Thank you for joining us today at

Ledgent CPE University

LEDGENT.COM *We love to create remarkable experiences… every person, every time.®*

Tax Report

LEDGENT FINANCE & ACCOUNTING
A Roth Staffing Company

866.702.6670

Ledgent.com

CPE Quizzer Answer Sheet

CHECKPOINT LEARNING

CPE Network Tax Report
CPEN001
02/22

You will have one year from your date of receipt to complete this program and submit the quizzer in order to obtain credit.

First Name:____________________

Last Name:____________________

Firm Name:____________________

Firm Address:____________________

City:____________________ State /ZIP:____________________

Firm Phone: ____________________ Fax No:____________________

Firm Fax No: ____________________

Email: ____________________

Licensing State: ____________________ License No:____________________

CFP License (if applicable):____________________ PTIN No. (if applicable):____________________

A Certificate of Completion will be issued with a passing grade of 70 percent or better **within three (3) weeks of submission**. You will be sent a make-up test if you fail. You are responsible for submitting a CPE Reporting Form to your State Board or professional organization. Contact your State Board for complete information regarding your status or requirements.

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

Email: CPLGrading@thomsonreuters.com **FAX:** 1-888-286-9070

ANSWERS:

Please indicate your answer by filling in the appropriate circle as shown: Fill in like this ● not like this / ✓ X

	A	B	C	D		A	B	C	D		A	B	C	D		A	B	C	D
1.	○	○	○	○	5.	○	○	○	○	9.	○	○	○	○	13.	○	○	○	○
2.	○	○	○	○	6.	○	○	○	○	10.	○	○	○	○	14.	○	○	○	○
3.	○	○	○	○	7.	○	○	○	○	11.	○	○	○	○	15.	○	○	○	○
4.	○	○	○	○	8.	○	○	○	○	12.	○	○	○	○					

CHECKPOINT LEARNING

Contact us at: 2395 Midway Rd., Carrollton, TX 75006
checkpoint learning.cpecustomerservice@tr.com
800.431.9025

CPE NETWORK
TAX REPORT

FEBRUARY 2022 VOLUME 35, ISSUE 2

Note: While video/discussion/Q&A may be shared via Teams, Zoom, or other conferencing-type software, you must have each of your participants submit the quiz for self-study credit. Refer to the User Guide for best practices.

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

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

Topics for future editions may include:

- 2021 Tax Forms Update
- Partnership Audit Rules

THOMSON REUTERS™

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Taxation is 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 or their practice, 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, and/or the courts, since the last program.

Learning Objective: Upon completion of this segment, the user should be able to analyze current issues in taxation, including analyzing the Form 6419 Advance Child Credit and issues surrounding it, determining if a Form 1099-C is applicable to student debt forgiveness, and assessing the extinguishment regulations for conservation contributions.
[*Running time 36:48*]

PART 2. INDIVIDUAL TAXATION

Subchapter K is one of the most complex areas of the Code. The determination of a partner's outside basis is one of the most important things for any partner client. This is maintained by the client and not the partnership. Outside basis determines how much a partner may withdraw or deduct from a partnership for tax purposes without recognizing additional gain or without being limited on the allowable flow-through of partnership losses. Practitioners should work closely with a partner client to assure the basis is properly maintained to take full use of many of the advantages of partnership taxation.

Learning Objective: Upon completion of this segment, the user should be able to analyze issues related to partner and partnership bases, including calculating a partner's initial basis in the partnership, determining the impact of annual adjustments to the outside basis, and analyzing the use of an alternative method to determine outside basis.
[*Running time 37:12*]

PART 3. BUSINESS TAXATION

The IRS has come under a significant amount of scrutiny in recent years. The 2021 tax season was very difficult for all involved, and it does not appear that 2022 will be much better. The IRS is significantly behind in all aspects of its activities, including processing 2020 returns and responding to various taxpayer correspondence. There is a proposal to increase funding to address some of the issues.

Learning Objective: Upon completion of this segment, the user should be able to analyze issues related to the IRS administration and enforcement, including assessing the audit activity related to S corporations, assessing issues related to current delays within the IRS in dealing with taxpayers, and determining the impact of the Administration's budget proposal on future audit activity. [*Running time 24:05*]

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.

Brian O'Sullivan, CPA, CVA is a tax partner with LG Legacy Group, LLC, located in Dresher, PA. He has over 20 years of public accounting experience in the areas of income taxation, valuation services, and audit and attestation services. Brian's area of emphasis is income tax planning for high net worth individuals and consulting for closely held businesses. Brian is a frequent speaker on technical tax topics.

Shiny Rachel Mathew, CPA, JD, is a Tax Attorney, Accountant, Business Owner, Best-Selling Author, Public Speaker, and Oklahoma Bar Association Tax Section Chair. She co-owns and manages a nationwide tax firm with over 100 employees across eight states. She loves making the topics of tax policy, tax strategy, tax administration, tax cases, and tax law easy to understand for all. Shiny has been working in the field of taxes and accounting since 1999. She continues to serve through education and has spoken hundreds of times to audiences across the country.

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

Title of Course (Enter full title)	
Date of Class (MM/DD/YYYY)	
Time (Enter time of class)	
Location (Enter location of class)	

Learning Objectives (Refer to executive summary)	
Program Description (Refer to executive summary)	
Instructional delivery method	Group Live
Recommended CPE credit	3.0 Credits
Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	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.)

EXPERT ANALYSIS AND COMMENTARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

This month we join Ian Redpath for Experts' Forum, a popular feature in which we review recent developments in taxation. We begin with a discussion about Revenue Ruling 2022-2, which establishes covered compensation under IRC Section 401.

Let's join Ian.

A. Revenue Ruling 2022-2

Mr. Redpath

Hi, I'm Ian Redpath with Network Tax. This is the Experts' Forum section, and this is where we go over a number of things that have happened since the last time we spoke, whether it be the Internal Revenue Service, the courts. Nothing really has happened in Congress. We know that the Build Back Better Plan, which was expected to come with some legislation is now being held up and seems to be on the back burner right now, but we'll see what happens with that. There's rumors that it will be broken up into separate packages; and so we'll keep you appraised, obviously, as soon as we have information on that.

Let's jump right in on some of the things that have happened. And we're going to start right in with revenue ruling 2022-2; and this establishes what is considered covered compensation for various qualified plans under section 401 of the code. Basically, the qualified plan, the contributions provided can't discriminate. But plans that are integrated with social security can—and again, there's certain limits here—provide participants with additional contribution benefits based on their compensation above a permitted disparity without violating those nondiscrimination rules. What this revenue ruling does is establish that the covered compensation or the permitted disparity, the integration level has to satisfy the rules and the covered compensation, which essentially is considered to be the average of taxable wage base for each year in the 35-year period ending in the year the employee attained social security retirement age. The taxable wage base for 2022 is $147,000. And so, that is what we'll be using to determine that taxable wage base. And it also has a series of tables attached to reflect the wage base amounts.

B. IR-2021-255

You may have had many clients who did receive and people are all over the place on what they did with their clients relative to the Advance Child Tax Credit. But in IR-2021-255, the IRS announced that beginning in December, they were going to start sending out—and presumably it really started in late December, early January—that they were sending out Letter 6419, which was going to detail the amount of the Child Tax Credit advance payments that were made in 2021, the number of qualifying children that were used to determine those monthly payments. So, when you have a client come in, make sure that you ask to see that 6419. Confirm with the client that these numbers appear to be correct in applying the advanced tax credit against the Child Tax Credit.

Where do we stand right now? We do know that the additional tax credit was only for 2021; it did not get extended to 2022. It is part of the Build Back Better Plan, but it changes effective January 1, 2022. The changes that were made to the Child Tax Credit expired; and so, the increased amounts do not apply as of right now to 2022. So, from a planning standpoint, remember that those have gone away, even though the Build Back Better Plan does provide for that if it ever gets through Congress. Again, keep in mind, one of the big differences is that it was made fully refundable for 2021, so keep that in mind. Again, look for the letter, ask the client for the letter, confirm the numbers, confirm what was used as you are looking at preparing the return—so another thing we have to make sure our clients give us as a form of an information return that they're getting in this case from the Internal Revenue Service.

C. Notice 2022-1

Notice 2022-1. Well, if you don't represent lenders who are making student loans or loan servicers, you're not really concerned about this. Well, maybe you are because if you have clients who have any student loans that have been in any way, shape, or form discharged of any of the indebtedness any forgiven loan amount, this really does apply. In the notice, the IRS told lenders and loan providers that they are not to file any information returns or furnish any payee statements to report discharge of student loans if that discharge is going to be excluded from gross income. Now, under 108(f)(5), discharges of loans after December 31, 2020 and before January 1, 2026—and again, it's not every loan, but most loans fit into this category and again, I refer you to the code section 108(f)(5)—that they're excluded from income.

So basically, there's a general reporting requirement when there is a discharge of at least $600—filing a 1099-C or Cancellation of Debt with the Internal Revenue Service. But this notice says, look, if it's under these provisions of 108(f)(5) for student loans, don't file anything with the IRS or with the borrower. So, what happens is that, if you have someone that comes in and says, "Hey, look, I got a 1099-C. What do I do?" Well, the first thing you're going to have to do is be aware of the fact that you may want to make a disclosure that that was not included in income. I would certainly contact the lender and say, why are you sending this, and refer them to this IRS notice that, look, you're not supposed to be doing this.

So, this notice makes it very clear, 2022-1, that you are not supposed to be filing this because what's going to happen is, if that 1099-C, if they receive that and there's nothing in there on the discharge of debt income, you're probably going to get a CP2000 letter saying, "Hey, wait a second. You didn't pick up this income." And now you're going to have to deal with that. So, if in fact, and we know this is going to happen, that there's going to be 1099-Cs that are going to be sent out. If your client gets one for a student loan debt, and it falls under this provision of the code 108(f)(5), then what you should do, contact the lender first, try to get them to file an amendment to get rid of that, or report it, back it out, and disclose why you're backing it out. That should avoid the CP2000 problem. So, if you do get one, you may want to consider reporting it and then backing it out and just disclosing that you're backing it out because it's excluded under 108(f)(5) and that the lender mistakenly gave you a 1099-C. But again, the first thing to do would be to contact the lender to see if they can withdraw that 1099-C, amend it, and get rid of it.

D. Revenue Procedures 2022-1, 2, 3, 5, & 7

DC CA

All right. We have a whole series of revenue procedures here, 2022-1 through 2022-7. And what these are, are just revised procedures for requesting advice, such as letter rulings, determination letters, technical advice from the IRS and Chief Counsel. And it goes over the procedures, but it also gives the non-ruling areas, so areas that the IRS says, "We just don't give rulings on this particular issue."

And so, you may want to look at those if you're looking for a determination letter, if you're… planning on considering asking for a private letter ruling, a Technical Advice Memorandum, a TAM, you may wish to look at these and it will provide you with the procedures for doing so. Also, one of the things that is provided here is that Form 5300, the Application for Determination of Employee Benefit Plan, will be submitted electronically beginning June 1, 2022. And then it has to be submitted electronically beginning July 1, 2022. And so the procedures are updated in here on that; but that's something to keep in mind if you are going to be filing a 5300 for Determination of an Employee Benefit Plan, so do keep that in mind.

Again, another area which is Rev. Proc. 2022-5 explains determination letters for tax-exempt status. And you may very well want to look at that if you're applying for tax-exempt status for a client, and it establishes the procedures.

E. Challenge of Massive College Head Coach Football Contracts

Very interesting for those of you who are sports fans, especially those of you who may be professional, excuse me, college—which some people would argue may be becoming professional—football may be very interested in this. Representative Pascrell issued letters to the president of LSU and the president of USC, Louisiana State University, University of Southern California; and that's from the House Ways and Means Oversight Subcommittee chair, Bill Pascrell, a Democrat from New Jersey. He sent letters to them after the hiring of, in LSU's case, Brian Kelly from Notre Dame, and in USC's, Lincoln Riley from Oklahoma. You might say, "Well, why would the House Ways and Means Committee, a Subcommittee of the House Ways and Means, be asking them to respond to anything? So, they hired new coaches."

A couple of things here. Well, first as pointed out in the letter, they're tax-exempt entities under 501(c)(3). They're organized and operated exclusively for educational purposes. Their income is not subject to tax because they are operated as educational institutions. Now, the exempt educational entities pay tax on employee compensation in excess of $1 million—and that's under code section 4960—as well as unrelated business income from activities not related to education. So, you've got the Form 990, and you break down the institution's mission and activities, their governance, their expenses, the compensation for most compensated employees. Pascrell says, "Wait a second. How does paying these coaches the amount of money that you're paying them, how does that deal with the education of student athletes who are competing in sports?" In fact, he says in the letter, "It's unclear how such lucrative compensation offered to LSU and USC's new football coaches aligns with the school's respective educational missions and benefits their student bodies."

Brian Kelly departed University of Notre Dame; and it's reported that he received $95 million with a yearly base salary that starts at $9 million for 2022 and gradually goes up to $10 million in 2031. In addition, half a million dollar annual bonuses, contract performance bonus incentives, another $500,000 total bowl game incentives, another total of up to $1.35 [million] in incentives. In addition, it's reported that he's to get an interest-free loan up to $1.2 million for his primary residence and a monthly allowance for two vehicles. And Lincoln Riley, head coach of Southern Cal—not all the details are known, but what is reported is that he'll get $110 million during the contract, plus a $6 million home, plus unlimited… access to a private jet. So, he's asking the schools to clarify how their new deals with these coaches relates to their educational tax-exempt purpose. One might argue, are these excess benefit transactions? Should these be denied as they don't relate to their exempt purposes at all? So, the specific questions. Are highly compensated university employees pursuant to 4960 subject to the $1 million comp, the excess toll charge on that, for the university, the commercialization as he states, the commercialization of men's football and basketball, financial data on athletic scholarships, revenue and expense of the athletic departments, fiscal and budgetary oversight of the athletic budgets, and costs and usage of athletic facilities?

Now, the NCAA shows that—and this is published by the NCAA—that Division 1, the so-called Power Five Conferences that self-govern their own operations, the Football Bowl Subdivision programs like LSU and USC and other prominent universities, that essentially they generate over $8.25 million in revenue. 34.8% comes from media rights, 24% from donor contributions and endowments, and 18.8% from ticket sales. The remainder, things like royalties, licensing, advertising, student fees, the same entities incurred a combined $7.9 million in expense during the same period; and the highest expense was the coach at 20%, followed by facility expenses, and then administrative compensation, and interestingly enough, 18.9% for severance pay. Coaches leave. They get paid for a while many times if they don't leave voluntarily

Comparatively, student-athletic financial aid was only 12.7% of all expenses. Now, they netted overall, netted a profit, a median in 2020 net generated by those Division 1, FBS, Power Five schools was a negative $7.76 million. Only 20 of the 65 schools had positive net generated revenue. Men's sports, only football and basketball are profitable; and only one of the 65 football programs in that grouping had negative net generated revenue. So again, basically, we know that most schools at that level that their football programs, to some extent basketball, but football primarily essentially supports all the other sports. It supports all the women's sports, all the secondary sports, the track and field, the wrestling, all of these other sports.

However, regardless if players go winless in a season or a bowl game or a championship, essentially, they're unpaid. Now, we may have to disagree with that a little bit, because we know now there's that NIL, Name Image Lightness, money that is available.

But if you're the third-string quarterback at Alabama, at LSU, at Michigan, you're not having an NIL deal. And so, basically, he believes that the awarding of scholarships is so nominal compared to these other, especially the percentage of revenue used to pay the coaches. Again, he's asked them to respond to this. So, this will be very, very interesting to see what their response is going to be. We should know by about mid-February what their response is going to be, although I assume they're going to ask for additional time to respond.

F. IR-2022-2

Now IR-2022-2, the IRS has ruled that electronic submission now is the sole means for submitting Form 1024. Now, if you're seeking to be charitable status for a not-for-profit, you file a 1023. If you're going to be a 501(c)(4), you do a Form 1024-A. All others generally use the 1024. Now, certain farm cooperatives under 521 will use Form 1028. What does all of this mean? They say that instead of the 1028, they can file the 1024 and that will suffice. However, now the sole means to file a 1024 is electronically. Therefore, the IRS has said that it's giving a 90-day grace period where it will still accept paper; but after that, it is not going to accept any paper.

G. *Mark A. and Vanessa C. Kelly, Debtors*

Bktcy. Ct. NY

All right, we have an interesting case here. This is a bankruptcy court case. Mark and Vanessa Kelly are the debtors. It's a bankruptcy court in New York. What has happened here is that they filed rather large amounts. So, on May 25, 2018, the IRS filed a proof of claim that included a secured claim in the amount of almost $1.6 million, a priority claim of $2.168 million plus unsecured of $14,000 for $3,826,000, a lot of money. Then on November 30th, 2018, they filed an amended proof of claim and increased that to $4,363,032.05. Can't forget that 5 cents. The IRS, the debtor, they objected to it. Essentially, they claimed that they're owed a refund of $64 for one of the years, 2013, and a refund of $4,000 something in 2016 and a tentative refund of $1,347,250. They said that because they make capital contributions to the company, they had a tax basis.

This was an LLC. The tax basis allowed them then to flow through NOLs that they could use to offset income on their return; and so, they asked that the IRS's claims be disallowed because of that. Well, now we get into a whole lot of issues here. This is a situation where the best I could say is that there was a lot of stuff going on—not all of it, apparently, above board. Basically, the bank in consideration of the debtor cooperating and completing the sale, they entered into a forbearance agreement dated in June of 2013, releasing them of their personal guarantee of about $2.7 million. Thereafter, all of the assets of their company is sold. Now there's a number of different companies that are all related here, so they all go together.

In early 2013, the IRS began an onsite audit of their 2011 return. They retained attorneys, CPAs, and now you get into a whole lot of questions here. They say, well, even so even if we owned the companies, because they tried to claim that the bank owned it, they didn't own it at the sale. The court didn't buy that one. They said even if we did, we were insolvent and yes, they submitted a document saying essentially that when the bank took it over, therefore it's not one of our assets, we have nothing and the court disagreed, they also had a Form, they filed a... Well, they had a Form 1045, but they only had undated copies.

