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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Experts' 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. [Running time: 49:09]

Learning Objective:

Upon completion of this segment, the user should be able to analyze recent tax compliance topics, identify the impact of IRS enforcement efforts, evaluate ongoing legal challenges to the Corporate Transparency Act and their implications for the upcoming reporting deadline, and discuss identity theft and tax fraud concerns.

PART 2. BUSINESS TAXATION

Business Tax Update13

Stan Pollock provides insights into key areas of business taxation, including available Employee Retention Credit (ERC) remedies, corporate stock recontributions, and self-employment taxes for limited partners. He also explores the treatment of research and development (R&D) expenses, the interplay with research credits, and energy-related tax incentives like the Energy Investment Credit and the Renewable Electricity Production Tax Credit, equipping tax professionals with practical guidance. [Running time: 1:28:04]

Learning Objective:

Upon completing this segment, the user should be able to analyze the tax treatment of corporate stock recontributions, payments to limited partners, research and development expenses, and cannabis-related issues; determine strategies to minimize taxes through IRC §179 expensing, depreciation, and deductions for auto and business expenses; and discuss general business tax credits, including the monetization and claiming of specified energy credits.

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.

Stan Pollock, CPA, has experience working for large international accounting firms and today runs a boutique tax and accounting practice in the San Francisco Bay Area that focuses on high-net-worth individuals and small businesses. He has taught continuing education courses to practitioners throughout the country for close to 20 years. Throughout the years, Stan has also been a guest on several Northern California radio talk shows discussing taxes and he has previously taught accounting courses in junior colleges in southern California. Stan earned his Bachelor's Degree in Business Administration from California State University, Northridge in 1980.

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

PART 1. CURRENT DEVELOPMENTS

Experts Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, Ian Redpath looks at updates on the IRS's enhanced enforcement initiatives, expanded Business Tax Account access for corporations, penalty relief for partnerships failing to furnish Form 8308, and the latest challenge to the Corporate Transparency Act.

Let's join Ian.

Mr. Ian Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. This is the segment where we go over a number of things that have happened since the last time we got together, with the IRS, with the courts, and maybe Congress. Well, not really Congress. They haven't really been doing a heck of a lot, have they, right now? So, we're basically focusing on things that have happened with the IRS and the courts.

So, let's start in with Rev. Proc. 2025. Boy, we're already hearing that one. Rev. Proc. and Rev. Rulings 2025. So, Rev. Proc. 2025-8, that addresses the research and expense accounting methods for 2024. The IRS had issued previous guidance, but they were concerned that the previous guidance, the actual wording of it, wouldn't apply for 2024. And so, what this does is this is just further guidance for the change of accounting methods for research and experimental expenses that comply then with Section 174 of the Code. And so, the guidance extends automatic IRS consent where the expenses occurred in 2024.

Now, it also allows taxpayers to change their accounting methods for expenses paid or incurred in 2024, regardless of whether they previously made the change for tax years 2022, 2023, or 2024, and again, typically you need to have consent of the IRS, but, you know, this is automatic. You get consent through filing Form 315, but again, this is an automatic consent method.

Now, there's a number of different automatic consents. I'd refer you to Rev. Proc. 2024-23, which is a list of automatic consents. Now, as you know, taxpayers could deduct R&E costs as current expenses or charge them to the capital account and amortize them ratably over a period of not less than 60 months, five years. But the Tax Cuts and Jobs Act amended Section 174 to require the cost paid or incurred in tax years beginning in 2022 and later to be amortized over a five-year period or over a 15-year period if they relate to foreign research.

So, to get this, this is a method of accounting for these expenditures so, therefore, the IRS provided previous automatic consent to change for 2022 and 2023. And the new guidance was issued, again, as I said, it acknowledges that the earlier guidance, it could be interpreted that taxpayers would not be eligible for automatic change of accounting methods for tax years beginning in 2024, that it only applied to 2022 and 2023. So, this makes it clear that it does apply for 2024. And that's, again, regardless of whether the taxpayer made a change for the same item for any previous year, 2022, 2023, or 2024. Now, this is effective for any Form 3115 filed on or after December 17th of 2024.

So, I always like to tell some of my, especially my high wealth clients, I like to keep them informed as to what types of things are going on with the Internal Revenue Service right now. And one of the things is IR 2024-310, which is also in Fact Sheet 2024-32. The IRS said that through new enforcement efforts, they have recovered \$4.7 billion, that's with a "B," dollars through enforcement initiatives. That includes criminal investigations and crackdown on wealthy individuals with unpaid taxes. So, if you have any of those, you might want to remind them that the IRS is being very aggressive with them and has been very successful in collecting.

Around \$2.9 billion of that amount resulted from criminal investigations. That came from the Criminal Investigations Division, the IRS-CI, and that's tax and financial crimes. While it's a little broader, because that includes things like drug trafficking, cyber-crime, terrorist financing, but again, a large amount of money that was collected through new enforcement initiatives on taxes.

In 2024, the IRS-CI, the Criminal Investigation Division, identified \$9.1 billion in fraud as in investigated cases in partnerships with other law enforcement. So, you know, that's a large number. Remember, we spoke in another program about the fact that the IRS has established a separate division now to deal with partnerships, partnerships, S corps, and estates and trusts, but they said the primary emphasis, at least initially, is going to be on partnerships.

Now, we've heard this for years, right? "We're going to emphasize partnerships. We're going to audit more partnerships." And what do they always do? They end up just, it's basis, basis, basis. If you've got larger partnerships, that's not true. Now, you'll get a highly complex team coming in to audit a large, a large partnership, but what's happened is that the IRS says, "We're losing a lot of money on partnerships." So, keep that in mind that partnership compliance is going to be a huge issue moving forward. And again, the IRS also got court orders for \$1.7 billion in restitution, and they seized assets in criminal cases for \$1.2 billion.

And again, another staggering number, they collected \$1.3 billion from wealthy individuals who either hadn't filed tax returns or just hadn't paid their taxes. So, the IRS, what are they looking at? They're ramping up, pursuing high income taxpayers who either fail to file tax returns or have money owing since 2017. So, keep that, keep that in mind with any client.

And again, there's been a significant increase. Just in the last quarter of 2024, the IRS had an increase of \$120 million in collections. Whistleblowers, interestingly enough, the criminal and civil cases amounted to \$475 million of that came from whistleblowers, and they paid \$123.5 million to whistleblowers.

So, what the IRS in these notices is, "Look, we're launching a new examination campaign to address tax deferral transactions." So, one initiative here, if you have any lawyers as clients, is the IRS announced in that same fact sheet that they are launching a new examination initiative to address tax deferral transactions, specifically going after plaintiffs, attorneys or law firms for failing to report legal fees earned from representing clients on a contingency basis.

So, essentially, what's been going on is that attorneys have been deferring sometimes up to 40% of the settlement amount through an arrangement with a third party. So, essentially what happens is this, the lawyers, have the fee transferred to a third party. The third party then pays out those contingency fees from that case over a period of, say, 20 years. And so, they've been picking it up as they receive it from the third party. The IRS says, "Absolutely not. That has to be picked up and reported in the year that you get it, even if it goes to that third party. You've earned it and therefore it is income to you." So, contingency fees should be included income in the year you have the right to them, even if you're having them transferred to that third party.

Now, we have a fact sheet, a Fact Sheet 2024-31. This may be of interest with businesses. The IRS's Business Tax Account has now been opened to C corporations, and it allows what's called a designated official to access the online service tool on behalf of the corporation. So, things like viewing the balances, making payments, accessing transcripts, they can view and pay their tax balances and make federal tax deposits.

Now, Initially the DOs and Sole Proprietors can use the income verification express service to approve or reject transcript requests from a lender. I see lenders asking for transcripts. You can use that to approve or reject it. So, who are designated officials? Basically, someone who's legally authorized to bind the corporation and a current employee who got a W-2 for the latest filing tax year. So, right now that would be 2023. They'll get a W-2 for 2024, obviously in 2025. The corporation can choose more than one person, and the IRS says for continuity purposes, they recommend more than one official, but they have to be one of, the president, vice president, CEO, CFO, COO, secretary, treasurer, or the managing member of a limited liability company.

Now, to register, you know, collect all the documents, the tax records, ID numbers, etcetera, sign into the corporation's existing BTA account, then proceed with the registration, request a PIN. The PIN will be sent within 10 days to the business at the business address that is on file with the IRS. So, the DOs then are required to validate their access to the account annually through the account, through the BTA account. So, it's not mandatory, but again, the IRS highly recommends that corporations assign multiple persons, that provides continuity if in fact someone leaves.

Now, one of the things, and, and this is something that, you know, it's been a fact for years, many, years, decades, I would say, you know, when the benefits go down, charitable contributions go down. So, when you take away incentives for charitable contributions, sometimes people don't give us much. And that's what came about after the Tax Cuts and Jobs Act with the increase in the standard deduction. Fewer people felt incentivized to give any charitable contributions. We had, for a period of time, non-itemizers could take the \$300, and then that went up to \$600 for married filing jointly as a deduction, again, regardless of whether they had itemized.

Well, you know, that in 2021, Congress allowed those temporary non-itemizers to make those deductions. That expired at the end of 2021. Well, the data from 2020 and 2021 demonstrates that there was a major drop after that expired in contributions to charities. And so, what we have here is we have a request and a letter from the charitable groups, over 100 charitable organizations, asking in fact that this be renewed and that this be in fact made permanent.

You know, there does appear to be bipartisan support. There is the Charitable Act (H.R. 3435/S. 566) to make this permanent, to apply it for 2024, retroactive, and to, to make it permanent going forward. And the idea is to provide, you know, lower- and middle-income Americans, make it more likely that they'll give something rather than just for those who are wealthy enough, and again, wealthy enough even to have to itemize. So, there's \$1.7 million U.S. not-for-profits. Obviously, they provide great services, and that tax deduction had encouraged Americans to give more. And the Philanthropy Roundtable found that for every \$1 increase in tax benefit, charitable donations rise by a statistically significant \$1.30. So, for every dollar in benefit, donations rise by \$1.30.

So, what they did find, that there is an alarming trend, and that alarming trend shows that there has been a significant drop in donations as I mentioned. Now, you know, the letters from what's called the Charitable Giving Coalition, the CGC, Charitable Giving Coalition, what they have found is that giving, the overall charitable giving in 2023, declined by an inflation adjusted 2.1% as compared to 2022. And, again, that's the second consecutive year that charitable giving failed to keep pace with inflation. And, you know, it doesn't matter how the economy was going, it failed to keep pace with inflation. And the American Enterprise Institute said that the Tax Cut and Jobs Act change meant a reduction of \$252 billion in itemized charitable contributions between 2018 and 2021.

So, essentially only the wealthy got the incentive and so, fewer people are giving. So, you know, this is something to keep an eye on. If it were to pass, it would be retroactive for 2024. At least that's the discussion right now. In its letter, you know, the coalition says, they listed 100 national organizations, two international, 300 state and local entities that they are representing in this.

All right. So, we have another notice. Here we go. Notice 2025. You have to get used to saying that; right? Notice 2025-2. Partnerships, and this is a benefit for partnerships, when you have a transaction that has Section 751 assets involved. So, if a partner sells their interest to another partner, to a third party, or even to another partner, but generally to a third party, they can't get capital gain treatment to the extent of the 751 assets. The idea is that this would have been ordinary income to you, and if all of the assets had been distributed, that would have been ordinary income to you. If the partnership had collected in the normal course of business, these 751 assets would have generated ordinary income. But when you sell your interest in a partnership, you in fact get capital gain treatment. Well, 751 comes in and says, "No, no, no, no, no, no, no, no, no. Not to the extent of the hot assets." And hot assets are generally unrealized receivables and inventory. Well, all inventory is hot, and in a sale, basically the assets are going to be hot.

Now, 751 also applies to distribution, but this applies, this penalty and Form 8308, the report of a sale or exchange of certain partnership interests applies to the sale or exchange of a partnership interest. So, if A sells their interest to B, A is going to have to recognize ordinary income to the extent of the 751 assets that would be allocated to them. Had these been collected, you would have paid tax on these at ordinary income rates.

So, unrealized receivables says it's for 751, its receivables as we normally think in the normal course, but it includes what's called "deemed," "deemed receivables." So, what's a deemed receivable? Section 1245 recapture. What? Yes. Section 1245 recaptures are receivable. Think of receivables as anything but inventory that would generate ordinary income. Oh, and by the way, inventory's hot, too. So, it includes all of that.

Now, the key here is it has to be picked up in the year of sale, and that is regardless of the transaction. What do I mean by that? I had a client who sold their partnership interest at a loss, but they had to pick up the ordinary income in the year of the sale equal to the hot assets, their proportionate share. So, what did that mean? Well, they sold it at a loss. So, they offset the ordinary income. So, let's make it simple here. They had \$7,000 – it was a lot more than that – but \$7,000 of ordinary income from 751. But they sold their business at a \$1,000 loss. They sold it to another partner at a \$1,000 loss. They're going to pick up \$7,000 of ordinary income and they're going to adjust that with an \$8,000 capital loss.

Well, we know if they don't have any other assets in the netting process, they're going to be limited to a \$3,000 deduction. So, in essence, they're going to have \$4,000 of ordinary income in the year of sale, and they're going to carry forward that excess \$5,000 loss to the future and put it in the capital gain and loss netting process.

So, now, let's make it \$70,000. Well, it doesn't get any better, right? Because now you're going to take a \$71,000 loss, unless you got capital gains to offset it, you got a \$3,000 limitation. And so, you're at \$67,000 that you're picking up in income, and you're carrying over that balance into, of the capital loss in excess of the \$3,000 into the future. I mean, make it \$700,000. Wow, it keeps getting worse, right? It doesn't get any better, but that's the rule, and that's missed very, very often.

Now the IRS requires that the partnership file Form 8308. The partnership furnishes a copy of the 8308, or similar statement to the transferor and transferee that are involved by the later of, the later of January 31st of the year following the exchange or 30 days after the partnership received notice. So, when you're involved in this transaction, the partner, generally the partner who was obtaining the property, the transferee partner, supplies the notice within 30 days to the partnership that the transfer has taken.

So, the IRS had previously provided relief for exchanges that occurred in 2023. But then, and they said, you know, the IRS said that partnerships will not have all the information required to complete the form, especially Part IV, by January 31 of the calendar year following the year in which the exchange took place. Well, they don't think they've gotten enough information either in 2024, and so they're going to extend this penalty relief.

Now, they will not impose penalties for failure to furnish the Form 8308 with a completed Part IV by the due date, if, so here's the "if," the partnership timely and correctly files to the transferor and the transferee a copy of the Form 8308, Parts I and II, or a statement that has the similar information by the later of January 31, 2025, or 30 days after the partnership is notified in the exchange. Now, keep in mind, we're talking about 2024, exchanges, exchanges that took place in 2024.

The partnership furnishes the transferor and transferee a copy of a completed Form 8308, including Part IV, or a similar statement, by the later of the due date of the partnerships Form 1065, plus extensions, or 30 days after the partnership is notified of the exchange. Again, that 30 days is always in there, but it's always the latter of. So, the penalty applies again only to the partnerships furnishing the Form 8308 to the transferor and transferee made during 2024. It does not apply to a transferor partner failure to furnish that partnership notification. Remember, again, when a transaction takes place, the transferor is required to give notice to the partnership that, "I sold my interest, and here's the person I sold it to. Here's their information." So, the information, which is the similar information from Parts I and II of the, and, and needed for Part IV on the details of the exchange. Again, there's no penalty relief provided for that.

All right. 2024, IR 2024-304. The IRS is warning that there is this thing out there, these charitable LLC scams, and this is something to talk to your small businesses about, because how it works is that typically they target high income taxpayers. They encourage the formation of LLCs, transferring assets into them, donating non-voting, non-management members, memberships in the LLC. Non-voting, non-participating in management, membership units are transferred to the charity. The taxpayers retain total control of the voting units. And generally, there's a provision in there that allows them to either use the assets personally or there's an exit strategy which allows them to buy back the assets at favorable rates.

Well, this is not a charitable contribution. The charities can face the consequences if they found they've knowingly participated in this, but the IRS is investigating a number of these transactions, and in some cases, they've already brought criminal cases and gotten criminal convictions, including the donor.

So, some of the examples of red flags that could indicate it, the IRS says promoters marketing a transaction that will grow wealth tax-free environment and allow the taxpayer to claim charitable deductions. Promoters marketing a plan that requires the creation of one or more entities in order to qualify for a charitable donation. Creating entities that do not engage in any business activity to facilitate the charitable deduction. Donating an interest in an LLC that loans cash or other assets back to the taxpayer or to a related party. The charity as the majority owner has no control over the LLC or the assets, no real control, no voting control. The taxpayers are allowed to personally use the assets they contribute. The promoter assists the taxpayer in creation of intellectual property to fund the LLC prior to the donation. The taxpayer uses the LLC funds to purchase life insurance policies, benefiting their heirs or related parties after the donation. The taxpayer retains ability to reclaim the donated property for less than fair market value, less than its then fair market value at the time that they're getting it back. The promoter requires the taxpayer to use specific appraisers and/or charities. "You've got to use this appraiser because we know we're going to get a high appraisal value," and appraisals fail to account for all the facts and circumstances like the ability to remove the assets from the donation or to buy the bad sets back at less than fair market value. If you, if your client has any of these, sees any of these red flags, it's probably a scam and you should be very, very careful.

If you believe that, you know, there's an abusive scheme, and especially if your client comes in and you go, "You know, this is a real potentially abusive scheme," remember that you can report it versus via Form 14242, which is a report of suspected abusive tax promoters or preparers, or you can submit other complaints. You can use that form or just submit a complaint. You can go through the Treasury Inspector General website, or you can call 1-800-366-4484.

In a similar, we've got IR-2024-306 and this is the Security Summit partners. They urge taxpayers, businesses, professionals to review and update their security measures related to identity theft. Again, we know that they're using ever increasing methods to try to get the taxpayer information, and accountants have been a target in trying to get that information about their clients.

And again, one of the things that they have encouraged is businesses to keep their, obviously, to keep their information, but to keep their, if they change addresses, you know, file the Form 8822-B, Change of Address or Responsible Party - Business, you know, you're supposed to file it within 60 days. It should be filed. The IRS also says that if you believe that that there's potential of an identity theft, businesses that may want to proactively report a potential theft can use Form 14039-B, Business Identity Theft Affidavit, if they – some of the things, receive a rejection notice for an electronically filed return because another return is already filed in the same period, get a notice about a tax return they didn't file, notified W-2s they didn't file, notice of a balance that they don't believe that they owe.

Now, it seems like every month we're talking about this because every month something's going on. Well, now we have more. The Corporate Transparency Act and the BOI, the Beneficial Ownership Rules. You know, a while ago we talked about the case out of Alabama, National Small Business United et al. v. Yellen. And in that case, an Alabama district court issued a temporary injunction against the FinCEN, against enforcing the Corporate Transparency Act and by definition the BOI, the Beneficial Ownership Rules. And that's really what the main thing right now is, because we're getting into the reporting period for the Beneficial Ownership Rules. So, that injunction was limited to the members of the National Small Business United. If you weren't a member of that group, the injunction didn't apply. So, for the rest of the country, it applied.

And in another program, we talked about how there's been some dispute to what extent this is practicing law. And basically, it's come down to, if they're simple and don't, they don't require a lot of discretionary information, they're relatively simple, they're not practicing law and accountants can file them. And the more complicated they are, well, they could be. And that's the problem. It's kind of left as a nebulous. It was New Jersey Bar Association that came out with kind of the definition, or I should say the CPA Society, rather, that came out with the definition of whether this was practicing law or not and what you needed to do.

My suggestion is, you know, check with your state society and check with your malpractice carrier before you start filling out BOIs. Make sure that, you know, you're not going to be found later on to be practicing law without a license. So, be very careful about that. And again, I would check with your state society, and I would check with your malpractice carrier.

So, we have another case. You know, the last time we talked about it, we talked about all these cases that were coming out that were found to uphold the Corporate Transparency Act. And there were numerous cases coming out upholding the Corporate Transparency Act, but we now have a case out of Texas, Texas Top Cop Shop, Inc., v. Garland. And in this case, it was found that it may be unconstitutional, but the court issued an injunction nationwide. They issued an injunction that they cannot enforce the Corporate Transparency Act and therefore the BOI nationwide.

Now, you know, we got this January 1, 2025, coming up soon. What do you do? So, we've got a number of different lawsuits pending. We've got cases on appeal, but the status right now is we've got this nationwide injunction now that was issued. Regardless of these other cases, there is a nationwide injunction against FinCEN enforcing this. So, what do you do? You know, FinCEN still has the system; right? The Corporate Transparency Act is still the law. It hasn't been overturned. It hasn't been determined to be unconstitutional. We just simply have these cases that are on appeal, but they're all over the place at the district court level. But we've got this injunction now. And we've got this injunction that's not just limited to the members of this group, it applies to everyone. So, what do you do? Well, the BOI reporting system, BOSS, Beneficial Ownership Secure System, it's up, it's running, and it's receiving filings.

So, what do you do? Well, FinCEN put an alert on their website which says that Beneficial Ownership reporting is voluntary currently while that case is still in effect. So, while that injunction is still in effect FinCEN says that reporting is voluntary, now, what do you do? Well, you know, we know we've got cases in Virginia, cases in Oregon, you know, the district courts that have said that the, that it's constitutional. So, you know, we've got cases all over the place on this. So, this basically injunction says that, "You know, you don't need to comply with the law's January 1, 2025, reporting deadline."

Now, the DOJ has appealed. They filed a notice of appeal on this particular case. So, we know we have a notice. We know that this is going up on appeal, the Texas case. What the appeals court will do, we don't know. But again, until something happens, we have a nationwide injunction that has been issued. So, this has created all sorts of, "What do we do?" Do we go ahead and file?

Well, people are taking different views of it. You know, take honestly, some people say, "Well, I'm going to go ahead and file. What do I have to lose?" Other people say, "You know what? This is confidential. There's a lot of, what I think, is confidential information. The government doesn't think it is, but I don't want to do it. If I don't have to do it, I don't want to do it and I'm not going to do it."

Now, more complicated ones, and here you get into that issue, as I was saying, is it practicing law, is it not, more complicated ones, they've been putting together the data that they need to report. And so, therefore, you know, if they're in that situation, do they just go ahead and file it? And then if the injunction is removed, they've already filed. But if we have a situation where, you know, it is determined to be unconstitutional, then the filing was for nothing.

Do we file the, put this information on, you know, the filing information, provide that to the government. So, there are those who have said, "You know what? We're so far along, we're just going to get it done. We're just going to file and get rid of it." Some are saying, "You know what? We're going to gather the information right now, but we're not going to do anything. And once we have a determination as to what's going on here, then we'll go ahead and do something or nothing if it's determined that the law is unconstitutional."

And again, others, some small are saying, "You know what? It's no big deal. I don't have any great concern about confidentiality. I'm not really worried about this. You know, I'm a smaller business. I'm just going to go ahead and file it. It's voluntary, you know, but it's not costing me any much. I'm just going to go ahead and have and do the filing."

So, the government, you the interesting thing is, you know, the information is generally out there. The law really doesn't require disclosing any information, information that is not already privy to the government. So, it's not as conveniently packaged as it will be under BOSS, but it's still out there, so, do we really have to file? Should we go ahead and file voluntarily or should we just take the decision? The information's already out there.

So, where do we stand right now? Well, as of right now, it's voluntary. You don't have to file the filings under the BOI rules. FinCEN says, "It's voluntary but you can still file." And they've left the system up. It's running and it's accepting filings. You just have to make a determination whether you want to go ahead and file now. Obviously, the more complicated it is, perhaps the less likely you are that you're going to file right now. And if it's a no harm, no foul, not a big deal, small business, you may go ahead and just file, or you may – one way or another, you need to notify the client. And if you've notified the client that they're responsible for the filing, you had better notify them now that it's voluntary. And they may say, "No. Don't do it. I don't want to do it. I don't want to pay you to do it." So, you do have an obligation now to notify them about that. So, keep that in mind.

You know, we talked earlier about all the collections. Well, the IRS, IR-2024-307, the criminal investigation said during fiscal year 2024, they obtained a 90% conviction rate on cases they brought, and they got, that's rather extensive. They identified \$2.12 billion in tax fraud and another seven billion in other financial crimes. So, abusive tax schemes, abusive return preparers, identity theft, questionable refunds, all of these. What are some of the things that they said they're going to be looking at going forward? And what were some of the things that they targeted in 2024 and will continue?

Syndicated conservation easement. That was a big target. In January, an accountant and an attorney were sentenced to 25 years and 23 years. The accountant got 25, the attorney 23 for inflating the values of land easements in a syndicated conservation easements. So, they're definitely going down that road in enforcement.

Crypto crackdown, huge. In February, a man was indicted for filing a false return after selling roughly \$4 billion in Bitcoin. This is kind of a huge area. The IRS indicates that there's going to be more use of technology, this is the criminal investigation, advanced analytics and emerging technologies, AI, in going after that. And they indicate that digital forensics was integral in the crypto exchange operator Binance, which is the largest case to date and that goes back to the CEO pled guilty in November of 2023 and they agreed to pay \$4 billion admitting that they prioritize growth over compliance.

So, we've had a lot of stuff going on. A lot of things are happening with the Internal Revenue Service. Here we are, 2025. You know, we have one more year left of the Tax Cuts and Jobs Act. We have a new Congress coming in, a new president coming in. We should have a lot of interesting things coming up this year. We should have a lot of interesting legislation. You know, if we don't, we'll have one of the largest tax increases if something is not done with the Tax Cuts and Jobs Act. Again, that's all going to expire at the end of this year if Congress doesn't do anything.

We know there's a lot of priorities that have been discussed by then candidate Trump, and with control of the houses, although not having the full control of the Senate, but having a majority, you know, it'll be an interesting period of time to see what happens in the areas of tax legislation. So, we should have an interesting 2025.

I know you're starting to head into tax season, so, I want to thank you for joining me on the program. And hopefully you have a tax season that is as smooth as possible, and hopefully we don't have much, if any retroactive legislation that we have to concern ourselves with.

So, thank you very much for joining me today, and as always, be safe.

GROUP STUDY MATERIALS

A. Discussion Questions

1. What penalty relief provisions were introduced in Notice 2025-02 for partnerships failing to furnish Form 8308 on time for §751(a) exchanges in 2024, and what are the conditions for qualifying for this relief?
2. What are some common red flags in charitable LLC schemes as identified by the IRS, and what are the potential legal and financial consequences for taxpayers and charities involved in such schemes?
3. What measures did the IRS and its Security Summit partners emphasize in IR 2024-306 to combat identity theft and tax fraud?

B. Suggested Answers to Discussion Questions

1. Notice 2025-02 introduced penalty relief for partnerships that fail to furnish Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*, on time for §751(a) exchanges occurring in 2024. The relief applies if the following conditions are met:
 - a. The partnership furnishes Parts I-III of Form 8308 (or an equivalent statement) to the transferor and transferee by the later of:
 - i. January 31, 2025, or
 - ii. 30 days after receiving notice of the exchange.
 - b. The partnership furnishes the complete Form 8308, including Part IV, by the later of:
 - i. The due date of the partnership's Form 1065, including extensions, or
 - ii. 30 days after receiving notice of the exchange.

This penalty relief applies only to furnishing requirements and does not extend to failure to file correct information returns with the IRS.

2. Red Flags in Charitable LLC Schemes include:

- a. **Retention of Control:** Taxpayers retain voting rights or control over donated LLC interests, undermining the donation's legitimacy.
- b. **Personal Use of Assets:** Taxpayers continue to use the donated assets, indicating they have not relinquished ownership.
- c. **Reclaiming Donated Assets:** Promoters offer strategies for taxpayers to buy back the donated LLC interests at a discounted rate.
- d. **Improper Structuring of Entities:** Promoters create entities that engage in no actual business activity and exist solely to facilitate charitable donations.
- e. **Misrepresentation by Appraisers:** Promoters use specific appraisers who inflate valuations or fail to account for taxpayers' ongoing control or use of donated assets.
- f. **Charity as a Puppet Entity:** Charities receiving the donation have no actual control over the LLC or its assets, undermining their role in the transaction.

Legal and Financial Consequences:**a. For Taxpayers:**

- Loss of the charitable deduction, as retaining control or rights over donated interests renders the contribution ineligible for a deduction.
- Penalties, interest, and fines for underreporting taxable income or misrepresenting charitable contributions.
- Criminal charges, such as tax fraud or obstruction, if there is evidence of intentional misconduct.

b. **For Charities:**

- Charities knowingly participating in fraudulent schemes may face penalties, loss of tax-exempt status, and reputational harm.

c. **For Promoters:**

- Promoters may face legal actions, including injunctions, fines, or criminal charges, particularly if they mislead taxpayers or charities.

IRS Guidance to Avoid Penalties:

Taxpayers must ensure:

- a. Full relinquishment of control over donated interests.
 - b. Compliance with documentation requirements, including a qualified appraisal for donations exceeding \$5,000.
 - c. Proper valuation of assets and adherence to IRS guidelines for claiming charitable deductions.
3. In IR 2024-306, the IRS and Security Summit partners highlighted several measures to combat identity theft and tax fraud:
- a. **Strong Cybersecurity Practices:** Taxpayers and businesses were urged to use strong passwords paired with multi-factor authentication, encrypt sensitive data, and ensure security software updates automatically.
 - b. **Awareness of Scams:** The Summit warned about common fraud tactics, including phishing emails, social media schemes spreading false tax advice, and impersonation of charitable organizations.
 - c. **Business Information:** Businesses were advised to keep their Employer Identification Number (EIN) contact information current and promptly report changes via IRS Form 8822-B.
 - d. **Report Identity Theft:** The IRS directed victims of identity theft to visit "Identity Theft Central" for assistance and provided specialized reporting procedures for businesses targeted by tax scams.

PART 2. BUSINESS TAXATION

Business Tax Update

In the business tax update segment, we will explore topics such as corporate stock recontributions, self-employment taxes for limited partners, and energy-related tax incentives. Additionally, we will examine specified research expenses, the interplay with the research credit, and more.

Let's join Stan.

Mr. Stan Pollock

Let's go to Page 5-1, the employee retention credit. And here I have the penny. Why do I have the penny? Well, you know, last year we were talking about the retention credit and I said, "I'm sorry, we have to keep on talking about it because it should be over, but it isn't." And, you know, I'm going to say today, "It still isn't over."

It's the proverbial bad penny. It keeps coming back in different forms. And that's what, you know, we're still dealing with it. We're not filing claims anymore. We're still dealing with waiting for money, filing amended returns and all of this stuff. It's going to be with us still, it looks like for a while.

Now the IRS says the outstanding claims are being processed, but they also say there's a big delay. "So, we're doing it, but we're doing it slowly." And then even worse, my last bullet point, the tool, the hotline that they had, you know, that you could go online and say, "What's the status of my claim," that's been removed. So according to the IRS, the only option that we really have is to wait. The problem with that, I can wait, it's not my money, you know, we can wait, but the clients want their money back, or they want to know if they're getting their money back and there's nothing that we can do. So, they get mad at the IRS, they get mad at us and all we can do is tell them, "We've got to wait."

So, the IRS recognizing that there are issues and recognizing even more than that, that a lot of these were filed, I don't want to say the word "fraudulently," but incorrectly, people were jumping on the bandwagon, companies were selling, were selling these things, and many companies and people and firms filed these that maybe they're not eligible for, or maybe they shouldn't have been eligible for. So, the IRS recognizing that, a year ago in 12/21/23, or they established a program that was available 12/21/23, all the way through March of 2024. And in this case, they said, "All you have to do is pay back 80%." That's wonderful. You get \$100,000 back. You already got your money back. You realize it might be not correct. You realize you probably shouldn't have filed, and so the IRS says, "Pay us \$80,000 back. We'll call it a day."

My guess is they got some of these numbers by saying, number one, they want to give the incentive. But if they asked for 100%, you know, a lot of taxpayers were paying these programs ridiculous sums, 20% of the amount. So, you know, they said, "We're going to get you \$100,000 back. We want \$20,000 upfront." You paid \$20,000 upfront. And then you were sitting and waiting to get \$100,000. Now you're wondering, are you ever even going to get that \$100,000? Should you even have filed?

So, the IRS said, "Hey, file this, remove your claim, and you'll get \$80,000." So, you're basically at break even. If you paid more than that, you have a small fee. That expired. And then the IRS came about again and said, "All right. From August 15th to the – August 15th, 2024, all the way through to November 22nd, you can do the same program, but this time you'll repay 85%." So, there's a little bump, there's a little cost to have waiting.

Both programs, the taxpayers were deemed to have repaid in full. In other words, you got that 100, you paid back \$80,000. IRS says "We're even." You got \$100,000, you got back, you paid back \$85,000. The IRS says, "We call it even." I do want to point out, and it's important to note, there is no relief from criminal penalties, though.

This is also big and important because there's a lot of third-party payers out there that just do payroll, you know, or do payroll services. And maybe they have 50 companies and they're doing payroll for all 50 of these companies. And two of those companies turn out to be bad claims. They want to withdraw their claim. But the initial rules were, if

you withdraw a part of a claim, you have to withdraw all your claims. That meant for third-party payers, they actually had to withdraw all 50 companies. And most of those were probably good. So, they couldn't do that for the couple of companies that were bad. Now the IRS has said, "Okay. We realize that, and you can withdraw the claims for only some of those clients while maintaining the other ones." So, again, perfect, you do 50 companies, two of them want to withdraw their claim, we can do that.

