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CPE NETWORK TAX REPORT

FEBRUARY 2023 VOLUME 36, ISSUE 2

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Topics for future editions may include:

- Cryptocurrency
- Taxation of High-Income Individuals

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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Taxation is one of the most dynamic areas of accounting. It changes daily with decisions from the various courts, the issuances from the IRS, and sometimes from Congressional legislation. While not all changes affect all practitioners and/or their clients, it is important to have an awareness of the changes that occur. This segment highlights many of the recent changes and issues, whether involving Congress, the IRS, or the Courts.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including analyzing the 2022 change regarding digital assets, assessing reporting requirements regarding Form 1099-K, and assessing the basic deduction reporting requirements for conservation easement contributions.
[*Running time 32:09*]

PART 2. INDIVIDUAL TAXATION

The long-awaited SECURE 2.0 (Act) was included in the Omnibus Appropriations Act signed into law on December 29, 2022. The Act provides a myriad of changes to existing law that require consideration for both participants and employers. Practitioners need to be aware of the changes to properly advise clients.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues related to the SECURE 2.0 Act, including assessing the timing of various parts of the Act, determining how the Act changes required beginning dates (RBDs), and applying automatic enrollment under the Act.
[*Running time 38:53*]

PART 3. BUSINESS TAXATION

A partner or member of a limited liability company taxed as a partnership has three separate accounting accounts that reflect different aspects of their respective ownership interests—inside basis, outside basis, and capital account. Each of these accounts is used for a different purpose and may or may not be different amounts. It is quite common to assume that the capital account is simply the outside basis plus liabilities, which may or may not be true. Improperly calculating the capital account may result in unexpected negative tax results to one or more partners.

Learning Objectives:

Upon completion of this segment, the user should be able to analyze issues related to partners' capital accounts, including distinguishing between inside basis, outside basis, and capital accounts; determining how capital accounts are maintained; applying the capital account rules to allocations.
[*Running time 35:26*]

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 in developing, writing, and presenting professional CPE programs. In addition to his active tax practice, he serves as Chairman of the Department of Accounting and Director of Graduate Accounting Programs as well as Professor of Taxation and Forensic Accounting at Canisius College in Buffalo.

Robert C. Lickwar, CPA is a tax partner with the accounting firm of UHY LLP in Farmington, Connecticut. Mr. Lickwar has more than 30 years' experience in public practice and has worked exclusively with privately held businesses and owners to provide compliance services and sophisticated tax planning strategies, including like-kind exchanges, tax-efficient workouts and restructurings, reorganizations, and estate planning services. He is also a nationally recognized presenter on many federal, state, and local tax issues.

Gregory Urban, CPA, CVA is a partner in the Tax Advisory Group of Dopkins and Company, LLP, in Buffalo, New York, and serves on the firm's Leadership, Executive, and Recruiting Committees. Greg's almost 20 years of experience in public accounting includes several years with KPMG, LLP. He specializes in partnership taxation, oversees tax compliance and consulting engagements, and co-chairs the firm's business valuation practice.

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Learning Objectives (Refer to executive summary)	
Program Description (Refer to executive summary)	
Instructional delivery method	Group Live
Recommended CPE credit	3.0 Credits
Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
	• Basic Governmental professional experience
Advance preparation	None required
Course registration and, where applicable, attendance requirements (1)	

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

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, we begin with a discussion about the IRS having revised the Form 1040 instructions regarding digital assets. Unfortunately, the IRS has added more confusion and complexity with this revision.

Let's join Ian.

A. Instructions for Form 1040 Regarding Digital Assets

Mr. Redpath

Hi, everybody, welcome to the program. I'm Ian Redpath, and this is the segment that we go over things that have happened, updating things that have come from the IRS, some court cases, any legislation; so, this is kind of the potpourri as we go through a number of things that have happened.

The first thing is on digital assets, and we're going to have a program on this. We previously had a program on digital assets, and there's been a significant change. I brought this up in one of our previous Experts' Forums at the end of last year and noted that it's going to be very important that you look at potential change when the draft 2022 form for 1040 came out. They made a change by changing the question from "virtual assets" to "digital assets." We now have the instructions, so that change stayed. The instructions are somewhat troublesome and I'm not sure that we've been up to date on what types of things we need to look at, and so we're going to do a full program on this. The change is not just cosmetic as it might seem at first glance. Digital assets, according to the instructions that have just come out—and there was hope that the instructions would clarify what the IRS was trying to get to with this—but the instructions, honestly, don't provide a whole lot of clarity other than clarity in a manner that there's an example which is something that we were assuming would *not* be considered a digital asset for this purpose.

So, what is the change? Well, digital assets, they're a representation of value that are recorded on a cryptographically secure ledger or similar technology. Now, right away, they throw this out. For example, digital assets include nonfungible tokens and virtual currency, such as cryptocurrency and stablecoins. Then it says, as it did in the past, if a particular asset has the characteristic of a digital asset, it will be treated as one for federal tax purposes. Well, "digital asset" is a term that came from the reporting requirements that came out with the Infrastructure Act. You have to check "Yes," but it leaves a broad definition, so it kind of follows that definition and then says, "and whatever else the Secretary might provide." Well, we don't have anything, specifically, that the Secretary is providing. It expands the question, "Did you receive digital assets as payment for property or services?" Not just, "Did you acquire it?" Were they received as a result of a reward or an award? Mining, staking, or similar activities? Were they the result of a hard fork? Did you dispose of any digital assets in exchange for property or services? Did you dispose of a digital asset in exchange for another digital asset? Did you sell digital assets? Did you transfer them for a fee without any consideration as a bona fide gift? [You're] going to have to report that on your 1040. Or did you otherwise dispose of a financial interest? And it defines a "financial interest" in the instructions here. It defines the owner of a financial interest in a digital asset if you're the owner of record of the digital asset or have an ownership stake in an account that holds one or more digital assets, and that could also be ownership in a wallet.

So, it says there are certain transactions that won't require a "Yes" answer, and that's holding it in a wallet or account. Transferring a digital asset from one wallet (an account that you control) to another one that you control is not a reporting requirement. Purchasing digital assets using U.S. or other fiat currency (or real currency) through the use of platforms like PayPal or Venmo. One thing it does say is, do not leave this question blank. How to report them? Remember, they're generally considered property and will go on the 8949 and Schedule D; but if you received it for compensation, obviously then, that has to be reported as compensation. It might be on a W-2. It might be on a 1099. It might be on a Schedule C. Did you receive payment for inventory? It's going to track whatever that is.

Some of the differences here are in the definition—this definition that is including digital assets, that includes nonfungible tokens. What's an example of a nonfungible token? A big one recently: [former] President Trump came out with his Trump superhero cards. Those are really digital cards. That's an example of a nonfungible token. You can own artwork. You don't buy the artwork itself; you own an interest in the artwork through a digital representation. It can be a song; it can be a gif. So, there are all sorts of things that constitute nonfungible tokens. But under certain definitions that the IRS has come out with, the characteristics—and they've changed the characteristics in the instructions by just referring to the characteristics; but yet, the IRS has had different definitions of what the characteristics are, and we'll go [into] that more in depth.

The IRS does refer for more information to www.irs.gov/virtualcurrencyfaqs, so you might want to look at those. But there seems to be some confusion on the guidance that the IRS has been giving us over the years as to what the actual definition is. The definition, if you refer to the Infrastructure Act, that definition is pretty nominal and leaves it open to whatever the Secretary might say, but we don't have any regulations that the Secretary has said. So again, we're going to do a full program on that. Obviously, it's a big deal. It's something that you should be aware of. I mentioned the possibility—and that you should be tracking this—that there could be some changes coming. Certainly, changes and questions that we may be asking in our client organizers, for example, relative to what our clients may hold and what they may have done with their virtual currency due to this kind of expanded definition of what used to be virtual currency, now expanding it to digital assets, and then expanding the question to include even things like a gift.

B. IR-2022-227; Announcement 2023-02

Well, we know that the reporting requirement [in] Section 6045 and 6045A—and by the way, that's where those definitions are of digital currency—those provisions were requiring broker reporting. The IRS has said, in Announcement 2023-2, they're going to delay the information reporting for the digital assets under 6045, and the requirement of potentially filing under the $10,000 rule under 6045A. Those are going to be delayed until they issue final regulations which, we don't know when that will be, but the reporting will be delayed. Now, a broker may report gross proceeds and basis under the prior law and the prior regulations that were in effect as of December 23, 2022. Again, if you get a statement, look at it closely. Determining the basis has been something that's been a real difficult hang-up here, so be very careful on that.

C. IRS Notice 2023-10, Fact Sheet 2022-41; IR-2022-230

Notice 2023-10 and Fact Sheet 2022-41, the IRS updates the 1099-K FAQs. They have delayed the implementation of that $600 threshold. Boy, what a mess! Again, we've talked about that on prior programs, but really, what exactly was it going to be? Well, the IRS announced that the calendar year 2022 is going to be considered a transition year. So, the reporting, that $600 [threshold], will no longer apply for 2022. However, it does apply under the old rule, which was 1099-Ks required to report transactions where gross payments exceed $20,000 and there are more than 200 transactions.

Now, the FAQs that I mentioned kind of clear up a little bit of the reporting issues. But it does, for example say, how would you report a personal loss? It uses the example of someone who buys tickets and then sells the tickets; and that selling of the tickets, the gain would be reported as a capital gain using 8949 and Schedule D. But what if there's a loss? Well, it says if you have a loss on something like that, [where] you would report it is on Schedule 1, Part I, Line 8z, as Other Income—report the amount of income—and put "Form 1099-K personal item sold at a loss," and then put the amount in. Now, you can't take a personal loss, right? So, what you're going to have to do then is, as a Part II, Line 24z, Other Adjustments, [put] "Form 1099-K personal item sold at a loss," and then put the same amount as the proceeds. In other words, you can't show the personal loss, but you put in that amount to reduce it to zero. Don't report it on Schedule D. Report it as other income and offset it with an other deduction, if you, in fact, got a Form 1099-K that, for example, was an item that had a loss.

The IRS also says—and this is something that will happen a lot, I think, when they reduce it, is if you believe the information on a 1099-K is incorrect or was issued in error, you should first contact the filer—and that would appear in the upper left-hand corner of the form. You can also contact the payment entity whose name and phone number are also shown on the left side of the form. If they will not correct it, then, again—let's say, for example, it was a gift—what you would do is you would report it as income, other income, and then offset it and make sure that you list the other income as "1099-K received in error." Then the offsetting adjustment, "1099-K received in error," and then offset the income. Don't *not* report it because the computer is going to kick it out and you're going to get a notice. You may get a CP2000, for example, [saying] you haven't reported this income, that they did get a 1099-K. So, 1099-Ks are still being issued, obviously, under the old rules. A lot of people are involved in that type of an industry where they are getting the 1099-K.

So, they suspended the $600 threshold for another year. You may get some at that threshold, but the old rules still apply. The IRS and the FAQs have provided some good guidance as to how to report this.

D. SECURE 2.0

[Under] the Consolidated Appropriations Act, we finally got the long-awaited SECURE 2.0. The Bill has a lot of interesting provisions relative to retirement that would affect our clients, and we're going to do a program on that. My colleague and friend, Bob Lickwar, and I are doing a program on that to kind of highlight the provisions of SECURE 2.0. So, I refer you to the program, and we'll go over the highlights of that.

In the rest of the Consolidated Appropriations Act, there are very little tax-related issues in there; but certainly SECURE 2.0, related to retirement accounts, it affects the RMDs, when you have to take them, it allows for greater access to retirement accounts. There are all sorts of provisions in there that will be things that we're going to have to know—the bad news, good news, whatever way we want to look at it. Most of the provisions do not apply for 2022, so we may get clients coming in asking us, "Well, what do I get to do now? I heard about this SECURE 2.0," or "I heard about retirement advantages." Most of them don't kick in until 2023, some in 2024 and even beyond; but be knowledgeable because you're going to get the questions, and you want to be able to talk to the client about tax planning going forward. If you have clients, there may be changes that have to be made to take advantage. For example, does the plan have the ability to provide for a Roth? You may have to change to provide for this new savings provision. So, there are changes to employer accounts or employer plans that also have to be considered as you look at this.

E. New Qualified Clean Vehicles

The IRS has said on their website, "Manufacturers and models for new qualified clean vehicles purchased in 2023 [or] after." The IRS goes on to provide a list of vehicles—here's the problem—that *potentially* qualify for the clean vehicle credit. It is manufacturers Audi, Ford, Nissan, Rivian, Stellantis (which is Chrysler Jeep), Tesla, Volkswagen, Volvo. Now, again, it only applies to vehicles purchased after 2022, so in 2023. The IRS says the list isn't complete. They're going to continue to update that list. Again, it's on their website, so it's easy for them to update it. They do point out, though, that just because it's on the list doesn't mean you're going to qualify. You have to be careful here. Why? Maybe warn our clients. They still have to undergo the final assembly in North America; so, just because a vehicle is listed doesn't mean the vehicle your client purchases was assembled in North America and meets that requirement.

The other thing is it lists vehicles. For example, Tesla Model Y Long Range, the five-seat variant, it's on the list. What's the problem? Remember that the MSRP is

$55,000. That's the limit to take the credit. Well, this Tesla, the model's MSRP we're being told is going to start at $60,000. So, it's on the list; but it wouldn't qualify because of the cost, unless they're going to change the costing on that vehicle. One of the things that the IRS does say is, if you want to determine if it meets the assembly requirements, you can do that through the VIN number. The VIN number will give you a lot of information, so you can check the VIN and you can check the MSRP online. You can find out where it was assembled through the VIN number and the MSRP online.

This is something we want to at least tell our clients in advance if they're thinking about getting a vehicle—a clean vehicle, as they're called—that qualifies; because the last thing you want is for them to come and then you find out, no, that doesn't qualify, it wasn't assembled in North America, or the cost is too high. You could have gotten something slightly cheaper, and it would have qualified. So, hopefully, the dealers are going to be providing them good information on this, but we'll wait and see.

The IRS has not released the regulations on mineral and battery content, which is part of the Act, but they will. They say that they're in the process of doing that.

[The IRS] released Fact Sheet 2022-42, which is FAQs on clean vehicles.

In addition, in Notice 2023-9, the IRS issued a notice regarding the commercial clean vehicle credit, and they indicated again that they are going to be issuing regulations and coming up with proposed regs first.

F. Notice 2023-3, 2023-3 IRB

Now we have Notice 2023-3, and this is the standard mileage rates. The IRS has issued the standard mileage rates, and they've gone up: 65.5 cents per mile for business mileage; charitable kind of stayed the same at 14 cents; medical, moving (if you qualify, limited moving of mostly military), 22 cents per mile. Now, the other thing to keep in mind, and this is missed a lot, is, built into that mileage rate is depreciation. So, to determine, when you sell or dispose of the asset, what the basis is, you're supposed to be keeping track of that mileage. So, the mileage, how do you reduce your basis? Well, it changes every year, but of the 65.5 [cents], 28 cents per mile is depreciation. So, your business miles times 28 cents a mile, that's how much you have to reduce your basis by for 2023.

The IRS also mentions, and this is somewhat interesting, they keep reminding that miscellaneous itemized, unreimbursed employee expenses, you can't take them. Production of income mileage—can't take it. So, just keep that in mind. Apparently, people are doing it still, and the IRS has warned that you don't get that mileage. Miscellaneous itemized are suspended until 2026—miscellaneous itemized, unreimbursed employee expenses, and production of income. So, that mileage is not going to be deductible for 2023. Also, if you are using the fixed and variable rate allowance plan, the standard automobile cost cannot exceed $60,800; and that applies for cars, trucks, and vans. Notice 2022-3 is superseded by this Notice.

G. Rev. Proc. 2023-11, 2023-3 IRB

We also have Rev. Proc. 2023-11; and in this, the IRS has announced that it's updated guidance for accounting method changes for research and experimental costs. This is simply to try to make it easier and encourage compliance with the Tax Cuts and Jobs Act; and again, it makes it much easier. Now, you may have already read Rev. Proc. 2023-8. This Rev. Proc. 2023-11—they changed their mind quickly here, didn't they?—it supersedes that. It modifies it and supersedes Rev. Proc. 2023-8, so Rev. Proc. 2023-11 is the updated guidance for that.

H. Notice 2023-7, 2023-3 IRB; IR-2022-229

In Notice 2023-7, the IRS issued a notice saying that it's going to issue proposed regs and gave some guidance relative to corporate AMT.

I. Notice 2023-2, 2023-3 IRB; IR-2022-228

In addition, [in] Notice 2023-2, they intend to issue proposed regs on the 1% repurchase excise tax; and this guidance will be reliance until the IRS comes out with further guidance.

J. *Kenneth M. Brooks, et ux. v. Commissioner* TC Memo 2022-122

We have an interesting case, *Kenneth Brooks, et ux. v. Commissioner*, it's a Tax Court memo case. A charitable contribution—this was a conservation easement, lots of stuff going on with those. We know we've talked about those in many [programs], but this was an interesting one because they had a conservation easement. This was actually a carryover of the amount to another year; and the IRS came in, and the IRS said, "You know what? We are not questioning that you made the conservation easement contribution. What we are questioning is, you didn't satisfy Section 170(f)(8)'s requirement to include a statement addressing whether you received any goods or services in consideration of the contribution." What? Well, I made a donation of a conservation easement. The IRS said, "Yes, but you have a requirement. Did you include a statement addressing whether you, as the donor, did the donee provide any goods or services?" The taxpayer argued and said, "Well, the deed says it's a *donation;* it also uses the word *herein*; so basically, this is all it is, it's just a donation."

The IRS argued, and the Court agreed. They said the deed did not include a merger or entire agreement. This is all of our agreements. "If it had had some language like that," the Court said, "we could have agreed that you didn't get anything because all of the agreement shows up in the deed." They said there was no such thing. There were no documents in the record that the IRS—or, I'll say the Court here—could argue or could be at least interpreted to mean that they didn't receive any goods or services in return. So, the IRS was taking a really hardline view on this, and the Tax Court said, "You know, what? The word *donation* doesn't mean you didn't get goods and services back. The *herein* doesn't mean that there wasn't some outside agreement that you received something. Therefore, you don't meet the requirement that the donee verify that you did not receive any goods or services for the contribution."

That is really kind of a major issue—something that I'm sure that we could talk about falling through the cracks. [It is] just another reason why we have to be so careful with conservation easements, and again, this one failing. This was a carryover of the conservation easement, failing because even though they had all the other paperwork, they didn't have an acknowledgement from the donee organization that they didn't provide any goods and services to the taxpayer in return for this. The arguments that the deed said it was a donation herein set forth, since they didn't use specific language [such as] this includes all of the agreements or merges all of the agreements (called a merger statement), they didn't have anything like that. We don't know if there were outside agreements because you don't limit it to this. Therefore, sorry, you don't get the deduction. Kind of a draconian answer to what appears to be, even if it was an error, a minor error; but certainly, they didn't agree with the argument.

