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CPE NETWORK TAX REPORT

AUGUST 2022

VOLUME 35, ISSUE 7

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Topics for future editions may include:

- Taxation of High-Income Individuals
- Changing Tax Risks



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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum 3

The IRS is flexing its muscles with the 'Dirty Dozen' tax scams list for 2022. Practitioners should be diligent and also make their clients aware of the numerous frauds the IRS is warning about. Many times, a client may engage in a transaction without understanding it is fraudulent; if it sounds too good to be true, it probably is! The tax law is dynamic, and practitioners are constantly being confronted by changes through the Courts, the IRS, and Congress. This segment covers some of those recent changes in addition to this year's Dirty Dozen.

Learning Objective: Upon completion of this segment, the user should be able to analyze current issues in taxation, including analyzing potential tax scams, assessing the potential digital asset reporting requirements, and analyzing syndicated conservation easement investments. [Running time 32:54]

PART 2. INDIVIDUAL TAXATION

Tax Loss Limitations and Harvesting 15

Clients may be involved in many financial transactions that result in possible loss disallowances. Sometimes, this may be the result of a client's investment advisor engaging in transactions that result in wash sales or actions taken by the client, such as a sale to a related party. Many taxpayers have some gains in the stock market or on other assets and have attempted to offset those with losses. The Internal Revenue Code has many provisions that are designed to limit the ability of a person to harvest losses without limitation. Practitioners need to be aware of these provisions to advise clients in these economic times.

Learning Objective: Upon completion of this segment, the user should be able to analyze issues related to loss disallowances, including determining the loss in a gift situation, evaluating the related-party rules, and applying the wash sale rules. [Running time 33:32]

PART 3. BUSINESS TAXATION

Employee Retention Credit 29

The Employee Retention Credit (ERC), also called the Employee Retention Tax Credit (ERTC), has undergone significant changes since enacted with the CARES Act in 2020. This credit is beneficial for employers that were experiencing COVID-related economic issues. However, there was and still is confusion on the application of the credit. This may have resulted in some employers taking too little or too much of a credit. This should be reviewed and the appropriate amended returns filed if applicable.

Learning Objective: Upon completion of this segment, the user should be able to analyze issues related to the Employee Retention Credit (ERC), including determining the period of availability of an ERC, evaluating the correction of an ERC, and applying the statute of limitations (SOL) for reporting changes in the ERC. [Running time 39:34]

ABOUT THE SPEAKERS

Ian J. Redpath, JD, LL.M., 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.

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Karen Davis, EA, MBA, PhD is an enrolled agent with over 15 years of tax experience. She is a tax specialist and works for T.M. Byxbee Company in Hamden, Connecticut, where her areas of responsibility include tax research, tax planning and preparation, responding to IRS and state notices, representing clients at audit, developing and presenting in-house CPE, and staff training.

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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. In this month's discussion, Ian includes the most recent "Dirty Dozen" issued by the IRS. Compiled annually, the "Dirty Dozen" lists a variety of common scams that taxpayers may encounter anytime; but many of these schemes peak during filing season as people prepare their returns or hire someone to help them with their taxes.

Let's join Ian.

A. IRS Dirty Dozen

IR-2022-113, IR-2022-117, IR-2022-119, IR-2022-121, IR-2022-122, and IR-2022-125

Mr. Redpath

Hi, and welcome to the program. This is Ian Redpath with Network Tax. And this is the segment where we go over a number of recent changes, announcements, pronouncements, issues that have been brought forward by the Internal Revenue Service since the last time that we met.

This is the segment today that a lot of our viewers enjoy; but it's also a warning. And it's a warning to practitioners, as well as taxpayers; because the IRS has now come out with the—and cue the music! Look for Charles Bronson, and Jim Brown, and Telly Savalas, and James Coburn. I know—for those of you who have never seen it, *The Dirty Dozen*, one of the great films from the past. But the IRS has their Dirty Dozen, and their Dirty Dozen, unlike the dirty dozen of the movie, they don't have a redemption here, other than watch out, stay away. And the IRS kind of starts off this Dirty Dozen by saying that they're flexing their muscle. And if you recall, in our last segment, we mentioned that they're adding additional staff, specifically to go after a number of different things, including taking credits that you're not entitled to, like the employee retention credit. They're also adding a number of staff to go after things like conservation easements. So, you can expect that there's going to be a lot of activity when it comes to the Dirty Dozen.

So, let's start right in with the Dirty Dozen. These are in a number of different IRS releases, starting with IR-2022-113. And the IRS pointed out in this four, the top four, what they call potentially abusive arrangements that are being promoted regularly; and they're going to

attract, according to the IRS, great scrutiny. And the IRS points out, and this is IRS Commissioner Rettig, points out that taxpayers and practitioners—so, anytime they say taxpayers here, they mean practitioners also—should stop and think twice before getting involved with any of these questionable arrangements on a tax return. Again, it's important for practitioners, throughout all of this, to see what is going on. And also, that way, we can advise our clients, because sometimes our clients are being... They're hit by investment people. Boy, here's a great investment for you. Look at the great amount of return we can get. We've got to be able to make them savvy enough to come and talk to us, talk to their tax professionals to make sure that these arrangements are really going to get them what they want and not get them five to 20 in federal prison. So, watch out. You certainly don't want to be signing any return where you have a client involved with something like this. And you've done your investigation. You've done your due diligence. So anytime you see this, you have to do your due diligence. And if it smells, you've got to look and try to protect yourself, because you're signing that return also. And so, for the most part, the IRS is focusing on things that average taxpayers, and even more complex arrangements... For the first time, they've come out with a high taxpayer area of abuse that they're going after. So, promoters, the key is identifying that these transactions are or appear to have taken place.

1. **Use of Charitable Remainder Annuity Trust (CRAT) to Eliminate Taxable Gain.** So, the first of the Dirty Dozen is the use of charitable remainder annuity trusts, or CRATs, to eliminate taxable gain. CRATs are valued. Charitable remainder annuity trusts—they're very common.

So, these aren't transactions that you don't hear of. They're regularly done types of transactions. So, in this transaction, appreciated properties transfer to the CRAT. The taxpayer improperly claims the transfer of the appreciated assets, in and of itself to the CRAT, gives those assets a step up in basis to fair market value, as if they had been sold to the trust. The CRAT then sells the property but does not recognize gain due to the step up in basis. The CRAT then uses the proceeds to purchase single premium immediate annuities [SPIA]. Again, I love these SPIAs. They have all sorts of acronyms. The beneficiary reports as income only a small portion of the annuity received from the SPIA. And then again, this is essentially allowing that gain to flow through and be somewhat tax avoided. So, the taxpayers are getting then an inaccurate result, as the IRS points out, because of a misinterpretation of Sections 72 and 664.

2. **Maltese (or Other Foreign) Pension Arrangements Misusing Treaty.**

And the next one, number two, Maltese or other foreign pension arrangements misusing our treaties. So, we have a lot of treaties with a lot of different countries. And sometimes in those treaties, we have a provision that relates to pension plans. Well, one of the more common is a Maltese. And it could be in other countries, but Malta is the primary one that the IRS is seeing right now. The individual lacks a connection, and local law allows contributions in a form other than cash and doesn't limit the amount of the contributions by reference to income earned from your employment or self-employment. So, by improperly asserting the foreign arrangement as a pension fund for U.S. tax purposes, the U.S. payer misconstrues the provision to claim an exemption from U.S. income tax on the earnings and distributions. Those are being sold out there. Watch out. Tell your clients to stay away.

3. **Puerto Rican and Other Foreign Captive Insurance.**

Another, and this relates to Puerto Rican and other foreign captive insurance. Again, the whole area of captive insurance, where you are insuring through generally a related entity, you are insuring unreasonable risk at an unreasonably high premium with the idea of being able to increase the deduction, while essentially the income is really coming back to you from the premiums. So, watch out for any type of captive insurance arrangement.

4. **Monetized Installment Sales.** And the next one, number four on the list, monetized installment sales. So, in these transactions, what happens is there's an inappropriate use of installment sale under Section 453. In the year of the sale, the property you effectively receive the sale proceeds through purported loans. So, in the typical transaction, the seller enters into a contract to sell appreciated property to a buyer for cash, then purports to sell the same property to an intermediary in return for an installment note. That intermediary then purports to sell the property to the buyer and receives the cash purchase price through the series then of related steps. The seller receives an amount equivalent to the sales price, less the transactional fees in a loan that's nonrecourse and unsecured. Again, IRS says, if you are engaged in any of these or contemplating any of these, watch out. There's potential penalties ranging from the accuracy penalties of 20% to 40% or civil fraud—because they're warning you not to do these things—civil fraud up to 75% of the underpayment. The IRS is scrutinizing these and they all fall into, if it sounds too good to be true, it probably is. So, the IRS is going to continue to attack these. They are going to attack promoters. I've had several cases where the IRS has gone after promoters criminally. And fortunately, in the ones that I've been involved with, they have found that they were not promoting illegal tax shelters, so they did not ultimately file charges after the investigation. But the IRS has established the Office of Promoter Investigations to coordinate Service-wide enforcement of activities related to what they believe are abusive tax avoidance transactions. So, a lot going on in that area.

5. **Pandemic-Related Fraud.** The next and the fifth is IR-2022-117. And the IRS notes that criminals are still actively engaged in bogus COVID-19 pandemics, trying to steal money and/or identity through social media. And again, this has been going on for quite some time. Some of the examples that the IRS has pointed out to be on the lookout for, economic impact payment and tax refund scams. Thieves try to use the economic impact payments to threaten individuals, similar to tax refund scams. You should watch out for them. For example, text messages, random incoming phone calls or emails inquiring about bank account information, requesting recipients to click a link to verify their data. So, it's not just the stimulus, but

tax refunds are other common areas that the IRS [warns taxpayers about]. And you should remember to tell your clients the IRS does not initiate phone calls. They don't ask for your social security number or other personal or financial information over an email or by telephone. I know when my mother... My mother was 100 years old at the time, and she got a phone call from someone, again, a scam. And she said, "Oh, my son happens to be a tax attorney. Here's his phone number if you want to call him." Boy, that call ended quickly. So, a little word to the wise, just tell them to call you. Tell a client, if you get this type of call, direct them to you directly. That call will end very quickly.

Unemployment fraud—again, taxpayers getting 1099-Gs that aren't for them. In other words, somebody had filed to take advantage of unemployment. I have a case right now where it's the state, but the state unemployment is trying to verify saying, "Well, you received these payments." No, she did not receive those payments. The payment fraud is quite common. So, be on the lookout for 1099-Gs reporting unemployment that someone didn't get.

This is an interesting one that's somewhat new, but fake job postings on social media. A lot of people with the idea of working from home and using social media, what they do is they post the job. Then, they try to get personal financial information by looking like you're in for the job, we need this additional information. Oh, give us your social security number, etc. With the way things are going today with the internet and people working remotely, and you've got all these job sites out there that are on the internet. But there are fake ones now and fake job postings, so you really have to be on the lookout for that and have your clients be aware of anything like that.

And the next one is fake charities. Fake charities are a huge problem. Again, after the pandemic, there're a lot of them. So, basically the IRS says never let a caller pressure you into making a payment to them or a donation, supposedly. If they're legitimate, ask them to send you information. Ask them to give you their website to go to. You could ask the fundraiser again. What's the exact name? And then, tell your client to call you, and you can investigate it by going into the TES system, the tax-exempt search, on the website,

and you can pull off the information. Again, tell your clients under no circumstances—don't wire them money. Don't give them your credit card over the phone, certainly not gift cards. Check, credit card is okay; but I would not be giving the information over the phone.

6. **Offer in Compromise (OIC) "mills."** And then we have IR-2022-119, and this adds the sixth item. And the sixth item is, beware, the IRS is settling for pennies on the dollar. No, they're not! And offer in compromise mills, making the outlandish claims that... And again, so much advertising, how they're going to settle it for pennies on the dollar. And the reality is people pay the mill a fee to get the deal, either the same deal, certainly the deal that you could have gotten; if not, you could probably have gotten them a better deal, but many times they don't even qualify. I had a situation where someone came in, and they were dealing with a mill; and the mill had told them for \$14,000, they would settle everything and it would all go away. Well, the problem is they hadn't filed tax returns for over ten years. So, what compromise? What amount? They didn't have any information to determine the taxes due. Where did they come up with \$14,000? Well, they'd file and say, "Oh, they denied it." And who knows after that, we need some additional money to appeal it. That's very common. We're going to file. They file. It comes back. No. The IRS points out that the mills tend to charge excessive fees for the arrangements. And again, offer in compromise is great; but the IRS is not settling for pennies on the dollar unless it's in a highly unusual circumstance. I was involved with a case where we got a \$250,000 judgment against one of these mills. The founder's in jail, and it went bankrupt, so okay. Great, got a piece of paper. Watch out. It's not just watch out. You really have to educate the client. The other issue, they're ghost preparers. And you might say, "Well, where would that happen?" Well, this is happening a lot in areas where there are other mills out there; and these mills are in the area, for example, of credits. Oh, we can get you... By filing amended 941s, we can get you all of these credits. You're entitled to all of this money. You didn't properly file, but we're going to get you an employee retention credit by filing amended 941s. Great. A lot of them, and I've heard this from several people, including a couple of clients, that have said they'll prepare it, but they won't sign anything. That's a real red flag, right? They'll

prepare it for you, but they won't sign it. So again, these are the types of things where we need to make sure that they understand it.