We give you more information on that link on Page 2. But this allows, this allows, you know, so many more payroll companies to file, to file the claim to pay back the, to pay back the money even when they, when they, even if they're not doing it for others.

Now I do want to give you an important notice. The deadline for third-party payers to amend their ERC claims has been extended from November 22nd all the way through December 31st. So they can still amend these ERC claims for those couple of clients, couple of taxpayers that recognize maybe they shouldn't have, maybe they shouldn't have filed the claim. That's why I say it's a bad penny, you know what? It just keeps on going.

So, relief is still available. Many clients, many taxpayers filed their claims later and the IRS started not refunding the money so fast. I have a few clients that haven't got their money back yet. I think, you know, I think they're legitimate claims, which means all we can do is wait. So, when I get that monthly phone call, "All we can do is wait." But for those, for those that have not got their money back yet and recognize, "Hey, maybe this is not a good claim," they can do what? They can withdraw their claims. So, they haven't received their refund. They haven't cashed the check yet, they withdraw their claims. You must withdraw the entire amount of the claim. But this is, again, important. But each quarter is considered a separate claim.

So, one of my clients filed for five quarters. Again, I think it's all legitimate, but let's say two of those quarters were not good. They filed for the first three, they realized how much money they're getting back, so they pushed on the last two. They can withdraw those last two, but still leave the three in place. And we give you that link on Page 5-3.

And, you know, again, you know, I think all of this is as a result of, we realize there's a lot of bad claims out there. You saw them. I saw them. Clients came and said, you know, "We want to file these claims." I said, "I don't think they qualify" Some of them went to other places, too, because they'll file the claims for them. They're getting a bunch of money back. Some got that money back. I still don't think it's legitimate. Many haven't got their money back yet. So, now we're just waiting, and we'll see.

To file amended returns you must, in order to do this, you file the amended returns, you must repay the full credit and any penalties and interest.

Now starting on Page 5-3, we also have this, we also have this statute of limitations issue. What's that? Well, it can be a problem for the taxpayers who reduce their wage deductions and then are later denied an ERC. Because remember, what's the process? We realize we're going to get back \$100,000. So, we go back to 2020 or 2021, whatever year that was, and we amend those returns. We reduce the wages, which means we now owe a bunch of income tax, probably. We pay that income tax. We file the amended returns. We pay that income tax in anticipation of getting this money down the road, and then the claims are denied. So, the first thing you do is go back and you amend the amended return. But what if we're past the statute of limitations?

And I have a good example on Page 5-4. So, let's look at this. Harriot is the sole shareholder of HRT Company. It's an S Corp. Harriot Corporation didn't reduce its deductible wages on its originally filed 2020 return, instead, it waited until it received the ERC refund, which was paid by the IRS in October of 2022. HRT and its shareholder, Harriot, each filed their original 2020 returns on March 15th and neither filed as an extension. That's important for the statute. HRT filed an amended S Corporation return on November 15th to reduce its deductible wages. And that was about a month after it got the HRC refund. On December 9th, Harriet amended her personal return to reflect the amended K-1 and she paid the additional federal tax of \$80,000 at that time. On March 22nd, HRT applied for the first ERC voluntary disclosure and repaid the 80% of the ERC refund. They filed. They realized they shouldn't do it. They paid back 80% of the money.

Based on this set of facts, Harriet has the latter of three years from the date she filed her amended income tax return for 2020, or two years from the date she paid the tax. So, what happened? They filed their original return. They filed an ERC claim. They get the money. They file an amended return. They pay back all of this tax and then they realize, "Oh, I shouldn't have done it." Now they're going to have to go back and amend the return to get back that income tax that they had previously paid. Get a refund. Well, what if they're past the statute, three years from the date return was filed or two years from the date the tax was paid. They're out of luck. They're not going to get that refund.

And then the statute of the, you know, the bottom line, the statute of limitations for refund is irrelevant because it's an S Corp. There was no tax. The refund claim is being made by Harriet on her personal returns. So, we are going to see this. It's a bad penny. I'm guessing next year that bad penny will still be with us.

All right. Let's go to Page 5-5. We're going to move on to a new topic. Recontributing stock. This was very interesting. This was a very interesting case to me – not "case" – Private Letter Ruling. But Private Letter Ruling 202406002 held that the redemption of stock from only some shareholders was not taxable for the redeeming shareholders, the non-redeeming shareholders, or the corporation. They gave back stock.

Now, you know, in a reading of the set of facts, but basically I'm going to summarize it, major shareholder gave back a bunch, and I'm going to make up a number, they had 1,000 shares of stock, major shareholder, and they gave back 400 of them. They just gave it back to the corporation. It was redeemed for no consideration. "I had 1,000 shares yesterday. Today I only have 600 shares." So, you know, everybody, the first question and my first question is, "Why would somebody do that?" And we the box on Page 5-5, which answers the question. "Why would a shareholder do that?" Well, shareholders, particularly major shareholders usually have non-tax reasons for engaging in this type of transaction, such as making the corporation more attractive to a buyer or increasing the incentive for the remaining shareholders to approve that company's sale. So, I mean that makes sense, of course.

So, the question was, "Is that taxable to the redeeming shareholder or, or the minority, the non-redeeming shareholders?" Their value just increased. Because if, if 1,000 shares were there before, 600 shares are here now. I have, you know, 500. But I had 500 out of 1,500, now I have 500 out of 1,100, my value has increased, is that taxable to me or is it taxable to the company? So, the IRS in this Private Letter Ruling, the contributing shareholders must allocate the basis among remaining shares.

That makes perfect sense. I had a thousand shares before. It cost me \$100 a share, that's \$100,000. Now I only have 500 shares. So now it's \$200. That's, you know, that's I mean, that's common practice. We do that all the time. Receipt of those shares by the company is not taxable. We wouldn't expect that. And the non-contributing shareholders, again, this was important, a non-contributing shareholder don't recognize any gain. The value of their stock went up, potentially went up, but they don't have any taxable gain.

The IRS rule, according to the, according to the Private Letter Ruling, contributing shareholders surrender of the shares is not treated as a distribution to the non-contributing shareholders. Had it been a distribution, they would have had a taxable event. And then the gift tax rules don't apply to the increase in value of the shares owned by the non-contributing shareholders because the transaction would occur in the ordinary course of business; not a gift.

So, this is pretty significant, and I think, you know, this is Private Letter Ruling. I'm imagining the numbers were pretty substantial, but I think we can see this on a small level. I'm the sole shareholder – I'm no longer the sole shareholder of my S Corporation. My daughter's now a partner. What if I just gave back half of my shares? So now my daughter, which owned, owned 40%, I gave back half my shares. Now she owns 80%. But you have to, you I can say this Private Letter Ruling is exactly on point. This is what it is. Now she's a related party. There's a whole bunch of differences, but proceed with caution because Private Letter Rulings are only binding on the taxpayers who request them. We laid out the facts. You can follow it item-for-item. It can be used as guidance. I'm suggesting this to my client based on this Private Letter Ruling. We're going to follow it exactly, it's guidance, but it's not authority. So, the IRS can come and say, "We're not following that. We're not allowing that." So, we do just have to be careful about that.

We're now going on to Pages 6 and 7. This is, I'm going to say, a potentially huge issue, but I'm going to say also, you heard it here, I don't think it's going to mean anything. So, across the country, several large LLCs and LPs are filing suits and saying that because they're a limited partnership or an LLC, the members, because they're limited partners or LLC members, they're not subject to self-employment tax because by definition, they are passive partner.

Now the court said you got to look at this based on facts and circumstances. And in the first case, the court didn't even review the facts of the case but denied to issue a summary judgment stating that the distributive share of the income is investment income, not subject to self-employment tax. They said, "You guys have to go back to court to determine that."

The IRS tried twice in the 1990s, to issue regulations specifically regarding limited partners and self-employment tax. They issued them for consideration but they, they never finalized and issued them. Then they did it again a few years later, but, again, you know, they never finalized them. Had they done this, had we had those regulations in place, probably we wouldn't be having these cases. And I'm going to, you know, go one step further. I don't think there's going to be any change to any of this, to any of what we're doing. Limited partners as passive partners are not subject, but LLC members or limited partners that are fully engaged in the business, I think the courts will ultimately say they're subject to self-employment tax.

Now in, in Soroban, the tax court held that the limited partners are subject to self-employment tax where they are limited partner in name only. These suits are saying, "Hey, we're a limited partner or an LLC under" – and I'm just making this up. I forgot what state it is. – "Kentucky, Kentucky, and by definition, by law, by order of law, if we're a limited partner, we're passive partner, we're not subject to that."

The determination of whether a partner is a limited partner in name only requires factual inquiry. "What are they doing?" "Oh, they're working 40 hours a week. They're generating all of the income for the business." "They're compensated maybe based on their contributions, maybe their work. "Wow, that sure doesn't sound like a passive partner. That sounds like somebody that's working for a living and subject to self-employment tax. Sirius Solutions filed an appeal challenging Soroban, and again, they're basically saying, "We are by definition of law in our state, a passive partner. We should not be subject to self-employment tax."

If the IRS had rolled on this 30-some-odd years ago, we probably wouldn't be having this issue. We could based on the Chevron overturning, which we'll get into, but essentially, this probably wouldn't have been here. We wouldn't have had these cases. And I believe once it gets through all of the courts, I don't think we're going to see a change. If they are looking at facts and circumstances, if they're working, if they're doing this, if they're doing, you know, what is considered to be active participation, material participation, working for a living, they will be, I guess, I'm guessing, subject to self-employment tax.

Going on to Page 7, Abusive Basis Shifting. I've seen that attempted, in my small practice I've seen that attempted many times. And if we see it on a small scale, I can only imagine what happens on a big scale, on a large scale.

So, the IRS has announced that they will be issuing regulations targeting Abusive Basis Shifting. What is that? Transfer of partnership interest to related parties, distribution of property to related parties, and liquidation of related Partnerships or partners. Essentially, what am I saying here? "Hey, I have a" – and I've been asked this question more than once. I'm sure every one of you have been, too. "Hey, I have a building that's worth a million dollars. I bought it 30 years ago for \$100,000. It's fully depreciated. What I'd like to do is transfer it to my partnership. My kids will be partners. I'll own 90%. The kids are, or I own 75%. And the kids own, you know, their share of 25%. And we'll start depreciating it at a million dollars."

Well, you can do that if you recognize the gain, but again, you know, the partnership rules are so that I can transfer that property without any taxable gain. And what's going on here with Abusive Basis Shifting is they are transferring the property without recognizing the gain but getting the step up. The IRS is aware of that. They're saying they're going to be challenging these transactions under the Economic Substance Doctrine, and they will also be issuing regulations targeting this. It's about time.

The research and development credit, frequently asked questions. So, if you remember, we went into this in pretty big detail last year, beginning in 2022, SRE expenses now need to be capitalized and amortized. I have a little example on Page 9. TagIt incurred \$710,000 of SRE expenses. In the past, they would have expensed those, but now based on these new regulations, they have to capitalize the \$710,000. It's domestic, which means they will amortize it over 60 months starting mid-point of the year, July 1st, and this is the calendar year. So, they take \$710,000, they divide it by 60. They have \$11,833 a month. They multiply that by six, we can end up with \$71,000 as a deductible expense in the current year.

We've compiled the top 20 FAQs regarding this new requirement, and I'm going to go through most of them or some of them. So, will this expire like the other tax cuts and job acts? No, it requires a legislative fix. Now, will it be repealed? We were expecting it to be repealed immediately. It wasn't. Previous legislation was stalled, and it actually came up a couple of times and nothing happened. Now we have a new administration. So, will it be overturned, will it be repealed or will it just go on? We don't know that.

What expenses need to be amortized. And here is the, all costs that are incident to the development or improvement of a product. And if you look on Page 10 with me, we list out labor costs of employees, independent contractors, cost of materials, cost of recovery allowances, depreciation, patent costs, certain operation and management costs. Essentially, all costs that are incident to the development or improvement. Are cost recovery allowances treated as SRE expenses? Yes, they are. We have an example, I'm not going to get into that.

Are there expenses that don't have to be amortized? And yes, they are. Let's look at that list on Page 5-12. General and administrative expenses, payroll, human resources, interest on debt, various website costs, amortization of SRE expenses, including those paid or incurred prior to 2022. Now, if I look at that, I would say, "You know that, well, this sounds like indirect costs. So, does that mean that all indirect costs don't need to be amortized, capitalized and amortized?" And then the answer to that, no, only the specifically listed items are excluded. Other indirect costs do need to be allocated, capitalized and allocated to SRE expenses.

Why are patent costs treated as both included and excluded? What's the difference? Well, the cost of obtaining a new patent must be amortized. The cost of acquiring a patent from another taxpayer is not. So, if I build it myself, we amortize. If we buy it from somebody else, it's not. Does it affect long-term contracts? Yes, and the IRS has said they will issue regulations on that.

Page 5-13, do software costs need to be amortized? Yes, if they're used in a research activities. What about software upgrades and enhancements? And the answer there is yes, if they add functionality or if they increase the speed. And then what software development costs have to be amortized? And we list that at the bottom of Page 5-13, planning the development of the software, designing, building a model of the software, writing and converting the source code, testing the software and making any modifications.

Are there any computer software related expenses that don't have to be amortized? And, yes, the answer to that, top of Page 5-14, training the employees, maintenance activities after the software is placed in service, activities that occur after the software is developed for sale or licensed to others and is ready for sale or license. Again, marketing, maintenance.

What if a company pays somebody else to do that research? Do those have to be amortized? And we have a great example, I think, on Page 5-15, which really shows the answer to this one. Star Company hires the Moon Company to develop an SRE product for use in their business. Star is going to pay the Moon \$25,000 plus whatever it costs the Moon to develop this. The Moon Company has no financial risk, cannot use the SRE product in its trade or business, and it performs everything in the United States. The SRE product cost was \$125,000, so Star pays the Moon \$150,000. Looking at the income statement for the Moon Company, I have \$150,000 of income, I have \$125,000 of expenses. These are not SRE expenses. I have a net income of \$25,000. Now to the Moon, I mean to the Star Company, though, that \$150,000 are SRE expenses. So, they must capitalize. And we said it's domestic, 60 months midpoint. So, they will amortize those expenses.

I think the reason I like this example is, you know, this is pretty common. And we have many clients that are doing work for other companies, developing, consulting, whatever it is. But so, there's the company that will benefit and there's the company that is paid and the company that's being paid, "Hey, it's just another job."

If the taxpayer no longer owns the SRE product, must the taxpayer still continue to amortize? Let's look at that other example. In 2023, Sweet Grips incurred 415,000 of research expenses. The \$415,000 of expenses incurred in 2023, must be amortized over five years starting in the midpoint of the year. Despite abandoning the product, Sweet Grips can only deduct its expenditures for the failed product by continuing its five-year period.

Doesn't sound fair to me, but nobody asked me, and tax laws aren't always fair. What if the taxpayer ceases to exist? And again, we give you a couple of examples on that. Does the requirement, we'll skip, does the requirement impact the calculation of gain when a research product is sold? And there, of course, basis is not increased by the amounts that have not been amortized yet.

Skipping to Page 5-19. The updated form 6765, the research credit. This is not a new form, it's just been updated. There are new sections for more cost information required starting in 2025. Supporting documents no longer need to be filed with the credit claim, but we must now supply supporting facts in an attached statement.

And on 5-19, we have a box summarizing qualified research rules, research rule. Activity specifically excluded from qualified research, research after commercial production adaptation, foreign research, research funded by the customer, and qualified research must meet the following four tests. Section 174 test, the expenditures connected with the research must be eligible for treatment as expenses under 174, which we mentioned above, technological in nature, business component tests, and the process of experimentation tests.

These credits are very valuable to many, to many taxpayers. And the problem with credit often is, you know, I do something in one year. I can't take the credit until I file the tax return for that year. So, you know, I do it in the first quarter of, let's say 2024. I file my tax return in March of 2025, or maybe I extend it all the way to September, and then I get the refund or the benefit of the credit, you know, a month or two later.

What we have on Page 5-20, we talk about the research credit for small businesses. And in small businesses, you know, we all know cash is king. Businesses go out of business with great ideas and great products, but they don't have the money to keep on going. So, tax for years after 12-31-22, starting in 2023, a taxpayer, small business can elect to claim up to \$500,000 of the credit against their Social Security and Medicare payroll taxes. The first 250 goes against Social Security, the next \$250,000 goes against Medicare. So, what does that mean? Again, I'm getting the benefit. "I did this work; I incurred these expenses in the first quarter. Now I'm filing my payroll taxes, and I can take the credits then throughout the year," giving me back, giving the taxpayers back more cash. More cash to continue the business, more cash to pay the employees, more cash to stay in business. So, I think that's a great, I think this is a great credit for the small businesses.

And there's a change in the book. want you to look at Page 5-20. The IRS just extended the date by which the research credit refund claims must provide this additional information. It was January 10th, 2025, but we have now all of 2025, going through the extended due date or the "change due date," I should say, is January 10th of 2026.

Starting January 10th of 2026, amended returns claiming the credit refunds must also contain additional information. We have to identify all the business components to which the research credit claim relates, and we have to identify total qualified employee wage expenses, qualified supply expenses, and qualified contract expenses. That's why the very first slide, the very first slide on this topic said, Form 6765 is being expanded. There's more room for this additional information that we are now required to give to the IRS.

The production costs. This is the bottom of Page 5-20. So, I'm not a lawyer, but I'm going to define in my layperson's way of summary judgment. Somebody brings a claim against someone. And the IRS in this case brought a claim against, brought a claim against these taxpayers. And then they said, "We don't even need to go to court about this."

We're asking for a summary judgment. We're saying, 'Hey, by definition, production costs can be excluded from the research credit calculation.'" So that's the crux of their claim and therefore they've lost because it doesn't apply. That may be an oversimplification. Again, I'm not a lawyer. It's close enough. The tax court denied that motion and they said, "It has to go to trial to give the taxpayer the opportunity to say why these production expenses were part of the evaluative process and therefore eligible for the credit."

Page 5-21, Section 179 expenses. We have the inflation figures listed on the chart on Page 5-21

Bonus depreciation, Section 179, depreciations are wonderful, they are, but they can also get taxpayers into trouble. So, when we are sitting down with our clients and they bought a building or they bought a piece of equipment, let's say for \$400,000, they're going to be paying that off over 10 years. Well, if we take that big deduction in the first year, which we're eligible to, and now we're eligible to take a portion of it, but we're going to continue paying principal, but we no longer have a tax, a tax deduction with depreciation.

So, we all know people, some people that get a \$10,000 tax refund, they go out and spend 12,000. Some people get a \$10,000 tax refund, they put it in the bank. So, when I talk about bonus depreciation or Section 179, to any great extent, any great numbers. We really talk to our clients about, you know, are you going to have the money? Does it make sense in your case?

Looking at bonus, we have the chart on Page 5-22. 2023-we're allowed 80%, 2024-60%, goes down in 2027 to zero. I'm going to tell you, don't worry about 2027. Tax laws change. We have a new administration. Bonus depreciation comes about when the economy needs it, and tax policies, who knows what will happen in 2027 and beyond. I'm doing tax planning for 2025, I'm looking at those numbers. But beyond that, what we'll consider, you know, 20% and zero, but I'm also going to bring up the question, maybe we'll have more. We don't know. Used property, happened a few years ago, qualifies for bonus depreciation.

On 5-23, you can elect out of bonus. Now, I file my original return, not taking bonus depreciation, that's fine. But what if I file my original return taking bonus and then I realize, "Wow, wait a minute. That was a bad idea." So, you must select on a timely filed return or an amended return filed within six months of the original due date, no extensions. So, I file my return in March, I've got six months to file an amended return. What if I file, I extend and I file my return in August? You've got a month. You still have six months from the original due date. Now why would we elect out? Well, the loss on the return could limit business interest deduction. We might want to preserve these deductions for later, or, you know, the 199A or the retirement contributions will be affected. This all goes into the pot, and you figure out which is the best way to do it. If we realize we made a mistake, we have six months to correct that. Some property will dictate which to claim, we show you that. Section 179 cannot create a loss, but bonus can.

On Page 5-25, we talk about business autos. We can deduct the standard mileage or the actual expenses. Depends on, you know, when I'm advising clients, it depends on how fast they're going through cars, how many miles they drive, what do they do with the cars. I personally deduct the standard mileage rate. I buy a car, I buy a used car. Usually, a year old has 5,000 or 15,000 miles on it. I will drive it till it dies. I put on a couple thousand miles a year, business miles. So, we just take the standard mileage rate. I get reimbursed by my company. Company deducts it. Self-employed individuals may claim auto expenses on schedule C. The LLC, the partners, LLC members claim it on Schedule E, I got a 100% direct write-off.

Farms on Schedule F, landlords can take the deduction on Schedule E. For employees, they are unreimbursed business expenses, so we don't get the deduction for now. Who knows what will happen? But we do get reimbursed. Again, I say, at the end of the year, company may, my company owes me, let's say \$1,000 for business miles. They write me a check for \$1,000. I've got the expense, I've got the income, it's a wash. Nothing is there. And then the company gets the deduction. I'm just an employee.

Commuting expenses allowed between jobs. The standard rate chart is on Page 5-26. For 2024, business mileage is 67 cents a mile. What will it be in 2025? We will know soon. We will let you know when we know it. Charitable miles, always 14 cents. You need an act of Congress to change that. Medical mileage, 21 cents. Moving mileage, when it's deductible, 21 cents. We'll let you know when we get those new numbers.

Now the employer can elect to treat 100%. If the employer gives the car, the employer can elect to treat 100% as personal use. So, essentially, they're saying, you know, the value of this car is, "Here you go," and we're just adding it to your W-2. Now the employee can exclude the work portion use as a fringe benefit. The maximum for fair market value for fringe benefits in 2024 is \$62,000. We can also use the FAVR, which you'll have to pardon me, Fixed And Variable Rate method of substantiating expenses, but only if at least five employees are covered by the plan. As I said, on owner employee deduction on Schedule Cs. For vehicles owned by the employee, the owners under an accountable plan corporations can deduct reimbursed expenses, and it is an income. That's what I said, that's what we do.

I don't think, in most cases, that it's a good idea to have the company cars in the companies because then you have personal and business use. I think it's better generally for the employee to have it, to own it. In a partnership, I absolutely would suggest the partner have it, own it separately. They can deduct 100% as though it came right off the partnership return, but the other partners are not paying for your kind of car.

On Page 5-30 through 33, auto depreciation and lease inclusion. We list for luxury automobiles on Page 5-30, the maximum depreciation amounts. The heavy SUV amounts are listed on Page 31. The lease inclusion tables, we give you a link on Page 5-32. I think the lease inclusion tables are a joke. If you've ever looked at that, you know, at these nominal numbers. And then there's a calculator talking about whether, you know, lease or buy. Most of the time, I don't think leasing or buying is really a tax question or even an economic question. Most of the time, I think it is a personal preference question, and then you take the tax benefits.

Some clients like new cars every year or every other year. My brother-in-law, he's a physician. He wants to drive a new car every other year. He leases the car and every other year he gets a brand new one. He doesn't need to, barely drives for work, barely drives, you he goes to his office and then sometimes the hospitals, but it's not a question of economics, it's not a question of tax deductibility. He wants a new car every year. I have a realtor, very successful realtor and she buys a new car. She gets a new car every other year. Why? Because she said, "I've got to show affluence to my clients. I've got to show that I am successful. I don't want to drive a 10-year-old car."

As I said, I buy a car a year old or so, I don't buy new cars, and then I will drive it until it dies. My wife likes new cars. So, when it comes time for her to get a car, we go out and we buy a new car for her because that's what she likes. And then she will drive it for a number, for many, many years. I don't think it's really a tax question most of the time, it's preference.

If you'll join me on Page 5-33, the qualified commercial clean vehicle credit. This is for vehicles purchased after 2022 and before 2033, so, 2023 through 2032. You must use the vehicle for business, commercial. Taxpayers can choose between the clean vehicle credit and the qualified commercial clean vehicle credit. You determine which one is better and then we can take the credit. This credit cannot be transferred to the dealer at the time of the purchase, which we can with other credits now. Why? To use that as the down payment or to help that with the down payment.

And I had to show this. I had to show this. Nothing to do with the class necessarily. This is the cyber truck. Everybody that sees this car either loves it or hates it. "God, it's the ugliest thing I've ever seen. Or, "Wow, is that a spaceship on wheels?" My grandson flips out every time he sees this car. I will tell you, I don't like it, but my friend has one and he picked us up from the airport in Las Vegas and he typed in his address and the car drove us home. It's absolutely amazing. Changed lanes, slowed down, stopped at stop signs, stopped at the stop lights, light changes to green, it goes. My friend Mitch is a crazy driver. He's been my friend since we were 15. I've been driving with him for 50 plus years. I've never felt safer in his car than when, you know, Elon Musk was driving it.

All right, so the qualified commercial vehicle equal to 15% of the vehicle's basis or 30% of the vehicle is not powered by gasoline or diesel internal combustion, or the excess of the purchase price over the cost of a comparable vehicle in terms of size and use, it's capped at \$40,000, \$7,500 or less for less than 14,000 pounds.

We give you these charts on Page 5-34, the incremental cost and safe harbor amounts. I'm going to come back to this in a second. And then if we look at the example on Page 33, Sonico is a moving company. They purchased the Class 7 BEV Day Cab in 2024, used it 100% for business. It has a gross weight of greater than 14,000 pounds, purchase

price was \$314,000. It didn't claim any Section 179. So, we have \$314,000. The credit percentage 30%, calculated amount, \$94,200. But if we go back to the chart, see, Class 7 Day Cab, \$93,500, that's the maximum, but then we know that the maximum credit is \$40,000. So, in this case, they can claim \$40,000.

On Page 5-36, we list out the requirements. It's made by a qualified manufacturer. It's acquired for use or lease by the taxpayer. It's not for resale. It's either a motor vehicle under Title II of the Clean Air Act or a mobile machine under Section 4053. It's either an electric vehicle, a plug-in hybrid, or a fuel cell, and it's a fuel cell vehicle.

I'll just say now, you know, my wife has an electric car, she loves it. She loves it. I have range anxiety and I think a lot of people do still. So, I don't have an electric car. I don't want an electric car yet. Maybe one day when there's more chargers and the range is much greater, maybe I will. I like the idea of a hybrid, and I think my next car will probably be a hybrid.

Also, there's no AGI limitations for this. I think a lot of people go through that. That was just a thought that came up. There are no AGI limits for this credit, and we'll compare the credits in a few minutes.

It is subject to recapture, but we don't have the regulations yet. We will. Lessees do not qualify. You can claim the credit for a used credit vehicle. And I laugh at that, because you can claim it for a used car, but only if neither the clean or qualified vehicle was claimed previously. And what's the likelihood of that? And I'll say pretty much nothing. You have to reduce basis, of course. Tax exempt entities can treat the seller as the taxpayer, get the benefits, and it's not for vehicles used outside the United States.

The clean vehicle credit for business. Now you can split the credit between business and personal, and if more than 50% use is business, you take the clean vehicle credit, you take it as a general business credit. We have an example of that on Page 5-39. Kristen works for Uber. In the first example, she uses the car 50-50. When she files her tax return, she must report the vehicle, the credit on Form 8936. The Form 8936 then goes to the Form 3800 as the general business credit and is subject to all the limitations. In the second example, she just uses her car now for 49%. She still files the Form 8936, but now 49% goes to the general business credit and the other 51% passes directly to her 1040 by way of Schedule 3. AGI limits do apply even to the partners and the shareholders. I'm going to skip that example.

On Page 5-41, we do show you the chart comparing the credits.

On the bottom of Page 5-42, Holly is a florist. She operates her business as a Schedule C sole proprietorship. In 2024, she buys a credit, meets all the requirements for the previously owned credit. Holly's income is below the AGI limitation, and she claims the maximum credit of \$4,000. It does not have to run through the general business credit first.

Let's go to Page 5-43, meals and entertainment. And we have that chart. Meals and entertainment. Client entertainment, no longer deductible. Sporting goods, theater tickets, golf outings, no longer deductible. I worked for a firm years ago. At the end, the three partners were all avid golfers. On April 16th, they took the whole firm, the accountants, all to Palm Springs, and we spent three days golfing on different golf courses. I don't golf, but I walked with them. I enjoyed it. It was outside. was nice. It was a nice social time. Those are no longer deductible for federal.

Client meals, 50%. We had that 100% for a little while. Holiday parties, company picnics are still 100% deductible. How often can you have a holiday party? How often can you have these occasional employee appreciation events? We have a big holiday party with our firm. Everybody's invited, family, too. We try to have some excursion, an excursion during the year.

Page 5-44, excess business losses. We show you the chart at the top of Page 5-44. We have the limitation for 2024. We don't know what it is yet for 2025. Remember initially it was \$250,000 and \$500,000. It's now up to \$305,000 and \$610,000. This is absolutely a tax increase, although it's disguised as one. Partnership and S Corporations, this applies at the owner level.

I've been teaching this for years, pass-through entities, basis issues, and I always talk about my three-part test when we're looking at basis for a pass-through. First, we verify basis. Do I have basis to deduct this loss? Yes, I do. If I have basis, am I at risk? At risk and basis are similar, but they are different. Yes, I have basis and I am at risk. All right, I have basis and I'm at risk. It's a passive activity, can I deduct it? Answered all three questions. Yes, I can deduct it on my tax return. We now have part four of my three-part test where basis at risk passive activity and now, what about the excess business loss limitations?

We have our SALT workarounds. I've never understood how this even got about. I never understood how this passed, but it did. So, we have the SALT limitation. We can only deduct \$10,000 of state local income taxes. Almost every one of my exceed that. Most of my clients, I should say, exceed that, which means we only deduct \$10,000. One client, his W-2 this year is a little bit more than \$20 million. His state tax will be about \$3 million. His property taxes are a couple of hundred thousand dollars. He'll deduct \$10,000.

So, the beauty is, is that the company that is going to pay, the company has a profit, let's say that an S Corp or partnership, has a profit of a million dollars. They say the tax on that million dollars is \$90,000. We'll pay that tax. Company pays that tax. And then federal income taxes are reduced because we have a \$90,000 deduction. We save money on federal taxes. It passes through a Schedule K-1 to the individual, their share of the income. Federal and state are different, again, \$90,000 plus whatever difference is, and they get a credit for their share of that \$90,000. In most cases, this works out better than it did under the old way of deducting, especially when you factor in AMT.

So, you know, we all say we want SALT limitations to be removed. Well, do we really? Do we really? And then there's questions, you know, fiscal years and fiscal year taxpayers or accrual taxpayers. What if it's we deducted when it's only rental income? Well, you know, we, we, I basically say I deduct the taxes where it's income. So, if it's Page 1, we'll deduct the taxes there. If it's rental income, we deduct the taxes there. What if it's investment income? Well, then it's really, the taxes would be an investment expense, and again, under the current law, I think they would not be taxable. I know others treat it differently.

We give you a chart on Page 5-46 which summarizes the rules by state. And as I said up above, you know, this is many states now. We do a big partnership return for a Connecticut partnership. They take advantage of this work around. So, I have to go through and see what the Connecticut laws are. So, this chart that we give you, I think is very helpful.

On Page 5-46, I included this one little section just because, hey, we all need a little entertainment in life. Henry v. Commissioner. This is the best, I think it's the best case of the day, maybe the best case of the year. We have tax preparers who in their marketing video, they say, "We teach you what's deductible and we'll help you convert your personal life into your business life and write it all off." Okay, we call it, "Anyway expenses. You've got to eat anyway, you might as well write it off."

Now, okay, all right, so they do this. You would think that these taxpayers, this, this, these tax preparers would be so careful and teach their clients about record keeping and how to support these "anyway expenses," but they weren't. They kept little or no records. They were horrible. They wrote off personal expenses. The IRS audited them. They said, no. And the court said, no. They had almost a \$2 million tax deficiency. And it's no surprise that the tax court found the taxpayers' testimony at trial to not be creditable. And they stated, the court stated, that the taxpayers encouraged their clients to falsely characterize their personal expenses as business expenses. The court could not rule out the likelihood that the taxpayers themselves were engaged in such conduct. If you are inclined to read cases, I highly recommend that you do this, that you read this. It's entertaining.

On Page 5-46, we talk about the general business credits. On Page 5-47, we give you a list of the credits, 5-47 and 5-48. These all go to Form 3800. The credits are listed in the order that they are generally claimed or are claimed.

On Page 5-49, for non-corporate taxpayers, non-corporate taxpayers, if a taxpayer is subject to AMT, they can't claim the general business credit in the current year with certain exceptions for certain credits. The general business credit can't offset more than 75% of the taxpayers' net income tax. And taxpayers with regular tax liability of \$25,000 or

less are not subject to the limitation unless they are AMT. And many of our clients are no longer an AMT; right? The corporate taxpayers, the amount of the credit is limited to 25% of the net income tax in excess of \$25,000. We have an example on Page 5-49.

The general business calculation, the amount of the general business calculation allowed in the tax year is equal to the sum of the business credit carryforwards, the amount of the current year credit, and any carrybacks, subject to the limitations that we just talked about in the last couple of slides.