They claimed that they dropped it off to agent Kim at the Binghamton New York office. Although at another time they said that no, they electronically filed it. So, we got a lot of issues here as to what's really the truth. It's a little odd that you've got a CPA firm, a law firm, and here you've got a client that clearly has issues of credibility. At the IRS's request, the CPA prepared a summary of the debtor's basis and liabilities and literally provided no documentation. Then, they wanted to use as documentation copies of their returns. Well, copies of their returns are not documentation.

There was an issue about royalty income. What does he say? I just signed the return. My CPA prepared it. That became an overriding issue here. Well, my CPA prepared it, I don't know, I don't know what he did. He was asked if he remembered being deposed and he did. And he was asked, "Do you remember saying that you e-filed the 1045?" "Yeah. I said that." Well, okay. He's arguing over whether the sale was a dollar or $10, but he testified that he was never paid anything. He never received a penny and didn't recall signing any verification to any interrogatories where he stated he believed that the sale was for $2.7 million, so there is a constant going back and forth here on credibility issues.

Clearly, there was value here because as the IRS said, actually the company had borrowed about $2.5 million to buy assets. Yet he's claiming there was no value to it. Their 2012 return on the company showed an increase in assets and liabilities of $5 million. Now, the IRS agent testified that he felt that this increase was considered questionable because they knew that VMR was in financial distress and having difficulties obtaining credit. They believed it was essentially that he had already reduced his basis and was trying to use these numbers to try to create more basis to take it.

In addition, it was not until he received a copy of the debtor's 2012 1045 application by mail April 21st of 2015. The accountant signed it in 2013. It didn't get to the IRS though and that was not filed, obviously, within the one year. Essentially, what the court said here is the individual clearly lacked any credibility, IRS tax assessments, this is Welsh versus Helvering, have the support of a presumption of correctness. The taxpayer has the burden of proving it wrong. If you're going to try to take NOLs, you have to bear the burden of establishing the existence of the NOL in prior years and the amount that such losses could be carried to other years; and that burden of substantiating the claim deductions, you have to produce the appropriate records so the IRS can determine the appropriate tax liability. Just filing tax returns to substantiate your claim is clearly insufficient. They didn't substantiate their tax bases. They didn't have other records other than personal tax returns. They couldn't even come up with all their bank records to file.

Likewise, you can't simply testify about your debts and assets without more if you're trying to show that you were insolvent. So, in trying to claim the insolvency, basically he says, "I was insolvent." He prepared some statements saying, "I'm insolvent. Here's a spreadsheet, I'm insolvent." Well, what goes behind that spreadsheet? Just giving a spreadsheet is not enough. You have to have the document to behind the spreadsheet. And so looking at it, he totally lacked any credibility on any issues here; and the IRS simply was sustained on this, so a lot of money at stake.

H. RMD Rule Changes

Interesting, the IRS—employee plans—there is posted on the IRS website, IRS employee plans news [about] required minimum distributions. This is a reminder to taxpayers who are at least 70½ years old; and every retirement account may have a responsibility because the waivers and other changes that resulted from the past two years.

Again, the minimum distributions changed. The RMD threshold was 70½, for those who reached that age before January 1 of 2020 for taxpayers whose retirement plans provided RMDs can be delayed if you continue working and are not at least a 5% owner. The IRS rules, then—and again, you don't have to take them from a Roth, keep that in mind. Under the CARES act, there were some changes. The changes included an RMD waiver for 2020. For holders of IRAs and workplace retirement accounts who turned 70½ in 2019, they had their first and second RMDs due in 2020 or had their first RMD due April 1 of 2021 for the 2020 year waived. There is no waiver for 2021 RMDs. So, the news alert emphasizes that the waiver of the RMDs for 2020 under the CARES act wasn't extended to RMDs in 2021. The account holders and participants are required then to make those RMDs for the 2021 year. If you reached 70½ in 2019, the RMDs due in 2020 were waived, but you have to make the 2021 RMD. Well, that had to be done by December 31 of 2021. So, you need to talk to your client, make sure that they did what they needed to do. If not, you're going to have to back that up. If you turned 72 in 2021, but hadn't reached 70½ in 2019, the RMD has to be taken by April 1, 2022. Again, so keep that in mind.

I. *David F. and Tammy K. Hewitt v. Commissioner*

CA 11

We have a real interesting case, Hewitt. It's coming out of the Eleventh Circuit Court of Appeals. it involves the extinguishment regs under conservation easements. Now, these have been highly controversial. But this is a really interesting case because what happened here is that the conservation easement, it provided that if in fact it's extinguished, that the proceeds under the extinguishment regs proportionally, so that the donee of the conservation easement has to get the same proportionate interest that they had at the time it was transferred. So therefore, if it's extinguished the conservation easement, they're entitled to the proceeds, the same portion of the overall value of the property that they had at the time the conservation easement was transferred.

Well, this one said that the donor was entitled to receive any additional amounts that they spent on improvements after the transfer, after the conservation easement was transferred. Well, the courts have in general and the tax court said, "No, you can't do that." The IRS said, "No, you can't do it. It violates the regulations." It says in Reg. 1.170A-14G6ii that you cannot deduct from the value of that property, the pro rata share, you can't deduct any additional improvements you put into it. This circuit court reversed that and said no. And they reversed it because they said that the Internal Revenue Service did not follow the Administrative Procedures Act, the APA, where they said one commentator raised the specific issue and recommended deleting that provision from the proposed regs. Six other organizations criticized it, urging a change. The IRS didn't respond to any of those.

It simply stated that it had considered all comments, never addressed these comments. And so, what the court here said is that the APA has been violated. They haven't all of the options, all of the comments; and so, therefore, it's arbitrary and capricious and so the regulation has to be struck down. That is a really interesting case if that is going to be struck down, because the extinguishment regs have been a matter of a lot of controversy; and so, if those will be struck down that could be very, very interesting going forward.

Well, I want to thank you for joining me. It's always interesting to see what goes on in the courts and with the IRS each month. I want to thank you for being here. Be safe and we'll see you next month. Thank you.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. Revenue Ruling 2022-2

The IRS released the covered compensation tables for the 2022 plan year. For purposes of determining covered compensation for 2022, the taxable wage base is $147,000. In Revenue Ruling 2022-2, the IRS issued covered compensation tables that reflect this taxable wage base amount.

Under §401, a retirement plan is a "qualified plan" only if the contributions or benefits provided by the plan do not discriminate in favor of highly compensated employees. However, plans that are integrated with social security may, within limits, provide plan participants with additional contributions or benefits based on compensation above a certain integration level (a "permitted disparity") without violating the nondiscrimination rules. For defined benefit plans, the integration level specified in the plan must satisfy certain rules, including rules based on "covered compensation." An employee's covered compensation is the average of the "taxable wage base" for each year in the 35-year period ending with the year in which the employee attains social security retirement age. A defined benefit plan may use the covered compensation tables provided by the IRS to determine an employee's covered compensation.

B. IR-2021-255

The IRS announced that it is issuing Letter 6419 to taxpayers who received monthly advance child tax credit (CTC) payments in 2021. The letter will provide a record of the amounts paid and qualifying children on file that were used to determine the monthly payments.

The American Rescue Plan Act (ARPA) increased the credit amount to $3,600 for children age 5 and under and $3,000 for children ages 6–17 for those individuals making up to $75,000 and heads of household and joint filers making up to $112,500. All other recipients remained eligible for the $2,000 credit. The CTC is fully refundable for 2021.

Unless opted out, there was an advance of 50% of the credit amount for 2022 paid in six monthly advance installments beginning July 2021. The last advance CTC payments were distributed December 15, 2021. The IRS maintained an online portal for taxpayers to adjust the information on the advanced payment.

If there is a discrepancy between the taxpayer's record and Letter 6419, it is unclear exactly what the taxpayer should do. Some commentators recommend that taxpayers use their own records to determine how much of the CTC they have received if there is a discrepancy between the amount reflected in Letter 6419 and the taxpayer's records. However, this could generate a flag item for the return. Others have said to use the IRS numbers to obtain a faster refund and then file an amended return. This is not recommended as the IRS is significantly behind in processing amended returns. Another option is to use the IRS numbers and then make the adjustment as an "other credit" and file a disclosure. It is doubtful at this point that anyone at the IRS that is answering phones will be able to correct the numbers on the letter.

Practitioners should make sure to ask clients for this letter and review it closely. If the client does not have the letter, you might consider assisting the client in setting up an online account. The IRS website has a link, "How to Register for Certain Online Self-Help Tools," that can assist in setting up the account. The taxpayer's account should show the amounts the IRS says it paid to the taxpayer in advanced CTC payments in 2021. This will also be helpful in checking the amounts of recovery rebate credit payments in 2021 if the client does not have Letter 6475. That letter details the amounts the IRS says the taxpayer received as payments in 2021.

C. Notice 2022-1

The IRS told lenders and loan servicers of student loans not to file information returns or furnish payee statements to report the discharge of student loans when the discharge is excluded from gross income under §108(f)(5) added by the ARPA for certain student loans discharged after December 31, 2020 and before January 1, 2026.

According to the Notice, filing an information return with the IRS in these circumstances could result in the borrower receiving a CP2000. Practitioners should ask the client if they received a 1099-C and, if so, contact the lender or servicer to make sure they file an amended 1099-C without the discharge. If it is reported, you may wish to report the amount, take it out, and disclose it as excluded under §108(f)(5).

D. Revenue Procedures 2022-1, 2, 3, 5, & 7

DC CA

The IRS released revised procedures for requesting advice such as letter rulings, determination letters, and technical advice from the IRS and Chief Counsel. These procedures also cover what issues the IRS will and will not give advice on.

E. Challenge of Massive College Head Coach Football Contracts

House Ways and Means Oversight Subcommittee Chair Bill Pascrell (D-NJ) sent letters to the presidents of Louisiana State University (LSU) and the University of Southern California (USC) following the schools' recent football coach hirings. The basis issue is to determine if these multimillion-dollar compensation packages are violating the federal tax code. Both of these schools are tax-exempt institutions "organized and operated exclusively for" educational purposes. [§501(c)(3)]

Under §4960, entities pay tax on employee compensation in excess of $1 million as well as unrelated business income tax (UBIT) on income from business activity not directly related to education. Pascrell indicates that it is "unclear how such lucrative compensation" offered to LSU and USC's new football coaches aligns with the schools' respective educational missions and benefits their student bodies.

Brian Kelly is departing the University of Notre Dame to become the new head coach of the LSU Tigers football team. Reportedly, Kelly's contract totals $95 million with a yearly base salary that starts at $9 million for 2022 and gradually increases each year to $10 million in 2031. In addition to $500,000 annual bonuses, the contract includes a performance-based incentive equal to another $500,000 bonus each year LSU is eligible for a bowl game, bringing the potential maximum incentive to $1.35 million. It is alleged that Kelly will also receive an interest-free loan up to $1.2 million for his primary residence and monthly allowances for two vehicles.

Lincoln Riley was recently named the next head coach of the USC Trojans football team. Although the full details of his contract are not yet entirely clear, Riley is reported to be set to receive a total of $110 million during the contract term, as well as a $6 million home. Riley may also have unlimited access to a private jet.

The schools are asked to respond to specific queries regarding:

- highly compensated university employees pursuant to §4960,
- the "increasing commercialization" of men's football and basketball programs,
- financial data on athletic scholarships,

- revenue and expenses of athletic departments,
- fiscal and budgetary oversight of athletic departments, and
- costs and usage of athletic facilities.

Pascrell notes in his letters that the responses will provide insight on how the Oversight Subcommittee should monitor athletic programs of tax-exempt educational entities moving forward.

Data published online by the NCAA sheds light on the financial trends of intercollegiate athletics, specifically Division I autonomous (Power 5 conference programs that self-govern their own operations) Football Bowl Subdivision (FBS) programs like LSU and USC and other prominent universities. In 2020, Division I autonomous FBS schools generated over $8.25 million in revenue, 34.8% of which came from media rights, 24% from donor contributions and endowments, and 18.8% from ticket sales. The remainder was comprised of items such as royalties, licensing, advertising, and student fees. The same entities incurred a combined $7.9 million in expenses during the same period. The highest expense was coach compensation at 20%, followed by facility expenses (19.5%), and administrative compensation and severance pay (18.9%). Comparatively, student athlete financial aid was 12.7% of all expenses.

While this group of schools overall netted a profit, median 2020 net generated revenue by Division 1 autonomous FBS schools was negative $7.76 million. Only 20 of the 65 schools had positive net generated revenue. For men's sports, only football and basketball were profitable; and only 1 of the 65 football programs had negative net generated revenue.

The schools both indicated they intend to respond.

F. IR-2022-2

The IRS has announced that electronic submission is the sole means for submitting Form 1024. Additionally, organizations seeking exemption under §521 may also e-submit Form 1024 rather than using Form 1028. They will accept paper versions for 90 days from the ruling's effective date. The user fee has not changed. Revenue Procedure 72-5, 1972-1 CB 709, which addressed determination letters for religious and apostolic organizations seeking exemption under §501(d), and Revenue Procedure 2015-17, 2015-7 IRB 599, which updated procedures for §501(c)(29) qualified nonprofit health insurance issuers for seeking exemption letters, are modified and superseded. Revenue Procedure 2022-5, 2022-1 IRB 256, which provides annual updates for issuing determination letters for exempt organizations is modified.

G. *Mark A. and Vanessa C. Kelly, Debtors*

Bktcy. Ct. NY

Married taxpayers and former LLC owners' objection to the IRS proof of claim filed in their Chapter 11 bankruptcy case was denied. The taxpayers alleged that they were entitled to NOL carryforwards from the LLC and that they were not required to pay income tax on LLC's canceled debt because they were insolvent at the time of its sale. Although taxpayers provided partnership returns and supporting lists pertaining to the LLC's losses, they were not entitled to shift the burden of proving same to the IRS because they failed to meet the substantiation requirements of §7491(a). They provided copies of the tax returns for the LLC but failed to provide copies of contemporaneous documentation to substantiate the pass-through losses or keep adequate records to substantiate their basis in the LLC to allow the losses to be taken on their individual return. The husband testified that he timely filed Form 1045 informal refund claim but offered no documentation to substantiate the claim. Their attempt to shift the burden of proving their insolvency to the IRS was also unavailing considering the facts that they owned the LLC until it was sold as a going concern and that they failed to provide supporting documentation of all their assets and liabilities. The IRS claim exceeded $4 million dollars while taxpayers claimed they are owed a refund of $64.00 for tax year 2013, a refund of $4,762.00 for 2016, and a tentative refund of $1,347,250.05 for 2015.

H. RMD Rule Changes

In an Employee Plans News Alert, the IRS has reminded taxpayers who are at least 70½ years old and have a retirement account of their responsibility to withdraw minimum amounts annually, noting waivers and other rule changes that have resulted from legislation over the past two years. Taxpayers are not required to take RMDs from Roth IRAs.

The IRS pointed out that required minimum distributions (RMDs) apply to IRAs and other retirement accounts for each year after the account owner has reached age 72. The RMD threshold is 70½ for individuals who reached that age before January 1, 2020. For taxpayers with retirement plans provided by an employer, RMDs can be delayed if the account holder continues working and is not at least a 5% owner of that employer, according to the IRS release. However, under IRS rules, taxpayers who meet the age criteria are required to make annual withdrawals from traditional IRAs as well as from simplified employee pension plans (SEPs), savings incentive match plans for employees (SIMPLE), and salary reduction simplified employee pension (SARSEP) plans even if they continue working.

The News Alert also noted changes to the RMD rules introduced by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law in March 2020, and the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which took effect in December 2019. These changes include an RMD waiver for 2020 for holders of IRAs and workplace retirement plan accounts, including individuals who turned age 70½ in 2019 and had their first and second RMDs due in 2020 or had their first RMD due on April 1, 2021 for the 2020 tax year.

The waiver of RMDs for 2020 under the CARES Act was not extended to RMDs for 2021. "IRA account holders and participants in retirement plans are subject to RMDs for 2021," the document stated. For taxpayers who reached 70½ in 2019, RMDs due in 2020 were waived. But these taxpayers must take a 2021 RMD by December 31, 2021. The amount of the RMD is based on their account balance as of December 31, 2020. For taxpayers who turned 72 in 2021 but had not reached 70½ in 2019, their 2021 RMD must be taken by April 1, 2022. Again, the RMD amount is based on account balances as of December 31, 2020. These taxpayers' 2022 RMDs will be due by December 31, 2022 based on account balances as of December 31, 2021.

Other changes outlined in the release pertain to still-employed holders of retirement plans and delays of RMDs as well as to IRA beneficiaries, who must follow special distribution rules from the IRS. It noted that the SECURE Act changed how and when beneficiaries must take distributions from an account whose owner died after 2019, whereas the CARES Act excuses beneficiaries from taking RMDs for or during 2020.

I. *David F. and Tammy K. Hewitt v. Commissioner*

CA 11

The Court of Appeals for the 11th Circuit reversed a Tax Court decision and held that Reg. §1.170A-14(g)(6)(ii) is arbitrary and capricious under the Administrative Procedure Act (APA) and thus is invalid. The IRS interprets that regulation to prohibit subtracting the value of post-donation improvements to conservation easement property from the proceeds allocated to the donor and donee in the event of judicial extinguishment.

Mr. and Mrs. Hewitt donated a conservation easement to a charity and took a charitable contribution deduction. The terms of the easement provided that if the Hewitts had to extinguish the easement, then the Hewitts would return to the charity the profits from the sale, except that the Hewitts could keep the increase in value of the easement due to any improvements that the Hewitts made to it. The IRS denied the charitable deduction because it said that the easement's terms violated the extinguishment regulations. The IRS maintained that the regulation "does not permit the value of post-easement improvements to be subtracted from the proceeds before determining the donee's share."

The extinguishment regulations provide for a conservation easement deduction to be allowed only if the easement is protected in perpetuity. The IRS says that, at the time of the gift, the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at that time. For this purpose, that proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions gives rise to the extinguishment of a perpetual conservation restriction, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction.