K. *Luis A. Castro, et al. v. Commissioner* TC Memo 2022-120, 2022

Now, we have another case which is *Luis A. Castro, et al. v. Commissioner*. It's a Tax Court memo case. Interesting case here, because the taxpayer argued that the Code Section 6751(b)'s written supervisory approval as to an accuracy-related substantial understatement penalty, that they didn't have the appropriate approval. So, they later changed, and the supervisor later executed a civil penalty approval form that revised the amount of the initial accuracy-related penalties asserted in the RAR—the revenue agent's report. The Tax Court said, "No, wait, it was sufficient that the supervisor signed the 30-day letter, which included the RAR, before the revenue agent provided it to the taxpayer." [The] supervisor signed it, imposing penalties; it was then provided to the taxpayer.

Later, it was realized that there were mistakes in the RAR that were revisions, then. The taxpayers said, "Well, since they made a claim and they made changes, then the fact that they signed it, they didn't really approve the penalties." The [Court] said, "No, they signed it. That 30-day letter was an approving document. Sorry!" They did get approval for the penalties even though it was later changed.

Well, a lot of things have happened, as usual. I hope you'll join me for other programs. As I mentioned, we'll have a program on the SECURE Act coming up, and a program on what's going on with these digital assets. Thank you for joining me today. I know we're heading into the deep part of tax season as we speak; so, I wish you all luck during the tax season. Please take some time to relax a little bit if you can, and please be safe. Thank you for joining me, and I hope to see you on our next program. Thank you.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. Instructions for Form 1040 Regarding Digital Assets

For 2022, the IRS made some major changes, adding additional complexity and confusion. There is a marginal heading of: Digital Assets. The language is substantially revised to:

> "At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?"

Part (a) is expanded and refers to receiving "digital assets," whether it is by a reward, award, or compensation (such as wages) rather than just acquire. The new definition is to require taxpayers to report what would be a taxable transaction. Meanwhile, Part (b) is designed to ensnare nearly any relinquishment of the "digital assets," whether by selling it (capital gain), exchanging it (various potential tax implication depending on the nature of the transaction), or gifting it (which could result in a Form 709 filing). The Instructions provide that if a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal income tax purposes. There is no further explanation of what those are.

The term "digital assets" comes from the Infrastructure Act. Section 6045(g)(3)(D) defines a "digital asset" as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary." Thus, for a more definitive explanation, we must await upcoming regulations.

The 2022 Instructions refer to the "characteristics of digital assets" without a definition. Likewise, the IRS website does not provide any characteristics. The IRS provides conflicting characteristics of "virtual currency." Notice 2014-21 says it is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In Rev. Rul. 2019-24 and the FAQs, the IRS uses "and," not "and/or," meaning all three must be present. No characteristics are provided in the Instructions or the updated website on digital assets for 2022. For example, Nonfungible Tokens (NFTs) do 'not appear to be a unit of account but are a store of value. Rev. Rul. 2019-24 requires an asset to be all three, so it is not a virtual currency and, presumably, not a digital asset. However, NFTs are listed in both the Instructions and the updated website as "digital assets."

B. IR-2022-227; Announcement 2023-02

The IRS has announced it will postpone the Infrastructure Act's brokers' digital asset reporting. It will not require brokers to furnish additional information with respect to dispositions of digital assets under §6045 or issue statements under §6045A. Thus, there will be no filings for transfers of digital assets under §6045A until the IRS issues final regulations. Thus, the original reporting date of returns or statements required to be filed or furnished after December 31, 2023, is postponed indefinitely. Until such time, a broker may report gross proceeds and basis as required under existing law and regulations as of December 23, 2022. Likewise, a broker may furnish statements on transfers of covered securities under §6045A as required under existing law and regulations as of the same date.

C. IRS Notice 2023-10, Fact Sheet 2022-41; IR-2022-230

The IRS announced it will postpone the Form 1099-K reporting changes for third-party settlement organizations until returns due in 2023 and after. The §6050W(e) threshold of $20,000 on 200 or more transactions will continue to apply, rather than the $600. The IRS also updated its FAQs on Form 1099-K, Payment Card and Third-Party Network Transactions, to reflect its recent guidance that it will be postponing the implementation of the recently enacted $600 threshold rule.

The FAQs show taxpayers how to report transactions showing on Form 1099-K and how to report income that might be different from the amount shown on the form. It also explains how a taxpayer should reflect a 1099-K on their tax return if they disagree with the information reported.

Example: In a single online transaction on an online marketplace, Jane sold two sets of four tickets (which were bought for personal use) to two sporting events for $800 and $200, respectively. Jane received a Form 1099-K. She had purchased the tickets for $125 each several weeks before selling them. The IRS says to report the gain and loss separately because the loss on the second set of tickets— a loss on a personal use asset—cannot offset the gain on the first set of tickets.

The $550 gain from the sale of one set of tickets ($800 sales price – $250 purchase price = $550 gain) must be reported as short-term gain on Form 8949 and Schedule D.

The $50 loss transaction from the other set of tickets ($200 sales price – $250 purchase price = $50 loss) should be reported as follows. On Form 1040:

- Schedule 1, Part I – Line 8z, Other Income. List type and amount: "Form 1099-K Personal Item Sold at a Loss… $200" to show the proceeds from the sale reported on the Form 1099-K, and

- Part II – Line 24z, Other Adjustments. List type and amount: "Form 1099-K Personal Item Sold at a Loss… $200" to show the amount of the purchase price that offsets the reported proceeds.

If there is a disagreement with the amounts reported, the IRS indicates that the recipient should contact the filer, whose name and contact information appears in the upper left corner on the front of the form or, in the alternative, contact the payment settlement entity whose name and phone number are shown in the lower left side of the form. If there is still a disagreement, then the error should be reported on Form 1040:

- Schedule 1, Part I, Additional Income, Line 8z, Other Income, with an offsetting entry in

- Part II, Adjustments to Income, Line 24z, Other Adjustments.

Example: Caroline received $800 from a friend reimbursing her for a football game ticket. She received a Form 1099-K reporting this as gross proceeds. It should be reported as follows:

- Schedule 1 should reflect the following: Form 1040, Schedule 1, Part I – Line 8z, Other Income. List type and amount: "Form 1099-K Received in Error…. $800" to show the proceeds reported on the Form 1099-K, and

- Part II – Line 24z, Other Adjustments. List type and amount: "Form 1099-K Received in Error…. $800" to offset the proceeds reported in error. Not reporting this adjustment could result in Caroline improperly reporting gain on the reimbursement.

D. SECURE 2.0

The omnibus (Consolidated Appropriations Act, 2023) has been signed into law. The long-awaited SECURE 2.0 was a part of this bill. It contains few other tax provisions.

E. New Qualified Clean Vehicles

The IRS has published a list of cars that are potentially eligible for the 2023 clean vehicle credit. The list includes cars from manufacturers such as Audi, Ford, Nissan, Rivian, Stellantis (Chrysler Jeep), Tesla, Volkswagen, and Volvo. The list applies to cars purchased after 2022 and is not a final list. The IRS notes that just because a vehicle is listed does not mean it will automatically be eligible for the credit (so it is a "maybe" eligible list). The mere fact that a car appears on the list does not necessarily mean that the car is eligible for the credit. The IRS points out that the car must also have undergone final assembly in North

America, and the car's manufacturer's suggested retail price (MSRP) must not exceed $80,000 for vans, sport utility vehicles, and pickup trucks, or $55,000 for other vehicles. For example, some cars on the list are expected to have an MSRP that exceeds $55,000. Tesla has, since this listing, reduced pricing on many of its models.

To see if a vehicle meets the assembly requirements, check its Vehicle Identification Number (VIN). A car's MSRP can be found online. In addition, the IRS has not yet released regulations on the mineral and battery component requirements of the clean vehicle credit. Cars that are on the list now might not qualify after those regulations are released.

The IRS has released frequently asked questions (FAQs) about clean vehicle credits for new, previously owned, and commercial clean vehicles. They are on the IRS website.

The IRS announced that it plans to issue proposed regulations that will provide guidance for the various definitions that are necessary to satisfy the many requirements for obtaining a §30D credit. The overall parameters of these terms are set out in this guidance with the exception of the critical mineral and battery component requirements. Those will be set forth and identified separately.

The IRS has issued a notice regarding the §45W commercial clean vehicle credit for vehicles purchased and placed in service during the tax year 2023. The IRS has reviewed the incremental cost for all street vehicles in calendar year 2023. That analysis shows that the incremental cost of all street vehicles, other than compact car PHEVs, that have a gross vehicle weight rating of less than 14,000 pounds, will be greater than $7,500 in calendar year 2023. Thus, the incremental cost will not limit the available credit amount for street vehicles that have a gross vehicle weight rating of less than 14,000 pounds and are placed in service in calendar year 2023.

For compact car plug-in electric hybrids for which the incremental cost was calculated to be less than $7,500, the Treasury Department and the IRS will accept, for vehicles placed in service during calendar year 2023, a taxpayer's use, in calculating the credit amount, of the incremental cost published by the Department of Energy.

F. Notice 2023-3, 2023-3 IRB

The IRS released optional standard mileage rates for 2023. The rates are:

- business (65.5¢ per mile),
- charitable (14¢ per mile), or
- medical/moving (22¢ per mile for either).

For purposes of determining basis, the reduction for depreciation will be 28¢ per mile under the business standard mileage rate.

For the allowance under a fixed and variable rate allowance plan, standard automobile cost may not exceed $60,800 for cars, trucks, and vans.

The IRS further reminded taxpayers that miscellaneous itemized deductions are suspended after the TCJA, so the standard mileage rate 'cannot be used to deduct unreimbursed employee travel expenses or other production of income expenses under §212. Also, remember that moving expenses are very limited after the TCJA [§217(g)].

G. Rev. Proc. 2023-11, 2023-3 IRB

The IRS announced that it is providing updated guidelines for accounting method changes for specified research or experimental expenditures. This guidance is meant to encourage compliance with the TCJA changes. Note that it modifies and supersedes Rev. Proc. 2023-8, 2023-3 IRB.

H. Notice 2023-7, 2023-3 IRB; IR-2022-229

The IRS intends to issue proposed regulations addressing the application of the new 15% corporate alternative minimum tax (CAMT). The notice also provides interim guidance regarding certain matters to be addressed by the forthcoming proposed regulations. In the meantime, this notice may be relied on until the issuance of the proposed regulations.

In addition, the IRS intends to issue additional interim guidance to address other CAMT issues prior to the issuance of the proposed regulations. The further guidance is expected to address, among other things, issues related to the treatment under the CAMT of items that are marked to market for financial statement purposes (such as life insurance company separate account assets and certain financial products), the treatment of certain items reported in other comprehensive income (OCI), and the treatment of embedded derivatives arising from certain reinsurance contracts. The IRS says that the additional interim guidance will be intended to help avoid substantial unintended adverse consequences to the insurance and other industries.

I. Notice 2023-2, 2023-3 IRB; IR-2022-228

The IRS intends to issue proposed regulations addressing the application of the new 1% excise tax on stock repurchases by a covered corporation under §4501. The notice describes various rules and procedures the IRS intends to include in those regulations. Until the issuance of the proposed regulations, taxpayers may rely on the rules described in the notice. The notice describes (1) certain operating rules for purposes of the excise tax, including rules setting forth an exclusive list of transactions that are repurchases, and rules for determining the fair market value of stock repurchased in such transactions, that the IRS intends to include in the forthcoming proposed regulations; (2) the anticipated rules for reporting and paying any liability for the excise tax; and (3) the anticipated applicability date for the forthcoming proposed regulations.

J. *Kenneth M. Brooks, et ux. v. Commissioner* TC Memo 2022-122

The Tax Court upheld the IRS in denying married taxpayers' carryover charitable deductions for a conservation easement donation to a county-qualified organization for failure to satisfy the §170(f)(8) requirement to include a statement addressing whether the donee organization provided any goods or services in consideration for contribution—not a quid pro quo. The easement deed did 'not include a merger or "entire agreement" clause, and there were no other documents in record qualifying as such a statement. The taxpayers' argument that the deed was sufficient if taken as a whole because it used the words "donation" and "herein" failed, because that donation wording did 'not necessarily mean no consideration was given and that "herein" did 'not necessarily mean *exclusively* herein. The Court noted that even if they met that requirement, the deductions would still fail due to their failure to meet the requirements under Reg. §§1.170A-14(g)(5)(i) and 1.170A-13(c).

K. *Luis A. Castro, et al. v. Commissioner* TC Memo 2022-120, 2022

The Tax Court upheld the IRS's position that it satisfied §6751(b)'s written supervisory approval requirement regarding accuracy-related substantial understatement penalties asserted against married taxpayers. Although the supervisor later executed a civil penalty approval form revising the amounts of accuracy-related penalties asserted in the revenue agent's report (RAR), the Court found that the IRS met the requirement because the supervisor had signed the 30-day letter, which included the RAR, before the revenue agent provided it to the taxpayers. The taxpayers' arguments that the alleged mistakes in the RAR that resulted in the revisions showed that the supervisor did 'not view the 30-day letter as an "approving document" were unavailing.

GROUP STUDY MATERIALS

A. Discussion Problems

Your clients, Pedro and Paulina, are married and will file a joint return.

1) They have heavily invested in nonfungible tokens (NFTs). For prior tax years, you have not asked about NFTs. They are confused as to why you are asking now. What can you tell them?

2) Paulina had purchased two tickets to a concert for $200 each. It is Pedro's favorite group, and she planned to surprise him with the tickets. Unfortunately, Pedro had to go out of town for work and ' was unable to attend. Paulina sold the tickets through an online site for $120. She received a Form 1099-K reporting the $120 proceeds. How is this reported?

3) They are considering making a qualified conservation easement contribution in 2023. Their attorney has prepared a proposed easement deed. In reviewing the deed, you notice there is nothing indicating if there is a quid pro quo, and there is no "merger" clause. What advice do you have for them?

Required:

Discuss the issues fairly presented by the above facts.

B. Suggested Answers to Discussion Problems

1) The IRS changed the question on the 2022 Form 1040 to reference "digital assets" rather than "virtual currency." The Form 1040 instructions refer to the definition from the Infrastructure Act, but we have no further guidance from the IRS. The instructions say that if it has the characteristics of digital assets, it will be considered a digital asset—but no characteristics are provided in any guidance. In referencing guidance for the definition of virtual assets, there is conflicting guidance from the IRS. However, in the instructions and on its revised website, the IRS has specifically mentioned NFTs as digital assets. The question on the front of the 2022 Form 1040must be answered "Yes" and the transactions, as always, reported. Generally, they are property transactions.

2) The expanded reporting for Form 1099-K has been postponed. However, if Pedro and Paulina received a Form 1099-K reporting the $120 proceeds, they will have to report it. The tickets are personal use assets and, therefore, no loss is allowed. However, they also do 'not have income. Report it as follows:

    - Schedule 1 should reflect the following: Form 1040, Schedule 1, Part I – Line 8z, Other Income. List type and amount: "Form 1099-K Received in Error… $120" to show the proceeds reported on the Form 1099-K, and

    - Part II – Line 24z, Other Adjustments. List type and amount: "Form 1099-K Received in Error… $120" to offset the proceeds reported in error. Not reporting this adjustment could result in improperly reporting gain on the reimbursement.

3) The proposed deed, in itself, is not sufficient. While there are many requirements that must be specifically met in the language, there must be a statement that no goods or services were provided in consideration for the contribution, or it will fail. Care must be taken to meet all the requirements of a conservation easement contribution and the general rules such as the no quid pro quo.

PART 2. INDIVIDUAL TAXATION

SECURE 2.0

In late December, President Biden signed into law a giant omnibus budget bill. Buried within that bill was the Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022, also known as SECURE 2.0. Ian Redpath and Bob Lickwar discuss several of the key provisions in SECURE 2.0 that impact individuals, small businesses, and retirement plans and planning.

Let's join Ian and Bob as they discuss SECURE 2.0.

Mr. Redpath

Bob, welcome to the program.

Mr. Lickwar

Hi, Ian. Thanks, and great to be here.

Mr. Redpath

Yes, it's always great to have you because we have some legislation that I'm thinking we've been talking about for a long time coming, and it's finally here. Unfortunately, for a lot of the provisions here, we can use that same term—it's a long time coming.

Mr. Lickwar

Yes, about 18 months' worth, right? We started hearing about SECURE 18 to 24 months ago, and it took a budget bill to get it passed. So, I guess, better late than never.

Mr. Redpath

Right. My disappointment is the same disappointment I have with a lot of things we're doing these days in tax. Like the Tax Cuts and Jobs Act, we put that in and so what do we do? "Oh, well, it's all going to sunset in 2026." Then, we put in the things like the infrastructure bill or the Inflation Reduction Act, and we put provisions in there that [don't] take effect till 2025 or 2026. And unfortunately, the SECURE Act, I think, is another example of what I like to call budgetary tricks. So, they have a good idea; but for budgetary reasons, to make it look certain ways, they put these dates that sometimes are way into the future. I know they're doing it as a budgetary trick, but I was hoping that SECURE 2.0 would be more straightforward. Like, "Okay, for 2022 or 2023, this is what you have;" and in my opinion, I don't think a lot of that happened.

Mr. Lickwar

Yes, there certainly are some staggered effective dates in here. From an overall perspective, Ian, if I had to summarize this bill, I would say there are a lot of good provisions for saving in here if you want to take advantage of them. That's really going to be the issue. Are people going to take advantage? But, by the same token, I agree. Some of the staggered effective dates make you scratch your head a little bit; because we know we're getting to a point in the U.S. where people have not done as good of a job as they should be at saving. You need to accelerate that because, potentially, there are issues with social security down the road, and social security is still the big safety net when most people retire. So, you'd think that they would expedite the process here a little bit; but for whatever reason, they decide to kick it down the road again a little bit—at least out a year or two here and there. But that being said, Ian, as I mentioned, for our clients who are looking to take advantage, there are some really beneficial rules in here.

Mr. Redpath

Yes, and I think that the point here is, even though it's really not applicable to 2022, per se, and the tax season that we're in, we are going to get questions. People are going to read about it, and they're going to say, "Hey, what does this mean? What can I do? When can I do it?" There is a lot of planning that can be done. I look at planning from two sides: planning from the side of the employee who might be our client, but also, I'm sure we have clients that are employers. A lot of the things I think we're going to talk about today, you have to look at the plans. There may be needs to amend plans in order to take advantage of a lot of these changes that have come about.

Mr. Lickwar

Yes, I remember the good old days, Ian, when we used to help clients with their plan administration and their testing and assisting with setup (we couldn't draft the documents—I'm not an attorney—you could have), and prepare the [Form] 5500s; and now we're at the point where you almost don't want to do that anymore, Ian. The springing up of all of the pension companies has really been something. That was business that CPAs used to take on. Accountants don't take it on anymore because it's really gotten too complicated when you had to amend your plan every year, and it pushed out another year, and you have a year to implement a procedure or a rule that has been in effect for 10 years. It just got to be too much, and the accountants got out of the business. But you still need to, at least esoterically, know what the rules are because you probably are going to get asked about it.