Generally unused credits may be first carried back one year and then carried forward for 20 years. Those laws keep changing, that's where we are. Beginning with the 2023 tax year, a three-year carryback period applies for applicable credits that can be treated as a tax payment by tax exempt entities and certain government organizations. Very limited, but in certain cases, we can take those back.

And then on Page 5-51, we give you an example of the carrybacks and carryforwards. Lil's Restaurant has tax liability, tentative minimum tax, AMT, non-specific, non-specified general business credits, specified credits, and non-general business credits. And then we show what they can take and then what the carryovers are, carryforwards are, carryovers are.

Generally, no part of the unused credit can be carried back to a year before the credit was available. Of course, that makes perfect sense. Ignoring the statute of limitations, just as an example, we have that \$7,500 credit for cars, I can't take it back 10 years if I could amend a 10-year return. I can't take it back 10 years because it wasn't around 10 years ago. And for a better example, the Clean Vehicle Credit can't be carried back to 2022, because it came about in 2023.

If the taxpayers have more than one credit and their credit exceeds the limitations, we apply them in the order listed on the chart that we looked at back on Page 5-47. Carryovers from prior years are applied first. And if we look at the example on Page 5-53, Tasty Goods as a restaurant chain has a \$35,000 tax liability. 48,000 of general business credits combined making up the following. Applying the ordering rules, looking back on that chart, Page 5-47, work opportunity credit, disabled credit, FICA tax, tip credit, small employer credit, and then there's \$3,000 left over, and that either gets carried back or carried forward.

Carrybacks can be claimed on an amended return or with an application for a tentative refund. Forms 1139 and 1045 must be filed by the end of the tax year following the tax year in which the credit arose. So, we're taking a credit for 2023. We file the tax return in 2024. We have until the end of 2024 to file the Form 1139 or Form 1045. They're filed with the IRS service center where the taxpayer files their return and the IRS must act on these applications within 90 days.

Starting on Page 5-54, this is, you know, again, I think this is great. Taxpayers that are unable to use all of their available qualified business credits may be able to claim a deduction for the unused credit at the end of the 20-year carryover period. Now you do have to wait 20 years, and then certainly, you know, I say at the bottom of the slide, it's accelerated if they die or they cease to exist, but let's not hope, let's hope that doesn't happen. So, I have a credit. I can't use it. I can't use it, can't use it. 20 years later, so only certain credits, 20 years later, I can deduct a portion of that.

The deduction is generally – so it's actually in the 21st year. The deduction is generally claimed in the year following the end of the carry forward period. I ran out of my 20-year period. And on Page 5-54, we do list for you many of those credits or the credits that are allowable. Again, I'll just say a few of them. The investment tax credit for property that had a section, Internal Revenue Code Section 50(c) basis adjustment, work opportunity credit, alcohol fuels credit, enhanced oil recovery credit, the employment zone recovery, Indian employment, FICA tip credit, new markets credit, small employer pension plan startup credit. That's a good credit. Hopefully they can use that before the 20 years. Hopefully they can use all of these. All sulfur diesel fuel credit, energy efficient home credit, small employers' healthcare credit. I've only in my practice, we've only come across a few of these and they've never gone all the way to the end. The deduction is accelerated, as I said, if the taxpayer dies or ceases to exist.

Claiming the general business credit. It's on Page 5-55. So, we compute the source credit on the applicable forms and then we bundle them on the Form 3800. I gave the example earlier where the Uber driver put her credits first on the credit form and then because it was 50%, it goes to the Form 3800. This form was expanded from three parts to six parts in 2023, all part of tax simplification. And that was to accommodate the Inflation Reduction Act's 2022 provisions to transfer credits.

You know, they have been simplifying the tax code since 1981, and every time they simplify, there's more work for us. I think the next couple of years, by the way, are going to be great years for tax preparers. Laws are going to change. We don't know exactly what. Laws are going to change. Fees are going to have to be increased. Make sure you increase your fees for increased work. So, all of these law changes that are going to come about or that are due to expire or whatever, it will be good for our business.

On Page 5-55, monetizing specified energy credits. The 2022 Act allows a taxpayer to apply certain energy credits as tax payments and then to sell those certain energy credits to others. And there's actually an energy credit marketplace they're popping up. And we talk about that in the comment box. A simple Google search for selling energy credits will produce multiple companies advertising themselves as a marketplace for managing and brokering the acquisition and sale of eligible energy credits. Currently the credits are selling on the open market for 90 to 95% of the credit amount. Billions of dollars in credits are already in the process. So, this is a great way for, again, taxpayers that quickly monetize on these credits.

On Page 5-56, registration is required. We give you that link. And then if we look at the practice pointers, one of our speakers has actually already gone through this for their clients. Taxpayers may require more than one registration number. Be sure to review the form instructions. The registration, according to us, to the practitioner that went through this, registration process was easy. And practitioners can do it on their client's behalf after logging in using their IDME account. Or you can have the client do it. Registration process requires that you provide the client's bank account and routing number, even though that's just early registration. You're not going to need that still for several months, potentially for several months. The registration process requires that you input the latitude and longitude of the facility where the energy property is being placed in service. That's easy using Google Map.

I was driving once to Santa Barbara, San Francisco to Santa Barbara, and we got, I got a flat tire. So, first I went, so, first of all, where we were was an absolute dead zone. And then I was able to drive about five or 10 miles. And we got to a place where I could call AAA and they said, "Where are you?" I said, "Highway 1." "Where are you?" I don't know. I didn't notice the city behind me. I don't know what's coming up. There's no signs. So, they actually said, give me the latitude and longitude. So, I went to our GPS and I gave them numbers, and they said, "Oh, hang on, they know exactly where we are." And they were able to send a tow truck up to get us. So that wouldn't have made sense to me prior to my experience or this requirement, I should say, wouldn't have made sense to me. The registration process asks for certain documents to be uploaded. So again, relatively simple process.

On Page 5-56, eligible credits include the 45 Renewable Electricity Production Credit, Clean Electricity Production Tax Credit for facilities placed in service after 2024, the Energy Investment Credit and the Clean Electricity Investment Credit. Eligible taxpayers, any person subject to the Internal Revenue Tax, Partnerships and S Corporations can transfer the credit even if the taxpayer is not subject to the income tax. S Corps and Partnerships, of course, don't pay tax.

Credits cannot be transferred to related parties. Okay. That makes perfect sense. No transfers for non-cash consideration. Again, like discounts. That makes sense. You got to really sell it. Go to the marketplace, you can sell it. And a credit can only be sold/transferred once. So, I can't buy it, turn around and sell it, and, you know, the price of this particular credit goes up. I hold it for a while, I sell it. It's now becoming a commodity. We can't do that. The seller sells it. The buyer buys it. That's the end.

On Page 5-57, we can transfer all or a portion of the credit. Let's say I can use a portion of the credit. I don't want to sell it all. But that portion that I can't use, I can sell. I can sell to multiple recipients. I've got a \$50,000 credit for sale.

Goes on the marketplace. Five different people only want \$10,000 credits. They can each buy a piece of it. So, all this is very, if you will, taxpayer friendly. You cannot transfer the bonus portion of the credit separate from the base credit. They go together.

On Page 5-57, how do we make the election? An irrevocable election must be made on an original or superseding return filed by the extended due date for the taxpayer. S Corporations and Partnerships, of course, make the election at the entity level. That's where the credit is being generated, even though they don't benefit from it. And as I said in the previous slide, the S Corps and Partnerships can sell it.

The taxpayer and transferee attach a transfer election to their returns. Why? Well, you know, this reminds me of Code Section 351, a non-taxable contribution, a transfer to a corporation. I incorporated my CPA practice many years ago. And on my tax return, I included a Section 351 statement on my personal return. I said, "I, Stan Pollack, am transferring to Stanley Pollock Corporation, this federal ID number, I'm transferring cash and assets and all of this and blah, blah, basis of this to this corporation."

Now the corporation then has to file a Section 351, a statement on its first tax return that says essentially the same thing. Why do we do that? Well, because I don't want to transfer, the IRS, I should say, doesn't want me to be transferring \$10,000 and the corporation saying I got \$40,000. Same thing here. The taxpayer and the transferee attach to the transfer election. The taxpayer says what they are transferring. The transferee says what they have received. They should be the same numbers.

How do we claim the credit? We claim the credit on Form 3800 for the first tax year ending with or after the credit was determined. Taxpayers who claim excessive credits are liable for a repayment plus a 20% penalty. This is a, "Don't mess around," but there is a reasonable cause exception.

Transfer fees are liable for any recapture during the five-year recapture period if the property is disposed of or taken out of service, just like the original transferors would have been had they kept the credit.

Page 5-58, credits as tax payments says this is only for tax exempt and government agencies. It applies to any entity exempt under code Section 501(a). It applies to transfer credits and the Commercial Clean Vehicle Credit. The election is made on form 990-T and is irrevocable. I do not do any 990-Ts. I don't do any 990s. We have elected not to. There's a great CPA in Walnut Creek that focuses on nonprofits. So, we get a couple of referrals every year and we always refer him to them – we will refer them to him.

And on Page 5-58, we give you a link to frequently asked questions on this topic.

The energy investment credit up to 30% for non-residential energy property that produces renewal energy. We have solar power on my house. We have solar batteries in the house. I think they're wonderful. It's only for construction that begins prior to January 1st, 2025. And then the new clean electricity investment credit will kick in. You can't take this and the rehab credit on the same property.

List of qualified properties is on Page 5-60, solar panels, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. I'm an accountant. Like many of you that probably have done this, I did a cost benefit analysis. I figured that the solar panels would pay for themselves in about seven years. They have paid for themselves. It is wonderful.

We put in solar batteries. I have three batteries on my house. I did a cost benefit analysis. They will never pay for themselves. They won't. We get to use the solar, you know, it stores power, then we use it at night. During the summer, our electric bills are next to nothing. But more importantly, we got the solar batteries because we have brownouts and blackouts here in California, planned and unplanned. We live in the mountains off a big mountain road, and a couple of years ago, there was an accident. Somebody ran into a power pole and the electricity was out for a little over a day. We weren't affected. So, a lot of our clients are getting this. I think they're wonderful.

On Page 5-61, we listed out, must be new construction or original use property, must be depreciable, and you must meet the performance standards issued by the IRS. The base credit is 6%. It's increased to 30% if construction begins prior to January 30th, 2023. It's small enough to be exempt from the wages and the wage and apprenticeship requirements are met. There are additional limitations listed out on Page 5-62, qualified fuel cell, micro turbine property.

And then on 5-64, we talk about some additional credits. Up to a 10% increase of the domestic content requirements for steel, iron, and manufactured products are met. Up to 20% for certain solar and wind facilities placed in service in connection with low-income communities.

The Energy Investment Credit can be claimed, that's on Page 5-65, against AMT. That's a huge benefit. For property placed and service after 2024, it's only US facilities. There's also a 30% credit. The renewable electricity production credit, on 5-67, it's per kilowatt hour tax credit. It has to be sold to an unrelated buyer. On Page 5-67, we list out, again, those credit amounts. We have bonus amounts. We compare, on 5-68 to 5-71, the different credits and how they compare over time.

And now we are on Page 5-71, cannabis. The Department of Justice has made a recommendation to reclassify Schedule 1 to Schedule 3. It wouldn't be legal for recreation, but the deductions would no longer be limited to just cost of goods sold by Section 280E. That's a great step. It's a step. We got to get further. Banking rules alone would not change though, so they remain cash businesses. I'm going to just say I am old or older. I actually know people that went to jail for selling this stuff. You know, the world has changed. You see signs now advertising cannabis. Buy an ounce for X amount of dollars. Those things used to be done in back alleys and hidden away. So, to me at my age, it's pretty mind boggling. To my kids, it's, "Hey, that's, you this life."

Now I want to thank you for sticking with me. On behalf of me and the boys, this is Billy Jack and Oscar. They are with me all the time. I am one of the lucky ones that get to bring my dogs to work. Thank you all for being here.

SUPPLEMENTAL MATERIALS

Business Tax Update

EMPLOYEE RETENTION CREDIT

OUTSTANDING ERC CLAIMS

The IRS is still processing ERC claims. On June 20, 2024, they announced an update on the processing delays and announced that processing will continue to take time and that the only option for taxpayers is to just wait. (IR-2024-169) There is no hotline or online tool for taxpayers to use to find out the status of their claim.

The IRS's June 20, 2024, announcement also provided an update on the amount of claims they had processed to date along with the rough number of claims that had been denied.

VOLUNTARY DISCLOSURE PROGRAMS

The IRS opened and closed two separate ERC Voluntary Disclosure Programs (ERC-VDP) in 2024. Both programs allowed taxpayers that already received their ERC refunds but who didn't believe they actually qualified to repay a significant portion of the refunds received in exchange for audit relief and other relief from civil penalties.

The first ERC-VDP was announced and opened on December 21, 2023, and closed on March 22, 2024. (IR-2023-247; IRS Announcement 2024-3) The first ERC-VDP allowed taxpayers to repay only 80% of the refund they received and keep the remaining 20%.

The second ERC-VDP was announced and opened on August 15, 2024, and closed on November 22, 2024. (IRS Announcement 2024-30) The second ERC-VDP allowed taxpayers to repay only 85% of the refund they received and keep the remaining 15%.

Under both programs, participating taxpayers are deemed to have repaid their full ERC refunds, thus allowing them to maintain the full wage deduction on their income tax returns. Remember, taxpayers that received the ERC are required to reduce their deductible wages by the amount of the credit received for the 2020 and/or 2021 taxable years.

Criminal Penalties

Taxpayers that participated in either ERC-VDP are not relieved from criminal penalties.

Participating taxpayers and those who helped them claim the ERC can still be subject to criminal penalties for fraud if the IRS believes their actions in claiming their original ERC rise to that level.

EXPANDED ERC RELIEF FOR THIRD-PARTY PAYERS

The IRS has announced a special "supplemental claim" process available only to third-party payers (TPPs) to resolve incorrect ERC claims. (IR-2024-246) Third-party payers report and pay federal employment taxes under the TPP's EIN on behalf of multiple client businesses. Many TPPs filed ERC claims for multiple client businesses. If a TPP's client has since determined it is ineligible for the ERC and wants to resolve their claim, the IRS requires that the TPP correct it.

The new IRS process allows TPPs that filed prior ERC claims with multiple clients to effectively withdraw ERC claims for only some clients while maintaining other ERC claims. One of the hurdles to other ERC relief previously announced by the IRS was that TPPs that wanted to withdraw claims had to do so for all of their clients included on a joint filing.

The supplemental claims process is only available for TPPs to which all of the following apply:

- The TPP has filed one or more ERC claims aggregating credits for itself and/or clients using the TPP's EIN;
- The TPP made the claim on an amended payroll tax return; and
- The IRS has not processed any of the claims the TPP is including in the supplemental claim and is not auditing these claims.

When filed, the supplemental ERC claim replaces an outstanding (and unprocessed) ERC claim.

The IRS will treat claims filed before the supplemental claim as if they were never filed. Supplemental claims can only replace claims filed on or before January 31, 2024.

TPPs that file supplemental claims must file a separate claim for each tax period (payroll quarter), and all supplemental claims originally had to be filed by 11:59 p.m. on November 22, 2024, which was the same due date as the second ERC Voluntary Disclosure Program. On November 26, 2024, the IRS announced that it was extending the deadline for TPPs to 11:59 p.m. on December 31, 2024. (IRS e-News for Tax Professionals 2024-47) TPPs file supplemental claims by filing another amended payroll tax return for the applicable quarter. Unlike applications for the Voluntary Disclosure Program, the supplemental claims submitted by TPPs can also make changes to other items reported on the original amended return.

TPPs looking for more information about filing supplemental ERC claims should review the IRS's webpage on the topic at:

 **Website**

www.irs.gov/newsroom/irs-opens-new-process-for-payroll-companies-third-party-payers-to-help-clients-resolve-incorrect-claims-for-the-employee-retention-credit

ERC RELIEF STILL AVAILABLE

Taxpayers that applied for ERC refunds and that, after further review, don't think they actually qualified still have two avenues of relief available even though both Voluntary Disclosure Programs are closed:

- ERC withdrawal program; or
- Amend returns.

ERC Withdrawal Program

If they haven't received their ERC refunds, or they received them but haven't cashed their checks yet, taxpayers can still use the IRS's ERC withdrawal program. Taxpayers are eligible to withdraw their ERC claims if they meet all four of the following requirements:

- The taxpayer made their ERC refund claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X, CT-1X);
- The taxpayer filed their adjusted return only to claim the ERC and made no other adjustments;
- The taxpayer wants to withdraw the entire amount of their ERC claim; and
- The IRS has not paid the refund claim, or the IRS has paid the refund claim, but the taxpayer hasn't cashed or deposited the refund check.

 **Practice Pointer**

Each payroll quarter is considered a separate claim. So, a taxpayer can withdraw for one payroll quarter but not the next.

The IRS has published detailed procedures for withdrawing ERC claims on its website:

**Website**

www.irs.gov/newsroom/withdraw-an-employee-retention-credit-erc-claim

Amending Returns

There is nothing preventing taxpayers from amending payroll tax returns to remove ERC refund claims and repaying any amounts already received. However, unlike the ERC-VDP programs that allowed taxpayers to repay only 80% or 85% of their ERC received and provided penalty and audit relief, taxpayers that amend their income tax returns must repay their entire claim plus pay penalties and interest and do not receive audit relief.

STATUTE OF LIMITATIONS ISSUES

Taxpayers that amend their payroll tax returns to remove ERC credit claims and repay any ERC refunds received don't really face any statute of limitations issues for their amended payroll tax returns. The IRS's three-year statute of limitations applies to refund claims. Amended tax returns that add additional tax liability have no such three-year limitation.

The statute of limitations becomes a problem for taxpayers that already reduced the deductible wages on their income tax returns by the amount of the ERC claims, then later want to restore their wage deduction after receiving a denial of their ERC claim or that voluntarily repay their ERC claim. Taxpayers in this situation must amend their returns and make their refund claims before the statute of limitations expires.

The last date taxpayers can file an amended return and claim a refund is generally the later of:

- Three years from the date the taxpayer filed their federal income tax return; or
- Two years from the date the taxpayer paid the tax that is the subject of the refund claim.

**Practice Pointer**

Taxpayers that filed their income tax return before its due date are deemed to have filed on the due date. For example, a taxpayer that filed an S corporation income tax return on February 25 is deemed to have filed the return on March 15.

Likewise, any income tax withheld or paid during the year through estimates are deemed paid on the tax return due date.

**Practice Pointer**

Because the statute of limitations for refund claims depends heavily on whether the taxpayer filed an income tax extension, when they paid their tax, and whether the taxpayer's due date is affected by a Presidentially declared disaster, there is no single answer applicable to all taxpayers.

The IRS maintains a webpage with statute of limitations information that tax professionals should review in light of their client's specific set of facts. The webpage can be found at:

**Website**

www.irs.gov/filing/time-you-can-claim-a-credit-or-refund

Example of Taxpayer-Specific Statute of Limitations

Harriet is the sole shareholder of HRT Corporation, an S corporation. Harriet's corporation didn't reduce its deductible wages on its originally filed 2020 federal income tax return. Instead, it waited until it received its ERC refund, which was paid by the IRS in October 2022.

HRT and its shareholder Harriet each filed their original 2020 income tax returns on March 15, 2021, and neither filed an income tax extension.

HRT filed an amended S corporation income tax return on November 15, 2022, to reduce its deductible wages (about a month after it received its ERC refund).

On December 9, 2022, Harriet amended her personal income tax return to reflect the amended K-1 she received from HRT, and she paid the additional federal tax owed of \$80,000 on that date.

On March 22, 2024, HRT applied for the first ERC-VDP and repaid 80% of the ERC refund it received on that same date.

Based on this set of facts, Harriet has the later of three years from the date she filed her federal income tax return for 2020 or two years from the date she paid the tax that is subject to the refund claim.

For 2020 returns, the COVID-19 pandemic postponed the April 15 deadline until May 17, 2021. Pursuant to IRS Notice 2023-21, the three-year statute of limitations runs from the postponed due date of May 17, 2021. Because Harriet filed her personal income tax returns for 2020 before the due date, they are deemed filed as of May 17, 2021.

Note: The IRS allowed this special rule only for 2019 and 2020 taxable-year filing postponements. Other filing postponements, such as those for storms or other natural disasters, still apply the three-year rule from the original April 15 filing deadline.

Three years from May 17, 2021, is May 17, 2024. But since Harriet didn't pay the tax until she filed an amended personal income tax return on December 9, 2022, she has until December 9, 2024, to re-amend her personal income tax return and claim a refund of the tax paid.

Additionally, if Harriet files her refund claim after May 17, 2024, and by December 9, 2024, her refund claim is limited to the \$80,000 she paid on December 9, 2022. This is because any other withholding or estimates she paid for the 2020 tax year were deemed paid as of May 17, 2021.

The statute of limitations for refund claims is irrelevant for HRT because the refund claim is being made by Harriet on her personal returns.

IRS ISSUES PROPOSED REGULATIONS ON INTEREST RECAPTURE ON EXCESS COVID-19 CREDITS

The IRS issued proposed regulations that will allow them to assess and collect any overpayment of interest that was paid to a taxpayer on an erroneous COVID-19 credit refund. (REG-109032-23) The proposed regulations provide that any such overpayment of interest would be treated as an underpayment of employment taxes and can be assessed and collected by the IRS in the same manner as employment taxes. (IRC §§3111(a), 3111(b), 3221(a), 6611) The regulations would apply to interest paid on or after Tuesday, July 2, 2024.

CORPORATIONS

RECONTRIBUTING STOCK BACK TO CORPORATION

The IRS issued Private Letter Ruling (PLR) 202406002 earlier in 2024 that draws heavily on the

U.S. Supreme Court precedent in *Fink v. Comm.* ((1987) 483 U.S. 89) to hold that when a corporation redeems shares of its stock from only some shareholders, the transaction does not result in a currently taxable event for the redeeming shareholders, the nonredeeming shareholders, or the corporation itself.

The PLR at issue involved a publicly traded company with three classes of stock: A, B, and C. The A shares were common shares and publicly traded. The B shares were owned solely by one executive of the company and family trusts set up by the executive. The B shares were identical to the A shares except they had additional voting rights. The C shares were owned solely by a disregarded single member LLC owned by the corporation. Because the C shares were owned by a disregarded entity of the corporation, they were not deemed to be outstanding shares for federal income tax purposes.

In the proposed transaction for which the taxpayer requested the ruling, the executive and his family trusts would contribute a proportionate amount of Class A and B shares back to the corporation for no consideration.

Comment

You may be asking why a shareholder would voluntarily surrender shares of stock back to the issuing corporation in exchange for no consideration, especially when doing so would provide an increase in the value of the shares owned by other, unrelated shareholders.

Shareholders, particularly major shareholders, usually have nontax reasons for engaging in this type of transaction, such as making the corporation more attractive to a buyer or increasing the incentive for the remaining shareholders to approve a company sale.

The IRS held that the stock contributions:

- Are a nontaxable contribution to the capital of the corporation (*Fink v. Comm.*);
- The contributing shareholders (the executive and his family trusts) must allocate the basis in their shares among their remaining shares (*Fink v. Comm.*);
- The company's receipt of the shares is not taxable to the company (IRC §118(a));
- The noncontributing shareholders of the company will not recognize any income as a result of the transaction (Treas. Regs. §1.305-3(b)(3) and (e), Example 13; Rev. Rul. 77-19);
- The contributing shareholders' surrender of shares to the company is not treated as a distribution of property to the noncontributing shareholders (Treas. Regs. §1.305-3(b)(3) and (e), Example 13; Rev. Rul. 77-19); and
- The gift tax rules do not apply to the increase in value of shares owned by the noncontributing shareholders because the transaction would occur in the ordinary course of business. (Treas. Regs. §25.2512-8)

Significance of the PLR

The PLR provides guidance regarding the IRS's position when only some shareholders contribute shares of stock back to the issuing corporation. The PLR relied heavily on *Fink v. Comm.*, which was limited to deciding whether the

contributing shareholder could claim a deduction in the year he contributed his shares back to the corporation. The court held that he could not and that he had to allocate his share basis among his remaining shares.

The PLR expands on the *Fink* decision by ruling on the tax consequences (or lack thereof) to the noncontributing shareholders and also provides a ruling regarding potential gift tax consequences.

⚠ Caution

Taxpayers that want to use PLR 202406002 for planning purposes with their own corporations must proceed with caution. PLRs are only binding upon the shareholder requesting them and only if the actual transaction follows the facts set forth in the PLR.

Other taxpayers can use a PLR as guidance, but not as authority.

PARTNERSHIPS

LIMITED PARTNERS AND SELF-EMPLOYMENT TAX

The Tax Court has held that limited partners are subject to self-employment tax where they are a limited partner in name only. (*Soroban Capital Partners, LP, et al., v. Comm.* (November 28, 2023) 161 T.C. 12) The determination of whether a partner is a limited partner in name only requires a factual inquiry into the functions and roles of the limited partner.

The Issue

The taxpayer in *Soroban* was a limited partnership whose limited partners received a combination of guaranteed payments for services rendered to the partnership and a distributive share of partnership net income (generally Schedule K-1, line 1 income).

The partnership reported that the guaranteed payments paid to the limited partners were subject to self-employment tax, but their distributive share of the partnership's net income was not subject to self-employment tax.

After audit, the IRS determined that the Schedule K-1, line 1 income for the limited partners should also be subject to self-employment tax because the limited partners were limited partners in name only. The case did not discuss the facts that lead to the IRS's determination.

On the other hand, the partnership argued that the mere fact the partners were limited partners under state law meant that their Schedule K-1, line 1 income is, by definition, not subject to self-employment tax under the limited partner exception detailed in IRC §1402(a)(13).

Limited Partner Exception

The general rule is that partners are subject to self-employment tax on income received from the partnership for guaranteed payments for services and for the partner's distributive share of partnership net income. (IRC §1402(a) and (b)) There are exceptions to this general rule, one of which provides that a limited partner's share of the partnership's distributive net income is not subject to self-employment tax. (IRC §1402(a)(13))

The taxpayer argued that a limited partner under state law (meaning a partner who is defined as a limited partner under the laws of the state where the limited partnership was organized) automatically meets the limited partner exception.

However, the Tax Court's analysis focused on one phrase of the limited partnership exception that says that the exception applies to a "limited partner, as such."

The IRS's argument, with which the Tax Court agreed, was that the limited partner exception only applies where the limited partner's earnings are of an investment nature. This, according to the IRS, was the purpose of the qualifier "as such" in IRC §1402(a)(13), which was added to §1402 in 1977 to essentially exclude earnings that are of an investment nature due to concern at the time regarding the use of limited partnership investments to obtain Social Security benefits.

To determine whether earnings allocated to a limited partner are of an investment nature requires a factual inquiry into the functions and roles of the limited partner. The Tax Court refers to this factual inquiry as a "functional analysis test."

Applying the Functional Analysis Test

The Tax Court didn't get into a factual inquiry related to the taxpayer at issue in ***Soroban*** because the court's decision was limited to ruling on a motion for summary judgment regarding the application of the limited partner exception as an initial matter. Later proceedings before the Tax Court will be required to determine whether Soroban Capital's limited partners' distributive share of net income is in the nature of an investment.

However, the court did provide an analysis of an earlier Tax Court decision dealing with a law firm that operated as a limited liability partnership. The earlier decision held that the partners in the law firm were not limited partners for purposes of the limited partner exception in IRC §1402(a)(13) because their distributive share of partnership net income arose from legal services performed on behalf of the partnership and not as a return on the partners' investments. (***Renkemeyer, Campbell & Weaver, et al. v. Comm.*** (February 9, 2011) 136 T.C. 137)

Another Taxpayer

A different taxpayer, Sirius Solutions, has filed an appeal in the Fifth Circuit, challenging the ***Soroban*** ruling. (***Sirius Solutions, LLLP v. Comm.***, U.S. Court of Appeals, Fifth Circuit, Case No. 24-60240 (filed May 20, 2024)) While the taxpayer in the ***Sirius*** case disagrees with the Tax Court's ruling in the ***Soroban*** case, it conceded that the functional analysis test would not qualify its partners as limited partners. Sirius requested in its Tax Court case that a decision be made in the IRS's favor, which allowed it to proceed with an appeal to the Fifth Circuit. This would make Sirius the first taxpayer to challenge the functional analysis test. Soroban has not yet appealed its case to the Second Circuit.

FORTHCOMING PARTNERSHIP REGULATIONS

The IRS has announced that they will be issuing regulations targeting abusive partnerships basis shifting transactions among related parties. (IRS Notice 2024-54) The regulations will be issued under IRC §§732, 734(b), 755, and 1502.

The basis shifting transactions targeted in Notice 2024-54 generally fall into three categories:

- Transfer of partnership interests to related parties;
- Distributions of property to related parties; and
- Liquidations of related partnerships or partners.

Transfer of Partnership Interests to Related Parties

Transfer of partnership interests to related parties involve transactions where a partner that has a low share of inside basis (but has high outside basis) transfers their partnership interest in a tax-free transaction to a related party. This related-party transfer generates a tax-free basis increase to the transferee partner's share of inside basis.

Distributions of Property to Related Parties

In this type of transaction, a partnership with related partners distributes a high basis asset to one of the related partners that has a low outside basis. Afterward, the distributee partner reduces the basis of the distributed asset, and the partnership increases the basis of its own remaining assets.

The related partners can arrange this transaction so that the reduced tax basis of the distributed asset will not adversely impact the related partners, while the basis increase to the partner's retained assets can produce tax savings for the related parties.

Liquidations of Related Partnerships or Partners

In this type of transaction, a partnership with related partners liquidates and distributes:

- A low basis asset that is subject to accelerated depreciation or for which the parties intend to sell to a partner with a high outside basis; and
- A high basis property that is subject to longer depreciation or amortization periods (or no depreciation/amortization at all) or that the parties intend to hold to a partner with a low outside basis.

Under the partnership liquidation rules, the first related partner increases the basis of the property with a shorter life or the property that is held for sale. The second related partner decreases the basis of the long-lived or nondepreciable property, with the result that the related parties generate or accelerate tax benefits.

IRS challenging Basis Shifting

Concurrently with the release of Notice 2024-54, the IRS issued Revenue Ruling 2024-14 notifying taxpayers and advisors that the IRS will challenge the three types of basis-shifting transactions identified in Notice 2024-54 (listed above) under the economic substance doctrine.

Transactions of Interest

The IRS also issued proposed regulations (REG-124593-23) that will treat these related-party partnership basis adjustment transactions and substantially similar transactions as transactions of interest. As a result of this classification, affected taxpayers and material advisors are subject to the disclosure requirements for reportable transactions.

RESEARCH AND DEVELOPMENT FAQs

Beginning with the 2022 tax year, specified research or experimental (SRE) expenditures must be capitalized and amortized over five years (15 years for expenditures which are attributable to research conducted outside the United States, Puerto Rico, or any U.S. territory or possession). (IRC §174(a)(2)(B); Notice 2023-63, Sec. 3.04) All SRE expenditures incurred during the year are amortized beginning with the midpoint of the taxable year in which such expenditures are paid or incurred. (IRC §174(a)(2)(B))

Example of amortizing SRE expenditures

TagIt, Inc. incurred \$710,000 of SRE expenditures during its calendar year ending December 31, 2024. TagIt must amortize all \$710,000 of its SRE expenditures over 60 months, starting on July 1, 2024 (the midpoint of its taxable year).

SRE expenditures incurred during the year	\$710,000
Amortization period	\div 60
Monthly deduction	11,833
Deductible months in 2024*	\times 6
Amortization deduction in 2024	\$ 71,000

* All SRE expenditures paid or incurred during the year are amortized beginning with the midpoint of the taxable year

Below are Spidell's top 20 FAQs regarding the amortization requirement. The FAQs also address the intersection of the IRC §174 amortization requirement with the IRC §41 Research Credit.

AMORTIZING SPECIFIED RESEARCH EXPENSES

- Q1:** Since the requirement to amortize rather than currently expense specified research expenses was enacted by the TCJA, will this provision expire at the end of 2025?
- A1:** No, this is one of the few changes enacted by the TCJA that is permanent. Therefore, absent any legislative changes, this requirement will remain in effect.
- Q2:** Will the requirement to amortize these expenditures be repealed?
- A2:** Ever since the amortization of SRE expenditures was introduced by the TCJA and went into effect for taxable years beginning after December 31, 2021, there has been an expectation that the provision would be repealed before it went into effect.

The latest legislation to address mandatory IRC §174 amortization was contained in the Tax Relief for American Families and Workers Act (H.R. 7160), which would have deferred the implementation of the TCJA provision until the 2026 tax year, retroactive to the 2022 tax year. Although TRAFWA passed the House with overwhelming bipartisan support, it died in the Senate without a vote.

- Q3:** Which expenses must be amortized?
- A3:** The IRS defines SRE expenditures as research and development costs in the experimental or laboratory sense, which include all costs that are incident to the development or improvement of a product. (Treas. Regs. §1.174-2(a)(1))

Whether an expenditure qualifies as a research or experimental expenditure depends on the nature of the activity to which the expenditure relates, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents. ((Treas. Regs. §1.174-2(a)(1))

- Q4:** Are there any specific examples of what expenses must be amortized?