The Tax Court agreed with the IRS and found that Reg. §1.170A-14(g)(6)(ii) does not allow a donor to subtract the value of improvements from the proceeds that it must return to a donee upon extinguishment. Second, the *Hewitt* court held that Reg. §1.170A-14(g)(6)(ii) is a valid regulation under the APA, referring to its opinion in *Oakbrook Land Holdings, LLC*, (2020) 154 TC No. 10. The Court of Appeals for the 11th Circuit reversed the Tax Court decision.

The Court looked at the comments made when the IRS first proposed the regulation to determine whether the IRS reading of Reg. §1.170A-14(g)(6)(ii), that it prohibits the subtraction of any amount of proceeds attributable to post-donation improvements to the easement property in the event of judicial extinguishment, is procedurally valid under the APA where:

(1) one commenter—the New York Landmark Commission (NYLC)—made specific comments raising the improvements issue as it relates to extinguishment proceeds and recommended deletion of the provision;

(2) six other organizations submitted comments criticizing or urging caution as to the regulation; and

(3) the IRS failed to specifically respond to any of those comments, instead simply stating that it had considered "all comments."

After careful consideration of the agency record before it, the several dissenting opinions in *Oakbrook*, and the Appeals Court determined that the Tax Court's interpretation of procedural validity under the APA, is incorrect. The regulation, as interpreted by the IRS, is arbitrary and capricious under the APA for failing to comply with the APA's procedural requirements and, thus, is invalid. It must be remembered that this interpretation is the 11th Circuit's view and is not binding on the courts in other circuits. However, it does establish authority for that position. Care should be taken in all conservation easements if applying a different interpretation of the extinguishment regulations. One can assume the IRS will take further action in this area. Valuation and "in perpetuity" are the two main areas where the IRS attacks the validity of a conservation contribution, including syndicated conservation easements.

GROUP STUDY MATERIALS

A. Discussion Problems

1. Your clients, the Ortegas, come in to have their 2021 return prepared. From the client organizer, you have determined they qualify for a substantial CTC for 2021.

2. In working with Samantha on her 2021 return, you come across a Form 1099-C from a lender for a discharge of debt. Samantha informs you that she had some of her student loan debt discharged in 2021.

3. One of your clients is considering making a charitable contribution of a conservation easement to a qualified charity.

Required:

1. Discuss any additional inquiries/issues in the Ortegas' situation.

2. Discuss any issues raised in the situation with Samantha.

3. What discussion would you have with your client concerning the "in perpetuity" requirement and the extinguishment regulations?

B. Suggested Answers to Discussion Problems

1. Inquiry must be made to determine if the Ortegas received advance CTC payments. Assuming they did, you should ask for Letter 6419. If they have it, it must be reviewed to determine if the numbers are accurate. If they do not have the letter, consider having them set up an online account with the IRS, and the amount of any advance payments will appear there. If there is a discrepancy, the IRS does not recommend using their numbers and then filing an amended return. The chances of getting in contact with someone in the IRS who can make any adjustments to the numbers is slim. Some commentators recommend that taxpayers use their own records to determine how much of the CTC they have received if there is a discrepancy between the amount reflected in Letter 6419 and the taxpayer's records. However, this could generate a flag item for the return. Another option is to use the IRS numbers and then make the adjustment as an "other credit" and file a disclosure.

2. A determination must be made if the loan discharge qualifies as excludable income under §108(f)(5). If so, the IRS told lenders and loan servicers not to file information returns or furnish payee statements to report the discharge of those student loans. You should contact the lender/service provider for them to amend the 1099-C. If this is not available, you may wish to report the amount as income and then back it out as negative "other income" and disclose that it is excluded under §108(f)(5). This should avoid a CP2000 or correspondence audit.

3. The first issue is to get a valuation appraisal that will be able to withstand scrutiny by the IRS. This is one major area of attack by the IRS on conservation contributions. Additionally, the 11th Circuit Court of Appeals has ruled that the extinguishment regulations are invalid as they violate the APA. This is only one Circuit, and presumably the IRS will take action to enforce their position. Care must be taken in drafting the instrument to avoid running afoul of any future issues with these regulations.

PART 2. INDIVIDUAL TAXATION

Partner and Partnership Bases

Partnership taxation is complicated and may become more complicated because of changes aimed at simplification. At a minimum, proposed changes will require time on the part of practitioners to become familiar with those changes and to ensure they are properly run through the partnership accounting records and tax returns. Several factors have an impact on a partner's basis in a partnership and the partnership's basis in its assets. Ian Redpath and Brian O'Sullivan discuss partnership basis and inside and outside bases for a partner, along with the impact of factors such as debt and treatment of distributions.

Let's join Ian Redpath and Brian O'Sullivan as they discuss partner and partnership bases.

Mr. Redpath

Brian, welcome to the program.

Mr. O'Sullivan

Ian, thanks for having me.

Mr. Redpath

It's always great to have you here, always great to get your insight; it's great for our viewers. Partnership basis. For our viewers who don't know, there's a proposal currently in Congress, the Wyden proposal, to significantly change how Subchapter K is taxed. Does it affect basis? Well, it can affect basis significantly. There was a proposal—we did this in another program—on the Green Book, the Biden administration proposal. And one of those proposals was to say a contribution to capital in a partnership was a taxable event. So, basically everybody'd take fair market value because they'd be taxed on the contribution of property. That did not make it into the Wyden bill. And the Wyden bill comes out of the Senate Finance Committee. It has bipartisan support to have a major overhaul of Subchapter K taxation. For example, doing away with special allocations, making 754 mandatory so there won't be a 754 election. The two adjustments, 743 and 734, on distributions and on sales; those would become mandatory. Doing away with the seven-year rule for 704(c) pre-contribution gain recognition. So, there are significant changes in this bill. The IRS is supporting it, and it's getting bipartisan support. I learned this a long time ago. I had a gentleman say, "You know, 95% of all partnership tax returns have significant errors. That's really bad. But the good news is the IRS doesn't know the rules either." And the IRS said that. The IRS said Subchapter K is so complicated that we can't audit, and we certainly can't penalize. We can do things like basis. And so, what they really tend to do is focus on basis currently in audits. "Oh, you didn't have enough basis to take that loss." So, basis is a really important item today. Where do we stand? I'm going to tell you just to watch this because it has a lot of support, including support from the Internal Revenue Service. But it would be a total overhaul. For example, another thing—no special allocations, gone, no such thing. Debt allocation—no rules, like we're going to talk about today. When you're allocating debt, it's just basically everything will be allocated based upon your capital contribution. Thus, the capital account becomes an important aspect. So, keep in mind, follow that legislation. A lot of the things we are talking about today, we'll mention the effect of the Wyden bill. But I want to make sure that you're following that. So, what we're going to be talking about is the law currently, and that's what we're going to go with. The proposal is that the Wyden bill, right now the lobbyists I've talked to have said, "Sometime late 2022, to begin in 2023." That's kind of the timeframe we're looking at. Even the Wyden bill says it's not effective until 2023. So, just keep that in mind.

Basis is really important. Yet, I always hear practitioners talk about the capital account as if that's basis or inside basis and outside basis as if they're all the same thing. So, there are these different concepts. Can you clarify for me? You have three accounts, right? You have your capital account, your inside basis, and your outside basis. So, without talking about the calculation, conceptually, what are those three things?

Mr. O'Sullivan

Sure. That's one area where if you really want to get a client's head spinning, is start talking to them about how their transaction's going to be different for their inside basis and then what's going to happen to their outside basis and then the implications of the debt going down. We see it all the time in practice and certainly even when we have conversations "in the hall" where we're talking about a client or a situation or a deal. And we'll always talk about the capital account as if it's basis; and it really is a shorthand because usually it's in the context of a deal happening, or there's an exit, so the debt goes away, etc. So it ends up being a shorthand. But really when you want to get into the nitty gritty of planning, you actually have to stop people and say, "Hold on." There's a core difference between tax capital, okay. And as practitioners, we're thinking on the K-1, there's a capital accounts' reconciliation. So there's a difference between your tax capital and the partners' basis. And then there is a core difference between that amount that the partnership knows about and it reports on, known as your inside basis, versus what the partnership doesn't know about or doesn't report on, known as your outside basis.

The first part of that as we start to untether this ball of yarn is think about it from the perspective of the partnership. So, every partner in the partnership is going to have a capital account. We know now the IRS has forced everybody in partnerships onto tax-basis capital accounts. As a practitioner, I'm A-okay with it now that we're past the mechanics of having to recreate it, which was a yeoman's effort. But now that it's implemented, I'm A-okay with it because that's right in our wheelhouse, that's speaking our language.

Mr. Redpath

Let me just interrupt you here for one second, Brian, because I think it's an important point because you mentioned the capital account and the 2020 change to a tax-basis capital account. I know that's a great confusion now even more. It's even more of a confusion between tax basis and tax capital account. What the IRS is saying that they're finding—and this is something that you need to look at this. You said it was a yeoman effort and it really was to get basis. Unfortunately, the IRS is saying a lot of practitioners simply took their ending basis from 2019 and that became their beginning basis for 2020 as if somehow that rule was prospective, okay, it applies to 2020 going forward. But that wasn't the case. You said it was a yeoman effort. What exactly were you supposed to do? You weren't supposed to just carry it over unless you were already, as you said, unless you were already on a tax basis? But if you weren't, you weren't supposed to just carry it over. What were you supposed to do?

Mr. O'Sullivan

The IRS, I thought, was pretty clear; albeit, I think it came out of left field. So, we didn't really have a tremendous amount of ramp-up time. And when it first came out, there was teeth on it. There were penalties that would be associated with it for accuracy. You were actually supposed to go back to the dawn of time of that particular partnership and build up the tax-basis capital accounts for each of those partners. And if you think about it in terms of a relatively new partnership and they were always on tax-basis reporting, well then, you got the right answer, maybe for the wrong reason. You just got to leverage it; you still have the right answer, no big deal. That was a win. But if you were a partnership that was formed back in 1976, and you've got 46 partners, and 10 of them are estates because there's been transfers and/or deaths. And there's been partners bought out, the new generation's been brought in. And remember reasonably, most people will keep tax returns about seven years. Okay, now when they say things about basis, you're supposed to keep them so that you can always support your basis.

But reasonably, as due diligence and a good business practice, usually you're supposed to destroy tax returns after seven years. So now we're in the position where we have to go back to that partnership from 1976 and say, "By the way, just give me your 1976 and forward tax returns, and we'll build it up for you." So, that's really what you were supposed to do, was you were supposed to recreate the tax capital accounts for each person or each member of that particular partnership. Not supposed to guesstimate it. And if you had GAAP-basis capital accounts or 704(b) capital accounts, just guesstimate it back of the envelope and say it's good enough for government work? That wasn't the language of it.

So, it really was a yeoman's effort in trying to reasonably recreate. And they did give some relief. If for some reason it got missed, there was a window of time where you could submit the corrections to the IRS with just a mailing, not like a formal submission of a tax return but a mailing and cure it and try to at least protect the client from penalties. But I would suggest if a practitioner took that administrative approach, and they were using some type of non-basis capital account, and then that was their beginning point in 2020, and then they just layered like a cake, the tax implications on that. So really, their ending capital account is nothing. It's not GAAP, it's not 704(b), it's not tax. It's that disclosure for the other box where they write hybrid. And nobody knows what it is. I suggest there's still work to be done.

Mr. Redpath

I think one of the problems is the IRS gave us a lot of confusion… in 2020.… They came out in the fall of 2020 and said, "You can't use the transactional approach. You can't use that." And they gave us two different methods. One, much like making an adjustment under 743 for a sale, and the other was the modified partnership basis rule, which said, "If you believe that the partner has properly been keeping track of their basis, and they give you that number, and you believe that that number is correct, you could rely on that number and just essentially make the modifications, like take out the debt from that."

But that assumes the partner was properly keeping track of their basis. Then, they came back and said, "Going forward, you have to use the transactional method, the one we just said doesn't work. Now they came out in the instructions—as you said, left field—they put it in the instructions and said, "Now, you have to do the transactional method going forward." And I think a lot of people just missed that other part that said you've got to recreate the basis and if you can't recreate it, we're going to give you two options, I guess a safe harbor as to how you might do it. And we're going to eliminate penalties as long as you used appropriate due diligence to determine that I believe this is the correct number. And that's I think where people are going to have a problem who didn't put the yeoman's effort as you said into it. They're going to find that if that gets audited, the IRS is going to say, "Well, how did you come up with that number?" "Well, I carried it over." You didn't put the effort into doing it. So, that basis issue and again, this continues to every return, right? So, if you made a mistake on the beginning capital account for 2020, that's going to continue on forever in your capital account. The IRS is going to come back and say that balance is incorrect and make you go back. Big issue going forward.

So, what happens? I put in cash, I don't really have a problem, do I? I've got a basis [equal to] the cash. What happens when I put in property under 721?

Mr. O'Sullivan

721 is one of the nice provisions that we have here. Again, partnerships give us tremendous flexibility in their current state, to move property in, to restructure, the allocations of debt to create basis, tremendous amount of flexibility, different from S corporations [which are] much more rigid. So, in this case, we have a partner and you're trying to partner up with somebody. One person say is the sweat equity person, one person is the cash person, one person is the property person. And that could be intellectual knowhow, like IP. So then the question becomes when now I have to create tax-basis capital accounts. So, what are they? Clearly, the partner that's putting in cash into the partnership, they're going to take an outside basis equal to the cash value. And the partnership is going to take an inside basis equal to the value of the cash. Seems simple enough and straightforward. And it's going to be tax-free under 721. Alright, and we always say in general under 721. There's some exceptions when there's some things that can go in that can create taxable; but in general, certainly when we're talking about cash, 721's going to treat it tax-free.

When you have the other partner who's going to be that sweat equity partner. Well, if they're going to get an interest in the partnership—and it depends on the type of interest that they get—and this is where some structuring can be, and this is where you find out the motivators. So, if you end up and you give that partner a profits interest, which means they're just entitled to some benchmark in the future where they'll then get access to cash, then it's very possible that that would be a tax-free event for them, the receipt of that profits interest, and there's some criteria that they have to adhere to.

If you give them a capital interest like a full capital interest and a good concept here, right? Profit versus capital interest in a partnership. Capital interest, I always explain it to people as when everything starts to wind up, if there's a deal, if there's a liquidation type event, and there's appreciation in the partnership, do they get to sit at the table and share in that? Or is it like a profits interest where a certain benchmark has to happen and if it doesn't, you don't get a cut of the gravy or the appreciation? So, there are differences between the two. So in that case, if you give the sweat equity partner and you give them a full capital interest, say at that time that the value of it was $20,000. Well, that partner that's performing services to receive the capital interest? That sounds like income every day of the week. So, that's not going to be a tax-free 721. But here's the rub. That person is going to take an outside basis in that partnership interest of $20,000 or the amount that they picked up in income. And then the partnership inside is going to give them a capital account of $20,000 as well, so the amount that they picked up in income. Different from the profits interest—no income pickup, no capital account, or the capital account's going to be zero.

Mr. Redpath

That's an outstanding point, Brian. Sometimes we bring in a sweat equity person or we have someone that's going to leave. What do we give them? And bottom line is, a lot of times we overlook the idea of a profits interest. And if you think of it from a fundamental fairness, we built up this business. So, the capital that we have when you come in, I'm sorry, but that's ours. And that change is going to stay forever if you say all you have is an interest going forward. And the rules basically say the value of the interest that you get, if we liquidate immediately upon you coming in, what do you share in the capital? And if the answer is nothing in the existing capital, it's tax-free; and we often miss that ability of using that. The other thing is if we bring that person in and give them a share of the capital—this is often missed—you've got to adjust everybody's capital account because you don't create a new capital account. You allocate; people are giving up a share of their capital.

And so that person, you've got to remember to adjust their capital accounts; and that's again a major difference. And as you mentioned, when you put property in… Let's say you and I are going to go into partnerships. I have a business. I know nothing about auto mechanics, but I've got a beautiful shop. And you have all the knowledge, so we decide to get together. I'm going to have, when I put it in, normally that would be taxable. But it's not; 721 is going to make it a tax-free event. It could be, depending on what interest you got if I had incorporated under 351. It might have been taxable. There's that 80% rule to the property giver. There's no such rule in partnership tax. So, I know, as you said, my basis in the partnership is not going to be the same as yours. Even though I have a 50-50 interest, it's not going to be the same because I'm going to get a carryover basis from my property. You're going to get—how did we bring you in? What are you getting, as you mentioned? So, if you're taxed on something, that would become your basis.

What about the partnership now? Our partnership is just going to step into my shoes on those assets. It's going to continue the depreciation. It's not going to create a new asset; it's just going to continue the depreciation. And you mentioned one other thing too for our viewers. The only time you have to worry about a gain, that's called 721(b), is if you have someone putting in significant amounts of portfolio investment; if it's 80% is roughly the rule, then the IRS looks at it that all they're trying to do is diversify their portfolio and makes it a taxable event. So, if you don't have just a lot of portfolio, which would be unusual in most partnerships, don't even worry about that.

We have our initial basis. Now you mentioned, I could have gotten it by a gift, right? Someone could have gifted me a share in the partnership. I could have inherited it. So, what is my original basis? Usually the contribution. I could have purchased it. So, if I purchase an interest—you and I are partners, or you're partners with Sally and I purchased Sally's interest. What happens then, if we have a 754 or if we don't?

Mr. O'Sullivan

Yes. And that's a great distinction there. Say we have a cross-purchase scenario with Sally, with yourself. With no 754, I think it's really important. And this is how I get my colleagues to understand where I'm going with this is, it's all about perspective. So, from Ian's perspective in his transaction with Sally, when he bought her partnership interest, say it was 20 grand. Well, Ian knows that he has an outside basis because at least at that point, he has an outside capital account, 20 grand. Before he gets any debt allocations, it would also be his basis. So he has an outside basis of 20 grand; but that's just a transaction outside the partnership between him and Sally in a cross purchase. If the partnership has no 754, it doesn't have to recognize that transaction unless we run into something with a mandatory step-down type loss transaction for Sally.