Mr. Redpath

Right, and maybe one of the questions you're going to have to ask is, "What does the plan provide? Get me a copy of the plan summary (for example) so I know. I can't advise you unless I know what options are available in your employer plan." From an employee perspective, you're going to want to know what's there, what can I recommend that we do? And obviously, from an employer standpoint, at least making them aware that, "Hey, these are things that you may want to consider because you know your employees are going to be asking about it when they read it on the Internet."

Mr. Lickwar

Correct.

Mr. Redpath

Let's start right in with some of the kind of major issues that people are going to deal with. And I think we have catch-up rules that are different for 401(k)s and for IRAs. You know that, "Okay, I'm age 50 or older, I can make that catch up," and you know $6,500 in 2022, $7,500 in 2023, in addition to your regular. The regular for 401(k) is $20,500 for 2022 and $22,500 for 2023 (again, indexed for inflation). So, what are going to be the changes here?

Mr. Lickwar

Well, the big change, Ian, is that—again, acknowledging that people may not have saved all they should be saving for retirement—is that beginning at age 60 and beginning in 2025, you're going to be up to a $10,000 catch up for those 401(k) plans, or 150% of the inflation-adjusted $6,500 or $7,500 number, whichever is greater. So, it'll take a couple of years which, again, begs the question, why wouldn't you push this provision as people get closer and closer to retirement? I think in a couple of years, this will be a good idea. Will it make a big dent on anybody's financial future in their retirement plan savings? That's to be determined, but at least it's a little bit more of an opportunity to defer to the 401(k) plan. Again, we can be up to $10,000 or 150% of what the regular contribution was, so we'll see where that number is. Right now, that number would be roughly $11,250, I believe, if you're looking at $7,500 × 150%. But again, that's out a couple of years from now—2025.

Mr. Redpath

Yes, and there's another limit on there, which is it's only ages 60 to 63.

Mr. Lickwar

Right.

Mr. Redpath

It's a catch up, but the additional amount is only for people 60 to 63, which I thought was an interesting provision.

Mr. Lickwar

Yes, it's strange since people are working to 67, 68 years old, and so you're missing 64, 65 preliminarily, but then you're missing some of those extra working years. Again, you just scratch your head and say, "Why?"

Mr. Redpath

Here's another provision that I think we have to look [at], does your plan provide for them? There's this $145,000, which will be indexed for inflation, on the catch-up amounts. So, what happens with that? If your income exceeds $145,000, you can still make a catch up, but there's a catch to your catch up.

Mr. Lickwar

Yes, it has to go to a Roth provision in the 401(k) plan, Ian; and of course, plans aren't required to offer Roths. There's nothing in here that I read that says that you're going to have to offer a Roth. Maybe you will, so that people can make catch ups. But I'm a little bit apprehensive here, Ian, because a lot of my clients would love to take advantage of this provision, but they're in a 37% tax bracket right now, and maybe when they retire, they're at 24%. So, wouldn't they like that deduction now because they'll pay a lower tax rate when they eventually start taking out money for their retirement at age 84 (or whatever they advance the number to)? I'm being a little facetious. We'll talk about the new RMDs later. But yes, it's a little bit of a strange provision, Ian. You actually caught that when we were talking about that—I missed that one the first time through. You'll have to do it to a Roth if your income is over $145,000.

Mr. Redpath

The other thing is, again, if you're the employer not having a Roth, your employees are going to say, "What do you mean I can't take advantage of this? We have to change the plan." So, now there's a cost to the employer to make sure that they have a Roth provision in that 401(k).

Mr. Lickwar

Right, and I think a lot of people have already added it, Ian; but certainly, I have clients who don't have a Roth provision in their plan.

Mr. Redpath

Now the IRAs. There's a different rule now for IRAs as far as the catch up. So, what's going on with that?

Mr. Lickwar

Currently, Ian, of course, when we provide our workers with matching contributions, it needs to be made to a traditional. But with respect to the IRAs, we're looking at moving those up for inflation beginning in 2024. So, we're at $6,000 for 2022 in catch ups, we're at $6,500 in 2023, but we're going to bump those up for inflation, I think in $100 increments there, too. Again, it's kind of disconnected from the 401(k) match provisions; and it doesn't seem to make a lot of sense if you're trying to spur on a little more retirement savings. But as you mentioned, Ian, there is a budget impact here, obviously. I would think, however, that in many cases, many of these contributions are going to be those that are traditional nondeductibles; because I'm thinking about these provisions, saying, "Ian, I'm 55 years old. I'm probably covered by a plan at work. I probably make too much to put into a traditional deductible IRA." So, again, it's a good idea to do the traditional nondeductible in certain cases, particularly when you can do a backdoor Roth conversion. Those become problematic if you have a SEP plan or what have you; but, again, why they're disconnected just makes me scratch my head.

Mr. Redpath

Yes, so you want to scratch your head some more? We'll talk about RMDs.

Mr. Lickwar

Yes.

Mr. Redpath

Here's the reality, at least in my opinion n. Maybe it's just me, but I'm not sitting calculating RMDs for my clients. Whoever they have the 401(k) with, or they have their IRAs with, they're making the calculations. I'm not making that calculation. So, I'm relying on whoever—Merrill Lynch or whoever—to make those changes—Edward Jones. They're the ones that are going to do the calculations. I'm going to review them, but I usually don't sit down and go, "Here's your RMD." I look at theirs, make a quick and dirty, and say, "Yes, this looks right. I kind of agree with that."

Mr. Lickwar

Yes, I still actually get calls, and I say, "Doesn't your broker call you or give you that? That's required on Form 5498. The IRS is supposed to get that every year." But I will push a Checkpoint tool that they use, Ian, to do the calculators. There are some calculation tools in your Checkpoint subscription. They do a great job calculating RMDs.

So, here's the change, Ian. People are obviously living a little bit longer. Congress is concerned that people will outlive their retirement benefits. So, if you turn 72 after 2022, your required beginning date is going to be moved up to age 73, and if you turn 72 after 2032, your RMD is going to be moved up to age 75. And that would be, of course, April 1st of the year after you hit those applicable ages. Somehow, [age] 74 got missed—73 skipped right over 74 to 75, because the original version of the bill had 75 kicking in in 2028. If you're already taking RMDs before this law, you need to continue on, obviously. This isn't going to change anything if you are required to take them. Of course, you still have the 10-year rule to work around if you're not an eligible designated beneficiary, so there has been no change there. I would say, Ian, that many of my wealthy clients will take advantage of this provision because they don't need to take their IRAs. But, quite frankly, most of my clients are not in that position to *not* have to take RMDs until they hit 72. They usually start taking retirement plan distributions at 72, if not a little bit earlier.

Mr. Redpath

I think another change here is that with the 401(k)s, unlike the Roth IRA which didn't have any RMD, the 401(k) Roth *did* have RMD requirements. That, starting in 2024—so what age are you?—starting in 2024 is exempt from RMDs if you have a Roth within a 401(k) plan. For many people, if you turn 72 in 2022, or you are 72 in 2022, you have to start your RMDs by April 1st of 2023. If you're 72 in 2022, you're 73 in 2023, I think. Do I have that math, right? So, you're already taking it, right? I'm not quite sure what they meant by putting that one in there.

Mr. Lickwar

Yes, the language was a little bit bizarre; but the bottom line is, if you hit 72 after 2022, then your new required beginning date is April 1st of the year after you turn 73. Again, you probably don't want to wait until that April 1st, because then you're going to end up doubling up. You probably want to take it in the year you hit 73 and then your second one in the following year.

Mr. Redpath

Unfortunately, many of our clients are not going come to us until tax season and we go, "You should have taken the RMD out." Hopefully, their broker has contacted them and told them, "Hey, this is your age. You're subject to RMDs now." And I think a lot of people don't realize that if you have a 401(k), but maybe you have a side hustle and you have a SEP IRA, well, you have to take an RMD from a SEP IRA even though you're still working. That's still [a] requirement, just like the IRA. So, there is a little confusion out there as to how that RMD is going to apply. I think it's an interesting one.

Well, we know things are going on and the whole idea of the student loan provisions—*we're going to exclude, we're going to forgive*—that's all in the courts, we don't worry about that. But there's a provision here that really would be beneficial if, in fact, you were paying student loans. So, what's going on with that one?

Mr. Lickwar

Yes, and just to mention for 10 seconds what you scratched on there, if you are 72 and in pay status, if you're still working and you're not a 5% owner, you can actually delay that, but not from your IRA, so, good point there.

What's going on with student loans? Well, I guess Congress, Ian, feels that making student loan payments, if you weren't making those, you'd be deferring into your 401(k) plan. So, we're going to treat those student loan payments as if they were actually contributions to 401(k) plans, which means that your employer can match them. They're not going to credit the account balance with the amount of student loan payments, but they're going to treat them as deferrals for matching purposes. So, again, this is going to be an added cost for employers who have matching provisions in their plan.

You're going to want to take a look at your plan and say, are you better off with a QNEC rather than the ADP/ACP testing and all of the matching contributions? It's going to have employers take a look to say, "Does this make sense?" But we're in a tight job market, Ian, and trying to attract top talent. You're looking at probably putting this provision in and enforcing this and making this provision available to attract those individuals who would otherwise be the beneficiaries of it.

Mr. Redpath

Especially in accounting. That's a very tight job market right now. It's tough to get accountants.

Mr. Lickwar

Correct, it is very tight. I can testify to that.

Mr. Redpath

It's a nationwide problem. So, also SEP and SIMPLE IRAs can now have Roth contributions, so you can attach a Roth to those.

Mr. Lickwar

Yes, I never thought we'd go back to the SARSEP days, Ian; but now here we are, pretty much back to the SARSEP—not a salary reduction SEP, but a salary reduction Roth SEP. This was kind of probably a long time coming. I'm not sure how administratively difficult this is going to be. I think we have a couple of years to get to this one, too, right? 2025, I believe, is when this one kicks in. But yes, it's an interesting one and it's probably not surprising.

Mr. Redpath

Then, we have this automatic enrollment in 401(k)s and 403(b) plans, again, to encourage people; but again, that doesn't start until 2025 that it kicks in.

Mr. Lickwar

Yes, we've actually had some automatic entry into plans now for a couple of years that were pretty much elective. So, now, we're going to make them mandatory; but that doesn't mean that I, as the employee, have to contribute. I can always elect out if I'd like to. I remember, Ian, when I started working at a grocery store at [age] 16 (which was a long time ago). I'll never forget, they sent in somebody who was selling life insurance. And I was a 16-year-old kid in high school with a girlfriend, but they were signing you up for group term insurance. This isn't that bad, but I'm thinking that somewhere, somebody falls through the cracks. Obviously, if you're 16 or 18, you wouldn't be eligible to participate, theoretically, unless everyone was automatically entered. So, from that perspective, it's a little problematic. I get the idea behind it. I think, Ian, you'll probably mention it later, that you can now give out gift cards and things of minimal value. It's almost like you're bribing people to put money into the 401(k) plan. Can I say that?

Mr. Redpath

Like you said, we might as well say it. Yes, we can do gift cards to encourage people to participate. And the other thing that's interesting about this one is that nonparticipating employees can change their mind every three years. So, you can have a three year, "Oh, now I want in the plan. Now, I want in." So, nonparticipating [employees] can reconsider their choice. You automatically enroll, you opt out, you can change your mind, but it's a three-year period. It's not going to apply to businesses with 10 or fewer workers or companies that have been in business for less than three years.

There's also a change that's going to make it easier to take your plan from one job to another. You can transfer balances starting in 2024 from a former employer, up to $7,000, into a default IRA and again, employers can do that. Employers can move that. And also, I've never thought about this, that people are leaving their jobs and they're vested in 401(k)s and they never pick it up. It's out there. So, by 2025, the Department of Labor is required to have a national searchable database of people who've left money with their employers, which I thought was an interesting provision.

Mr. Lickwar

That's actually not the first time around at any of these things, is it? We've had this supposed national database for years. I think, Ian, if somebody wants to disappear, they disappear; and it's going to be really hard to find them in certain cases. I hope it makes it a little easier because it's awfully difficult for the administrators to comply with here. I think from the perspective of ease of movement, one of the things that you have to be really careful with on these automatic enrollment and ease of movement provisions is that many states already have provisions about funding IRAs on behalf of employees. For example, Connecticut has this retirement plan issue unless you have a qualified plan, and Connecticut is not unlike many of the other states. So, you need to be cognizant of what's going on already at the state level.

Certainly, Ian, if you're looking to comply, because you're going to have to comply with these provisions, do you wait for the new credits to come into play? Those are credits that we'll talk about in a minute; but those are for small employers. I know there's a 10-employee-or-less exception here; but many of my small businesses, Ian, do have more than 10 employees. They have thirty, they have forty employees. They're not huge businesses by any stretch. So, there's some relief, but certainly not a lot. There are still going to be some administrative costs here.

Mr. Redpath

We have a couple of interesting ones. You can take a $1,000 distribution for emergency expenses—to be defined later—without being subject to the 10% early withdrawal. So, if you're under age 59½, you can take out $1,000. There's also this new idea, starting in 2024, the idea of an emergency savings account. What is that thing?

Mr. Lickwar

It's a pension-backed emergency savings account of up to $2,500 that's going to allow for four withdrawals per year; and you can also have the employer match it up to $2,500, as well. So, these provisions, Ian, I think recognize the fact that people run into financial emergencies. The financial emergency at a small amount should not discourage them from saving for retirement; and this is the conceived way that Congress has to do it. This probably does not replace the hardship rules, because the hardship rules, you're still looking at a tax consequence; but they're allowing for an early withdrawal to pay for a catastrophic event like a large medical bill, a tuition bill, et cetera, et cetera. These are for nagging little things it seems, Ian, not that huge hardship, but just, "I've run into a little bit of a rough time and $1,000 would really help," is the way I see this. I see this also as really tough for the IRS to administer, though it seems that plans will be able to rely on whatever the participants give them, within reason.

Mr. Redpath

Now, I think the savings account has to be a Roth, doesn't it?

Mr. Lickwar

Yes, it's a Roth-type investment because they don't want you making deductible amounts, and there are going to be no penalties associated with the withdrawal; but they're certainly not going to give you a deduction that you would eventually take out.

Mr. Redpath

Another thing here is the retirement account access. SECURE, for part-time workers who had between 500 and 1,000 hours for three consecutive years, reduces that to two years. It changes that. It also increases the amount that's available. The maximum that can go into a qualified longevity annuity account is either $135,000 or 25% of the value of the retirement accounts, whichever is less. SECURE eliminates that 25% cap and increases the max to $200,000, which means more people are going to do that, or potentially could.

Mr. Lickwar

Have you seen anyone utilize these, Ian? I have not.

Mr. Redpath

No, nor has the government.

Mr. Lickwar

Exactly. It's an annuity from an insurance company, and it's only as good as the insurance company may be. I've not seen anyone do them. It's out there. I guess you could suggest it, but I think people are apprehensive about the annuity in the retirement plan.

Mr. Redpath

There are a couple of other things here. This federal matching for lower-income retirement savings. What's going on there?

Mr. Lickwar

Well, Ian, we used to get a credit if we were below certain income levels. It was called the Saver's Credit. If we contributed to a 401(k) or an IRA, whatever the case may be, we would get a dollar credit of up to $2,000. That would be cash in hand. Well, now, Ian, instead of cash in hand, the government will contribute that former cash-in-hand credit to the retirement plan account of your choice. So, if you fund the IRA and you earn a credit, the IRS will "match that with a contribution to that IRA." So, they've decided to stop letting the cash go out the door to do other things with and to match it into the retirement plan. I'm sure people who are taking Saver's Credit are probably not going to be happy about that change. It seems, Ian, as an employer, you need to offer a retirement benefit; but people aren't really thrilled when they get their benefit statements at year end, and they say the company made a $3,000 contribution on your behalf. The [people] kind of say, "Well, I really would have liked that in cash instead." But it's just human nature, I guess.

Mr. Redpath

We also have something interesting, which is the 529 plan. If you have one and you haven't used it, if it has been in around for 15 years, you can take some of that and you can roll it over into a Roth IRA. So, you can take those assets and roll them over from your 529 plan, but it has to be there for 15 years. It has to be 15 years old, the 529; but it's subject to the annual, the Roth limitations, and an aggregate lifetime of only $35,000. So, whatever's in there, the maximum you can do [for] this is $35,000. It's a provision that, if you're sitting out there with a 529 that hasn't been used, what do I do with it? Well, here's an option to roll it into a Roth.

Mr. Lickwar

You have to be the beneficiary, right, Ian? You can't be just the account owner. So, does that mandate reviewing the beneficiaries? Can you make a change to make yourself a beneficiary? Certainly, if I wanted to, I could set up a 529 plan for myself; but it's also going to be limited to earnings and contributions within the last five years. So, if the account has been dormant for a little while, this option may not be available, either. I'm really going to anticipate the guidance on this, Ian. The Service is going to have their hands full here.

Mr. Redpath

Yes, and that was a good point that it's a Roth for the beneficiary, not for the person who established it. There are also, again, going to be credits for small businesses that let military spouses enroll in the plan and have immediate vesting. Also, [QCDs] are qualified charitable distributions, and I know some people use those. This will begin next year—a change. What's going on with the QCDs, qualified charitable distributions, beginning next year?

Mr. Lickwar

We can use up to $50,000 once in a lifetime, Ian, to fund, for example, a charitable remainder trust, which, of course, clients always ask, "Can I use a QCD to fund my private foundation?" The answer is no. "Can I use it to fund a donor-advised fund?" The answer, again, is no. This is a very strange provision; but what it seems to say is, if you want to make a charitable contribution but you still need an income stream, we're going to allow you to do it to the extent of $50,000. Which is, again, something that kind of came out of left field for me. I kind of didn't see this one coming. You have to wonder about the thinking behind it. I love the QCD provisions, Ian, and all of my clients who are receiving RMDs and making charitables generally are doing them via QCDs, regardless of their income level, because in Connecticut, we don't get itemized deductions. So, picking up income and an itemized deduction, while it may be a wash federally, certainly it isn't in Connecticut; and it also keeps that AGI manageable below that net investment income tax level.

Mr. Redpath

It also counts towards your annual RMD.

Mr. Lickwar

That is correct.

Mr. Redpath

It also has to be done by the end of the year. It's not like the RMDs that you don't have to take out until April 1st of the following year. It has to be done by the end of the year in order to qualify. There are some startup costs, obviously. What's going on with that? We've had a credit. What's going on with the startup costs here for small businesses?

Mr. Lickwar

Yes, we've had the credit around for three or more years now. It's the Section 48(e) credit, and that would allow for credits for administrative costs related to startup for the first three years of the plan. It was generally $250 a participant up to $5,000. That credit has actually been bolstered, Ian, because it's going to allow for small employers—under 50 employees—to claim a credit up to $1,000 for contributions to the plan. So, it will extend the credit out for up to five years, two years' worth of administrative costs and also plan contributions. And again, this is for businesses that have not had a plan in effect for at least three years. So, [for] those current clients that already have a plan in place, unfortunately, this credit will not apply to them. It's basically to new businesses starting plans, and it just can't be for a solo owner plan. You have to have at least one non-highly compensated individual or non-owner as a participant.