A4: In IRS Notice 2023-63, Sec. 4.03(a), the IRS stated that the following nonexhaustive list of SRE expenditures must be amortized:

- Labor costs of employees and independent contractors who perform, supervise, or directly support specified research activities. These costs include basic compensation, stock-based compensation, overtime pay, vacation, holiday and/or sick leave pay, payroll taxes, pension costs, employee benefits, and payments to a supplemental unemployment benefit plan. It does not include severance compensation;
- Costs of materials and supplies, including tools and equipment that are not depreciable under IRC §168;
- Cost recovery allowances including depreciation, amortization, or depletion allowances for property used in the performance of SRE activities or in direct support of SRE activities;
- Patent costs;
- Certain operation and management costs such as rent, utilities, insurance, taxes, repairs and maintenance costs, security costs, and similar overhead costs related to facilities, equipment, and other assets used in SRE activities or in direct support of these activities; and
- Travel costs.

Land acquisition or land improvement expenditures, even if related to a taxpayer's research activities are not subject to IRC §174 amortization. These expenses remain subject to IRC §167 depreciation, but see Q5.

 **Practice Pointer**

Taxpayers that incur SRE expenditures should reevaluate their internal accounting procedures to make sure they are adequately distinguishing ordinary and necessary business expenses under IRC §162 from SRE expenditures under IRC §174.

Q5: Are cost recovery allowances, including depreciation allowances, treated as SRE expenses?

A5: Yes. Both the current regulations and IRS Notice 2023-63 require that any depreciation, amortization, or depletion for property used in the performance of SRE activities is itself an SRE expenditure that must be amortized over five years (15 years for foreign research). This also includes depreciation for land acquisition and improvement expenses to the extent that the property to which the allowance relates is used in connection with SRE activities. (Treas. Regs. §1.174-2(b)(1))

Example of Cost Recovery Allowances

Woody's, Inc. purchased a piece of equipment in 2024 to be used in its research activities at a cost of \$200,000. The equipment has a 5-year MACRS life. The bonus depreciation rate in 2024 is 60%.

Unless Woody's elected out of bonus depreciation on all its 5-year MACRS property, it must claim bonus depreciation for the equipment of \$120,000 ($\$200,000 \times 60\%$).

Unfortunately, pursuant to IRC §174(c)(1) and IRS Notice 2023-63, Woody's must treat the \$120,000 of bonus depreciation as an SRE expenditure that is deemed placed in service at the midpoint of Woody's taxable year and must be amortized over 60 months from the midpoint of the year (or 180 months for foreign research) (\$12,000 the first year and \$24,000 each year thereafter).

Additionally, each year during the equipment's 5-year depreciable MACRS life, as depreciation is claimed (\$16,000 each year ($\$80,000 \div 5$)), the depreciation must again be treated as an SRE expenditure and amortized out another five years.

IRC §174 would require this same treatment whether Woody's uses bonus depreciation, elects out of bonus depreciation, or claims IRC §179 expensing for the assets it uses in its SRE activities.

Example of Cost Recovery Allowance for Buildings and Improvements

PlastiCo is in the business of plastic recycling and has a permanent research department dedicated to finding more efficient and better ways to recycle plastic products.

PlastiCo purchased the assets of a small business that is an innovator in the plastics recycling industry, and the entire acquired business will be absorbed into PlastiCo's research activities. Of the purchase price of the other business, \$1 million is allocated to goodwill, which is amortizable over 15-years.

Additionally, PlastiCo purchased a building for \$5 million in 2024 that is used 100% in its SRE activities.

Under IRC §174, the building and its land are not subject to the amortization rules of IRC §174. This rule ensures that a building with a 39-year MACRS life isn't treated as an SRE asset and amortized over only five years.

However, under the IRC §174 regulations, each year as building depreciation is claimed and goodwill is amortized, those deductions must be treated as SRE expenditures and amortized out another five (or 15) years.

Q6: Are there any expenses that do not have to be amortized?

A6: Yes. Notice 2023-63 also provides a list of expenditures that are specifically excluded from the amortization rules of IRC §174, even if the expenditures are indirectly related to research activities of the taxpayer.

Those items are:

- General and administrative services, such as payroll, human resources, and accounting;
- Interest on debt to finance research activities;
- Various website costs (e.g., costs related to inputting content, website hosting fees, internet domain registration, and trademark fees);
- Amortization of SRE expenditures, including those paid or incurred prior to 2022; and
- As before:
 - Quality control testing;
 - Efficiency surveys;
 - Management studies;
 - Consumer surveys;
 - Advertising or promotions;
 - The acquisition of another's patent, model, production or process; and
 - Literary, historical, or similar research.

(Notice 2023-63, Sec. 4.03(2); Treas. Regs. §1.174-2(a)(6))

Excludable Quality Control Testing Expenses

Quality control testing is excluded from the definition of SRE expenditures, which refers to testing or inspection to determine whether a particular unit, material, or product conforms to specified parameters. Testing to determine if the design of the product is appropriate is classified as an SRE expenditure. (Treas. Regs. §1.174-2(a)(7))

Q7: Does that mean all indirect expenses can be expensed?

A7: No. It's only the specific items listed immediately above in Q&A #6 that are excluded.

Indirect costs, such as utilities and depreciation on property used in both SRE and non-SRE activities, must still be allocated between SRE and non-SRE expenditures.

Taxpayers must allocate indirect costs to SRE activities on the basis of a cause-and-effect relationship between the costs and the SRE activities. The allocation method used for one type of cost may be different than the allocation method used for another type of cost (e.g., hours spent on research for labor costs versus square footage for overhead costs). However, the allocation method used for each type of cost must be applied on a consistent basis. (Notice 2023-63, Sec. 4.03(3))

Q8: Why are patent costs treated as both included and excluded SRE expenditures?

A8: The difference is that the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application, are expenses that must be amortized under IRC §174, but the costs of acquiring a patent from another taxpayer are not. (Treas. Regs. §1.174-2(a)(1) and (6))

Q9: Does the requirement to amortize IRC §174 SREs impact the rules for accounting for long-term contracts?

A9: Yes. The IRS has stated that they will be amending the existing regulations under IRC §460 to provide that the costs allocable to long-term contracts accounted for using the percentage-of-completion method include amortization of SRE expenditures rather than the capitalized amount of such expenditures. (IRS Notice 2023-63) The amended regulations will also provide that such amortization is treated as incurred for purposes of determining the percentage of contract completion as deducted.

SOFTWARE EXPENSES

Q10: Do software costs also have to be amortized?

A10: Yes. Software development costs as well as software purchase for use in research activities must be capitalized under the rules of IRC §174.

Computer software includes system software, programming software, application software, embedded software, and all forms and media in which the software is contained. Computer software also includes computer programs of all classes, such as operating systems, executive systems, software monitors, compilers and translators, assembly routines, utility programs, and application programs.

Computer software includes a computer program, a group of programs, and upgrades and enhancements to that program that result in additional functionality or materially increase speed or efficiency of the software.

Computer software does not include a database or information base, such as customer lists, client files, business books and records, etc. (Treas. Regs. §1.197-2(b)(4))

Q11: Must computer software upgrades and enhancement expenses also be amortized?

A11: Yes. Notice 2023-63 specifically includes upgrades and enhancements in the term “computer software.” This is defined as “modifications to existing computer software that:

- Result in additional functionality (enabling the software to perform tasks that it was previously incapable of performing); or
- Materially increase speed or efficiency of the software.” (Notice 2023-63, Sec. 5.02)

Q12: What software development costs must be amortized?

A12: The following are treated as computer software development (or the development of upgrades or enhancements of that software) for the purposes of IRC §174:

- Planning the development of the software, including identifying and documenting its requirements;
 - Designing the software;
 - Building a model of the software;
 - Writing and converting the source code;
 - Testing the software and making any modifications, up to the point the software is placed in service in the taxpayer’s business or is ready for sale or licensing to others; and
 - Producing the product masters, in the case of software developed for sale or license to others.
- (Notice 2023-63, Sec. 5.03)

Q13: Are there any computer software-related expenses that do not have to be amortized?

A13: Yes. The following items are not treated as computer software development activities for the purposes of IRC §174:

- Training employees who will use the software;
- Maintenance activities after the software is placed in service;
- Data conversion activities to transform data from one format to another to make it compatible with the system;
- Installing the software and other activities that are part of placing it in service;
- The purchase and installation of any purchased computer software, and any configuration to make the purchased software compatible with the business and any planning, designing, modeling, testing, or deployment activities with respect to the purchase and installation of such software; and
- Activities that occur after software developed for sale or license to others is ready for sale or license (for example, marketing or maintenance activities).

(Notice 2023-63, Sec. 5.05)

Example of Software Expenses

Smarty Pants, Inc. incurred various software costs in 2024. The following chart summarizes which of its software costs must be amortized under IRC §174.

Software Costs	
Description	Amortizable under IRC §174?
Cost of developing software to be used in its own operations	Yes
Cost of developing software to be sold to others	Yes
Cost of purchased accounting software	No
Cost of purchased computer aided drafting (CAD) software to be used in its R&D department	Yes
Employee training to use its software (both the internally developed software and the purchased software)	No
Data conversion costs during the implementation stage of the internally developed software to be used internally	No

OUTSOURCING RESEARCH ACTIVITIES

Q14: If a company pays another firm to conduct their research, does the research provider have to amortize their expenses incurred in conducting the research?

A14: It depends. The research provider (the outsourced company) must treat its expenditures to develop the SRE product as IRC §174 expenditures and amortize them over five years (15 years if the research is conducted outside the United States) if:

- The research provider bears financial risk under the terms of their contract with the research recipient; or
- If the research provider has a right to use any resulting SRE product in its trade or business or otherwise exploit any resulting SRE product through sales, lease, or license without obtaining approval from another party to the research arrangement.

(IRS Notice 2023-63, Section 6.04)

Whether the research provider must amortize its SRE expenditures is not dependent on whether the research recipient must also amortize amounts paid to the research provider.

Example of Outsourced SRE Product

Star Company hires Moon Company to develop an SRE product for use in Star's business. Star will pay Moon \$25,000 plus expenses to develop the SRE product.

Moon bears no financial risk and cannot use the SRE product in its trade or business.

Moon performs its activities in the United States.

The SRE product cost Moon \$125,000 to make, so Star pays Moon \$150,000 (\$25,000 + \$125,000 of expenses).

Star has SRE expenditures under IRC §174 of \$150,000 that must be amortized over five years.

Because Moon does not bear any financial risk and cannot use the SRE product in its trade or business, Moon does not have any SRE expenditures under IRC §174. As such, Moon can deduct the entire \$125,000 of its expenses to develop the SRE product for Star during the year.

DISPOSITION, RETIREMENT, OR ABANDONMENT OF SRE PRODUCTS

Q15: If the taxpayer no longer owns the SRE product, must the taxpayer still continue to amortize the expenses?

A15: Yes. If any property with respect to amortized SRE expenditures is disposed of, retired, or abandoned during the five- or 15-year amortization period, then the taxpayer must continue to amortize the expenditure over the applicable amortization period. (IRC §174(d))

Example of Disposition, Retirement, or Abandonment

In 2023, Sweet Grips, Inc. incurred \$415,000 of research expenditures in the development of a new product line for its business but abandoned the project in 2024.

The \$415,000 of expenditures incurred in 2023 must be amortized over five years starting July 1, 2023 (the midpoint of the year in which the expenditures were paid or incurred).

Despite abandoning the project, Sweet Grips can only deduct its expenditures for the failed project by continuing its five-year amortization period; it cannot deduct the unamortized cost in the year the project is abandoned. The same treatment applies if the project is retired or otherwise disposed of.

Q16: What happens to the unamortized expenses if a taxpayer ceases to exist?

A16: It depends on how the taxpayer ceases to exist.

Corporate Dissolution: If a corporation ceases to exist in a transaction that is not defined as an IRC §381(a) transaction, such as a corporation dissolution, then the corporation can deduct its remaining unamortized SRE expenditures. However, the notice is silent whether this same rule would apply to noncorporate taxpayers, such as partnerships or LLCs taxed as partnerships. (Notice 2023-63)

Comment

We'll have to wait for additional IRS guidance to determine whether a taxpayer such as the one in the preceding example can dissolve after its asset sale and deduct its remaining unamortized SRE expenditures or if the business must continue filing returns year over year until it has recovered its remaining SRE expenditures through annual amortization.

Corporate Acquisition and Reorganization: If a corporation ceases to exist for federal income tax purposes in a transaction or series of transactions described in IRC §381(a) regarding corporate acquisitions and reorganizations, then the acquiring corporation must carry over and continue the amortization of SRE expenditures from the acquired corporation. (IRS Notice 2023-63, Section 7.04(1))

Example of SRE Expenditures in a §381(a) Transaction

SmallCo incurred \$500,000 of SRE expenditures in 2023 that it began amortizing over five years starting on July 1, 2023.

BigCo acquired all of the stock of SmallCo in a corporate reorganization on January 1, 2024. SmallCo ceased to exist after the reorganization, and the reorganization qualified as an IRC §381(a) transaction.

Even though SmallCo ceased to exist after the reorganization, it cannot deduct its remaining unamortized SRE expenditures. Instead, BigCo must continue the five-year amortization started by SmallCo.

If a corporation ceases to exist in a transaction to which IRC §381(a) does not apply, then the corporation is allowed a deduction equal to the unamortized SRE expenditures in its final taxable year. (IRS Notice 2023-63, Section 7.04(2)(a)) Notice 2023-63 contains an anti-abuse exception that prevents a deduction of unamortized SRE expenditures in a corporation's final year if the principal purpose of the transaction is to claim a deduction for the unamortized SRE expenditures.

Example of SRE Expenditures When a Corporation Closes

Bob's Bad Boy, Inc. is an S corporation that incurred \$100,000 of SRE expenditures in 2023 that it began amortizing over five years starting on July 1, 2023. Its SRE amortization deduction in 2023 was \$10,000, leaving \$90,000 to be amortized over the following 4½ years.

On May 16, 2024, Bob's Bad Boy shuttered its business and dissolved. The shuttering and dissolution of a business is a transaction to which IRC §381(a) does not apply. As such, Bob's Bad Boy can deduct the remaining \$90,000 of its unamortized 2023 SRE expenditures on its final income tax return in 2024.

Sale of Assets: If the assets of a business are sold in an asset acquisition within the meaning of IRC §1060(c), then the selling business must continue amortizing its SRE expenditures despite the fact that the business sold all its assets. (IRS Notice 2023-63, Section 7.05(1)(c))

IRC §1060(c) applies to any transfer of assets that constitute a trade or business and with respect to which the buyer's basis in the assets is determined wholly by reference to the amount paid for the assets. (IRC §1060(c)(1) and (2)) This section applies to all taxpayers, not just corporations.

Example of Asset Sale Under IRC §1060(c)

Makers, LP is a limited partnership. On February 12, 2024, Makers sold its business in an asset acquisition. On the date of sale, Makers had \$300,000 of unamortized SRE expenditures.

Makers must continue amortizing its SRE expenditures even though it sold all the assets that make up its business.

Q17: How does the requirement to amortize expenses impact the calculation of gain when a research product is sold?

A17: Unfortunately, the taxpayer's basis is not increased for the amount of as yet unamortized expenses.

For taxable years beginning before January 1, 2022, SRE expenditures were deductible annually as they were incurred. So, if the costs were deductible as incurred, the accelerated tax benefits prevented the SRE expenditures from being part of the taxpayer's basis in their SRE product. When a taxpayer sold their SRE product, the entire sales price was taxable because the taxpayer had zero tax basis in their asset.

Under the current rules, if SRE expenditures are incurred to create property that is later disposed of, retired, or abandoned before the mandatory amortization period has ended, then the taxpayer cannot recover the unamortized costs. (IRC §174(d); Notice 2023-63) The taxpayer must continue amortizing the SRE expenditures over the remaining amortization period. This rule means that taxpayers must not only capitalize their SRE expenditures, but they also don't get the benefit of having basis in their SRE product either.

Example of Disposition of SRE Product

Hat Fitters, Inc. spent \$510,000 to develop an SRE product in 2023. At the end of 2024, Hat Fitters sells the SRE product it developed for \$900,000. At the time of sale, Hat Fitters' accumulated amortization for its SRE expenditures related to the SRE product was \$153,000.

If the SRE product was any other type of asset, typical tax accounting would calculate a basis of \$357,000 (\$510,000 cost to produce the asset – \$153,000 of accumulated amortization), thus leaving Hat Fitters with taxable gain on sale of \$543,000 (\$900,000 sale price - \$357,000 basis).

However, IRC §174(d) requires a different result. Hat Fitters is not allowed to recover any of its unamortized SRE expenditures upon the asset sale. Instead, Hat Fitters must continue its regular 60-month amortization.

Therefore, Hat Fitters must realize taxable gain of \$900,000 upon the sale of its SRE product, representing the full sale price of the property.

INTERPLAY WITH RESEARCH CREDIT

Q18: Are all SRE expenditures under IRC §174 also qualified research expenses under IRC §41?

A18: No. Qualified research expenses for purposes of the credit for increasing research activities under IRC §41 are defined more narrowly than SRE expenditures under IRC §174.

Where Revenue Ruling 73-20 and Revenue Ruling 73-275 provide that overhead costs are classified as SRE expenditures under IRC §174, the IRS has held that depreciation, overhead costs, general and administrative costs, and other indirect expenses are *not* qualified research expenses for purposes of the IRC §41 Research Credit.

Tax professionals can use qualified research expenses under IRC §41 as a starting point to identify SRE expenditures but must go further to identify all SRE expenditures that must be capitalized.

Q19: Must a taxpayer reduce the amount of their amortizable SRE expenses by the amount of Research Credit claimed for those expenses?

A19: Only under certain circumstances. Unlike pre-TCJA law, a reduction is only required if the current-year Research Credits are greater than the current-year research amortization deduction. (IRC §280C(c))

IRC §280C(c)(1), as modified by the TCJA, requires that in the event current-year Research Credits are greater than the current-year research amortization deduction, then the excess reduces the amount of research expenses chargeable to capital account.

Example of Reduced Research Expense Amortization Deduction

Assume a taxpayer's current-year research expenses are \$1 million, their current-year research amortization deduction is \$100,000, and their Research Credit is \$120,000. They must take the \$20,000 excess of their Research Credit over their amortization deduction (\$120,000 - \$100,000) and reduce their capitalized research expenses to \$980,000 (\$1 million - \$20,000).

 **Practice Pointer**

The 2022 Form 6765 instructions still stated that taxpayers were required to reduce their IRC

§174 amortization expenses for all expenses claimed even though the TCJA changed the law to only require a reduction if the credits claimed are greater than the current-year research amortization deduction. That language has now been removed from the 2023 form instructions.

Taxpayers whose credits did not exceed their amortization deduction who reduced their amortizable §174 deduction on their 2022 or 2023 tax returns should consider filing an amended return.

Q20: Can taxpayers choose to reduce the amount of their credit claimed in lieu of reducing their IRC §174 amortization deduction amount?

A20: Yes. Taxpayers can make an irrevocable election to reduce the amount of their credit claimed by the corporate tax rate of 21% in exchange for not reducing their deductible/amortizable research expenses. (IRC §280C(c)(2)) The election is commonly known as the §280C election.

The §280C election is made by checking a box on Form 6765, Credit for Increasing Research Activities, on a timely filed income tax return, including extensions.

RESEARCH CREDIT**UPDATED FORM 6765**

The IRS has released an updated draft Form 6765, Credit for Increasing Research Activities. The updated form contains additional sections to be used beginning with the 2024 tax year. Beginning with the 2025 tax year, most taxpayers will also be required to provide additional information regarding qualified costs by cost type and business component.

Supporting Documentation

A taxpayer does not need to provide supporting documentation at the time they file their Research Credit refund claim. However, they should state the supporting facts in a written statement attached to the claim rather than through the production of documents.

If the taxpayer has prepared a credit study, the taxpayer does not need to attach it to the taxpayer's claim.

Qualified Research

To qualify for the credit, a taxpayer's research activities must, among other things, involve a process of experimentation using science with a goal of improving a product or process the taxpayer uses in their business or holds for sale, lease, or license. Activities specifically excluded from qualifying for the credit include:

- Research after commercial production;
- Adaptation of an existing business product or process;
- Foreign research;
- Research funded by the customer; and
- Activities where there is no uncertainty about the taxpayer's method or capability to achieve a desired result.

(IR-2019-42)

Qualified research must meet the following four tests:

1. IRC §174 test: The expenditures connected with the research must be eligible for treatment as expenses under IRC §174 (discussed above);
2. Technological in nature test: The research must be undertaken for the purpose of discovering technological information;
3. Business component test: The taxpayer must intend that the information to be discovered be useful in the development of a new or improved business component (e.g., product, process, computer software, technique, formula, or invention) that the taxpayer holds for sale, lease, or license or uses in its trade or business; and
4. Process of experimentation test: Substantially all of the research activities must constitute elements of a process of experimentation for a purpose relating to a new or improved function, performance, reliability, or quality. This test requires the use of the scientific method; simple trial and error is not sufficient.

(IRC §41(d))

RESEARCH CREDIT AGAINST SMALL BUSINESS PAYROLL TAXES

For taxable years beginning after December 31, 2022, taxpayers can elect to claim up to \$500,000 of their Research Credit against their employer's share of Social Security and Medicare payroll taxes. (IRC §41(h)) If the election is made, then the first \$250,000 of payroll tax credits are applied against the employer's share of Social Security taxes, and the second \$250,000 of payroll tax credits are applied against the employer's share of Medicare taxes.

RESEARCH CREDIT REFUND CLAIMS

The IRS is extending the Research Credit claim transition period through January, 10, 2026. (www.irs.gov/newsroom/irs-sets-forth-required-information-for-a-valid-research-credit-claim-for-refund) This means that for refund claims filed on or before January 10, 2026, taxpayers will be given a 45-day period to provide the required information for previously submitted claims.

In October 2021, the IRS initially set forth the additional information that taxpayers are now required to include for a Research Credit refund claim. (Chief Counsel Memorandum 2021401F) Taxpayers were given a transition period, during which taxpayers were given up to 45 days to perfect a previously submitted return. Since that time, the IRS has extended the transition period three times.

Pursuant to CCM 2021401F, as modified in subsequent guidance, taxpayers must do the following when claiming a Research Credit refund:

- Identify all the business components to which the §41 Research Credit claim relates for that year;
- For each business component, identify all research activities performed; and
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year.

This may be done using Form 6765, Credit for Increasing Research Activities.

TREATMENT OF PRODUCTION COSTS

The Tax Court has denied the IRS's motion for summary judgement in a case involving a disallowance of a taxpayer's claimed Research Credit, holding that as a matter of law, production costs are not automatically excluded from the Research Credit calculation. (*Intermountain Electronics, Inc. v. Comm.* (March 14, 2024) U.S. Tax Court, Dkt. No. 11-19-19) The case involved expenses incurred by a company that designs, engineers, and manufactures electrical distribution and control equipment in creating custom products for its customers.

The IRS took the position that the taxpayer's pilot models automatically fail the "substantially all" requirement of the process of experimentation test and were not specified research or experimental expenditures that qualify as an IRC §174 research expenditure. However, the Tax Court held that its prior ruling in *Little Sandy Coal Co. v. Comm.* (TCM 2021-15) did not stand for the proposition that production expenses are automatically excluded from the Research Credit calculation, rather that a taxpayer must show that the production expenses were part of an evaluative process to address uncertainty relating to the development of custom equipment. The Tax Court's ruling allows the taxpayer to provide such evidence at trial.

IRC §179 AND DEPRECIATION**IRC §179 EXPENSING**

The IRC §179 expensing limitation is \$1 million, and the phaseout threshold is \$2.5 million for property placed in service in tax years beginning after December 31, 2017. (IRC §179(b)) These figures are adjusted for inflation annually. The inflation adjusted figures are:

IRC §179 Expensing		
Assets placed in service in tax years beginning after...	Expensing limitation	Phaseout threshold
December 31, 2021 (2022 tax year) (Rev. Proc. 2021-45)	\$1,080,000	\$2,700,000
December 31, 2022 (2023 tax year) (Rev. Proc. 2022-38)	\$1,160,000	\$2,890,000
December 31, 2023 (2024 tax year) (Rev. Proc. 2023-34)	\$1,220,000	\$3,050,000
December 31, 2024 (2025 tax year) (Rev. Proc. 2024-40)	\$ 1,250,000	\$ 3,130,000

If the total assets placed in service by the taxpayer during 2024 exceed the expensing limit threshold, then the IRC §179 expense is subject to a dollar-for-dollar limitation.

 **California Nonconformity**

California never conformed to the enhanced IRC §179 deduction but continues to have a maximum \$25,000 expense limit and a \$200,000 phaseout threshold. (R&TC §§17255, 24356)

California never conformed to the federal revocation election or to the federal provision that treats off-the-shelf software as qualifying property for IRC §179. (R&TC §§17255(e) and (f), 24356(b)(6) and (7))

California does not conform to the expansion of the deduction to include purchases of portable heating and air conditioning units and roofs, HVAC systems, fire protection and alarm systems, and security systems installed in nonresidential property. (R&TC §§17024.5(a), 23051)

Election to Treat Film, Television, and Live Theatrical Costs as Expenses

Taxpayers can elect to treat up to \$15 million of the cost of any qualified film or television production, and any qualified live theatrical production, as an expense instead of capitalizing them. (IRC §181(a)) The limitation is increased to \$20 million for films produced in specified low-income or distressed communities. The special election under IRC §181 expires on December 31, 2025. (IRC §181(g))

 **Practice Pointer**

The special expensing election under IRC §181 for film, television, and live theatrical productions is essentially a more favorable version of the IRC §179 expensing that is available to other taxpayers. Once IRC §181 sunsets at the end of 2025, taxpayers in the film, television, and live theatrical production industries can still benefit from the IRC §179 expensing.

BONUS DEPRECIATION

Bonus depreciation is taken after any IRC §179 expense deduction and before regular depreciation.

Bonus Depreciation Rates		
Date placed in service	Bonus depreciation percentage	
	Qualified property in general/specified plants	Longer production period property and certain aircraft
2018–2022	100%	100%
2023	80%	100%
2024	60%	80%
2025	40%	60%
2026	20%	40%
2027	None	20%
2028 and thereafter	None	None

Qualified Improvement Property

Qualified improvement property is eligible for both IRC §179 expensing and bonus depreciation and is defined as 15-year MACRS property. (IRC §168(e)(3)(E)(vii) and (g)(3)(B))

Defining Qualified Improvement Property

“Qualified improvement property” is any improvement made by the taxpayer to the interior portion of a nonresidential building if the improvement is placed in service after the date the building was first placed in service. (IRC §168(e)(6)(A))

However, qualified improvement property does not include any expenditure attributable to:

- Enlargement of the building;
- Any elevator or escalator; or
- The internal structural framework of the building.

The “made by the taxpayer” phrase was added by the CARES Act. The impact of adding this phrase is that if a taxpayer acquires a building that has qualified improvement property, then none of the property will be treated as qualified improvement property because the taxpayer did not make the improvement. Therefore, the property will be depreciated over 39 years rather than 15 years.

Remember that improvements to a residential rental property are not qualified improvement property.

**California Nonconformity**

California has not conformed to the federal treatment of qualified improvement property.

Such property must be depreciated over a 39-year period. (R&TC §§17024.5, 17250, 24349)

Used Property Qualifies for Bonus depreciation

Bonus depreciation can be claimed for new and used property (subject to an exception for acquisitions from a related party).

To be eligible property, the property must meet either the “original use” requirement (IRC §168(k)(2)(A)(ii)) or the “used property acquisition” requirement. (IRC §168(k)(2)(E)(ii)) Taxpayers cannot claim bonus depreciation when they convert personal use property to business use.

**California Nonconformity**

California has never conformed to federal bonus depreciation. (R&TC §§17250(a)(4), 24349)

Electing out of Bonus Depreciation

Bonus depreciation must be claimed unless a taxpayer makes an election out. (IRC §168(k)(7)) The election applies to a class or classes of property (e.g., property in a three-year class), not to a particular asset within that class. To make an election, attach a statement to a timely filed return (including extensions) indicating the class of property for which you are making the election. (Form 4562 Instructions)

The election out of bonus depreciation must be specific as to what classes that the taxpayer wishes the election to apply to. The following is a proper election out of bonus depreciation: “Taxpayer hereby elects out of bonus depreciation for tax year 2024 for its five-year and seven-year asset classes.”

Taxpayers who timely file their return without electing out of bonus depreciation can still make the election by filing an amended income tax return within six months of the due date of the original return (not including extensions). Taxpayers must attach the election statement to the amended return and write, “Filed pursuant to section 301.9100-2.”

**Practice Pointer**

Why would a taxpayer want to elect out of bonus depreciation? In short, taxpayers usually don’t want to elect out of bonus depreciation. It’s generally more beneficial to take deductions in the earliest year possible.

Despite that, there are still numerous reasons to elect out of bonus depreciation, but they all come down to one issue: Is the taxpayer better off with higher taxable income today? Consider the following possible reasons to elect out of bonus depreciation:

- Bonus depreciation can create a tax loss and the taxpayer doesn’t want to have a tax loss because a loss would limit the deduction of business interest;
- If tax rates are expected to increase, then preserving the depreciation deductions for higher tax years provides a greater long-term benefit; or
- Depending on the taxpayer’s income situation, higher income may increase the taxpayers:
 - IRC §199A deduction; or
 - Allowable retirement contributions.

IRC §179 Versus Bonus Depreciation

Specific Property

IRC §179 and bonus depreciation are not always available for all property. Specific types of property may dictate which deduction to claim. Consider the following:

- IRC §179 can be claimed for HVAC units, roofs, fire alarms, and security systems purchased for nonresidential property. Bonus depreciation cannot because bonus depreciation generally only applies to MACRS property with a recovery period of 20 years or less);
- An IRC §179 limitation of \$30,500 for 2024 (\$31,300 for 2025) applies to sports utility vehicles that are over 6,000 pounds and not more than 14,000 pounds gross vehicle weight and certain larger vehicles;
- For cars and passenger trucks, claiming bonus depreciation means a \$20,400 cap in the first year for autos placed in service in 2024, whereas if IRC §179 is claimed, the deduction is limited to \$12,400; and
- Bonus depreciation must be taken on all property in a class, while IRC §179 may be claimed on all or a portion of the cost of one or more items of qualifying property;

Loss or No Loss

Determining whether the taxpayer wants to generate a loss can affect whether bonus depreciation or IRC §179 expensing is claimed. The IRC §179 deduction is limited to a taxpayer's net income from the business and cannot create a tax loss. Disallowed IRC §179 expense is carried forward and can be used in a future year.

However, bonus depreciation may create a loss that can offset the taxpayer's income in the current year from other sources.

Combining Bonus Depreciation and IRC §179 Expensing

Bonus depreciation of 100% was the norm for over four years. The reduced bonus depreciation rate beginning for property placed in service in 2022 once again gives rise to strategic use of bonus depreciation combined with IRC §179 expensing to deliver the greatest depreciation deductions for our clients.

Example of Combining Bonus Depreciation and IRC §179

Lone Pine, Inc. placed \$2.5 million of assets in service in 2024 (assume all new assets are five-year machinery). All assets are eligible for bonus depreciation and IRC §179.

If Lone Pine only used the default bonus depreciation, then its depreciation deduction would be:

Assets placed in service during 2024	\$2,500,000
Bonus depreciation rate	<u>60%</u>
Bonus depreciation deduction	1,500,000
Regular depreciation deduction*	<u>200,000</u>
Total depreciation deduction	\$1,700,000

* Lone Pine can also claim regular depreciation for the year on the remaining \$1 million of assets not consumed by bonus depreciation

If Lone Pine elected out of bonus depreciation and only used IRC §179 expensing, then its depreciation deduction would be limited to the \$1.16 million expensing limit for the year.

Lone Pine can combine bonus depreciation and IRC §179 to maximize its depreciation deductions:

Assets placed in service during 2024	\$ 2,500,000
A IRC §179 expensing limit up to the annual limit	<u>(1,220,000)</u>
Remaining assets eligible for bonus depreciation	1,280,000
Bonus depreciation rate	<u>60%</u>
B Bonus depreciation	768,000
C Regular depreciation	153,600
Total depreciation and §179 deduction (A + B + C)	\$ 2,141,600

Planning Pointer

In years when the bonus depreciation rate is less than 100%, taxpayers generally want to apply IRC §179 first to expense assets with the longest depreciation period. This will allow taxpayers to claim more depreciation deductions in the shortest period of time.

For example, if the taxpayer is faced with the choice of claiming IRC §179 for 20-year property versus 3-year property, the IRC §179 deduction should be used for the 20-year property because the entire cost of both items will be depreciated over only three years.

BUSINESS AUTOS

A taxpayer who uses a vehicle for business purposes may deduct vehicle expenses using either the standard mileage rate or actual expenses. (Treas. Regs. §1.162-1)

Auto expenses of employees are treated as unreimbursed business expenses, which are classified as 2% miscellaneous itemized deductions. All 2% miscellaneous itemized deductions are suspended for federal purposes through 2025.

Self-employed individuals may claim auto expenses on Schedule C, partners/LLC members on Schedule E, and farms on Schedule F. Landlords take the deduction on Schedule E.