We can touch on that as we unpeel this a little, as we go down. But in a very vanilla scenario, we've got this outside basis of $20,000. But inside the partnership with no 754, Ian is going to end up stepping into the shoes of Sally's capital account. So, if her capital account was $1,000 on the books, tax-basis capital account. Well, now Ian is going to get a K-1 for that particular year. He's a new partner; he's going to have a K-1 that says his capital account's $1,000 before it gets adjusted for other items during the year and allocations of income. That may not be okay with Ian. And he may say, "Well, hold on. I'm not comfortable with you reporting that I gave 1,000 bucks because I think there could be something that gets lost over time or there could be some tax inequities. But also I understand because I was talking to my accountant, he says or she says that I've got outside bases of $20,000 that's not working for me right now. It's just sitting there. Is there a way we can push that into the partnership and try to get some real tangible benefits to me today? Because I know in talking with my accountant, they said I'll get the benefit when I sell. But I think this is a long hold. Let's get some benefits today."

That's really where the 754 comes in. So we'll break down the 754. We'll really active break down the wall between the outside basis from Ian's perspective and then the inside basis or inside capital account inside the partnership. So then we'll end up having a step up that'll actually inure to the benefit of exclusively Ian under 743(b) because it was a cross-purchase scenario that was outside the partnership. So, in that case, we'll actually step up the assets. We'll divide the assets into two different types of buckets, dealing with the unrealized receivables, and then we'll have the capital assets and/or the 1231 assets. And the goal is—and a lot of times what we see in practice is—we'll see allocations of depreciation or amortization go exclusively to Ian. So your debits are over there on your fixed assets. The credits are to the capital account. And in the case of Ian, when he paid $20,000 but he got a capital account of $1,000, we're really looking at back of the envelope math, a step up of about $19,000. In each year, those allocations of depreciation and amortization will start to bring down that $20,000 capital account.

Mr. Redpath

I have one comment and one question for you. So one, the comment is that the Wyden proposal is to eliminate 754 and make these adjustments mandatory. That's a big difference. The adjustments aren't going away; but according to them, the 754 would be a mandatory adjustment. My question is practitioners often miss or report it in very unusual and screwy ways. So, how do you report to me because now, my basis in those assets is greater than yours because I got a step up; you didn't, as you mentioned? How are you reporting that to me? Is my K-1 going to look different than yours? Are you going to attach a schedule? How does your firm do that?

Mr. O'Sullivan

Sure. And this is in contrast to the good old days of I'll say just a couple of years ago, where there was varying degrees of how to report this. Right now, the IRS has streamlined the process where, when there's a 754 in effect and there's going to be adjustments, those adjustments will be reflected on the depreciation schedules. They're actually using a code now on your K-1. Again, it's tax-basis capital account, so it'll pop off the page that your capital account is either significantly larger or smaller than my capital account, even though we may be 50-50 partners. But now, there's a specific code on the K-1 in box 13. And then, they're also throwing the corresponding code over in box 20 so that we can keep track of how many 754 adjustments you've had. In the good old days—couple of years ago—in the good old days, there was such varying degrees of how to do this where some accountants loved the idea of putting it on the books because then you can't miss it. And then, we just kind of jammed it through in other deduction. Then, the question was always, does it really go there?

Or, what if we just keep everything off the books of the partnership, even though we made the election, and why don't we just do a footnote to your K-1? And you'll figure it out on your own 1040 if you're an individual taxpayer. The IRS has moved away from all that because I'm sure there was a lot of funny business in how to capture the actual 754. How much did you get a benefit for? And I'm sure taxpayers were evasive on, a couple of years got missed, so I trued it up, that type of formality type stuff. So, now it's on the K-1.

Mr. Redpath

As you mentioned, if you're trying to get the capital account and you're using the basis from the partner, the modified adjusted basis method for your beginning capital account, if there was a 754 election for that person, there may be a lot of complexity in trying to figure out exactly what their basis really is, again, some of that yeoman work. Now, we have annual adjustments to basis in a partnership unlike a C corp, where there's none. An S corp is very similar to this. By the way, there's a new form; if you're not aware of it viewers, there's going to be a new form. I believe it's Form 7203, which is going to be reporting basis in an S corp. So the IRS is developing a new form. They're going to want us to redo it. They haven't done it for partnerships as of right now as we're speaking. What are these annual adjustments to basis?

Mr. O'Sullivan

The annual adjustments are really critical, and it really highlights the differences. I'll tell this to clients all the time is that they're very comfortable that when they bought shares of Microsoft for 1000 bucks, that each year when they get cash or dividends, they're not really adjusting the basis. They just go back to when it was bought. So that highlights that we're not making annual adjustments in that scenario. Alternatively, here in a partnership, there's this aggregate theory where all of the items of income, expenses, distributions, contributions, all come down to the 1040 level and that's where the reporting occurs. So there's always this need to perpetually adjust basis. So when it comes to basis, it really is your beginning. So that could be the adjusted basis of property that you contributed. It could be the value of the cash that you gave. But also, it's going to be increased by any increases in debt that get allocated to you for the year.

A lot of times, this is the part that gets missed when you're having a conversation with a colleague or a conversation with a client and you're interchangeably saying basis and tax capital. They're two critically different concepts; but sometimes, it gets a little bit blurred as far as the line. When we're talking about true basis, it really is your beginning basis plus increases to your debt, but also increases to the income items, your non-separately stated plus your separately stated that are reported on your K-1. And then any additions to the capital, so if new money went in. But then there's going to be reductions, and the ordering here is also important. So you'll see I took a number, I'll call it the beginning large number, and then we added to it all the positives. Now, we're going to start to find out what whittled down our basis.

Clearly distributions, any money that you had a chance to take out of the partnership, that's going to reduce your basis. But interestingly, any decreases in the debts that are allocated to you on the K-1, they're treated as if those are cash distributions.… One of the number one things we see all the time when we review returns—either it's prepared internally before it goes to the client or it's something we review from a third party—the allocations of debt on the K-1s. There's always something embedded in there that may not be proper theory or human error that could be in there. So when you're working on basis and you really have a basis issue, it could be a worthwhile effort to really challenge the bed allocations that are there because they, as we just found out, can have a significant impact on basis. And then, you'll have your other items like your nondeductible.

Mr. Redpath

Brian, if I can just interject on that, that is a huge issue because it's misunderstood. We have recourse debt, and recourse debt is at least one partner has economic risk of loss on that. Not at risk but economic risk of loss. In other words, they're going to go after them; they're going to collect it from them.

And nonrecourse, they can only go after the assets of the partnership or the property itself. But they're allocated differently. And with the nonrecourse and recourse, nonrecourse is three steps—minimum gain, any precontribution 704(c) gain gets allocated. And then everything goes by the… profit ratio because they can't come after you for losses. They can only go after you for the profit in the partnership. But recourse debts—there's this whole constructive liquidation scenario that all the assets are worthless, including cash. Everything's disposed of for its value, zero. Then, if property has nonrecourse debt, it's disposed of for the balance of the nonrecourse debt on it. You have the gains and losses—and here's going to be the confusion—you hit it to the capital account but that's as prepared under 704(b), not your tax-basis capital account.

Because they did one thing, but they didn't conform it with the other. And so, the reality is as you said, often our debt is just 50/30/20. Okay, 50/30/20. But what happens if you've had special allocations, for example, and their real capital accounts don't reflect 50/30/20 because they had distributions, special allocations? Your constructive liquidation analysis of recourse debt could be way off because most software just says 50/30/20 partners, that's what they get, 50/30/20. So, that's an issue that currently is a big issue, as you mentioned, and really something practitioners should be looking at. If you're not preparing the return, you have a client, and you get that K-1, and it has their allocation of debt. As you said, I would be trying to find out, making sure that that was properly determined.

Mr. O'Sullivan

Sure. And I think that basis planning to me always goes hand in hand with the debt planning. And it really highlights how you can then find a conclusion that's unfavorable, where you actually need some allocations of debt or need to be guaranteed some allocations of debt to make sure that your basis—again, debt plus tax capital is your basis—to make sure your basis always stays positive and you don't have an event. So, we saw the IRS shut down the idea of bottom dollar guarantees because they really didn't have true economic substance. But what we've seen kind of come in vogue are these vertical slices. So that you can then, if you find out you're going to have a deficit—and we're not talking about $1,000 because a lot of people's lifestyles aren't changed for $1,000. We're talking about significant deals. It could be real estate related. There could be millions of dollars of basis issues. So you can start to structure it where you put some guarantees in place, appropriate guarantees in place. And now you'd actually have your partner start getting specific allocations of recourse debts using this regime to prop up their basis. And the whole goal—accelerate losses, get access to cash, don't pay taxes because I have positive basis, and kick it down the road as much as I can. That's the whole goal with the planning. So, you really could do a lot of good structuring too and bring some significant value with basis planning on the debt.

Mr. Redpath

Yes. One comment that I hear quite often, and I hear this from practitioners. They'll say, "Oh, they have a negative basis. You can have a negative capital account, correct? But is there such a thing as negative basis?

Mr. O'Sullivan

The short answer is no. And it absolutely highlights when you have that conversation with the person in the hall or you have it with a client. Your basis can't be negative. So, even if you're stuck with that partnership from 1976 and you're looking at the equity section and they swear it's on tax. Well, it doesn't mean that their tax basis is negative whatever the retained earnings is or negative whatever the capital is. It doesn't mean that. It means their tax capital is negative. And if it's negative, that doesn't mean it's a bad thing. It just means there was an acceleration of distributions or an acceleration of losses that could be there, say through depreciation or cost segregation. So, you can always have negative tax capital. It just means you better have some sufficient allocations of debt so that you have positive basis. So total misnomer in practice, happens all the time where people will say, "I have negative basis." And you have to give a little time-out sign and tell them, "Hold on, you don't have negative basis." If nothing else, you start with zero and then let that tax year stand on its own. Sometimes, that's the only justifiable position you can do with the Service or take on the tax return because you don't know what the basis is sometimes.

Mr. Redpath

Yes. And the reality is that today—and I'm going to give you my experience—most of the audits are on basis. They tend to focus on that because, "You took those losses. You didn't have enough basis." That's the low-hanging fruit for the IRS. So, there is an importance in basis because as we mentioned, the other rules are so complicated even the IRS says they can't audit them. They seldom come in and question your 704(b) capital account calculations. You normally don't get that. Basis has been the focus of IRS audits. But look what's happening. They're getting more people, I think 9,000 they said, agents they were going to put onto partnerships. We have the centralized partnership audit rules coming in. So, that and with the Wyden proposals, we're going to see some significant potential audits of partnerships on a wide variety of items, not just the traditional basis type questions.

Mr. O'Sullivan

You can certainly see the IRS positioning the chess pieces to better bolster the attacks on partnership. And depending on how you view it, probably appropriate attacks. Because when you look at the statistics, the number of partnerships that get audited, and then you think about the complexities of the layers that partnerships go through with tiers; and by design, they're supposed to be in tiers. It lends itself to it, the complexities that are there, it's ripe for areas of abuse or underreporting and just general confusion. Errors happen, not because of nefarious means, but because sometimes it is so complex that a mistake can get made. So, you can actually see them positioning the pieces to begin attacking that particular area.

Mr. Redpath

Yes, I think we're going to see significant activity. Brian, a lot of complexity in this area as we talked about; but I think you've helped get through a lot of the fog for our viewers and get down to what's really going on. I want to thank you very much for being here. We always enjoy your insight. To our viewers, thank you again for joining us and be safe.

Mr. O'Sullivan

Thanks for having me.

Basis in a Partnership

By Ian J. Redpath, JD, LLM

A. Introduction

Partnership taxation under Subchapter K is considered to be one of the most complex areas of federal taxation. It includes partnerships and LLC/LLPs. An LLC may be taxed in different manners. It may choose to be a corporation and then can elect S status. [Reg. §301.7701-3] This election is made on Form 8832. If the LLC does not want to be a corporation for tax purposes, the default, if it is a multiple member entity (MME), is a partnership. The members will generally have limited liability but are able to participate in management. An LLP is a related entity sometimes referred to as a registered partnership. This is the typical choice for service businesses. It should be noted that regardless of the form of an entity, partners/members retain liability for their own acts and the acts of those they supervise.

While it is not necessary to have a written partnership agreement, it is highly recommended. The agreement establishes the rights and duties of the members as well as the allocation of income, deductions, and losses. It will often detail any required future capital contributions as well as other matters. While this is the province of the legal profession, it is imperative that accountants regularly review the documents to assure the expected tax results for the clients. While certain things may be allowed legally, they may not have the desired affect when the tax results are considered, such as special allocations.

A partner has three separate but related accounts within a partnership—capital account, inside basis, and outside basis. Each account serves a different purpose and is calculated differently. There is often confusion about which account applies for what purpose.

The capital account is to reflect the economic relationship of the parties. It is often confused with the outside basis. This is especially true since 2020 returns when the IRS began requiring that capital accounts be reported on a tax basis. However, the calculation is different; for example, the capital account does not reflect a partner's share of liabilities. In addition, the reporting rule change did not change the rules of §704(b) requiring that capital accounts also be maintained according to the regulations under §704(b) for certain purposes such as testing special allocations or debt allocations. The capital account can be negative while outside basis cannot be negative. As discussed later, a negative outside basis would be a gain. The capital account is reflected on Schedule M-2 of the Form 1065 and is to be reported on the Schedule K-1 for each partner.

The inside basis is the partner's share of the partnership's basis in the assets. It is possible for different partners to have different inside bases if the partnership has a §754 election in effect. With the election in effect, a partner who purchases an interest in the partnership from a partner, as opposed to a contribution to capital, will adjust the partner's inside basis in the assets to reflect the price paid for the interest, which is generally Fair Market Value. This could be either a positive or negative adjustment. All tax items related to the assets, such as depreciation, will reflect this different basis for that partner only. It does not affect the basis of the assets to the partnership or other partners.

The outside basis is the measure of the partner's interest in the partnership. It takes into account the original basis, usually the contribution to capital and/or cost and is adjusted over time to reflect over time the income/loss of the partnership allocated to the partner as well as increases and decreases to the partner's share of liabilities. Because a partnership is a conduit, the partners will pay tax on their share of the net income of the partnership. This increases the partner's basis in the partnership; thus, when the partnership makes distributions, they are tax free to the extent of the partner's outside basis and thereafter capital gain. The outside basis is also the first limitation on the deductibility of partnership deductions and losses. If there is not enough basis, then the deductions and losses are suspended until there is sufficient basis. This also establishes the basis for determining gain/loss on the disposition of the partnership interest or upon liquidation. The rules are under §705 and the regulations thereunder.

B. Determining Outside Basis: General

The outside basis of a partnership interest is generally the cash plus the adjusted basis of any property the partner contributed. If the partner must recognize gain as a result of the contribution, this gain is included in the basis of his or her interest. Any increase in a partner's individual liabilities because of an assumption of partnership liabilities is considered a contribution of money to the partnership by the partner. If a partner acquires an interest in a partnership by gift, inheritance, or under any circumstance other than by a contribution of money or property to the partnership, the partner's basis must be determined using those basis rules. For inheritances, it is generally the FMV at the date of death or the alternate valuation date if elected. For gifts, it is generally a carryover basis from the donor plus any gift tax paid by the donor on the appreciation of the interest. This is generally limited to FMV.

The general rule is that neither the partner nor the partnership recognizes any realized gain or loss on contribution of property to a partnership. [§721] The partnership takes a carryover basis in the contributed assets it receives as the inside basis in the assets. The basis in the property transferred to the partnership carries over to the partner's interest in the partnership. This is generally how outside basis is determined. [§722] This will be increased for any gain recognized under §721(b). The partner's holding period in the partnership interest carries over for capital and §1231 assets contributed. For other property, the holding period in the partnership interest begins on the date the partnership interest is acquired.

Example: Jane transfers a capital asset in exchange for a one-third interest in JBB LLC. The asset has an adjusted basis to Jane of $10,000 and a fair market value of $30,000. Jane has a $20,000 realized gain on the exchange ($30,000 − $10,000); but under §721, she does not recognize any of the gain. The basis for her LLC interest is a substituted basis of $10,000. Because she contributed a capital asset, her holding period "tacks" and becomes her holding period for the partnership interest. The LLC's basis for the contributed property is a carryover basis of $10,000. This basis ensures that Jane's $20,000 deferred gain would be recognized if the LLC sold the property for its fair market value. Jane's holding period for the capital asset becomes the partnership's holding period for the asset.

There are some exceptions to the non-recognition on contributions. Under §721(b), gain may be recognized. It applies when appreciated stocks are contributed to an investment partnership that would have been an investment company if incorporated. Another exception is the disguised sale rule under §707. Under the disguised sale rule, if a transaction appears to be a sale or exchange of the property rather than a contribution, it is deemed a disguised sale and §721 cannot be used to defer a gain or loss. For example, if a partner contributes appreciated property to a partnership and soon thereafter receives a distribution from the partnership of an amount that approximates the value of the property, it could be viewed as a payment to purchase the property. The IRS presumes that such distributions within two years of the contribution are suspect. This is rebuttable presumption. If it is reasonable in relation to the capital invested by the partner, the rule will not apply. A partner must attach Form 8275, Disclosure Statement, (or other statement) to his or her return if the partner contributes property to a partnership and, within two years (before or after the contribution), the partnership transfers money or other consideration to the partner. For exceptions to this requirement, see Reg. §1.707-3(c)(2). A partnership must attach Form 8275 (or other statement) to its return if it distributes property to a partner and, within two years (before or after the distribution), the partner transfers money or other consideration to the partnership.

Example: Emma's basis in her ELM partnership interest was $50,000. She transfers to the partnership a property with an adjusted basis of $10,000 (and a fair market value of $30,000), resulting in a basis of $60,000 in her partnership interest. Two weeks later, the partnership distributes $30,000 cash to her. Under the general rule, the distribution would not be taxable to her but instead reduces her basis in the partnership interest to $30,000 ($60,000 basis − $30,000 cash distribution). However, the transaction appears to be a disguised purchase-sale transaction. Therefore, she must recognize gain of $20,000 on transfer of the property, and the partnership is deemed to have purchased the property for $30,000.

