for Small Employer Pension Plan Startup Costs (discussed in more detail on page 4-24);
- Unlike most other retirement plans, the starter 401(k)/403(b) does not allow employer contributions; and
- It can assist with employee recruitment by providing a low-cost retirement plan for employees.

## PART-TIME EMPLOYEES

The first SECURE Act requires employers that offer 401(k) plans to allow long-term part-time employees to make elective contributions to the plan, applicable to plan years beginning after December 31, 2020. (SECURE Act §112(a); IRC §401(k)(2)(D))

Employers are not required to make nonelective or matching contributions on behalf of part- time employees under the SECURE Act provision (although they may choose to adopt a plan that does provide for these nonelective and/or matching contributions).

### Counting years

The mandate that employers must include long-term part-time employees in their 401(k) plans is effective for plan years beginning after December 31, 2020. Additionally, employees are not given credit for years of service prior to January 1, 2021, when determining an employee's eligibility.

**Exclusion from various requirements**

Employers may choose, but are not required, to exclude the part-time employees from the application of the top-heavy and nondiscrimination rules as well as the safe harbor contribution amounts.

**SECURE 2.0 Act expansion**

Effective for plan years beginning after December 31, 2024, the employer mandate to allow long- term part-time employees to participate in 401(k) plans that was enacted by the original SECURE Act is revised by:

- Expanding the definition of eligible part-time employees so that part-time employees that work at least 500 hours of service for two consecutive years (reduced from three consecutive years) qualify to participate in the employer plan; and
- Extending the mandate to apply to 403(b) plans as well. (29 U.S.C. §§1052(c), 1053(a)(4); IRC §401(k)(2)(D)(ii))

As before, this provision does not apply to employees covered by a collective bargaining agreement or to employees under age 21.

**Proposed regulations issued**

The IRS has issued proposed regulations related to the SECURE Act and SECURE 2.0 Act that mandate employers offering 401(k) plans to allow elective contributions by long-term part time employees. (REG-10414-23; Prop. Treas. Regs. §1.401(k)-5)

The proposed regulations provide detailed clarification to guide administrators of employer plans regarding:

- How to determine whether an individual qualifies as a long-term part-time employee;
- The interplay with vesting rules; and
- The exclusion of the long-term part-time employees from nondiscrimination and coverage testing and top-heavy testing.

**EMPLOYER CREDITS**

**Credit for Small Employer Pension Plan Startup Costs**

The Small Employer Pension Plan Startup Costs Credit is a tax credit available to small businesses (100 employers or fewer) that set up and begin contributing to an employer-sponsored retirement plan. The credit is calculated and claimed using IRS Form 8881, Credit for Small Employer Pension Plan Startup Costs and Auto-Enrollment.

Starting with the 2023 taxable year, the IRC §45E Credit for Small Employer Pension Plan Startup Costs was increased from a 50% credit to 100% for employers with up to 50 employees. (IRC §45E(e)(4)) The 50% credit still applies to employers of between 51 and 100 employees. Only those employees who are paid at least $5,000 of compensation in the prior year are included in the 50/100 employee threshold.

**Additional credit for small employer contributions**

The IRC §45E credit is also increased by an applicable percentage of employer contributions (other than elective deferrals as defined in IRC §402(g)(3)) to an eligible employer plan (other than a defined benefit plan), up to a $1,000 maximum credit per employee. (SECURE 2.0 Act §102(b); IRC §45E(f))

Contributions made for employees who receive wages in excess of $100,000 (increased annually for inflation; the amount for 2024 and 2025 is $105,000) are excluded from the calculation of the additional credit. (IRC §45E(f)(2)(C); Notice 2024-80)

The applicable percentage is equal to:

- 100% for the first and second taxable year after the plan is established;
- 75% for the third taxable year after the plan is established;
- 50% for the fourth taxable year after the plan is established;
- 25% for the fifth taxable year after the plan is established; and
- 0% thereafter. (IRC §45E(f)(3))

The credit is phased out for employers with 51 to 100 employees by 2% for each employee for the preceding taxable year in excess of 50 employees. (IRC §45E(f)(2))

**Employers that join existing plans**

The Credit for Small Employer Pension Plan Startup Costs is expanded to apply to the first three years a qualified employer joins an existing multiple employer plan, retroactive to taxable years beginning after December 31, 2019. (SECURE 2.0 Act §111; IRC §45E(d)(3)(A))

Previously, the credit was only available for the first three years of the plan's existence, which prevented employers that joined an existing multiple employer plan from claiming the credit for the full three years (if at all).

**✐ Practice Pointer**

Employers that were not eligible under the original SECURE Act provision can file amended returns and claim the expanded Credit for Small Employer Pension Plan Startup Costs due to the retroactive nature of this provision.

**No double benefit**

The employer's income tax deduction for contributions to the retirement plan must be reduced by the amount of the credit claimed. (IRC §45E(e)(2))

## ROTH IRAs

### ROTH IRA CONTRIBUTION AMOUNTS

For taxpayers with AGI not exceeding certain amounts, nondeductible contributions to a Roth IRA are allowable up to the lesser of $7,000 for 2024 (also $7,000 for 2025) or the taxpayer's annual compensation. An additional catch-up contribution of $1,000 can also be made for taxpayers age 50 or older. This amount is reduced by the amount the taxpayer contributes to another IRA for the same taxable year.

Consistent with traditional IRA rules, joint-filing couples may contribute up to $7,000 each ($8,000 each if both spouses are age 50 or older) to a Roth IRA, provided the couple's combined compensation is at least equal to the amount contributed.

**Annual contribution limitations due to income**

The maximum contribution that can be made to a Roth IRA is phased out based on the taxpayer's AGI, adjusted annually for inflation.

| Roth IRA AGI Limits | | |
|---|---|---|
| **Filing status** | **2024 (Notice 2023-75)** | **2025 (Notice 2024-80)** |
| Single, HOH, or MFS and did not live with spouse at any time during the year | $146,000–$161,000 | $150,000–$165,000 |
| MFJ | $230,000–$240,000 | $236,000–$246,000 |
| MFS and lived with spouse at any time during the year | $0–$10,000 | $0–$10,000 |

✐ **Practice Pointer**

Unlike a traditional IRA that has a limitation on the ability to make deductible contributions based on whether the individual or spouse is a participant in a retirement plan, a Roth IRA has a limitation based only on the amount of earned income and the taxpayer's AGI.

**Roth IRA does not have an age limit**

Roth IRAs, like traditional IRAs, have no age limit for contributions (for either younger workers or older workers). Any individual with earned income can contribute to a Roth IRA. (IRC §§219(d)(1), 408A(c)(4))

**ROTH CONVERSIONS**

A conversion of assets from a traditional IRA, SEP IRA, SIMPLE IRA, or an employer plan to a Roth IRA results in taxation of any untaxed amounts in the traditional IRA (see page 4-10 for a reference guide to which types of accounts can be converted to a Roth IRA). A taxpayer may also recharacterize a contribution from one type of IRA to another type of IRA on or before the extended due date for the return for the contribution year.

***Example of permissible recharacterization***

Holly contributed $7,000 to her traditional IRA in 2024. She can recharacterize the traditional IRA to a Roth IRA on or before October 15, 2025, but not after.

**Partial conversions**

Taxpayers can choose to convert only part of a traditional IRA to a Roth. In that case, the distribution aggregation rules come into play if the taxpayer has basis in any of their traditional IRAs. Under the aggregation rules, all of the taxpayer's traditional IRAs and the total basis in all the IRAs are combined. (IRC §408(d)(2)) The amount of basis considered converted is the percentage of the total basis that bears the same ratio as the amount converted bears to the total value of all of the taxpayer's traditional IRAs.

***Example #1 of partial conversion***

Tim has a traditional IRA with a balance of $215,000 and a basis of $25,000. He wants to convert $50,000 into a Roth IRA. He must report $44,186 as taxable income ($50,000 – ($50,000 × $25,000 ÷ $215,000)). He must file Form 8606, Nondeductible IRAs, to report the transaction.

***Example #2 of partial conversion***

Yasmine owns two traditional IRAs with the following attributes:

| | **IRA 1** | **IRA 2** | **Total** |
|---|---|---|---|
| Nondeductible contributions (basis) | $20,000 | $ 0 | $ 20,000 |
| Deductible contributions | 0 | 50,000 | 50,000 |
| Earnings | 10,000 | 20,000 | 30,000 |
| Current FMV | $30,000 | $70,000 | $100,000 |

Yesmine converts IRA 1 to a Roth IRA. She believes she will only have $10,000 of taxable income because she has basis in IRA 1 of $20,000 (the amount of nondeductible contributions).

However, the distribution aggregation rules require her to allocate basis ($30,000 total amount of traditional IRA funds to be converted to Roth IRA ÷ $100,000 current FMV of all traditional IRAs × $20,000 basis in all traditional IRAs). As such, she can only use $6,000 of her basis. She is taxed on $24,000 ($30,000 converted amount less basis of $6,000).

**Backdoor Roth conversions**

The "backdoor" Roth conversion strategy allows high-income individuals to make a nondeductible contribution to a traditional IRA and then convert the traditional IRA to a Roth IRA. However, be aware of the IRA aggregation rules under IRC §408(d)(2) when considering a backdoor Roth IRA whereby the total value of all of the traditional IRA accounts becomes a component when computing taxability of the Roth conversion.

***Example of simple backdoor conversion***

Gary made a $7,000 nondeductible contribution to a traditional IRA. His AGI was too high to allow him to make a Roth contribution. Immediately after contributing the $7,000 to the IRA, he converted the $7,000 IRA to a Roth IRA in a nontaxable event. He had no other IRA accounts.

If Gary had more than one non-Roth IRA, then he would have to treat all of his non- Roth IRAs as one when calculating the taxable portion of his conversion. The calculation would be same as the example of Yasmine above.

**Mega backdoor Roth**

The mega backdoor Roth strategy works similarly to a backdoor Roth IRA strategy, which is much more common. In a mega backdoor Roth strategy, a taxpayer uses after-tax (nondeductible) contributions to a 401(k) plan instead of nondeductible traditional IRA contributions.

In order to take advantage of a mega backdoor Roth strategy, the taxpayer must be a participant in a 401(k) that allows participants to make after-tax contributions.

***Comment***

Most people, even tax professionals, think that the maximum employee deferral contributions that can be made to a 401(k) plan in 2024 are $23,000 ($30,500 for taxpayers age 50 and over). This is not true. These dollar amounts are only the maximum pre-tax contributions a participant can make as an employee deferral. Any contributions in excess of these limits are after-tax (aka nondeductible) contributions.

401(k) plan participants can only contribute more than the pre-tax contribution limits if their employer plan allows it, but most plans do not. This is one reason why the mega backdoor Roth strategy is somewhat rare.

Occasionally, a taxpayer is a participant in a 401(k) plan that does not allow after-tax contributions, but the taxpayer manages to contribute more than the pre-tax limits. In this scenario the 401(k) plan will typically distribute the excess contribution back to the participant, which will trigger a Form 1099-R.

For the mega backdoor Roth strategy to work, the 401(k) plan must also allow the taxpayer to make either:

- An in-plan Roth conversion (converting after-tax 401(k) contributions into the employer's Roth 401(k)); or
- An in-service withdrawal (which allows the employee to roll over or convert 401(k) funds into an IRA while still employed).

**Contribution limits**

The total employer and employee contribution limits for a 401(k) is limited to the lesser of 100% of the employee's compensation or $69,000 for 2024 ($76,500 for taxpayers age 50 and over). The 2025 limits are $70,000 and $77,500. (Notice 2024-80)

✐ **Practice Pointer**

Employees who take advantage of after-tax contributions must be careful not to contribute the maximum of $69,000 ($76,500 for taxpayers age 50 and over) for 2024 or $70,000/$77,500 for 2025 with only employee contributions because these limits include employer matching and profit sharing contributions as well.

If the employee uses deferral contributions to get to the contribution limits, then there is no more room in the bucket for employer matching or profit sharing contributions.

***Example of mega backdoor Roth strategy***

Bill is over age 50 and works for an employer whose plan allows for after-tax contributions as well as in-service withdrawals. Bill's employer offers both a traditional 401(k) and a Roth 401(k).

Bill wants to contribute $60,000 into his 401(k) for the year. He should maximize his Roth 401(k) contributions first, then make the rest of his employee deferrals as after-tax contributions. His $60,000 total contributions will be broken out as follows:

| | |
|---|---|
| Direct Roth 401(k) contributions | $30,500 |
| After-tax traditional 401(k) contributions | 29,500 |
| Total | $60,000 |

Bill can then engage in an in-plan Roth conversion and convert his $29,500 of after-tax contributions, plus related earnings, into the company's Roth 401(k). The conversion is a taxable event, but because he has $29,500 of basis, his only taxable income from the conversion will be from any earnings in the account prior to the conversion.

As an added benefit, IRS Notice 2014-54 allows Bill to peel off the earnings from his after-tax 401(k) contributions and roll them over into a traditional IRA (if his employer plan allows it). This will allow Bill to escape any tax on his conversion.