COMMUTING EXPENSES

Expenses incurred commuting between the taxpayer's residence and place of business generally are not deductible. (Treas. Regs. §§1.162-2(e), 1.212-1(f)) However, in certain cases, commuting miles may be deductible:

- Expenses incurred for a taxpayer to travel between jobs if the taxpayer has more than one job are deductible; and
- Expenses incurred going between a taxpayer's residence and a temporary work location (if outside of the taxpayer's metropolitan area) are deductible.

Example of Miles Between Jobs

Millie has two jobs that are 10 miles apart. If she goes directly from Job A to Job B, the miles are deductible. If she goes home in between jobs, then she may still deduct miles but only the 10 miles that are on the direct route from Job A to Job B.

STANDARD MILEAGE RATE

Taxpayers can use the standard mileage rate in computing the deductible costs of operating a vehicle for business purposes.

The standard mileage rate takes into consideration depreciation (or lease payments), maintenance and repairs, tires, gasoline, oil, insurance, and license and registration fees.

However, to the extent allowed, parking fees and tolls for business purposes may be deducted as separate items, as well as interest on the purchase of the vehicle and any state and local personal property taxes. (IRC §§163, 164)

Federal Mileage Rates			
	2023 (Notice 2023-03)	2024 (Notice 2024-08)	2025 (Notice ____)
Business mileage	65.5 cents	67 cents	cents
Charitable mileage	14 cents	14 cents	14 cents
Medical mileage	22 cents	21 cents	cents
Moving mileage*	22 cents*	21 cents*	cents*
* Federal law only allows a moving expense deduction for active duty military			

Example of Deduction

Jim uses his car 60% for business purposes. He drove a total of 30,000 miles, of which 18,000 was for business. He paid \$1,000 in interest, and his auto registration was \$1,100 (\$1,000 in personal property tax and \$100 registration fee) on the car.

If Jim is self-employed, he may elect to claim 60% of the actual expenses on Schedule C, including the business portion of the interest, and \$400 (40% × \$1,000) personal property tax is deductible on Schedule A as a tax.

If he claims the standard mileage rate, he may claim the \$1,000 personal property tax on Schedule A as a tax.

A taxpayer who uses the standard mileage rate is not subject to the limitations on automobile depreciation deductions. To determine the basis of a vehicle for which the taxpayer has used the standard mileage rate, for 2024 depreciation is calculated at the rate of 27 cents per mile. (Notice 2024-08) If actual costs were used for any year, then this rate does not apply for that year.

Standard Mileage Rate Versus Actual Expenses

Use of the standard mileage rate isn't mandatory. A taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation.

The decision to calculate the deduction based on the standard rate versus actual expenses will depend on the vehicle and its use. If operating expenses are high, the standard mileage rate method may produce a smaller deduction than if the taxpayer claimed actual expenses, plus depreciation or lease payments. However, the standard mileage rate method may yield bigger deductions in a case where the driver's business mileage is high and the vehicle expenses are low, which may be the case for taxpayers driving electric vehicles.

The standard mileage rate cannot be used for a vehicle if the taxpayer did not choose to use the rate for that vehicle in the first year the vehicle was used in the taxpayer's business. If the taxpayer chooses to use the standard mileage rate in the first year, then for subsequent years, the taxpayer may choose between the standard rate and actual expenses. If a taxpayer chooses to use the standard rate for a leased vehicle, the standard rate must be used for the entire lease period. A return may not be amended to revoke the choice to use the standard rate. (IRS Publication 463, Travel, Gift, and Car Expenses)

If, after using the standard mileage rate, a taxpayer switches to the actual cost method in a later year, the taxpayer must estimate the remaining useful life of the car and use straight-line depreciation for that estimated useful life, subject to depreciation deduction limitations. (IRC §280F)



California Partial Conformity

California conforms to the election to use either actual expenses or mileage. However, there is no bonus depreciation for California purposes, so depreciation may be different. A taxpayer may make a separate election. (R&TC §17024.5)

ACTUAL CAR EXPENSES

Under the actual cost method, taxpayers may deduct the actual costs of operating a vehicle for business purposes. These costs include depreciation, licenses, gas, oil, tolls, lease payments, insurance, garage rent, parking fees, registration fees, repairs, tires, and car washes. (IRS Publication 463, Travel, Gift, and Car Expenses)

Vehicle Provided by Employer

With one exception listed below, a taxpayer who uses a vehicle provided by an employer for business use must use actual expenses to calculate their deduction. In this case, the use of the standard mileage rate is not allowed. Remember, again, that employee business expenses are suspended as a deduction on the federal return through the end of 2025.

On the employer's end, the employer may either:

- Determine the actual value of personal use of a road vehicle; or
- Treat 100% of the usage as personal and include 100% of the usage in the employee's income.

If the employer elects to treat all usage as personal, the employee may exclude the value of actual business use from gross income as a working condition fringe benefit. (IRS Announcement 85-113)

2024 Maximum FMVs

The 2024 maximum FMV for employer-provided autos, trucks, and vans for purposes of valuing personal use of these vehicles as a fringe benefit is \$62,000. (Notice 2024-08)

If the inflation-adjusted FMV of employer-provided vehicles does not exceed this amount, employers can instead use the standard mileage rate to value the employee's personal use of the vehicle.

FAVR METHOD

Under a fixed and variable rate (FAVR) method of substantiating expenses, the employer reimburses the employee's expenses with a mileage allowance that uses a flat rate or a schedule of fixed and variable payments. At least five employees must be covered under this type of arrangement for the entire calendar year, and the majority of covered employees cannot be management employees. (Rev. Proc. 2010-51)

The allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied.

This method is based on the cost of the vehicle. For 2024, the maximum vehicle cost for the purposes of the FAVR method is \$62,000.

AUTOMOBILE USE BY OWNER/EMPLOYEE

Self-Employed Owner

The self-employed owner deducts automobile expenses, generally, on Schedule C. They can choose to use either the actual expense method or the standard mileage rate method.

Corporation

A vehicle used for business may be owned by the corporation or by an employee (even a shareholder-employee). The method of claiming the deduction will differ depending on the ownership of the vehicle.

Vehicle Owned by Employee

Assuming that the business entity uses an accountable plan, an employee (including shareholder-employee) who uses a personal vehicle for business can submit a request for reimbursement to the corporation based on documented business miles. The corporation can then reimburse the employee based on the standard mileage rate for business.

The corporation deducts the reimbursement, and the reimbursement is not reportable as taxable income to the employee.

If the employee must pay their own expenses for travel on behalf of the corporation, the employee treats the unreimbursed employee business expense deduction as a 2% miscellaneous itemized deduction. The employee can use the actual method or standard mileage method to calculate the deductible amount. Remember, once again, that all 2% miscellaneous itemized deductions are suspended for federal income tax purposes through 2025.

Vehicle Owned by the Corporation

A corporation must determine the deduction for vehicles it owns based on actual operating expenses. The corporation is also limited by the business-use percentage of the vehicle.

However, when the vehicle is driven by an employee, the corporation must include the value of the employee's personal use of the car on the employee's W-2. The employer may report the full value of the car on the employee's W-2 or less than the full value based on the employee's reported percentage of use being business versus personal.

If the employer reported the full value of the car on the W-2, the employee must treat expenses for business use as a 2% miscellaneous itemized deduction, which cannot currently be claimed under the TCJA's suspension of the miscellaneous itemized deduction.

The corporation can deduct all of the operating expenses of the vehicle without regard to the business-use percentage if the personal-use percentage is treated as income to the employee. This is typically the case when someone gets the use of a company car as an employee benefit. The corporation's deduction for the personal-use percentage is treated as a compensation expense.

Note: Generally, a 2% shareholder of an S corporation is treated as a partner in a partnership for employee fringe benefit purposes. (IRC §1372(a); Notice 2008-1) Therefore, these rules apply to a 2% shareholder even if that shareholder is not an employee of the corporation.

Partnership

The rules are the same as those for an S corporation, with one exception: A partner who has unreimbursed auto expenses can claim the deduction on Schedule E of Form 1040 rather than on Schedule A as an unreimbursed partnership expense. However, the partnership agreement must expressly state that it does not reimburse partners or that reimbursements are limited, and the limitation required by the partnership agreement is one that would preclude reimbursement of auto expenses.

Employee's Income

The amount included in the employee's income may be determined on the basis of personal miles used on a cents-per-mile basis only if certain requirements are met. (IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits) If the requirements cannot be met, the employer must determine the value based on the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. (Treas. Regs. §1.61-21(b)(4))

If the vehicle is available to the employee for the entire calendar year, the value of the benefit provided is the annual lease value of that automobile. (Treas. Regs. §1.61-21(d)(1)) For an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a prorated annual lease value or the daily lease value.

The annual lease value is calculated as follows:

- Determine the FMV of the automobile as of the first date on which the automobile is made available to an employee for personal use; then
- Select the dollar range in column 1 of the Annual Lease Value Table found in Treas. Regs. §1.61-21(d)(2)(iii) (also found in IRS Publication 15-B).

Expenses Included

The annual lease value is deemed to include all expenses (repairs, insurance, etc.) except for fuel.

Example of W-2 Inclusion

Bobbi is a majority owner of Rydell Publishing, an S corporation. She has the corporation purchase an auto that she uses for both personal and business purposes. Its purchase price (FMV) was \$75,000. She drives the car 10,000 miles in 2024, including 4,000 miles for personal purposes and 6,000 miles for business. She provides an accounting to the corporation for her mileage.

The annual lease value is \$19,250 per the Annual Lease Value Table. The company must include \$8,500 in her W-2 income ((40% × \$19,250) + (40% × \$2,000)).

AUTO DEPRECIATION**Luxury Automobiles**

The 2024 maximum depreciation amounts for luxury automobiles are:

2024 Maximum Depreciation Amounts (Rev. Proc. 2024-13)								
	Auto without bonus		Federal auto with bonus		Light truck without bonus		Federal light truck with bonus	
	Federal	CA	Federal	CA	Federal	CA	Federal	CA
1st year	\$12,400	\$3,860	\$20,400	N/A	\$12,400	TBD	\$20,400	N/A
2nd year	\$19,800	\$6,200	\$19,800	N/A	\$19,800	TBD	\$19,800	N/A
3rd year	\$11,900	\$3,750	\$11,900	N/A	\$11,900	TBD	\$11,900	N/A
4th year and following	\$7,160	\$2,275	\$7,160	N/A	\$7,160	TBD	\$7,160	N/A

Note: The dollar limits must be reduced proportionately if business or investment use of a vehicle is less than 100%.

Qualified Property

A vehicle is “qualified property” if:

- The original use of the vehicle (the first use to which the auto is put) begins with the taxpayer after September 27, 2017; and
- The vehicle is used more than 50% for business.

There are four sets of limitations for vehicles placed in service in 2024:

- Passenger autos that don’t qualify for bonus depreciation;
- Passenger autos that qualify for bonus depreciation;
- Light trucks and vans (6,000 pounds or less unloaded gross vehicle weight) that don’t qualify for bonus depreciation; and
- Light trucks and vans that qualify for bonus depreciation.

**California Partial Conformity**

California conforms to the federal mileage rates and the maximum allowable auto deduction.

However, there is no bonus depreciation, so you must use the federal amounts without bonus depreciation.

Autos with Gross Vehicle Weight in Excess of 6,000 Pounds Excluded

Certain “qualified nonpersonal use vehicles” (taxicabs, ambulances, etc.) continue to be exempt from the luxury car caps regardless of their weight, along with heavier trucks and SUVs (i.e., rating in excess of 6,000 pounds). In general, a qualified nonpersonal use vehicle is one that has been specially modified in such a way that it is not likely to be used more than a *de minimis* amount for personal purposes. Such vehicles are excluded from the definition of a passenger automobile. Therefore, they are not subject to the onerous substantiation rules of IRC §274(d), and they are not subject to the annual depreciation limits. (IRC §280F(d)(5)(B); Treas. Regs. §§1.274-5(k), 1.280F-6(c)(3)(iii))

Heavy SUVs

Heavy SUVs are exempt from the luxury auto limitations because they don’t meet the definition of a passenger automobile. (IRC §280F(d)(5)) A heavy SUV is one that is classified as a truck by the manufacturer and weighs more than 6,000 pounds, with a gross vehicle weight of less than 14,000 pounds.

Heavy SUVs are allowed a maximum \$30,500 IRC §179 expense for 2024 (\$31,300 for 2025). (Rev. Procs. 2022-38, 2023-34, 2024-40) In subsequent years, the heavy SUV may be depreciated under regular rules that apply to five-year MACRS property.

Comment

The gross vehicle weight is usually listed on the inside of the driver’s door.

It is also usually available at the vehicle manufacturer’s website, as well as at several other online valuation services.

The term “sport utility vehicle” does not include any vehicle that:

- Is designed to have a seating capacity of more than nine persons behind the driver’s seat;
- Is equipped with a cargo area of at least six feet in interior length and is an open area or is designed for use as an open area, but is enclosed by a cap and is not readily accessible directly from the passenger compartment;
- Has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield; or
- Is rated at more than 14,000 pounds gross vehicle weight. (IRC §179(b)(6)(B)(i))

 **Caution**

There are a few caution points tax professionals must be aware of regarding bonus depreciation for vehicles:

- Even though used property qualifies for bonus depreciation, personal vehicles converted to business use do not qualify;
- Business use must be at least 50% to qualify for bonus depreciation; and
- The dollar limits must be reduced proportionately if business or investment use of a vehicle is less than 100%.

LEASE INCLUSION AMOUNTS

A taxpayer who leases a business auto may deduct the part of the lease payment representing business or investment use. (Rev. Proc. 2024-13) If business/investment use is 100%, the full lease cost is deductible. But, to ensure that auto lessees cannot avoid the effect of the luxury auto limits, taxpayers must include a certain amount in income during each year of the lease to partially offset the lease deduction. (IRC §280F) The income inclusion amount varies with the initial FMV of the leased auto and the year of the lease and is adjusted for inflation each year.

The lease inclusion applies if the lease term begins in 2024 and if the vehicle's FMV on the first day of the lease exceeds \$62,000 in 2024.

To view the lease inclusion tables, go to:

 **Website**

www.irs.gov/pub/irs-drop/rp-24-13.pdf

**California Partial Conformity**

California did not conform to the TCJA changes to the lease inclusion amounts. To view California's lease inclusion amounts, see:

 **Website**

www.caltax.com/files/2024/leasetables.pdf

Buy or Lease?

Although the lease tables often provide a larger deduction for the business, a leased vehicle does not provide the taxpayer with a bonus depreciation deduction.

The advantage to the lease is generally a lower down payment and significantly lower monthly payments. However, the disadvantages are:

- Limits on mileage before surcharges; and
- The residual value must be paid, refinanced, or rolled into a new vehicle, increasing its cost.

For a cost comparison using a lease and buy calculator, go to:

 Website

www.bankrate.com/loans/auto-loans/lease-vs-buy-calculator/

CLEAN VEHICLE CREDITS FOR BUSINESSES

Qualified Commercial Clean Vehicle Credit

The Qualified Commercial Clean Vehicle Credit is available for qualified vehicles purchased after December 31, 2022, and before 2033. (IRC §45W) The credit is part of the IRC §38 general business credit. The taxpayer must use the vehicle for a business purpose. (FAQs About Qualified Commercial Clean Vehicle Credit, Topic G, Q&A 1)

Credit Amount

The credit is equal to the lesser of:

- 15% of the vehicle's basis (30% if the vehicle is not powered by a gasoline or diesel internal combustion engine); or
- The vehicle's incremental cost. (IRC §45W(b))

The credit is capped at \$40,000 (\$7,500 for vehicles with a gross vehicle weight rating (GVWR) of less than 14,000 pounds).

Comment

Unlike the Clean Vehicle Credit, the Qualified Commercial Clean Vehicle Credit cannot be transferred to the dealer at the time of purchase. However, tax-exempt entities can treat the seller as the purchaser, which will essentially lower the cost of the vehicle by the amount of the credit.

Incremental cost: A vehicle's incremental cost is defined as the excess of the vehicle's purchase price over the cost of a comparable vehicle in terms of size and use, which is powered solely by a gasoline or diesel internal combustion engine.

Incremental cost safe harbor: The incremental cost safe harbor allows taxpayers to use the modeled incremental cost published by the Department of Energy (DOE) to determine a vehicle's incremental cost. Where the DOE has determined that the incremental cost of a vehicle with a GVWR of less than 14,000 pounds is greater than \$7,500, then the incremental cost safe harbor is \$7,500 because that is the maximum credit amount.

2024 Vehicle Incremental Cost Safe Harbor (Notice 2024-5)^{1, 2}			
Representative vehicle modeled	Battery electric vehicles (BEV)	Plug-in hybrid electric vehicles (PHEV)	Fuel cell electric vehicles (FCEV)
Compact car	\$ 7,500	\$ 7,000	\$ 11,000
Midsize car	\$ 8,500	\$ 8,000	\$ 15,000
Midsize SUV	\$ 14,000	\$ 9,500	\$ 19,000
Pickup truck	\$ 19,500	\$ 14,000	\$ 35,500
Class 4–6 Box	\$ 34,500	\$ 28,000	\$ 41,000
Class 7 Daycab	\$ 93,500	\$ 66,000	\$ 80,500
Class 8 Longhaul	\$297,500	\$164,000	\$105,500

¹ Notice 2024-5 as well as the Form 8936 instructions reference the DOE's Incremental Purchase Cost Methodology and Results for Clean Vehicles analysis to determine the incremental cost for the various vehicle classes. The 2024 amounts are derived from the DOE's amended analysis published in December 2023, available at: www.energy.gov/sites/default/files/2023-12/2023.12.18%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles%20pub%2012-2022%20amd%2012-2023%20Final_2.pdf

² For vehicles with a GVWR of less than 14,000 pounds and whose incremental cost is greater than \$7,500, taxpayers should just use \$7,500 as the incremental cost because the credit amount for these vehicles cannot exceed \$7,500

Description of Representative Vehicles		
Representative vehicle modeled	Representative of vehicle class	GVWR of representative vehicle classes
Compact car	Mini compact, subcompact and compact cars	< 14,000 lbs.
Midsize car	Midsize and large car, all station wagons	< 14,000 lbs.
Midsize SUV	Standard SUV, small SUV, minivans	< 14,000 lbs.
Pickup truck	Pickup trucks, including classes 2–3	< 14,000 lbs.
Class 4–9 Box	Classes 4–6	14,001–26,000 lbs.
Class 7 Daycab	Class 7	26,001–33,000 lbs.
Class 8 Longhaul	Class 8	> 33,000 lbs.

 **Practice Pointer**

When calculating the taxpayer's Qualified Commercial Clean Vehicle Credit on Form 8936, Schedule A, Part V, the incremental cost of the vehicle must be entered manually on line 23.

Use the information in the two immediately preceding charts to help determine the class of the taxpayer's vehicle and the appropriate incremental cost to input on line 23.

Example #1 of Application of Incremental Costs

Sonico is a moving company and purchased a Class 7 BEV daycab truck in 2024 that is used 100% for its business. Class 7 daycab trucks have a GVWR of greater than 14,000 lbs.

The purchase price of the truck was \$314,000, and Sonico did not claim any IRC §179 expensing.

Sonico's Qualified Commercial Clean Vehicle Credit is calculated on Form 8936, Schedule A, Part V, as follows:

Cost of vehicle	\$314,000
IRC §179 expense deduction	<u> 0</u>
Net	\$314,000
Credit percentage ¹	<u> × 30%</u>
A Calculated amount	\$ 94,200
B Incremental cost of vehicle ²	\$ 93,500
C Smaller of A or B	\$ 93,500
D Maximum credit allowable for vehicle	\$ 40,000
Credit amount (smaller of C or D)	\$ 40,000

¹ The credit percentage is 30% because the vehicle is a BEV (which is not powered at all by gas or diesel). The credit percentage is 15% if the vehicle is powered in part by gas or diesel, as would be the case for a PHEV.

² Class 2 PHEV pickup truck; see charts preceding this example

Example #2 of Application of Incremental Costs

Spotless, Inc. is a cleaning business and purchased a compact PHEV car for use in its business at a cost of \$55,000 and did not claim any IRC §179 expensing for the vehicle.

Compact PHEV cars have a GVWR of less than 14,000 lbs.

Spotless' Qualified Commercial Clean Vehicle Credit is calculated on Form 8936, Schedule A, Part V, as follows:

	Cost of vehicle	\$ 55,000
	IRC §179 expense deduction	<u> 0</u>
	Net	\$ 55,000
	Credit percentage ¹	<u> × 15%</u>
A	Calculated amount	\$ 8,250
B	Incremental cost of vehicle ²	\$ 7,000
C	Smaller of A or B	\$ 7,000
D	Maximum credit allowable for vehicle	\$ 7,500
	Credit amount (smaller of C or D)	\$ 7,000

¹ The credit percentage is 15% because the vehicle is a PHEV (which is a gas/electric hybrid). The credit percentage is 30% if the vehicle is not powered by gas or diesel at all.

² Class 2 PHEV pickup truck; see charts preceding this example

Defining Qualified Commercial Clean Vehicle

A qualified commercial clean vehicle is a vehicle that:

- Is made by a qualified manufacturer (one that registers with the Secretary of the Treasury and discloses specified information to the IRS, including the vehicle's VIN);
- Is acquired for use or lease by the taxpayer and not for resale;
- Either is:
 - A motor vehicle under Title II of the Clean Air Act; or
 - A mobile machinery under IRC §4053(8);
- Either is:
 - An electric vehicle;
 - A plug-in hybrid electric vehicle; or
 - A fuel cell vehicle as defined under IRC §30B; and
- Is subject to depreciation.

More Vehicles Qualify than under the Clean Vehicle Credit

For a vehicle to qualify for the Clean Vehicle Credit under IRC §30D, the vehicle must have its critical material and battery components sourced from the United States or a country in which the United States has a free trade agreement in affect. In addition, the vehicle's final assembly point must be in North America.

The Qualified Commercial Clean Vehicle Credit does not contain the critical material or battery component sourcing rules.

Further, because the Qualified Commercial Clean Vehicle Credit can be claimed for vehicles used in a trade or business with a gross vehicle weight of less than 14,000 pounds, many vehicles that would qualify for the Clean Vehicle Credit except for the fact that either their critical components are not sourced in the U.S. or a qualifying country or the vehicle's final assembly point is not in North America can qualify for the Qualified Commercial Clean Vehicle Credit.

In addition, taxpayers do not have to meet the AGI limits to qualify to claim the credit.

See the discussion on page 5-38 dealing with vehicles that can qualify for a credit under both IRC §§30D and 45W.

Comment

The credit is subject to recapture if the vehicle is no longer qualified (e.g., does not continue to be used in a trade or business). (IRC §§30D(f)(5), 45W(d)(1))

The Inflation Reduction Act provision requiring recapture leaves the details of this provision up to the Department of the Treasury to issue regulations. As of publication, no such regulations have been issued.

Leased Vehicles

The Qualified Commercial Clean Vehicle Credit is generally not available to the lessee of the vehicle. However, the IRS's FAQs provide a limited exception in the case of capital leases where the lessee is the deemed owner of the vehicle and treats the vehicle as a depreciable asset for tax purposes. (FAQs About Qualified Commercial Clean Vehicle Credit, Topic G, Q&A 7)

Used Vehicles

Technically, a taxpayer can claim the Qualified Commercial Clean Vehicle Credit under IRC

§45W for used vehicles, but only if neither the Clean Vehicle Credit under IRC §30D nor the Qualified Commercial Clean Vehicle Credit under IRC §45W has already been claimed for the vehicle.

Comment

It seems unlikely that a taxpayer will actually be able to claim the Qualified Commercial Clean Vehicle Credit for a used vehicle. First, it's very unlikely that the taxpayer who purchased the vehicle new would forego claiming the credit, which is required in order to claim the credit for a used vehicle. Second, there isn't a mechanism in place for taxpayers to look up the used vehicle VIN number to determine whether a previous credit has been claimed for the vehicle.

Other Issues

Similar to the Clean Vehicle Credit, when claiming the Qualified Commercial Clean Vehicle Credit:

- Taxpayers must provide the vehicle identification number (VIN) on the tax return for the year the credit is claimed;
- The vehicle's basis must be reduced by the amount of the credit claimed;
- Tax-exempt entities that purchase a qualified vehicle may elect to have the seller treated as the taxpayer for purposes of the credit;
- The credit cannot be claimed for vehicles used predominantly outside the U.S.;
- Only one credit may be claimed per vehicle; and
- The vehicle must meet applicable air quality and motor vehicle safety standards.

No Double Benefit

The Qualified Commercial Clean Vehicle Credit cannot be claimed for a vehicle for which the taxpayer claimed the Clean Vehicle Credit under IRC §30D.

Any other deduction or credit allowed for the vehicle must be reduced by the amount of the Qualified Commercial Clean Vehicle Credit.

Intersection of IRC §§30D, 45W, and 25E for Business Autos

Many new cars are eligible for both the Clean Vehicle Credit under IRC §30D and the Qualified Commercial Clean Vehicle Credit under IRC §45W, and taxpayers must choose which credit to claim.

The decision will come down to understanding the limitations applicable to each credit to help your clients avoid the limitation maze.

BUSINESS VEHICLES UNDER IRC §30D

The Clean Vehicle Credit can be claimed for either a personal use vehicle or a vehicle subject to an allowance for depreciation (i.e., a business use vehicle). (IRC §30D(c)(1)) However, if the credit is claimed for a business vehicle, then the credit is claimed as part of the general business credit under IRC §38 and not part of the regular Clean Vehicle Credit under IRC §30D(a).

If, in the year a vehicle is placed in service, it has a combination of business and personal use, then the business and personal use must be split based on the personal versus business use percentages (usually using mileage in the year the vehicle is placed in service). Business use is reported on Form 8936, Qualified Plug-In Electric Drive Motor Vehicle Credit, Part II, and the business portion of the credit is treated as part of the general business credit and carries to Form 3800. The personal use portion of the vehicle credit is reported on Form 8936, Part III and carries to Form 1040, Schedule 3.

General Business Credit

The general business credit, in a nutshell, is a credit that is made up of over 30 different business credits that are calculated and reported on their own separate IRS forms. The credits are then combined on Form 3800, General Business Credit, and are subject to limitations on the aggregate credit. Unused business credits can be carried forward for up to 20 years. See page 5-46 for a longer discussion of general business credits.

Mixed Business and Personal Use for IRC §30D Credit

The Treasury Regulations provide some guidance for taxpayers claiming the Clean Vehicle Credit under IRC §30D for business vehicles. The regulations require that the entire credit be claimed as an IRC §38 general business credit if a vehicle is used 50% or more for business in the year it is placed in service. (Treas. Regs. §1.30D-1(b)(1)(i)) A Clean Vehicle Credit under IRC §30D(a) cannot be claimed by an individual taxpayer in this situation.

Example of Clean Vehicle with 50% or More Business Use

Kristin has a side hustle working as an Uber driver. She reports her income and expenses from Uber on Schedule C. Kristin purchased a new qualifying clean vehicle in 2024, and all requirements for claiming the Clean Vehicle Credit have been met (such as the vehicle MSRP, her AGI, etc.).

Using a mileage log, Kristin determines that she used her new car 50% for business and 50% for nonbusiness in 2024.

When Kristin files her 2024 income tax return, she must report the vehicle on Form 8936, and then the entire credit must be reported on Form 3800 as a general business credit and is subject to all limitations applicable to the general business credit.

If the vehicle is used less than 50% for business, then the credit must be split based on the business and personal use: The credit for the business use portion of the vehicle must be claimed as a general business credit under IRC §38, and the credit for the personal use portion of the vehicle is claimed as a Clean Vehicle Credit under IRC §30D(a). (Treas. Regs. §1.30D-1(b)(2))

Example of Clean Vehicle with less than 50% Business Use

Assume the facts are the same as the prior example, except that Kristin uses her new clean vehicle 49% for her Uber side hustle and 51% for nonbusiness purposes (once again, based on her mileage log).

When Kristin files her 2024 income tax return, she must report the vehicle on Form 8936, but 51% of the credit will flow directly to Form 1040, Schedule 3, and 49% of the credit must flow through the general business credit on Form 3800 and run through the limitation maze of the general business credit before the credit ultimately ends up on Kristin's Form 1040, Schedule 3.

Comment

The regulations, as illustrated in the examples above, contain a somewhat strange rule that if a Clean Vehicle Credit is used 50% or more for business, then the entire Clean Vehicle Credit must be claimed as a general business credit.

This special rule in the regulations only applies to the Clean Vehicle Credit under IRC §30D. The regulations do not allow a taxpayer to treat a qualifying clean vehicle that is used only 50% for business as if it were a 100% business-use vehicle when it comes to deducting business mileage, depreciation issues, etc.

Partnerships and S Corporations Claiming Clean Vehicle Credit

The regulations provide that the AGI limitation under IRC §30D(f)(1) generally does not apply to C corporations or other taxpayers that do not calculate an adjusted gross income under IRC §62. (Treas. Regs. §1.30D-4(b)(5)(i))

However, in the case of partnerships and S corporations where the Clean Vehicle Credit is claimed by individuals who are direct or indirect partners or shareholders, the modified AGI limits do apply to those partners and shareholders when the credit passes through to them. (Treas. Regs. §1.30D-4(b)(5)(ii))

Example of Reporting Clean Vehicle Credit Purchased by a Partnership

The KR Partnership is owned by Kiko (60%) and Radesh (40%), who both file their personal tax returns as single individuals. KR purchased a qualifying clean vehicle in 2024 and will claim the credit under IRC §30D. The vehicle qualifies for the maximum \$7,500 credit.

Kiko's AGI for 2024 is \$180,000 and Radesh's AGI is \$130,000.

The partnership must first report the purchase of the vehicle on Form 8936, Clean Vehicle Credits, in Part II and will carry the \$7,500 credit to Schedule K, line 15P (Other Credits). For an S corporation, this will be Schedule K, line 13P.

Kiko's Schedule K-1, line 15P will report \$4,500 of the credit ($\$7,500 \times 60\%$ ownership), and Radesh's Schedule K-1, line 15P will report the remaining \$3,000.

On their personal income tax returns, Kiko and Radesh each must determine whether they qualify to claim the credit based on their own AGI. Kiko cannot claim any portion of the \$4,500 credit allocated to him because his AGI is over \$150,000. See page 1-36 for a discussion of the AGI limitation for the Clean Vehicle Credit.

Radesh's AGI is less than the \$150,000 limit for 2024, so he will report the credit on Form 3800, General Business Credit, at Part III, line 1y. Assuming his general business credits are not limited, then the \$3,000 credit will flow from Form 3800 to Schedule 3, line 6a.

The Business Choice

For purposes of qualified commercial clean vehicles under the 14,000-pound GVWR, a qualified commercial vehicle means any vehicle that meets the vehicle requirements of IRC §30D(d)(1)(C).

That subsection defines an eligible vehicle, but it does not include the following limitations:

- Critical mineral and battery component sourcing;
- MSRP limitations; and
- AGI limitations.

What this means is that taxpayers who purchase a new clean vehicle with a GVWR of under 14,000 pounds for their business can choose between the credit available under IRC §30D or IRC §45W. Both credits will be claimed as part of the general business credit under IRC §38, but the limitations discussed here will affect the tax professional's strategic decision to determine under which code section (and on which IRS form) to claim the credit.

Comparison of IRC §30D and IRC §45W Credits		
Point of consideration	IRC §30D	IRC §45W
Calculation of credit	Credit is either \$3,750 or \$7,500 based on battery capacity and sourcing of material and battery components—use Department of Energy website to determine available credit based on make and model (https://fueleconomy.gov/feg/tax2023.shtml)	Lesser of: <ul style="list-style-type: none"> • 15% of vehicle basis (30% if not powered at all by gas or diesel engine); or • Excess of vehicle's purchase price over cost of comparable gas or diesel vehicle (see page 5-33)
Apportionment of credit for mixed personal/business credit	Credit apportioned between personal and business credit if business use less than 50%. Treated as 100% business credit if business use is 50% or more	No apportionment required but must be a business-use vehicle
Critical material and battery component sourcing limitation	Yes (for vehicles delivered after April 17, 2023)	Not subject to limitation
Vehicle MSRP limitation	Subject to limitation	Not subject to limitation
Taxpayer modified AGI limitation	<ul style="list-style-type: none"> • C corporations (and other taxpayers that do not calculate an AGI) are not subject to limitation; • Partners and S corporation shareholders are subject to limitation when credit passes through to them; and • Individual taxpayers are subject to limitation 	Not subject to limitation
Credit claimed at point of sale	Yes, starting in 2024	No
Recapture of credit claimed for business vehicle if vehicle sold or no longer used for business	Yes (but regulations containing details of recapture have not yet been issued)	Yes (but regulations containing details of recapture have not yet been issued)
IRS form to claim the credit	Form 8936	Form 8936

As should be obvious from the chart, because the Qualified Commercial Clean Vehicle Credit under IRC §45W contains fewer limitations, it will generally be preferable over the Clean Vehicle Credit under IRC §30D. However, tax professionals must evaluate the calculation of each credit to determine which provides a greater benefit. Consider the following examples.

Example of IRC §30D Providing a Greater Credit

Joe's Pool Cleaning, a Schedule C business, purchased a new plug-in hybrid vehicle (PHEV) for its business in 2024 at a cost of \$35,000. According to the Department of Energy website, the credit under IRC §30D for the vehicle is \$7,500. Joe's modified AGI is under the threshold, and he is eligible to claim the IRC §30D credit.