7. **Suspicious communications.** The next, IR-2022-121, the scams listed essentially are adding to it, in essence, stealing taxpayer identification numbers. Look out for bogus calls, texts, emails, posts online. And again, similar to what we talked about before, text message scams, especially about stimulus payments, as we mentioned, unsolicited text messages. Taxpayers should take a screenshot of a text message; include the screenshot, and you can send it to the IRS, phishing@irs.gov. Do not click any links or open any attachments or unsolicited, suspicious, unexpected text messages. And that doesn't matter whether it's from the IRS or a state agency; don't open them. Phishing scams. And again, the IRS doesn't initiate the contact. You'll get something through regular mail. They're not going to call you or send you a text message. And then phone scams, as we mentioned, prerecorded messages, threatening messages offering to settle it, telling you that the law enforcement agency is going to be coming, or someone's going to be deported, or their license is revoked.

And then, remember that criminals can fake or spoof caller ID numbers to appear from anywhere in the country. It can appear to be a local number, and it can look like it's coming from the IRS office. Again, one of the things I've seen several times is spoofing sheriff's offices, as if it's coming from the sheriff. It says right on my [phone] that it's the sheriff. No, it's not. Or other federal agencies, so watch out for these. Again, remember another one is saying that they are one of the private collectors. They're working for a private collection agency. The IRS is not going to use the private collection. They're not going to text you. They're not going to call you. And so, if it says it comes from something like that, again, that is not legitimate.

8. **Spear Phishing.** And then IR-2022-122, the spear phishing. And this is aimed primarily at tax professionals, trying to gain their software preparation credentials. So essentially, they're going after in many different ways. And so, this is important for staff to be aware that you might get a phone call from someone. For example, you might get someone that says they're with the payroll company of a client of yours. Well, don't give them

any information. Oh, we just needed to verify. Common? Not true; it's not going to happen like that! The other thing is you'll get a phishing email that uses the IRS logo and says, "Action required. Your account has now been put on hold." Those types of things are bogus. You also get them from something that says, "Tax application provider," and tells you, "Unusual activity report. Click on this for the solution." So again... your account... with the IRS has been put on hold. Again, they look like the IRS website trying to get your credentials. They try to get you to... Oh, you have to update your credentials, and all they want to do is get your IRS credentials. Don't respond to any of those. They are going to put malicious links. They're going to try to steal your information, download malware to your computer. The bottom line is stay away from those. And again, staff may get something that says it's from your software preparer. There's so much information out there on your website. You may have the name of all your staff and where they work in tax. So, these are the types of things that they're going after in order to get information. Likewise, they may call a client and try to get information from them, appearing to be from your office. So, you've got to be very diligent in this.

9. **Concealing Assets in Offshore Accounts and Improper Reporting of Digital Assets.** And then, IR-2022-125. Again, the IRS points out that Chief Counsel's hiring 200 experienced attorneys to go after abusive tax deals, abusive things that have been promoted. So, here are some of the tax schemes. Concealing assets in offshore accounts and improper reporting of digital assets. We've talked in a number of different programs that they're going after the digital assets, but concealing... And this international tax compliance is a top priority of the IRS, and they are attempting to use a computer and algorithms to come up with ways to see if people evading U.S. taxes by attempting to hide offshore. And again, remember, you do have the FBAR reporting also.
10. **High-income individuals who do not file tax returns.** This is unusual. I mean, I don't see it; but the IRS is focusing on people who are just ignoring the law, not filing returns, especially with those earning \$100,000 or more. The IRS says that a lot of people earning \$100,000 or more are not filing tax returns. Part of that is people who are offshore and don't

understand that they have to file because the U.S. taxes worldwide income. But again, the IRS points that out.

11. **Abusive Syndicated Conservation Easements.**

They again raise the issue of abusive, syndicated conservation easements. They try to get people to avoid them. We know that they are in fact being abused in a lot of respects. The IRS examines 100% of the deals related to conservation easements. So, they're going to continue to do so. And if you have a client, make sure that the conservation easement, the I's are dotted, the T's are crossed on the documents. And a reminder, the IRS in Notice 2017-10 has indicated that if it's more than a 2.5% [return], it's going to be suspect.

12. **Abusive Micro-Captive Insurance Arrangements.**

And then, the last is abusive micro-captive insurance companies; and much like what we previously talked about with the Puerto Rican, again, you have closely held entities participating in schemes. They're large premiums with essentially either duplicate coverage, with commercial coverage that you already have, or not having what we would say is an insurable risk, sometimes just ridiculous things that it's insuring for. So, watch out for those. The IRS points out that in these micro-captive areas, that the IRS has won in either appeals, the tax court, and every appeals. They have won every case since 2017. So, if the IRS is questioning you, it's a problem. Try to have clients avoid that type of thing.

B. IR-2022-118

Again, the IRS, in IR-2020-118, noted—to kind of follow up on that—warning taxpayers should be alert to schemes pedaled by promoters related to these types of micro-captive. Again, the May 12th case of *Reserve Mechanical Corp*, the court of appeals upheld them again.

So, our Dirty Dozen, something to really keep in mind. One suggestion I might have is, if you have a client newsletter, you might want to just put those into words, your own words, but summarize them for clients to be

aware of. If you don't have a newsletter or something like that you send out, maybe just put it up on your website, something for your clients. Or maybe send out, put together a letter, an email that kind of summarizes these things for them; and make sure that they're aware that they should contact you for any of these things. So, that's a value added to the client. You don't want to find out that they did these things when they come in for tax season, and now you find out what did you do? Well, it might be too late to try to unwind some of that. So, just a warning.

C. S.4356

A couple of other things we mentioned, one of the things of misreporting the digital assets. Well, we have bipartisan bill, the Responsible Financial Innovation Act, which is to establish a regulatory framework for digital assets. It's a bipartisan bill. Senator Lummis and Senator Gillibrand are supporting it, Senate Bill 4356. And it's interesting in a number of senses. For purposes of the bill, digital assets are defined as a natively electronic asset that confers economic, proprietary, or access rights or powers and is recorded using cryptographically secured distributed ledger technology or similar analogy. And that includes virtual currency and virtual assets.

What they do, which is interesting, is the bill grants regulatory authority to the Commodities Futures Trading Commission and not to the SEC. If the

currency, if the digital asset represents a security or would be defined as a security using the Howey test of the Supreme Court, then it would in fact be under the SEC; but the vast majority would be under the Commodities Futures Trading Commission, so that's kind of an interesting approach. It also modifies the definition of a broker to include any person who, for consideration, stands ready in the ordinary course of business to affect sales of digital assets at the direction of their customers. Again, we have to tie this into the broker reporting that was part of the infrastructure bill that will be kicked in. Again, that is delayed. So, kind of a difference here.

D. *GBX Associates LLC v. United States*, No. 1:22-cv-00401, in the U.S. District Court for the Northern District of Ohio

Lastly, we have a case out there that's interesting. In that, I mentioned Notice 2017-10, that sent the 2.5%, or I'm sorry, 250%, 2.5 return, on an investment in a syndicated conservation easement. And this action is brought, and we talked in a previous program about the *Mann* case. And in the *Mann* case, a notice was set aside because they said it violated the APA, that the IRS did not get the appropriate commentary period and did not properly address comments that were made. Well, this case tries to do the same thing and is seeking an

injunction to set aside Notice 2017-10 for the same reason, that they did not follow the notice and comment procedures of the APA and, therefore, under the decision in *Mann*, they cannot enforce Notice 2017-10. Now remember, Notice 2017-10 also makes these reportable transactions; and that's the key in this particular case. And that's something to keep in mind with your clients if they come in. Notice 2017-10 makes these reportable transactions.

E. Charitable Conservation Easement Program Integrity Act

Now, that may or may not be a problem in the sense that we have a bill currently in the Senate, and this was reintroduced. The Charitable Conservation Easement Program Integrity Act—this was reintroduced in into the Senate, which basically will allow a charitable deduction only up to 2.5 times or 250% of your original investment. It will not allow it beyond that. So, that might be somewhat of a codification of the Notice 2017-10. And then, the other issue would just be the IRS would have to say whether or not anything under that is still a reportable transaction.

Well, we had a lot going on; and we always have the Dirty Dozen. And the Dirty Dozen gives us a lot to think about and a lot to do with our clients. I want to thank you today for joining me. Please be safe.

SUPPLEMENTAL MATERIALS

Current Material: Experts' Forum

By Ian J. Redpath, JD, LL.M.

A. IRS Dirty Dozen

IR-2022-113, IR-2022-117, IR-2022-119, IR-2022-121, IR-2022-122, and IR-2022-125

The Internal Revenue Service issued its "Dirty Dozen" list for 2022. Taxpayers, tax professionals, and financial institutions must be especially vigilant and watch out for all sorts of scams from simple emails and calls to highly questionable but enticing online advertisements.

1. **Use of Charitable Remainder Annuity Trust (CRAT) to Eliminate Taxable Gain.** In this transaction, appreciated property is transferred to a CRAT. Taxpayers improperly claiming the transfer of the appreciated assets to the CRAT in and of itself gives those assets a step-up in basis to fair market value as if they had been sold to the trust. The CRAT then sells the property but does not recognize gain due to the claimed step-up in basis. The CRAT then uses the proceeds to purchase a single premium immediate annuity (SPIA). The beneficiary reports, as income, only a small portion of the annuity received from the SPIA. Through a misapplication of the law relating to CRATs, the beneficiary treats the remaining payment as an excluded portion representing a return of investment for which no tax is due. Taxpayers seek to achieve this inaccurate result by misapplying the rules under IRC Sections 72 and 664.

2. **Maltese (or Other Foreign) Pension Arrangements Misusing Treaty.** In these transactions, U.S. citizens or U.S. residents attempt to avoid U.S. tax by making contributions to certain foreign individual retirement arrangements in Malta (or possibly other foreign countries). In these transactions, the individual typically lacks a local connection; and local law allows contributions in a form other than cash or does not limit the amount of contributions by reference to income earned from employment or self-employment activities. By improperly asserting the foreign arrangement is a "pension fund" for U.S. tax treaty purposes, the U.S. taxpayer misconstrues the relevant treaty to improperly claim an exemption from U.S. income tax on earnings in, and distributions from, the foreign arrangement.

3. **Puerto Rican and Other Foreign Captive Insurance.** In these transactions, U.S. owners of closely held entities participate in a purported insurance arrangement with a Puerto Rican or other foreign corporation with cell arrangements or segregated asset plans in which the U.S. owner has a financial interest. The U.S.-based individual or entity claims deductions for the cost of "insurance coverage" provided by a fronting carrier, which reinsures the "coverage" with the foreign corporation. The characteristics of the purported insurance arrangements typically will include one or more of the following: implausible risks covered, non-arm's-length pricing, and lack of business purpose for entering into the arrangement.

4. **Monetized Installment Sales.** These transactions involve the inappropriate use of the installment sale rules under §453 by a seller who, in the year of a sale of property, effectively receives the sales proceeds through purported loans. In a typical transaction, the seller enters into a contract to sell appreciated property to a buyer for cash and then purports to sell the same property to an intermediary in return for an installment note. The intermediary then purports to sell the property to the buyer and receives the cash purchase price. Through a series of related steps, the seller receives an amount equivalent to the sales price, less various transactional fees, in the form of a purported loan that is nonrecourse and unsecured.

To combat the evolving variety of these potentially abusive transactions, the IRS created the Office of Promoter Investigations (OPI) to coordinate Service-wide enforcement activities and focus on the participants in and promoters of abusive tax avoidance transactions.

5. **Pandemic Related Fraud.** The Internal Revenue Service warns that criminals still use the COVID-19 pandemic to steal people's money and identity with bogus emails, social media posts, and unexpected phone calls, among other things.

- **Economic Impact Payment and tax refund scams.** Identity thieves who try to use Economic Impact Payments (EIPs), also known as stimulus payments, are a continuing threat to individuals. Tell-tale signs of a scam include any text messages, random incoming phone calls, or emails inquiring about bank account information, requesting recipients to click a link or verify data; these should be considered suspicious and deleted without opening. This includes not just stimulus payments, but tax refunds and other common issues.
 - **Unemployment fraud leading to inaccurate taxpayer 1099-Gs.** Because of the pandemic, many taxpayers lost their jobs and received unemployment compensation from their state. However, scammers also took advantage of the pandemic by filing fraudulent claims for unemployment compensation using stolen personal information of individuals who had not filed claims. Payments made on these fraudulent claims went to the identity thieves. Taxpayers should be on the lookout for a Form 1099-G reporting unemployment compensation they did not receive.
 - **Fake employment offers posted on social media.** There have been many reports of fake job postings on social media. The pandemic created many newly unemployed people eager to seek new employment. These fake posts entice their victims to provide their personal financial information. This creates added tax risk for people because this information in turn can be used to file a fraudulent tax return for a fraudulent refund or used in some other criminal endeavor.
 - **Fake charities that steal your money:** Bogus charities are always a problem. They tend to be a bigger threat when there is a national crisis such as the pandemic.
6. **Offer in Compromise (OIC) "mills."** The IRS cautions taxpayers with pending tax bills to *not* go to unscrupulous tax companies that use local advertising and falsely claim they can resolve unpaid taxes for pennies on the dollar. These "mills" contort the IRS program into something it's not—misleading people with no chance of meeting the requirements while charging excessive fees, often thousands of dollars.
- Taxpayers should also be wary of unscrupulous **"ghost" preparers** and aggressive promises of bigger refunds by preparers unwilling to sign a return.
7. **Suspicious communications.** Bogus calls, texts, emails, and posts online to gain trust or steal information are on the increase.
- **Text message scams.** These scams are sent to taxpayers' smartphones and can reference things such as COVID-19 or "stimulus payments." These messages often contain bogus links claiming to be IRS websites or other online tools. Other than IRS Secure Access, the IRS does not use text messages to discuss personal tax issues, such as those involving bills or refunds. The IRS also will not send taxpayers messages via social media platforms. The IRS reminds everyone *not* to click links or open attachments in unsolicited, suspicious, or unexpected text messages.
 - **Email phishing scams.** The IRS does not initiate contact with taxpayers by email to request personal or financial information. The IRS initiates most contacts through regular mail.
 - **Phone scams.** The IRS does not leave pre-recorded, urgent, or threatening messages. In many variations of the phone scam, victims are told that if they do not call back, a warrant will be issued for their arrest. Other verbal threats include law-enforcement agency intervention, deportation, or revocation of licenses. Criminals can fake or "spoof" caller ID numbers to appear to be anywhere in the country, including from an IRS office.
8. **Spear Phishing.** IRS Commissioner Chuck Rettig said, "Spear phishing remains one of the biggest threats to the tax industry and other client-based enterprises." Spear phishing is an email scam that attempts to steal a tax professional's software preparation credentials. Spear phishing can be tailored to attack any type of business or organization, so everyone needs to be on the lookout

and not rush to act when a strange email comes in. The latest phishing email uses the IRS logo and a variety of subject lines such as "Action Required: Your account has now been put on hold." The IRS has observed similar bogus emails that claim to be from a "tax preparation application provider." One such variation offers an "unusual activity report" and a solution link for the recipient to restore their account. Emails claiming "Your account has been put on hold" are scams. The scam email will send users to a website that shows the logos of several popular tax software preparation providers. Clicking on one of these logos will prompt a request for tax preparer account credentials.