## EARLY WITHDRAWAL PENALTIES

Taxpayers are generally subject to a 10% early withdrawal penalty for retirement account distributions made before reaching age 59½. There are numerous exceptions to the early withdrawal penalty rule, and the IRS maintains a webpage with a quick reference chart that can be found at:

**Website**
www.irs.gov/retirement-plans/plan-participant-employee/ retirement-topics-exceptions-to-tax-on-early-distributions

Many of the early withdrawal penalty exceptions apply to both IRAs and employer-sponsored qualified plans, but not all.

### ADDITIONAL SECURE 2.0 ACT EXCEPTIONS

The SECURE 2.0 Act added additional exceptions to the early withdrawal penalties for distributions related to:

- Qualified long-term care distributions (SECURE 2.0 Act §334);
- Substantially equal periodic payments (SECURE 2.0 Act §323);
- Domestic abuse (SECURE 2.0 Act §314);
- Terminal illness (SECURE 2.0 Act §326);
- Qualified public safety employees (SECURE 2.0 Act §329);
- Presidentially declared disasters (SECURE 2.0 Act §331);
- Emergency savings account distributions (SECURE 2.0 Act §127); and
- Corrective distributions of excess contributions. (SECURE 2.0 Act §333)

The IRS has issued Notice 2024-55 to provide additional clarification for two of the items from the list above and whether distributions for these purposes can be repaid into the taxpayer's retirement account:

- Emergency personal expense distributions; and
- Domestic abuse victim distributions.

**Emergency personal expense distributions**

Under IRC §72(t)(2)(I) taxpayers can take a penalty-free withdrawal of up to $1,000 to meet an unforeseeable or immediate financial need relating to personal or family emergency services. The $1,000 amount is not subject to inflation.

The term "unforeseeable or immediate financial need" is not statutorily defined. The notice states that this is a facts and circumstances determination but provides examples of personal or family members' expenses related to:

- Medical care;
- Accidents or casualty losses;
- Imminent foreclosure or eviction from a primary residence;
- Burial or funeral expenses;
- Auto repairs; and
- Any other necessary emergency personal expenses.

Plan administrators can rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution.

The $1,000 is reduced for those taxpayers who have less than $2,000 in total nonforfeitable accrued benefits under the plan (or total interest in an IRA). For these taxpayers, the maximum amount that can be withdrawn is equal to the nonforfeitable accrued benefit as of the date of each distribution over $1,000.

At most, an emergency personal expense distribution can be taken once per year. If the employee has taken the full $1,000, they cannot take another emergency expense distribution from that plan for the immediately following three calendar years unless the previous distribution is fully repaid.

However, taxpayers who did not take the full $1,000 can take additional distributions in the following three years as long as the total of the individual's elective deferrals and employee contributions to the plan after the previous emergency personal expense distribution is at least equal to the amount of the previous emergency personal expense distribution that has not been repaid.

***Example of multiple distributions within three years***

Alexandria receives an emergency personal expense distribution of $500 on July 1, 2025, when her vested retirement account balance was $1,500. She does not repay the distribution. She continues to make elective deferrals to the retirement plan and as of August 1, 2027, has $5,000 in her retirement account.

Because the $3,500 contributed since her last personal expense distribution exceeds the $500 amount she previously withdrew, she can take up to another $1,000 in another emergency personal expense distribution.

**Note:** This example is based on the example provided in FAQ A-6 in Notice 2024-55. It appears that based on this example, Alexandria can receive more than $1,000 in total distributions over a three-year period even though she did not repay the initial $500. This appears to be the case even though she would not be able to take out more than $1,000 over a three-year period if she had initially taken out the full $1,000 and did not repay that amount within the three-year period.

**Domestic abuse victim distributions**

The SECURE 2.0 Act also allows victims of domestic abuse to make penalty-free withdrawals from certain retirement accounts. (IRC §72(t)(2)(K))

The maximum available penalty-free withdrawal is the lesser of:

- $10,000 (adjusted annually for inflation after 2024; the 2025 amount is $10,300 (Notice 2024-80)); or
- 50% of the vested account balance.

Withdrawals must be made during the one-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. **Note:** The term "domestic partner" is not defined but does not appear to be limited to registered domestic partners.

The term "domestic abuse" means any of the following types of abuse:

- Physical;
- Psychological;
- Sexual;
- Emotional; or
- Economic.

The law does not contain any requirement of criminal charges or reports to substantiate such abuse. An employee can self-certify that they are a domestic abuse victim.

**Repayments**

Taxpayers who take an emergency personal expense or domestic abuse victim distribution can repay these amounts at any time during the three-year period beginning on the date after which the distribution was received. The repayment can be made to any applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made. Taxpayers who make repayments after they filed their income tax return for the year of the distribution may amend their prior income tax return to remove the taxable portion of their distribution from income.

Even if the taxpayer's employer's plan does not offer the emergency personal expense or domestic abuse victim distributions, if the taxpayer otherwise qualifies for a penalty-free withdrawal (e.g., hardship distribution or separation from service distribution), the taxpayer can report the distribution as an emergency personal expense or domestic abuse distribution on the Form 5329, Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts, which would enable them to be eligible to repay these amounts to an IRA within three years.

**Qualified plans**

An eligible retirement plan for purposes of both the emergency personal expense and domestic abuse victim distributions is any eligible retirement plan described in IRC §402(c)(8)(B), other than a defined benefit plan. Eligible retirement plans include:

- IRC §401(k) plans;
- IRC §403(a) annuity plans;
- IRC §403(a) annuity contracts;
- IRC §457 governmental plans; and
- IRAs.

However, for purposes of the domestic abuse victim distribution, an eligible retirement plan does not include a plan to which the spousal consent requirements of IRC §§401(a)(11) and 417 apply.

## INHERITED IRAs

### RULES FOR DEATHS AFTER 2019

Under the SECURE Act, most beneficiaries of retirement plans, IRAs, and some government plans of taxpayers who die after December 31, 2019, must now distribute the entirety of their inherited account by the end of the year that contains the 10th anniversary of the account owner's date of death, even if the beneficiary is a named beneficiary.

> ***Deaths prior to January 1, 2020***
>
> Taxpayers who inherited a retirement account from a person who died prior to January 1, 2020, are subject to the pre-SECURE Act RMD rules. See the chart on page 4-34.

**Three beneficiary classifications**

There are three types of beneficiaries, and the distribution rules for retirement account owners who die after December 31, 2019, depend on which type of beneficiary inherits the account. The beneficiary types are:

- Nondesignated beneficiaries;
- Designated beneficiaries; and
- Eligible designated beneficiaries.

"Designated beneficiaries" and "eligible designated beneficiaries" are defined by the Code and regulations. Any beneficiary who doesn't fall under one of those two definitions is a nondesignated beneficiary.

**Eligible designated beneficiaries**

There are five types of eligible designated beneficiaries:

- Surviving spouse;
- Minor child of the decedent (under age 21). Once the child turns age 21, the 10-year distribution rule discussed below kicks in;
- A person who is not more than 10 years younger than the decedent;
- A person who is disabled at the time of the account holder's death; or
- A person who is chronically ill.

Eligible designated beneficiaries are the only types of beneficiaries who can take RMDs from inherited accounts based on their own life expectancy.

**Caution**

When it comes to employer-sponsored plans, the regulations contain a provision that effectively allows an employer's defined contribution plan to use different rules, for example, forcing either a five-year or 10-year distribution rule on all beneficiaries. (Treas. Regs. §1.401(a)(9)- 3(c)(5)(iii)) This optional provision is available only where an employee dies before their required beginning date for taking distributions.

***Example of optional defined contribution plan provision***

Hank was 58 years old and a participant in his employer's 401(k) plan when he died in 2024. Hank's sister Vikki, who is five years younger, is the sole beneficiary of the 401(k).

Hank's employer's 401(k) plan provides that if an employee dies before their required beginning date for taking distributions, then all beneficiaries must distribute the entire account by the end of the year containing the 10th anniversary of the employee's date of death.

Vikki is an eligible designated beneficiary because she is not more than 10 years younger than Hank. The regulations allow Hank's employer to force the 10-year distribution rule upon Vikki if it is written in the plan's terms, which they have done in this example.

**Designated beneficiaries**

Designated beneficiaries are generally individuals and "see-through" trusts that are not classified as eligible designated beneficiaries. Designated beneficiaries that inherit retirement accounts from decedents who die after December 31, 2019, must distribute the entire account by the end of the year containing the 10th anniversary of the decedent's date of death.

**RMDs for designated beneficiaries:** Under the regulations, designated beneficiaries must continue taking RMDs each year during their 10-year distribution period, ensuring that the entire account balance is distributed by the end of the 10-year period if:

- The deceased account owner had reached their required beginning date for taking RMDs at the time of their death; and
- The account beneficiaries are not one of the five types of eligible designated beneficiaries.
(Treas. Regs. §1.401(a)(9)-2)

***IRS relief from proposed RMD distribution rules***

Through Notice 2024-35, followed thereafter by the final inherited IRA regulations, the IRS announced that designated beneficiaries who inherited retirement accounts after 2019 must start taking RMDs in 2025.

This rule applies to designated beneficiaries who inherited retirement accounts from account owners who died in 2020, 2021, 2022, or 2023. Under the IRS's regulations, these taxpayers would have had an RMD requirement prior to 2025 but for the IRS's previous delayed implementation of the RMD rule. This means that the taxpayer is treated as not having an RMD requirement in 2020 through 2024 at all, so Form 5329 for missed RMDs is not required for those years, and taxpayers do not have to increase their 2025 RMD.

### Chart summarizing RMD rules

Under the SECURE Act, there are potentially three different periods in which the inherited IRA must be distributed:

**RMD Distribution Timetable (Treas. Regs. §1.401(a)(9)-3(b))**

| Distribution period | When it applies |
|---|---|
| Five years (nondesignated beneficiaries) | • If account holder did not have a designated beneficiary;<br>• If retirement account is a defined benefit plan |
| 10 years (designated beneficiaries) | • If account holder died after December 31, 2019, and there is no "eligible designated beneficiary" (see note below) |
| Life expectancy of beneficiary (eligible designated beneficiaries | • If account holder died prior to January 1, 2020, and had a designated beneficiary under pre-SECURE Act rules;<br>• If account holder died after December 31, 2019, and had an "eligible designated beneficiary" (see note below) |

**Note:** An eligible designated beneficiary is defined as the surviving spouse, a minor child of the decedent, a person not more than 10 years younger than the decedent, or a person who is disabled or chronically ill.

If there are multiple designated beneficiaries and any one of them is not an "eligible designated beneficiary," then none of them is treated as an eligible designated beneficiary unless a specific exception applies (e.g., one of the eligible designated beneficiaries is disabled or chronically ill, or the individual is "disregarded" due to their death or a qualified disclaimer) (Treas. Regs. §1.401(a)(9)-4(e) and (g))

Under the regulations, if the deceased grantor had already started taking RMDs, the beneficiaries must take at least an RMD each year based on the "at least as rapidly" (ALAR) rule. The ALAR is based on the frequency of distributions (annually), not the amount of the annual distributions. The life expectancy of the beneficiary is used to calculate annual RMDs, with the balance of the account fully distributed by Year 10. If the decedent had not already started taking RMDs, the beneficiary can wait until the 10th year to distribute the funds from the account.

**INHERITED ROTH IRAs**

Inherited Roth IRAs are subject to the 10-year distribution rule for designated beneficiaries. Roth IRAs do not have an RMD in the original account owner's hands, so when the account owner dies, they are deemed to have died before their RMD age, no matter how old they are. Therefore, designated beneficiaries who inherit a Roth IRA are not subject to the RMD rules during their 10-year distribution period.

Eligible designated beneficiaries can take distributions based on their own life expectancy.