Under IRC §45W, the credit is only \$5,250 (15% of the vehicle's basis because the car is powered by a hybrid gas-electric engine). In this scenario, it is more advantageous for Joe to claim the Clean Vehicle Credit under IRC §30D (using Form 8936).

Example of IRC §45W Providing a Greater Credit

Assume the facts are the same as the previous example, except that Joe's AGI is too high to claim the Clean Vehicle Credit under IRC §30D. In this scenario, Joe should claim the \$5,250 Qualified Commercial Clean Vehicle Credit under IRC §45W (using Form 8936-A).

Vehicles Used in a Schedule C Business

The Previously Owned Clean Vehicle Credit under IRC §25E is only available to individual taxpayers, and therefore business entities cannot claim the credit. (IRC §25E(c)(3)(A); IRS FAQs, Topic D, Q&A 8) The Previously Owned Clean Vehicle Credit is discussed in more detail on page 1-42.

However, there are no provisions within IRC §25E that prevent individual taxpayers from claiming the Previously Owned Clean Vehicle Credit if they use the vehicle in their business, such as a sole proprietorship business or in a partnership where the vehicle's use is classified as an unreimbursed partner expense.

Further, the Previously Owned Clean Vehicle Credit under IRC §25E does not require that the credit be claimed as a general business credit when the vehicle contains business use the way the Clean Vehicle Credit under IRC §30D does.

Example of Business Use of used Clean Vehicle

Holly is a florist and operates her business as a sole proprietorship. In 2024, she purchased a vehicle that is used in her business and that satisfies all the requirements for the Previously Owned Clean Vehicle Credit under IRC §25E. Holly's income is below the AGI limitation, and she claims the maximum personal credit of \$4,000.

Holly can claim the Previously Owned Clean Vehicle Credit on her personal return without having to run the credit through the general business credit under IRC §38 first.

If Holly had purchased a new vehicle for her business, then she would have to claim either the Clean Vehicle Credit under IRC §30D or the Qualified Commercial Clean Vehicle Credit under IRC §45W and treat the credit as a general business credit.

TRADE OR BUSINESS EXPENSES**MEALS AND ENTERTAINMENT**

Meals and Entertainment Expenses		
Expense	Federal	California
Client entertainment, such as: <ul style="list-style-type: none"> • Sporting event tickets; • Theater tickets; • Golf outings; and • Yacht excursions; etc. Client meals in conjunction with entertainment, not purchased separately from the entertainment	0% deductible	50% deductible
Client meals (directly related to a business meeting)	50% deductible	50% deductible
Meals for employees while traveling for business	50% deductible	50% deductible
Meals provided for the convenience of the employer, such as: <ul style="list-style-type: none"> • Tax season meals in office; • Employee meals on boat charter; • Employee meals at seminars; and • Office coffee, water, and snacks 	50% deductible (1/1/18–12/31/25); 0% deductible (after 12/31/25)	100% deductible if they qualify as <i>de minimis</i> fringe benefit; 50% deductible if they don't qualify as <i>de minimis</i> fringe benefit
Holiday parties, company picnics, and other occasional employee appreciation events	100% deductible	100% deductible

EXCESS BUSINESS LOSSES

Noncorporate taxpayers can only deduct business losses up to an annual inflation-adjusted threshold. (IRC §461(l)) Business losses in excess of the threshold are carried forward to a future year as a net operating loss. See page 4-5 for a discussion of new IRS Form 172, Net Operating Losses (NOLs) for use by individuals, estates, and trusts.

The excess business loss rules apply for taxable years beginning after December 31, 2020, and before January 1, 2029. (IRC §461(l)(1))

Calculating Excess Business Loss

Under IRC §461(l), an excess business loss is defined as the excess of:

- Business deductions (determined without the excess business loss limitation); over
- The sum of:
 - Gross business income or gain for the taxable year; plus
 - \$250,000 (or \$500,000 for married taxpayers filing jointly) (adjusted for inflation, as shown in the following chart).

Excess Business Loss Threshold		
	2024 (Rev. Proc. 2023-34)	2025 (Rev. Proc. 2024-40)
Single filers	\$305,000	\$313,000
Joint filers	\$610,000	\$626,000

When calculating the excess business loss:

- Exclude NOLs, IRC §199A, and capital loss deductions from the business deductions used to calculate the excess business loss;
- Exclude any deductions, gross income, or gains attributable to any trade or business of performing services as an employee from the excess business loss computation, so wages will not be considered business income; and
- Limit the capital gains included in the excess business loss computation to the lesser of:
 - Capital gain net income solely attributable to gains and losses from a trade or business; or
 - The taxpayer's capital gain net income. (IRC §461(l)(3))

Flowthroughs Calculated at the Individual Level

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. (IRC §461(l)(4)) Each partner's distributive share and each S corporation shareholder's *pro rata* share of items of income, gain, deduction, or loss of the partnership or S corporation is taken into account in applying the limitation under the provision for the taxable year of the partnership or S corporation. (IRC §461(l)(3)(A)(ii)(I))

Other Deferral Provisions Applied First

The excess business loss rules of IRC §461(l) apply after the application of:

- Basis rules for S corporations and partnerships (IRC §§704(b), 1366);
- The at-risk rules under IRC §465; and
- The passive activity loss rules of IRC §469. (IRC §461(l)(6))

Therefore, losses suspended in the current tax year under the passive loss rules do not have an effect in the current year. Any prior-year suspended losses that are released in the current year do have an effect on the amount of excess business loss in the current year.



California Conformity

California has conformed to the federal excess business loss provisions, with some fairly significant modifications. (R&TC §17560.5) California's excess business loss rules went into effect for the 2019 taxable year.

REPORTING SALT WORKAROUND ON BUSINESS RETURN

Many states have passed state and local tax (SALT) workaround legislation, and we have received many questions from tax professionals asking where they should report the passthrough entity taxes on their S corporation or partnership returns.

The Tax is Assessed Against the Entity

IRS Notice 2020-75, which is where the IRS gave its blessing for SALT workaround legislation, provides that:

- If specified state and local income tax payments are imposed directly on a partnership or an S corporation on its income (even if the passthrough entity must elect to be taxed directly); and
- The income taxes are actually paid by the partnership or S corporation; then
- The entity can deduct the taxes in computing its nonseparately stated income or loss for the tax year (reported on each owner's Schedule K-1, generally on line 1).

Open questions: fiscal-year and accrual basis taxpayers

There is nothing in Notice 2020-75 that specifically addresses fiscal-year taxpayers. Many tax professionals have taken the position that fiscal-year taxpayers should be able to rely on the statement made in Notice 2020-75 that taxpayers claim the deduction in the year the tax is paid. But until we get additional guidance from the IRS, this is still an open question.

Because the notice states that the deduction is taken in the year paid, there is a question as to whether accrual basis taxpayers may take a 2024 deduction for payments made in 2025. The conservative position is that they are also required to take the deduction in the year the tax is paid. However, some are taking the more aggressive position that these taxes can be accrued.

So, because the SALT workaround legislation is a tax imposed directly on, and paid by, the passthrough entity, you must deduct the SALT workaround payments in the same place you would any other deductible state and local taxes:

- **On 2024 Form 1120-S:** Page 1, line 12, Taxes and licenses; and
- **On 2024 Form 1065:** Page 1, line 14, Taxes and licenses.

Rental and Other Investment Activities

One variation of this question we have received is in the case of rental real estate entities. If the passthrough entity has no activities other than rental real estate, they typically deduct state and local taxes on Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

The question is whether the passthrough entity taxes should likewise be reported on Form 8825 or on Page 1 of the Form 1065, U.S. Return of Partnership Income, or Form 1120-S, U.S. Income Tax Return for an S Corporation.

The instructions to Forms 1065 and 1120-S both direct taxpayers to deduct state and local taxes on Page 1 of the respective forms unless the taxes are allocable to a rental activity. The IRS has not provided definitive guidance on where exactly taxpayers should deduct state and local taxes where the taxpayer's business contains rental and investment activities.

If the taxes are allocable to a rental real estate activity, then should passthrough entity elective taxes be deducted on Form 8825? The same open question applies to non-real estate rental activities or investment activities—should passthrough entity elective taxes for these activities be deducted directly on Schedule K?

Practice Pointer

In the absence of IRS guidance, tax professionals must use their best judgment to determine where claiming the state and local tax deduction on the business return provides the most benefit for their client.



California Conformity

For a discussion of California's passthrough entity elective tax, see page 10-1.

Spidell Publishing has created a multistate passthrough entity elective tax summary chart which outlines the states that have enacted their own passthrough entity tax, who may make the election, the tax base and tax rate, election procedures, and owner tax benefits. The chart is available at:

 Website

www.caltax.com/files/2024/peetchart.pdf

COMMINGLING BUSINESS AND PERSONAL ITEMS

In an all-too-fun-to-not-discuss Tax Court case, husband and wife taxpayers who ran multiple businesses providing tax and financial services found themselves on the losing end of a nearly \$2 million federal tax deficiency over a four-year period. (*Henry v. Comm.*, TCM 2024-79)

A quick dive into the nature of the tax advice the couple was doling out to clients provides some quick insight into the couple's own tax problems. Just one excerpt from a marketing video that the court found particularly interesting stated:

"We teach you what is tax deductible, and help you convert your personal life into your business life and write it all off. Okay. We call it anyway expenses. You gonna eat anyway, ya might as well write it off, talk business."

The taxpayers regularly commingled the expenses from their multiple business entities with their personal expenses and did not maintain business records outside of credit card and bank statements and sporadic receipts.

It's no surprise, then, that the Tax Court found the taxpayers' testimony at trial to be not credible and stated that the taxpayers encouraged their clients to falsely characterize their personal expenses as business and expenses and could not rule out the likelihood that the taxpayers themselves engaged in such conduct.

BUSINESS CREDITS

GENERAL BUSINESS CREDITS

The general business credit (GBC) is not a single credit. Rather it is the sum of over 30 credits that a business can claim against a portion of its tax liability. In any given year, the GBC can be comprised of unused GBC carryforwards, the current-year GBC, and carrybacks. (IRC §38(a))

Each of the individual credits is computed separately on the form applicable to that individual credit, and then all available credits are compiled and reported on Form 3800, General Business Credit, to determine the amount of combined credit that can be claimed as a GBC.

The GBC is nonrefundable, and limitations apply as to the total amount that may be claimed in any given year. IRC §§38 and 39 govern the computation of the GBC, including:

- The limits on how much of the GBC can be claimed against a taxpayer's tax liability;
- Carrybacks and carryforwards; and
- The order in which each of the 30-plus credits may be claimed.

Taxpayers that are unable to use the total credits available by the end of the carryover period can claim a deduction for the amount of specified unused credits.

Credits Comprising the General Business Credit

The following chart lists the credits that make up the GBC, the applicable IRC section, and the form on which the credit is computed. (IRC §38(b)) As discussed in more detail on page 5-52, the credits are claimed on Form 3800 in the order they are listed in the chart.

Credits Comprising the General Business Credit		
Name of credit	IRC section	Form number
Investment Tax Credit, comprised of:	§§46, 49, 50	3468
Rehabilitation Credit	§47	
Energy Investment Tax Credit	§48	
Qualifying Advanced Coal Project Credit	§48A	
Qualifying Gasification Project Credit	§48B	
Qualifying Advanced Energy Project Credit	§48C	
Qualifying Therapeutic Discovery Project Credit (carryover only)	Former §48D	
Advanced Manufacturing Investment Credit	§48D	
Clean Electricity Investment Credit (for post-2024 tax years)	§48E	
Work Opportunity Credit	§51	5884
Alcohol Fuels Credit	§40	6478
Research Credit	§41	6765
Low-Income Housing Credit	§42	8586
Enhanced Oil Recovery Credit (not available during the 2022 and 2023 tax years)	§43	8830
Disabled Access Credit	§44	8826
Renewable Electricity Production Credit	§45	8835
Empowerment Zone Employment Credit	§1396	8844
Indian Employment Credit	§45A	8845
Employer Social Security Credit (aka the FICA Tip Credit)	§45B	8846
Orphan Drug Credit	§45C	8820
New Markets Tax Credit	§45D	8874
Small Employer Pension Plan Startup Costs Credit	§45E	8881
Employer-Provided Child Care Credit	§45F	8882
Railroad Track Maintenance Credit	§45G	8900
<i>(Continued)</i>		

Credits Comprising the General Business Credit (Continued)		
Name of credit	IRC section	Form number
Biodiesel Fuels Credit	§40A	8864
Low Sulfur Diesel Fuel Production Credit	§45H	8896
Marginal Oil and Gas Well Production Credit	§45I	8904
Distilled Spirits Credit	§5011	8906
Advanced Nuclear Power Facility Production Credit	§45J	7213
Nonconventional Source Production Credit	§45K	Expired
New Energy Efficient Home Credit	§45L	8908
Alternative Motor Vehicle Credit (for vehicles placed in service prior to 2022)	§30B	8910
Alternative Fuel Refueling Property Credit	§30C	8911
Mine Rescue Team Training Credit	§45N	8923
Agricultural Chemicals Security Credit	§45O	Expired
Differential Wage Payment Credit	§45P	8932
Carbon Dioxide Sequestration Credit	§45Q	8933
New Clean Vehicle Credit	§30D	8936
Small Employer Health Insurance Credit	§45R	8941
Paid Family and Medical Leave Credit	§45S	8994
Retirement Auto-Enrollment Credit	§45T	8881
Zero-Emission Nuclear Power Production Credit (post-2023 tax years)	§45U	Not available
Sustainable Aviation Fuel Credit	§40B	Not available
Clean Hydrogen Production Credit	§45V	7210
Qualified Commercial Clean Vehicle Credit	§45W	8936
Advanced Manufacturing Production Credit	§45X	7207
Clean Electricity Production Credit (post-2024 tax years)	§45Y	Not available
Clean Fuel Production Credit	§45Z	Not available
Military Spouse Retirement Plan	§45AA	8881

Limitations

For noncorporate taxpayers, the amount of the GBC that can be claimed in a tax year is limited to the excess (if any) of the taxpayer's net income tax over the greater of:

- The taxpayer's tentative minimum tax; or
- 25% of the taxpayer's net regular tax liability in excess of \$25,000. The \$25,000 figure may be modified for MFS taxpayers, trusts and estates, and members of controlled groups (see IRC §38(c)(6)). (IRC §38(c))

"Net income tax" is the sum of the taxpayer's regular tax liability plus its alternative minimum tax (AMT) liability less most personal income tax credits (IRC §§21–30D) and the Foreign Tax Credit. "Net regular tax liability" is the taxpayer's regular tax liability reduced by specified personal income tax credits. (IRC §§21–30D, §38(c))

Comment

Key things to keep in mind for noncorporate taxpayers:

- If a taxpayer is subject to the AMT, the taxpayer cannot claim the GBC in the current year, with exceptions for certain credits (discussed after the following example);
- The GBC cannot offset more than 75% of the taxpayer's net income tax; and
- Taxpayers with regular tax liability of \$25,000 or less are not subject to the limitation unless they are subject to the alternative minimum tax.

For corporate taxpayers, the amount of the credit is limited to 25% of net income tax in excess of \$25,000. (IRC §38(c)(6)(E))

Example of GBC Income Limitation

Planetarius, Inc. is a C corporation and has general business credits equal to \$175,000, \$210,000 in net income tax, and \$150,000 in tentative minimum tax.

Planetarius is limited to claiming \$163,750 in general business credits for the tax year computed as follows:

Regular tax liability	\$210,000
Threshold	<u>- 25,000</u>
Regular tax liability in excess of \$25,000	185,000
Credit limitation percentage (corporation)	<u>× 25%</u>
Amount of credit limitation	\$ 46,250
Regular tax liability	\$210,000
Credit limitation	<u>- 46,250</u>
Maximum GBC allowed	\$163,750

Because Planetarius's threshold limitation of \$163,750 is greater than its tentative minimum tax of \$150,000, the amount of GBC Planetarius can claim in the tax year is \$163,750.

The remaining \$11,250 (\$175,000 GBC - \$163,750 limitation) of unused credit is subject to the carryback and carryforward rules discussed below.

Limitation for Specified Credits

The limitation discussed above is modified for the specified credits listed below by treating the tentative minimum tax as “0.” This means noncorporate taxpayers can claim some of the credits that make up the GBC against both their regular tax liability and their AMT.

In addition, the limitation based on 25% of a portion of the taxpayer’s tax liability is computed separately for these specified credits. The specified credit limitation is computed after the taxpayer’s tax liability is reduced by all the other nonspecified GBC credits (see example below).

The specified credits are:

- Biofuel Producer Credit (IRC §40);
- Research Credit for an eligible small business as defined in IRC §38(c)(5), essentially nonpublicly traded corporations, partnerships, and sole proprietors whose average annual gross income for the preceding three taxable years does not exceed \$50 million. (IRC §41);
- Low-Income Housing Credit (IRC §42);
- Renewable Electricity Production Tax Credit (PTC) for the four-year period after the facility is originally placed in service. (IRC §45) **Note:** The Renewable Electricity Production Tax Credit can be claimed over a ten-year period;
- FICA Tip Credit (IRC §45B);
- Railroad Track Maintenance Credit (IRC §45G);
- Small Employer Health Care Credit (IRC §45R);
- Employer Paid Family and Medical Leave Credit (IRC §45S);
- Energy Credit (IRC §48);
- Rehabilitation Credit (IRC §47); and
- Work Opportunity Credit. (IRC §51)

Example of GBC Income Limitation for Specified Credits

Lil's Restaurant, a Schedule C business, has:

Regular income tax liability	\$35,000
Tentative minimum tax (TMT)	\$50,000
AMT	\$15,000
Nonspecified GBC	\$ 5,000
Specified credits	\$20,000
Non-GBC credits	\$ 0

Nonspecified GBC credit limitation

Lil's cannot claim the GBC during the current year for its nonspecified GBC credits because its net income does not exceed its TMT, discussed above. Remember, the GBC can only be claimed up to the amount of Lil's net income, in excess of its TMT or the 25% income limitation component.

For Lil's, the GBC income limitation is computed as follows:

Regular tax liability	\$35,000
AMT	\$15,000
Net income tax	\$50,000
(A) TMT	\$50,000
(B) Credit limitation*	\$ 2,500
Net income tax in excess of the greater of (A) or (B)	\$ 0
* (\$35,000 regular tax - \$25,000 threshold) × 25%	

Lil cannot claim the GBC for these credits during the tax year because its TMT is the same as its "net income," and therefore no GBC is allowed.

Specified GBC credit limitation

However, Lil's can claim the GBC for its specified credits because the GBC limitation is computed separately using the modified specified credit limitation formula.

For its specified credits for the current year, Lil's computation of its GBC is computed as follows:

Regular tax liability	\$35,000
TMT	\$ 0
Net income tax liability	\$35,000
(A) TMT	\$ 0
(B) Credit limitation*	\$ 2,500
Net income tax in excess of the greater of (A) or (B)	\$32,500
* (\$35,000 regular tax - \$25,000 threshold) × 25%	

Carrybacks and Carryforwards

The amount of the GBC **allowed** in a tax year is equal to the sum of the following amounts (applied in the order listed here):

- The business credit carryforwards carried to the taxable year;
- The amount of the current-year business credit; and
- The business credit carrybacks carried back to the taxable year. (IRC §38(a))

However, the amount of GBC that can be **claimed** in the tax year cannot exceed the limitations described above.

Generally unused credits must first be carried back one year and then carried forward 20 years.

However, beginning with the 2023 tax year, a three-year carryback period applies for applicable credits that can be treated as a tax payment by tax-exempt entities and government organizations (discussed on page 5-58).

Example of applying carryforwards and carrybacks

In 2023, ABC Corp. had a tax liability of \$80,000. The \$80,000 was partially offset by unused business credit carryforwards of \$35,000 from 2021, and \$10,000 from 2022, resulting in a 2023 net income tax liability of \$35,000.

In 2024, ABC had an unused GBC of \$40,000, which it carried back to 2023. ABC now has a credit carryforward from 2023 equal to \$5,000 that may be carried forward until used, up to a maximum of 20 years.

 **Practice Pointer**

In general, no part of the unused credit for any year attributable to any credit can be carried back to any tax year before the first tax year for which that credit was first allowable. For example, the Qualified Commercial Clean Vehicle Credit can only be claimed for vehicles placed in service after 2022 and therefore cannot be carried back to the 2022 tax year.

However, this general rule does not apply to unused credits listed in IRC §6417(b), which may be carried back three tax years. As discussed in more detail below, IRC §6417 allows certain tax-exempt entities and governmental agencies to claim certain tax credits as a tax payment (see page 5-58).

Ordering Rules

Taxpayers with more than one credit that exceeds the limitation must apply the credits in the order listed in the chart starting on page 5-47.

Carryovers from earlier years are applied prior to the current-year credits, and the ordering rules apply within each tax year.

Example of Applying Ordering Rules

Tasty Goods, Inc. is a restaurant chain that has \$35,000 of tax liability and \$48,000 of GBC credits comprised of the following credits:

Work Opportunity Credit	\$25,000
Small Employer Health Insurance Credit	\$ 5,000
Disabled Access Credit	\$ 5,000
Qualified Commercial Clean Vehicle Credit	\$10,000
FICA Tip Credit	\$ 3,000

Applying the ordering rules in the chart starting on page 5-47, the credits that can be claimed during the tax year are:

Work Opportunity Credit	\$25,000
Disabled Access Credit	\$ 5,000
FICA Tip Credit	\$ 3,000
Small Employer Health Insurance Credit	\$ 2,000

The remaining \$3,000 of the Small Employer Health Insurance Credit and the \$10,000 Qualified Commercial Clean Vehicle Credit must either be carried back to the prior year and/or carried forward.

Note: The Qualified Commercial Clean Vehicle Credit was first available in 2023. So, if this was the 2023 taxable year, then the credit could not be carried back to a year before 2023.

Example of Applying Ordering Rules for Multiyear Carryovers

Revving Up, Inc. began its operations in 2022 and had NOLs in 2022 and 2023. During those years, it incurred a \$10,000 Disabled Access Credit in 2022 and a \$30,000 Rehabilitation Credit in 2023 that it was unable to claim.

In 2024, it generated taxable income but is limited to \$75,000 in GBC that it could claim. It also generated a \$50,000 Research Credit and a \$20,000 Energy Investment Tax Credit.

On its 2024 return, Revving Up may claim the GBC for the following credits:

Disabled Access Credit (2022 carryover)	\$10,000
Rehabilitation Credit (2023 carryover)	\$30,000
Energy Investment Tax Credit (2024)	\$20,000
Research Credit (portion of 2024's \$50,000)	\$15,000

The remaining \$35,000 of the Research Credit will be carried forward to 2025.

Note: Oldest carryovers are claimed first. The 2024 Energy Investment Tax Credit is applied prior to the 2024 Research Credit because it is above the Research Credit in the chart starting on page 5-47.

Claiming the Carryback

Taxpayers can either claim the carryback on an amended return or by filing:

- Form 1139, Corporation Application for Tentative Refund; or
- Form 1045, Application for Tentative Refund.

 **Practice Pointer**

Forms 1139 and 1045 must generally be filed by the end of the tax year following the tax year in which the credit arose. They are filed with the IRS Service Center where the taxpayer files their return. The IRS must act on these applications within 90 days.

Credit Recaptures

If a credit is subject to recapture, amended returns do not need to be filed. The amount of the credit carryforward is reduced by the amount of the recapture. (Instructions to Form 3800)

Deduction for Unused Credits

Taxpayers unable to use up all of their available qualified business credit(s) may be able to claim a deduction for the unused credit at the end of their 20-year carryover period. (IRC §196) The deduction is generally claimed in the year following the end of the carryover period.

Comment

This deduction is an attempt to make taxpayers somewhat “whole.” Most credits prohibit a taxpayer from claiming a deduction for expenses for which a credit is claimed. The IRC §196 deduction allows them to claim deductions for expenses for which they were not able to claim the credit. Unfortunately, most taxpayers must wait 21 years to claim the deduction.

Qualified Business Credits

A deduction may only be claimed for the following unused credits:

- Investment Tax Credit for property that had an IRC §50(c) basis adjustment;
- Work Opportunity Credit;
- Alcohol Fuels Credit;
- Research Credit, unless the taxpayer made an IRC §280C(c) election to reduce the credit;
- Enhanced Oil Recovery Credit;
- Empowerment Zone Employment Credit;
- Indian Employment Credit;
- FICA Tip Credit;
- New Markets Credit;
- Small Employer Pension Plan Start-Up Costs Credit;
- Biodiesel Fuels Credit;
- Low Sulfur Diesel Fuel Production Credit;
- Energy Efficient Home Credit; and
- Small Employer’s Health Care Credit. (IRC §196(c))

Accelerated Deduction in the Taxpayer’s Final Year

The deduction may be claimed earlier than the end of the 20-year carryover period if:

- The taxpayer dies; or
- Ceases to exist. (IRC §196(b))

In such instances, the taxpayer may claim the deduction in the year the taxpayer dies or ceases to exist. This can be especially important for taxpayers selling their business who have yet to claim all of their unused GBC because they may offset gains from the sale of the business with this increased deduction.

Claiming the General Business Credit

As discussed above, taxpayers must first compute the source credit on the applicable credit form, and then the credit is bundled with the other general business credits on Form 3800.

Partnerships and S corporations must always complete and attach the source forms for the various component credits to their entity income tax returns.

All other filers whose only source for a credit is from a partnership, S corporation, estate, trust, or cooperative or who received the credit as a transfer from an unrelated eligible taxpayer can report most component credits directly on Form 3800. However, the source forms must still be attached to the taxpayer's return if the taxpayer is:

- Claiming the Investment Tax Credit (Form 3468) or the Biodiesel Fuels Credit (Form 8864);
- An estate or trust, and the source credit must be allocated to beneficiaries; or
- A cooperative, and the source credit can or must be allocated to patrons.

Form 3800 Revisions

Form 3800 underwent a major revision beginning with the 2023 tax return. The form was expanded from three parts to six parts to accommodate provisions of the Inflation Reduction Act that allow taxpayers to transfer credits and certain eligible taxpayers to claim credits as a tax payment and to simplify how the various credits are reported.

MONETIZING SPECIFIED ENERGY CREDITS

The Inflation Reduction Act of 2022 enacted two new provisions (IRC §§6417 and 6418), which, beginning with the 2023 tax year, allow certain taxpayers to either apply certain energy-related tax credits as tax payments (primarily for certain tax-exempt and governmental entities) or sell certain energy credits. (IRC §§6417, 6418; Treas. Regs. §§1.6417-0 et seq., 1.6418-0 et seq.)

Comment

Energy credit marketplaces are beginning to pop up. A simple Google search for selling energy credits will produce multiple companies advertising themselves as marketplaces for managing and brokering the acquisition and sale of eligible energy credits.

Currently, credits are selling on the open market for about 90%–95% of the credit amount. Billions of dollars in credits are already in the process of being bought and sold through these credit marketplaces.

Registration

The IRS has opened an online registration tool for eligible taxpayers that want to monetize their energy credits. (IR-2023-249) Registration is required before any qualifying business, tax-exempt organization, or government or tribal entity can monetize their energy credits.

Once an entity registers through the IRS's registration tool, which can be found at the link below, the entity must receive a registration number from the IRS before monetizing their energy credits.

Entities should register after the energy property or facility has been placed in service, but the IRS recommends registering at least 120 days prior to filing the entity's income tax returns for the year. The 120-day lead time is so the IRS has plenty of time to review the registration information provided and obtain additional information if needed. The registration number must be included on the entity's income tax return.

The registration website is:

 **Website**

www.irs.gov/credits-deductions/register-for-elective-payment-or-transfer-of-credits

 **Practice Pointer**

We have gone through the registration process already and would like to share some of our observations:

- Taxpayers may require more than one registration number. Be sure to review the form instructions for the particular energy credit being claimed to determine how many registration numbers will be required;
- The registration process was easy, and practitioners can do it on their client's behalf after logging in using their ID.me account;
- The registration process requires that you provide a client's bank account and routing numbers even though this is just an early registration process. Obtain this information ahead of time if you don't have it already;
- The registration process requires that you input the latitude and longitude of the facility where the energy property is placed in service. This is easy to do using a Google search of the facility's physical address;
- The registration process asks for documents to be uploaded related to the facility but provides no direction regarding the nature of the documents. The registration process can be completed without uploading any documents, but a notice during the registration process states that the IRS's processing time will be longer if no documents are uploaded; and
- When submitting the registration, we were met with a warning stating that there may be an error and requesting that we double-check our input. After double-checking all input, including entity name and EIN, we found no errors and resubmitted the registration successfully. So, a potential matching error on the IRS's end does not appear to prevent you from submitting the registration, despite an initial error message.

Eligible Credits

The credits that may be transferred include, but are not limited to, the:

- IRC §45 Renewable Electricity Production Tax Credit;
- IRC §45Y Clean Electricity Production Tax Credit for facilities placed in service after 2024;
- IRC §48 Energy Investment Tax Credit (often referred to as the business solar credit); and
- IRC §48E Clean Electricity Investment Credit for facilities placed in service after 2024.

For a complete listing of the applicable credits, see IRC §6418(f)(1)(A).

Eligible Taxpayers

Taxpayers eligible to transfer the credit include any person subject to any internal revenue tax, other than government agencies, Indian tribes, or tax-exempt entities (as discussed below, these latter entities can treat these credits as tax payments).

This means taxpayers subject to a U.S. employment tax or an excise tax, such as partnerships and S corporations, can transfer the credit even if the taxpayer is not subject to an income tax or corporate tax. (Treas. Regs. §1.6418-1(b))

Limitations

The eligible taxpayer cannot transfer credits to related taxpayers (within the meaning of IRC §267(b) or §707(b)(1)) and cannot transfer the credit for noncash consideration, such as various price reductions for products or services.

A credit can only be sold/transferred once. (IRC §6418(a) and (e)(2))

Eligible Credit Amount

Taxpayers can transfer the entire credit or a portion of the allowable credit. Eligible taxpayers can sell credits to multiple transferees as long as the total credit transferred does not exceed the amount of the eligible credit determined with respect to the eligible credit property. (Treas. Regs. §1.6418-2(a)(2))

Taxpayers cannot transfer the “bonus” portion of a credit (e.g., the component attributable to a taxpayer meeting the wage and apprenticeship requirements) separately from the base portion of the credit.

Making the Election

An irrevocable election must be made on an original or superseding return filed by the extended due date for the return for the taxable year for which the credit is determined. (IRC §6418(d); Treas. Regs. §1.6418-2(f)) For S corporations and partnerships, the election is made at the entity level.

A separate transfer election must be made for each credit or portion of credit transferred with respect to a single eligible credit property and for each year the credit is available.

Both the eligible taxpayer and the transferee taxpayer must each attach a transfer election statement to each of their returns. Details of what must be included in the election statement are outlined in Treas. Regs. §1.6418-2(b)(5).

Claiming the Credit

The transferred credit is claimed in the first taxable year of the transferee taxpayer ending with, or after, the taxable year of the transferor with respect to which the credit was determined. (IRC §6417(d)(6); Treas. Regs. §1.6418-5) The credit is claimed on Form 3800.

Excessive Credits

Transferee taxpayers that claim too much of a credit are liable for the amount of the excessive payment plus, absent reasonable cause, an additional amount equal to 20% of the excessive payment. (Treas. Regs. §1.6418-5(d) and (e))

Credit Recapture

For transferred eligible credits under IRC §48, §48E, or §48C, or transferred carbon sequestration tax credits under IRC §45Q, the transferee bears the financial responsibility for a recapture event. Remember, these credits are subject to a five-year recapture provision if the property is disposed of or taken out of service. (Treas. Regs. §1.6418-2(d)(1))

Tax-exempt Organizations and Governmental Agencies

In addition to the credit transfer rules discussed above, the IRS has also issued proposed regulations regarding the election available to tax-exempt organizations and governmental agencies and their instrumentalities that allows them to treat the various energy credits as elective tax payments, applicable beginning with the 2023 tax year. (REG-101607-23; Treas. Regs. §1.6417-0 et seq.) The election applies to any entity exempt under IRC §501(a), which includes charitable and religious organizations. Any elective tax payments made in excess of amounts the entity may owe will be refunded to the taxpayer.

Comment

The purpose of IRC §6417, which allows certain entities to elect to treat some energy credits as tax payments, is to benefit tax-exempt entities. Income tax credits provide little or no benefit to tax-exempt organizations because they don't typically have any income tax liabilities.

By allowing these entities to elect to treat the credits as a tax payment under IRC §6417, they can now receive the same monetary benefit of energy credits that for-profit taxpayers receive.

Comment

These rules apply to the same credits available for credit transfers. However, the election for tax-exempt organizations and governmental agencies also applies to the IRC §45W Commercial Clean Vehicle Credit. (Treas. Regs. §1.6417-1(b))

The irrevocable election and the elective tax payment is made on the entity's timely filed (including extensions), original annual tax return. (Prop. Treas. Regs. §1.6417-2(b)) Form 990-T, Exempt Organization Business Income Tax Return, should be used for all entities not otherwise required to file a return.

The rules clarify that the credit amounts may be reduced for investment credit property purchased, constructed, erected, etc., with certain tax-exempt income such as various grants and forgiven loans provided to invest in qualified property.