9. **Concealing Assets in Offshore Accounts and Improper Reporting of Digital Assets.** The IRS remains focused on stopping tax avoidance by those who hide assets in offshore accounts and in accounts holding cryptocurrency or other digital assets.

Over the years, numerous individuals have been identified as evading U.S. taxes by attempting to hide income in offshore banks, brokerage, accounts or nominee entities. They then access the funds using debit cards, credit cards, wire transfers, or other arrangements. Some individuals have used foreign trusts, employee-leasing schemes, private annuities, and structured transactions attempting to conceal the true owner of accounts or insurance plans.

Digital assets are being adopted by mainstream financial organizations along with many other parts of the economy. The proliferation of digital assets across the world in the last decade or so has created tax administration challenges regarding digital assets, in part because there is an incorrect perception that digital asset accounts are undetectable by tax authorities. Unscrupulous promoters continue to perpetuate this myth and make assertions that taxpayers can easily conceal their digital asset holdings.

According to Commissioner Rettig, "The IRS is able to identify and track otherwise anonymous transactions of international accounts as well as digital assets during the enforcement of our nation's tax laws.... We urge everyone to come into compliance with their filing and reporting responsibilities and avoid compromising themselves in schemes that will ultimately go badly for them."

10. **High-income individuals who do not file tax returns.** The IRS continues to focus on people who choose to ignore the law and not file a tax return, especially those individuals earning more than \$100,000 a year.
11. **Abusive Syndicated Conservation Easements.** In syndicated conservation easements, promoters take a provision of the tax law allowing for conservation easements and twist it by using inflated appraisals of undeveloped land (or, for a few specialized ones, the facades of historic buildings), and by using partnership arrangements devoid of a legitimate business purpose. These abusive arrangements do nothing more than game the tax system with grossly inflated tax deductions and generate high fees for promoters. The IRS examines 100 percent of these deals and plans to continue doing so for the foreseeable future.
12. **Abusive Micro-Captive Insurance Arrangements.** In abusive "micro-captive" structures, promoters, accountants, or wealth planners persuade owners of closely held entities to participate in schemes that lack many of the attributes of insurance. For example, coverages may "insure" implausible risks, fail to match genuine business needs, or duplicate the taxpayer's commercial coverages. The "premiums" paid under these arrangements are often excessive and are used to skirt the tax law.

B. IR-2022-118

On May 12, 2022, in *Reserve Mechanical Corp. v. Commissioner*, the United States Court of Appeals for the Tenth Circuit upheld the Internal Revenue Service's position on abusive micro-captive insurance transactions. The Tenth Circuit affirmed the Tax Court's decision holding that the taxpayer was not

engaged in the insurance business and that the purported insurance premiums it received were therefore taxable. *Reserve Mechanical* is the first appellate decision recognizing the IRS's position that these abusive transactions are shams.

C. S.4356

Senators Lummis and Gillibrand introduced the Responsible Financial Innovation Act, which would establish a regulatory framework for digital assets. For the purposes of the bill, a digital asset is defined as a "natively electronic asset" that "confers economic, proprietary, or access rights or powers and is recorded using cryptographically secured distributed ledger technology, or any similar analogue." This includes virtual currency and "ancillary assets," payment stable coins, and other securities and commodities. An ancillary asset refers to an intangible, fungible asset that is offered, sold, or otherwise provided to a person in connection with the purchase and sale of a security through an arrangement or scheme that constitutes an

investment contract. The bill grants regulatory authority to the Commodity Futures Trading Commission and not the Securities and Exchange Commission. The bill provides a legal distinction between which digital assets are treated as commodities or securities using the Supreme Court's *Howey*. The modified definition of a broker is "any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers." This bill would delay the digital asset reporting requirement under the Infrastructure Investment and Jobs Act (IIJA) to January 1, 2025.

D. *GBX Associates LLC v. United States*, No. 1:22-cv-00401, in the U.S. District Court for the Northern District of Ohio

The plaintiff is seeking an injunction against enforcement of Notice 2017-10 based on the Sixth Circuit decision in *Mann Construction, Inc. v. United States*, No. 21-1500 (March. 3, 2022). The claim is that the IRS did not follow the Administrative Procedure Act notice and public comment provisions.

E. Charitable Conservation Easement Program Integrity Act

Senator Grassley reintroduced this Act to stop the abuse of conservation easements, save taxpayers billions of dollars, and promote conservation in the U.S. Specifically, the proposal would generally disallow a charitable deduction if it exceeds 2.5 times (250 percent) of a partner's original investment.

GROUP STUDY MATERIALS

A. Discussion Problems

Your client, Rita, has come to you to prepare her tax returns for the year and informs you of the following:

1. She has invested in digital currency that is being held offshore. She indicates that she has been informed by an online investment group that she does not have to pay any tax on gains from these offshore accounts.
2. In May, she invested in a syndicated conservation investment regarding certain conservation easements. The investment group promised her a minimum return of 400%.
3. She shows you an email she just received from the IRS about her "back taxes" and offering to settle for substantially less than what is owed. It appears to be from the IRS "official website" and directs her to click on a link to confirm her identity and pay the reduced amount to settle her tax debt. She questions why she owes more money for back taxes.

Required:

Discuss the issues raised in the above scenarios.

B. Suggested Answers to Discussion Problems

1. On its face, this is a fraudulent tax scam. Rita will owe taxes on her income regardless of where she earns it. Moving income and/or assets offshore does not render them untaxable and is a common tax scam and fraudulent scheme. She must report the income. This type of scheme is one of this year's Dirty Dozen.
2. Syndicated conservation easements are one of this year's Dirty Dozen. This return exceeds the 250% of Notice 2017-10 and the pending legislation. These inflated returns are indicative of a fraudulent scheme. The IRS examines 100% of these deals.
3. The IRS does not make initial contact with taxpayers by phone or email. They certainly do not offer to settle tax debts for less if paid immediately. This is a scam, and she should **not** open the link. This should be reported to the IRS immediately.

PART 2. INDIVIDUAL TAXATION

Tax Loss Limitations and Harvesting

Selling investments at a loss to offset gains realized by selling other investments at a profit is known as tax loss harvesting. When done properly, taxes are paid only on the net profit, thereby reducing a taxpayer's tax bill. Tax loss harvesting can be a very effective strategy. However, there are certain loss limitation rules that must be followed, including the wash sale and related-party rules. Ian Redpath and Julie Welch discuss basic loss limitations and harvesting of losses.

Let's join Ian Redpath and Julie Welch as they discuss issues related to loss limitations and harvesting.

Mr. Redpath

Julie, welcome to the program. Always great to have you here and get your insight. A lot of people with the economy the way it has been, and what's been going on in the stock market are looking to, let's say, harvest losses, or take losses, or figure out ways to get losses. And yet, sometimes they still want to keep the same securities, stock or securities. So, we have a lot of interesting things to go over today.

Ms. Welch

Yes, it is an interesting time. Usually, at the end of the year is where people are thinking about this. But when the market's acting like it's been acting, it really is a chance to look through your portfolio and really see what's out there, and make sure you've got the right things in there. But it gives you a chance to reallocate things and reapportion what you have.

Mr. Redpath

And I think it also, Julie, a lot of times a lot of our viewers' clients will be relying on their brokerage house or their investment counselor; and sometimes, it's just automatic where they're just making transactions, they're just doing transactions, and they're not always looking for things like a wash sale or something like that. They're just doing the transactions and not always thinking about what's the tax implication of what's happening. So, I think it's a good opportunity for the accountant to sit down with the client and maybe go over some of these things rather than waiting until they come in at tax season and say, "Oh, wait a second. This may have made some sense for one reason; but you do realize that you're not getting any of that loss?" And so, I think it's a good opportunity for us to talk to, especially our higher-end clients, and talk to them about what's going on and what they might be looking at and

not just relying on their investment counselor. I'm not trying to infer that the investment counselors don't know what they're doing. I'm just saying that they're not always taking into consideration the tax aspect of it.

So, we're sitting around, and I have some gains that I have; and you're sitting around, and you've got some losses. And all of a sudden, we come up with this great idea, "Well, why don't you just gift me this property and I'll take the losses? You've got losses built in. Just gift it to me; then I'll sell it, and I'll take the losses, and we'll figure out what we're going to do to reverse that sometime in the future." Can we do that? Because that's not an unusual thing, especially with related parties, where they'll try to make gifts of losses to different parties. Can we do that?

Ms. Welch

Ian, you're exactly right. So many people think, "Hey, this looks like a great thing to do." And they don't think of, oh, the tax law is going to kick in, and say, "Hey, wait a minute. We're not going to let you do that. We've already figured out that scheme." So, what you're talking about here is you're talking about gifting loss property; and the gift rules are a little different. Normally, you get a carryover basis when you gift something. So, if the stock's gone way up in value, carryover basis. If the stock has gone way down in value, then you get this second, kind of second loss basis; and you get the value on the date of the gift, generally. So, all of a sudden, then you go to sell it, and there is no loss on it if you're selling it for that price.

Now, it's kind of weird with that gifting basis; because if you sell it in between, so you gift it, and the value is, let's say you bought it at \$100 and it's worth \$300. Then, your basis is \$100 that you're going to compare to. So, if you gift it, if I gift it over to you, Ian, and say, "Okay,

here, you take this stock, because it's gone up in value. I want you to recognize it." Well, all of a sudden, \$300 is not the basis; it's \$100.

Now, if the \$100 has gone down to \$25, then, when I gift it to you, now your basis is \$25. So, if you sell it for \$25, there is no loss on it. Even though I had a loss, that loss just goes poof; it's gone. If on the other hand, you sell it somewhere in between there, so you sell it for, let's say \$50. Now, all of a sudden, you can use—because we're falling between the \$25 of the value when I gifted it to you and \$100, which was my original basis, you're in between there, there is no gain or loss to you. So, if you sell it for \$50, then you get to use \$50 as the basis rather than the \$25.

Mr. Redpath

And the holding period tacks on, right? So, you take on the holding period of the donor. I think one of the things that's always interesting and I always facetiously tell people, "Remember that if anybody gives you something, thank them first, and then ask them for their basis and proof." Because you might sell that 20 years later, 15 years later, and if you can't prove the basis... With stock, at least you can go back, and you can come up with and try to figure out what the basis might be, at least the fair market value of what it might be. But the IRS says, "The basis is zero."

And with this gifting rule, I haven't had the situation, but I can see the IRS coming in and going, "Well, what was the fair market value? You've got the basis, but what was the fair market value on the date of that gift?" And, of course, you say, "Well..." You don't know. So, that is an interesting one. And we have an example here of Sarah and Julia. So, Julie, could you kind of go over this with us, which kind of summarizes what you were just talking about?

Ms. Welch

Here, we've got Sarah, she gets a gift from Julia. So, Julia gives her a gift on June 1st. The fair market value on the date of the gift was \$10,000. However, Julia had actually purchased the stock, oh, about 30 years ago for \$16,000. And then Sarah decides to sell the stock almost immediately on June 3rd. So, if Sarah sells the stock, and I'm saying stock, but it could be anything, for \$18,000, there's actually a \$2,000 gain, which is the difference between \$18,000, which is what she sold it for, and \$16,000, which is what Julia purchased for.

Mr. Redpath

The carryover basis, right?

Ms. Welch

Carryover basis, because it's a gain situation. However, if Sarah sells the asset for \$7,000, now there's a \$3,000 loss in there. You've got the difference between the \$7,000, which she actually sells it for. And you only get the \$10,000, which was the value of the gift on the date of the gift, which was lower than the original cost basis.

On the other hand, if Sarah sells it for \$12,000—and that's between the \$10,000 and the \$16,000, two basis numbers we talked about—so if Sarah sells it for \$12,000, there is no gain or loss because that basis adjusts back up from \$10,000 up to \$12,000.

Mr. Redpath

And you still have to report it though. I mean, it's still a reportable transaction. It's not like you can say, "Okay, we don't have to worry about that. We don't have to report it." You still do have to report it.

Ms. Welch

Exactly. And if you don't, you're going to get one of those notices saying, "Hey, why didn't you report this?" Especially if it's stock, there's going to be 1099 reporting.