**MAXIMUM DEDUCTIBLE CONTRIBUTIONS TO IRAs, KEOGH PLANS, AND SEPs**

| Maximum Deductible Contributions to IRAs, Keogh Plans, and SEPs | | | | | | |
|---|---|---|---|---|---|---|
| Tax Year | Maximum deductible amount of Keogh contribution | | Maximum deductible amount of IRA contribution | | Maximum deductible amount of SEP contribution | |
| | Federal | California | Federal | California | Federal | California |
| 1963–67 | $ 1,250[1] | $ – 0 – | | | | |
| 1968–70 | 2,500 | – 0 – | | | | |
| 1971–73 | 2,500 | 2,500 | | | | |
| 1974 | 7,500 | 2,500 | | | | |
| 1975 | 7,500 | 2,500 | $1,500 | $ – 0 – | | |
| 1976–78 | 7,500 | 2,500 | 1,500 | 1,500 | | |
| 1979–81 | 7,500 | 2,500 | 1,500 | 1,500 | $ 7,500 | $ 2,500 |
| 1982–83 | 15,000 | 2,500 | 2,000 | 1,500[2] | 15,000 | 2,500 |
| 1984–86 | 30,000 | 2,500 | 2,000 | 1,500[2] | 30,000 | 2,500 |
| 1987–93 | 30,000 | 30,000[3] | 2,000 | 2,000[2] | 30,000 | 30,000[3] |
| 1994–96 | 30,000 | 30,000 | 2,000 | 2,000 | 22,500 | 22,500[3] |
| 1997–99 | 30,000 | 30,000 | 2,000 | 2,000 | 24,000 | 24,000 |
| 2000 | 30,000 | 30,000 | 2,000 | 2,000 | 25,500 | 25,500 |
| 2001 | 35,000 | 35,000 | 2,000 | 2,000 | 25,500 | 25,500 |
| 2002–03 | 40,000 | 40,000 | 3,000[4] | 3,000[4] | 40,000 | 40,000 |
| 2004 | 41,000 | 41,000 | 3,000[4] | 3,000[4] | 41,000 | 41,000 |
| 2005 | 42,000 | 42,000 | 4,000[4] | 4,000[4] | 42,000 | 42,000 |

*(continued)*

| Maximum Deductible Contributions to IRAs, Keogh Plans, and SEPs (continued) | | | | | | |
|---|---|---|---|---|---|---|
| **Tax Year** | **Maximum deductible amount of Keogh contribution** | | **Maximum deductible amount of IRA contribution** | | **Maximum deductible amount of SEP contribution** | |
| | **Federal** | **California** | **Federal** | **California** | **Federal** | **California** |
| 2006 | 44,000 | 44,000 | 4,000[5] | 4,000[5] | 44,000 | 44,000 |
| 2007 | 45,000 | 45,000 | 4,000[5] | 4,000[5] | 45,000 | 45,000 |
| 2008 | 46,000 | 46,000 | 5,000[5] | 5,000[5] | 46,000 | 46,000 |
| 2009–11 | 49,000 | 49,000 | 5,000[5] | 5,000[5] | 49,000 | 49,000 |
| 2012 | 50,000 | 50,000 | 5,000[5] | 5,000[5] | 50,000 | 50,000 |
| 2013 | 51,000 | 51,000 | 5,500[5] | 5,500[5] | 51,000 | 51,000 |
| 2014 | 52,000 | 52,000 | 5,500[5] | 5,500[5] | 52,000 | 52,000 |
| 2015–16 | 53,000 | 53,000 | 5,500[5] | 5,500[5] | 53,000 | 53,000 |
| 2017 | 54,000 | 54,000 | 5,500[5] | 5,500[5] | 54,000 | 54,000 |
| 2018 | 55,000 | 55,000 | 5,500[5] | 5,500[5] | 55,000 | 55,000 |
| 2019 | 56,000 | 56,000 | 6,000[5] | 6,000[5] | 56,000 | 56,000 |
| 2020 | 57,000 | 57,000 | 6,000[5] | 6,000[5] | 57,000 | 57,000 |
| 2021 | 58,000 | 58,000 | 6,000[5] | 6,000[5] | 58,000 | 58,000 |
| 2022 | 61,000 | 61,000 | 6,000[5] | 6,000[5] | 61,000 | 61,000 |
| 2023 | 66,000 | 66,000 | 6,500[5] | 6,500[5] | 66,000 | 66,000 |
| 2024 | 69,000 | 69,000 | 7,000[5] | 7,000[5] | 69,000 | 69,000 |
| 2025 | 70,000 | 70,000 | 7,000[5] | 7,000[5] | 70,000 | 70,000 |

[1] For tax years 1963–67, the maximum allowable Keogh contribution was $2,500, but only 50% of it was deductible

[2] For these years, California did not allow a taxpayer who was covered by an employer's plan at any time during the year to deduct an IRA

[3] Although the maximums were the same for federal and California, the deductible amount may have been different. The federal maximum was based on federal net income and the California maximum on California net income

[4] Plus $500 if at least age 50 as of the end of the year

[5] Plus $1,000 if at least age 50 as of the end of the year

**PLAN LIMITATION AMOUNTS**

| Maximum Contributions to Retirement Plans | | | | | |
|---|---|---|---|---|---|
| | **2021** | **2022** | **2023** | **2024** | **2025** |
| **IRAs (regular and Roth)** | | | | | |
| Up to age 50 | $6,000 | $6,000 | $6,500 | $7,000 | $7,000 |
| Age 50+ | $7,000 | $7,000 | $7,500 | $8,000 | $8,000 |
| **401(k); 403(b); 457 plans** | | | | | |
| Up to age 50 | $19,500 | $20,500 | $22,500 | $23,000 | $23,500 |
| Age 50+ | $26,000 | $27,000 | $30,000 | $30,500 | $31,000 |
| **SIMPLE IRAs*** | | | | | |
| Up to age 50 | $13,500 | $14,000 | $15,500 | $16,000 | $16,500 |
| Age 50+ | $16,500 | $17,000 | $19,000 | $19,500 | $20,000 |
| * See chart on page 4-13 for variations of the SIMPLE IRA contribution limits. | | | | | |
| **Defined contribution plans** | | | | | |
| Profit sharing/ money purchase | $58,000 | $61,000 | $66,000 | $69,000 | $70,000 |
| SEP IRA | $58,000 | $61,000 | $66,000 | $69,000 | $70,000 |
| **Solo 401(k)** | | | | | |
| Up to age 50 | $58,000 | $61,000 | $66,000 | $69,000 | $70,000 |
| Age 50+ | $64,500 | $67,500 | $73,500 | $76,500 | $77,500 |

| **Annual Compensation Limits of Defined Benefit Plans (IRC §§401(a)(17), 404(j), 408(k)(3)(C)(7))** | |
|---|---|
| 2022 | $305,000 |
| 2023 | $330,000 |
| 2024 | $345,000 |
| 2025 | $350,000 |

## SOCIAL SECURITY

### SOCIAL SECURITY (FICA) TAX

#### FICA wage base

The FICA payroll tax is made up of two components:

- Old Age, Survivor, and Disability Insurance (OASDI); and
- Medicare.

Both the employer and employee are subject to a 6.2% rate for OASDI and 1.45% for Medicare up to a specified wage base (see chart below). In addition, an employer is required to collect from each of its employees the 0.9% additional Medicare tax only to the extent the employer pays wages to the employee in excess of $200,000 in a calendar year. This rule applies regardless of the employee's filing status or other income. (Prop. Treas. Regs. §31.3102-4) There is no requirement that the employer match the 0.9% tax or notify its employees if it withholds additional Medicare tax.

| FICA and Self-Employment Tax Update | | | | | |
|---|---|---|---|---|---|
| | **2021** | **2022** | **2023** | **2024** | **2025** |
| Maximum FICA (OASDI) wage base | $142,800 | $147,000 | $160,200 | $168,600 | $176,100 |
| FICA tax rate (employer/employee) | 7.65% (employer) + 7.65% (employee) | | | | |
| Self-employment tax rate | 15.3% | | | | |
| Max FICA tax (employer) | $10,924 | $11,246 | $12,255 | $12,898 | $13,472 |
| Max FICA tax (employee) | $10,924 | $11,246 | $12,255 | $12,898 | $13,472 |
| Max self-employment tax (to OASDI limit) | $21,848 | $22,491 | $24,511 | $25,796 | $26,943 |
| Max Medicare health insurance wage base | Unlimited | | | | |
| Medicare health insurance rate | 1.45% + 0.9% above $200,000 | | | | |
| Earned income ceilings for SS benefits: early retirement age | $18,960 ($1,580/mo.) | $19,560 ($1,630/mo.) | $21,240 ($1,770/mo.) | $22,320 ($1,860/mo.) | $23,400 ($1,950/mo.) |
| Earned income ceilings for SS benefits: full retirement age and over | Unlimited | | | | |

**2.5% COLA for 2025**

Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 2.5% cost of living adjustment in 2025. For 2024, it was 3.2%.

**Practice Pointer**

Occasionally, a client is unable to locate their SSA-1099. Taxpayers who have created an online account with the Social Security Administration can instantly download a printable copy of their SSA-1099 online at the following Social Security website:

**Website**

www.ssa.gov/myaccount/replacement-SSA-1099.html

All taxpayers, not just those currently receiving benefits, who have not created an online account with the Social Security Administration should create one. Taxpayers can review their earnings history online, print annual statements, and order replacement Social Security cards.

## MEDICARE

For 2024, the basic Medicare premiums are $174.70, plus the cost of a prescription drug plan. For 2025, basic Medicare premiums are $185.00 plus the cost of a prescription drug plan.

### HIGH-INCOME INDIVIDUALS

Individuals with incomes above certain thresholds pay a higher Medicare premium surcharge and do not receive the benefit of the hold-harmless rule. The surcharge is based on “modified AGI” using a two-year look-back. A two-year look-back means, for example, that the 2025 surcharge is based on 2023 modified AGI.

Taxpayers may be able to get the surcharge reduced if their income has dropped because of certain life-changing events, such as marriage, divorce, or the death of a spouse, or if the taxpayer or spouse stopped working or reduced their work hours. In that case, the taxpayer must contact the Social Security Administration. Taxpayers cannot contest the surcharge just because their income was unusually high in the look-back year for other reasons (e.g., sale of property).

Modified AGI is the taxpayer’s adjusted gross income plus:

- Tax-exempt interest;
- Excluded savings bond interest used to pay for educational expenses;
- Excluded foreign-earned income;
- Income derived from sources within Guam, American Samoa, and the Northern Mariana Islands; and
- Income from sources in Puerto Rico.

***Comment***

Noticeably absent from the MAGI calculation for Medicare are distributions from Roth accounts (IRAs or 401(k)s). The fact that Roth distributions won’t create additional income for purposes of calculating the Medicare surcharge is yet another benefit of Roth retirement accounts.

Taxpayers who file as head of household or qualifying widow or widower are treated as single for purposes of the Medicare premium surcharge.

**Part D subject to surcharge**

High-income beneficiaries who pay the Part B premium surcharge also pay a graduated surcharge on Part D premiums if they are enrolled in Part D. The income levels are the same for Part D surcharges as Part B.

| 2025 Medicare Parts B and D Premium Surcharge | | | |
|---|---|---|---|
| If 2023 Modified AGI is … | | 2025 Part B monthly premium | 2025 Part D monthly premium |
| Single | Married | | |
| $106,000 or less | $212,000 or less | $185.00 | Plan premium |
| $106,001–$133,000 | $212,001–$266,000 | $259.00 | Plan premium + $13.70 |
| $133,001–$167,000 | $266,001–$334,000 | $370.00 | Plan premium + $35.30 |
| $167,001–$200,000 | $334,001–$400,000 | $480.90 | Plan premium + $57.00 |
| $200,001–$500,000 | $400,001–$750,000 | $591.90 | Plan premium + $78.60 |
| $500,001 and above | $750,001 and above | $628.90 | Plan premium + $85.80 |

| 2024 Medicare Parts B and D Premium Surcharge | | | |
|---|---|---|---|
| If 2022 Modified AGI is … | | 2024 Part B monthly premium | 2024 Part D monthly premium |
| Single | Married | | |
| $103,000 or less | $206,000 or less | $174.70 | Plan premium |
| $103,001–$129,000 | $206,001–$258,000 | $244.60 | Plan premium + $12.90 |
| $129,001–$161,000 | $258,001–$322,000 | $349.40 | Plan premium + $33.30 |
| $161,001–$193,000 | $322,001–$386,000 | $454.20 | Plan premium + $53.80 |
| $193,001–$500,000 | $386,001–$750,000 | $559.00 | Plan premium + $74.20 |
| $500,001 and above | $750,001 and above | $594.00 | Plan premium + $81.00 |

**Practice Pointer**

If the Social Security Administration determines that a Medicare participant should pay the Medicare premium surcharge, then it will mail the participant an initial determination notice. Taxpayers can appeal the surcharge by filing Form SSA-44, Medicare Income-Related Monthly Adjustment Amount — Life-Changing Event.

Form SSA-44 should be used where a Medicare participant experiences a life-changing event. Life changing events are:

- Change in marital status (marriage, divorce/annulment, or death of a spouse);
- Work stoppage or work reduction (retirement, reduced work hours, etc.);
- Loss of income-producing property;
- Loss of pension income; or
- Employer settlement payment.

Taxpayers can attempt to get ahead of a Medicare premium surcharge by either filing Form SSA-44 or by calling the Social Security Administration ahead of time at:

☎ **Telephone**
(800) 772-1213

A copy of Form SSA-44 can be found at:

**Website**
www.ssa.gov/forms/ssa-44.pdf

## ESTATE, TRUST, AND GIFT TAXES

### UNIFIED EXCLUSION AMOUNT

The 2024 unified exclusion amount is $13.61 million. (Rev. Proc. 2023-34) The 2025 amount is $13.99 million. (Rev. Proc. 2024-40)

The unified exclusion amount, which represents the value of assets that can be transferred upon death before an estate tax liability will be incurred, is adjusted annually for inflation. The TCJA nearly doubled the unified exclusion amount in 2018, but under the TCJA, it is scheduled to revert back to $5,000,000 (plus inflation from 2011) after December 31, 2025 (see page 2-9 for a discussion of planning ahead for a reduced exclusion).

| Estate and Gift Tax Unified Exclusion Amount and Credit Equivalent | | |
|---|---|---|
| **Year of death** | **Unified exclusion amount** | **Credit equivalent[1]** |
| 2002–2010 | $1,000,000 | $345,800 |
| 2011 | $5,000,000 | $1,945,800 |
| 2012 | $5,120,000 | $1,993,800 |
| 2013 | $5,250,000 | $2,045,800 |
| 2014 | $5,340,000 | $2,081,800 |
| 2015 | $5,430,000 | $2,117,800 |
| 2016 | $5,450,000 | $2,125,800 |
| 2017 | $5,490,000 | $2,141,800 |
| 2018 | $11,180,000 | $4,417,800 |
| 2019 | $11,400,000 | $4,505,800 |
| 2020 | $11,580,000 | $4,577,800 |
| 2021 | $11,700,000 | $4,625,800 |
| 2022 | $12,060,000 | $4,769,800 |
| 2023 | $12,920,000 | $5,113,800 |
| 2024 | $13,610,000 | $5,389,800 |
| 2025 | $13,990,000 | $5,541,800 |
| [1] Calculated as: ((unified exclusion amount - $1,000,000) × 40%) + $345,800 | | |

**Estate valuation**

The United States Supreme Court has affirmed an Eighth Circuit Court of Appeals decision that held that life insurance proceeds received by a closely held corporation after the death of a shareholder increased the value of the corporation, and therefore the value of the shareholder's stock, when valuing his estate. (***Connelly v. U.S.*** (2024) 602 U.S. ________________________________________)

The decedent owned 77% of a closely held C corporation's stock, and his brother owned the remaining 23% of the stock. The corporation owned a life insurance policy on the decedent and received proceeds of $3.5 million upon his death. The purpose of the life insurance was so that the corporation would have the cash necessary to redeem the decedent's shares upon his death pursuant to a redemption agreement between the shareholders and the corporation.