Mr. Redpath

Then, beginning in 2024, we have this thing called a Starter 401(k) plan, which I'll wait to see what the guidance is on that; but this is, okay, you're a small employer, let's start one. We have a starter plan that the employer has to automatically enroll the employees, it has an IRA annual employee contribution limit of $6,000 with an additional $1,000 at age 50, but no employer contributions are allowed. So, it's kind of an interesting provision.

Mr. Lickwar

Yes, and let's face it, Ian, if you're doing retirement planning with your clients, you're looking at solo 401(k)s, 401(k)s with profit sharing plans. I'm not sure that a plan like this gets that small employer to set up a plan. If you're going to set up a plan, you want as many of the bells and whistles for tax deferral as possible, so the jury is still out. We'll see what happens. It smells SIMPLE all over it. Of course, the thing I love about SIMPLE plans is there's nothing simple about them.

Mr. Redpath

Right, and I think one of the things they've tried to do, and I think this goes to understanding what your income is going to be in retirement, which a lot of people are very concerned [about]. "I know what my balance is in my 401(k), but what does that translate to? What does that mean?" And I know now on statements, basically, this is what this means to you; but like everything else, there are so many assumptions that are being made. I mean, assume, assume, assume, assume. Well, did those assumptions come true? There's a minimum income threshold test. It's loosened to kind of allow for more annuities structures with the RMD rules to try to kind of encourage, I guess, in some respects, more uses of annuities in your RMDs, so that's another thing to look at. Now, there's been a draconian, I think, 50% penalty for failure to take the RMD. That's being reduced, right?

Mr. Lickwar

Yes, down to 25%, Ian. Let's look at the background. The IRS has basically been loath to assess this penalty. I think even they would look at it and say, "Somebody made a mistake, [but] they corrected it within 60 or 90 days." You attach the [Form] 5329, you explain what happened, you pick up two distributions in one year; and I've never seen the IRS assess the penalty. At 25%, or if you clear it up in a reasonable manner, the penalty will now be 10%. We'll see what they mean [by] clean it up reasonably quickly. I'm thinking that's 90 days, but we don't know at this point. I have to tell you, Ian, I'm looking at this provision and I'm saying, will the IRS be more emboldened to try to collect this penalty for not taking your RMD when it's down to 10% or even 25%? I hope that's not the case, but it seems to me—and I'll just put this out there—that maybe Congress didn't know that the IRS has not been collecting and enforcing this penalty anyway, at least from what I've seen in practice.

Mr. Redpath

I agree with you, by the way. I don't see that. The ones that I've had, we've requested relief and it's almost automatic—yes, reasonable cause. Because again, the RMD rules can be so complicated. How many people understand, for example, that you're still working [and people say], "Oh, I don't have to take an RMD." Well, wait, you have that IRA that you have over there. Or you have that side job, you have a SEP IRA sitting out there. No, you have to take one, and people make mistakes all the time because of that.

Mr. Lickwar

Sure. Look at the 10-year rule, Ian, where we thought, okay, clean out the account in 10 years. You don't have to take anything in the interim under SECURE 1.0. But then, the IRS gives us the regs that [say], if the decedent was already taking RMDs, you needed to continue for the next 10 years and then clean it up by year 10. So, how many people were out there with potential 50% excise taxes? The IRS, in Notice 2022-53 said, we're not going to assess those. But, in a case like this, will they be a little bit emboldened to go after a 10% penalty? I don't know. I certainly hope not, because mistakes happen.

Mr. Redpath

Oh, absolutely, and there are a lot of mistakes with RMDs. There's no question about that.

Bob, I want to thank you for being here. We have a lot to mull over. I don't think most of this is going to be affecting our clients [for 2022]. In fact, literally none of it is going to affect our clients for 2022. However, we are going to get the questions during tax season about what's going on because everybody has read about it. So, we do need to be up on what's going on, and there are planning opportunities. There are a lot of planning opportunities going forward knowing that these provisions—2023, 2024, 2025, 2033 when it comes to the [age] 75 for RMD—are kicking in in the future. So, there's a lot of planning.

Mr. Lickwar

Absolutely, and actually, Ian, one thing we probably can plan for [is] the client who didn't set up their solo 401(k) by year end. If they're a single-member LLC or sole proprietorship, the SECURE Act says they can fund that deferral up to the due date of the return. So, that's a good change. That may affect some of your planning, too. There's a lot in here, Ian, and it's worth going through to refresh yourself to see what's going on in the bill. So, thanks, I appreciate being here. It's always great to talk tax with you.

Mr. Redpath

Always great to have you, Bob. I appreciate your insight, as our viewers do. Thanks a lot.

Mr. Lickwar

Thanks.

SECURE 2.0

By Ian J. Redpath, JD, LLM

A. Introduction

President Biden signed into law the "Consolidated Appropriations Act of 2023" on December 29, 2022. The Act includes the long-awaited changes to the SECURE Act with what is being called SECURE 2.0. While some provisions take effect in 2023, many are pushed off into the future. In advising clients, it is important to plan according to such dates. SECURE 2.0 has provisions affecting both individuals and employers. In some cases, changes will be required to employers' retirement plans and/or options.

B. Major Provisions – Catch-Up Contributions

Under current law, anyone age 50 or older can make "catch-up" contributions to their 401(k) account. The limit, which changes year to year based on inflation, is $6,500 in 2022 and $7,500 in 2023. Those amounts are in addition to regular 401(k) contribution limits which are $20,500 for 2022 and $22,500 for 2023. Beginning January 1, 2025, individuals ages 60 through 63 will be allowed to make catch-up contributions to their plan in the amount of the greater of $10,000 or 150% of the regular contribution. The inflation adjustments will be in $100 increments; the ceiling will not increase until inflation cumulatively increases enough to allow at least a $100 boost. If the participant's income exceeds $145,000 (indexed to inflation), all catch-up amounts, regardless of age, will need to go into a Roth account. Unlike contributions to traditional 401(k) plans, money put into a Roth 401(k) or individual retirement account does not get a current tax break, but qualified withdrawals in retirement are tax free. Plans generally will have to be amended to reflect this provision.

Deferrals under SIMPLE plans are subject to a reduced annual elective deferral dollar limit ($15,500 for 2023). The annual dollar limit on catch-up contributions to SIMPLE plans is $3,500 for 2023. The statutory dollar amounts are indexed for inflation commencing in 2026. Note that it is 2025 for SIMPLE plans.

Currently, when employers provide their workers with a "matching" contributions amount, it must be made to a traditional 401(k) account versus a Roth account. That means those matches are subject to taxation when withdrawn in retirement. The Act will allow employees to elect to have employer matches designated as Roth contributions.

For IRAs, there are lower contribution limits ($6,000 for 2022 and $6,500 for 2023), and the annual catch-up amount has remained at $1,000 since 2006. It will be indexed to inflation beginning in 2024, which means it may increase yearly.

C. Required Beginning Date (RBD)

Under current law, required minimum distributions (RMDs) generally must begin at age 72 for retirement accounts. Normally, the first RMD must be taken by April 1 of the year following an individual's 72nd birthday. SECURE 2.0 changes that required beginning date (RBD) to age 73 in 2023, and then 75 in 2033. Remember that once an individual starts taking RMDs they must continue even if the age changes.

D. Required Minimum Distributions (RMDs)

The penalty for failing to take these RMDs will also change, starting in 2023. In general, it will drop to 25% of the amount that should have been withdrawn, down from the current 50%. Another change is that, beginning in 2024, Roth accounts in 401(k) plans and other employer-sponsored plans will be exempt from RMDs. While Roth IRAs come with no RMDs during the owner's lifetime, that has not been the case for Roth 401(k)s.

The Act reduces from 50% to 25% the excise tax for failure to take an RMD. The penalty is further reduced to 10% if the following requirements are met:

- the RMD shortfall is distributed during the (new) correction window (defined below);
- the shortfall is distributed from the same account that had the shortfall; and
- the participant submits a return, during the correction window, reflecting the excise tax of 10%.

The correction window begins on the date on which the excise tax is imposed and ends on the earliest of:

1. the date the IRS mails a notice of deficiency regarding the excise tax,
2. the date on which the excise tax is assessed, or
3. the last day of the second taxable year that begins after the end of the taxable year in which the excise tax is imposed.

The shortfall is to be remedied from the account to which it applies. Thus, an RMD shortfall for a traditional IRA, SEP IRA, or SIMPLE IRA that a participant owns can be taken from any of those IRAs because IRAs are aggregated for RMD purposes. The same is true for a participant with multiple 403(b) accounts. This provision is effective for 2023 and after. Note that Notice 2022-53 waives the penalties for 2021 and 2022.

The Act provides that the statute of limitations for the assessment of the penalty excise taxes begins to run upon the filing of the taxpayer's income tax return for the year of the violation rather than the filing of a Form 5329 excise tax return. The statute of limitations period is three years (six years in the case of excess contributions).

E. Student Loan Payments

Beginning in 2024, employers will be allowed to make 401(k) matching contributions based on a worker's student loan payments. An employer can make matching contributions under a 401(k) plan, 403(b) plan, SIMPLE IRA, or 457(b) plan with respect to "qualified student loan payments," which are defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Those will be treated separately for nondiscrimination testing.

F. Emergency Savings

Starting in 2024, companies will have the option to offer emergency savings accounts linked to an employee's retirement 401(k). Employees could opt to save up to 3% of their annual pay, or a maximum of $2,500, as an after-tax contribution. The employer may set a lower cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance—$2,500 or lower as set by the plan sponsor.

The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals. At separation from service, employees may take their emergency savings accounts as cash or roll them into their Roth defined contribution plan or IRA.

G. Savers Credit to Match

Beginning in 2027, the Saver's Credit becomes a Saver's Match. It creates one credit rate of 50% and makes it refundable. The refund credit amount will be deposited directly into an individual's retirement account or IRA.

H. Domestic Workers

The bill would allow employers of domestic workers to offer a retirement plan through a Simplified Employee Pension IRA (SEP IRA).

I. Qualified Longevity Annuity Contracts (QLACs)

The Act directs the Treasury Department to dramatically reduce the limitations on purchasing qualified longevity annuity contracts (QLACs). These are deferred annuities that begin at a later age, providing retirees with a relatively affordable form of longevity protection. It also clarifies that "free-look" periods (during which policy holders can terminate a policy with no penalty) of up to 90 days are permitted for QLACs. Additionally, it increases how much can be put into a QLAC. Currently, the maximum is either $135,000 or 25% of the value of the retirement accounts, whichever is less. The Act eliminates the 25% cap and increases the maximum amount to $200,000.

J. Access to Emergency Savings

Employees will be allowed to withdraw up to $1,000 from their retirement account for emergency expenses without having to pay the typical 10% tax penalty for early withdrawal if they are under age 59½.

K. Low-Income Match

Beginning in 2027, lower-income retirement savers will be eligible to receive a federal matching contribution that would be deposited into their retirement savings account, such as a 401(k) plan. The match will be a maximum 50% of up to $2,000 in contributions to a qualifying account ($1,000 match). The match will phase out at an income of $41,000 to $71,000 for married couples filing a joint tax return ($30,750 to $53,250 for head of household, and $20,500 to $35,500 for others).

L. Rollovers from a 529 Plan

Beginning in 2024, a plan may allow for tax- and penalty-free rollovers to Roth IRAs from 529 college savings accounts that are at least 15 years old, within limits. The assets can be rolled over to a Roth IRA for the beneficiary, subject to annual Roth contribution limits and to an aggregate lifetime limit of $35,000. Rollovers cannot exceed the aggregate before the five-year period ending on the date of the distribution and are subject to the annual Roth IRA contribution limit.

M. New ABLE Provisions

Beginning in 2026, states may establish tax-exempt ABLE programs to assist persons with disabilities. An individual who is disabled or blind may establish and become the designated beneficiary of an ABLE account under a state's program. The age is raised from 26 to 46.

N. First Responders

Effective in 2027, the Act allows first responders to exclude from gross income certain service-related disability pension or annuity payments from a 401(a), 403(a), governmental 457(b), or 403(b) plan after they reach retirement age.

O. Military Spouses Access to Plans

Beginning at enactment, the Act adds a new tax credit for small employers (those with no more than 100 employees that earned at least $5,000 for the preceding year) which lets military spouses enroll right away in their plan and qualify for immediate vesting of any employer match. The credit is for each military spouse who starts participating in an eligible defined contribution plan of the employer. It will not include highly compensated employees. The annual credit amount is (1) $200 for each military spouse who participates in the employer's plan, plus (2) the amount of related employer contributions to the plan (but capped at $300 of contributions for any individual). A military spouse is counted for the credit only for the tax year which includes the date they begin participating in the plan and for the two succeeding tax years.

P. Improving Coverage and Savings for Part-time Workers and Small Business Employees

Beginning in 2024, employers offering SIMPLE plans may make uniform additional nonelective contributions beyond 2% of compensation or 3% match (required by current law) up to the lesser of 10% of compensation or $5,000. The original SECURE Act made it so that part-time workers who book between 500 and 999 hours for three consecutive years could be eligible for their company's 401(k). SECURE 2.0 reduces that to two years. Companies already have been required to grant eligibility to employees who work at least 1,000 hours in a year.

Q. Enhancement of 403(b) Plans

Section 403(b) plan investments generally are limited to annuity contracts and publicly traded mutual funds. Effective on enactment, 403(b) custodial accounts are able to participate in group trusts with other tax-preferred savings plans and IRAs.

R. Qualified Contribution Distribution (QCD)

Beginning in 2023, people who are age 70½ and older may elect as part of their QCD limit a one-time gift of up to $50,000, adjusted annually for inflation, to a charitable remainder unitrust, a charitable remainder annuity trust, or a charitable gift annuity. This counts toward the annual RMD, if applicable.

S. Firefighters Early Withdrawal

Under current law, if an employee terminates employment after age 55 and takes a retirement plan distribution, the 10% early distribution tax does not apply. However, there is a special rule for "qualified public safety employees" in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10% tax. This exemption applies to public-sector firefighters, but not to private-sector firefighters. Effective upon enactment of the Act, the age 50 rule also applies to private-sector firefighters.

T. Birth or Adoption Distributions

The Act amends the qualified birth or adoption (QBAD) provision to restrict the recontribution period to three years. This is effective for distributions made after the date of enactment of the Act and retroactively to the three-year period beginning on the day after the date on which such a distribution was received.

U. Reliance on Certifications

Under certain circumstances, employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal.

V. Domestic Abuse Victims

Effective in 2024, retirement plans may permit participants who self-certify that they experienced domestic abuse to withdraw a small amount of money, the lesser of $10,000, indexed for inflation, or 50% of the participant's account. A distribution made under this section is not subject to the 10% tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over three years and to be refunded for income taxes on money that is repaid.

W. Exception for Substantially Equal Periodic Payments (SEPPs)

Effective for transfers, rollovers, exchanges after December 31, 2023, and effective for annuity distributions on or after the date of enactment of the Act, the current-law 10% additional tax on early distributions from tax-preferred retirement accounts exception for SEPPs that are made over the account owner's life expectancy continues to apply. The exception is applicable in the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the RMD rules.

X. Roth Plan Distributions

Under current law, RMDs are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth-designated account in an employer retirement plan [e.g., a 401(k) plan]. Effective for tax years beginning after December 31, 2023, the Act eliminates the pre-death distribution requirement for Roth accounts in employer plans. The requirement does not apply to distributions which are required with respect to years beginning before January 1, 2024, but which are permitted to be paid on or after such date.

Y. Terminal Illness Withdrawals

The 10% tax on early distributions from tax-preferred retirement accounts will not apply in the case of a distribution to a terminally ill individual. This change was effective on enactment.

Z. Years of Service for Public Safety Officers

The 10% additional tax on early distributions does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. Upon enactment, this is reduced to at least 25 years of service with the employer sponsoring the plan.

AA. Federally Declared Disaster Areas

Retroactively effective for disasters occurring on or after January 26, 2021, in a federally declared disaster area, up to $22,000 can be distributed from employer retirement plans or IRAs for affected individuals without penalty. The income can be spread over a three-year period. Distributions can also be repaid to a tax-preferred retirement account.

BB. Replace SIMPLE IRA Plans

Beginning in 2024, an employer may replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.

CC. Long-Term Care Policies

Effective December 30, 2025, retirement plans can distribute up to $2,500 per year for the payment of premiums for certain specified long-term care insurance contracts not subject to the 10% tax on early distributions.

DD. Prohibited IRA Transactions

When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction. Effective in 2023, the Act clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified.

EE. Penalty on Excess Contributions

The Act provides that earnings attributable to excess contributions to an IRA that are returned by the due date for the taxpayer's return for the year (including extensions) are exempt from the 10% early withdrawal tax. The taxpayer must not claim a deduction for the distributed excess contribution. Because taxpayers can correct excess amounts contributed to an IRA without payment of an excise tax, it makes sense that the 10% additional early withdrawal tax also does not apply to the entire corrective distribution as well.

FF. Surviving Spouse

Beginning in 2024, under the Act, in the case of an employee who dies before RMDs have begun under an employer-provided qualified retirement plan, and who has designated a spouse as sole beneficiary, the designated beneficiary surviving spouse may elect to be treated as if the surviving spouse were the employee for purposes of the RMD rules of §401(a)(9). The date on which the distributions are required to begin will not be earlier than the date on which the employee would have attained the applicable age. If the surviving spouse dies before the distributions begin, the surviving spouse is treated as the employee for purposes of determining the distribution period. The elections must be made in such a time and manner as prescribed by the IRS. The election must include a timely notice to the plan administrator; and once made, it may not be revoked except with the consent of the IRS. This allows a designated beneficiary who is a spouse to receive a similar distribution period for lifetime distributions under an employer-sponsored retirement plan as is permitted if the surviving spouse rolls the amount into an IRA.

GG. Automatic Enrollment

The legislation requires businesses adopting new 401(k) and 403(b) plans to automatically enroll eligible employees, starting at a contribution rate of at least 3% beginning in 2025. That contribution rate must increase by one percentage point annually until it reaches 10% to 15% of the worker's pay. A worker can put in more, up to any other applicable limits. It also permits retirement plan service providers to offer automatic portability services to plan sponsors, transferring an employee's low-balance retirement accounts to a new plan when they change jobs. The change could be especially useful for lower-balance savers who typically cash out their retirement plans when they leave jobs rather than continuing to save in another eligible retirement plan. The new auto-enrollment, auto-deferral, and auto-escalation rules will not apply to businesses with 10 or fewer workers, or to companies in business for less than three years. Additionally, non-participating employees can reconsider every three years.