If a partner receives a fully vested interest in partnership capital in exchange for services, the value of the interest is generally taxable to the partner as ordinary compensation income. Generally, the partner's ordinary income equals the amount the partner would receive if the partnership was liquidated immediately following the contribution of services, less any amount the partner paid for the interest. [Reg. §1.721-1(b) and §83(a)] If the interest is a profits interest, it is generally not taxable subject to the exceptions in Rev. Proc. 93-27. [1993-27 C.B. 343] If the future profits interest is classified as a carried interest, special rules apply and any capital gains related to the interest are treated as short-term capital gains unless a three-year holding period is met. [§§1061(a), (b), and (c)] If the interest is not fully vested or subject to a substantial risk of forfeiture, then the income recognition is delayed until the interest vests or is no longer subject to the substantial forfeiture risk. The income is measured by the value at that delayed date unless the person makes an election under §83(b) to pick up the income at the time it is granted at its then value. The election must be made within 30 days of the grant. If the election is made and the person never gets the interest, there is no deduction for the income recognized.

One of the great advantages of a partnership over an S corporation is the treatment of liabilities. The partner's share of the liabilities is considered a "deemed" contribution of cash and thus the partner gets an increase to the partner's outside basis. [§752] Likewise, a reduction in liabilities is a "deemed" distribution of cash. [§733] The partner adjusts its basis annually for increases and decreases in debt. A partner obtains basis for both recourse and nonrecourse debt. Recourse debt is allocated on the constructive liquidation scenario.

A partnership liability is a recourse liability to the extent that any partner or a related person has an economic risk of loss for that liability. A partner's share of a recourse liability equals his or her *economic risk of loss* for that liability. A partner has an *economic risk of loss* if that partner or a related person would be obligated, whether by an agreement or by operation of law, to make a net payment to the creditor or a contribution to the partnership with respect to the liability of the partnership based on the constructive (hypothetical) liquidation of the partnership. A partner who is the creditor for a liability that would otherwise be a nonrecourse liability of the partnership has an economic risk of loss in that liability. [See Regs. §§1.752-1 through 1.752-5.]

Generally, in a constructive liquidation, the following events are treated as occurring at the same time.

- All partnership liabilities become payable in full.
- All of the partnership's assets have a value of zero, except for property contributed to secure a liability.
- All property is disposed of by the partnership in a fully taxable transaction for no consideration except relief from liabilities for which the creditor's right to reimbursement is limited solely to one or more assets of the partnership.
- All items of income, gain, loss, or deduction are allocated to the partners.
- The partnership liquidates.

Nonrecourse debt is allocated in a three-step process—each partner's share of minimum gain, any pre-contribution gain is allocated to that partner, and finally each partner's share of the profit. It should be noted that while nonrecourse liabilities generate basis, they do not generate at-risk unless they are qualified nonrecourse financing.

Example: Pedro and Tessa form a cash-basis general partnership with cash contributions of $20,000 each. Under the partnership agreement, they share all partnership profits and losses equally. The partnership borrows $60,000 and purchases depreciable business equipment. This debt is included in the partners' basis in the partnership because incurring it creates an additional $60,000 of basis in the partnership's depreciable property. If neither partner has an economic risk of loss in the liability, it is a nonrecourse liability. Each partner's basis would include his or her share of the liability, $30,000. If Tessa is required to pay the creditor if the partnership defaults, she has an economic risk of loss in the liability. Her basis in the partnership would be $80,000 ($20,000 + $60,000), while Pedro's basis would be $20,000.

If property is contributed that is subject to a liability, the contributing partner is deemed to have been relieved of the amount of debt that the other partners have "assumed." If this amount is greater than the basis, then there will be a gain. It is not a gain on the contribution but on the relief of liability, so there is no increase in basis for the gain. It should also be remembered to adjust the basis of the other partners for their share of the liability.

After a partner's initial outside basis has been established, that basis is adjusted to reflect subsequent partnership operations and other events. The partner's basis is adjusted annually for numerous items. [Reg. § 1.705-1(a)] The following items *increase* a partner's adjusted basis:

- The partner's proportionate share of partnership income (including capital gains and tax-exempt income).
- The partner's proportionate share of any increase in partnership liabilities.
- Contributions of cash or property from the partner to the partnership after the partnership is formed.

The following items *decrease* the partner's adjusted basis in the partnership:

- The partner's proportionate share of partnership deductions and losses [including capital losses, foreign taxes, charitable contributions (including the allocable basis of donated property), and suspended business interest expense that will be available for future tax years].
- The partner's proportionate share of nondeductible expenses.
- The partner's proportionate share of any reduction in partnership liabilities.
- Distributions of cash or property from the partnership to the partner after the partnership is formed.

Tax-exempt income (or noncapitalizable, nondeductible expenditures) increase or decrease the partner's basis. The adjustment is necessary so there is not a recognition of tax-exempt income or nondeductible expenses when the partner either sells the interest or receives a distribution from the partnership.

C. Alternate Basis Determination

In certain cases, the adjusted basis of a partnership interest can be figured by using the partner's share of the adjusted basis of partnership property that would be distributed if the partnership terminated.

This alternative rule can be used in either of the following situations.

- The circumstances are such that the partner cannot practicably apply the general basis rules.
- It is, in the opinion of the IRS, reasonable to conclude that the result produced will not vary substantially from the result under the general basis rules.

Adjustments may be necessary in figuring the adjusted basis of a partnership interest under the alternative rule. For example, adjustments would be required to include in the partner's share of the adjusted basis of partnership property any significant discrepancies that resulted from contributed property, transfers of partnership interests, or distributions of property to the partners. See Reg. §1.705-1(b) for the rules applicable to using the alternative method. If the capital account is being properly maintained on a tax basis, the outside basis will generally equal the capital account plus the partner's share of liabilities.

D. Reporting

It is the partner's responsibility and not that of the partnership to keep track of the partner's outside basis. However, as a practical matter, the client relies on the tax practitioner to keep track of basis. The information to determine the annual adjustments and distributions is on the partner's Schedule K-1. This includes the tax-exempt income and nondeductible expenses. It also includes information of the partner's share of the partnership debt, which is shown in Item K. Additional contributions to capital will be shown on the capital account reconciliation in Item L. Remember that Item L is determined on a tax-basis method beginning in 2020. A basis can generally be reconstructed from the K-1.

E. Conclusion

The importance of properly maintaining a partner's outside basis cannot be overstated. Fundamentally, a partner's outside basis represents his or her after-tax investment in the partnership. Outside basis determines how much a partner may withdraw or deduct from a partnership for tax purposes without recognizing additional gain or without being limited on the allowable flow-through of partnership losses. As mentioned above, if the capital account is properly maintained on the tax basis, then the outside basis should generally equal the capital account plus the partner's share of liabilities. Caution should be used to make sure the beginning capital account is properly determined on a tax basis. This has been an issue the IRS has found with 2020 returns. So, often it may be an approximation of outside basis. The outside basis should be properly maintained separately to avoid any issues on audit. Practitioners should work closely with a partner client to ensure the basis is properly maintained to take full use of many of the advantages of partnership taxation.

A. Discussion Problems

1. On June 1 of the current tax year, Julia and Jenny contribute property to form the JJ Partnership. Julia contributes cash of $200,000. Jenny contributes a building and land with an adjusted basis and fair market value of $340,000, subject to a liability of $140,000.

2. Assume the partnership borrows $20,000 to finance construction of a parking lot in front of the building. At the end of the first year, the accrual-basis partnership owes $8,200 in trade accounts payable to various creditors. The partnership reported net income of $30,000 for the year. Assume they share equally.

3. You get a new client, Jimmy, who is a partner in HL Partners. Jimmy has been a partner since 1962 and has very few records that survived a major hurricane disaster.

Required:

1. Determine the initial outside basis in the partnership for each partner, Julia and Jenny.

2. Determine Julia's basis and Jenny's basis at year end with the additional information.

3. Discuss how Jimmy's outside basis may be determined under the facts above.

B. Suggested Answers to Discussion Problems

1. Julia's initial basis of $200,000 (cash contribution) is increased by a $70,000 share of the liability on the contributed land. Jenny's initial basis of $340,000 (building and land basis) is reduced by the $140,000 debt assumed by the partnership, and then increased by her $70,000 share of the liability on the contributed land. Each has an outside basis of $270,000.

2. Both Julia and Jenny will increase their respective outside basis by a $10,000 share of the construction debt and a $4,100 share of the accounts payable debt. In addition, their basis is increased by the $15,000 share of the partnership's taxable income. They each have a basis of $299,100.

3. This is a situation where the alternative basis calculation may be used. You might attempt to recreate the basis using the K-1 from the partnership and making adjustments to the initial basis if it can be determined. If the partnership has properly determined the capital account in 2020 on a tax basis, this may be the starting point in determining basis.

PART 3. BUSINESS TAXATION

Underfunding of the IRS

In recent years, the Internal Revenue Service has been significantly impacted by budget cuts and loss of talent. With the IRS being underfunded and under-resourced, their ability to conduct audits and collections has been hindered. However, it has also hindered their ability to process tax returns and to assist taxpayers and practitioners, which is causing frustration for everyone. Ian Redpath and Shiny Mathew discuss the underfunding of the IRS, options that are available in dealing with the IRS, and recommendations for both taxpayers and practitioners in navigating the current environment.

Let's join Ian Redpath and Shiny Mathew as they discuss the underfunding of the IRS.

Mr. Redpath

Shiny, welcome to the program.

Ms. Mathew

Thank you so much for having me, Ian. I'm excited to be here.

Mr. Redpath

It's great to have you, and it's great to have your insight on this because this is really a timely topic that we have right now, because we went through a pandemic and the IRS just essentially—we can almost say they were shut down during the pandemic. And a lot of practitioners are getting very frustrated in trying to deal with the IRS, because there's nobody to deal with. Really, what's going on right now? I think that we've got to kind of look at this first from 30,000 feet. What's going on with the IRS right now?

Ms. Mathew

Yes, absolutely. I know everyone who's been a practitioner over the last decade, we've seen this slow decline. Since 2010, Congress has been slashing budgets at the IRS; and each subsequent year where their budget's getting slashed, the IRS is trying to do more, handle more work, with less money, less resources, less funding, less staff. And we've been seeing for many years now, IRS staff, senior staff retiring and not being replaced. I know we've experienced it; we've felt it on our end as practitioners who deal with the IRS. So that was always a slow-growing problem, but then compounded not just with COVID and all the tax centers being closed, the employees having to work from home being ill equipped. They were already ill equipped in the office; imagine how much more ill equipped they were at home. And add to that all the legislation that was passed that the IRS was tasked with—the PPP loans, verifying information for the EIDL loans, sending out these stimulus check payments, verifying who's filed their tax return, and getting inundated with tax returns now from people who hadn't filed who now need a stimulus check and they need to process. I've heard there are still tens of millions of paper tax returns for 2019 that have not been processed, that were just put in storage units and are still pending even being opened and looked at.

Mr. Redpath

Yes, what you're mentioning is a huge problem because the IRS has said not only are you not hearing anything, we haven't even processed returns. And if something was sent in on paper, the odds are it still hasn't been looked at. As you said, it's in the millions of returns that have not been even looked at. They're sitting there unprocessed. What a problem that the IRS is having right now. And I think from our standpoint as practitioners, a lot of practitioners are frustrated because they don't know where to turn right now. Where do you go? Do you do the five-hour delay on waiting for a phone call from someone? That's the usual delay. Now it's even longer to try to get ahold of someone. The taxpayer advocate pointed out that the IRS is just being very poor in providing information. So, even if you go onto the website checking the return, you're going to get, "Well, it's in processing," or "We don't have enough information at this point." No information is being provided. And the taxpayer advocate just pointed that out, that the IRS has to start doing something in order to respond to this. But can they, I guess, is the question?

Ms. Mathew

Right now, the taxpayer advocate has indicated that their research reflects the IRS is answering 20% of the calls that they're receiving, 20%! I know you're familiar with this, but the IRS has a "Courtesy Hang-up." That's their term for hanging up on you because you're waiting on hold too long. So if the general public is calling and they wait on hold for too long, the IRS "courteously" hangs up on them because they're not getting through, they don't have the manpower, and they don't want you to wait on hold. And when I say wait on hold too long, these are individuals who may have waited on hold for over an hour and then the IRS hangs up on them. This problem, when I say the funding has been slashed… I remember in 2010, working on an offer in compromise and I was talking to an individual in the Offer in Compromise Department with an approved offer. At the same time, I was trying to have them release those tax liens that had been filed, which is a completely different department of the IRS. Lien Department, Offer in Compromise Department.

So looking back, 2010, more than a decade ago. And the Offer in Compromise Department says yes, we see in the system that this offer has been approved and paid in full and this account is taken care of. I said, "Well, can you tell the Lien Department that because they won't release this lien and I've talked to them?" And they said, "Well, the Offer Department has to communicate that." And I kid you not, the person on the phone at the Offer Department says, "No, we can't call the Lien Department. They need to see it in the system." And so, it was this endless loop. How does the public…? We were able to get that lien released. But how does the public know how to navigate this maze which was already a nightmare a decade ago? And now you take this maze and you've just thrown in all these other components to it with underfunding. Now, you've thrown in PPP loans and EIDL loans, and oh, we're going to take more money away from you. And we're not going to have money to hire more people.

It's this cycle where, so I'll give you a statistic that I saw. The IRS has slashed audits such that you're more likely to get audited if you make under $200,000 as a household than if you make more.

Mr. Redpath

Really? That's incredible! You always think the other side. You think that as practitioners, especially small practitioners, people think, "Well, the odds of getting audited for my clients are relatively small, if they're certainly under $200,000." But what you're saying is that statistically now, that's not correct?

Ms. Mathew

Yes, and it's even more unlikely if you make over a million dollars. I don't want to say it's near impossible, but if you make over a million dollars as a household, statistically, you are very unlikely. As a household, if you've got, let's say W-2 income, so straightforward income, we're not talking about a business, very unlikely to be audited. And the IRS hasn't come out and said this, but my own instinct is the IRS would be unmanned. If a household, you've got a physician making a million dollars and the IRS audits them, that person making a million dollars is going to hire an attorney. And that attorney has incentive to spend time on that audit and make sure that the tax code is gone over with a fine tooth comb and interpretation after interpretation is sent over. The IRS is outmanned in that respect. And so, it's easier to audit individuals who may be less sophisticated or not as equipped to go up against the IRS and for them, as a matter of practicality for their lack of resources, to try to find the lowest hanging fruit.

Mr. Redpath

Wow! That's the opposite of what we always think. You're both, right? You have the CPA and the attorney side going. I mean, you get in there and they know that the CPA handling the audit, or if they hire an attorney thinking it might go beyond that. The IRS doesn't have the resources any more to attack that. It's still kind of shocking to think of that.

We had a proposal to increase; and that was part of the President's proposal was to significantly increase the amount of money that the IRS gets for enforcement. The average person, when they think IRS enforcement, the first thing they think is the IRS coming down, they're going to attack us. They're going to go after us. We're going to have no opportunity to defend ourselves because it's the government and they're going to run us around forever and make us spend a lot of money. Of course, as practitioners, we don't mind that, right? But make us spend a lot of money to defend ourselves. That's not necessarily true, is it? Isn't it really the enforcement? Yes, it will pay for itself, but was the intent to have the IRS going after everyone who files a tax return? Where does that whole thing stand?

Ms. Mathew

Right. I would say I think that there's a misunderstanding by the public in general about what funding the IRS means. And unfortunately, in my opinion, the IRS should not be viewed as a political tool. And I think that in some ways that it has become an enemy of one or seem to be the weapon of another. I'm not sure. But as you pointed out, as an accountant, I used to be an accountant before I became an attorney. And then, maybe I'll clarify what I said earlier. Accountants have the strongest guns against the IRS, just like any tax attorney in my world today. What all of us in the accounting world want to do is see enforcement, see the IRS funded properly so that they could help taxpayers. I say that the IRS themselves create an industry, sadly, an industry where there are a lot of scam artists also, who are just trying to take advantage of people who can't work with the IRS, because the IRS is under-resourced.

And so, if the IRS instead had more resources, they would be able to help people get into agreements. We're not talking about tax cheats or people who are evading taxes or who think taxes are unconstitutional. That's criminal. I'm talking about very straightforward, civil tax matters where somebody doesn't have the money to pay or doesn't know how to catch up, or the penalties and interests that have accrued are more than they can afford, and they just want to figure out a way to get into an agreement with the IRS. Those people are trying to call and can't get through because the IRS is only answering 20% of the phone calls that they're getting and they're hanging up on the rest. I should say they're hanging up on a good number.

Obviously, practitioners, we have a different number than the public, so make sure you have your CAF number, make sure you have your power of attorney ready. There is a new online system that the IRS has rolled out where you can submit your power of attorney online. This looks like it has a lot of promise. Submit your power of attorney online. You can only have one power of attorney named, but you can get processed into the IRS system, I think it's 24 to 48 hours, which is much better. Right now, we're seeing the CAF units taking three to four weeks to get our pool of attorneys processed, but you can only list one name at a time.

Mr. Redpath

Yes. I'm not sure how well that's working. It was really a response to the COVID problems in putting the ability to do that. One of the things I think it's important to mention is we use e-services a lot. I know you use them a lot. I use it a lot. One of the things that the IRS has warned against is the fact that there's a lot of scamming of practitioners. And I think recently, the IRS just came out with the IR-2021- and it's, I think, 135, 137, 141, and 144; but you put them all together and they make the dirty dozen. But among the dirty dozen, I think this year is really important about the fact that scamming of tax professionals has really increased dramatically.