The central issue in the case was whether the corporation's obligation to redeem the decedent's shares was a liability that decreased the value of those shares. The Supreme Court held that a stock redemption obligation is not a liability of the corporation that reduces the value of the decedent's shares as of his date of death.

## DSUE PORTABILITY ELECTION

Portability of estate and gift tax allows a surviving spouse to inherit any unused portion of their deceased spouse's estate and gift tax exemption (aka, the deceased spouse unused exclusion, or DSUE). Estates that are filing an estate tax return only to make a portability election have five years from the date of the decedent's death to make the election without having to pay any fee. (Rev. Proc. 2022-32) Previously, estates that had no filing requirement because of having gross income below the filing threshold could make an election within two years of the decedent's death. Revenue Procedure 2022-32 superseded Revenue Procedure 2017-34, which allowed the two-year filing period.

### Which estates qualify

To qualify for the simplified extension process, the following requirements must be met:

- The decedent must:
    - Be survived by a spouse;
    - Have died after December 31, 2010; and
    - Have been a citizen or resident of the United States on the date of death;
- No estate tax return is required under IRC §6018(a) based on the gross value of the estate and adjusted taxable gifts, without regard of the need to file for portability purposes;
- The executor did not file a timely estate tax return;
- The executor must file a properly prepared Form 706, United States Estate (and Generation- Skipping Transfer) Tax Return, on or before the fifth annual anniversary of the decedent's date of death; and
- State at the top of Form 706 that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER IRC §2010(c)(5)(A)."

> ✐ **Practice Pointer**
>
> If a Form 706 is filed pursuant to Rev. Proc. 2022-32, then an extension request is not required. The estate is only required to file Form 706 based on the requirements listed immediately above in order to receive the extension.

> ✐ **Practice Pointer**
>
> If a Form 706 is being filed only to elect portability, the IRS Form 706 instructions state that a complete Form 706 must be filed. However, estimated assets values are permitted.
>
> Under Treas. Regs. §20.2010-2(a)(7)(ii), if the total value of the gross estate and adjusted taxable gifts is less than the basic exclusion amount (see IRC §6018(a)) and Form 706 is being filed only to elect portability of the DSUE amount, the estate is not required to report the value of certain property eligible for the marital or charitable deduction.
>
> For the property being reported on Schedules A, B, C, D, E, F, G, H, and I, the executor must figure their best estimate of the value.

## CHARITABLE REMAINDER TRUSTS

Charitable remainder annuity trusts (CRATs) allow the trust's grantor to receive a charitable contribution deduction for the net present value of the remainder interest in the trust while providing an income stream in the form of annuity payments to the grantor of the trust.

In a typical CRAT, the grantor funds the trust with appreciated property. The trust then sells the appreciated property and invests the proceeds. In addition to other requirements not relevant here, CRATs must pay between 5% and 50% of the trust's assets at least annually to the trust beneficiaries.

A beneficiary's tax treatment of distributions from a CRAT are determined based on a hierarchy of four categories. Using this hierarchical system, amounts distributed by a CRAT are considered as having the following characteristics in the hands of the beneficiary:

- First, as current-year ordinary income and undistributed ordinary income for prior years;
- Second, as current-year capital gain and undistributed capital gains for prior years;
- Third, as other current-year income and undistributed other income for prior years; and
- Fourth, as a distribution of trust corpus. (IRC §664(b)(1)–(4))

**Proposed regulations created listed transactions**

The IRS issued proposed regulations that target CRATs that invest the proceeds of their appreciated assets in single premium immediate annuities (SPIA) and seek to tax distributions to CRAT beneficiaries under the rules of IRC §72 (governing the taxation of annuity distributions) instead of under IRC §664(b) (governing the tax treatment of CRAT distributions).

Taxpayers engaging in these transactions claim that distributions from the CRAT are not taxable to the beneficiaries under the four-tier hierarchy of IRC §664(b). Instead, the beneficiary of the trust treats the SPIA payments received by the trust and then distributed to the beneficiary as if the annuity were held by the beneficiary directly. The end result of this claimed tax treatment is to permanently avoid recognition of ordinary income and/or capital gains that would be required under the four-tier hierarchy of IRC §664(b).

The IRS, through its proposed regulations, states that the claimed application of IRC §§72 and 664 by taxpayers engaged in these transactions is incorrect. According to the proposed regulations, the SPIA payments made to the CRAT must be treated as ordinary income (the first tier in the CRAT distribution hierarchy) each year.

**Listed transaction reporting**

Under these proposed regulations, CRAT beneficiaries must report the trust's distributions as listed transactions using Form 8886, Reportable Transaction Disclosure Statement, where:

- The CRAT has invested in an SPIA; and
- The beneficiary seeks tax treatment of their distributions pursuant to IRC §72.

Material advisors must file Form 8918, Material Advisor Disclosure Statement. A person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with regard to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of a threshold amount. (Treas. Regs. §301.6111-3(b)(1))

The threshold amount of gross income is $10,000 for a reportable listed transaction that provides substantially all of the tax benefits to individuals and $25,000 for all others.

**Charitable organizations**

The IRS's proposed regulations specifically exempt, as either a participant or a material advisor, any organization whose only role or interest in the transaction is as a charitable remainderman. If the charitable organization participates in any other way, then they may find themselves subject to the material advisor disclosure rules.

## GENERATION-SKIPPING TRANSFER TAX

In May 2024, the Treasury Department finalized regulations on the extension of time to make certain generation-skipping tax (GST) elections. In short, the final GST regulations largely adopt, with clarifying changes, the proposed regulations issued 16 years ago on this topic. The regulations detail the circumstances and procedures under which an extension of time will be granted by the IRS to make the following allocations and elections:

- An allocation of the GST exemption (IRC §2631);
- An election not to have the deemed (automatic) allocation of the GST exemption apply to a direct skip gift (IRC §2632(b)(3));
- An election not to have the deemed (automatic) allocation of the GST exemption apply to an indirect skip or to transfers made to a particular trust (IRC §2632(c)(5)(A)(i)); and
- An election to treat any trust as a GST trust. (IRC §2632(c)(5)(A)(ii))

Taxpayers must continue to use the private letter ruling system to request an extension of time to make GST elections until the Treasury identifies appropriate methods for simplified or automatic relief under IRC §2642(g)(1). The final regulations are effective as of May 6, 2024.

## GIFT TAX ISSUES

### Annual gift tax exclusion

For 2024, the annual gift tax exclusion is $18,000. (Rev. Proc. 2023-34) For 2025, the exclusion is $19,000. (Rev. Proc. 2024-40)

### Tax reimbursement provisions can be deemed gifts

In a Chief Counsel Advice memorandum, the IRS concluded that a modification to an intentionally defective grantor trust to add a tax reimbursement clause constitutes a taxable gift by the trust beneficiaries to the grantor because it represents a relinquishment of a portion of the beneficiaries' interest in the trust. (CCA 202352018)

In the scenario outlined in the CCA, the taxpayer created an irrevocable grantor trust to benefit her child and her grandchildren. The trust did not originally have a tax reimbursement clause (nor was there such authority under state law). After the creation of the trust, the independent trustee requested modification of the trust terms to provide for reimbursements to the taxpayer for tax paid on trust income on her personal return. (IRC §671) Under state law, the beneficiaries of the trust were required to consent to the change, which they did.

In their analysis, the IRS reviewed Revenue Ruling 2004-64, which examines three scenarios in which a grantor pays income tax on trust income and then is reimbursed by the trust for the tax. The ruling concludes that the grantor's payment of the tax is not a gift by the trust beneficiaries because:

- The grantor, and not the trust, was liable for the tax; and
- The distribution to the grantor was either:
  - Mandated by the trust instrument; or
  - Made by a trustee with discretionary authority to make such a distribution.

The IRS noted that the modification made to the trust in the CCA (to allow for reimbursements of tax stemming from the inclusion of trust income to the taxpayer) constituted a transfer by the beneficiaries of a portion of their interest in the trust for the benefit of the taxpayer.

Therefore, by consenting to the modification, the beneficiaries gifted a portion of their income and/or principal to the taxpayer. The IRS distinguished this from the scenarios in Revenue Ruling 2004-64, in which the original governing instrument provided either a mandatory or discretionary right to reimburse the grantor for tax.

However, the IRS acknowledged that their position in the CCA reverses their earlier position taken in PLR 201647001, in which the IRS concluded that the modification of a trust to add a discretionary tax reimbursement clause is administrative in nature and does not result in a change of beneficial interests in the trust. In Footnote 1 in the CCA, the IRS stated that the conclusions reached in PLR 201647001 "no longer reflect the position of this office."

This means that the beneficiaries are required to complete a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, if the value of the gift exceeded the exclusion amount for the tax year.

**Family stock sales**

Taxpayers were deemed to have made a gift of over $26 million when their son purchased their company's stock for $5 million. (***Huffman v. Comm.***, TCM 2024-12) The facts of the ***Huffman*** case are much more complicated than a son purchasing an asset from his parents for less than full and valuable consideration.

**The facts**

In ***Huffman***, the son took over his parents' California company in the late 1980s when its revenues were about $5 million per year.

By the end of 1993, the son had entered into three separate written right-to-purchase (RTP) agreements to acquire all the shares of the company. Two of the agreements were to acquire his parents' shares for $5 million, and the third agreement was to acquire a minority third-party's shares for $150,000. The RTP agreement to acquire the third-party's shares was exercised immediately, but the other two RTP agreements were not exercised until 2007.

Between 1993 and 2007, the son grew the company significantly from $5 million in annual revenue to nearly $30 million in annual revenue. It was at this point that the son exercised his RTP options and acquired his parents' shares of the company for $5 million. The son then sold the company for $95.75 million in 2009.

**IRC §2703**

On audit, the IRS determined that the company was worth $31.3 million when the son exercised his RTP agreements and paid only $5 million, resulting in a gift of $26.3 million.

IRC §2703(a)(1) provides that the value of property rights must be determined without regard to any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property. However, IRC §2703(b) provides an exception for any option, agreement, right, or restriction that meets all three of the following requirements:

- It is a *bona fide* business arrangement;
- It is not a device to transfer such property to members of a decedent's family for less than full and adequate consideration in money or money's worth; and
- Its terms are comparable to similar arrangements entered into by persons in an arm's-length transaction.

If the three IRC §2703(b) requirements are satisfied, then the agreement will be respected for gift and estate valuation purposes. If taxpayers in ***Huffman*** could convince the Tax Court that all three requirements were met, then the son's acquisition of their shares at the lesser valuation would not be deemed a gift.

The court in ***Huffman*** recognized the two RTP agreements between the taxpayers and their son as *bona fide* business arrangements without much analysis, so the first requirement under IRC §2703(b) was met.

After a heavy factual analysis, the court held that the RTP agreements were not a device to transfer the company's stock for less than full and adequate consideration, thus meeting the second requirement of IRC §2703(b). The Tax Court considered the fact that the son accepted a reduced salary during the years he operated the company and that the company benefited from unusual and unexpected growth from the time the RTP agreements were executed and the date the son exercised his options to purchase his parents' shares. Therefore, adequate consideration was bargained for at the time the RTP agreements were executed.

At this point, it would seem only a formality that the Tax Court would hold that the third requirement of IRC §2703(b) was met because the first two requirements are the most difficult to satisfy, and there was a third agreement with an unrelated third party executed at the same time. However, this is where the case fell apart for the taxpayer.

The court noted the following differences between the RTP agreements executed between the taxpayers and their son and the RTP agreement executed with the unrelated shareholder:

- The son could not freely transfer rights under the RTP agreements with his parents without obtaining his parents' consent, and the third RTP did not contain such a provision;
- The RTP agreements all contained rights of first refusal, but the agreements between the taxpayers and their son exempted offers from the taxpayers' other sons from the right of first refusal provisions;
- The RTP agreements between the taxpayers and their son allowed the son to exercise his purchase option at any time at the son's discretion, where the third agreement contained restrictions as to timing; and
- The stated purpose of the RTP agreements between the taxpayers and their son was to retain ownership of the company within the family.