HH. Portability

Starting in 2024, the Act allows employers to automatically transfer account balances of former employees up to $7,000 (up from the current $5,000 limitation) into a default IRA, unless the participant elects otherwise. It allows service providers to facilitate automatic transfers from a participant's old workplace retirement plan into their new plan upon job change to help consolidate small account balances and reduce leakage from the system. Employees always retain the ability to opt out of such transfers.

By 2025, the DOL is to establish a national searchable online "retirement savings lost and found" database to help individuals track down their savings that may be held with a former employer.

II. Conclusion

There are a number of other non-retirement provisions in the Act. However, practitioners will need to be cognizant of the myriad of changes brought about by SECURE 2.0. Special care must be taken regarding the applicable dates. The rules require consideration for both participants and employers alike.

GROUP STUDY MATERIALS

A. Discussion Problems

Your firm has a number of small- and medium-size businesses. You also represent a number of individuals who have various types of retirement plans.

Required:

1) What advice would you have for your small businesses and individual plan participants regarding the applicability of SECURE 2.0 provisions?

2) You have a client who turned 72 in 2022. She read in a magazine that the law has changed her required beginning date (RBD) to age 73, so she did not take a distribution for 2022. What can you advise her?

3) Several of your small businesses have asked about automatic enrollment. What would you advise them?

B. Suggested Answers to Discussion Problems

1) Practitioners must take great care in advising clients of the provisions of SECURE 2.0. There are many different applicability dates, from retroactive provisions to provisions that become effective in 2023, 2024, 2027, and beyond. This is part of any planning discussion with both businesses and individual clients.

2) For 2022, required minimum distributions (RMDs) must begin at age 72 for retirement accounts. Normally, the first RMD must be taken by April 1 of the year following an individual's 72nd birthday. SECURE 2.0 changes that required beginning date (RBD) to age 73 in 2023, and then 75 in 2033. Thus, your client should take an RMD by the April 1 date.

3) SECURE 2.0 requires businesses adopting new 401(k) and 403(b) plans to automatically enroll eligible employees, starting at a contribution rate of at least 3%, beginning in 2025. That contribution rate must increase by one percentage point annually until it reaches 10% to 15% of the worker's pay. A worker can put in more, up to any other applicable limits. It also permits retirement plan service providers to offer automatic portability services to plan sponsors, transferring an employee's low-balance retirement accounts to a new plan when they change jobs. The change could be especially useful for lower-balance savers who typically cash out their retirement plans when they leave jobs rather than continuing to save in another eligible retirement plan. The new auto-enrollment, auto-deferral, and auto-escalation rules will not apply to businesses with 10 or fewer workers, or to companies in business for less than three years. Additionally, non-participating employees can reconsider every three years.

PART 3. BUSINESS TAXATION

IRC Section 704(b) Capital Accounts

Regulations generally require partnerships to maintain a Section 704(b) book capital account for each partner to reflect the partner's economic interest in the partnership. Maintenance of 704(b) book capital accounts is often included in partnership agreements to satisfy the safe harbor for economic effect as well as to assist in determining whether a partner's allocation has economic effect. The 704(b) capital accounts are generally maintained outside of the tax return, typically in a set of workpapers. While capital accounts generally must be maintained by other bases as well, Ian Redpath and Greg Urban focus in this segment on the calculation and maintenance of Section 704(b) capital accounts.

Let's join Ian and Greg.

Mr. Redpath

Greg, welcome to the program.

Mr. Urban

Hey, Ian, good to be with you again.

Mr. Redpath

Always great to get your insight on this. This is interesting, I think, because there's been so much misunderstanding. We've done programs before on this [dealing] with capital accounts and the tax basis reporting. Then there was all, what they told us was guidance in the summer; and then they changed it when they got to the 2020 returns and said, "Oh no, no, you have to use a tax basis." Then, they gave us ways to calculate the tax basis and then said, "Well, if you didn't do that right, then you can do it—well, at least if you tried." I think one of the problems is a lot of people didn't even try; and those capital accounts that are being reported on the K-1, I'm not sure they're exactly accurate. Certainly, if I got a K-1 and I wasn't preparing the partnership return, I don't know about you, but I would be digging in to make sure I felt that capital account was right. I mean, what's your firm's position on that?

Mr. Urban

Yes, no doubt, our firm—historically, a lot of capital accounts were kept on GAAP basis or what we'll call *internal book accounting*. I don't want to confuse it with *704(b) book* and some other concepts that we'll talk about later on.

Mr. Redpath

I always used the hybrid. Remember, there was a box, and it said "other?" And people typed in hybrid, or they'd say, "as per books and records." I never knew what that meant.

Mr. Urban

That was very common. I would say a lot of the partnerships that we had within the office, unless there was truly a tax basis balance sheet, we oftentimes saw a capital account maintained on a book GAAP basis. When, in 2020, the rules changed, it was a lot of work for firms like ours to go back and to compute tax basis capital. I'll be honest. I mean, in a lot of cases, we went back and computed tax basis of the outside interest of a partner in the partnership, and that was a lot of work.

Now, there's some larger partnerships that we had—and maybe people in the audience had this case also—where that was maybe just impractical. Maybe we had 40 or 50 partners and they came in at varying points over the past maybe 10 to 15 years, and to go back and really compute outside basis was very difficult. So, there were some shortcut methods that were available where you could look at historical book/tax timing differences and come up with an estimate of tax basis capital. In reality, in some cases, that's really what you were forced to do because the historical information wasn't good. A lot of times, you inherited clients, and you just didn't have the books and records. So, those were really the challenges that I think we experienced.

Mr. Redpath

And you're right, I mean, that's what I hear. We're not always sure that the beginning capital account number is correct, but at least the IRS said, "If you made a reasonable effort [to] establish it, you made a reasonable effort to get to it, we're not going to penalize you if we audit you later and say your beginning capital account number is wrong beginning in 2020."

One of the confusions—so, people think, "Oh, well, that's all I have to do is keep a capital account on a tax basis because that's what the IRS mandates." And the reality is, that's not what they mandated. They didn't mandate to keep it on the tax basis other than report it on the M-2 on a tax basis and report it on the K-1's on a tax basis. And oh, by the way, even if those amounts, if your K-1's don't add up to your capital account on the M-2, you better attach a statement and say why and explain it. But normally, they should. People have forgotten that—you know what?—there's this whole other world out there called 704(b), and that hasn't lost its importance. Even though I keep hearing people say, "Oh, you don't have to worry about any of that stuff because they just want tax basis. That's all you have to do." I hear that regularly. So, where are we on that? Is that really a true statement?

Mr. Urban

Yes, it's interesting. Most tax practitioners listening today, probably their staff will know that there's some difference in the capital accounts because there's a diagnostic that comes out in the software. It will tell you the equity on your balance sheet doesn't agree with your capital accounts. That's the first clue that there are some differing metrics, things like that.

I'll tell you what I think. Today, what we see is really three sets of capital maintained. One is typically always going to be books and records. It's going to be just based upon GAAP—meaningless, I think, for what we're talking about today. We have tax basis capital accounts, which are just that: [they] reflect the tax basis of assets. And then, you're right, we have these 704(b) capital accounts that are maintained; but those are maintained outside of the tax return, typically in a set of work papers. In a lot of cases, they may or may not be available depending upon whether or not you started doing the work for the partnership from day one, if they've been maintained over time. And even then, there can be some adjustments—which I'm sure we'll talk about in a little while—that can happen to those capital accounts that you really have to understand, were they made and had they been made. So, my experience is, you see three different sets of computations: a capital account or an equity based upon your books and records and GAAP, you see a pure tax basis, and then you see the 704(b).

Now, the other thing, Ian, when we talk about tax basis capital accounts, sometimes there's some confusion over is that inside tax basis or is it outside tax basis? Some of our preparers, a lot of times, will rely on the tax basis that is noted as such on the K-1; but I think it's important for the audience to realize that is really referring to your share of the inside tax basis of the assets.

Mr. Redpath

Right, and even that isn't necessarily correct, because if you're thinking tax basis, you're saying, "Okay, we have a 754 election in effect. We had a purchase of an interest or a death and someone inherited an interest, so we had a 754 election. We have the adjustments for that partner under 743(b)." 743(b)—the IRS says that's not an adjustment to the capital account.

Mr. Urban

Right. That totally comes back to what we're talking about.

Mr. Redpath

So, even though your inside basis may be reflective of the 754 for that partner, or multiple partners, perhaps. You're talking about having 50 partners. I had one in Chicago where we had 350 partnership interests, but there were a heck of a lot more than 350 partners. We finally petitioned the IRS to get rid of the 754 election because it became a nightmare trying to keep track of it. But that's what can happen. 754 is a tax concept, but it's not an adjustment to the capital account.

I think the other confusion often is, when you come into a partnership and you buy someone's interest, or inherit someone's interest, or get a gift of someone's interest, you get an outside basis—a basis in your interest that's greater. If there's a 754 election, your inside basis may be greater to reflect it, but you take their capital account.

Mr. Urban

That's right. For this purpose, you do. Where it becomes really important is if there's a sale of a partnership interest or somebody disposes of their partnership interest, the records may be such that all you have is the tax basis that's reported on a K-1. I think the audience should just know that may not be 100% accurate when you're doing calculations for purposes such as those.

Mr. Redpath

Another thing to look at is that, historically—and I know your firm is a firm that looks at governing instruments to make sure that you think they got the right things in there. Because, again, there's a lot of very good business attorneys, but they don't understand tax; and so, there may be things in there that have a negative tax impact. One of the things now is a lot of these older documents always say, "The capital account will be maintained in accordance with the IRS rules." Sometimes it specifically refers to 704(b). Sometimes it'll say the Internal Revenue Code and Regulations. Yet very few people actually do keep that. If you take all the partnerships everywhere, there's probably a minority that actually do 704(b) and actually follow what their actual documents tell them they're supposed to be doing. And that has nothing to do with how you report it to the IRS.

Mr. Urban

That's right. What we experience is that, now more than ever, I think, you see partnerships with maybe private equity, or you see financial buyers coming in. Those structures are typically a lot different than the historical partnerships that we've seen over the years where you and I, Ian, are partners, maybe we have a 50/50 profit allocation, or we have a relatively straightforward allocation. A lot of times, these transactions—now when you have financial investors coming in, maybe there's preferences. Maybe there's preferential distributions. Maybe cash flow is allocated a certain way. It's in those environments where, I think, tracking and maintaining those 704(b) capital accounts becomes particularly relevant. In a straightforward partnership that we see within the office, I think you can probably reasonably go back and compute a 704(b) capital account without too much trouble. But now, as there's more nuances and special allocations and maybe contributions of appreciated property made to partnerships, it becomes particularly important.

Mr. Redpath

Well, I think it also is important. Again, let's say you have a plain vanilla partnership, 50/30/20, and everything is 50/30/20. They contributed cash 50/30/20. Every distribution is 50/30/20. And then, sharing of their liabilities, generally, you're going to say, "Okay, it's 50/30/20." No problem. That's an easy one. But when they start getting out of sync—well, how do they get out of sync? Well, my kid needed tuition this year, so I took out a little more. We'll equalize it sometime in the future, but our capital accounts are not in sync anymore. Now, all of a sudden, the IRS says, "Okay, when you are allocating your debt, you've got to use the constructive liquidation scenario." That refers to the capital account, but they don't mean that tax basis capital account that you're reporting on the K-1. They mean your 704(b) capital account. How does it hit that?

When you allocate nonrecourse debt, the first step is minimum gain. *Minimum gain* is defined as a difference between book basis and tax basis. Well, what does it mean? Anytime Subchapter K uses the word *book*, they mean 704(b). So, your books and records are 704(b); your book basis is 704(b). We've tended to say, "Oh, now everything's tax basis. We don't have to worry about these rules." Yet, they can come up in many different things, as you said. They can come up if you have special allocations, if you [have] debt allocations. Again, plain vanilla, you have no problem; but you don't need a whole lot of complexity to get to a problem.

Mr. Urban

What makes it, from my experience, even a little bit more confusing is you'd be talking about a 704(b) book capital account. Some of the people on our staff will ask, "Well, does that mean book income goes through, or does it mean tax deductions go through? Taxable income? What is it that you adjust these 704(b) capital accounts by?" It's taxable items, so it's items computed on a tax basis. You're using the term *book*, yet you're adjusting it on an annual basis by items of taxable income, gain, loss, [and] deduction.

Mr. Redpath

The general rule is a special allocation has to have, to be respected by the IRS, substantial economic effect. Substantiality, we could spend two days trying to figure out what that means, but economic effect is pretty easy. You need the big three as a safe harbor. The IRS says, "Look, if you have this, you've met economic effect." Now again, substantiality is a different issue, but economic effect—if you don't meet that, you don't even worry about substantiality. It has to have economic effect first.

Mr. Urban

And when you say economic effect, what you're really saying is [that] it's going to impact the amount of dollars that would be distributed on a hypothetical liquidation.

Mr. Redpath

Right. And the IRS has the so-called big three, right? Well, the first one says capital account maintenance. You have to maintain your capital accounts under 704(b), or we're not going to respect an allocation. Now, you can go in and argue, but when they give you a safe harbor, you want that. Then, of course, you have only those [partners] with positives in their capital account get a distribution on liquidation. Which capital account? No, not that tax capital account—your 704(b) capital account. And then, you have to have a deficit restoration obligation. Anybody with a negative in their capital account when you liquidate or they leave has to pay it back. Or you can have—and you always do in an LLC by the way—if you look at your LLCs, if they have a deficit restoration obligation, get rid of it. Put a QIO in there, *qualified income offset*, that says if, for certain events, it falls below zero, your capital account, you've got to pick up income, ordinary income, to bring it back to zero. But the first requirement to have a special allocation be respected as having economic effect under the safe harbors of 704(b) is you've got to maintain your capital accounts under 704(b).

Mr. Urban

Yes.

Mr. Redpath

It seems so simple, but yet we seem to forget that still is out there. So, how would you define, for our viewers who aren't familiar with 704(b)—and again looking at the regs is the best way to do it because they detail what you're supposed to do—how would you compare those? What are some of the differences that you see between 704(b) because we're talking about 704(b)? Essentially, what should our viewers know?

Mr. Urban

Yes, to me, the starting point is always how you go about starting a 704(b) calculation. Generally speaking, what you would do is, you'd say, "Okay, I'm going to establish the 704(b) capital account with the value of money or the fair market value of property that I contribute to the partnership."

Mr. Redpath

I'm going to stop you one second here because let's not go over that word too quickly—or three words—*fair market value* of the property, as opposed to a tax basis on the property.

Mr. Urban

That's right. Because, really what you're looking at is, you're saying, "Look, if we were to liquidate this partnership, sell it for fair market value, what do we want the respective parties to receive?" Oftentimes, that's the starting point. Contrast that with a tax basis capital account, which is what you just suggested, a starting point of that would be the tax basis of the property that was contributed and also the money that was contributed to the partnership. So, that would be the first fundamental difference that we see.

Then, if you go forward, the maintenance of those 704(b) capital accounts and tax basis capital accounts are in a lot of ways very similar. You're adjusting both by the taxable items of income, gain, loss, [and] deduction. You're also adjusting for distributions. But, when you talk about distributions, clearly, a tax basis capital account is reduced downward by cash that gets distributed and also the basis of property that gets distributed. A 704(b) capital account would come down by the fair market value of the property or, obviously, the amount of the cash that gets distributed. So, you see these differences at the front end and the back end.

Mr. Redpath

Depreciation is different too, though, isn't it, Greg? Because now you're depreciating for your capital account the fair market value. So, your depreciation number in your capital account is not going to be just carried over from your tax return.

Mr. Urban

Yes. So, you would see some differences that way for sure. And you bring that up mainly because, if you had somebody that contributed appreciated property and somebody else who put in cash—that's probably way beyond what we're going to talk about today—but there are ways of curing those discrepancies. Your point is that difference between the amount of tax depreciation that is available based upon the tax basis of the asset and the amount of depreciation that would be available based upon fair market value can be different. In a lot of cases, you're curing those discrepancies for maybe a party that contributed property and a party that contributed cash.

Mr. Redpath

I was doing a program two weeks ago for a state association. One of the participants said, "Well, all that stuff about the regulations under 704(c) for pre-contribution gain—the traditional method, traditional plus curative, remedial—they're all gone, right, because we're using tax basis?" And I said, "No, they're not." Again, we're talking two different things. We are talking about how you're reporting it on the K-1 and M-2, and this other outside one that we keep forgetting about, which is 704(b). And so, as you mentioned, that 704(c) allocation, how you're doing it—because again, it's way beyond as you said—but there's a ceiling rule, and you can't give more than they depreciate in their capital account. I understand what the person was saying, because they were saying, "Well, if it's tax basis, that's what they're getting." And you're going, "Well, no, because that's not what it's referring to." That section is referring to 704(b) capital accounts. So, there is that real confusion out there on all of these rules.

704(c) is another area that's going to reflect back to a 704(b) capital account to have. You mentioned that there's a number of different things that come into play. And so, recourse debt—you have that constructive liquidation; and it says, you have a hypothetical, everything's worth nothing. Everything's disposed of for its basis, for its value of nothing, the gains and losses. The only thing would be if property had nonrecourse debt, it was disposed of for that. And then anybody who has a negative has to restore their capital account, but the capital account you're hitting with this constructive liquidation is 704(b). It's not that tax capital account. Likewise, we said, when you do—let's say you have nonrecourse deductions. The concept of nonrecourse deductions on property that is secured by nonrecourse debt—that whole concept of minimum gain is based on your 704(b) book basis versus your tax basis.

And they're going, "Really? I better go back and look at 704(b)."

Mr. Urban

Probably the most valuable thing that we find in our practice that we could tell the audience is, it's really interesting, I think, at the beginning of a partnership, particularly a new partnership, where property is contributed to the partnership. Let's say you and I are partners. I contribute property. You contribute cash to set up a set of tax basis capital accounts and a set of book basis capital accounts, and let's carry those out. Assume that we would be in business for five years and carry out those capital accounts for a five-year period, and work through an allocation of the depreciation. You contribute cash. You would expect depreciation based upon the fair market value or the value of the cash you put in. I may put in appreciated property that might not have any basis. So, how are you going to get the deductions that you would expect, or how am I going to get the gain allocated to me that was inherent in the property that I contributed?

The only way to really understand, I think, how a partnership agreement works for the partners that you're representing is to model this out through liquidation and say, "Okay, let's assume a selling price down the road. How would that gain get allocated, and how is it going to impact my partner and the other partners, and basically, make sure you get to the result that is equitable. That's what we do in a lot of cases. Clients will come in and ask us to look at a partnership agreement, and we can go through it. But probably the most valuable thing you can do is model out the capital accounts over say a five-year period—we like that period of time; maybe it's seven years—and follow through the deductions and maybe special allocation of this pre-contribution gain that you're referring to and just understand what the annual impact is going to be on your client. Having those in the file, a lot of times, serves as a document you can go back to and say, "Okay, when we prepare this year's return, we did some special allocations. Is it in line with what we expected based upon what we set up initially?"