And one of the things is the e-services; you're getting messages that you need to update your password, for example, getting messages that you filed something, and they're just verifying it. And so, with e-services, they're finding that a lot of practitioners are getting scammed now with these fake IRS emails. So, it's something really to watch out for. And I think the other thing that the IRS has pointed out is that people are, they really don't often do it, but checking to see how many returns have been filed under your PTIN number; because if it doesn't [agree], all of a sudden, it's like, well, that number makes no sense. It means somebody accessed your information and maybe they've also accessed your client's information. So, those are two things I think that practitioners really need to look at because the electronics makes it a lot easier in life, but it also makes it a lot easier for crooks.

Ms. Mathew

Right, absolutely. And sadly, the crooks are posing as tax professionals, right? So you've got crooks posing as tax professionals, but there are offer in compromise mills that are scamming vulnerable taxpayers or posing as tax preparers. And I don't think the people, the public in general, realizes you shouldn't want a tax preparer who's guaranteeing the largest refund for you. What income are they reporting that they're getting an unusually high refund for you?

Everybody does not qualify for an offer in compromise. There are a myriad of resolution options that are available through the IRS. And one of them that I tell clients, even when we're looking at options, is paying the taxes due in full. I mean, that has to be one of the options. That is a possibility for some taxpayers. Paying the taxes due in full. So, for the public in general to think, okay, well, everybody's getting out of paying their taxes or getting a portion forgiven or only paying a portion, it's just not true. Having said that, I mean, we have offer in compromises approved all the time.

Let's just say, and I'm giving whoever this is the benefit of the doubt. Let's just say somebody comes into my office; they haven't prepared their tax returns for 10 years. They know they've earned income. They can estimate about how much they've earned. The offer in compromise process, how that works is it's a breakdown of your current income and expenses. It's not a snapshot even. If you own a business, it's going to look at maybe the last three years. If your income has declined substantially this year, particularly with COVID, or coming out of COVID, or whatever stage we're in right now, the IRS is going to see. What have you historically made? What's your industry? What's your future earning potential? All of those types of things when they're calculating an offer. So, if I had a client come in and they said, "I haven't filed, I made about this much money," I could estimate how much I think that they're going to owe. There's a lot that's going to go into that tax return, but then I could also maybe estimate if they would qualify for an offer.

But the financial analysis that you would do for every single client, honestly, is the same, not just for an offer—for a monthly payment, for a hardship, for a full payment, for a partial payment, for an offer in compromise. It's going to be: What's your financial analysis, What's your equity and assets? What's your cash in the bank? What's your current income? What's your cash flow? And then what are your expenses? Are you married? Do you have children? How many homes do you have? How many cars do you have? All these things. Once you get that calculated, potentially, I could say, "Hey, I'm under the assumption you may owe this amount in taxes. Potentially, you could have this offer in compromise if what you're telling me is true. And the reason I add that caveat is, and this happens a lot in consultations. How many times does a client say, "I made no money this year," and then no money in their mind is relative to what they used to make, but it's still substantial income.

Mr. Redpath

Yes. Well, I think one of the things that people don't understand is if they haven't filed tax returns, the IRS generally says, "File for six years and then we'll let you know if we're going to need more." It's not, we have to go back 20 years and figure out how do we file 20 years of tax returns? You don't. File the six, and that's more informal practice rather than formalized rules. But I think that's pretty much the standard the IRS is looking at is file for six.

Ms. Mathew

Actually, we're seeing seven, but six plus the current year.

Mr. Redpath

Yes. Six plus the current year. Right. So, seven. I meant six back.

But one of the things that people forget is, I had a client come in and they said, "Well, you know what? I don't think I owe anything because I made a lot of money back a while ago. And of course, I never got a refund because I never filed taxes. So I never filed my return. And then I [should get] a refund." Then the IRS says, "Well, wait a second. We only carry that over so far." So no, you do owe because yes, you did pay back then, but it's too late to request to get a refund of that. And so the IRS isn't just going to allow you on the return to say, "Oh, well, we overpaid this year. We're going to carry it to the next. We're going to carry it to the next." It doesn't quite work that way, does it?

Ms. Mathew

No. One, you have to file that tax return if you have a refund due. So, if let's say you made estimated tax payments and you never filed that return, the IRS is not carrying forward those estimated tax payments; you have to file that return. You can potentially indicate that you want to apply any refund due to a future tax return, but you have to file the tax return in order to effectuate that. And after three years, any of those monies, whether it was an estimated tax payment or refund that you were due had you filed the tax return, it's out of the IRS's account for you in terms of it'll be there on your transcript, but they're not applying it forward.

Mr. Redpath

Yes. And boy, that came as a shock to my client who thought that, "Well, I'm not going to owe anything because I made a lot of money a long time ago. And I just haven't filed anything."

Ms. Mathew

That's terrible.

Mr. Redpath

We always have difficulties sometimes telling our clients, I'm sorry, but that's how it is. I didn't make the law. Because they hear all this stuff on television about how the IRS is giving everything away. I had a client come in once and said, "You never talked to me about the Fresh Start Initiative." And I said, "Well, there's not really something. That's kind of a combination of different things." They thought that there was just this program, Fresh Start Initiative. You apply for the fresh start initiative, because they heard it online. And I said, "No, a lot of that is not new stuff. It's old. There's all sorts of collection options, but not necessarily new as it comes to that."

Ms. Mathew

That's really the old streamlined installment agreement that got a fresh name called Fresh Start Installment Agreement. I'm not faulting companies that do a lot of advertising for that only because I do think it's good for the public to realize that there are options. I think of the frustration they feel, right? They're trying to navigate this maze that seems horrendous. They can't get through to the IRS. I know people who still haven't had their 2019 tax return processed. I know people who still haven't had the checks that they mailed into the IRS for their 2019 tax return cashed. And they are wondering, "Should I worry about this? What do I need to do?" So I appreciate at a basic level that the public is informed that there are other options because there are other options.

And like I said before, the IRS, for better or for worse, they're creating opportunities for CPAs and tax attorneys to help to use the law. And I actually think, even if the IRS is funded properly, there's still a need because these options like the Fresh Start Initiative, if a member of the public were to call the IRS, the IRS is not tasked with the responsibility of telling an individual what these options are. They're tasked with collecting as much money as possible. And so we get the benefit of telling taxpayers, "Here's an option available for you. And you actually qualify."

Mr. Redpath

Yes, I think the key there is qualification and that's where it falls.

Shiny, I want to thank you for being here on the program. A lot of great insights, a lot of things for us to think about. Unfortunately, I think that that's something that as practitioners, it's just a lot of frustration. I'm not sure we can take away the frustration, but there's a lot of things for everybody to be aware of. So again, thanks for joining the program and we want to have you on again soon, get more of your insight into what's going on with the IRS. Thanks for being here.

Ms. Mathew

Wonderful. Thanks for having me. I enjoyed it.

Issues with the IRS Administration and Enforcement

By Ian J. Redpath, JD, LLM

A. Introduction

The administration and enforcement of the tax laws has been delegated by the Treasury Department to the Internal Revenue Service, an agency within the Treasury Department. There are over 75,000 people employed by the IRS. Of serious concern is the age of employees within the IRS. About 45% are within two years of normal retirement age; and more than half are over 50. Only 3% of the employees are under age 30. The IRS has been hit with retirements, hiring freezes, and budget cuts. Audit rates for large corporations have decreased, but the amounts collected from audits has increased. The IRS budget is about $11.8 billion.

According to the IRS 2020 Data Book published in 2021, the overall audit rate for individuals is 0.4%, while for corporations it is 0.97%. Generally, the probability of audit increases for higher income taxpayers. However, there is an anomaly for individuals under $25,000 income who are audited at a higher rate than expected due to issues with the Earned Income Tax Credit. The overall number of audits has dropped. This includes both small business audits and corporate audits. According to IRS data, only about 2% of all S corporation returns were audited in 2019 despite the growth in S corporation entities. The IRS estimates that the cost of collecting $100 in taxes amounts to 33 cents.

In *Publication 5364* (Rev. 9-2019), the IRS estimated the tax gap for all taxes to be $441 billion. They estimate they will receive $60 billion, leaving a net tax gap of $381 billion. Of this gap, 2% relates to small corporations (those with less than $10 million in assets) and 6% to large corporations (those with $10 million or more in assets). The largest area of tax gap is with individuals with small business income and accounts for 25% of the total gap. That is over twice that of all corporations. The IRS says that about 86% of taxpayers voluntarily report the correct amount of tax. The main sources of the tax gap are:

- Underreporting net taxable income (80% of the tax gap).
- Underpayment of tax (11% of the tax gap).
- Nonfiling (9% of the tax gap).

B. Treasury Inspector General for Tax Administration (TIGTA)

The TIGTA has been somewhat critical of the IRS in a number of areas. One often audited area is the reasonableness of compensation. In TIGTA Report #2021-30-042, the TIGTA found that compliance risks of underreporting S corporation officers' compensation are increasing. However, the IRS is selecting less than 1% of all S corporations for examination. When the IRS does examine an S corporation, nearly half of the revenue agents do not evaluate officer's compensation during the examination even when single-shareholder owners may not have reported officer's compensation and may have taken tax-free distributions in lieu of compensation. TIGTA's analysis of all S corporation returns received between processing years 2016 through 2018 identified 266,095 returns that were not selected for a field examination but had profits greater than $100,000, a single shareholder, and no officer's compensation claimed. The analysis found that the single-shareholder owners had profits of $108 billion and took $69 billion in the form of distributions, without reporting they received officer's compensation for which they would have to pay Social Security and Medicare tax. The TIGTA estimated those 266,095 returns may not have reported nearly $25 billion in compensation and may have avoided paying approximately $3.3 billion in Federal Insurance Contributions Act (FICA) tax.

Additionally, the TIGTA identified 151 S corporations with nonresident alien shareholders. If the IRS had identified these 151 S corporations and their 424 returns, it may have converted them to C corporations and assessed $5 million in corporate income taxes.

TIGTA recommended that the Commissioner, Small Business/Self-Employed Division:

- Evaluate the risk of noncompliance associated with officer's compensation in S corporation returns and update the examination plan;
- Evaluate the benefits to using a threshold and specific criteria as part of classification guidance;
- Use compliance results from established workstreams to inform decision-making around alternative treatments;
- Evaluate the 151 S corporations with nonresident alien shareholders to ensure that they meet the filing requirements for S corporations; and
- Evaluate the benefits of creating controls to identify invalid S corporations when shareholders are nonresident aliens.

C. National Taxpayer Advocate

In IR-2022-11 (January 12, 2022), Taxpayer Advocate Erin M. Collins released her 2021 Annual Report to Congress. She referred to calendar year 2021 as "the most challenging year taxpayers and tax professionals have ever experienced." The report says tens of millions of taxpayers experienced delays in the processing of their returns; and with 77% of individual taxpayers receiving refunds, "processing delays translated directly into refund delays."

The report credits the IRS for performing well under difficult circumstances. Since the start of the pandemic, in addition to its traditional work, the IRS has implemented significant programs enacted by Congress. Among other things, it has issued 478 million stimulus payments (referred to as Economic Impact Payments or "EIPs") totaling $812 billion and has sent Advance Child Tax Credit (AdvCTC) payments totaling over $93 billion to over 36 million families. The report says "[t]he imbalance between the IRS's workload and its resources has never been greater." Since fiscal year (FY) 2010, the IRS's workforce has shrunk by 17%, while its workload—as measured by the number of individual return filings—has increased by 19%. The report reiterates the National Taxpayer Advocate's longstanding recommendation that Congress provide the IRS with sufficient funding to serve taxpayers well.

"There is no way to sugarcoat the year 2021 in tax administration," Collins wrote. "The year 2021 provided no shortage of taxpayer problems." "While my report focuses primarily on the problems of 2021, I am deeply concerned about the upcoming filing season," Collins added in releasing the report. "Paper is the IRS's Kryptonite, and the agency is still buried in it." As of late December, the IRS had backlogs of 6 million unprocessed original individual returns (Forms 1040), 2.3 million unprocessed amended individual returns (Forms 1040-X), more than 2 million unprocessed employer's quarterly tax returns (Forms 941 and 941-X), and about 5 million pieces of taxpayer correspondence—with some of these submissions dating back at least to April and many taxpayers still waiting for their refunds nine months later. Although e-filed returns fared better than paper returns, the report says millions of e-filed returns were suspended during processing due to discrepancies between amounts claimed on the returns and amounts reflected on IRS records. When a taxpayer disagreed with a math error notice and submitted a response, the taxpayer's response went into the IRS's paper processing backlog, further delaying the refund.

The report identified areas of concern:

- IRS's "Where's My Refund?" tool often could not answer the question. Taxpayers attempted to check the status of their refunds on IRS.gov more than 632 million times last year, but "Where's My Refund?" does not provide information on unprocessed returns, and it does not explain any status delays, the reasons for delays, where returns stand in the processing pipeline, or what actions taxpayers need to take, if any.
- Telephone service was the worst it has ever been. The combination of processing delays and questions about new programs like the Advance CTC caused call volumes to almost triple from the prior year to a record 282 million telephone calls. Customer service representatives (CSRs) only answered about 32 million, or 11%, of those calls. As a result, most callers could not obtain answers to their tax law questions, get help with account problems, or speak with a CSR about a compliance

notice. "Among the lucky one in nine callers who was able to reach a CSR, the IRS reported that hold times averaged 23 minutes," the report says. "Practitioners and taxpayers have reported that hold times were often much longer, and frustration and dissatisfaction was high throughout the year with the low level of phone service."

- The IRS took months to process taxpayer responses to its notices, further delaying refunds. The IRS sent tens of millions of notices to taxpayers during 2021. These included nearly 14 million math error notices, Automated Underreporter notices (where an amount reported on a tax return did not match the corresponding amount reported to the IRS on a Form 1099 or other information reporting document), notices requesting a taxpayer authenticate his or her identity where IRS filters flagged a return as potentially fraudulent, correspondence examination notices, and collection notices. In many cases, taxpayer responses were required; and if the IRS did not process a response, its automated processes could take adverse action or not release the refund claimed on the tax return. The IRS received 6.2 million taxpayer responses to proposed adjustments and took an average of 199 days to process them—up from 74 days in FY 2019, the most recent pre-pandemic year.

By statute, the National Taxpayer Advocate is required to identify the ten most serious problems encountered by taxpayers in their dealings with the IRS. This year's report details the following problems: processing and refund delays; challenges in employee recruitment, hiring, and training; telephone and in-person taxpayer service; transparency and clarity; filing season delays; limitations of online taxpayer accounts; limitations in digital taxpayer communications, including e-mail; e-filing barriers; correspondence audits; and the impact of collection policies on low-income taxpayers. For each problem, the report includes an IRS response.

The National Taxpayer Advocate's 2022 Purple Book proposes 68 legislative recommendations for consideration by Congress. Among them are the following:

- Provide sufficient funding for the IRS to improve taxpayer service and modernize its information technology systems. The IRS receives its annual appropriation in four accounts: Taxpayer Services, Enforcement, Operations Support, and Business Systems Modernization. During the past year, there has been considerable discussion about substantially increasing funding for the Enforcement account and related activities in the Operations Support account. To address taxpayer problems identified in this report, TAS recommends that Congress substantially increase funding for the Taxpayer Services account.

- Extend the period for receiving refunds when the IRS postpones the tax filing deadline. When a taxpayer files a timely refund claim, the IRS generally is permitted to refund only amounts paid within the preceding three years. If a taxpayer files a return on April 15 in Year 1, the IRS generally may issue a refund until April 15 in Year 4. In 2020, the IRS postponed the filing deadline for tax year 2019 tax returns from April 15 to July 15 due to the COVID-19 pandemic. Taxpayers who filed their returns on July 15, 2020 may reasonably believe they have until July 15, 2023 to obtain full refunds. However, income tax withholding and estimated tax payments for tax year 2019 are deemed paid on April 15, 2020. As a result, refund claims filed after April 15, 2023 will be limited to the amounts taxpayers paid or were deemed to have paid by April 15, 2020. A similar issue will arise in 2024 because the IRS postponed the 2021 filing deadline to May 17. This result was not anticipated and will prevent some taxpayers from receiving the full refunds to which they are otherwise entitled. TAS recommends Congress clarify that a postponement of the filing deadline extends the lookback period for paying refunds.

- Authorize the IRS to establish minimum standards for paid tax return preparers. Most taxpayers hire tax return preparers to complete their returns, and visits to preparers by Government Accountability Office and Treasury Inspector General for Tax Administration auditors posing as taxpayers, as well as IRS compliance studies, have found paid preparers make significant errors that both harm taxpayers and reduce tax compliance. Ten years ago, the IRS sought to implement minimum preparer standards, including requiring otherwise non-credentialed preparers to pass a basic competency test; but a federal court concluded the IRS could not do so without statutory authorization. TAS recommends Congress provide that authorization.

- Expand the U.S. Tax Court's jurisdiction to hear refund cases. Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax and are seeking a refund must file suit in a U.S. district court or the U.S. Court of Federal Claims. The Tax Court is an easier forum to navigate, and it has established relationships with the Low Income Taxpayer Clinics and other pro bono programs that assist taxpayers when they litigate their cases in Tax Court. TAS recommends that taxpayers be given the option to litigate all tax disputes in the U.S. Tax Court.
- Restructure the Earned Income Tax Credit (EITC) to make it simpler for taxpayers and reduce improper payments. TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income unrelated to the presence of qualifying children and (ii) a refundable child credit. For wage earners, claims for the worker credit could be verified with nearly 100% accuracy by matching claims on tax returns against Forms W-2, reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that currently varies based on family size would be combined with a child credit into a larger family credit. The National Taxpayer Advocate published a report making this recommendation in 2019, and TAS continues to advocate for it.
- Expand the protection of taxpayer rights by strengthening the Low Income Taxpayer Clinic (LITC) program. The LITC program effectively assists low-income taxpayers and taxpayers who speak English as a second language. When the LITC grant program was established in 1998, the law limited annual grants to no more than $100,000 per clinic. The law also imposed a 100% "match" requirement (meaning a clinic cannot receive more in LITC grant funds than it is able to match on its own). The nature and scope of the LITC program has evolved considerably since 1998, and those requirements are preventing the program from providing high quality assistance to eligible taxpayers. TAS recommends that Congress remove the per-clinic cap and allow the IRS to reduce the match requirement to 50% where doing so would provide coverage for additional taxpayers.