The court held that these differences were sufficient to render the RTP agreements between the taxpayers and their son dissimilar to the RTP agreement with the third party, and therefore the third requirement of IRC §2703(b) was not met. Therefore, the RTP agreement could not be considered when valuing the stock acquired by the son, and he was deemed to have purchased $31.3 million worth of stock for only $5 million.

**Loans between family members**

The Tax Court held that a decedent's estate owed additional estate tax after determining that amounts paid to a decedent's son from 1990 through 2007 were determined to be mostly gifts, rather than loans. (***Estate of Mary P. Bolles v. Comm.*** (April 1, 2024) U.S. Ct. of Appeals, Ninth Circuit, Case No. 22-70192; aff'g TCM 2020-71)

The decedent had made loans to her son starting in 1985 and continuing through 2007, totaling $1,063,333. There was no evidence that the son made any loan repayments after 1990.

The loans were made to help keep the son's architecture business afloat. The son had taken over the business from his late father, and the mother expected that the loans would be repaid when business turned around.

About the time the loan repayments stopped, the son was excluded from the decedent's personal trust, and he signed an acknowledgement that he did not have the assets or the earning capacity to make repayments.

In upholding the Tax Court's ruling, the appeals court held that from 1985 when the loans started through 1989, there was a debtor-creditor relationship between the mother and son. There was a change in relationship in 1990 when the loan repayments ceased, and the son was excluded from the decedent's trust. It was at this point that there was no longer a *bona fide* debtor-creditor relationship between the decedent and her son. The court held that any loans made from that point forward were gifts to the son, which reduced the decedent's unified exclusion.

**Superfunding §529 accounts**

Taxpayers can make yearly contributions up to the annual gift tax limit ($18,000 in 2024) without the need to file gift tax returns; however, there is an option to place up to five years' worth of the annual gift limit in a §529 account in one year and spread that contribution across five years. This amount is $90,000 using the 2024 gift limit ($18,000 × 5). Taxpayers can make this election for as many separate people for whom §529 plan contributions were made.

There is no immediate federal tax benefit for making contributions to a §529 plan, but certain states offer either a credit or a deduction from income. A chart of states that offer either a credit or a deduction can be found at:

**Website**
www.caltax.com/files/2023/529plans.pdf

**Gift tax return requirement**

If a taxpayer makes the election to treat up to $90,000 (for 2024) of a contribution to a §529 plan as being contributed ratably over a five-year period, then the taxpayer must file a gift tax return in the year of the gift. There is generally no gift tax return requirement in years 2 through 5 if the taxpayer otherwise did not make any reportable gifts. If the election applies to a portion of a larger contribution (for example, if the taxpayer contributed $120,000 to a §529 plan), a gift tax return is required in all years to report the excess of the five-year amount. (Instructions to Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return)

***Example of filing gift tax returns***

In 2024, Dave contributed $120,000 to a §529 plan for the benefit of his son, and he elects to treat $90,000 of it as being contributed ratably over a five-year period ($18,000 2024 gift tax exclusion × five years = $90,000).

For 2024, he will file a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report an unrelated $30,000 gift to his son as well as the $90,000 excludable gift.

In 2025, Dave gives a gift of $25,000 cash to his niece.

For 2025, Dave must file a Form 709 to report the $25,000 gift to his niece ($19,000 of which is the annual gift tax exclusion), and so he will also report a $18,000 gift to his son (the one-fifth portion of the 2024 gift that is treated as made in 2025).

Dave doesn't make any gifts in 2026, 2027, or 2028. He is not required to file Form 709 in those years to report the one-fifth portion of the §529 plan contribution because he is not otherwise required to file Form 709.

**Alternative college expense planning: education gifting**

Taxpayers who make tuition payments for another person directly to a qualified educational organization may exclude those payments from gift tax and reporting no matter their amount, and they do not count toward your client's annual exclusion or lifetime credit. (IRC §2503(e); Treas. Regs. §25.2503-6(b)(2)) The unlimited exclusion is not permitted for amounts paid for books, supplies, dormitory fees, or similar expenses that do not constitute direct tuition costs.

A qualified educational organization is one that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on. (IRC §170(b)(1)(A)(ii))

**☑ Planning Pointer**

Making gifts by directly paying tuition may be a better alternative than gifting into a §529 college savings account. For example, grandparents, aunts, and uncles often want to give gifts that will be used for education. But what if the recipient will be drawing from their §529 account within a couple of short years? A gift made into a §529 account isn't likely to see much appreciation before it is spent.

In this scenario, it may be better to preserve the annual gift tax exclusion amount and simply wait to make a tuition payment directly to the educational institution.

**☑ Planning Pointer**

In addition to gifts of education tuition, direct payments of medical expenses to a medical care provider can be made gift-tax free. (IRC §2503(e); Treas. Regs. §25.2503-6(b)(3))

The medical gift does not count against the annual gift tax exclusion or the lifetime gifting credit, so the donors reduce their estate and retain the ability to make additional gifts.

This exclusion applies regardless of the relationship between the person making the payments and the individual on whose behalf the payments are made. This exclusion is available in addition to the annual gift tax exclusion. (Treas. Regs. §25.2503-6(a)) However, the payments must be made for medical care as it is defined under the IRC §213(d) medical expense deduction rules. This includes the costs of dental treatment, drugs and medicines, nursing, and certain transportation and travel.

## TIPS FOR FILING A FINAL 1040

Many aspects of filing a decedent's final Form 1040 are the same as for everyone else: The filing requirements, filing deadlines, and income and deduction rules are the same. However, there are some common aspects every practitioner should understand as they prepare the decedent's final return.

**Filing tips**

Follow these tips for a smooth final Form 1040 filing:

- The taxpayer's final return can be filed by a surviving spouse or a personal representative;
- A death certificate should be kept with the decedent's tax records but should not be sent to the IRS unless requested;
- Personal representatives should file Form 56, Notice Concerning Fiduciary Relationship, to notify the IRS of their fiduciary relationship to the decedent;
- A separate notification to the IRS of the decedent's death is not necessary. Instead, write "deceased" at the top of the final Form 1040 and the date of death;
- Married taxpayers are deemed married the entire year when one spouse dies during the year:
    - For the year of death, the surviving spouse can file as married filing joint with their deceased spouse or as married filing separate;
    - If the surviving spouse files as married filing separate, then the decedent must also file as married filing separate;
    - If the surviving spouse remarries before the end of the year, the decedent must file as married filing separate, and the surviving spouse can either file as married filing separate or married filing joint with their new spouse — the surviving spouse cannot file as married filing joint with their deceased spouse;
- The final tax return can be signed by:
    - A surviving spouse — write "filing as surviving spouse" on the decedent's signature line;
    - A court-appointed representative; or
    - If there is no court-appointed representative, a personal representative who should sign the return as "personal representative";
- If a representative is appointed by a court, then a copy of the court order appointing the representative should be attached to the return; and
- If a refund is being claimed for a decedent by someone other than a surviving spouse or court-appointed representative, then Form 1310, Statement of Person Claiming Refund Due to a Deceased Person, must be attached to the return.

***Delayed refund processing for deceased taxpayers***

In an August 13, 2024, blog post, the IRS's Taxpayer Advocate Service stated that the IRS is significantly delayed in processing refunds for deceased taxpayers on their final Form 1040s for the 2022 and 2023 tax years. Taxpayers still waiting for these funds just need to be patient while the IRS works through its backlog.

**Personal liability of fiduciaries**

The executors of a decedent's estate can be held personally liable for the decedent's tax debts, including penalties and interest, if:

- The executors distributed assets of the estate;
- The distribution rendered the estate insolvent; and
- The distribution took place after the executors had actual or constructive knowledge of the liability for unpaid taxes. (See ***United States v. Coppola*** (2d Cir. 1996) 85 F.3d 1015)

For this reason, executors and others that serve in a fiduciary capacity for the decedent's estate should be careful not to distribute assets until after tax liabilities have been established.

**Splitting income**

The taxpayer's date of death marks the end of the taxpayer's final taxable year and the beginning of the taxable year of a new taxpayer: the decedent's estate. Decedents regularly receive tax reporting forms, such as 1099s for interest and dividends, that cover the entire year when, in fact, the decedent died midyear.

The amounts reported on the tax reporting forms that were paid after the decedent's date of death should be reported on the estate's income tax return (Form 1041). But, because the amounts are reported on tax-reporting forms issued to the taxpayer, the entire amount should also be reported on the decedent's final return to avoid under reporter notices.

After the full amounts are reported on the decedent's return, an offsetting negative entry should be entered on the appropriate schedule with the notation "Nominee distribution."

***Example of splitting income***

John died on June 12, 2023. In January 2024, the executor of his estate received Form 1099-INT for $10,000 issued in John's name with his Social Security number. The interest was earned in a bank account owned by John and not closed by his executor until four months after John died. The interest earned during that four-month period was $4,000.

John's final income tax return should report all $10,000 of interest income on Schedule B and then should report a negative $4,000 on Schedule B with the notation "Nominee distribution."

The executor of John's estate should then report the $4,000 as interest income on the estate's Form 1041.

**Medical expenses**

Medical expenses paid after the decedent's death can be deducted on either the decedent's final income tax return or on the decedent's estate tax return (Form 706). They cannot be deducted on the estate's income tax return (Form 1041).

In order to deduct medical expenses paid after the decedent's date of death, the expenses must have been paid within one year of the date of death, and the taxpayer must attach an election statement to the final Form 1040.

## NEW RETIREMENT PROVISIONS GOING INTO EFFECT AFTER 2024

The following chart shows the SECURE 2.0 Act provisions that are going into effect after 2024.

See page 4-1 for a chart of SECURE 2.0 provisions going into effect in 2024.

| SECURE 2.0 Act Provisions Going Into Effect After 2024 | |
|---|---|
| **Change made** | **SECURE 2.0 Act section** |
| **Effective in 2025** | |
| *Contribution-related provisions* | |
| Catch-up contribution limit for employer-provided and SIMPLE plans increased for employees ages 60, 61, 62, and 63 during the taxable year | 109 |
| *Roth provisions* | |
| Catch-up contributions must be made to employer-provided qualified retirement plans on a Roth basis: amount indexed annually for inflation | 603 |
| *Distribution-related provisions* | |
| Waiver of 10% early distribution penalty for qualified long-term care distributions for distributions made after three years from SECURE 2.0 Act's enactment | 334 |
| *Employer- and plan-related provisions* | |
| New 401(k) and 403(b) plans must auto-enroll employees with a minimum employee contribution rate of 3% | 101 |
| Expanded mandate for long-term part-time employees to participate in 401(k) plans | 125 |
| Retirement plans can begin implementing provisions of SECURE 2.0 Act immediately but must amend their plans by the last day of their first plan year beginning on or after January 1, 2025 | 501 |
| **Effective in 2026** | |
| *Contribution-related provisions* | |
| Indexes increased catch-up contribution limit for employer-provided and SIMPLE plans | 109 |
| *Miscellaneous provisions* | |
| Age of individual for which an ABLE account may be established increased to 46 | 124 |
| Participants in defined contribution plans to receive paper statements at least once annually | 338 |
| Catch-up contributions must be made on a Roth basis (after-tax) for employees with compensation in excess of $145,000 (provision was originally set to go into effect in 2024, but the IRS created a transition period until 2026). | 603 |
| *(continued)* | |

| SECURE 2.0 Act Provisions Going Into Effect After 2024 *(continued)* | |
|---|---|
| **Change made** | **SECURE 2.0 Act section** |
| **Effective in 2027** | |
| *Public safety officers and qualified public safety employees* | |
| Gross income exclusion for certain disability-related first responder retirement payments | 309 |
| *Employer- and plan-related provisions* | |
| Governmental retirement plans can begin implementing provisions of SECURE 2.0 Act immediately but must amend their plans by the last day of their first plan year beginning on or after January 1, 2027 | 501 |
| *Miscellaneous provisions* | |
| IRC §25B Qualified Retirement Savings Contributions Credit repealed and replaced with saver's matching contributions from the federal government for low- and moderate-income individuals | 103 |
| **Effective in 2028** | |
| *Miscellaneous provisions* | |
| Expansion of IRC §1042 gain deferral to apply to sale of S corporation stock | 114 |
| Highly regulated companies with liquid securities that are quoted on nonexchange markets may treat their stock as "public" for ESOP purposes | 123 |
| Department of Labor report to Congress growing pooled employer plan industry | 344 |
| **Effective in 2033** | |
| *Distribution-related provisions* | |
| Increase in mandatory age for RMD distributions to age 75 | 107 |

# GROUP STUDY MATERIALS

## A. Discussion Questions

1. What are the consequences of making excess contributions to an IRA, and how can a taxpayer rectify the situation to avoid penalties?

2. How has the SECURE 2.0 Act changed the rules around required minimum distributions (RMDs), and what are the potential benefits for retirees?

3. What new Roth contribution options have been introduced under the SECURE 2.0 Act, and how might these changes impact retirement planning?

4. What is a Starter 401(k) plan, and how does it differ from traditional employer-sponsored retirement plans?

5. How does a backdoor Roth IRA conversion work, and what are the tax considerations high-income individuals should keep in mind?