Mr. Redpath

Yes, and that's a great point to make, Greg. One of the things too is that liabilities don't affect either one of the capital accounts. Whether it's tax basis or it's 704(b) basis, liabilities are not included in that. And, like you said, the basic idea of a capital account is it's supposed to reflect the economic relationships of the partners. When you start talking about special allocations and all of these things, you're really trying to relate the economic relationship of the parties.

One of the things you mentioned just struck me because I had a situation where someone asked me to review a partnership agreement and a buyout. The buyout said capital account plus, plus, plus. Plus, plus, plus don't matter; they were using essentially a tax basis capital account. And I said, "Well, your agreement…" [It was an LLP; it's a law firm, of all things. The LLP agreement they had said capital accounts will be maintained under 704(b).] "They're not. You're entitled to a lot more money. Let's just do a down and dirty here. Here's the calculation." There's important things that could come out of that. This was a retirement. The two parties were talking different languages on that.

Another one, Greg, is something that you hear a lot about in more sophisticated partnerships, but restating the capital account. That's where we restated it. So, what does that mean to restate the capital account?

Mr. Urban

Probably the simplest way to start the conversation is, let's say you had a partner that came in and contributed property to the partnership. What's he or she really interested in when the partnership liquidates? That they get the value of the property that they contributed. So, that's probably where we typically see restatements.

Basically, what you're saying is, "Okay, I had an event." A contribution of property would be one example; a distribution of property to a partner might be another example. But take the contribution of property. In that scenario, what you basically have the opportunity to do is to take the capital accounts that had been adjusted over time—again, starting with the fair market value of property that was contributed, the value of cash adjusted for items of taxable income—and to reset it at the fair market value that's determined, really, by reference to the fair market value of the property that was contributed. So basically, what we do is we say, "Okay, somebody contributed a piece of property that's worth X." We divide X by the percentage interest that they obtained, and that basically implies the value of everybody else's partnership interest. That type of an event gives you the opportunity to reset the value and essentially start the calculation over. So, that's an important one.

Mr. Redpath

I look at it from another perspective too, Greg. Let's say you and I are partners, and we've been partners for 20 years. Our partnership capital accounts are $200,000 each. We're 50/50, but a one-third interest in our partnership now, fair market value, is a million. We have somebody that wants to come in, and they want to contribute cash. We found the right person; they want to contribute a million dollars in cash to become a one-third partner in our partnership.

If we take the million and give them a one-third interest, and we liquidate the next day, and we pay out the capital accounts first—well, you and I are going, "Whoa, whoa, whoa! You're getting a million, and then we share equally in everything else? No, no, no, no, no. We need to restate that capital account to reflect the economic relationship. Okay, Greg, you're a million, I'm a million, and third party is now a million." And now, our economic relationships are the same.

Now, there's all sorts of complications that come in with that, for example, 704(c) questions. There are other issues to be addressed, but that's way beyond. That would take us five days.

Mr. Urban

Ian, in that context, it's interesting. Our firm's experiences are just worth commenting on for 30 seconds here. In that type of a transaction, you can have what's called a reverse 704(c) situation. A lot of our staff, they're familiar with 704(c), and they could probably track it. But here, what we see missed a lot of times would be the reverse. Somebody's buying into an appreciated asset. So now, you and I, in this example, aren't the contributing partners, yet we got an allocation under 704(c).

Mr. Redpath

And again, the internal, as you said, reverse 704(c)s and everything on this internal, someone coming in [scenario], that's a whole course in and of itself—way beyond this. But the thing is, there is nothing on a tax capital account that would be the equivalent of a restatement of someone's capital account. I mean, if you're doing it on tax basis, our capital account doesn't change because this person now has a million-dollar capital account.

Mr. Urban

This one-third partner coming in, in your example, is going to inherit essentially one third of the inside tax basis of the assets; and probably not much is going to change on the capital account that gets put on his K-1 when you look at it as the total before he came in.

Mr. Redpath

There's a lot of aspects here, Greg, that people really need to pay attention to. I think it's been misleading to put great emphasis on tax basis capital accounts, and [it's] saying to some people, "Well, that means I don't have to worry about any of these other rules. I've just got to keep my tax basis. It was hard enough to figure out what the tax basis capital account, the beginning was, in 2020. So, now I've got that, I don't have to worry about it." And, by the way, the IRS says a lot of people didn't put the effort into doing it correctly. I mean that's the IRS that said that as a warning to everybody. Yet, no, that's not true.

Perhaps the more complex part of this is the 704(b), and I would ask our viewers to look at your partnerships and go, "Should we be maintaining a 704(b) capital account?" I'm going to guarantee you that most of your operating agreements, most of your partnership agreements, your LLP agreements are going to say that language in there—that the capital accounts are to be maintained under the capital account maintenance rules, 704(b), the Code and the Regs.—because that's standard language in every form book. And yet, it's the exception, not the rule.

Mr. Urban

For sure.

Mr. Redpath

And you mentioned, I think another point is that this is off the books.… On the return, you're doing the capital account on a tax basis. Your 704(b) is off the return.

Mr. Urban

Right.

Mr. Redpath

So, anything you want to leave our viewers with here on 704(b)? Hopefully, we've got the importance of it through to them.

Mr. Urban

The only other thing that we see in practice that I think is interesting, and another reason to maintain it as we talked about—you had mentioned revaluation events. A lot of times, you certainly see it on a contribution. You also see it in situations where we buy out a partner. Why is resetting capital accounts and maintaining them important? We have some partnerships that maybe have some large losses that get passed through. Maybe some partnerships in the past year or so, because of the inflation situation, that will adopt LIFO and will have large tax losses. The question, I think, becomes should some of the net tax deductions be allocated to people who've contributed debt to a partnership and have some capital accounts gone to zero? It becomes really important, not only for understanding what you would distribute in a liquidation scenario, but also for allocation of losses throughout the life of a partnership. So, for all these reasons, I think maintaining it, monitoring it, and making sure that your allocations follow what the capital accounts are telling you is really important.

Mr. Redpath

I had one firm—a relatively large firm—said to me once, "Well, how do we convince our clients to pay for it?" And I said, "Well, I think it's just what we've been discussing is how you can explain it to them." You really have to do it. I don't think it should be viewed as elective other than in our 50/30/20 plain, everything's plain, everything's done [plain]. And even that, at some point in the future, may not be the case.

Mr. Urban

Right.

Mr. Redpath

It's always safe, as you mentioned, to have it in your file and refer to it on whatever occasion it is that may come up that you need to look back at that. Your idea, Greg, of maintaining it—at least keeping it in the file, keeping it updated—I think that makes a world of sense. That is a great, great point for all of our viewers.

Greg, I want to thank you and your insight on this. It's been an oversight—a lot of time spent on reporting, and not a lot of time spent on, "Hey, 704 is still out there. Don't forget about it." Hopefully, our viewers are not going to forget about it now. So, Greg, thanks a lot. Appreciate you being here. Really appreciate your insight.

Mr. Urban

Sounds good, Ian. Always good to be with you.

Mr. Redpath

Thank you.

IRC Section 704(b) Capital Accounts

By Ian J. Redpath, JD, LLM

A. Introduction

Each partner or member of a limited liability company taxed as a partnership has three separate accounting accounts that reflect different aspects of their respective ownership interests: the inside basis, outside basis, and capital account. Each of these accounts is used for a different purpose and generally is different in amount. It is quite common to assume that the capital account is simply the outside basis, plus liabilities. This may, in some cases, be true; but often, it is not. Improperly calculating the capital account may result in unexpected negative tax results to the partners. In this material, the use of the terms "partnership" and "partner" includes limited liability companies taxed as partnerships, and their members.

B. Inside Basis

Inside basis represents a partner's pro rata share of the partnership's basis in the assets. When assets are contributed to a partnership, there is no gain or loss recognized under the general rules of §721. The basis of the partnership in the property is a carryover basis under §723. Going forward, a partner will share pro rata, as determined by the partnership agreement, in the basis in all future assets acquired by the partnership. As the tax items of the partnership flow through to the partners, they will be based on this inside basis.

Special rules may apply in situations where a contribution is recharacterized as a disguised sale under §707, or the property has pre-contribution gain under §704(c).

C. Outside Basis

Outside basis is the partners' tax basis or their tax interest in the partnership. This is determined under the rules of §705. The initial basis on contributions is determined under §722 and is a carryover basis in the assets, plus any gain recognized on the contribution. This is a limited gain recognition under §721(b) related to contributions of, primarily, portfolio assets. A partner's basis includes their allocable share or all of the debts of the partnership, whether recourse or nonrecourse. They are allocated differently per §752 and the regulations thereunder. The outside basis is used in determining the taxability of distributions and sales of partnership interests.

D. Capital Accounts

The §704(b) capital account is meant to reflect the economic relationship of the partners, even though it may not, at any particular point in time, because of such things as special allocations of partnership items. There is much confusion on how to calculate the capital account; however, for purposes of the tax code, the term "book" means the capital account as maintained under the rules of §704(b) and the regulations thereunder. While the Code does not mandate the method to maintain the capital account, the IRS requires that, for purposes of reporting the capital accounts on Form 1065, Schedule M-2, and a partner's K-1, the account must be reflected on a "tax basis." However, this reporting change did not change the need for a §704(b) capital account for other partner purposes. Failing to do so could result in negative tax consequences.

It should be noted that most commercial software ties the capital account to the balance sheet (Schedule L), so whatever method was used for that purpose is carried over to the initial capital account. A §704(b) capital account will only be determined by a spreadsheet. This "off the return" capital account will be used to make special allocations and in allocating debt.

Items in the capital account under §704(b) are reflected at fair market value of the investment, plus accumulated earnings that the partner has in the partnership. It relates back to a basic concept: assets – liabilities = equity. The capital account attaches to the interest so that when there is a transfer of an interest, a proportionate share goes with the transfer. It should be noted that the capital account is not the same as invested or capital contribution. Those terms refer to the amount of cash and the fair market value of property contributed without adjustments. As mentioned earlier, the capital account is meant to reflect the partners' economic relationship; it may not do so at any particular point in time until liquidation.

If a partner provides services in return for an interest in the capital, the regulations provide that the amount of income is determined by the amount by which the other partners give up their right to be repaid their capital on liquidation. If it is a profits-only interest, except in the limited circumstances set forth in Rev. Proc. 93-27, there is no income recognition. The amount of income is added to the capital account for that partner.

The rules contained in Reg. §1.704-1(b)(2)(iv) are used to determine the partners' capital accounts for §704(b). It should be noted that no special allocation can be respected as it cannot have economic effect, unless the partnership uses §704(b) in determining its capital account for this purpose. Likewise, recourse debts may be improperly allocated under the constructive liquidation scenario as they are tested against the capital account under §704(b). Nonrecourse debt allocation, and allocation of nonrecourse deductions, refers to "minimum gain" which is the difference between the debt balance and the "book" basis. Remember that "book" in Subchapter K refers to the books under §704(b). If IRC §704(b) is used, it is necessary to maintain a separate spreadsheet and override the tax software's calculation. Remember that there are no specific requirements that a partnership use IRC §704(b) to maintain its capital accounts. What must be remembered is that those rules contain a safe harbor, and partnership tax law assumes that the partnership is using it.

While the IRS requires reporting on a "tax basis," the partners may not be happy with the result if an "off the return" §704 capital account is not also kept. Clearly, a "tax basis" capital account does not reflect the true economic relationship of the parties. If the intent of the allocation was not to permanently change the economic relationship, then it must be reinstated before or at liquidation to reflect the true economic relationship of the partners.

E. Schedule M-2

Schedule M-2, *Analysis of Partners' Capital Accounts*, shows what caused the changes during the tax year in the partners' capital accounts as reflected on a "tax basis." The amounts on Schedule M-2 should equal the total of the amounts reported in Item L of all the partners' Schedules K-1.

F. Book Capital Accounts

Each partner has separate capital accounts that represent the equity that the partner has in the partnership. The partners' share of equity is the amount that would be received if the partnership were liquidated and all of the assets were sold at their book value, all liabilities paid, and the net proceeds distributed. As the partnership carries on the trade or business, these capital accounts will change depending on the agreement between the partners as to how they will share in the profits and losses. The capital accounts should reflect the economic arrangement between the partners.

Many partnerships allocate their income, losses, and deductions on a straightforward pro rata basis, but some partnerships make special allocations. In cases where special allocations are made, it may be important for the partnership to gain access to the safe harbor provided in Reg. §1.704-1(b)(2). One of the safe harbor provisions is that the partnership must maintain its capital accounts in accordance with the capital account maintenance rules found in Reg. §1.704-1(b)(2)(iv).

When safe harbor rules are followed, the book capital accounts will be maintained using fair market value

(FMV) of assets contributed, net of liabilities. It is important to understand the relationship between the financial accounting of the books and records, book capital accounts, and the Form 1065 balance sheet. The partnership's books and records may be kept using various methods. If the partnership provides audited financial statements to outside readers, the books and records will be kept in accordance with GAAP. The book capital accounts and the Form 1065 balance sheet should state the assets at FMV, net of liabilities, as of the date of contribution by the partner. The FMV of partnership assets may, over the passage of time, reflect a different amount than the partnership books and records at the date of contribution due to the appreciation or depreciation in assets.

It should be noted that guaranteed payments do not directly affect the capital account, other than as a reduction in the income of the partnership allocated to all the partners/members. The receipt of a guaranteed payment is income and generally subject to self-employment tax for the recipient.

G. Tax Capital Accounts

As mentioned, capital accounts on Schedule M-2 and the partners' K-1s must be maintained on the tax basis. This has been discussed in several past programs, so we will not go in depth into those rules now. It should be remembered that the capital accounts for that purpose are maintained using tax principles. For example, the basis of assets contributed is recorded using the adjusted basis of the assets contributed, instead of FMV. Because the tax capital account reflects the adjusted basis, barring any transfers of partnership interests, there is a close relationship to a partner's outside basis for tax purposes. However, like §704(b), the capital account will not reflect a partner's share of liabilities. It will also not reflect any §743(b) adjustments if a §754 election is in effect.

H. Comparing Book and Tax Capital Accounts

Book capital accounts compare to tax capital accounts as follows:

1. Book capital accounts reflect the fair market value of the property at the date of contribution, and tax capital accounts reflect the adjusted basis of the property at the date of contribution.
2. Book capital accounts reflect the fair market value of the property at the date of distribution, and tax capital accounts reflect the adjusted basis of the property at the date of distribution.
3. Book capital accounts and tax capital accounts do not include liabilities of the partnership; both are reflected net of liabilities.
4. Book capital accounts and tax capital accounts may both reflect a negative balance; however, it is important to note that outside basis cannot have a negative balance since outside basis includes liabilities.
5. The book depreciation, depletion, and amortization, with respect to property that has a book basis that differs from its tax basis, will be an amount that is proportional to the tax depreciation. If the tax amount is zero, then any reasonable method can be used.
6. Generally, nondeductible expenses will reduce the capital account.

I. Restatement of Capital Accounts

Partnerships and LLCs may "book-up" the capital accounts of the partners/members to fair market value upon the happening of certain events. It must be for a substantial nontax business reason in relation to the acquisition or relinquishment of an interest. Failure to do so could result in substantially adverse consequences in the future. Practitioners should be aware of this if such a transaction took place.

J. Allocations

Non-pro rata allocations are subject to §704(b), which provides that such allocations must have "substantial economic effect" if they are to be respected by the IRS and not set aside.

The substantial economic effect test is actually a two-part test. An allocation is respected only if the allocation has "economic effect" and that economic effect is "substantial." Economic effect and substantiality are two separate and different inquiries. An allocation could have economic effect and still not be respected due to insubstantiality. The economic effect test provides a safe harbor. Its advantage is that it is mechanical and well defined; it removes the taxpayer from the subjectivity surrounding the partner's interest in the partnership test.

The way the economic effect regulations tie tax allocations to economic benefits and burdens is through the capital accounts. For an allocation to satisfy the primary economic effect test, the partnership agreement must, throughout the full term of the partnership, provide as follows:

- The partners must maintain their capital accounts in accordance with the rules contained in Reg. §1.704-1(b)(2)(iv).
- Upon liquidation of the partnership or any partner's interest in the partnership, liquidating distributions are required in all cases to be made in accordance with the positive capital account balances of the partners.
- Upon liquidation, a partner with a deficit in her/his capital account has an unconditional obligation to restore the amount of the deficit.

The first requirement focuses on the maintenance of book or economic capital accounts. The purpose of the capital account maintenance rules is to ensure that the underlying economic arrangement of the partners is clearly reflected. Analysis of the book capital accounts is intended to reveal the contribution obligations and the liquidation rights of the partners.

There are two types of allocations: shifting and transitory. A shifting allocation reduces the partners' overall tax liabilities in a given year without altering their capital account balances. Transitory allocations occur over two or more years. An allocation is considered transitory when an original allocation is offset by a reversing allocation in the future and there has been a tax savings for one or more partners. In other words, if the allocations taken as a whole produce a wash in the capital accounts, and there has been a tax savings for one or more partners, then the allocations may be considered to be transitory. Ultimately, the capital accounts should reflect the actual economic relationship of the parties. Special allocations of income or deductions will have to be offset with future income or loss to offset that allocation from an economic perspective. Usually, this is accomplished by either an income chargeback or a gain/loss chargeback. In the chargeback, the partner who obtains the prior benefit is allocated either future income/loss or gain/loss from the sale of property to offset the prior specially allocated benefit. While this may seem counterintuitive in some situations, it is necessary to maintain the economic relationship of the parties.

When property is contributed to a partnership and there is precontribution gain in the property, §704(c) provides rules to allocate that gain to the contributing partner. If the property is such that it generates a current deduction such as amortization or depreciation, the regulations provide that the taxpayer may use any reasonable method to eliminate the difference between the "book" and tax basis as quickly as possible. This assumes the "book" is at FMV. The regulations provide three methods: traditional, traditional with curative, and remedial methods. The allocation must be made; the taxpayer may choose the method. These are mandatory and, thus, not subject to the rules of §704(b).

K. Minimum Gain Chargeback

The general idea behind the minimum gain chargeback is that a partner who receives the tax advantage of a deduction for which s/he bears no economic risk of loss (such as depreciation deductions generated by basis created by nonrecourse borrowing) may bear a tax liability in the future due to the allocation of income. This allocation of income is called a "minimum gain chargeback." At the appropriate time, income must be allocated to the partner who received the corresponding nonrecourse deductions.

The allocation of income to partners who received nonrecourse deductions—minimum gain chargeback—is triggered when there is a decrease in minimum gain. A net decrease in partnership minimum gain occurs when:

1. Debt is repaid.

2. A taxable disposition of the property encumbered by the debt occurs.

3. A nonrecourse liability is converted to a recourse liability.

L. Debt allocation

Recourse debts are allocated on the constructive liquidation scenario. All assets are deemed worthless and sold for the value of zero. If there is nonrecourse debt on property, it is sold for the balance of that debt. The gains and losses are recorded in the capital account. To the extent that a partner has a negative in their capital account, they must restore that negative. That amount of debt is allocated to that partner, with the balance allocated to the partners based upon their respective interest in the partnership losses. Thus, if the capital account is not in sync with the partners' economic interest or maintained on other than a §704(b) basis, the recourse debts may not be properly allocated. Nonrecourse debts are allocated in a three-step process: first, to the extent of the share of any minimum gain; then, to the extent of a partner's precontribution gain on the property; then lastly, based on the partner's respective share of the partnership profits. Of course, the allocation of debt affects the partner's basis in the partnership or outside basis (§752).