Mr. Redpath

Right. Now, another situation that often is at least very disturbing when people have already done it, and then they come in to see you at tax time, and you say, "Well, you can't take that loss because it was a related party." And we know that the IRS, lots of transactions, right, where they look at the related parties and say, "You're really one economic unit, and we know you can play around. So, you can't sell it to your corporation, or sell it to your spouse, or sell it to your kid, and take the loss." Because same thing, "Oh, I got this loss property, but we really want to keep it. We like this asset, but I need that loss. So, I'm going to sell it to my spouse, my corporation, my partnership, all sorts of potential." What about that attempt to take a loss?

Ms. Welch

Again, the IRS has looked at that and said, "Hey, we actually put in a Code Section 267, and it says, we're going to look at all your family members." And how they define family for this purpose, it's generally your

brothers, your sisters, your spouse, or spouses as it says, ancestors, and lineal descendants. The people that are not considered related would be stepparents, uncles, in-laws, cousins, nephews, and believe it or not, ex-spouses. So, they're not considered related. So, if you have a good relationship with an ex-spouse, they are not a related party for this purpose. So, you could have a loss situation between ex-spouses, but not between current spouses.

Mr. Redpath

And just to follow up on that, Julie, I think the other thing that is often confusing about this is it doesn't matter if you made a great deal. So, I really don't like my ex-spouse and this property was worth eight, but I took her and I sold it to her for four. They don't care. In that case, I'm okay, I can take the loss, but what if I sold it to my brother that I don't like, and I don't like my brother at all. And I took advantage of my brother and I sold him something worth eight, but he bought it for four. I really took advantage of him.

IRS says, "We don't care. You're related. You don't get that loss." Doesn't matter if you sold it at fair market value or you sold it at significantly less than fair market value. You've got a loss, you're related, you don't get it.

Ms. Welch

Exactly.

Mr. Redpath

And there's all sorts of relationships with corporations. For example, if you own more than 50% of the value, two corporations that are members of a controlled group, partnerships where you own more than 50%—this is an own more than 50% of the capital or profits—and then two different corporations that may be related, or partnerships. So, you have all these interrelated, but it kind of is, hey, look, if you fall under the provision of 267, the loss, you're not going to get it, even if it's sold at fair market value.

Remember. you don't get personal. You could never take a loss on a personal use asset, so that's disallowed anyway; You don't get that. So, what happens to the loss? I mean, you don't get it, okay. So, what happens?

Ms. Welch

The loss can go poof. Just like we talked about in the gifting situation, the loss can go poof. However, if the asset is later sold by that related party at a higher

amount, up to that amount, again, kind of like that gifting situation, we don't have to recognize that gain up to the amount of the original basis, what the person had. So, the loss may be able to be utilized at a future time. However, that loss is utilized by somebody else, not by you. If you're the one that sold it, now, the other person has it, they're the one that gets the loss, not you, if they eventually do get that loss.

Mr. Redpath

So, the related-party buyer gets the loss if they sell it to an unrelated party. They can't sell it to another related party. Then, the rule would kick in for them. And this is reported on the 8949 with adjustment code zero, because you're taking an adjustment by offsetting your loss against your gain, right?

Ms. Welch

Exactly. And you're not really recognizing a loss. You're just not having to recognize the gain.

Mr. Redpath

Right. You're reducing your gain.

Ms. Welch

I guess I said that wrong, originally. But you're not really recognizing a loss, you're just not having to recognize that gain, because part of that loss is realized. The other interesting thing about that, different from the gift situation that we talked about, is that the holding period does not tack on in this case. So, it is treated as a new purchase for the related-party purchaser.

Mr. Redpath

Okay. Yes, that's an interesting difference. We have an example here of Sydney who has a corporation. Can we go over that one, Julie?

Ms. Welch

Sure. We've got Sydney. Sydney owns 75% of SmithCo, and that's more than the 50%. So, Sydney sells property to SmithCo for \$5,000; and that property has an adjusted basis of \$8,000. The loss, because they're related, because Sydney owns more than 50%, that \$3,000 of loss is disallowed, because they're related under the Code Section 267 related-party rules.

Now, let's assume that SmithCo later sells the property for \$10,000. Now \$10,000 is more than the \$5,000 that they purchased it for, and it's more than the \$8,000 that

Sydney had originally paid for it. But the realized gain from the transaction is going to be \$5,000, which is \$10,000, which is what they sell it for minus the \$5,000 basis. But then, SmithCo is allowed to use part of that disallowed loss that Sydney had. So, Sydney had that disallowed loss of \$3,000; that now is kind of allowed for SmithCo. So, now the gain is really only \$2,000, the difference between \$10,000 and \$8,000.

Mr. Redpath

So, the related-party buyer gets the loss. And then, if we take the same facts, except we have a different price on the sale, what happens?

Ms. Welch

So now, SmithCo sells it for \$3,000, which is under the related-party purchase price of \$5,000. So then, you have a recognized loss of \$2,000. And that original loss that Sydney had of \$3,000? That goes poof; it's gone. And this last example, we sold it to an unrelated party. So, we're able to recognize a \$2,000 loss out there. But the \$3,000 original loss that Sydney had? It just goes poof; it's lost.

Mr. Redpath

It's gone. Here's one that a lot of people just don't understand. And I think that there is a need to discuss this with the client, but also for the client to discuss this with their investment counselor, and that's the wash sale rules. Because so many people get caught in these wash sale rules without really thinking about it; I mean, they didn't intend to get caught in the wash sale rules. They weren't intending to do a wash sale; but these rules, there's no wiggle room here. If you're involved in a wash sale, I'm sorry, you don't get the loss currently. So, what is a wash sale?

Ms. Welch

A wash sale is when you sell something at a loss, but you basically purchase the same thing within, I say 30 days before or after, so a 61-day period. 30 days before or after you sell this stock, so, "Hey, I have some stock right now, the market's down. I'm going to go sell that stock, but I really like that stock. So, I'm going to buy it back at this low price." So, effectively, I'm thinking, "Hey, I get to recognize that loss." I do realize that loss, but I don't get to recognize it. That loss then just goes into the basis of my new stock. So, I do not actually get to recognize it right now, because they look at it and

say, "You really didn't get rid of that. You still have the same thing." And what you're looking at is substantially identical stock or securities. So, if I have Google stock and I get something different that's somewhat similar, and I'm looking at it from the internet side. So, you've got Spectrum and Google and AT&T and all these providers, so I just switch one for the other. Those are not substantially identical stocks. Google is identical to itself. So, if I buy Google stock, and I've sold it within 30 days before or after that, then I don't get to recognize that loss.

Mr. Redpath

That's a great point, Julie. That's a great point that you're just making, because you can stay in the same industry. And sometimes, you have to look at it that way that if I want to get this loss, I can buy back not Google; but I can buy back in the same industry, if that's what I'm looking at. If I'm looking at it as an industry that I want to stay in, as opposed to a company that I want to stay in. And that really is important. And the holding period here does tack on.

We have an example with Jade. Can we go over that example as just a basic for wash sales? And then we're going to get in kind of the details on what really is substantially identical, because that's the key here really, substantially identical.

Ms. Welch

Here in our example, Jade owns 100 shares of SmithCo, and it has an adjusted basis of \$30,000. She sells 50 of those shares, so half of it, for \$10,000; and 20 days later, she purchases 50 shares of the same stock for \$8,000. So, you look at that and say, "Okay, number one, I've got a 20-day period." So, we just talked about substantially identical stock. Well, this is substantially identical, because she bought the same stock. So, the realized loss of \$5,000 is \$10,000 is what she sold 50 shares for; and then we take our original basis of \$30,000, but we only sold 50 shares, so \$15,000 is our basis. So, we have a \$5,000 loss. But we can't recognize that, because within that 30-day period before or after, so 61-day period, we bought substantially identical stock. So now Jade's basis in that new stock that she purchased, and she purchased it for \$8,000, but she gets to add that \$5,000 unrecognized loss from that wash sale. So, in this case it didn't go poof, but it gets postponed until some future time when she actually gets rid of this stock.

Mr. Redpath

But I think the big issue is substantially identical, so what does that mean?

Ms. Welch

Substantially identical—if it's a stock and you bought the same stock, that's pretty clear; but the IRS has regulations out there to talk about what is identical and what isn't identical. And there's some exceptions out there for when you have straddles and things like that. But you have to watch the tax court and the circuit court that you're in to figure out if some sort of commodity future, whether it is a security and going to be subject to, if it's the same substantially identical property, or if it isn't.

Ms. Welch

So, the Sixth [Circuit] court is different than other circuits, where they held that a commodity future contract was actually a security and fell within the wash sale rules. But other places say, "No, that's not a security and it's not going to be substantially identical property." And so, you don't have to worry about the wash sale rules there.

Mr. Redpath

And a lot of, I mean, the tax court has said, "Generally, commodities are not." So, like you said, it depends on where you're living, so you've got to look at that. What about preferred stock versus common stock?

Ms. Welch

Generally, those are going to be considered not to be identical. However, if it's convertible preferred, then the IRS is going to hold that that is substantially identical. The other thing is if you have a company that merges, so you have two companies that merge as part of a plan of reorganization, and you had stock in the old and the new company, they're going to be treated as substantially identical. Because they're going to say it's the same company, even though it changed its name or changed something a little different.

Mr. Redpath

What about...?

Ms. Welch

Mutual funds.

Mr. Redpath

Yes, mutual funds and then the exchange traded funds, the ETFs. I mean, I think a lot of people are involved with that. They're involved in the mutual fund transaction. How are the courts looking at that and the IRS as far as substantially identical?

Ms. Welch

There's not a lot of IRS guidance out there; but usually, mutual funds are held not to be substantially identical, if it's different fund companies and different stocks in there, because otherwise the IRS would have to go in and show that the underlying portfolios were considered substantially identical.

Now exchange traded funds, they're a little different because they don't really have fund managers. They're just following an index. So, they're just following like the S&P 500 or the Russell 1000 Index, so those two indexes could be substantially identical. So, if you had one exchange traded fund and you sell that one at a loss and buy another one that is the same index, then, there's not a lot of IRS guidance out there, but you really have to be careful that they're going to come in and say, "Those are substantially identical." But mutual funds, usually not. Usually, those won't be treated as substantially identical. So, those are ones where you really have a really good case of going in and revamping your portfolio if it makes sense.

Mr. Redpath

Well, I think the argument there is different fund managers can make different decisions. And so therefore, they're not really substantially identical because of that. And as you said, with the ETFs, just tracking indexes, if they're tracking the same index, well, there is no separate decision making that would go into it. But I have a great idea. Here's what I'm going to do. I'm going to sell something, but then I'm going to buy it back in my self-directed IRA.

Ms. Welch

Now, wait a minute. They thought of the related-party rules, and they thought of the wash sale rules. Don't you think they thought of this one too?

Mr. Redpath

Eh, probably.

Ms. Welch

Of course, they did.

Mr. Redpath

You're telling me I can't do that? That wasn't such a great idea I had?

Ms. Welch

Yes. And the other thing is watch out, because even if your spouse has it, that's considered still a wash sale. So, IRAs, Roth IRAs—loss harvesting doesn't make sense in IRAs anyway, because that's not a taxable account. So, when we're looking at loss harvesting, we're usually not looking at IRAs or Roth IRAs; and we have to be careful about spouses. And the other thing we have to be careful about is those publicly traded partnerships, because people buy and sell those things so frequently. And if you buy it and then sell it at a loss and then rebuy it again somewhere else, guess what? You have the wash sale rule coming into effect.

And we've had some where we've had individuals, both spouses, own the publicly traded partnership, and then they have some trusts that actually own these publicly traded partnerships. And to just track all the wash sale rules was a staff accountant's full-time position. But you do have to watch all of that stuff, because if you think you have a really good idea, just make sure that the IRS hasn't thought of it too and disallowed it some way. You just want to make sure you can really recognize it.

So, the mutual funds are a great way to look at it, because we talked about that; they're usually not substantially identical. But be careful with your exchange traded funds or especially with stocks that are absolutely identical.

Mr. Redpath

Another issue that at least you have to look into is the potential on a short sale of actually falling within the wash sale rules. So, it's just something to look at, is if you're engaged in a short sale situation, have you made yourself out of the wash sale rules? And remember, the IRS basically is saying, "30 days before." And I think we should clarify that period we talked about; it means

you can't... If I have 100 shares of stock, I can't buy 100 and then sell 100, because I'm still coming out with 100. Nor can I go in, not purchase anything, then sell 100 and buy it within 30 days after that, another.

So, it's before, you can't buy it, then sell; because essentially, you can't still have it as you go out. Nor can you have it, sell it, and then repurchase substantially identical. And that's what that 30 days before, 30 days after. Why is it 61? 30 days before, the day... Because I envision that someone could put in a buy order and a sell order at the same time. They could buy back their own shares, right?

Ms. Welch

Right.

Mr. Redpath

In theory. So, another thing that people sometimes think, because I know I can't take personal losses, so I'm just going to convert the property to business, then sell it. So, I'll convert it for a short period of time. I'm going to take that house that I have a loss in, and I'm going to convert it to rental property for a month, and then I'll sell it. What about this conversion issue? Because a lot of times, people think, "Oh, that's a great way to do it because I know I can take business losses."

Ms. Welch

Well, a personal use asset, when you place it in service, it's going to get that lower value on the date of conversion. So, that loss in between, that was a personal loss and that's poof, that's gone. But the value on the date of the conversion, so that's real important to determine what that value is—appraisals or whatever of the property. In this case, you want to try to get it as high as possible. Because if the property then continues to go down or even sells at that price, you don't want to have to recognize a gain on it, especially when you had it as a personal loss; because you don't get to then take your personal loss and dump it into your business basis to recognize a loss at that point.