6. What are some of the new penalty-free withdrawal provisions introduced under SECURE 2.0, and how might they help individuals facing financial hardships?

## B. Suggested Answers to Discussion Questions

1. Excess contributions to an IRA are subject to a 6% excise tax for each year the excess amount remains in the account. To avoid this penalty, taxpayers must withdraw the excess contribution along with any earnings on it by the tax return due date, including extensions. If the excess contribution is not withdrawn, it can be applied toward a future year's contribution; however, the 6% tax continues to apply until the excess is fully offset. Additionally, if the statute of limitations has expired and the taxpayer had taken a deduction for the excess contribution, it must be corrected by reducing the allowable deduction in a later year.

2. The SECURE 2.0 Act increased the RMD age to 73 and will further increase it to 75 for those born after 1959. It also reduced the penalty for failing to take RMDs from 50% to 25%, with a possible reduction to 10% if corrected within the correction window. Additionally, employer-sponsored Roth accounts are now exempt from RMDs, providing greater flexibility for retirees. Another key change is that surviving spouses can now elect to be treated as the deceased employee for RMD purposes, which may result in a more favorable distribution schedule.

3. New Roth contribution options introduced under the SECURE 2.0 Act provide additional retirement planning opportunities. A notable change allows 529 plan rollovers into Roth IRAs, provided the 529 account has been held for at least 15 years. Employers can now offer Roth options for SEP and SIMPLE IRAs, but employees must elect to receive their employer contributions as Roth. Additionally, employer matching contributions can now be made on a Roth basis, though these contributions will be included in the employee's taxable income. Beginning in 2026, high-income earners making over $145,000 must make their catch-up contributions on a Roth basis.

4. A Starter 401(k) plan is a simplified retirement savings option designed for employers who do not currently offer a retirement plan. Unlike traditional 401(k) plans, Starter 401(k)s do not allow employer contributions. Employees are automatically enrolled at a contribution rate between 3% and 15% of their salary, though they may opt out or select a different rate. Contributions are capped at the IRA contribution limit, which is $7,000 in 2024 with an additional $1,000 catch-up contribution for those aged 50 and older. While these plans have lower contribution limits compared to traditional 401(k) plans, they provide a straightforward and cost-effective retirement savings option for small employers.

5. A backdoor Roth IRA conversion is a strategy that allows high-income individuals to contribute to a nondeductible traditional IRA and then convert it into a Roth IRA. Since high earners are typically ineligible to contribute directly to a Roth IRA due to income limits, this approach allows them to bypass those restrictions. However, if the taxpayer has other traditional IRAs with pre-tax contributions, the pro-rata rule applies, meaning that part of the conversion may be taxable. The conversion itself is considered taxable income, but once in the Roth IRA, qualified withdrawals are tax-free. A similar strategy, the "mega backdoor Roth," involves making after-tax contributions to a 401(k) and then converting those contributions to a Roth 401(k) or Roth IRA, though not all employer plans allow this option.

6. The SECURE 2.0 Act also introduces several new penalty-free withdrawal provisions aimed at helping individuals facing financial hardships. Taxpayers can now withdraw up to $1,000 per year for emergency personal expenses without incurring the usual 10% early withdrawal penalty. This amount can be repaid within three years, and additional withdrawals cannot be taken unless the prior withdrawal has been repaid. Victims of domestic abuse are eligible to withdraw the lesser of $10,000 or 50% of their account balance without penalty. Individuals diagnosed with a terminal illness are also permitted to take penalty-free withdrawals. Additionally, penalty-free withdrawals are now allowed for qualified long-term care expenses and for those affected by presidentially declared disasters, offering financial relief in times of crisis. In addition, corrective distributions of excess contributions are not subject to the early withdrawal penalty.

# GLOSSARY OF KEY TERMS

**Alternative Dispute Resolution (ADR)—**Commonly used to refer to a variety of alternatives to litigation, wherein a neutral party assists the disputing parties. Methods of conflict resolution other than court, include mediation, arbitration, etc. Sometimes called Appropriate Dispute Resolution.

**Appeal—**To demand a review of an IRS decision or proposed adjustment.

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

**Financial Crimes Enforcement Network (FinCEN)—**A bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat money laundering, terrorist financiers, and other financial crimes.

**Inside Basis—**Inside basis is the adjusted basis of contributed property in the hands of the partnership kept on a tax basis. The inside basis for a partnership is governed by IRC Section 723, which employs the aggregate theory to give the partnership a carryover basis in the assets contributed. The inside basis should be contrasted to the outside basis, which is the partner's adjusted basis in their partnership interest.

**Mediation—**A type of ADR in which voluntary settlement negotiations are facilitated by a neutral third party.

**OECD—**Organization for Economic Cooperation and Development (OECD) is the international organization of the industrialized, market-economy countries.

**Outside Basis—**Outside basis is the adjusted basis of contributed property in the hands of the partner kept on a tax basis. The outside basis for a partnership is governed by IRC Section 721, which employs the aggregate theory to give the partner a substituted basis in the assets contributed. The outside basis should be contrasted to the inside basis, which is the partnership's adjusted basis in the partnership assets. The adjusted basis of a partner's partnership interest is ordinarily figured at the end of a partnership's tax year. If there has been a sale or exchange of all or part of the partner's interest or a liquidation of the entire interest in a partnership, however, the adjusted basis is figured on the date of the sale, exchange, or liquidation.

**Required Minimum Distributions—**Distributions from qualified plans and IRAs that generally must commence at age 73 to avoid a 25% penalty.

**Section 530 Relief—**Under this section of the Revenue Act of 1978, an employer can continue to pay a worker as an independent contractor for employment tax purposes if the business: (1) has historically treated the worker's occupation (and similar occupations) in this manner, (2) has complied with certain information return filing requirements, and (3) has a reasonable basis for doing so.

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

1. According to Ian Redpath, what was the primary constitutional challenge made by Charlton Tooke III in Tax Court?

    A. The IRS Independent Office of Appeals lacks the authority to issue tax determinations.
    B. The Appeals Office structure violates the Appointments Clause and Separation of Powers.
    C. The Appeals Office does not have the power to reject offers in compromise.
    D. The Tax Court lacks jurisdiction to hear cases regarding IRS Appeals decisions.

2. According to Ian Redpath, what is the IRS's goal with its new Alternative Dispute Resolution (ADR) pilot programs?

    A. Replace traditional appeals with ADR as the only option
    B. Limit the use of ADR to high-income taxpayers
    C. Expand litigation options for taxpayers facing IRS disputes
    D. Increase participation by making ADR more accessible and attractive to taxpayers

3. According to Ian Redpath, what is the main purpose of Section 530 relief?

    A. To provide safe harbor for businesses that misclassify employees as independent contractors
    B. To reduce corporate tax rates
    C. To allow businesses to retroactively classify workers as employees
    D. To eliminate payroll tax liability for small businesses

4. According to Ian Redpath, what is a key factor in determining worker classification for employment tax purposes?

    A. The number of hours worked per week
    B. Whether the worker has a written contract
    C. The degree of control the employer has over the work
    D. The worker's job title

5. According to Ian Redpath, what change did the final rules (TD 100028) make to the reporting threshold for related-party basis shifting transactions?

    A. The reporting threshold is eliminated.
    B. It is reduced from $5 million to $2.5 million.
    C. It is increased to $25 million before 2025 and $10 million afterward.
    D. It now applies only to owners of publicly traded partnerships.

*Continued on next page*

6. According to Mike Giangrande, what is the maximum IRA contribution limit for 2024 and 2025 without considering catch-up contributions?

   A. $6,500
   B. $7,000
   C. $7,500
   D. $8,000

7. According to Mike Giangrande, which of the following is a provision of the SECURE 2.0 Act related to catch-up contributions?

   A. The $1,000 IRA catch-up contribution is now indexed for inflation.
   B. Catch-up contributions for those 50 and older are eliminated.
   C. Catch-up contributions for employer plans must always be made to Roth accounts.
   D. Catch-up contributions for employer plans are no longer allowed for high-income earners.

8. According to Mike Giangrande, what is new regarding qualified charitable distributions (QCDs)?

   A. The minimum age for QCDs increased to 75.
   B. QCDs must be included in taxable income.
   C. The maximum QCD amount is now indexed for inflation.
   D. QCDs can no longer be used for charitable donations.

9. According to Mike Giangrande, what is the maximum qualified charitable distribution (QCD) limit for 2024?

   A. $50,000
   B. $75,000
   C. $105,000
   D. $120,000

10. According to Mike Giangrande, how are employer Roth contributions taxed for the employee?

    A. They are taxable income in the year contributed.
    B. They are tax-free upon contribution.
    C. They reduce taxable income.
    D. They do not affect the employee's taxes.

*Continued on next page*

11. According to Mike Giangrande, what is the increased catch-up contribution limit for employer-sponsored plans for those aged 60-63 in 2025?

    A. $5,000
    B. $7,500
    C. $10,000
    D. $11,250

12. According to Mike Giangrande, when must employers implement mandatory Roth catch-up contributions for highly compensated employees?

    A. 2024
    B. 2025
    C. 2026
    D. 2030

13. According to Mike Giangrande, how long must part-time employees work to be eligible for 401(k) participation under SECURE 2.0?

    A. 1 year
    B. 2 years
    C. 3 years
    D. 5 years

14. According to Mike Giangrande, which of the following is a new early withdrawal penalty exception under the SECURE 2.0 Act?

    A. Distributions for emergency personal expenses
    B. Withdrawals for vacation expenses
    C. Withdrawals to pay off credit card debt
    D. Distributions to purchase cryptocurrency

15. According to Mike Giangrande, how much is the annual gift tax exclusion for 2025?

    A. $16,000
    B. $17,000
    C. $18,000
    D. $19,000

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**Tax Report**
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Location: ______________________________

Program Title: CPE Network Tax Report, March 2025 Date: __________

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

Instructor Name: ______________________________ Date: __________

E-mail address: ______________________________

License State and Number: ______________________________

CPLgrading@cerifi.com

# CPE Network/Webinar Delivery Tracking Report

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

| | | | First CPE Hour | | | CPE Hour 2 | | | CPE Hour 3 | | | FOR TR USE ONLY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **First Name** | **Last Name** | **Student Email** | **Poll 1** | **Poll 2** | **Poll 3** | **Poll 1** | **Poll 2** | **Poll 3** | **Poll 1** | **Poll 2** | **Poll 3** | **Certificate Issued?** |
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CHECKPOINT LEARNING NETWORK

# CPE NETWORK®
# USER GUIDE

**REVISED December 31, 2023**

**Welcome to CPE Network!**

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

This User Guide has the following sections:

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

# “Group Live” Format

**CPE Credit**

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

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

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

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

**Advertising / Promotional Page**

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

**Monitoring Attendance**

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

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

**Real Time Instructor During Program Presentation**

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

**Elements of Engagement**

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

**Make-Up Sessions**

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

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

**Awarding CPE Certificates**

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

**Subscriber Survey Evaluation Forms**

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

**Retention of Records**

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

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

**Finding the Transcript**

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

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

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

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

**Requesting Participant CPE Certificates**

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

**Email: CPLgrading@cerifi.com**

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

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

**Incomplete submissions will be returned to you.**

# "Group Internet Based" Format

**CPE Credit**

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

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

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

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

**Advertising / Promotional Page**

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

**Monitoring Attendance in a Webinar**

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

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

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

Examples of polling questions:

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

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

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

**Additional Notes on Monitoring Mechanisms:**

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

**Real Time Moderator During Program Presentation**

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

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

**Make-Up Sessions**

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

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

**Awarding CPE Certificates**

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

**Subscriber Survey Evaluation Forms**

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

**Retention of Records**

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

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

**Finding the Transcript**

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

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

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

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

**Requesting Participant CPE Certificates**

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

**Email: CPLgrading@CeriFi.com**

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

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

**Incomplete submissions will be returned to you.**

# “Self-Study” Format

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

**Self-Study—Email**

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

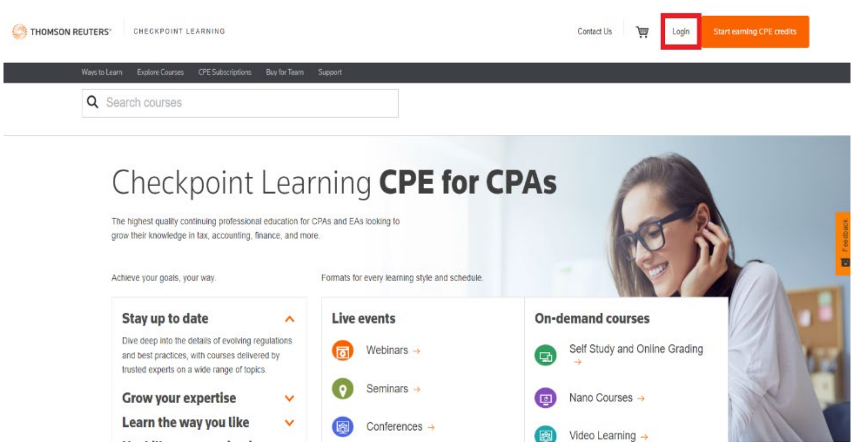
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