M. Conclusion

The determination of a partner's capital account can have wide-ranging effects on the partner and the determination of basis and the taxation of distributions. It is important that care be taken to assure that the capital account is properly calculated. Practitioners should be aware that the change in reporting requiring a "tax basis" for Schedule M-2 and the partners' K-1s does not eliminate the need for an "off the return" capital account under §704(b).

A. Discussion Problems

Your firm has just obtained a new client, Smith and Jones Partners. You have reviewed the last several partnership returns and notice that the balance sheet is maintained on a tax basis. You also note that the capital accounts appear to be tax basis capital accounts. One thing that is apparent is that the capital accounts do not reflect the partners' interests of 50% each in the capital and profits. This is due to the initial contributions, as Smith gave property and Jones gave cash, while the capital accounts have been maintained on a tax basis. The partners also tell you that, over the years, they have taken out differing amounts based upon their respective cash needs at the time, and not their 50%/50% sharing arrangement. They also have a large amount of recourse debt that has been allocated 50%/50%. They are considering relocating to Texas.

Required:

1) Explain to the partners the various accounting accounts in the partnership.

2) Discuss the differences in maintaining the capital account.

3) Are there any issues in the allocation of partnership items, including the debt?

B. Suggested Answers to Discussion Problems

1) There are three accounting accounts in a partnership. Inside basis represents a partner's pro rata share of the partnership's basis in the assets. Outside basis is the partners' tax basis or their tax interest in the partnership. The capital account is meant to reflect the economic relationship of the partners even though it may not, at any particular point in time, because of such things as special allocations of partnership items.

2) There is much confusion on how to calculate the capital account; however, for purposes of the tax code, the term "book" means the capital account as maintained under the rules of §704(b) and the regulations thereunder. This is even more confusing as the IRS requires that capital accounts on Schedule M-2 and the partners' K-1s be maintained on a "tax basis." This will not reflect the economic relationship of the partners. The failure to maintain an "off the return" §704(b) capital account may result in negative consequences to one or more partners. This is especially important for debt allocations or if special allocations are anticipated or made.

3) In order to have special allocations of items, they must be in accordance with the agreement or must have substantial economic effect. To have economic effect, the first condition is that capital accounts be maintained under the rules of §704(b). These allocations must be analyzed to determine if they will be respected by the IRS, if audited. In regard to the debt, recourse debt is allocated under the constructive liquidation scenario. Not maintaining the capital accounts under §704(b) and the manner in which they are out of sync with the partners' interests may be problematic in how the debt has been allocated and the basis of the partners in the partnership (outside basis).

GLOSSARY OF KEY TERMS

Annuity—An annuity is a contract purchased from an insurance company in which the buyer pays the insurance company either a lump sum or a series of premiums. At some point in the future, the insurance company pays back the annuity owner (annuitant). How many years the owner receives payments depends on the type of annuity.

Book Capital Account—For purposes of the tax code, the term "book" means the capital account as maintained under the rules of IRC §704(b) and the regulations thereunder.

Cryptocurrency— Cryptocurrency is a type of unregulated digital currency that is only available in electronic form. It is stored and transacted only through designated software, mobile or computer applications, or through dedicated digital wallets, and the transactions occur over the internet through secure, dedicated networks.

Infrastructure Investment and Jobs Act—Public Law No. 117-58, also known as the Bipartisan Infrastructure Framework, was signed into law by President Biden on November 15, 2021, and includes approximately $1.2 trillion in spending to include funding for broadband access, clean water, electric grid renewal, and transportation and road provisions, along with tax-related provisions.

Inside Basis—Inside basis represents a partner's pro rata share of the partnership's basis in the assets.

Outside Basis—Outside basis is the partners' tax basis or their tax interest in the partnership.

Qualified Longevity Annuity Contract (QLAC)—A qualified longevity annuity contract (QLAC) is an investment vehicle that allows funds in a qualified retirement plan, such as a 401(k), a 403(b), or an IRA to be converted into an annuity.

Setting Every Community Up for Retirement Enhancement (SECURE Act)—Part of the Further Consolidated Appropriations Act, 2020 (H.R. 1865, P.L. 116-94, the SECURE Act was enacted on December 20, 2019. It provides expanded opportunities for individuals for retirement savings and makes a number of administrative simplifications. It also includes a change to the kiddie tax.

SECURE 2.0 Act of 2022—SECURE 2.0 was signed into law by President Biden on December 29, 2022, as part of the Consolidated Appropriations Act (CAA) of 2023. It is a law designed to substantially improve retirement savings options in the U.S. and builds on the SECURE Act.

Stablecoins—Stablecoins are cryptocurrencies designed to have a relatively stable price and whose value is pegged or tied to that of another currency, commodity, or financial instrument. Stablecoins aim to provide an alternative to the high volatility of the most popular cryptocurrencies.

CUMULATIVE INDEX 2023

BY TOPIC

BY CITATION

BY SPEAKER

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

1. According to Ian Redpath, the 2022 Form 1040 changed the term *virtual currency* to which of the following?

   A. Cryptocurrency
   B. Digital assets
   C. Nonfungible tokens
   D. Stablecoins

2. According to Ian Redpath, digital assets must be reported on the 2022 Form 1040 under what circumstances?

   A. Taxpayers dispose of the digital assets in exchange for either property or services.
   B. Taxpayers hold digital assets in a digital wallet that they control.
   C. Taxpayers transfer digital assets from one digital wallet to another, both of which they control.
   D. Taxpayers are not considered to hold a financial interest in any digital assets.

3. According to Ian Redpath, the lower $600 Form 1099-K threshold has been delayed by what guidance?

   A. Announcement 2023-2
   B. Notice 2023-10 and Fact Sheet 2022-41
   C. Rev. Proc. 2023-11
   D. The SECURE 2.0 Act (SECURE 2.0)

4. According to Ian Redpath, what is the highest manufacturer's suggested retail price (MSRP) that still qualifies for the clean vehicle credit in 2023 (for other vehicles—other than the $80,000 for vans, sport utility vehicles, and pickup trucks)?

   A. $30,000
   B. $45,000
   C. $55,000
   D. $60,000

5. According to Ian Redpath, what is the standard rate for business mileage in 2023?

   A. 14 cents per mile
   B. 22 cents per mile
   C. 28 cents per mile
   D. 65.5 cents per mile

Continued on next page

6. According to Ian Redpath and Bob Lickwar, the effective dates for SECURE 2.0 are—

   A. in 2022.
   B. predictable.
   C. staggered.
   D. straightforward.

7. According to Ian Redpath and Bob Lickwar, SECURE 2.0 allows individuals who are 60 to 63 in 2025 to make catch-up contributions to their 401(k) accounts. Those contributions are limited to the greater of which amount?

   A. $5,000 or 125% of their regular contribution
   B. $7,000 or 130% of their regular contribution
   C. $10,000 or 150% of their regular contribution
   D. $12,000 or 160% of their regular contribution

8. According to Ian Redpath and Bob Lickwar, under SECURE 2.0, individuals whose income exceeds $145,000 can only make catch-up contributions under what circumstances?

   A. Their 401(k) plan offers a Roth provision.
   B. They did not take a required minimum distribution.
   C. They will turn 72 after 2022.
   D. They participate in a SEP plan.

9. According to Ian Redpath and Bob Lickwar, student loan payments may be treated as which of the following under SECURE 2.0?

   A. Contributions to a 401(k) plan that can be matched by an employer
   B. Required minimum distributions from a Roth IRA within a 401(k) plan
   C. Gift cards or other payments that encourage people to participate in a qualified plan
   D. A method for taking plan funds from one job to another.

10. According to Ian Redpath and Bob Lickwar, SECURE 2.0 allows funds from a 529 plan to be rolled into a Roth IRA if the 529 plan has been in existence for how long?

   A. 5 years
   B. 10 years
   C. 15 years
   D. 20 years

Continued on next page

11. According to Ian Redpath and Greg Urban, partnerships generally maintain how many sets of capital accounts?

    A. One—704(b) account only
    B. One—tax basis account only
    C. Two—tax basis and 704(b) accounts
    D. Three—GAAP basis, tax basis, and 704(b) accounts

12. According to Ian Redpath and Greg Urban, when is tracking and maintaining 704(b) capital accounts most relevant?

    A. When the partnership has simple allocations (e.g., 50/50)
    B. When the partnership has complex issues (e.g., preferential distributions)
    C. When the partnership uses the tax basis to report on Schedule K-1
    D. When the partnership has a Section 754 election in place

13. According to Ian Redpath and Greg Urban, special allocations must have which of the following to be respected by the IRS?

    A. Pre-approval by the IRS
    B. Fair market value
    C. Qualified income offset
    D. Substantial economic effect

14. According to Ian Redpath and Greg Urban, what is one of the most valuable things CPAs can do when looking at a client's partnership agreement?

    A. Recommend that partners contribute cash when they join, not property
    B. Establish a 704(b) capital account using the tax basis of contributed property
    C. Model the capital accounts out over a five-year period
    D. Carry over depreciation from the tax return

15. According to Ian Redpath and Greg Urban, what is the correct term for a circumstance in which non-contributing partners buy into an appreciated asset and get an allocation?

    A. An inflation situation
    B. A plain vanilla partnership
    C. A revaluation event
    D. A reverse Section 704(c) situation

Subscriber Survey

Evaluation Form

Please take a few minutes to complete this survey related to the **CPE Network® Tax Report** and return it by mail to 2395 Midway Road, Carrollton, Texas 75006, Attn: Managing Editor. All responses will be kept confidential. Comments in addition to the answers to these questions are also welcome. Please send comments to **CPLgrading@thomsonreuters.com.**

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

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
SECURE 2.0	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
IRC Section 704(b) Capital Accounts	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

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

____

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

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

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

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

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	|______|	|______|	|______|
Robert Lickwar	|______|	|______|	|______|
Greg Urban	|______|	|______|	|______|

Which of the following would you use for viewing CPE Network® A&A 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!

CPE Network®

CPE Group Attendance Sheet

Firm/Company Name: ______________________

Account #: ______________________

Location: ______________________

Program Title: CPE Network Tax Report, February 2023 Date: ________

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

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

Instructor Name: ______________________ Date: ________

E-mail address: ______________________

License State and Number: ______________________

Group Study PO Box 115008, Carrollton, TX 75011 -5008 Fax (888) 286.9070 CPLgrading@thomsonreuters.com

CPE Network/Webinar Delivery Tracking Report

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

			First CPE Hour			**CPE Hour 2**			**CPE Hour 3**			**FOR TR USE ONLY**
First Name	**Last Name**	**Student Email**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Certificate Issued?**

CHECKPOINT LEARNING NETWORK

CPE NETWORK®
USER GUIDE

REVISED SEPTEMBER 3, 2021

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.
- **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 Thomson Reuters.

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

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

Copyrighted Materials

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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/

Requesting Participant CPE Certificates

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

Mail: Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008

Email: **CPLgrading@tr.com**

Fax: 888.286.9070

When sending your package to Thomson Reuters, 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 Thomson Reuters any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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 one of the following means:

Mail: Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008

Email: **CPLgrading@tr.com**

Fax: 888.286.9070

When sending your package to Thomson Reuters, 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 Thomson Reuters any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Print

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

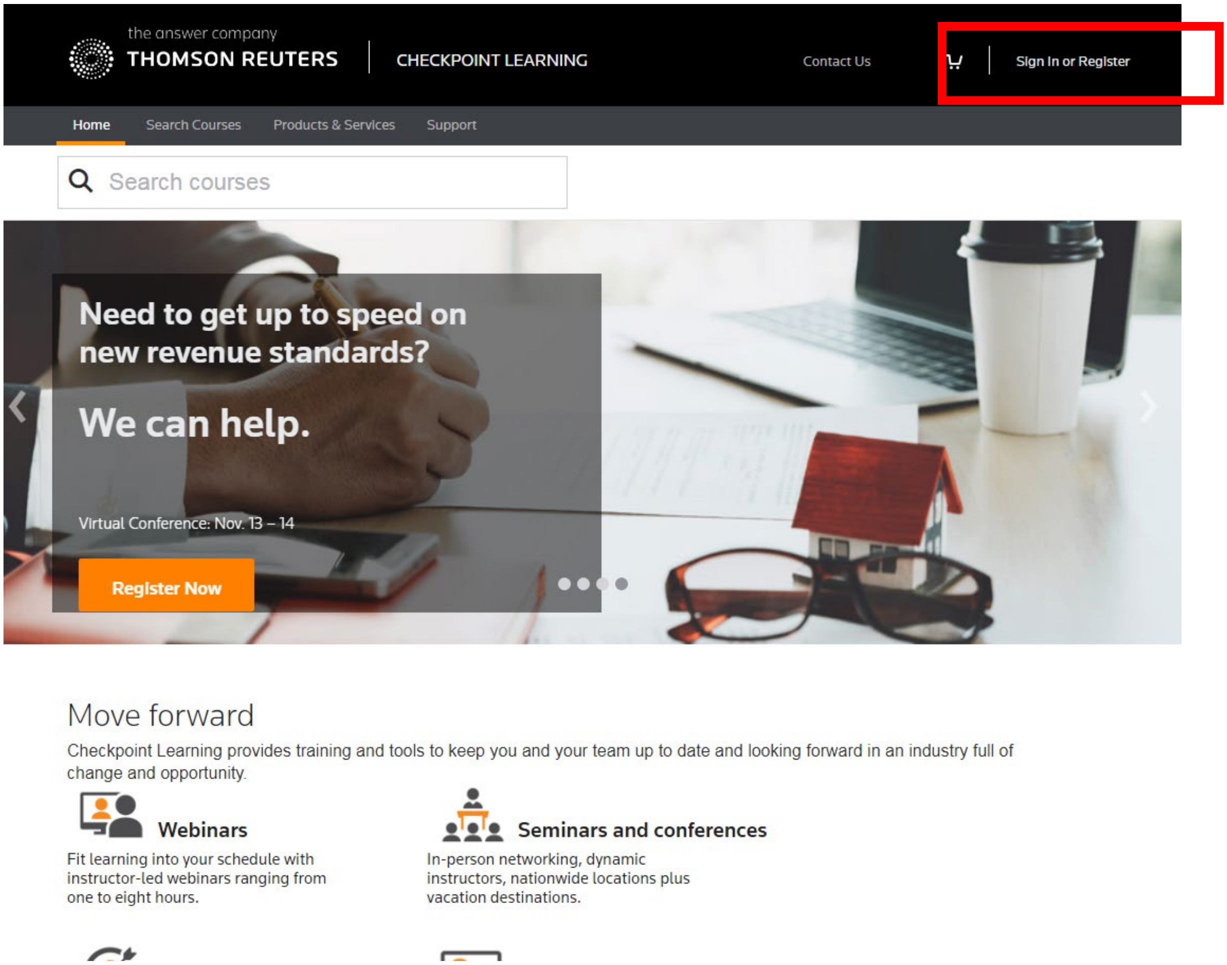
- Watch the DVD.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.
-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

  Thomson Reuters
  PO Box 115008
  Carrollton, TX 75011-5008

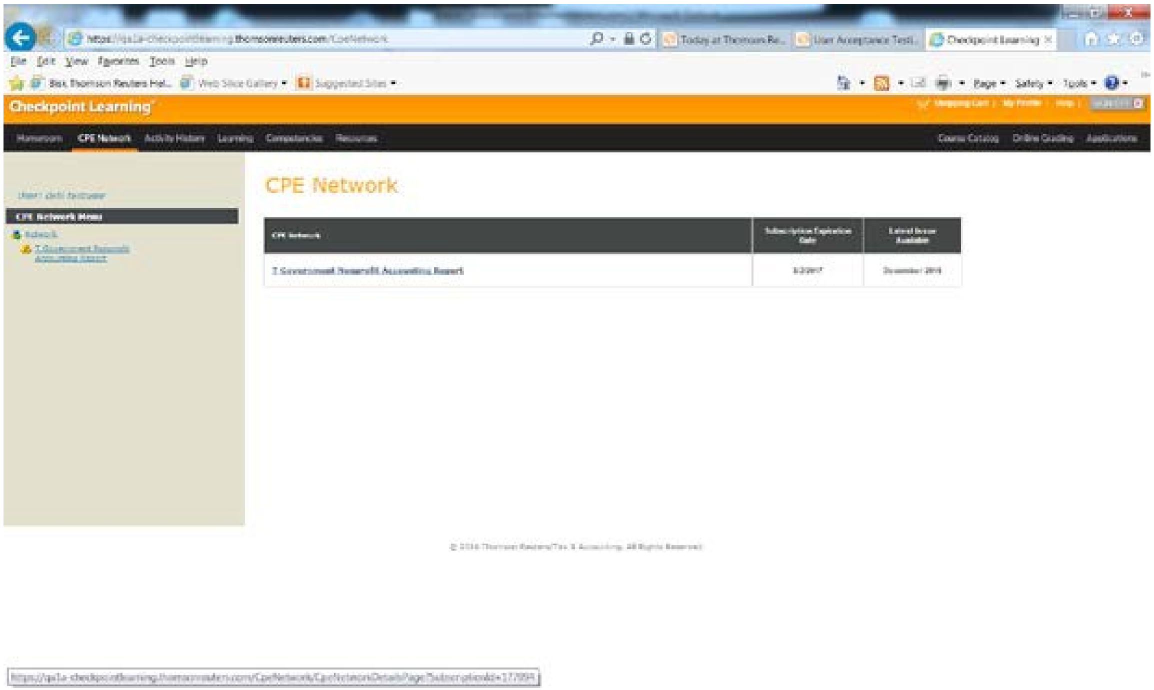
Self-Study—Online

Follow these simple steps to use the online program:

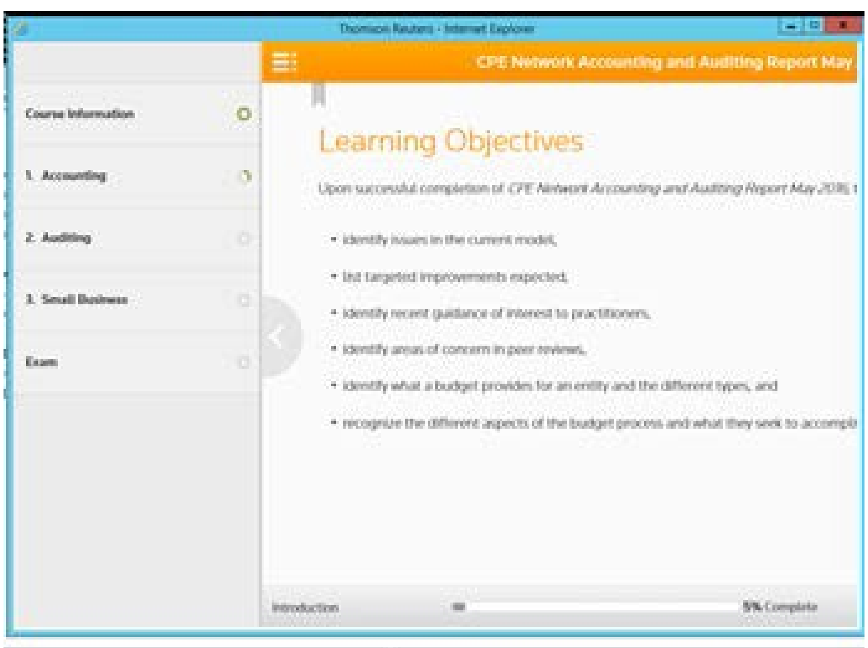
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Sign In or Register”).


the answer company
THOMSON REUTERS
CHECKPOINT LEARNING
Contact Us
Sign In or Register
Home
Search Courses
Products & Services
Support
Search courses
Need to get up to speed on new revenue standards?
We can help.
Virtual Conference: Nov. 13 – 14
Register Now
Move forward
Checkpoint Learning provides training and tools to keep you and your team up to date and looking forward in an industry full of change and opportunity.
Webinars
Fit learning into your schedule with instructor-led webinars ranging from one to eight hours.
Seminars and conferences
In-person networking, dynamic instructors, nationwide locations plus vacation destinations.