Additional Information

The IRS has issued FAQs regarding these elective pay provisions as well. They are available at:

 **Website**

www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions-elective-pay

ENERGY INVESTMENT TAX CREDIT

IRC §48 provides for credits of up to 30% (plus additional bonus credits) for expenditures on nonresidential energy property that produces renewal energy. The business energy credit is frequently referred to as the Energy Investment Tax Credit and is available only for construction of energy properties that begins prior to January 1, 2025, when the IRC §48E Clean Electricity Investment Credit will kick in (see page 5-65).

Planning Pointer

Key things to keep in mind:

- The IRC §48 Energy Investment Tax Credit is only available for property the construction of which begins prior to January 1, 2025. Property for which construction commences after 2024 may be eligible for the IRC §48E Clean Electricity Investment Credit discussed beginning on page 5-65;
- Property that qualifies for the Rehabilitation Credit cannot also qualify for the Energy Credit (IRC §48(a)(2)(B));
- For certain property (e.g., solar and wind facilities), taxpayers must choose between claiming the Energy Investment Tax Credit and the Production Tax Credit for the same property. See page 5-68 for a discussion of factors to consider when determining which credit to choose; and
- The credit cannot be claimed for property for which the taxpayer receives a §1603 American Recovery and Reinvestment Act grant from the Treasury Department.

Energy Properties

Energy properties include the properties as defined in IRC §48(c), but only if they meet certain general qualifications discussed below.

Comment

While many of the energy-related business credits only benefit large energy-related companies, this credit and the Production Tax Credit discussed on page 5-67 may provide the impetus for smaller startup companies (e.g., wind and solar production companies) to form.

Comment

The focus of this discussion is for our clients that may qualify for the Energy Investment Tax Credit for making their buildings or facilities more energy efficient. This material will not delve into the details that are more applicable to energy companies and alternative energy generators.

Energy properties include:

- Geothermal energy property;
- Solar energy property to generate electricity, or solar energy property to illuminate;

Solar Energy Property Defined

Solar energy property for purposes of the Energy Investment Tax Credit is equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (other than to heat a swimming pool). (IRC §48(a)(3)(A)(i)) Such property includes:

- Solar panels;
- Storage devices;
- Power conditioning equipment;
- Transfer equipment; and
- Parts related to the functioning of those items (e.g., solar cells or other collectors).

However, solar energy property used to generate electricity only includes equipment up to (but not including) the stage that transmits or uses electricity. (Treas. Regs. §1.48-9(d)(3))

- Qualified fuel cell property;
- Qualified microturbine property;
- Combined heat and power system property;
- Qualified small wind energy property, which is property that uses a wind turbine that has a nameplate capacity of not more than 100 kilowatts that is used to generate electricity;

Comment

How much a 100 kilowatt wind turbine can support can vary depending on a property's electricity usage and the amount of wind in an area, but to put this in perspective, according to energy.gov it would take a 1.5-kW wind turbine to meet the average needs of a typical home in a location with an annual average wind speed of 14 mph. (<https://windexchange.energy.gov/small-wind-guidebook#size>)

- Waste energy recovery property;
- Geothermal heat pump system property, which is equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure;
- Energy storage technology property (see below for definition);
- Qualified biogas property;
- Microgrid controllers property;
- Qualified investment credit facility; and
- Clean hydrogen production facility treated as energy property.

Energy Storage Technology Property Defined

Energy storage technologies placed in service after 2022 now qualify for the Energy Investment Tax Credit. This includes but is not limited to batteries, as long as the property has a nameplate capacity of not less than 5 kilowatt hours.

Modifications to Existing Storage Systems

Modifications to energy storage technology property with a capacity of less than 5 kilowatt hours to bring it up to a capacity of at least 5 kilowatt hours also qualifies for the credit, even if it was installed prior to 2022. However, the basis of the existing property prior to the modification will not be included in the calculation of the credit.

Thermal Energy Storage Property

Thermal energy storage property is property comprising a system that:

- Is directly connected to a heating, ventilation, or air conditioning system;
- Removes heat from, or adds heat to, a storage medium for subsequent use; and
- Provides energy for the heating or cooling of the interior of a residential or commercial building.

Thermal energy storage property doesn't include a swimming pool, combined heat and power system property, or a building or its structural components.

GENERAL QUALIFICATION CRITERIA FOR ENERGY PROPERTY

Construction or Original Use

Only energy property that the taxpayer constructs, reconstructs, erects, or acquires for original use, or that is acquired by the taxpayer if the original use of the property commences with the taxpayer, is eligible for the credit. (IRC §48(a)(3)(B))

Must be Depreciable or Amortizable Property

In order to qualify as "energy property," the property must be subject to the allowance for depreciation (or amortization in lieu of depreciation). (IRC §48(a)(3)(C))

No Credit for Lease Unless Capital Lease

The requirements that the property be subject to the allowance for depreciation removes leased solar energy property from the credit. However, a lease treated as a capital lease would qualify because the property would be subject to the allowance for depreciation.

Depreciable Life for Solar Property

Solar property falls under the 5-year property classification under IRC §168 (MACRS) and is bonus depreciation eligible. (CCA 201032038; IRC §168(e)(3)(B)(vi)(I))

Property must Meet Performance and Quality Standards

The energy property must meet quality performance standards (if any) that have been prescribed by the IRS and are in effect at the time of the acquisition of the property. (IRC §48(a)(3)(D)) The IRS works with the Department of Energy to develop standards that change as technology changes. Practitioners should advise their clients to verify that the property they seek to install meets all current government standards.

Amount of the Credit

The base amount of the Energy Investment Tax Credit is generally 6% of the basis of the energy project. (IRC §48(a)(2)(A)(i)(II)) Additional limits may also apply depending on the type of property involved.

The credit is increased five times and becomes a 30% “bonus credit rate” if:

- Construction of the facility began prior to January 30, 2023 (IRS Notice 2022-61);
- The project is small enough to be exempt from the wage and apprenticeship requirements (IRC §48(a)(9)(B)(i)); or
- Certain wage and apprenticeship requirements are met. (IRC §48(a)(9)(A)(i))

An “energy project” is a project consisting of one or more energy properties that are part of a single project. (IRC §48(a)(9)(A)(ii))

Additional amounts may also be claimed if the taxpayer meets the domestic content requirements or is in an energy community or low-income community (see page 5-65).

Additional Limits

The following properties have additional credit amount limits:

- **Qualified fuel cell property:** capped at \$1,500 for each 0.5 kilowatt of capacity; and
- **Microturbine property:** The base percentage for the credit is 2%, and the “bonus” percentage is 10%. In addition, the credit is capped at \$200 for each kilowatt of capacity.

Small Projects

If the facility upon which the energy property is constructed has a maximum net output of electrical or thermal energy of less than 1 megawatt, then the taxpayer can claim the bonus credit rate of 30% without having to meet the wage and apprenticeship requirements put in place by the Inflation Reduction Act. (IRC §48(a)(9)(B)(i))

The average home in the United States requires 1,223 watts of power. (www.forbes.com/home-improvement/home/how-many-watts-run-house) In other words, 1 megawatt of output is the equivalent of over 800 average homes.

Practice Pointer

The vast majority of solar projects, including those for most residential rental and even commercial buildings, are unlikely to be constructed on buildings whose electricity output is greater than 800 average homes. As such, most taxpayers can claim the 30% bonus credit rate without having to comply with the Inflation Reduction Act’s wage and apprenticeship requirements.

Wage and Apprenticeship Requirements

Projects that don’t qualify for the exceptions listed above must meet certain prevailing wage and apprenticeship requirements in order to qualify for the 30% bonus credit rate.

The IRS has issued final regulations related to the increased tax credit or deduction amounts for clean energy facilities and projects if taxpayers satisfy certain prevailing wage and registered apprenticeship requirements.

The final regulations include rules that:

- Require prevailing wage rates to be determined by the Department of Labor;
- Incentivize contemporaneous compliance with the wage and apprenticeship requirements;
- Implement recordkeeping requirements;
- Guarantee that taxpayers with projects covered by “qualifying project labor agreements” will not be penalized; and
- Clarify the apprenticeship requirements by defining what constitutes a request for qualified apprentices, what constitutes a response, and when the good faith effort exception applies.

The IRS has updated the following publications and FAQs:

 **Website**

Publication 5855, Prevailing Wage & Registered Apprenticeship Overview:

www.irs.gov/pub/irs-pdf/p5855.pdf

Publication 5983, Inflation Reduction Act Prevailing Wage and Apprenticeship Requirements:

www.irs.gov/pub/irs-pdf/p5983.pdf

FAQs:

www.irs.gov/credits-deductions/frequently-asked-questions-about-the-prevailing-wage-and-apprenticeship-under-the-inflation-reduction-act

The final regulations are available at:

 **Website**

www.federalregister.gov/public-inspection/2024-13331/increased-amounts-of-credit-or-deduction-for-satisfying-certain-prevailing-wage-and-registered

Prevailing Wages

Taxpayers satisfy the prevailing wage requirements by paying at least the prevailing wages for the geographic area and type(s) of construction applicable to the facility on which work is being performed, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics.

The prevailing wage rates are published by the Secretary of Labor at:

 **Website**

www.sam.gov

If the Secretary of Labor has not published a prevailing wage determination for the geographic area and type of construction for the facility on www.sam.gov (or if one or more labor classifications for the project are not listed), then the taxpayer must contact the Department of Labor Wage and Hour Division via e-mail and request the correct prevailing wage rate for the worker(s) at issue.

When e-mailing the Department of Labor Wage and Hour Division, the taxpayer must provide the following information to the department for each classification that is not listed:

- Type of facility;
- Facility location;
- Proposed labor classifications;
- Proposed prevailing wage rates;
- Job description and duties; and
- Any rationale for the proposed classifications.

The e-mail address is:



“Wages” includes amounts paid to all individuals performing services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or independent contractor for other federal tax purposes.

When calculating whether prevailing wages are paid, taxpayers include any *bona fide* fringe benefits defined under 29 CFR §5.2(p).

Apprenticeship Requirement

In order to satisfy the apprenticeship requirements, taxpayers must:

- Satisfy the apprenticeship labor hour requirements;
- Satisfy the apprenticeship participation requirements; and
- Comply with the same general bookkeeping requirements that apply to the prevailing wage requirement under IRC §6001 and Treas. Regs. §1.6001-1 et seq.

If a taxpayer cannot satisfy either the apprenticeship labor hour requirements or the participation requirements, then the taxpayer is deemed to have met the requirements if they meet the good faith effort exception. (IRC §45(b)(8)(D)(ii)) Under the good faith exception, the taxpayer must:

- Request qualified apprentices from a registered apprenticeship program, as defined in IRC §3131(e)(3)(B); and
- Either:
 - The request must have been denied (for purposes other than the taxpayer’s failure to meet the requirements of the apprenticeship program’s established standards); or
 - The registered apprenticeship program fails to respond to the taxpayer’s request within five business days from the date the registered apprenticeship program received the taxpayer’s request.

Under the apprenticeship labor hour requirement, the taxpayer must ensure that at least the applicable percentage of the total labor hours for the project is performed by qualified apprentices. The applicable percentages are:

- 12.5% for projects which begin in 2023; and
- 15% for projects that begin after December 31, 2023.

Under the apprenticeship participation requirement, each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with

respect to the facility for which an applicable credit or deduction is claimed must employ at least one qualified apprentice. (IRC §45(b)(8)(B))

Comment

Certain provisions of the Inflation Reduction Act, such as IRC §§45, 45Y, and 48, require prevailing wages to be maintained for any alterations or repairs on a facility for which enhanced credits were claimed for up to 10 years.

Additional Bonus Credits

Taxpayers can qualify for up to three bonus credit increases if certain conditions are met. These bonuses involve:

- Up to a 10% increase if certain domestic content requirements for steel, iron, and manufactured products are met (see IRC §45(b)(9) and IRS Notice 2023-38);
- Up to a 10% increase if the project is located in an energy community (e.g., a brownfield site, or certain areas with high unemployment rates if the area has significant tax revenues or employment related to the fossil fuel industry, and census tracts in which a coal mine has been closed); and
- Up to 20% for certain solar and wind facilities placed in service in connection with low-income communities.

Claiming the Energy Investment Tax Credit

The credit is calculated on Form 3468, Part VI, and then reported on Form 3800, Part III, line 4a as part of the general business credit. The Energy Investment Tax Credit can be claimed against AMT.

NEW CLEAN ELECTRICITY INVESTMENT CREDIT

Applicable to property placed in service after 2024 (including expansions and incremental production increases), the IRC §48 Energy Investment Tax Credit is replaced with a new IRC §48E Clean Electricity Investment Credit. (IRA '22 §13702) The IRS has issued proposed regulations regarding IRC §48E in REG-119283-23.

Only U.S. facilities for which the greenhouse gas emissions rate is less than zero qualify for the new credit. The IRS is directed to publish tables with greenhouse emissions rates for different categories of facilities.

Like the Energy Investment Tax Credit, the Clean Electricity Investment Credit:

- Is equal to 6% of the basis of the property (30% in cases of small facilities or taxpayers that meet the wage and apprenticeship requirements);
- Additional credit is available for facilities located in an energy community or low-income community and for facilities that qualify for a domestic content bonus credit;
- Credits are reduced for projects financed with tax-exempt bonds;
- The credit is subject to recapture if greenhouse emission standards are not met; and
- The credit can be treated as a tax payment by qualified entities or transferred to an unrelated taxpayer.

The amount of the credit is subject to phaseout beginning in 2032, or earlier if the Treasury Secretary determines that specified reductions of greenhouse gas emissions from the production of electricity in the U.S. have been met.

Taxpayers are ineligible for the credit if they claim or previously claimed other energy credits for the same facility, including, but not limited to, the IRC §45 Production Tax Credit, the IRC §48 Energy Investment Tax Credit, or the new IRC §45Y Clean Electricity Production Credit.

Proposed Regulations

The IRS has issued proposed regulations for the new energy credits enacted by the Inflation Reduction Act of 2022. For qualified facilities placed in service after 2024, taxpayers may claim either an IRC §45Y Clean Electricity Production Credit or an IRC §48E Clean Electricity Investment Credit. (REG-119283-23)

These credits generally replace the current IRC §45 Production Tax Credit and the IRC §48 Energy Investment Tax Credit (IRC §48 will continue to apply to geothermal heat pumps whose construction begins prior to 2035).

For the majority of our clients that are not in the energy production business, the credits claimed for solar, wind, or geothermal credits will not change dramatically under these new code and regulatory provisions. This is because solar, wind, and geothermal properties are automatically treated as generating zero or less greenhouse gas emissions. This means the amount of the credits and the criteria for claiming the increased credit amounts (e.g., a facility with under 1 megawatt output or meeting prevailing wage and apprenticeship requirements as well as the bonus credits for energy communities, etc.) remain the same.

Key Takeaways

Emissions standards: Certain facilities are deemed to have an emissions rate of zero or less, meaning that they automatically qualify for the credit without having to prove that they meet the zero emissions standard. These include wind, solar, geothermal, hydropower, nuclear, and waste energy recovery. (Prop. Treas. Regs. §§1.45Y-5(c)(2), 1.48E-5(a))

Only one credit per facility: The proposed regulations clarify that taxpayers that commence construction of these properties/facilities prior to January 1, 2025, but place the facilities in service after 2024 will be required to choose between the IRC §§45, 45Y, 48, and 48E credits. This is because the IRC §§45 and 48 credits generally apply to facilities whose construction begins prior to January 1, 2025, and the IRC §§45Y and 48E credits apply to facilities placed in service after 2024, but taxpayers are precluded from claiming more than one credit for any given facility.

Electricity for which production credit can be claimed: The IRC §§45Y and 48E credit can be claimed by a taxpayer that sells electricity produced at a qualified facility to an unrelated person, but the IRC §48E credit can also be claimed for electricity consumed or stored by the taxpayer if the qualified facility is equipped with a metering device owned and operated by an unrelated person. (Prop. Treas. Regs. §§1.45Y-1(b)(1)), 1.48E-4)

Interconnection property: The IRC §48E credit can be claimed for “interconnection property” for qualified facilities with a capacity of no more than 5 megawatts. Interconnection property is property needed to upgrade a transmission or distribution system to meet requirements imposed by a utility. (Prop. Treas. Regs. §1.48E-4(a)(2))

Additional capacity: Taxpayers will be able to claim the IRC §§45Y and 48E credits for new units that produce additional capacity. For purposes of the IRC §45Y credit, a new 10-year credit period will apply to the new unit or addition to capacity, whereas the IRC §48E credit is allowed only to the extent of the increased electricity produced attributable to the new unit or addition to capacity. (Prop. Treas. Regs. §§1.45Y-4(c)(1), 1.48E-4(b))

RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

The IRC §45 Renewable Electricity Production Tax Credit (aka the Production Tax Credit) is a per kilowatt-hour (kWh) tax credit for electricity generated by solar and other qualifying technologies for the first 10 years of a system's operation. The electricity must be sold to an unrelated buyer.

Comment

For the first four years after a qualified facility is placed in service, the general business credit tax liability limitation discussed on page 5-46 is calculated separately, and the credit may be claimed against both regular and AMT liabilities.

The Production Tax Credit was generally extended by the Inflation Reduction Act of 2022 for three years to apply to facilities that begin construction before January 1, 2025. (IRA '22 §13101; IRC §45) Facilities that begin construction after 2024 will likely qualify for the new IRC §45Y Clean Electricity Production Tax Credit.

Eligible Facilities

The Production Tax Credit is available for a range of renewable energy facilities, including:

- Solar and wind energy facilities;
- Closed-loop biomass facilities;
- Open-loop biomass facilities;
- Geothermal energy facilities;
- Landfill gas facilities;
- Trash facilities;
- Qualified hydropower facilities; and
- Marine and hydrokinetic renewable energy facilities.

Each type of facility must meet specific requirements to qualify for the Production Tax Credit. For example, wind energy facilities must have a nameplate capacity of at least 100 kilowatts, and closed-loop biomass facilities must use organic material planted exclusively for the purpose of being used at a qualified facility.

Credit Amounts

The Production Tax Credit is a per-kilowatt-hour (kWh) tax credit for electricity generated by qualified renewable energy facilities. For facilities placed in service after 2021, the "base" credit is reduced from 1.5 cents to 0.3 cents per kilowatt hours of electricity produced and is adjusted for inflation.

The credit amount varies depending on the type of facility and the year in which it was placed into service. As of 2023, the Production Tax Credit base rates for facilities placed in service after 2022 are as follows:

- \$0.055/kWh for solar, wind energy, closed-loop biomass, geothermal energy, qualified hydropower, marine and hydrokinetic renewable energy facilities; and
- \$0.03/kWh for open-loop biomass, landfill gas, and trash facilities. (IRC §45(a))

These rates are adjusted annually for inflation.

Like the Energy Investment Tax Credit, for facilities placed in service after 2021, the base credit is multiplied by five if:

- Construction of the facility began before January 29, 2023;
- The facility has a maximum net output of less than 1 megawatt; or
- The facility satisfies prevailing wage and apprenticeship requirements. (IRC §45(b)(6))

Credit bonuses are also available if the facility satisfies the domestic content test (10% bonus) or is located in an energy community (10%). (IRC §45(g)(9))

Comment

The exemption from the reduced rate for a facility that has a maximum net output of less than 1 megawatt may exempt many businesses from the reduction.

The credit is reduced for projects financed with tax-exempt bonds. (IRC §45(b)(3))

Curing Wage Requirement Failures

Unlike the Energy Investment Tax Credit, a taxpayer claiming the Production Tax Credit may cure the prevailing wage requirement and still claim the bonus credit rate in a taxable year if the taxpayer:

- Pays the worker the difference between the wages paid and the prevailing wage, plus interest (three times this sum if intentional disregard of the requirement); and
- Pays the Secretary of the Treasury \$5,000 (\$10,000 if intentional disregard of the requirement) per underpaid worker. (IRC §45(b)(7)(B))

These payments must be paid within 180 days of notification by the Secretary of the Treasury of the failure. If not, the taxpayer will be ineligible for the bonus credits.

Curing Apprenticeship Requirement Failures

A taxpayer may also “cure” the apprenticeship wage requirements by paying the Treasury Secretary a penalty equal to \$50 (\$500 if intentional) multiplied by the total labor hour requirements that were not met. (IRA '22 §13101(f); IRC §45(b)(8)(D)(i)(II)(bb))

Claiming the Credit

The Production Tax Credit is computed on Form 8835, Renewable Electricity Production Credit, and reported on Schedule K for partnerships and S corporations and on Form 3800, Part III, line 4e for all other taxpayers.

Investment Tax Credit Versus Production Tax Credit

As can be seen from the discussions above, taxpayers may be able to choose either the Investment Tax Credit or Production Tax Credit for many energy-related investments. This means taxpayers must choose which credit will provide them with the most bang for the buck.

The Investment Tax Credit is an upfront credit, while the Production Tax Credit is claimed over a 10-year period. But the credit amounts generated in the first year the credit is available may not be the determinative factor.

It's important to remember that given how the general business credit operates, it may not be advantageous for a taxpayer to receive a large credit upfront if they don't have the income to offset the credit or if they will lose out on claiming other credits if they generate a large upfront Investment Tax Credit.

As can be seen from the following chart, taxpayers only must make a choice between the two credits for projects involving solar and wind, municipal solid waste, geothermal, or tidal technologies and/or facilities.

Which Projects Qualify for Which Credit?		
Investment Tax Credit or Production Tax Credit	Investment Tax Credit	Production Tax Credit
<ul style="list-style-type: none"> Solar and wind technologies Municipal solid waste Geothermal (electric) Tidal 	<ul style="list-style-type: none"> Energy storage technologies Microgrid controllers Fuel cells Geothermal (heat pump and direct use) Combined heat and power Microturbines 	<ul style="list-style-type: none"> Biomass Landfill gas Hydroelectric Marine Hydrokinetic

The following table is a summary prepared by the U.S. Department of Energy, comparing the credit amounts of the Investment Tax Credit versus the Production Tax Credit.

Summary of Investment Tax Credit (ITC) and Production Tax Credit (PTC) Values Over Time

			Start of Construction						
			2006 to 2019	2020 to 2021	2022	2023 to 2033	The later of 2034 (or two years after applicable year ^a)	The later of 2035 (or three years after applicable year ^a)	The later of 2036 (or four years after applicable year ^a)
ITC	Full rate (if project meets labor requirements ^b)	Base Credit	30%	26%	30%	30%	22.5%	15%	0%
		Domestic Content Bonus				10%	7.5%	5%	0%
		Energy Community Bonus				10%	7.5%	5%	0%
	Base rate (if project does not meet labor requirements ^b)	Base Credit	30%	26%	6%	6%	4.5%	3%	0%
		Domestic Content Bonus				2%	1.5%	1%	0%
		Energy Community Bonus				2%	1.5%	1%	0%
Low-income bonus (1.8 GW/yr cap)	<5 MW projects in LMI communities or Indian land				10%	10%	10%	10%	
	Qualified low-income residential building project / Qualified low-income economic benefit project				20%	20%	20%	20%	
PTC for 10 years (\$2022)	Full rate (if project meets labor requirements ^b)	Base Credit			2.75 ¢	2.75 ¢	2.0 ¢	1.3 ¢	0.0 ¢
		Domestic Content Bonus				0.3 ¢	0.2 ¢	0.1 ¢	0.0 ¢
		Energy Community Bonus				0.3 ¢	0.2 ¢	0.1 ¢	0.0 ¢
	Base rate (if project does not meet labor requirements ^b)	Base Credit			0.55 ¢	0.55 ¢	0.4 ¢	0.3 ¢	0.0 ¢
		Domestic Content Bonus				0.1 ¢	0.0 ¢	0.0 ¢	0.0 ¢
		Energy Community Bonus				0.1 ¢	0.0 ¢	0.1 ¢	0.0 ¢

a "Applicable year" is defined as the later of (i) 2032 or (ii) the year the Treasury Secretary determines that there has been a 75% or more reduction in annual greenhouse gas emissions from the production of electricity in the United States as compared to the calendar year 2022.
 b "Labor requirements" entail certain prevailing wage and apprenticeship conditions being met.

For many of our clients, the big question will be whether to claim the Investment Tax Credit or the Production Tax Credit for solar systems that are being installed. The DOE provides the following guidance:

“The ITC is an upfront tax credit that does not vary by system performance, while the PTC can provide a more attractive cash flow, as the tax credits are earned over time. Whether to choose the ITC or the PTC depends largely on the cost of the project, the amount of sunlight available, and whether it is eligible for any bonus tax credits.

In general, large-scale photovoltaic (PV) projects will receive more value if they opt for the PTC in sunny places, while projects located in less sunny areas, that incur high installation costs, or that qualify for bonus tax credits, are more likely to benefit from the ITC.

Smaller-scale PV projects and concentrating solar-thermal power (CSP) projects generally receive more value utilizing the ITC, particularly if they can utilize a low-income bonus, which is not available with a PTC. However, as installed PV and CSP system costs reduce over time (or generate more electricity), the PTC may become more attractive for all sectors.”

Example of Investment Tax Credit and Production Tax Credit Comparisons

PowerUp, Inc. began construction of a solar energy system in 2023 and placed it in service in 2024. The 500-kW system costs \$1 million and has a capacity factor of 20% in the first year.

Below is a comparison of the Investment Tax Credit and Production Tax Credit with bonus depreciation factored in.

Investment Tax Credit calculation

The Investment Tax Credit is a maximum 30% so could generate a credit of \$300,000 if all requirements for the bonus credit are satisfied. This results in the property’s tax basis being reduced from \$1 million to \$850,000 (remember, for the Investment Tax Credit, the basis is only reduced by 50% of the credit claimed).

Because the property is placed in service in 2024, the bonus depreciation rate is 60%, resulting in \$510,000 in bonus depreciation ($\$850,000 \times 60\%$).

Solar property is depreciated over five years, so PowerUp would also be able claim an additional \$68,000 in depreciation each year over the five-year period ($(\$850,000 - \$510,000) \div 5$).

PowerUp would receive a \$121,380 tax reduction from the depreciation deductions in 2025 (21% tax rate \times \$578,000 in depreciation deductions).

Therefore, assuming the general business credit limits don’t apply, PowerUp can potentially receive up to \$421,380 in total reduction in tax liability for 2024.

(Continued)

Example of Investment Tax Credit and Production Tax Credit Comparisons (Continued)**Production Tax Credit calculation**

A 500-kW solar photovoltaic property that commenced construction in 2023 is eligible for a 2.75 cent per kWh Production Tax Credit for the first ten years of a project. A first-year capacity factor of 20% would mean it generates 876,000 kWh in Year 1 ($500 \text{ kW} \times 24 \text{ hours per day} \times 365 \text{ days per year} \times 20\%$).

Therefore, in Year 1 it generates \$24,090 in tax credits ($876,000 \times \0.026 per kWh). Because the business is claiming the Production Tax Credit instead of the Investment

Tax Credit, its depreciable basis for the system is not reduced, and therefore PowerUp

could claim \$600,000 in bonus depreciation, and the remaining \$400,000 would be depreciated over five years, resulting in an additional \$80,000 per-year depreciation deduction. The net impact of the depreciation deductions would result in a \$142,800 reduction in tax liability ($\$680,000 \times 21\%$).

Bottom line, PowerUp would receive a total reduction in tax liability equal to \$166,890 when the Production Tax Credit and depreciation deductions are combined.

CANNABIS

In late April 2024, the Department of Justice made a formal recommendation to President Biden to reclassify marijuana from a Schedule I category drug to a Schedule III category drug. On the federal level, this would recognize the medical use of marijuana (and allow research into the medical use of marijuana), but it would not legalize the use of marijuana for recreational use on the national level. This development could result in massive tax savings for marijuana businesses.

DEDUCTIONS COULD BE CLAIMED

Should the reclassification proposal be approved, significant tax relief would be available to licensed taxpayers engaged in the marijuana (aka cannabis) business in those states where it is legal. Under IRC §280E, taxpayers engaged in the marijuana industry are currently prohibited from claiming any deduction or credit on the federal return, even if the taxpayer's activities are legal in the state in which they are operating. That's because IRC §280E prohibits federal deductions or credits for taxpayers engaged in trafficking Schedule I and Schedule II controlled substances.

Should the White House approve marijuana's reclassification to a Schedule III category substance, the IRC §280E prohibition would no longer apply. This would be a huge boon for the marijuana industry, as licensed marijuana businesses would now be able to claim deductions and credits on their federal tax returns, including the IRC §162 business expense deductions such as rent and payroll, depreciation, and energy efficiency deductions and credits, to name just a few.

According to some industry reports, failure to be able to claim these deductions and credits has resulted in licensed marijuana businesses paying up to a 70% or greater effective tax rate.

However, remember that Schedule III drugs are still considered controlled substances, so only taxpayers licensed to sell marijuana would be able to claim these deductions and credits. Businesses that sell marijuana without a license would still be prohibited from claiming these deductions and remain subject to federal prosecution.

According to news reports, it could be at least several months before the reclassification may occur, if at all. We will keep you posted as to any developments. In the interim, you may want to encourage any clients engaged in the marijuana business to hold off incurring any discretionary expenses so they will be able to deduct or claim credits for these expenses should the reclassification be approved.

BANKING ISSUES

According to numerous news reports, it's unlikely that marijuana's reclassification to Schedule III will have any impact on the banking industry. Currently, marijuana businesses are unable to engage in banking activities because banks do not want to be involved in supporting any illegal activities. It's unclear that banks would want to take the risk of engaging with marijuana businesses without stronger legal and/or regulatory safeguards in place, even if the reclassification is approved. According to industry experts, marijuana businesses are looking to Congress to pass the SAFER Banking Act (S. 2860), which would allow banks to provide services to the cannabis industry in those states where it's legal.

COST OF GOODS SOLD

Under current law, although marijuana-related businesses cannot claim deductions or credits, they can write off costs of goods sold, such as direct material costs and indirect production costs. An IRS Chief Counsel Advice states that these businesses must compute COGS using the rules under IRC §471, rather than under IRC §263A. IRC §263A increased the types of costs that are inventoriable, compared to the rules under IRC §471. (CCA 201504011)

GROUP STUDY MATERIALS

A. Discussion Questions

1. In Private Letter Ruling (PLR 202406002), the IRS ruled that contributing shares of stock back to a corporation is a nontaxable event for the contributing shareholders, the corporation, and the noncontributing shareholders. Why would shareholders engage in such a transaction, and what are the tax consequences to consider?
2. The Tax Court in *Soroban Capital Partners, LP* ruled that limited partners may be subject to self-employment tax if they are “limited partners in name only.” Discuss how the functional analysis test helps determine if income qualifies for the limited partner exemption. How does this ruling build on earlier cases, and what implications does it have?
3. Discuss the differences between IRC §179 expensing and bonus depreciation. What factors might influence a taxpayer’s decision to use one over the other when claiming deductions for business assets?
4. The Qualified Commercial Clean Vehicle Credit under IRC §45W offers businesses a significant incentive to purchase clean vehicles. What are the key requirements for a vehicle to qualify for this credit, and how does it differ from the Clean Vehicle Credit under IRC §30D?
5. In *Henry v. Comm.*, the Tax Court ruled against taxpayers who intentionally deducted personal expenses as business expenses. What are the risks of commingling personal and business records, and what steps should taxpayers take to ensure proper recordkeeping for business deductions?
6. What is the General Business Credit (GBC), and how are limitations on its use determined? Provide an example of how these limitations might apply to a taxpayer.

B. Suggested Answers to Discussion Questions

1. Shareholders may choose to contribute shares back to a corporation for several strategic reasons. This can include making the corporation more attractive to potential buyers by reducing the number of outstanding shares, thereby increasing the value of shares held by remaining shareholders. Additionally, such contributions can improve corporate governance or strengthen shareholder incentive structures, aligning the interests of all parties involved.

From a tax perspective, the contribution of shares back to the corporation is treated as a nontaxable capital contribution under IRC §118(a). The contributing shareholders must allocate the basis of the surrendered shares to their remaining shares. Importantly, this transaction does not result in taxable income for noncontributing shareholders, as clarified in IRS regulations and court rulings, such as *Fink v. Comm.* Furthermore, gift tax rules do not apply because the transaction is considered to occur in the ordinary course of business.

While this ruling provides clarity on the tax treatment of such transactions, taxpayers must proceed with caution. Private Letter Rulings (PLRs) like this one apply only to the taxpayer requesting them and are not binding for others. Taxpayers considering similar transactions should consult with tax professionals to ensure compliance and avoid unintended consequences.

2. In *Soroban*, the IRS argued that the partners' distributive shares of partnership income should be subject to self-employment (SE) tax because the individuals were "limited partners in name only." The Tax Court rejected the partnership's claim that the limited partner exemption under IRC §1402(a)(13) applied solely because the partners were classified as "limited partners" under state law. Instead, the Court applied the functional analysis test, which examines the roles and functions performed by the partners to determine whether their income qualifies as investment income (exempt from SE tax) or is derived from services provided to the business (subject to SE tax).

The functional analysis test was first applied in *Renkemeyer, Campbell & Weaver, LLP*, where partners in a law firm LLC classified as a partnership were found ineligible for the limited partner exemption because their income resulted from legal services performed. In *Soroban*, the Tax Court extended the same test to state law limited partnerships, marking the first time the Court addressed whether limited partners in a traditional limited partnership must satisfy the functional analysis test to qualify for the SE tax exemption.