**CPLgrading@cerifi.com**

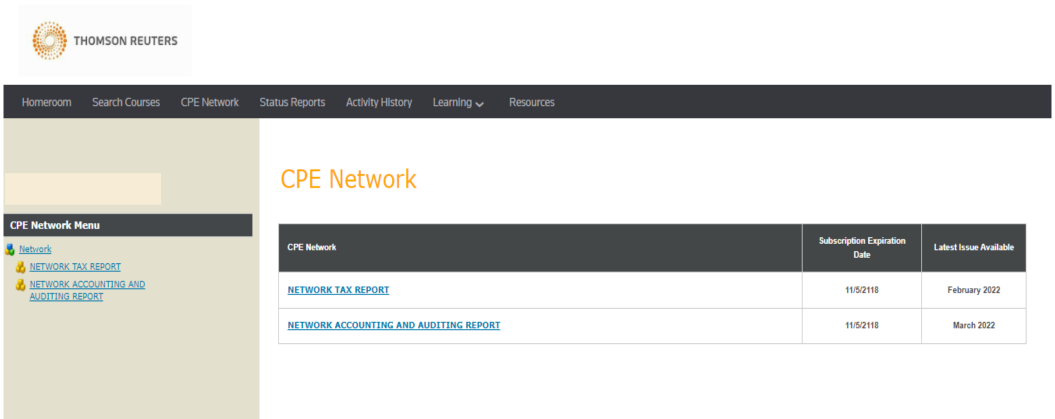
**Self-Study—Online**

Follow these simple steps to use the online program:

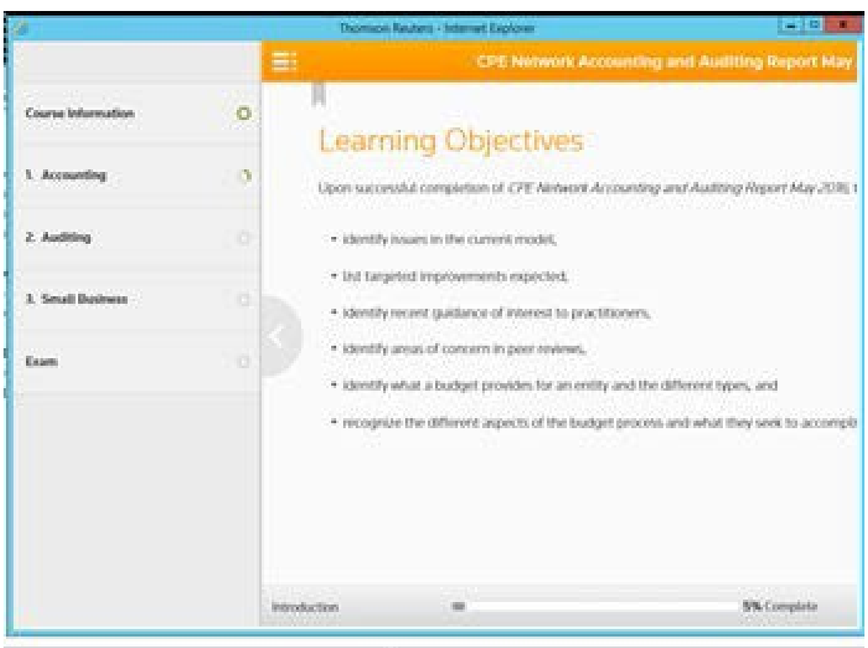
- Go to [www.checkpointlearning.thomsonreuters.com](http://www.checkpointlearning.thomsonreuters.com) .
- Log in using your username and password assigned by your firm’s  administrator in the upper right-hand margin (“Login or Register”).



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

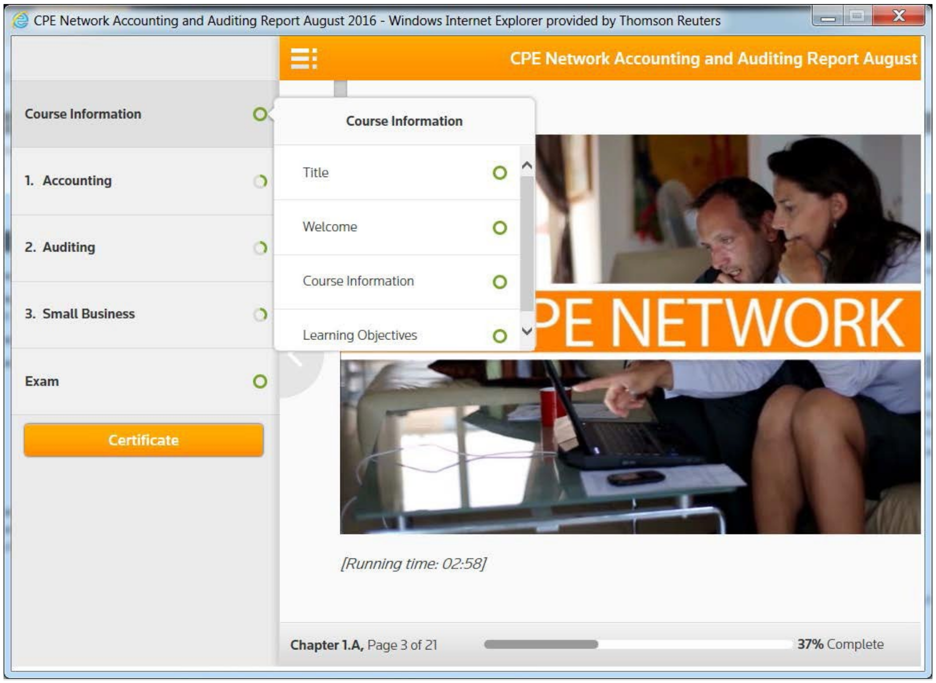



The Chapter Menu is in the gray bar at the left of your screen:

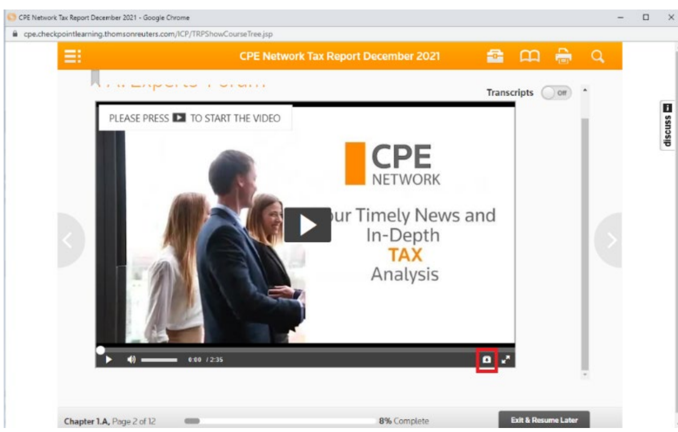



Click down to access the dropdown menu and move between the program Chapters.

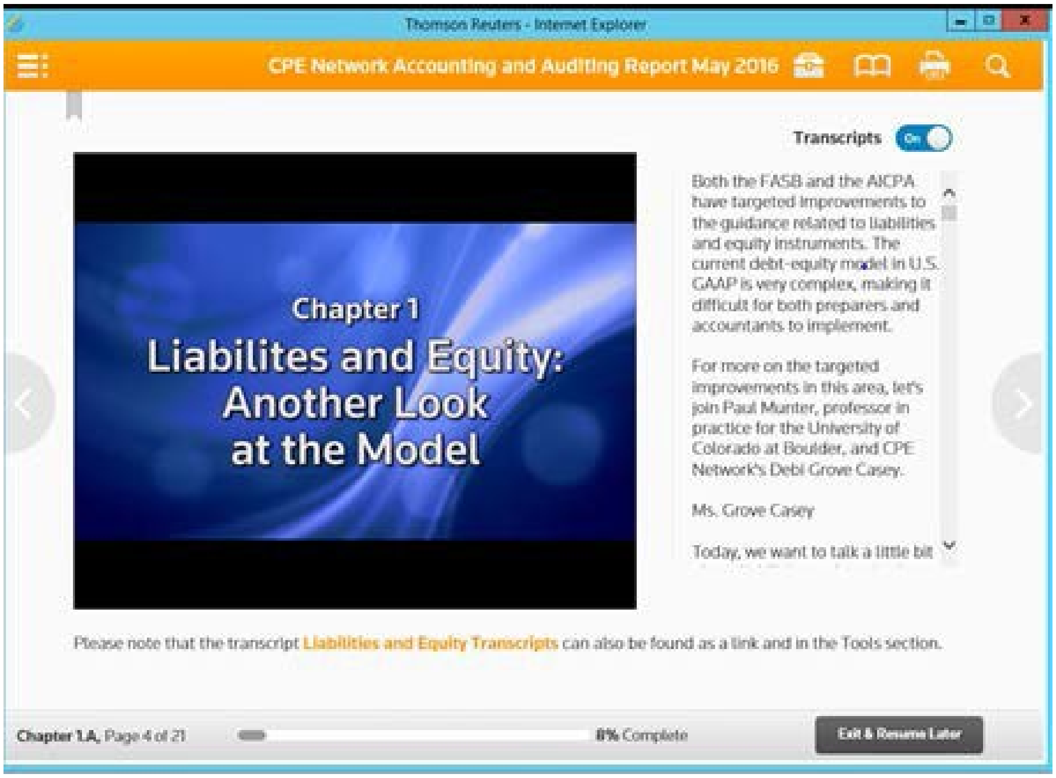
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



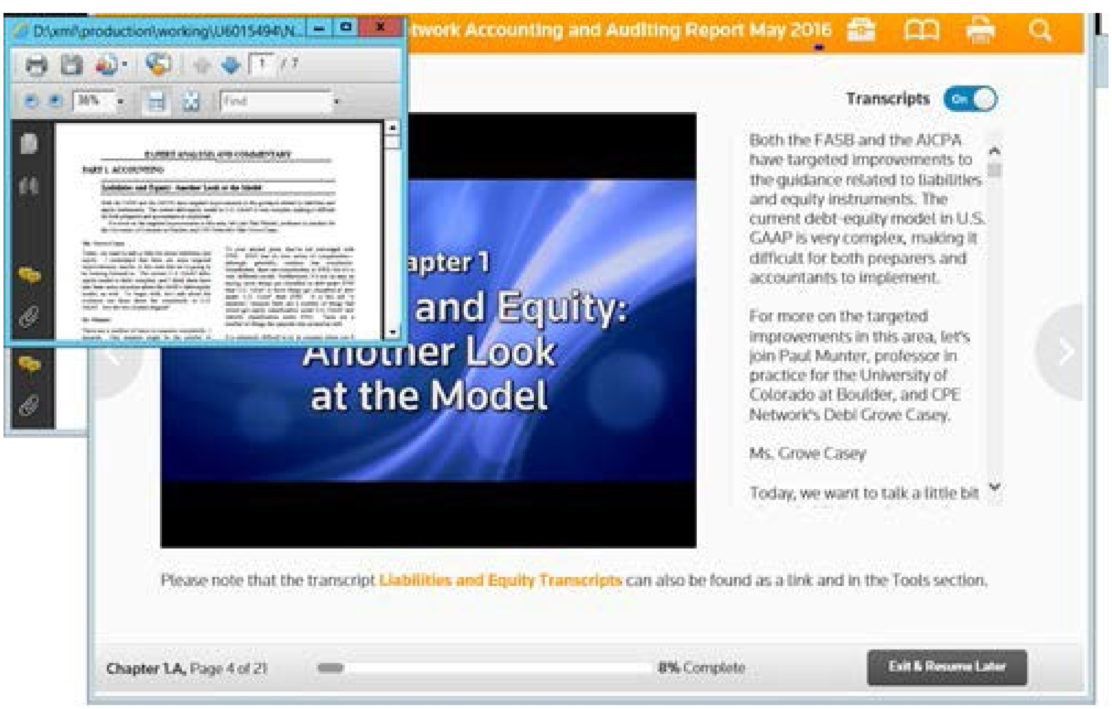

- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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



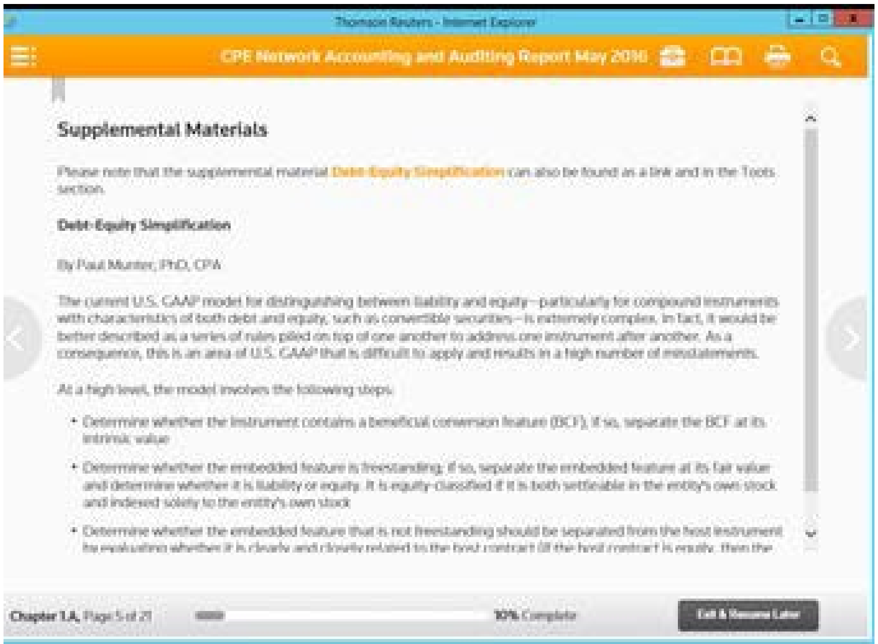

Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.