Mr. Redpath

So, in other words, the IRS has pretty much thought of most ways to harvest losses. What other things should our viewers be concerned with?

Ms. Welch

Well, again, we talked about the mutual funds, because that's one that we see a lot of when people are restructuring their portfolio. And you mentioned that you do have to report these things on a tax return. And now, it's easy to just say, "Hey, see attached schedule," because a lot of things get reported to the IRS since probably about 10 years ago when we changed, and everything has to be reported to the IRS for basis tracking related to securities. You still kind of have to watch those dates. Usually, the brokerage is going to track that date for you and let you know, "Hey, there's a wash sale in here." But, ultimately, it's not their responsibility. Ultimately, it's the taxpayer's responsibility to make sure that there's no wash sale rules in there. So, you do have to look through the dates rather than just saying, "See attached." Always scan through those dates. Make sure something that's long term versus short term, and make sure you don't see any wash sale things. And those sometimes are a little harder to see, because all you're seeing is the sales and you're not seeing the portfolio for the purchases all at one time when you're just preparing the tax return. So, you kind of have to look at the whole picture together. But this is the perfect time as the market is going up and down and up and down, and we don't know what's going to happen in the future. We all wish we had that crystal ball. It is a good time to look through a portfolio, see what's out there, make sure you're really in the asset classes you want to be in. And this is a good time to readjust.

And, Ian, what happens if I recognize this loss and I actually sell, and I don't have a wash sale and it's not related party. And I sell and I have a \$50,000 loss, and now, it turns out, I don't get capital gain distributions from the mutual funds this year; because everything went down and they didn't have the gains to pass out, and I didn't sell anything else. I get to the end of the year. And I've got a \$50,000 loss. Well, I get to recognize \$3,000 of that against other income, other ordinary income. And the remaining \$47,000 carries over. Carries over as long as I carry over. As long as I'm alive, I can carry that loss forward and use up to \$3,000 a year. So, that's the other important thing is don't worry that you didn't get to use it all. Don't limit it if it's the right thing to do to rebalance the portfolio. Go ahead and realize it, and then recognize it as you can on a tax basis.

Mr. Redpath

This is an interesting time; but it's absolutely, as you said, a time to help our clients, assist our clients, and look at these things. And, again, making sure that the decisions that are being made from the broker standpoint... And I had a client, I asked them exactly what was their investment strategy? And it was basically, well, they just do it. I'm in these funds and they just buy and sell things, whenever they feel it's best. And there's a ton of wash sales. The 1099-B is reporting a lot of wash sales in there. Those are things I think it's really a value-added to sit down with our clients at this time and discuss their portfolio and discuss some of these issues.

Julie, I really want to thank you. I mean, this is really an important time. But these things that we've gone over today and you've provided your great insight on them really are important things to help our clients in a value-added. So, Julie, thanks for being here. Love having you on the program. We'll have you again soon. Thank you.

Ms. Welch

Thanks, Ian.

SUPPLEMENTAL MATERIALS

Loss Harvesting Disallowances

By Ian J. Redpath, JD, LLM

A. Introduction

Many taxpayers have some gains in the stock market or on other assets and have decided to attempt to offset those with losses. The Internal Revenue Code has many provisions that are designed to limit the ability of a person to harvest losses without limitation.

Practitioners need to be aware of these provisions; and more importantly, clients need to be aware of these limitations in determining what, if any, property to dispose of and how.

B. General Limitations

Under §165(c), an individual can deduct only those losses that are incurred:

- in a trade or business;
- in a transaction entered into for profit; or
- that are a result of a casualty or theft with respect to property not connected with a trade or business or a transaction entered into for profit.

Losses on assets other than above are considered to be nondeductible losses. There is no netting with gains from such assets allowed. Personal use assets would, therefore, be property not used in a trade or business or held for the production of income under §212. For tax years 2018 through 2025, an individual can deduct a personal casualty loss only to the extent it is attributable to a federally declared disaster. [§165(i)(5)]

Losses on capital assets, as defined in §1221, are subject to an annual limit of \$3,000 after netting gains and losses. The remaining loss, if any, may be carried

over indefinitely. [§1211(b)] Corporations do not get a \$3,000 annual loss deduction after netting and are generally allowed to carry back the loss three years and forward five years, after which that loss is disallowed. [§§1212(a) & (b)]

The economic substance doctrine provides that the tax consequences of a transaction will not be recognized if the transaction (or a series of transactions) lacks economic substance. A transaction has economic substance only if:

- 1) the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's position (the objective meaningful change test), and
- 2) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into the transaction (the subjective substantial purpose test). [See §7701(o).]

C. Gifting Loss Property

It may seem like a good plan to generate a loss but keep the property "in the family." One consideration would be to gift loss property to a person who could then sell it to generate a loss. This loss gifting has been addressed in §1015. The general rule is that the basis in property received as a gift is the donor's basis plus gift tax on only the appreciation (pre-1977, it is all the gift tax). This is referred to as the gain basis. If the FMV at the date of the gift is lower than the gain basis, then for purposes of losses, the basis will be the lower of the gain basis or FMV on the date of the gift. There may also be a third basis in the property if the fair market

value of the property on the date of the gift is less than the donor's basis and the property is disposed of for an amount between the loss and gain basis. In this situation, the basis will be equal to the amount of the proceeds, resulting in no gain or loss. The transaction must still be reported for the year of the disposition, reporting the basis and proceeds as the same.

For determination of short- or long-term gains/losses, the holding period of the donor in the property "tacks" on to the holding period of the donee. Thus, the donee gets the benefit of the donor's holding period.

Examples: Sarah received a gift from Julia on June 1, 2020. The FMV of the asset on the date of the gift was \$10,000. Julia purchased the property on August 2, 1990 for \$16,000. Sarah disposes of the asset on June 3, 2020.

- If Sarah sells the asset for \$18,000, there is a \$2,000 gain (\$18,000 – \$16,000)

- If Sarah sells the asset for \$7,000, there is a \$3,000 loss (\$7,000 – \$10,000)
- If Sarah sells the asset for \$12,000, there is no gain or loss (\$12,000 – \$12,000).

D. Related-Party Losses

In order to prevent a taxpayer from transferring an unrealized loss to a related taxpayer who is generally in a higher tax bracket or who has or intends to realize gains from the disposition of property, losses on sales to related parties will be disallowed under §267(d)(1). The related parties are defined in §267 and the relationships include certain family members, corporations, partnerships, and estates and trusts. For the various relationships with and among corporations and partnerships, the issue is control (more than 50% ownership) and includes related entities.

Unlike the gift rules that disallow the loss in total, the related party's loss may be utilized by the related-party buyer to offset any gain, but not create or add to a loss, when the property is disposed of to a non-related party. Any remaining loss is permanently disallowed. The transaction must be reported on the Form 8949 with an adjustment code of O. It should be noted that the holding period of the seller does not tack on to the buyer's in a related-party transaction. The issue to be addressed is simply if the buyer is a related party. The issue is not if the sale or exchange was at actual FMV. The loss will be disallowed even if the seller can prove that the property was sold at an arms-length bargain at FMV. Related parties include:

- Family members—generally brothers, sisters, spouses, ancestors, and lineal descendants. However, note that stepparents, uncles, in-laws, cousins, nephews, and ex-spouses are not considered related.
- A corporation and an individual who directly or indirectly owns more than 50% in value of its outstanding stock.
- Two corporations that are members of the same controlled group.
- A grantor and a fiduciary of any trust.
- Fiduciaries of two different trusts, if the same person is a grantor of both trusts.

- A fiduciary and a beneficiary of a trust.
- A fiduciary of one trust and a beneficiary of another trust, if the same person is a grantor of both trusts.
- A corporation and a fiduciary of a trust, if more than 50% in value of the corporation's outstanding stock is directly or indirectly owned by or for the trust or any of its grantors.
- A person and a tax-exempt educational or charitable organization, if the organization is directly or indirectly controlled by the person or the person's family members (if the person is an individual). "Control" includes any kind of control by means of which a person controls an exempt organization, regardless of whether the control is legally enforceable, and regardless of the method by which the control is exercised or exercisable.
- A corporation and a partnership, if the same persons own more than 50% in value of the corporation's outstanding stock, and more than 50% of the capital interest or profits interest in the partnership;
- Two S corporations if the same persons own more than 50% in value of each corporation's outstanding stock;
- An S corporation and a C corporation, if the same persons own more than 50% in value of each corporation's outstanding stock.
- An executor and a beneficiary of an estate, except in a sale or exchange to satisfy a pecuniary bequest. [§267]

Examples: Sydney owns 75% of SmithCo, Inc. Sydney sells property to SmithCo for \$5,000. The property has an adjusted basis of \$8,000. The loss of \$3,000 is disallowed because Sydney is a related party to SmithCo under §267.

Assume SmithCo later sells this property for \$10,000 to an unrelated party. SmithCo's realized gain from the transaction is \$5,000 (\$10,000 – \$5,000). However, SmithCo is allowed to use the disallowed loss of Sydney for a recognized gain under IRC §267(d) of only \$2,000.

Assume the same facts except that SmithCo later sells the property for \$3,000 instead of \$10,000. As a result, SmithCo has a recognized loss of \$2,000 (\$3,000 – \$5,000). The related-party loss of \$3,000 is not recognized since IRC §267(d) applies only to the non-recognition of gain.

E. Wash Sales

A taxpayer cannot sell to generate a loss and in essence, still retain the property. To effectuate this concept, realized losses from wash sales are disallowed. [§1091] A wash sale occurs when taxpayer disposes of stock or securities at a loss and acquires **substantially identical stock or securities** within the 61-day disallowance period—30 days before or after the date of the loss sale. The period is six months for certain interests in a real estate mortgage investment conduit (REMIC)—either before or after the date of the sale or disposition. These rules do not apply to losses from transactions made in the ordinary course of a dealer's business of dealing in stocks and securities. The disallowed loss is added to the basis of the substantially identical stock or securities that caused the disallowance. This allows the taxpayer to recognize the loss on the future sale of the substantially identical stock or security by reducing the gain or increasing the future loss. The holding period of the old stock or securities tacks on to the new stock or securities.

The term "stock or securities" includes contracts or options to acquire or sell stock or securities. So, the wash sale rule applies to losses from sales or trades of contracts and options to acquire or sell stock or securities. [§1091(a) & IRS Pub No. 550, (2021), p. 56] The IRS has regulatory authority to make exceptions from the wash sale rule for certain contracts or options to acquire or sell stock or securities, as well as to provide exceptions for §1256 contracts or transactions subject to the straddle rules. The IRS, Tax Court, and the Second Circuit hold that a commodity future is not a security. [See Rev. Rul. 71-568, 1971-2 CB 312; *Corn Products Refining Co.*, (1951) 16 TC 395, affd (1954, CA2) 46 AFTR 528, 215 F2d 513, 54-2 USTC ¶66082, affd on other issue (1955, S Ct) 47 AFTR 1789, 350 US 46, 100 L Ed 29, 55-2 USTC ¶9746, reh den (1956, S Ct) 48 AFTR 681, 350 US 943, 100 L Ed 823; *Sicanoff Vegetable Oil Corp.*, (1957) 27 TC 1056, revd on other issue (1958, CA7) 1 AFTR 2d 779, 251 F2d 764, 58-1 USTC ¶9233.] But the Sixth Circuit, in a case decided under the 1939 Code, held that a commodity future

contract was a security and fell within the wash sale rule. [*Trenton Cotton Oil Co v. Com.*, (1945, CA6) 33 AFTR 610, 147 F2d 33, 45-1 USTC ¶9163, rev den (1945, CA6) 33 AFTR 910, 148 F2d 208, 45-1 USTC ¶9224]

Once the determination has been made that the asset disposed of is a stock or security, it must determine if the taxpayer acquired substantially identical stock within the 61-day period. Preferred shares are usually not considered substantially identical to common stock shares of the same company. However, if convertible to common stock in the same company, the IRS will usually contend they are substantially identical. [Rev. Rul. 77-201, 1977-1 CB 250] The stock or securities of one company are not considered substantially identical to stocks or securities of a separate company, even if they operate in the same sector. However, if the two companies merge as part of a reorganization, stock from the old and new company may be considered substantially identical. [See IRS Pub No. 550, (2021).] One way to avoid the issue would be to purchase stock or securities in the same business sector but not the same company.

There is a lack of specific IRS guidance regarding pooled investment securities like mutual funds or exchange-traded funds (ETFs). The IRS would have to show that the underlying portfolios of the two mutual funds are substantially identical. However, ETFs generally do not have specific fund managers making portfolio decisions as the ETFs generally track a market index such as the S&P 500. Two ETFs tracking the same market index could be considered substantially identical.

The IRS will consider transactions a wash sale if you repurchase the security in a different account. This includes an IRA or Roth IRA—even if the other account is in your spouse's name.

Application of the wash sale rule to defer losses on short sales or on securities futures contracts to sell where the same security is sold, sold short, or underlies

a securities contract to sell within the 61-day period prevents taxpayers from recognizing a loss for tax purposes while at the same time locking in a corresponding gain. The wash sale rule applies to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within the period beginning 30 days before the date of the closing and ending 30 days after that date:

- ...substantially identical stock or securities were sold, or
- ...another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into. [See §1091(e).]

The term "securities futures contract" has the meaning provided in §1234B(c), which essentially is any securities future as defined under SEC rules.