The ruling in *Soroban* has significant implications for limited partners. Being classified as a "limited partner" under state law is no longer sufficient to claim the SE tax exemption. Partnerships must assess their partners' actual roles and contributions to the business. Partners who provide significant services to the partnership may find that their distributive shares of income, in addition to guaranteed payments, are subject to SE tax. This ruling increases IRS scrutiny of limited partners' SE tax treatment.

3. The key differences between IRC §179 expensing and bonus depreciation include:
 - a. Applicability:
 - IRC §179 applies to specific types of property, such as HVAC systems, roofs, fire alarms, and security systems for nonresidential property. Bonus depreciation generally applies only to MACRS property with a recovery period of 20 years or less.
 - b. Limits:
 - IRC §179 has a deduction limit (\$1.22 million for 2024, \$1.25 million for 2025) and a phaseout threshold (\$3.05 million for 2024, \$3.13 million for 2025). Bonus depreciation has no such limit but phases down each year (60% in 2024, 40% in 2025).
 - c. Flexibility:
 - IRC §179 allows taxpayers to choose specific assets to expense, while bonus depreciation applies to an entire class of property unless the taxpayer elects out.

d. Income Constraints:

- The IRC §179 deduction is limited to the taxpayer's net income and cannot create a tax loss. Any unused deductions carry forward. In contrast, bonus depreciation can generate a loss that offsets other taxable income.

4. The Qualified Commercial Clean Vehicle Credit (IRC §45W) is available for businesses that purchase qualified clean vehicles for use in their trade or business. To qualify, the vehicle must:

- Be made by a qualified manufacturer that registers with the IRS,
- Be acquired for business use (not resale),
- Be powered by an electric, plug-in hybrid, or fuel cell system,
- Be subject to depreciation, and
- Meet the definition of a motor vehicle under the Clean Air Act or mobile machinery under IRC §4053(8).

The credit amount is the lesser of:

- a. 15% of the vehicle's basis (30% if the vehicle is not powered by a gas or diesel engine), or
- b. The incremental cost of the vehicle (the cost difference between the clean vehicle and a comparable gas or diesel vehicle).

The credit is capped at \$40,000 for vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds and \$7,500 for vehicles under 14,000 pounds.

Differences from the Clean Vehicle Credit (IRC §30D):

- a. No Critical Material or Battery Component Sourcing Rules: Vehicles under §45W do not need to meet sourcing requirements, unlike §30D.
- b. No MSRP or AGI Limitations: IRC §45W does not impose restrictions on the vehicle's price or the taxpayer's income level.
- c. Business Use Requirement: Vehicles under §45W must be used predominantly for business purposes, whereas §30D allows personal-use vehicles to qualify.
- d. Point of Sale: The §30D credit can be transferred to the dealer at the time of purchase starting in 2024, but §45W credits cannot.

The Qualified Commercial Clean Vehicle Credit provides businesses with a robust incentive to transition to cleaner vehicles without the limitations imposed by IRC §30D, making it particularly advantageous for businesses with heavier vehicles or higher-income taxpayers.

5. The *Henry v. Comm.* case highlighted the severe consequences of deducting personal expenses as business expenses. The taxpayers in this case failed to maintain adequate business records, relied only on credit card statements, and improperly characterized personal expenses as business deductions.

Risks of Commingling Expenses:

- a. Loss of Deductions: Personal expenses claimed as business deductions can be disallowed by the IRS, increasing tax liability.
- b. Increased Audit Risk: Poor recordkeeping and commingled expenses raise red flags during IRS audits.

- c. Penalties and Interest: The IRS may impose penalties for negligence or fraud, along with interest on unpaid taxes.

Steps for Proper Recordkeeping:

- a. Separate Bank Accounts: Maintain distinct business and personal bank accounts and credit cards.
 - b. Document Expenses: Keep receipts, invoices, and detailed records for each business expense.
 - c. Use Accounting Software: Accounting software helps track business expenses.
 - d. Follow the Rules: Taxpayers should consult IRS guidelines to ensure deductions are valid and properly substantiated.
6. The General Business Credit (GBC) is a nonrefundable credit composed of over 30 different business credits, including credits for research, energy efficiency, and hiring incentives. Each credit is computed separately and then aggregated on Form 3800. Credits that are not fully used can generally be carried back one year or carried forward for 20 years.

- a. GBC Limitation Calculation:

For noncorporate taxpayers, the GBC is limited to the excess of the taxpayer's net income tax over the greater of:

1. The tentative minimum tax (TMT), or
2. 25% of the taxpayer's net regular tax liability in excess of \$25,000.

Key points for noncorporate taxpayers:

- If subject to the AMT, the taxpayer generally cannot claim the GBC, except for certain credits.
 - The GBC cannot reduce more than 75% of the taxpayer's net income tax.
 - Taxpayers with a regular tax liability of \$25,000 or less are not limited, unless they are subject to the AMT.
- b. For corporate taxpayers, the amount of the credit is limited to 25% of net income tax in excess of \$25,000.

Example:

Planetarius, Inc., a C corporation, has \$210,000 in net income tax and \$150,000 in tentative minimum tax. It has a total of \$175,000 in GBC credits. The GBC limitation is calculated as follows:

- Regular tax liability exceeding \$25,000: $\$210,000 - \$25,000 = \$185,000$.
- Limitation: $25\% \text{ of } \$185,000 = \$46,250$.

Thus, Planetarius can claim \$163,750 of its GBC ($\$210,000 - \$46,250$). The unused \$11,250 can be carried back and forward.

This limitation ensures that taxpayers with significant credits cannot entirely eliminate their tax liability while allowing unused credits to be preserved for future years.

GLOSSARY OF KEY TERMS

BOI—Beneficial Ownership Information

BOSS—Beneficial Ownership Secure System

BTA—Business Tax Account

CTA—Corporate Transparency Act

DO—Designated Official

ERC—Employee Retention Credit

ERC-VDP—ERC Voluntary Disclosure Programs

FAVR—Fixed and Variable Rate

FinCEN—Financial Crimes Enforcement Network

FMV—Fair Market Value

GBC—General Business Credit

IVES—Income Verification Express Service

PLR—Private Letter Ruling

R&E—Research or Experimental

SRE—Specified Research or Experimental

TMT—Tentative Minimum Tax

TPP—Third-Party Payers

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

1. According to Ian Redpath, Revenue Procedure 2025-8 addresses research or experimental (R&E) expense accounting method changes effective for which tax year?
 - A. 2022
 - B. 2023
 - C. 2024
 - D. 2025

2. According to Ian Redpath, the IRS's enforcement initiative Fact Sheet 2024-32 emphasizes tax recoveries from all of the following **except**:
 - A. Criminal investigations of tax fraud
 - B. Crackdown on wealthy individuals with unpaid taxes
 - C. Cases attributable to whistleblower information
 - D. Identity theft victims

3. According to Ian Redpath, what key benefit does the IRS's new Business Tax Account (BTA) offer to corporations?
 - A. Automatic approval of tax refunds
 - B. Access to online tools for tax management
 - C. Waiver of late filing penalties
 - D. Automatic extension of filing deadlines

4. According to Ian Redpath, what is identified as the primary factor contributing to the decline in charitable giving?
 - A. Higher standard deductions
 - B. Inflation
 - C. Lack of public interest in charitable organizations
 - D. Economic instability

5. According to Ian Redpath, which recent court ruling temporarily halts nationwide enforcement of the Corporate Transparency Act?
 - A. *Texas Top Cop Shop, Inc. v. Garland*
 - B. *Firestone v. Yellen*
 - C. *Small Business Taxpayer Alliance v. Treasury*
 - D. *National Small Business United v. Yellen*

Continued on next page

6. According to Stan Pollock, what did the IRS conclude in Private Letter Ruling (PLR) 202406002 regarding a corporation redeeming shares from only some shareholders?
 - A. The transaction is taxable for nonredeeming shareholders.
 - B. The transaction increases the contributing shareholders' basis in remaining shares.
 - C. The transaction qualifies for a deduction for contributing shareholders.
 - D. The gift tax applies to the nonredeeming shareholders' benefit.

7. According to Stan Pollock, what key issue did the Tax Court address in *Soroban Capital Partners v. Commissioner* regarding limited partnerships?
 - A. Whether guaranteed payments to limited partners are taxable
 - B. Whether limited partners' distributive income is subject to self-employment tax
 - C. Whether the partnership can deduct non-cash distributions
 - D. Whether all partnership income qualifies as investment income

8. According to Stan Pollock, how must specified research or experimental (SRE) expenditures incurred after 2021 be treated under IRC §174?
 - A. Deducted immediately in the year incurred
 - B. Allocated entirely to the cost of goods sold
 - C. Deferred until the research is completed
 - D. Capitalized and amortized over five or 15 years

9. According to Stan Pollock, which cost can marijuana businesses currently deduct under IRC §280E?
 - A. Payroll expenses
 - B. Advertising costs
 - C. Rent for retail locations
 - D. Cost of goods sold

10. According to Stan Pollock, what is the bonus depreciation rate for qualified property placed in service in 2024?
 - A. 40%
 - B. 60%
 - C. 80%
 - D. 100%

Continued on next page

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11. According to Stan Pollock, what is the standard mileage rate for business use in 2024?
- A. 64 cents
 - B. 65.5 cents
 - C. 67 cents
 - D. 68.5 cents
12. According to Stan Pollock, what is the 2024 maximum Qualified Commercial Clean Vehicle Credit for vehicles with a gross vehicle weight under 14,000 pounds?
- A. \$5,000
 - B. \$7,500
 - C. \$10,000
 - D. \$40,000
13. According to Stan Pollock, which business expense is 100% deductible in 2024?
- A. Holiday parties for employees
 - B. Meals provided during tax season
 - C. Client meals during business meetings
 - D. Employee meals during business travel
14. According to Stan Pollock, what form is used to report and summarize the General Business Credit (GBC)?
- A. Form 1040
 - B. Form 1120
 - C. Form 3800
 - D. Form 4562
15. According to Stan Pollock, what is the carryforward period for unused General Business Credits (GBCs)?
- A. 5 years
 - B. 10 years
 - C. 20 years
 - D. Indefinitely

SUBSCRIBER SURVEY

Evaluation Form

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

How would you rate the topics covered in the January 2025 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Business Tax Update	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Which segments of the January 2025 issue of **CPE Network® Tax Report** did you like the most, and why?

Which segments of the January 2025 issue of **CPE Network® Tax Report** did you like the least, and why?

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

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

How would you rate the effectiveness of the speakers in the January 2025 CPE Network® Tax Report? Rate each speaker on a scale of 1-5 (5=highest):

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	<input type="text"/>	<input type="text"/>	<input type="text"/>
Stan Pollock	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

Were the stated learning objectives met? Yes No _____

If applicable, were prerequisite requirements appropriate? Yes No _____

Were program materials accurate? Yes No _____

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

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

Were the supplemental reading materials satisfactory? Yes No _____

Were the discussion questions and answers satisfactory? Yes No _____

Were the audio and visual materials effective? Yes No _____

Specific Comments: _____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

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

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), Checkpoint Learning Network will not be the sponsor and will not issue certificates. In this scenario, your firm will become the sponsor and must issue its own certificates of completion. This section outlines the sponsor's responsibilities that you must adhere to if you choose not to follow the requirements for the delivery methods.
- **Getting Help:** Refer to this section to get your questions answered.

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

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

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

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

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“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:

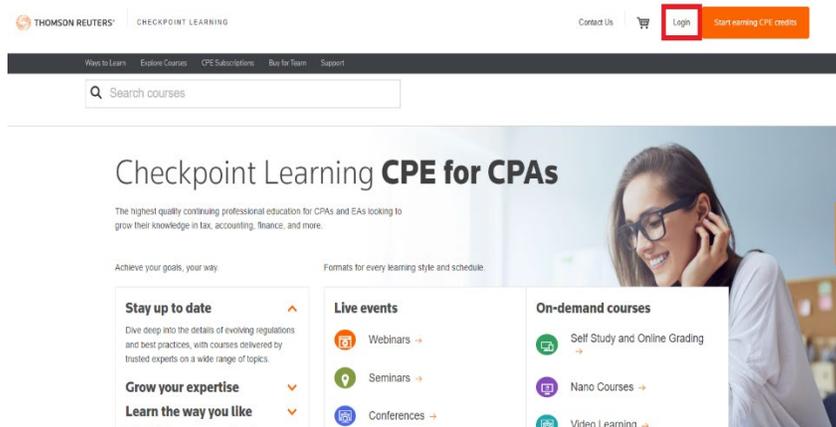
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

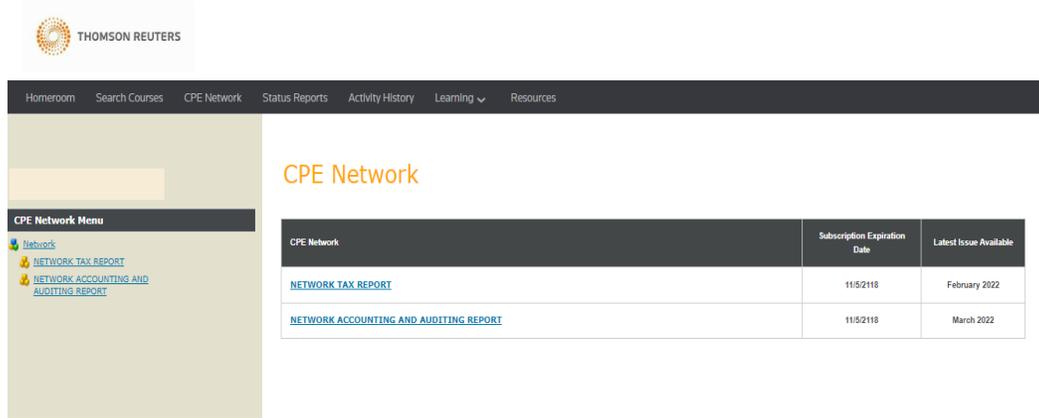
Self-Study—Online

Follow these simple steps to use the online program:

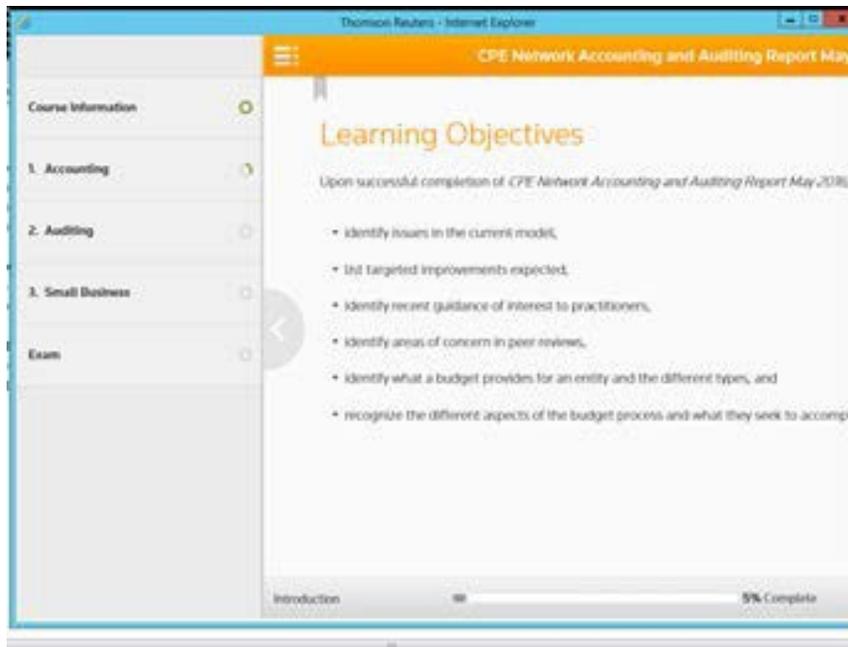
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

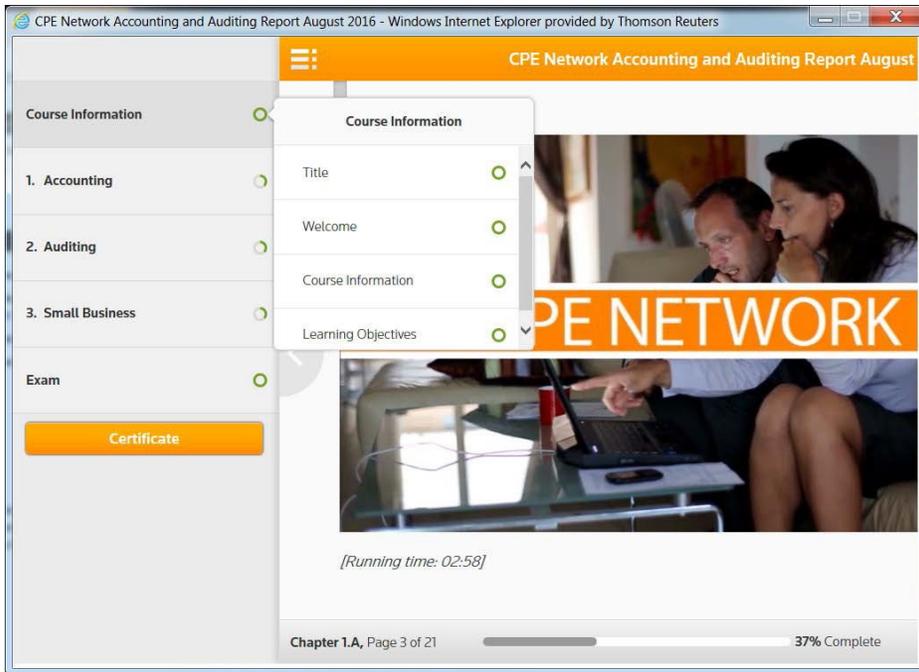


The Chapter Menu is in the gray bar at the left of your screen:



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

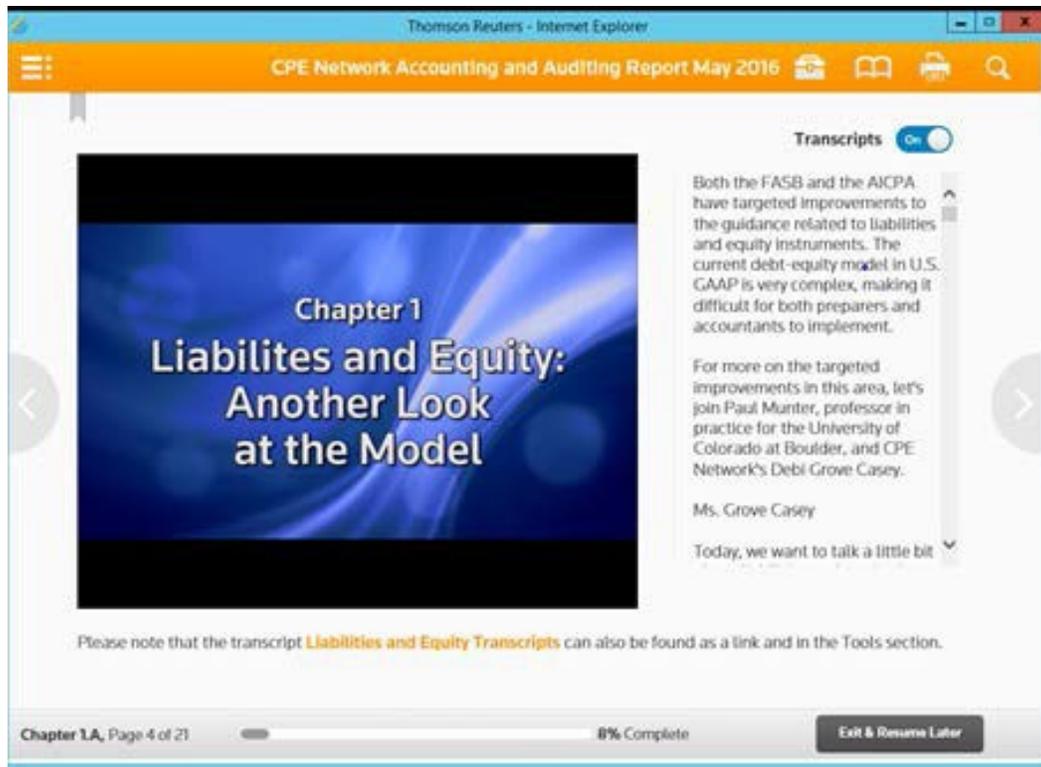
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



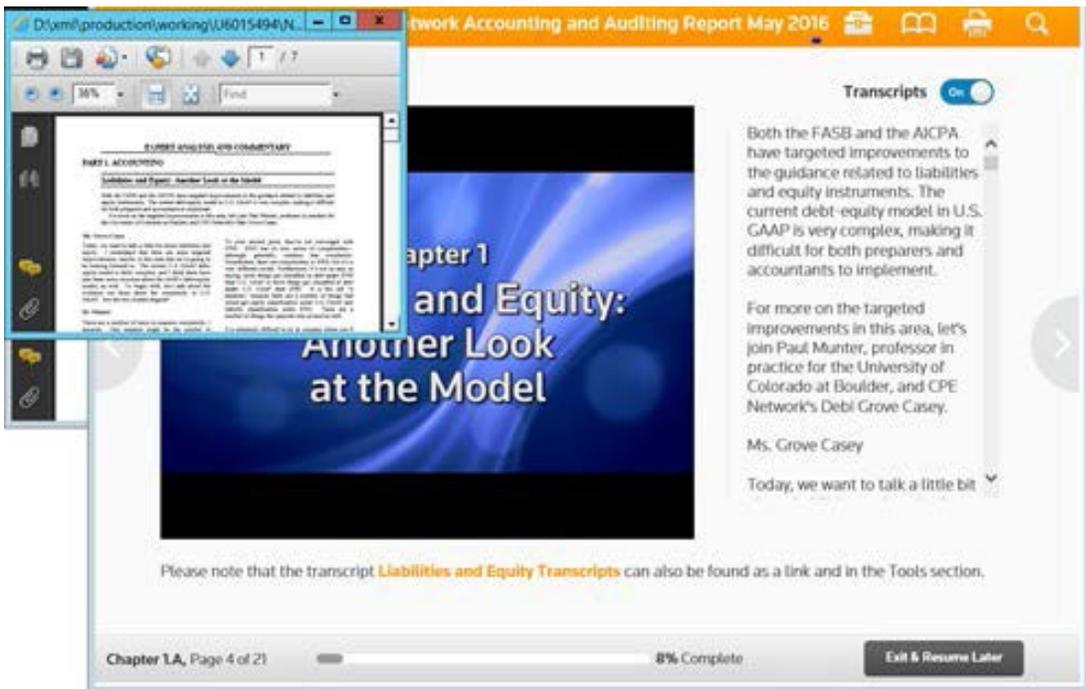
- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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



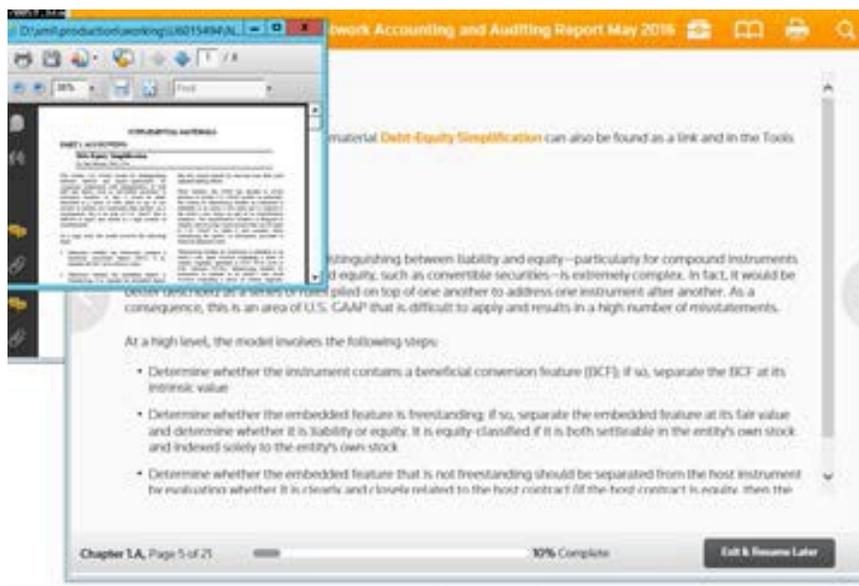
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.



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 problems related to the segment.

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

The screenshot displays a digital document interface for a CPE report. At the top, an orange header bar contains the text "CPE Network Accounting and Auditing Report July 2016" and several icons: a hamburger menu, a printer, a book, a document, and a search icon. Below the header, the main content area is titled "Suggested Answers to Discussion Problems". It contains three numbered items:

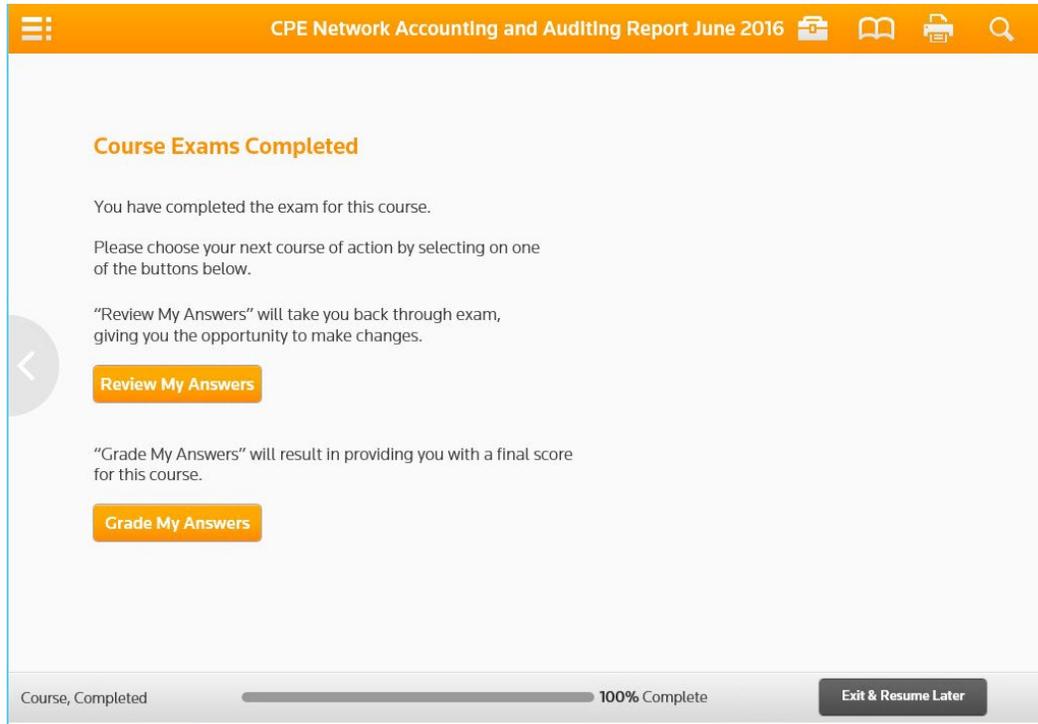
1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:
 - Held-to-maturity
 - Trading
 - Available-for-sale

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

At the bottom of the page, a grey footer bar shows "Chapter 3.A, Page 20 of 20" on the left, a progress indicator at "100% Complete" in the center, and an "Exit & Resume Later" button on the right.

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.

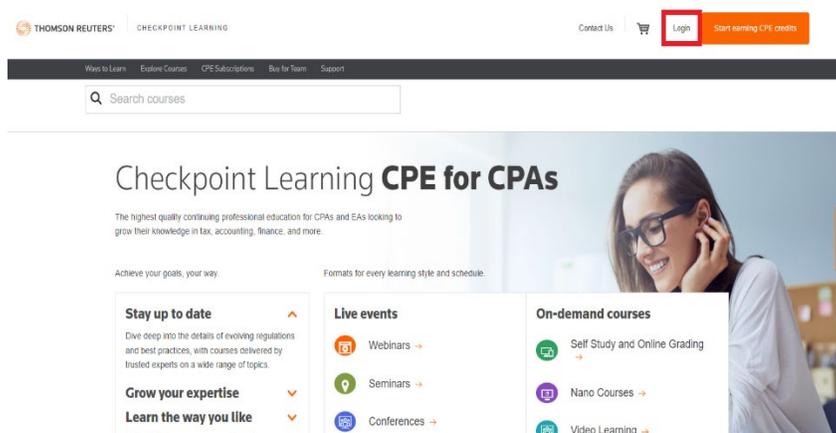
Print

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**.

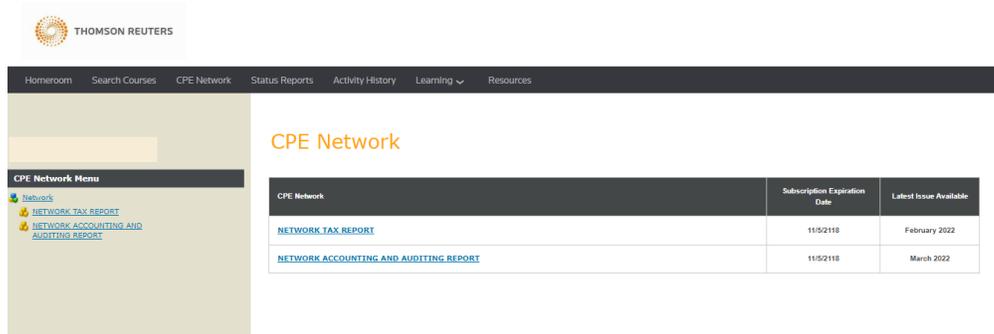
Transitioning From DVDs

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

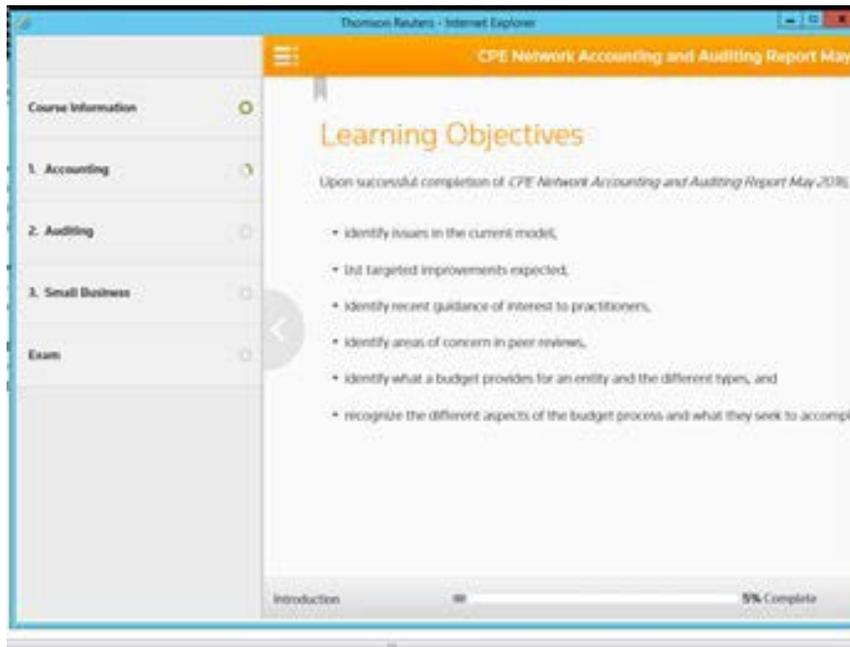
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login”).



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

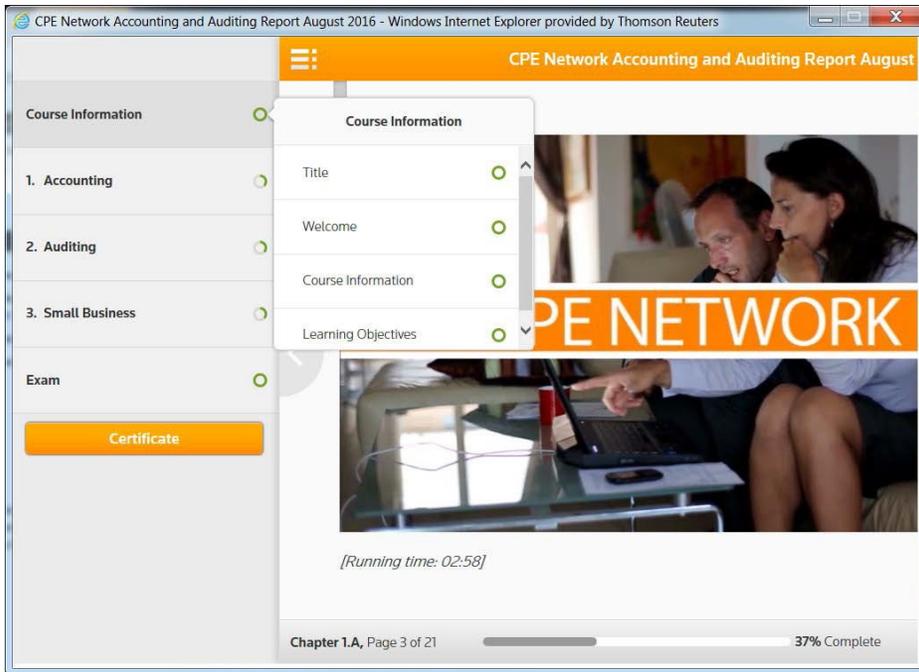


The Chapter Menu is in the gray bar at the left of your screen:



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