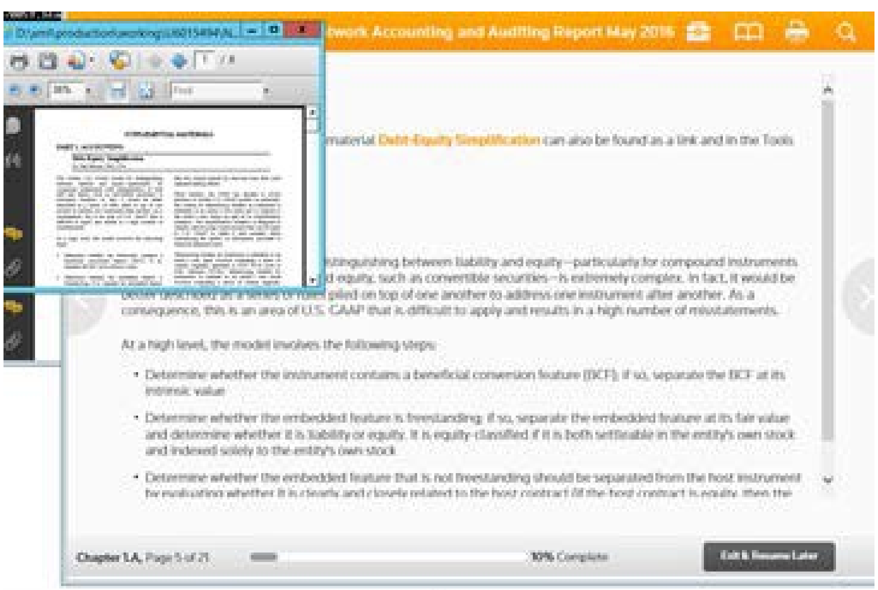



Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



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




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

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



## Suggested Answers to Discussion Problems

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

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

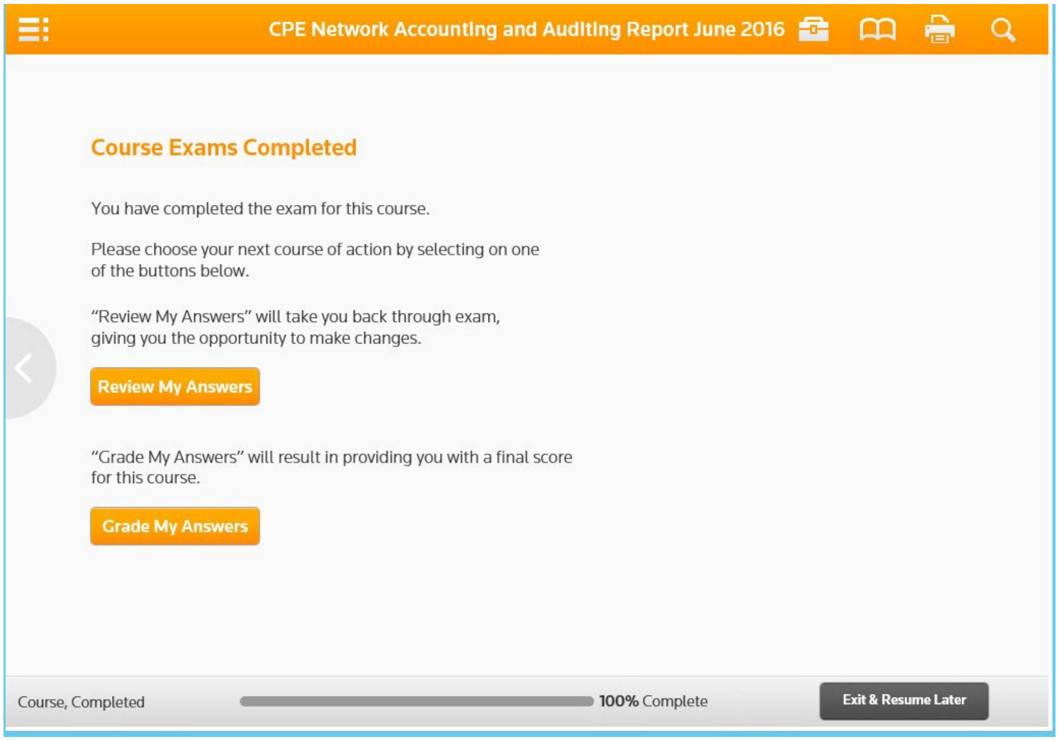
   An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions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

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

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

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

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




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

**Additional Features Search**

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

**Search Results** are displayed with the number of hits.

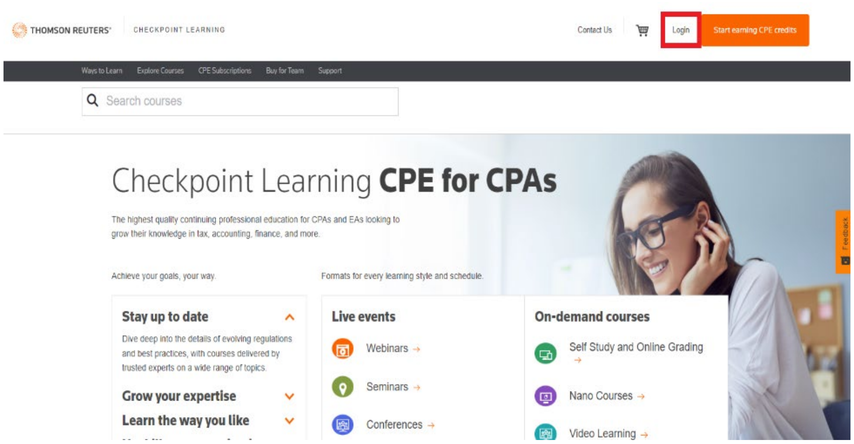
**Print**

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

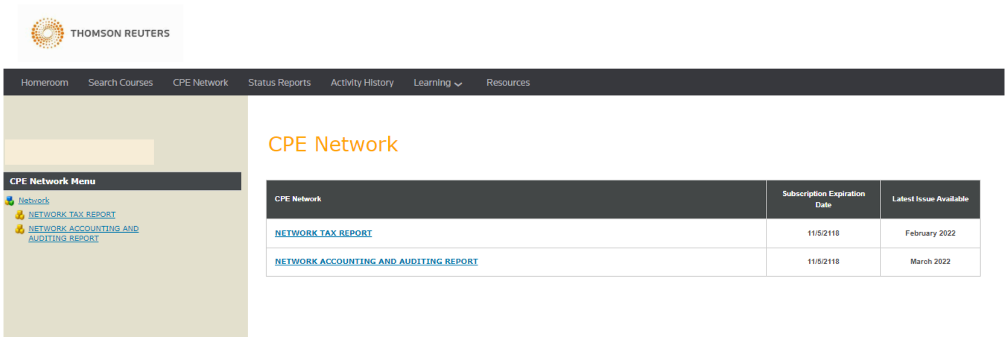
# Transitioning From DVDs

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

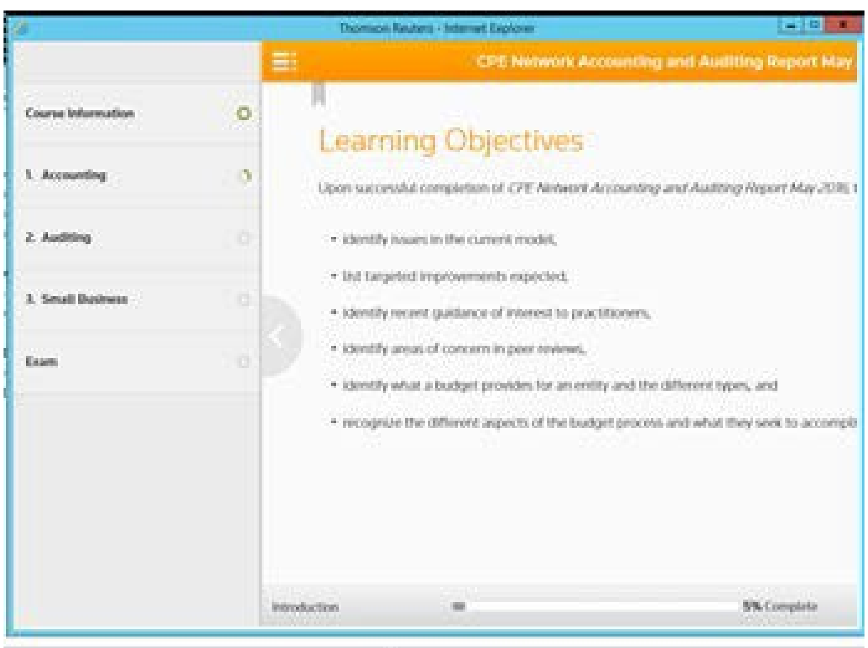
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

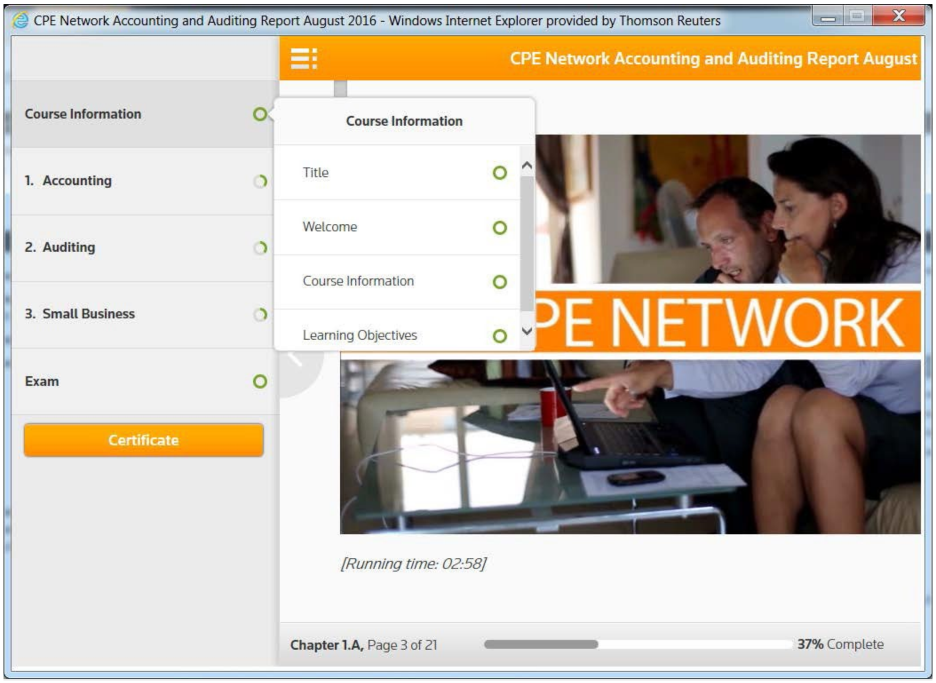



The Chapter Menu is in the gray bar at the left of your screen:

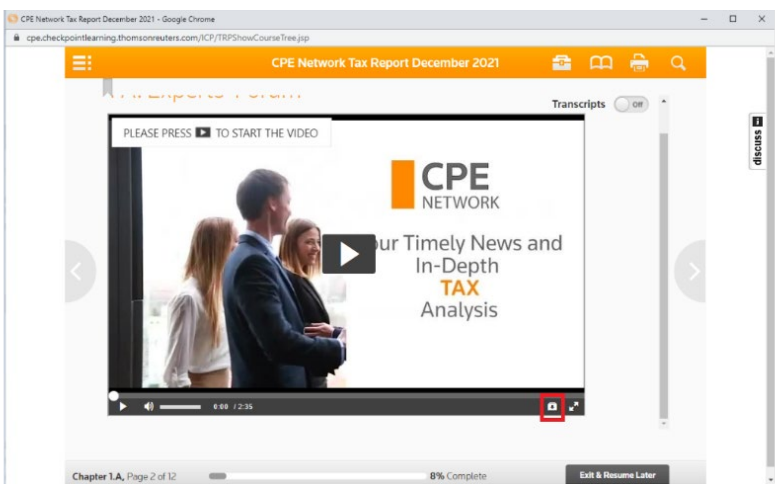



Click down to access the dropdown menu and move between the program Chapters.

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




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




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

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

# What Does It Mean to Be a CPE Sponsor?

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

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

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

## CPE Sponsor Requirements

### Determining CPE Credit Increments

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

## Program Presentation

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

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

## Disclose Significant Features of Program in Advance

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

## Monitor Attendance

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

**Real Time Instructor During Program Presentation**

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

**Elements of Engagement**

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

**Awarding CPE Certificates**

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

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

**Seminar Quality Evaluations for Firm Sponsor**

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

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

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

**Retention of Records**

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

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

# Appendix: Forms

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

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

# Getting Help

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

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