Examples: Jade owned 100 shares of SmithCo, Inc. common stock (adjusted basis of \$30,000). She sold 50 shares for \$10,000; and 20 days later, she purchased 50 shares of the same stock for \$8,000. Jade's realized loss of \$5,000 (\$10,000 amount realized – \$15,000

adjusted basis) is not recognized because it resulted from a wash sale. Jade's basis in the newly acquired stock is \$13,000 (\$8,000 purchase price + \$5,000 unrecognized loss from the wash sale).

Assume the same facts except instead of purchasing 50 shares of SmithCo stock for \$8,000 (\$160 per share), she purchased only 20 shares for \$3,200 (20 shares × \$160 per share). Jade replaced only 20 of the 50 shares previously sold at a loss. Only 40% (20 ÷ 50) of the \$5,000 realized loss is disallowed (\$2,000). As a result, Jade will recognize a \$3,000 loss (\$5,000 × 60%). She will have a basis of \$5,200 in the 20 shares of SmithCo Inc. she purchased (\$3,200 purchase price + \$2,000 disallowed loss)

Assume the same facts except instead of purchasing 20 shares, she purchased 150 shares for \$24,000 (150 shares × \$160 per share). The entire \$5,000 realized loss is disallowed. She will have a basis of \$16,000 (100 shares × \$160 per share) in 100 of the new shares of SmithCo and a basis of \$13,000 (\$8,000 purchase price + \$5,000 disallowed wash sale loss) in 50 of the shares purchased. The disallowed loss attaches only to the number of shares that created it.

F. Converted Property

A taxpayer may be considering converting property from personal use to a business or production of income use in order to generate a loss. It must be remembered that a loss that would be considered a miscellaneous loss under §212 production of income is disallowed, as miscellaneous itemized deductions are disallowed until 2026. As a general rule, personal use assets cannot be converted into a business (or production of income) use to obtain a deductible loss. The basis of an asset converted for loss and depreciation purposes is the lower of the asset's adjusted basis or FMV at date of conversion; thus, the loss from the personal use is lost. [Reg. §1.167(g)-1]

Example: Lindsay has a home that has declined in value due to market conditions. She knows that if she sells the home, she will not be allowed a loss on the personal use asset. To convert this loss to both a business loss and to make the loss available, she converts it to rental property and disposes of it two months later for \$150,000. Her basis in the home at the time of conversion was \$250,000. The FMV of the home on that date was \$150,000. She will not recognize any portion of the loss as her loss basis is \$150,000, which is the FMV on the date of conversion. If she sells it for \$120,000, she will be allowed the additional \$30,000 after conversion.

G. Conclusion

Our clients may be involved in many financial transactions that result in possible loss disallowance. This may, sometimes, be the result of a client's investment advisor engaging in transactions that result in wash sales or actions taken by the client such as a sale

to a related party. It is important to advise clients on the possible loss disallowance possibilities so they may discuss their portfolio investment strategy with their financial advisor or to know of dangers before they do transactions that you find out about at tax season.

GROUP STUDY MATERIALS

A. Discussion Problems

Your client, Carlita, engaged in the following independent transactions in 2022:

1. On March 12, 2022, she sold property to an unrelated party for its FMV of \$120,000. She had received the property as a gift from her mother on November 10, 2021. Her mother had purchased the property in 2018 for \$180,000. The FMV on the date of the gift was \$125,000.
2. On June 3, 2022, she sold property to her estranged brother for \$50,000, which was higher than its FMV of \$40,000 on that date. Her basis in the property on the date of sale was \$75,000.
3. On May 1, 2022, she held 100 shares of SmithCo common stock with a basis of \$30,000. On that date, her investment broker purchased another 100 shares of SmithCo common stock for \$20,000. On May 15, 2022, the investment broker sold the first 100 shares for \$18,000.

Required:

For each of the above situations, determine the tax treatment of the transaction.

B. Suggested Answers to Discussion Problems

1. When Carlita received the property from her mother, the FMV was less than her mother's basis. Thus, she has a gain basis of \$180,000 and a loss basis of \$125,000. Since the property was sold for less than the FMV at the time of the gift, she will use the loss basis of \$125,000. Therefore, her loss is limited to \$5,000 ($\$120,000 - \$125,000$). Her loss is long-term as the holding period of her mother carries over to her.
2. Even though Carlita's relationship with her brother is estranged, the fact that they are related is all that matters. As a result, the loss of \$25,000 is disallowed under the related-party rules. Her brother will have a basis of \$50,000 and will be allowed to use the related-party loss of Carlita to offset gain but not create or add to any loss when he disposes of the property.
3. The common shares of SmithCo that were purchased on May 1 are substantially identical to the shares disposed of on May 15. The purchase and sale within a 61-day period results in the loss of \$12,000 ($\$18,000 - \$30,000$) being disallowed under the wash sale rules. Carlita's basis in the 100 shares she has will be increased to \$32,000 ($\$20,000 + \$12,000$) by her disallowed loss.

PART 3. BUSINESS TAXATION

Employee Retention Credit

The Employee Retention Credit—or ERC—was initially introduced by the CARES Act for a portion of wages paid to certain employees during the COVID-19 crisis. Although the program has ended, taxpayers have the opportunity to claim the ERC for up to three years retroactively. The tax laws regarding the ERC have been changed or clarified, causing confusion for practitioners and business owners, which has resulted in mistakes and errors. Eligibility and documentation for the credit is complicated and time consuming, but it can be very beneficial for some businesses. Practitioners can provide value-added services for clients by reviewing payroll tax returns and eligibility for the ERC, which might require amending Forms 941 and income tax returns. Ian Redpath and Karen Davis discuss key rules regarding eligibility for and calculation of the ERC.

Let's join Ian Redpath and Karen Davis as they discuss the rules and guidance related to the Employee Retention Credit.

Mr. Redpath

Karen, welcome to the program.

Ms. Davis

Thanks for having me, Ian.

Mr. Redpath

It's always great to have you here. We've got a topic that I think at first blush, people would say, "Well, why are you talking about that? That ended. That's long gone." But it doesn't seem like the issues are long gone and it certainly seems like there's a number of things that we better watch out for. I'm going to start off by just saying that Julie Foerster, the IRS Small Business and Self-employment Division, was quoted at the New England IRS Representation Conference as saying that they are, during the months of February and March, training their employees to begin audits of exactly this credit.

And so, this employee retention credit, I think they believe there's been a lot of errors, maybe even some fraud. We've seen mills starting up that we're going to get you the credit, just like the old... or I shouldn't say the old, because they still exist, the offer in compromise mills as they call them, which made it onto the Dirty Dozen for the IRS this year. And so, there's been a lot going on; and I think we better maybe review what we did or expect that there could be some action by the IRS. Kind of as a start, where do we stand with this and what are you seeing in practice?

Ms. Davis

Well, Ian, first, I want to soften a little bit of how you introduced it. The IRS has trained the agents to work

the Forms 941-X relating to the COVID credit. Before they audit them, they have to process them. The IRS now maintains an operational status website. As of June 8th, that website reports they had 222,000 Forms 941-X that they're working on out of Cincinnati and Ogden. That's where the specialists are. And yes, they've been trained in exactly this, the employee retention credit.

Early on, I've been curious about this. I've been following it. The reason we're talking about it is it's still very much in the news. You mentioned the ERC mills saying we can get you hundreds of thousands of dollars. We've been working these amended claims for our clients. Maybe they had the PPP loan and didn't know they were eligible for it. Maybe we hadn't yet compared their decline in revenue. These claims do amount to hundreds of thousands of dollars.

When the client asks me, "Will this be audited?" What I say is, "We're expecting it to be audited. I'm making your file bulletproof. Everything that we put in our workpapers to go into the claim will be bulletproof if the IRS comes calling, not that they will." But I think there's going to be two red flags, Ian. And one of them—and this was from early on—is related parties. If someone was a Schedule C filer all these years, and all of a sudden, they pull an EIN, form an S corporation, and pay themselves wages as the 100% owner, you can bet they're a related party. That took a long time for the IRS to give us a clear answer. But among these mills, many of them were saying, "Hey, form an S corp, there's \$28,000 in it for you, etc." That pretty much the IRS put the kibosh on that, but not until August 2021. It took us a long time to get clear guidance and then a long time to work these claims and these amended claims.

Mr. Redpath

You mentioned the mills, and you see these things, we can get you tens of thousands of dollars, if not even more, by filing claims. But there's been a lot of discussion out there coming from advertising that literally says it's kind of an open field for any type of industry, for anyone that's out there, you can take it. A lot of this was aimed at restaurants; but now we're seeing things like, oh, well, if you're anything in the healthcare industry. So, what are you seeing out there with some of these claims? If we have clients out there that are being seduced by some of these things, what should we be looking for?

Ms. Davis

Yes, exactly. Home healthcare is an industry where here in Connecticut, they were essential workers. But many of these mills, as you're calling them, have pitched themselves exactly towards the home healthcare industry, which is, oh, you had an impairment getting into the nursing home where you would've met with your client. You had to do your work over Zoom. We couldn't do the aggressive marketing we do, because we couldn't get in and so forth. But a lot of the claims are not going to be sustained because they're not consistent with either the statute or the guidance, the notices that the IRS has issued. You mentioned EINs or the North American Industry Classification, NAICS.

Mr. Redpath

Codes, right.

Ms. Davis

Right. In the restaurant industry, absolutely, and the IRS has been very willing to say, "Look, if you had to close the dining room and you went totally to curbside service and takeout, even though your revenue didn't tank, you absolutely had a more than nominal impact on your business." Because think about it, you're still paying rent on a facility that seats 100 people that nobody's sitting in. So, restaurants, definitely.

Home healthcare—was there a partial shutdown because you had less access to your clients or you had increased operating costs for all of the COVID prevention measures? And nothing about increased operating costs feeds into this credit at all. Now, I want to say also in terms of these mills, I have seen, seduced is the word that you use, pitched is the word that I use.

Our clients have been pitched by the mills to say, "Hey, you're going to get this credit, and we're going to put together this credit package for you. We're going to take all the information you provide. We're going to say why you're entitled to the credit. We're going to calculate the amount of the credit, and then you or someone who is not us will sign that return." I'm not going to sign that return. And they're not Circular 230 preparers, so they're not going to get the 20% penalty for taking a frivolous position on a tax return.

Mr. Redpath

If I can just make one comment there. You're right. I used the word seduced. You used the word pitched. I think one of the reasons that your clients are being pitched and not seduced is that you are prepared and you are able to discuss with them why they can't have this or maybe they aren't, well, we'll look into it, but it's because you've stayed up on it and made sure that you're able to intelligently discuss with your clients. And if they are entitled to it, that there is the proper, as you mentioned documentation. Because the documentation, I think, is going to be the audit problem for a lot of clients in a lot of industries is coming in and saying, "Okay, well, you said you had this shutdown. Now, prove it."

Ms. Davis

Right. Here's another example. Another industry is litigating attorneys. Here in Connecticut, the courts were shut down. Cases could not go to trial; and the trials were not taking place over Zoom. You couldn't interview a jury. You couldn't see the jury for a number of months; and you're not going to get the same settlement for your client if you can't have a meaningful threat of going to court. We, being our firm, has looked at the legal industry; and attorneys being attorneys, they've really sort of pushed this as well in different states. I've looked at in the different states what were the limitations on litigation, and yes, in many states, I think attorneys will have been experiencing a partial government-ordered shutdown. That's another industry that I feel positive about, restaurants and attorneys, but not home healthcare. They were absolutely essential workers; and the government made efforts to make sure they could get their work done.

Mr. Redpath

The other thing that you mentioned briefly that I think is going to be an audit area is going to be wages. I mean, what are you including in your wages? I think one of

the things, it's not that you did something wrong if there was an error made. Part of it was that this seemed to be changing daily. I mean, what exactly what this whole credit was and what was included in the credit. You mentioned the PPP loan. Well, you can't take it if you took a PPP loan. Oh, no, no. You can, you just can't take it on the same wages. Well, what wages did you use when you applied for your PPP forgiveness?

Ms. Davis

Right.

Mr. Redpath

All of these issues just kept coming up and things were changing, and it wouldn't be unusual to, well, we didn't take the credit, but well, we didn't go back to look at it or we applied for the PPP forgiveness, what did we use and look for that synergy to what we were entitled to. I think if you took a PPP loan, one of the first things they're going to ask is to see your loan forgiveness. What did you include in that? Unfortunately, because of the time, a lot of people just threw in the wages and didn't worry about everything else. They said, "Oh, we have enough wages to cover the loan forgiveness," and just threw that in.

Ms. Davis

That's exactly right, Ian. For all of 2020, that was a great strategy. The easiest way to get your loan forgiveness is just take a payroll run, throw it in, and you're good, because it was only maybe an 11-week period, two and a half months of PPP eligibility, and you had a 24-week forgiveness period. In all cases almost, you could just use the wages. But then, with the Relief Act of 2020 in December, that's when retroactively, they allowed PPP loan recipients to claim this credit.

Now, we go to Notice 2021-20 FAQ Number 49; that gives a number of examples on how to coordinate the wages. The only thing that's a limitation for you is there's no redo. If you used only 13 weeks of wages, but you could have used 24, that's what you used. If you didn't put any rent or utilities, you don't have any rent and utilities. Here in 2021, we have encouraged our clients to not file their PPP forgiveness, because you've got 10 months to do it anyway. Let us look at it. Let us make sure that you're getting as much owner wages that's good, as much non-compensation expenses up to 40% of the rent and the utilities, and so forth. A little bit of planning there is helpful; and the coordination as detailed in the notice is actually very friendly.