D. Administrative Proposals

The Congressional Budget Office (CBO) published *An Analysis of Certain Proposals in the President's 2022 Budget*. Since then, the CBO has completed its analysis of another proposal in the President's budget to increase funding for the IRS's enforcement activities. The CBO estimates that portions of the Administration's proposal to increase funding by $80 billion over the 2022–2031 period would increase revenues by approximately $200 billion over those 10 years. It assumes that current laws generally do not change. Spending would increase in each year between 2021 and 2031, though the highest growth would occur in the first few years. By 2031, the CBO projects the proposal would make the IRS's budget more than 90% larger than it is in CBO's July 2021 baseline projections and would more than double the IRS's staffing. Of the $80 billion, CBO estimates about $60 billion would be for enforcement and related operations support.

The CBO notes that the change in revenues resulting from an increase in the IRS's funding could be different from the estimates and is highly dependent on the IRS's ability to hire experienced staff, changes in voluntary compliance, and the interaction of enforcement funding with the IRS's other capabilities. The IRS intends to hire mid- and senior-level people with private-sector experience who will not require a great deal of training to become productive. However, it might not be able to hire its desired mix of candidates. If it hired less experienced candidates, it would have to spend more resources training them. Not only would they take longer to become productive, but current staff members would have to devote more time to training them. A related source of uncertainty in CBO's estimate is attrition; if it proved higher than expected, personnel would have fewer years at full productivity.

While an increase in the IRS's funding could increase voluntary compliance, this would decrease the ROI from enforcement. It is also unclear how much the greater information reporting or the increased IRS spending in areas other than enforcement could improve examiners' productivity.

It can be assumed that an increase in funding would result in greater audit activity. The CBO estimates that audit rates would return to the levels of about 10 years ago. It would increase for all taxpayers, but the focus would most likely be higher income individuals, large corporations, and partnerships. As of this date, the proposed increase in funding has not passed.

E. Conclusion

There have been significant issues with the IRS that have caused concern for practitioners. There are numerous considerations for discussion with clients regarding 2021 returns. It should always be remembered that it is unethical under both Circular 230 and the AICPA's SSTS to play the "audit lottery" (i.e., taking into consideration the chances of being audited) in taking a position on a return.

GROUP STUDY MATERIALS

A. Discussion Problems

Your firm has asked you to address the following questions:

1. Your firm has a large number of S corporations. You have been asked to look at how aggressive the IRS is being in auditing S corporations, especially in the area of compensation to employee/shareholders.

2. You have several clients who are waiting on the IRS for various things from 2021. What might the issue be with the IRS?

3. You have been asked to determine if there might be greater audit activity by the IRS in the future.

Required:

Discuss the issues fairly presented above.

B. Suggested Answers to Discussion Problems

1. In TIGTA Report #2021-30-042, the TIGTA found that compliance risks of underreporting of S corporation officers' compensation are increasing. However, the IRS is selecting less than 1% of all S corporations for examination. When the IRS does examine S corporations, nearly half of the revenue agents do not evaluate officer's compensation during the examination even when single-shareholder owners may not have reported officer's compensation and may have taken tax-free distributions in lieu of compensation. The TIGTA recommended that the Commissioner, Small Business/Self-Employed Division:

   - Evaluate the risk of noncompliance associated with officer's compensation in S corporation returns and update the examination plan;
   - Evaluate the benefits to using a threshold and specific criteria as part of classification guidance;
   - Use compliance results from established workstreams to inform decision-making around alternative treatments;
   - Evaluate the 151 S corporations with nonresident alien shareholders to ensure that they meet the filing requirements for S corporations; and
   - Evaluate the benefits of creating controls to identify invalid S corporations when shareholders are nonresident aliens.

   So, it is possible that there will be increased audit activity going forward.

2. The National Taxpayer Advocate has reported that as of late December 2021, the IRS had backlogs of 6 million unprocessed original individual returns (Forms 1040), 2.3 million unprocessed amended individual returns (Forms 1040-X), more than 2 million unprocessed employers' quarterly tax returns (Forms 941 and 941-X), and about 5 million pieces of taxpayer correspondence—with some of these submissions dating back at least to April and many taxpayers still waiting for their refunds nine months later. Although e-filed returns fared better than paper returns, the report says millions of e-filed returns were suspended during processing due to discrepancies between amounts claimed on the returns and amounts reflected on IRS records. When a taxpayer disagreed with a math error notice and submitted a response, the taxpayer's response went into the IRS's paper processing backlog, further delaying the refund.

3. The Congressional Budget Office (CBO) published *An Analysis of Certain Proposals in the President's 2022 Budget*. Since then, CBO has completed its analysis of another proposal in the President's budget to increase funding for the IRS's enforcement activities. The CBO estimates that portions of the Administration's proposal to increase funding by $80 billion over the 2022–2031 period would increase revenues by approximately $200 billion over those 10 years. It assumes that current laws generally do not change. Spending would increase in each year between 2021 and 2031, though the highest growth would occur in the first few years. By 2031, the CBO projects the proposal would make the IRS's budget more than 90% larger than it is in CBO's July 2021 baseline projections and would more than double the IRS's staffing. Of the $80 billion, CBO estimates about $60 billion would be for enforcement and related operations support. If passed, there will be increased audit activity by the IRS.

GLOSSARY OF KEY TERMS

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

Excess Benefit Transaction—An excess benefit transaction is any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration, including the performance of services, received for providing such benefit.

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

Qualified Conservation Contribution—A qualified conservation contribution is a contribution of a "qualified real property interest," to a "qualified organization," exclusively for "conservation purposes," and prohibits the donee from making certain transfers.

Required Beginning Date (RBD)—The date on which minimum distributions from individual retirement accounts and certain employer-provided retirement plans are required to begin. Under pre-SECURE Act law, the RBD is April 1 following the calendar year in which the owner attains age 70½. The SECURE Act revises this to April 1 following the calendar year in which the IRA owner attains age 72.

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.

Transactional Approach/Method—A partner's tax capital account is determined as follows: 1) increase a partner's tax capital account by the amount of money and the tax basis of property contributed by the partner to the partnership (less any liabilities assumed by the partnership or to which the property is subject) as well as allocations of income or gain made by the partnership to the partner, and 2) decrease a partner's tax capital account by the amount of money and the tax basis of property distributed by the partnership to the partner (less any liabilities assumed by the partner or to which the property is subject) as well as allocations of loss or deduction made by the partnership to the partner.

CUMULATIVE INDEX 2022

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, which of the following establishes covered compensation for qualified plans under IRC Section 401?

   A. IR-2021-255
   B. Notice 2022-1
   C. Revenue Procedure 2022-1
   D. Revenue Ruling 2022-1

2. According to Ian Redpath, which of the following should taxpayers receive detailing the amount of Advance Child Tax Credit sent to them in 2021?

   A. CP2000
   B. Form 1099
   C. Letter 6419
   D. Notice 2022-1

3. According to Ian Redpath, which of the following advises lenders and loan providers ***not*** to issue information returns regarding discharge of student loans if that discharge is ***not*** to be included in gross income?

   A. IR-2021-255
   B. Notice 2022-1
   C. Revenue Procedure 2022-1
   D. Revenue Ruling 2022-1

4. According to Ian Redpath, which of the following announces the requirement that Form 1024 must be filed electronically?

   A. IR-2021-255
   B. IR-2022-2
   C. Notice 2022-1
   D. Revenue Procedure 2022-7

5. According to Ian Redpath, for taxpayers that reached age 70½ in 2019, their 2021 RMD is/was due by which of the following?

   A. April 1, 2021
   B. December 31, 2021
   C. April 1, 2022
   D. December 31, 2022

Continued on next page

6. According to Ian Redpath and Brian O'Sullivan, which of the following is included in the Wyden proposal regarding the Section 754 election?

   A. It would create the Section 754 election.
   B. It would eliminate the Section 754 election.
   C. It would make the Section 754 election elective.
   D. It would make the Section 754 election mandatory.

7. According to Ian Redpath and Brian O'Sullivan, which of the following is correct regarding a partner's three accounts related to the partner's interest in a partnership?

   A. A partner's capital account, inside basis, and outside basis may all be equal,
   B. A partner's capital account, inside basis, and outside basis must all be equal,
   C. A partner's inside basis must equal his/her capital account.
   D. A partner's inside basis must equal his/her outside basis.

8. According to Ian Redpath and Brian O'Sullivan, tax-basis capital reporting for partnerships is required beginning with which tax year?

   A. 2022
   B. 2021
   C. 2020
   D. 2019

9. According to Ian Redpath and Brian O'Sullivan, which of the following is correct regarding a distribution from a partnership to a partner?

   A. The distribution has no impact on the partner's basis.
   B. The distribution may increase or decrease the partner's basis depending on the circumstances.
   C. The distribution will increase the partner's basis.
   D. The distribution will reduce the partner's basis.

10. According to Ian Redpath and Brian O'Sullivan, a partner's basis in a partnership must be which of the following?

    A. $0 after distributions are made
    B. $0 at the end of the partnership year
    C. $0 or negative
    D. $0 or positive

Continued on next page

11. According to Ian Redpath and Shiny Mathew, what has happened to the IRS budget over the last decade?

    A. It has increased slightly.
    B. It has increased significantly.
    C. It has remained about the same.
    D. It has decreased.

12. According to Ian Redpath and Shiny Mathew, approximately what percentage of phone calls are being answered by the IRS?

    A. 20%
    B. 35%
    C. 50%
    D. 65%

13. According to Ian Redpath and Shiny Mathew, how quickly is a power of attorney generally processed if submitted to the IRS online?

    A. Within one to two days
    B. Within one to two weeks
    C. Within two to three weeks
    D. Within three to four weeks

14. If a taxpayer has neglected to file tax returns that were required for the past 15 years, Ian Redpath and Shiny Mathew generally recommend filing returns for how many years?

    A. The current year
    B. The current year plus three previous years
    C. The current year plus six previous years
    D. The current year plus 15 previous years

15. According to Ian Redpath and Shiny Mathew, approximately when will the IRS refund 2021 estimated tax payments to a taxpayer that does not file a 2021 tax return?

    A. Never
    B. 2024
    C. 2025
    D. 2026

CPE Network®
Tax Report
Volume 35, Issue 2 **February 2022**

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 2022 **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	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Partner and Partnership Bases	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Underfunding of the IRS	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

Which segments of the February 2022 issue of **CPE Network® Tax Report** did you like the most, and why?

____

____

____

____

Which segments of the February 2022 issue of **CPE Network® Tax Report** did you like the least, and why?

____

____

____

____

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

____

____

____

____

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

____

____

____

____

How would you rate the effectiveness of the speakers in the February 2022 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5 highest):

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	|______|	|______|	|______|
Brian O'Sullivan	|______|	|______|	|______|
Shiny Rachel Mathew	|______|	|______|	|______|

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 2022 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 <u>3 times per CPE hour</u>. 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:

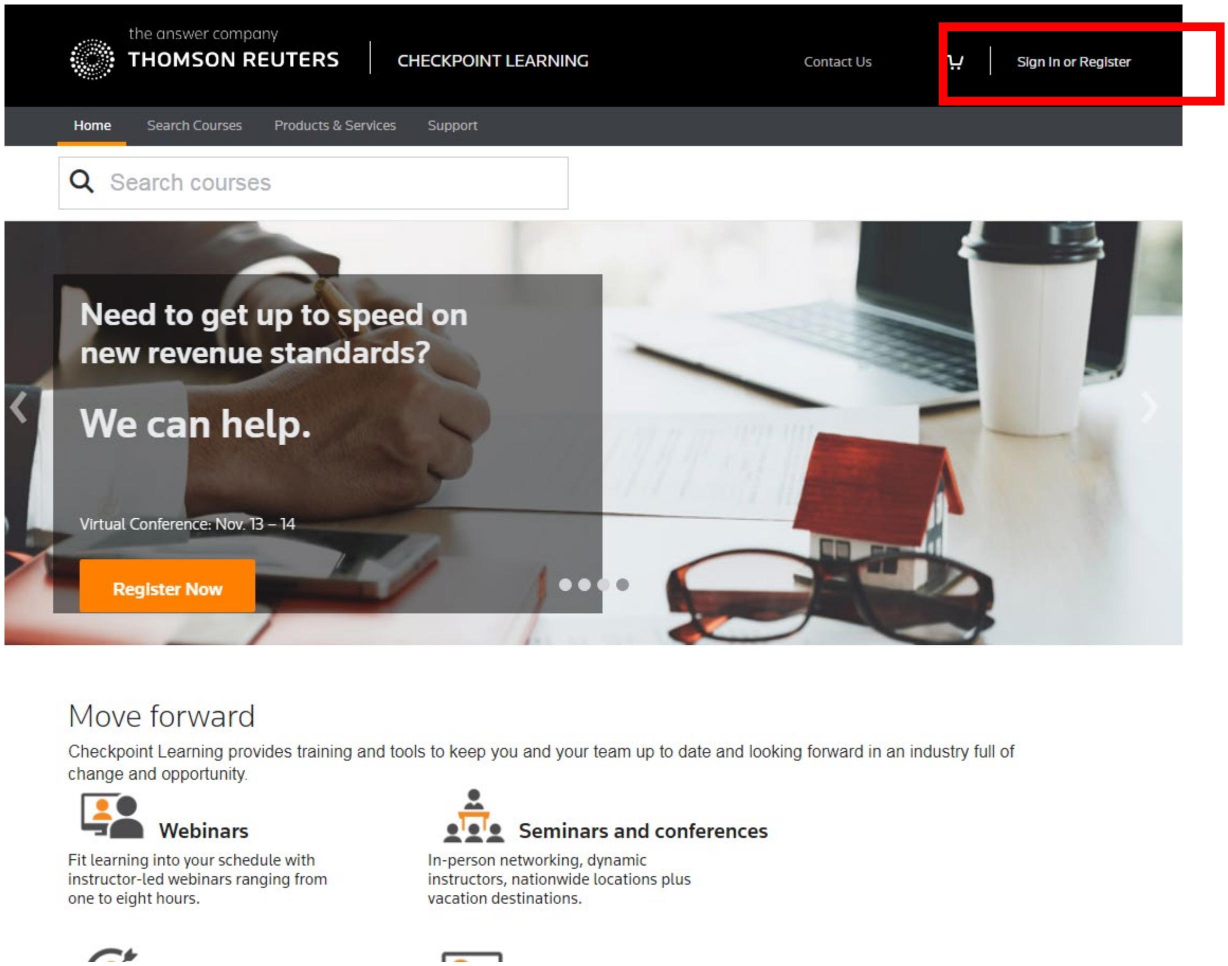
- Watch the DVD.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.
-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

  Thomson Reuters
  PO Box 115008
  Carrollton, TX 75011-5008

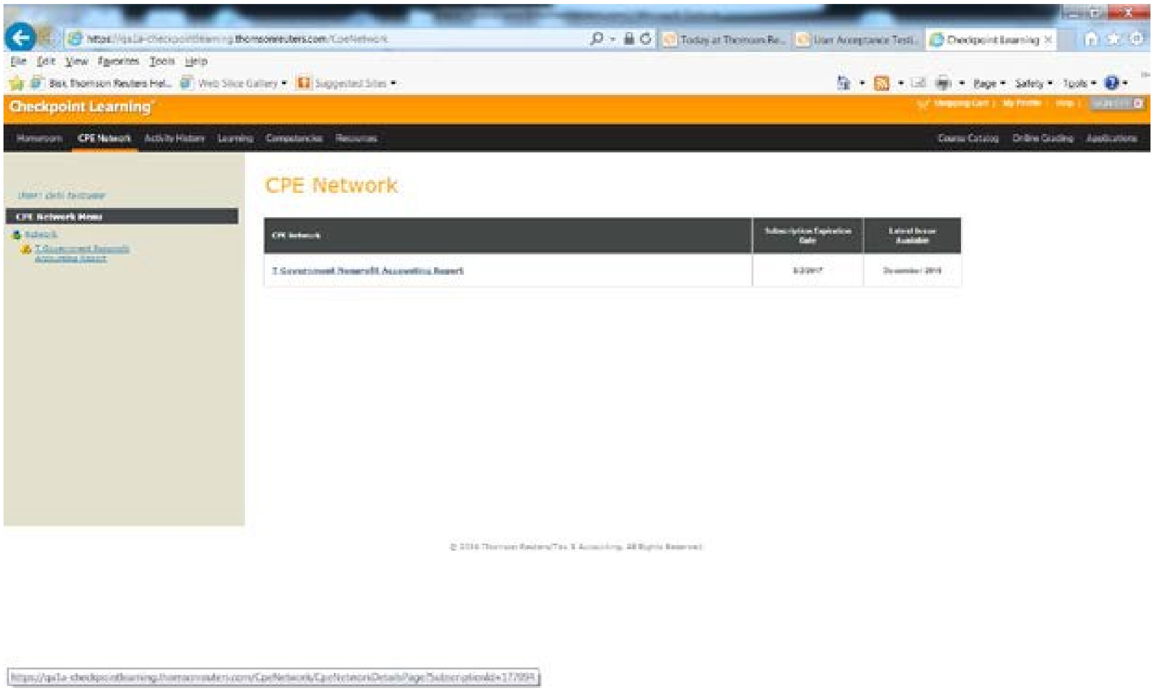
Self-Study—Online

Follow these simple steps to use the online program:

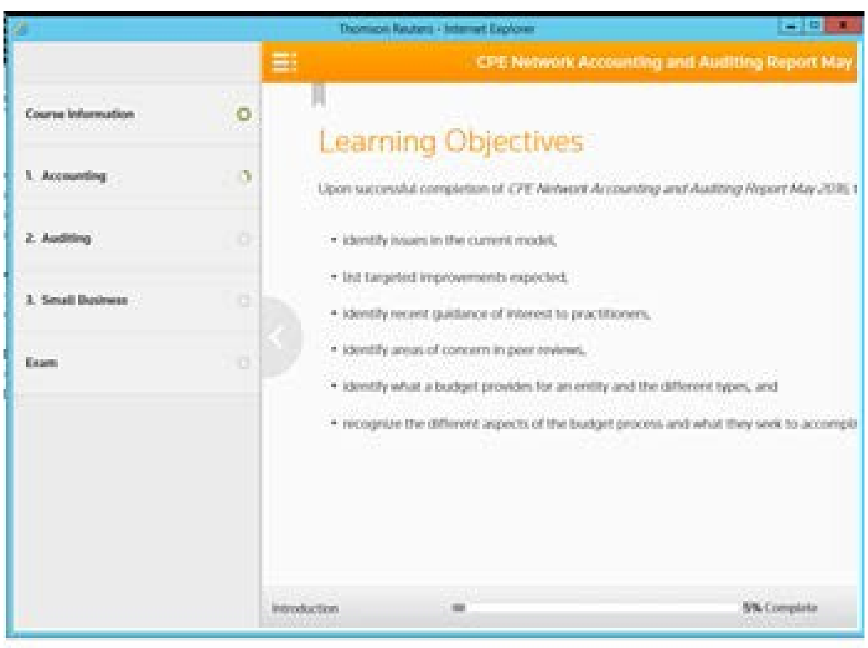
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Sign In or Register”).