- In the **Network** tab, select the Network Report for the month desired.

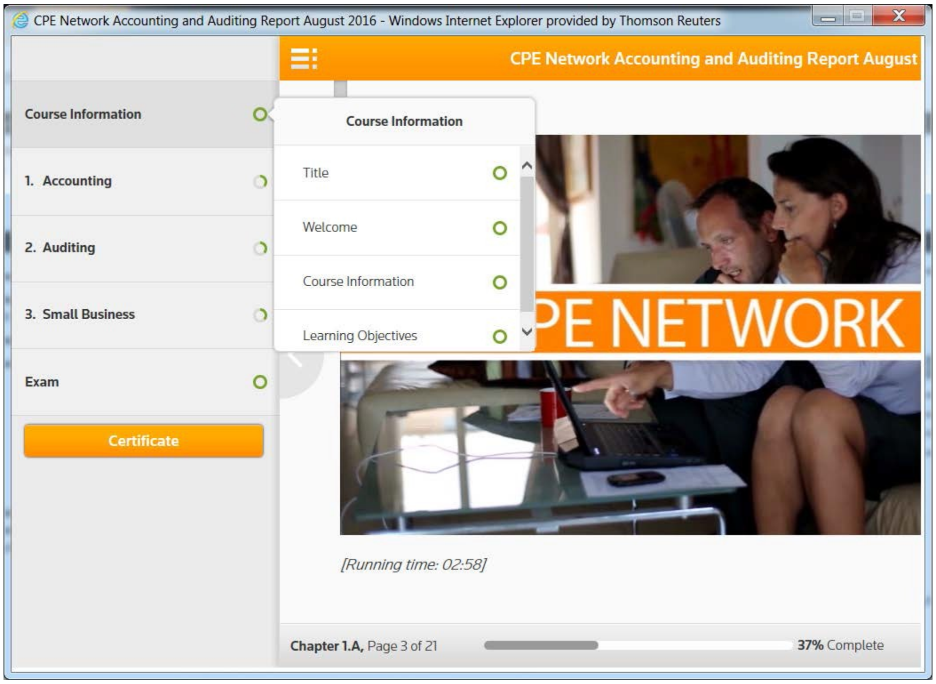


The Chapter Menu is in the gray bar at the left of your screen:

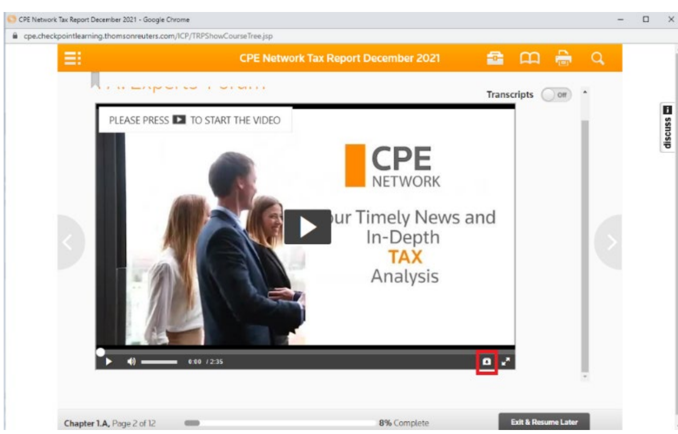


Click down to access the dropdown menu and move between the program Chapters.

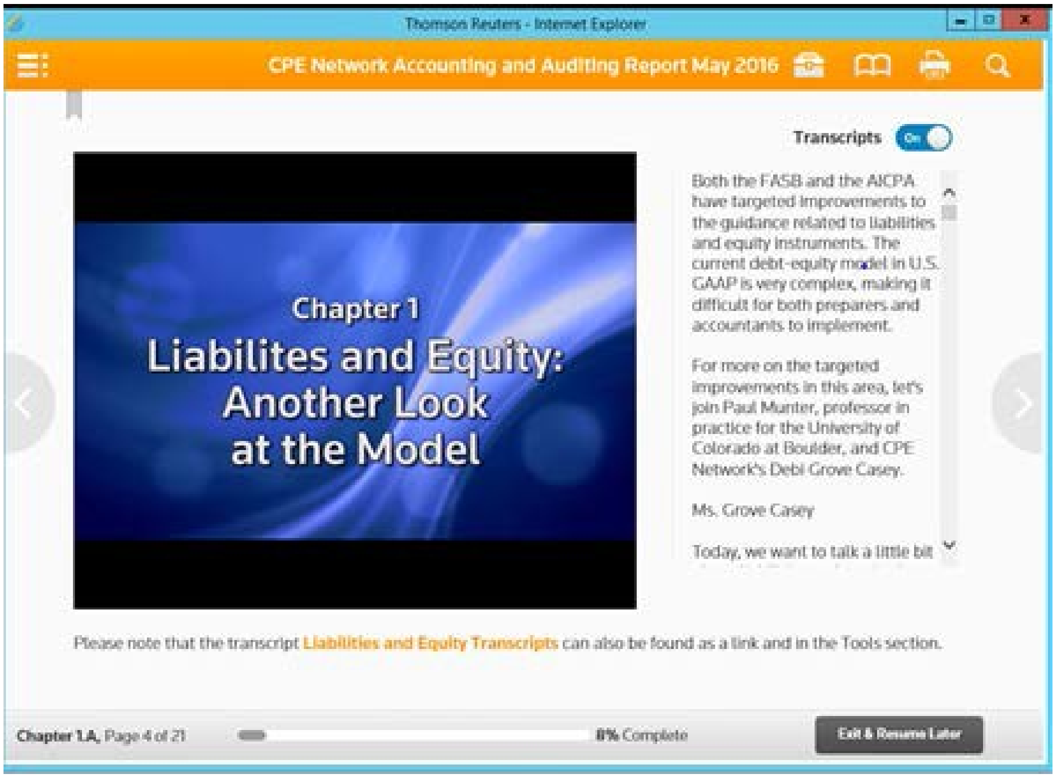
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



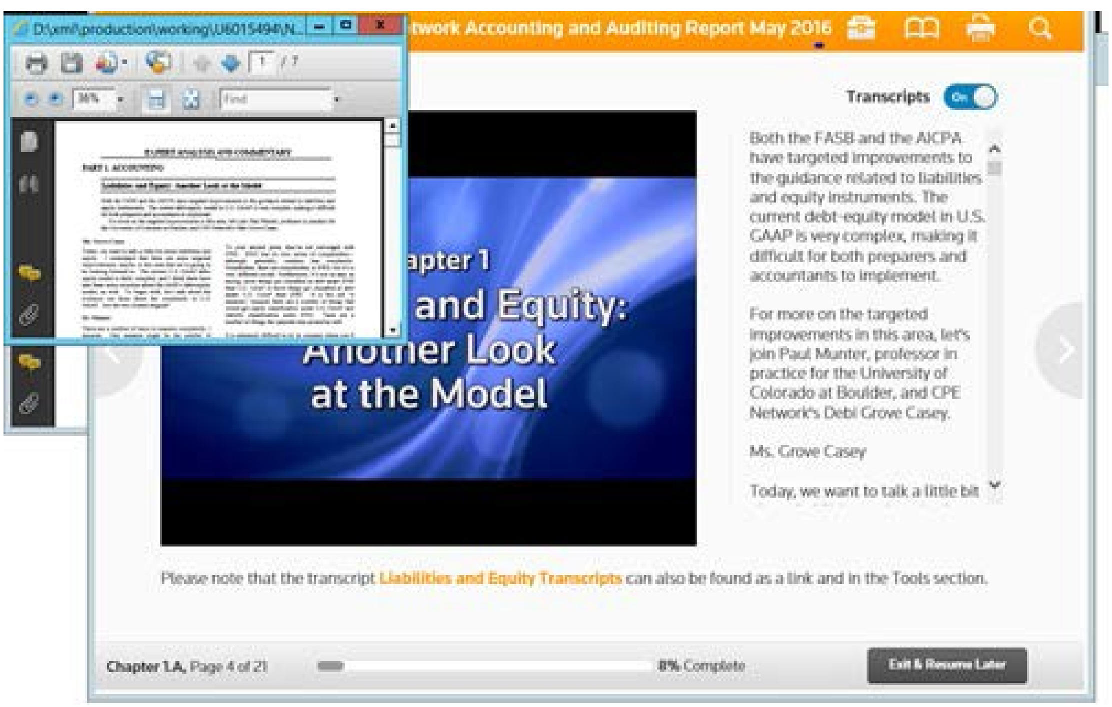
- **Each Chapter is now self-contained.** Years ago, when on the CPEasy site, the interview segments were all together, then all the supplemental materials, etc. Today, each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This more streamlined approach allows administrators and users to more easily access the related materials.



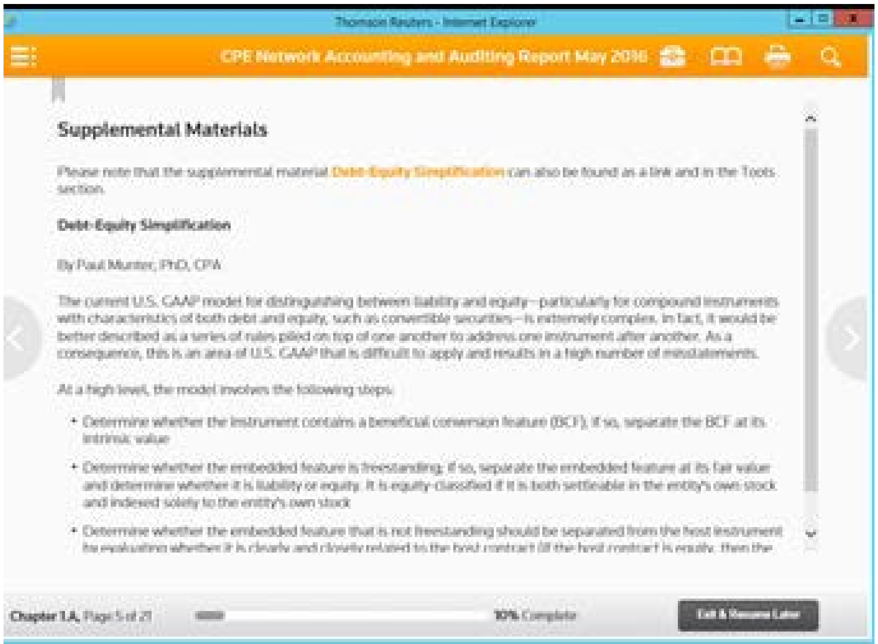
Video segments may be downloaded from the CPL player by clicking on the download button.

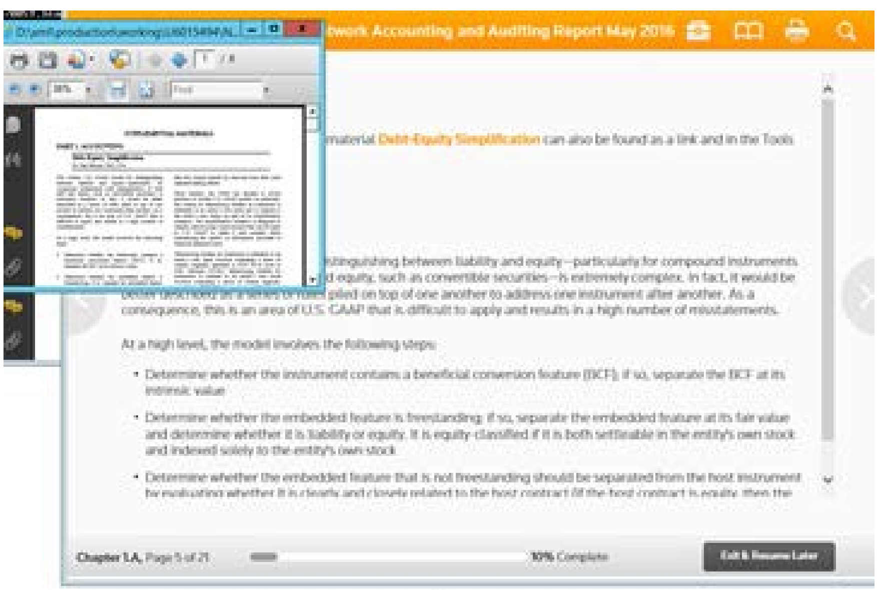


Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



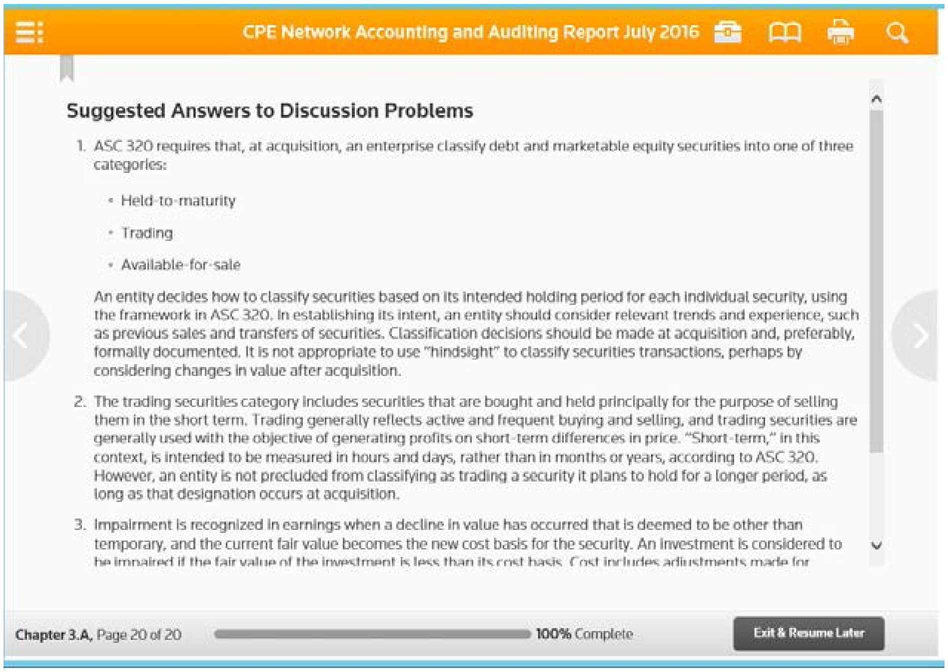
Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.





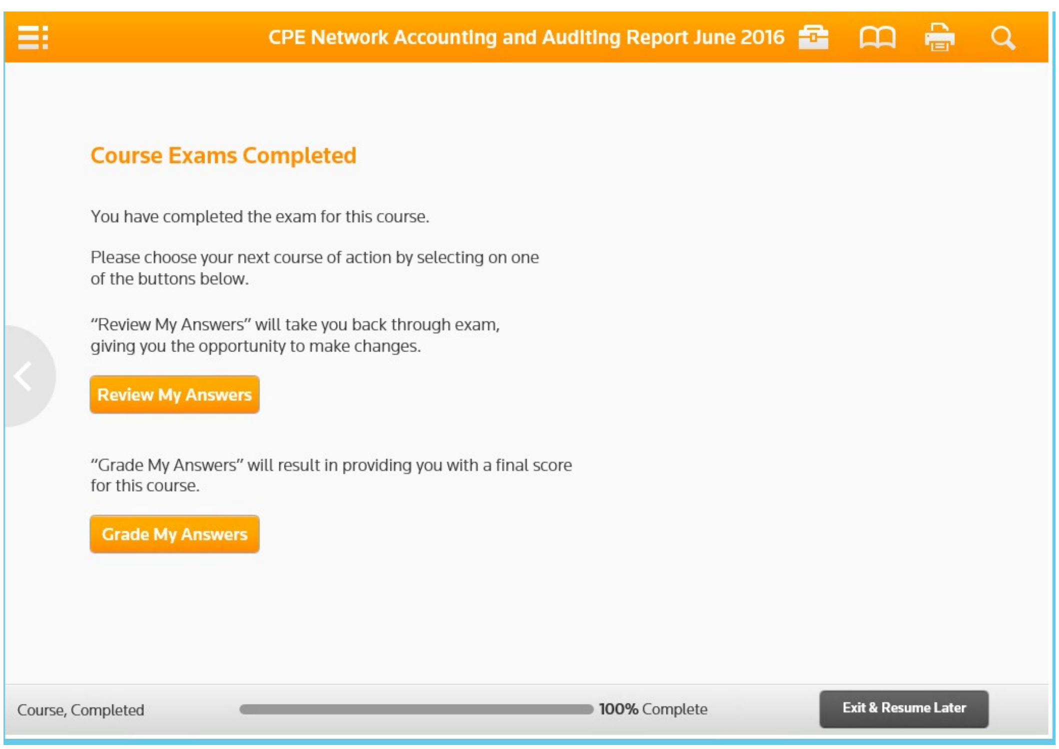
Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

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



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**.

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

<u>Determining CPE Credit Increments</u>

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.

<u>Program Presentation</u>

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

- Record of participation (the original sign-in sheets, now in an editable, electronic signable format)

- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name(s) and credentials
- Results of program evaluations

Appendix: Forms

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

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

Getting Help

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

Support Group	**Phone Number**	**Email Address**	**Typical Issues/Questions**
Technical Support	800.431.9025 (follow option prompts	checkpointlearning.techsupport@ thomsonreuters.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	800.431.9025 (follow option prompts	checkpointlearning.productsupport@ thomsonreuters.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	800.431.9025 (follow option prompts	checkpointlearning.cpecustomerservicet@ thomsonreuters.com	• Billing • Existing orders • Cancellations • Webinars • Certificates