One other thing as I've seen a bunch of these by now, Ian. I was reviewing one that was prepared within our firm, and it was \$500,000, because most of the people were making \$10,000 a quarter and we've got three quarters available in 2021. But a couple of the employees had only \$9,200 of wages. I'm like, "Well, let's see the benefits now. Let's see if we can true that up to the full \$10,000." I go through. I spent a couple hours of my time going through the benefits calculation and truing up the three employees that I can get to \$10,000 for the three quarters. I saved the client another \$700. I mean, I got another \$700 onto that credit. Well, for a \$500,000 credit, is that material? Yes. For two hours of my time, that's material and it feels good to do that. I sort of squeeze it until every drip of it comes out, and these are very good credits. But the focus of our program is document your file, do it right, follow the notices, and you'll get a good outcome. But you won't necessarily get it today or tomorrow. These are taking up to six months to process.

Mr. Redpath

Well, and you mentioned the 941 situation with the IRS, and I believe you said 220 some thousand are still backlogged. But that's actually down because at the end of February, it was 390,000. They are making progress. As slow as it might be, they are making progress to reduce this backlog that's coming up. At least, it's not like as they admitted the number of information returns that were filed on paper that they simply destroyed.

Ms. Davis

30 million.

Mr. Redpath

Yes, it was a dramatic amount of paper. They must have heated the IRS offices for a while with all of that. It was 30 million, wasn't it?

Ms. Davis

Yes. It was 30. And so, it's information returns. It's the 1099-MISCs that were filled out by hand and submitted instead of electronically filed. Really, it's a small portion of the billions that they get; but I just visualize. Every now and then you hear about a mailman who took the mail thing and just chucked it in a ravine.

Mr. Redpath

Right.

Ms. Davis

I just imagine these 30 million hand-prepared 2019 information reports being chucked into a ravine.

Mr. Redpath

It cleared the backlog.

Ms. Davis

Yes, they did, but I like your vision that it went into some sort of utility that heated homes and provided electricity. That's the benefit.

Mr. Redpath

We'll hope something good came out of it. They claim there was nothing adverse to a taxpayer as a result of it. But I don't think they're going to destroy any 941 or 941-Xs that have come in. Now, with the Infrastructure Act, we had a major change that a lot of people have kind of missed. We know that there was a retroactive essential repeal of the credit. It was no longer available for the last quarter, which has put some of our clients in a situation where did you account for that, because they in essence were withholding the amount in anticipation of it. Or they even may have applied the 7200 form and gotten an advance; that has to be corrected. But in addition to that, they slipped in something on the statute of limitations, which to me, it says, "You know what? We think there's a lot of problems with what's going on here when they did this." What's happened with that statute of limitations?

Ms. Davis

As part of the American Rescue Plan Act in April 2021, they said that for third and fourth quarter claims, we'll have a five-year statute of limitations, because remember, this credit was extended in successive pieces of legislation. Then, it was sort of in late summer of 2021 that the Infrastructure Act said, "You know what? Let's just go ahead and cancel it for the fourth quarter." For the fourth quarter of 2021, the only type of business that could claim an employee retention credit would be a recovery startup business. Different rules applied to that; but I didn't imagine very many companies would be eligible for the recovery startup designation.

Ms. Davis

Ian, one more thing that I am doing for my clients, the mills say... Well, actually, I've had clients say, "This is

what I've been told. I've been told that file the amended return now, and if it fails, that'll be whatever, at least you tried." Well, I don't want the 20% preparer penalty for a frivolous tax return position. My position is you have a three-year statute of limitations. Let's just wait and see how this shakes out. Let's see if there's any further IRS guidance and so forth to sort of kick the can down the road. Rather than aggressively pursue something that'll get reversed, wait and see and apply at a time when you're more confident about success. That's why this program is still timely because we have three years to make these amended claims. It's still a very fluid environment.

Mr. Redpath

Let's go through the credit. And there was some misunderstanding of people who didn't deal with the credit. This was not a credit against your income taxes. This was a credit against your payroll tax. The 941 had several lines on it, and they said the nonrefundable portion, and that was line 11c. And I'm just going to put up a quick PowerPoint on this. That was a line 11c, the nonrefundable portion. Then, on line 13d, you had what was called the refundable portion. That just meant the nonrefundable meant up to the amount of tax due; and the refundable then was anything over that.

Ms. Davis

It's even worse than that, because up until the first and second quarter of this year, the refundable portion was the employer's 6.2% share of Social Security tax. Then, in the third and fourth quarter, the refundable portion is the employer's share of the Medicare tax. But in terms of the amount that you'll get as a refund, the difference between refundable and nonrefundable makes no difference whatsoever.

The same as with the child credit. You get a nonrefundable portion of the child credit up to your actual tax. You get a refundable portion to the extent you're qualified after that. But the fact that they divided it into these two buckets, it only, I think, when I try to explain it either to staff or to clients, it's just a matter of whether the federal government is raiding the Social Security trust fund or raiding the Medicare trust fund to come up with this money, but you will get your refund. It's not a matter of whether you do or don't get your refund. It's all going to come to you; but refundable and nonrefundable are technical terms that are confusing to lay people.

Mr. Redpath

Well, I think it also honestly was confusing to a lot of practitioners because I had people saying, "Well, what is this nonrefundable? Are they two different things?" No, it's the same thing. It's just up to the tax and remaining; and then anything else, it becomes refundable. It just was confusing I think the way they put it on the form. We've talked about the fact that there's been so many changes and it's very possible that something was missed. It's very possible that there should have been another calculation done. Or it's very possible that there was a change and that change was never picked up. It's possible that our client's payroll service has made an error. I mean, there's a lot of possibilities here, and there's a possibility that if your offices, if one of our viewer's offices is actually doing payroll for clients, that something was missed. This was so confusing, as we said. It was changing constantly, and retroactive changes, and guidances that were coming back say, "Oh, now you can do this. Now, that's wages. But, no, no. Now, this is a wage." It's not unusual. This has been one of the most convoluted credits I've ever seen. I mean, just constant change. But maybe that's just the nature of the COVID situation we were dealing with.

What do we do now? There's a 941-X; and it's possible we could have two situations, an overpayment or an underpayment. We could find that there's one; or actually, it could be both. We could have an overpayment for a quarter and an underpayment for another quarter. There could be a lot of things here. We have this Form 941-X; and the 941-X has actually been amended to add lines to deal specifically with COVID-related issues, one of them being this.

For our viewers, I just put up a screen here showing the lines that are put on the [941-X] to deal with. For example, we have line [18a]—and again, the nonrefundable, then our listing of qualified wages on line 30, and then qualified wages paid during the period March 13th through March [31], 2020. These are different calculations, but they're separate lines on Form [941-X]. Keeping that in mind, what do we do with the [941-X]? I know you've had experience in [941-X]; but I'm thinking a lot of our viewers have not had any experience with the [941-X]. This may be the first time we've been looking at it. Can you give us the ins and outs of the 941-X please?

Ms. Davis

I was not a payroll tax expert until after the Cares Act. Then, I educated myself to become a payroll tax expert. The payroll companies very often produced the 941s; and I think they did a good job picking up the FFCRA sick and family leave credits because they knew that was running through payroll. But they did a less good job picking up the employee retention credit; because that was a revenue test, and the payroll company doesn't look at revenue, and they don't look at partial government order disruption. That's why so many of these are coming through as amended claims instead of original claims.

Mr. Redpath

If I could just interrupt you here for one second, Karen, because I think what you said is really important. A lot of times, because payroll services generally are not looking at revenue-related claims, this was missed. And so, even though our client may have a payroll service, this is something we probably should be looking at if we haven't been tracking that for the client, because there's kind of an onus on us as practitioners handling their overall financial and tax that we have some help for them that, yes, you could be entitled to this credit. I think that's where we're going to see it a lot to say, "No, well, you could have been entitled to this credit;" because the payroll services, as you said, this was not really down their alley. And so, I think that was a very important point that you raised.

Ms. Davis

Ian, our starting point for the outreach to our clients is to say, "Okay, here's a spreadsheet. I want to see for 2019, 2020, and 2021, your revenue by quarter." I'm looking for a 50% drop at any time during... 2020, the first year of the pandemic, and I'm looking for a 20% decline during 2021. Now, in 2021, there was the alternative quarter test. If I had a 20% drop in one quarter, the following quarter, I can do a lookback and say, under the alternative quarter test, I'm going to take last quarter's decline in revenue and count it for this quarter. A 20% decline in revenue in the fourth quarter of 2020 can qualify you for the first quarter of 2021 even though it didn't qualify you for the fourth quarter of 2020 under different rules, under a 50% revenue decline rule.

We start with the revenue by quarter. We look for eligibility, and then we look at the wages. We look at the PPP coordination. Our starting point, obviously, for

an amended return has to be the as-filed Forms 941 for the relevant quarters. Then, Ian, you look at the instructions for 941-X and there are five worksheets depending on which COVID-related credits you're taking. You're taking the sick and family leave credits. You're taking the employee retention credit. But then, there was also the credit for payment of COBRA benefits; that came through the payroll tax return as well. Depending which quarter it was in, there's an ordering rule of which one gets applied against the 6.2% and then, later, gets applied against the 1.45%. You have those five worksheets. The starting place for learning the 941-X is to make sure you understand and read the headings for each of those five worksheets. When you're calculating a claim after you've figured out what are your qualifying wages, according to the ERTC rules of a large and small employer, according to the coordination with PPP, according to the benefits that are qualified, get all your numbers together. And then you have to work through those five worksheets and make sure you're using the correct worksheet for the correct quarter and coordinating it correctly with the FFCRA and with the COBRA benefits. It's very exacting. It's very intensive. It's a very complicated puzzle. But again, these are big credits; so, I don't feel at all terrible about the many hours it takes me to get it right, because getting it right is tens or hundreds of thousands of dollars for my client.

Mr. Redpath

There is a statute of limitations, as you mentioned. The general rule is three years or two years from the date the tax was paid, very similar to income tax. We did have that extension for the IRS to come in. Does that extension, is that going to apply to filing an amended return, that five-year statute?

Ms. Davis

It does not. The five-year statute of limitations that was added as part of the American Rescue Plan Act applies to the third and fourth quarter claims; but it's only on the IRS side to come after you. It's not on the taxpayer side to get those claims in. But another thing to remember, Ian, also is that when you succeed or when you file one of these Form 941-X claims, the employee retention credit has to be counted as a reduction in compensation expense for the period of that refund.

Now, again, I have been following this space for more than two years and hoping that the IRS would let us make a prior-period adjustment on the income tax

return rather than going back and amending the affected tax return; but they never allowed us to do that. We know that if you're making an amended payroll tax return claim in for, say, tax year 2020, you have to go back and amend the 2020 income tax return, which can get very, very complicated itself if, for instance, you had an NOL and had chosen a five-year carryback. Well, now, your NOL is smaller. The cost of these amended income tax returns is sort of an add-on to the professional fees' cost of doing the amended 941s.

Now, the other thing, Ian, people ask is, "Okay, I'm going to amend my income tax return. I'm going to owe money. Am I going to owe interest and penalties; and can I get those waived?" It's interesting because in a way, the IRS has been holding onto your payroll tax receipts, and you'll get the refund here, and then you're going to pay money here. I'm hoping there would be some relief for late payment penalties on these amended income tax returns. I wouldn't self-assess a penalty. And I'm hopeful that the IRS would waive the penalty based on sort of the, what do you call it, the facts and circumstances or the economic reality of I didn't have the money because I paid it as payroll taxes, then I got it back for my income taxes. Many pieces to this puzzle.

Mr. Redpath

It certainly is. And so, if you have an underpayment, you've underreported the amount due, which could be very possible here because you took a credit you weren't entitled to. Procedurally, what would you do then? I believe you file, it's based upon the quarter you discover the error, which I guess is when we've looked at it and said, "Oh, you weren't entitled to that."

Ms. Davis

Right. The circumstance in which you're going to file a 941-X and actually owe money for the employee retention credit is if you had not properly taken into account the owner as a related party. There was, for a number of months, some confusion because when all we had to work with was the FAQs on the website, FAQ 59 said a related party is your son or daughter, your mother or father, your uncle and your aunt, and your niece and your nephew, but they never said the owner. What about the owner? I've always thought no, not the owner, because this was not intended for the majority owner, the controlling interest of the company. But it wasn't until August 2021 that we got the guidance that said, "Yes, you're exactly right." That was Notice 2021-

49 that they finally told us that the majority owner is most likely a related party. In that case, if you filed the S corporation owner's wages for purposes of this credit, yes, you do have to amend the 941 to disallow that portion of the credit to the majority owner.

Mr. Redpath

If you're claiming that you are entitled to more, how do you do that?

Ms. Davis

This is actually a good question. If you're entitled to a larger credit, which is what most of these claims are, you have two options. One is to apply the refund amount to your next quarter's payroll tax return, as if you had paid it in, or to ask for a refund. I actually, the IRS has a dedicated line. I called the practitioner priority line and said, "Hey, can you put me in touch with the payroll tax people?" And they did. I asked them, I was like, "Should I request an application of the overpayment to the next quarter?" They said, "Absolutely not, because it'll probably take us more than three months to process this return; and then, you'll be underpaid until you're not." It's just going to create notices and confusion and penalties that have to get reversed because of the timing. In all cases, we're asking for a refund as a check rather than as an overpayment applied to the next quarter.

Mr. Redpath

In both situations, you would file the 941-X. But in the first one, you're making the adjustment on the 941 for the quarter. Okay, we had this. We found this error. We make the adjustment for the quarter reducing our payments for that quarter on that 941, and then filing the 941-X basically to inform them what we're doing. But the other one, the claim process, we can actually just make a claim on the 941-X itself. The claim process, if you're within 90 days of the statute of limitations, which is the latter of three years from the date the employer filed the original return or two years from the date it was paid, then you have to use the 941-X and claim the refund. That's a requirement.