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.

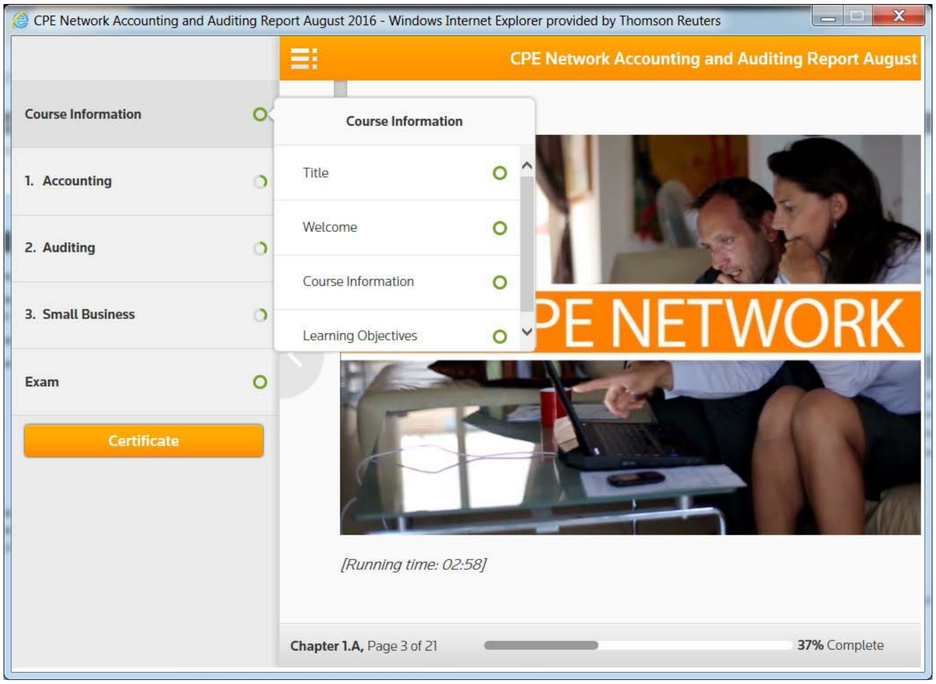


The Chapter Menu is in the gray bar at the left of your screen:

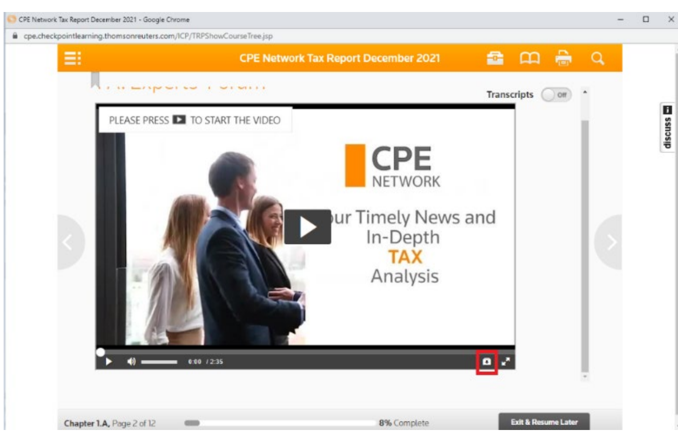


Click down to access the dropdown menu and move between the program Chapters.

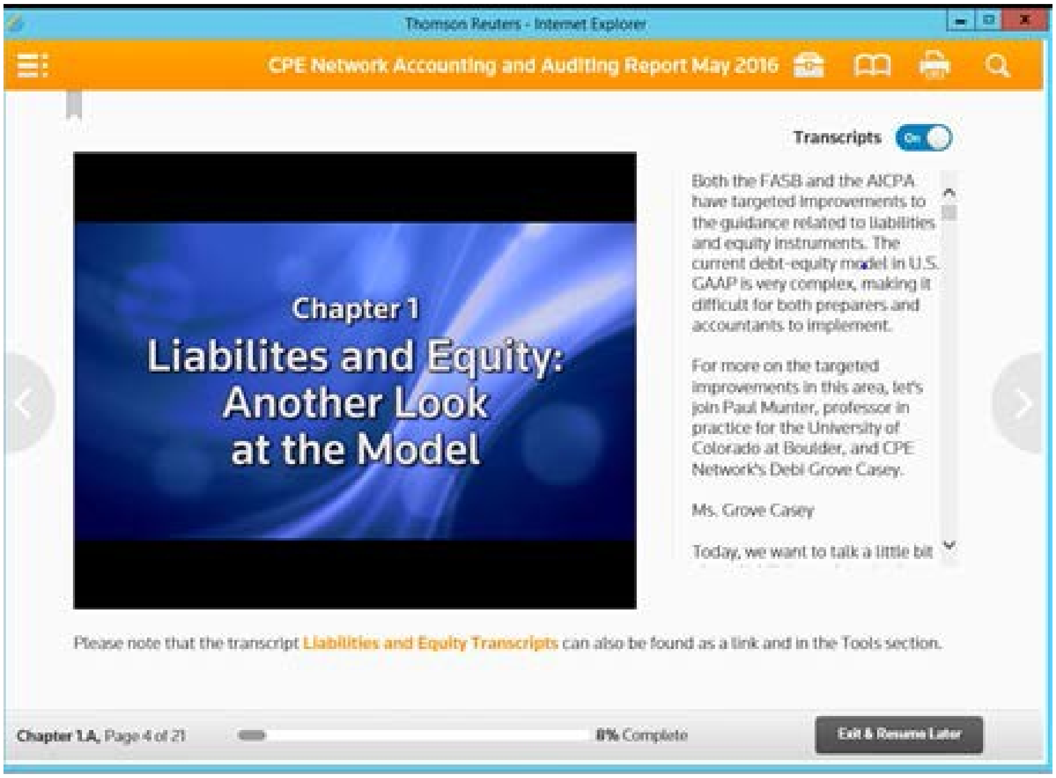
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



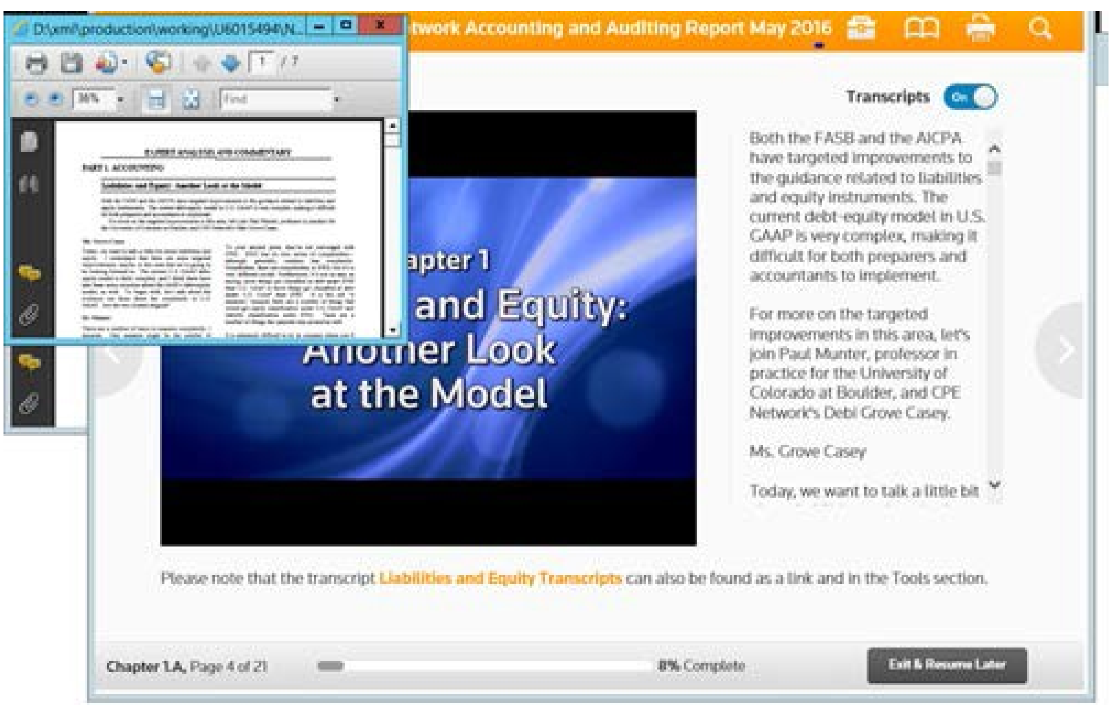
- **Each Chapter is now self-contained.** Years ago, when on the CPEasy site, the interview segments were all together, then all the supplemental materials, etc. Today, each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental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



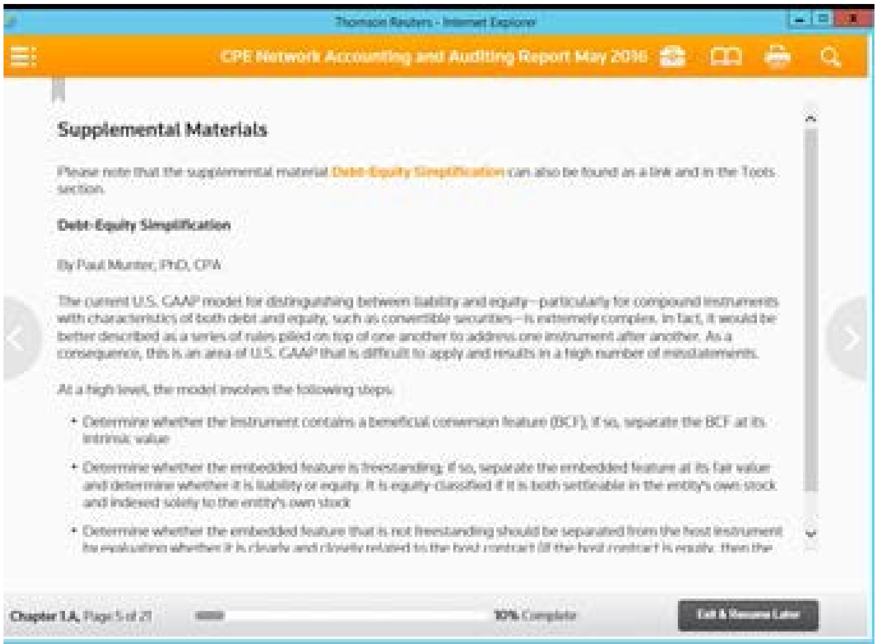
Video segments may be downloaded from the CPL player by clicking on the download button.

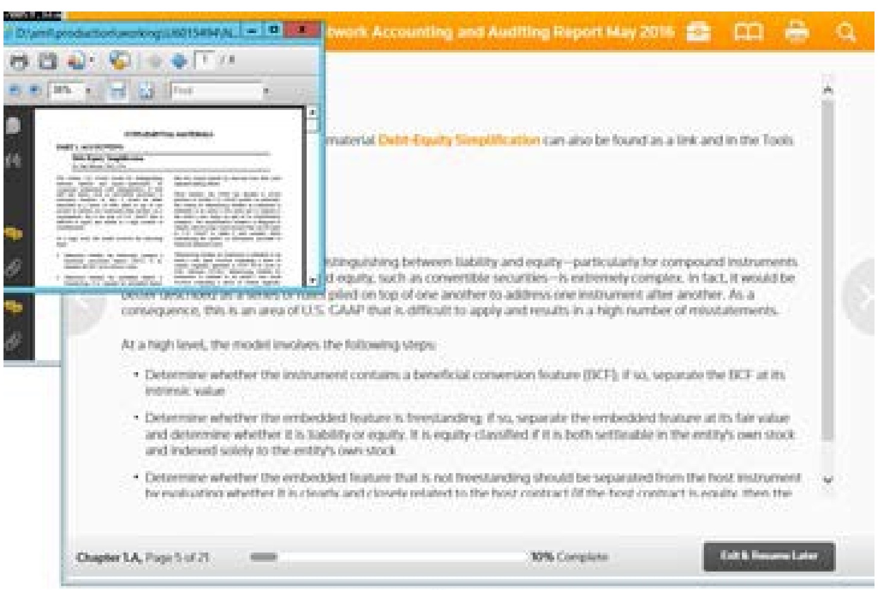


Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



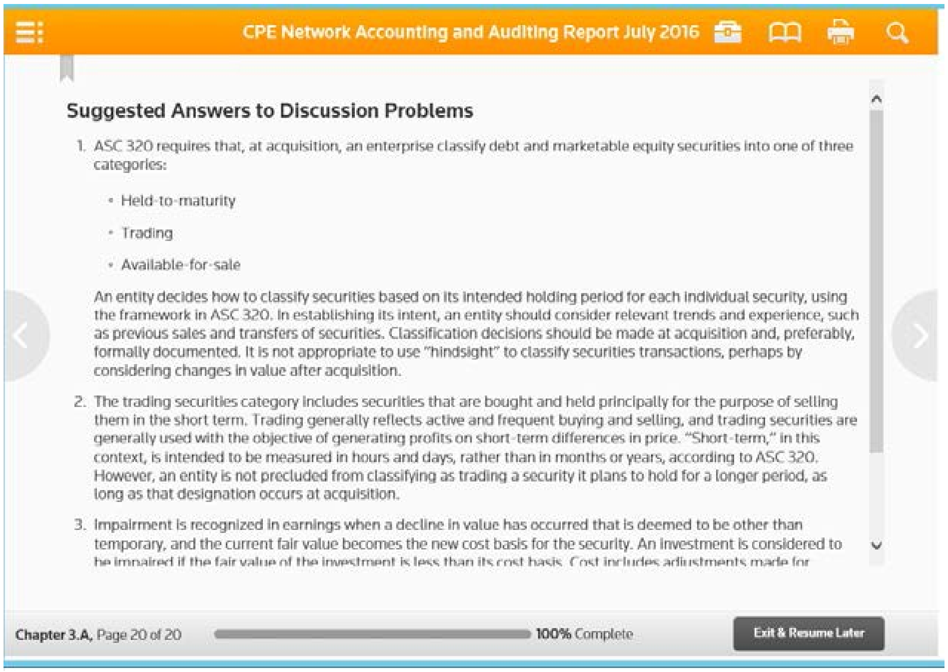
Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.





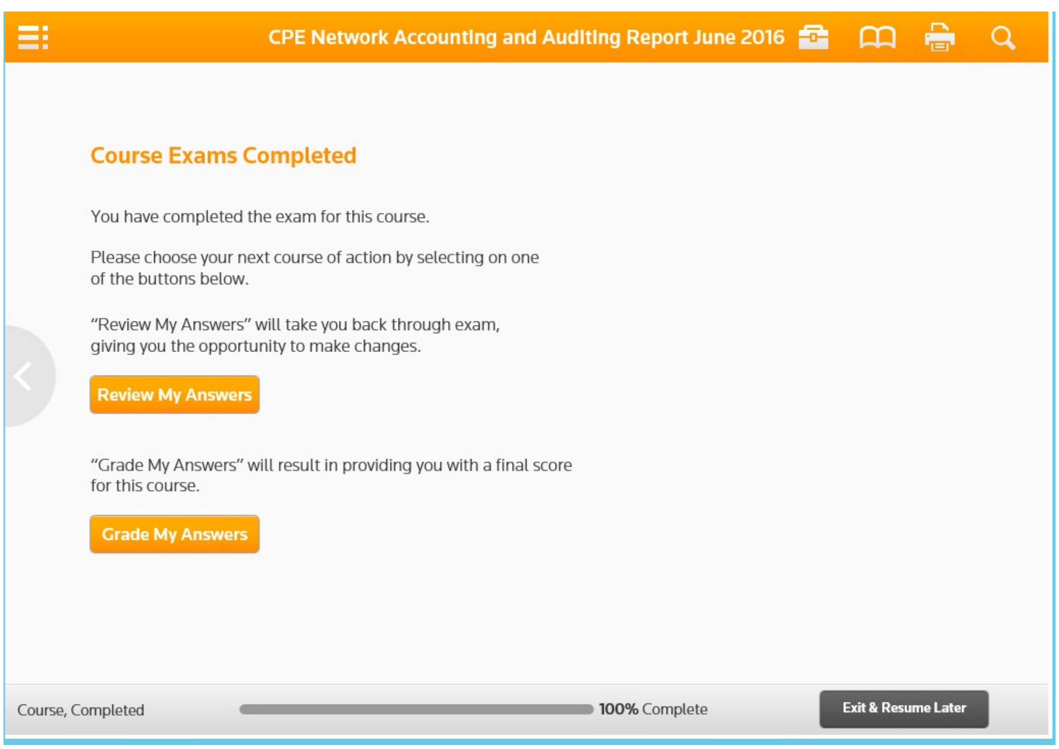
Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

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

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

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

Appendix: Forms

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

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

Getting Help

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

Support Group	**Phone Number**	**Email Address**	**Typical Issues/Questions**
Technical Support	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