Ms. Davis

Right. It's also, to my way of thinking, best practices anyway in this particular credit.

Mr. Redpath

This whole area, I think, is something that absolutely needs to be reviewed. I think it's something that we have to look at even if we did it to make sure that we complied with all of the various changes and didn't go back, but especially if our clients are doing their payroll internally or even if they're using a payroll service, because as you said, this is not down the alley of the payroll services, this credit. And there could be a very high possibility that an error was made, and we might be able to benefit our client tremendously or not, depending on what we're able to find.

But you mentioned something that I think is important when we're doing this analysis is if, in fact, we're going to have to reduce the wages, then we've got to look at it and say, "Okay, now we've got to file amended income tax returns." As you said, maybe that reduction is going to affect other things. And so, it really is a net effect. What's the net effect looking at everything? It's not just looking at this, "Okay, we can get more money on a payroll tax return."

Ms. Davis

Right. That's exactly right. I mentioned the amended income tax returns. If it's a flow-through entity, now, there's amended K-1s that'll flow through to the individual income tax returns. But it's just like the work opportunity tax credit. To the extent you've taken this employment-related credit, you have to reduce compensation expense. The theory is not unfamiliar to us on how to do it and why we need to do it; but the fact that we're doing it retroactively is the problem.

Now, for 2021, we at least knew enough to put all of the business returns on extension where we thought there was an implication for employee retention credit. We did two things. First of all, don't get your PPP forgiveness yet until we've looked at it and don't file your business income tax return until we've looked at it. We are able to take the time during 2022 to really look at who's eligible for 2021, what is the amount of the claim, get that filed, and then go ahead and file the income tax return. I'm not planning to take a summer vacation this year, oddly. Can you imagine why? It's so sad. It's not just gas prices. It's the employee retention credit amended claims keeping me busy. But I suppose I could work remotely, Ian. I can still go to the lake house or whatnot.

Mr. Redpath

There you go. That's very important. You've got to get your head clear when you're dealing with this employee retention credit. I think one other point we should make is that for assessment and collection purposes, a payroll tax return for any period ending with or within a calendar year is considered to be filed April 15th of the following calendar year for purposes of assessments. We're talking about the statute of limitations. When was that filed? It's not like an income tax return when we look at a filing date, because we've got quarterly returns. That's just a little quirk in there. Again, reminder—that five-year statute does not apply to us and our clients. It applies to the IRS to come back and assess and collect.

Well, Karen, this is something that I thought we had put away at the end of 2021. I said, "Well, this is nice. It's done. We're over with it." But boy, that was far from being correct. You're the guru of the employee retention credit. There's no question about that. I want to thank you for coming and being on the program. Again, you always provide a lot of great information for our viewers. Karen Davis, thank you very much for being here. I think for our viewers, we've given you a little warning. There's potential audits coming, or if nothing else, this is something you really do need to review from prior filing seasons. Karen, thanks for being here. Appreciate it.

Ms. Davis

Ian, thanks for having me. I never get tired of this stuff, as you can tell.

SUPPLEMENTAL MATERIALS

The Employee Retention Credit (ERC)

By Ian J. Redpath, JD, LLM

A. Introduction

The Employee Retention Credit (ERC) was adopted with the CARES Act and applicable for wages paid beginning March 13, 2020. The ERC is a credit against payroll taxes, not income taxes. However, since the credit results in a reduction of the compensation paid deduction for income taxes, it has an effect on the employer's income tax return. The IRS revised Form 941, beginning in Q2 2020. The ERC provided relief for eligible employers whose business operations were fully or partially shut down by a government order or who experienced a significant decline in gross receipts (§3134). The Tax Certainty and Disaster Tax Relief

Act (TCDTR) extended the ERC to wages paid through June 30, 2021. The American Rescue Plan further extended the ERC to include wages for the third and fourth quarters of 2021. However, the Infrastructure Investment and Jobs Act (IIJA), passed in November of 2021, retroactively repealed the ERC for the last quarter of 2021. This meant the credit expired on October 1, 2021.

From its inception, the credit went through numerous and significant changes in amounts, definitions, and application.

B. CARES Act

The Cares Act provided a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis [§2301(a)]. The credit was available to employers, including nonprofits, whose operations had been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings or who had experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis. [Act §2301(c)(2)] The credit was retained after the first quarter of eligibility if gross receipts did not exceed 80% of its gross receipts for the same quarter during 2019. The credit was not available to employers receiving Small Business Interruption Loans under the Act, including PPP loans.

If an employer had an average number of 100 or less full-time employees for 2019, then all employee wages qualify, even if not furloughed. If more than 100, only the wages of furloughed employees or those who had reduced hours as a result of their employers' closure or reduced gross receipts are eligible wages. [Act §2301(c)(3)(A)] The employer status is calculated by counting the average number of full-time employees employed during 2019. A full-time employee is an employee who, with respect to any calendar month in 2019, worked an average of at least 30 hours per week or 130 hours in the month. An employer that began business during 2019 determines the number of its full-

time employees by taking the sum of the number of full-time employees in each full calendar month in 2019 when operating and dividing by that number of months. An employer that began business during 2020 determines the number of its full-time employees by taking the sum of the number of full-time employees in each full calendar month in 2020 when operating and dividing by that number of months, same as the approach for employers that began business operations during 2019. Aggregation rules apply when determining the number of full-time employees. In most cases, all entities are considered a single employer if they are a "controlled group" of corporations, are under common control, or are aggregated for benefit plan purposes. No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit for that employee.

Wages for this purpose include the costs of health benefits. The total wages eligible for the credit are capped at the first \$10,000 paid by the employer to an eligible employee. They do not include amounts used for the payroll credits, for required paid sick leave or required paid family leave provided in the Families First Coronavirus Act, nor the general credit for paid family and medical leave. [Act §2301(h)(2)] Thus, the maximum credit was \$5,000.

The ERC was and is a credit against payroll taxes and thus taken on the Form 941. The IRS was granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of the credit. [Act §2301(k)] Form 7200 was developed for use in requesting advanced credits.

The credit applied to wages paid after March 12, 2020 and before January 1, 2021. The credit was extended with the Consolidated Appropriations Act (CCA) of 2021 signed into law December 27, 2020.

C. Extension and Modification of Employee Retention Credit – TCDTR & ARPA

Taxpayer Certainty and Disaster Tax Relief Act

Included in the CAA was the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR). Sections 206 and 207 address the ERC. It modified the credit and extended its availability until June 30, 2021.

The ERC rate was raised from 50% to 70% of qualified wages. Further, eligibility for the credit was expanded by reducing the required year-over-year gross receipts decline from 50% to 20% with a safe harbor allowing employers to use the prior quarter's gross receipts to determine eligibility. A major change was the amount of eligible wages. The limit on per-employee creditable wages was raised from \$10,000 per year to \$10,000 per quarter. Also, the 100-employee delineation for determining the relevant qualified wage base was expanded to employers with 500 or fewer employees.

The TCDTR provides that employers who receive a Paycheck Protection Program (PPP) loan may still qualify for the ERC for wages that are not paid for with forgiven PPP proceeds. This has major implications for those seeking forgiveness of a PPP loan. It should be remembered that only 60% of the loan forgiveness amount must be payroll. Many employers simply used payroll to meet the full forgiveness amount, especially on smaller loans. The SBA will not allow an amended loan forgiveness; but in preparing future loan forgiveness applications, practitioners should work with clients to maximize the ERC and loan forgiveness.

American Rescue Plan Act

The American Rescue Plan Act (ARPA) provides further expansion and extension of the ERC. The law makes important changes that apply beginning in July 2021, when the existing ERC provisions were set to expire and extends the credit through 2021. Some clients may become eligible to claim the ERC for the first time beginning in July 2021. The ARPA codified the ERC as IRC §3134. Since the ERC is now available for the third and fourth quarters of 2021, the credit for many employers may be worth as much as \$28,000 per employee for 2021.

Beginning in the third quarter of 2021, severely distressed employers who have suffered a decline of 90% or more in gross receipts compared with the same quarter in 2019 can treat all wages paid as qualified wages in meeting the \$10,000 maximum. This will apply even if the business has more than 500 employees and regardless of whether the employees provide services while receiving the wages. The business can use the prior calendar quarter to determine eligibility based on a decline in gross receipts.

The ERC for the third and fourth quarters is applied against the Medicare tax of 1.45%. The ARPA also extends the statute of limitations on assessments with respect to the ERC from three years to five years from the date the tax return claiming the credit is filed for the third and fourth quarters. [See Notice 2021-49.]

D. Infrastructure Investment and Jobs Act (IIJA)

The Infrastructure Investment and Jobs Act eliminated the availability of the credit for the fourth quarter of 2021 for all otherwise eligible employers other than those that are considered a Recovery Startup Business. A Recovery Startup Business is an employer that:

- Began carrying on any trade or business after February 15, 2020; and
- Has average annual gross receipts that are under \$1,000,000.

The IRS issued guidance with Notice 2021-65 providing relief to employers who were anticipating Employee Retention Credits for the fourth quarter of 2021 but are no longer eligible based on the elimination of the ERC with the Infrastructure Act. If employers follow the steps provided in the latest guidance, the IRS has stated that it will waive applicable penalties.

For those employers that meet the above qualifications to be considered a Recovery Startup Business, the credit remains available for the fourth quarter of 2021. There are other rules specific to Recovery Startup Businesses regarding the calculation and amount of Employee Retention Credit that is available.

E. IRS Guidance

The IRS has issued significant guidance on the ERC. In addition, the IRS website contains FAQs that address many areas of concern for the IRS and practitioners. As a result, practitioners may have found that it became necessary to amend Forms 941 due to an overpayment or underpayment of payroll taxes.

Significant guidance, usually applicable to different periods, includes Notice 2021-20 updating guidance related to the ERC for the wages in 2020 and Notices 2021-23 and 2021-49 dealing with the retroactive termination of the ERC. Practitioners should consult these notices in determining if an amended Form 941 should be filed.

F. Reporting/Auditing

The ERC is taken on Form 941 against the payroll taxes. There are two lines that affect the ERC—lines 11c and 13d. The nonrefundable portion of the ERC is shown on line 11c and is that amount necessary to reduce the current quarter tax liability. The refundable portion on line 13d is the remaining amount of the credit which will be refunded to the employer.

When applying for an advance of the ERC, Form 7200 was used. Many practitioners have indicated that they did not use the advance on a regular basis.

Many employers reduced Federal payroll tax deposits in anticipation of the credit, including for the fourth quarter of 2021.

Julie Foerster of the IRS Small Business/Self-Employed Division indicated that the IRS began training agents to audit ERCs in the February–March 2022 time period. We can expect exams to start ramping up shortly. Regardless of whether the IRS actually commences examinations, advisers are still required to be able to justify any positions on returns or claims prepared by the adviser. While the rules were often complex and the substantiation requirements thorough, the ERC was a valuable credit. But undoubtedly credits were missed, and/or mistakes were made. Many times, the credit was determined by a payroll service. This credit relies on income/receipts and other tests that are generally not within the expertise of those services. Additionally, there has been

a growth of "credit mills" that approached companies and advertised that they could provide significant cash refunds with these credits. One common problem is that many employers reduced their federal payroll tax deposits in anticipation of the credit for the fourth quarter of 2021. Taxpayers can file a Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, to fix underpayments and make a credit refund claim for overpayments. It should be noted that for the third and fourth quarter of 2021 ERC claims, the IRS has five years to assess additional tax.

Employers who ***underreported payroll tax*** should correct errors in the period it is discovered and pay the amount due when they file an amended payroll tax return (Form 941-X) for an interest-free adjustment. [Reg. Sec. 31.6205-1(b)(2)(i)] Generally, an interest-free adjustment is available if an error is ascertained, corrected, and paid within the statute of limitations (SOL) period and by the due date for filing the next payroll tax return for the quarter in which the error is ascertained. Otherwise, interest will begin to accrue on underpayments from the date Form 941-X is filed until the payment is received by IRS. [§ 6601]

The SOL period for filing a refund claim on Form 941-X is the later of:

- three (3) years from the date the employer filed its original return, or

- two (2) years from the date the tax was paid. [§6511]

The five-year period only applies to the IRS assessment period and does not apply to the taxpayer SOL.

For clients who failed to repay anticipated ERCs claimed on their fourth quarter 2021 payroll tax return, correction and payment of the tax due on Form 941-X should occur in the period they discover the omission.

There are two methods to correct or recover an **overpayment**:

- under the adjustment process, an employer can claim the credit against regular payroll tax due on

its next Form 941 filing and then file the required Form 941-X to report the correction; or

- under the claim process, a refund of the employer's share of overreported amounts can be requested directly on Form 941-X.

If an employer has both overreported and underreported amounts, it may use the overreported amount to adjust and net against the underreported amount. However, employers must use the claim process to request a refund of an overpayment if it is within 90 days of an expiring SOL.

The ERC will affect the deduction for compensation. Thus, filing a Form 941-X may also require amending federal and/or state income tax returns.

G. Conclusion

The ERC provided a great benefit to employers in this uncertain economic time. This can be combined with other available benefits and provide a necessary lifeline for employers and employees. Practitioners need to be cognizant of the several variations of the ERC and its interaction with other tax provisions.

GROUP STUDY MATERIALS

A. Discussion Problems

A new client has come to the office. She owns a small corporation with 20 employees, and payroll is done internally. The corporation filed its 2020 and 2021 income tax returns and filed all Form 941s for each quarter of 2020 and 2021. However, no ERC was applied. In 2020 and 2021, the corporation suffered a significant downturn in business and was forced to close operations at various times due to government orders for COVID. During that time, it continued to pay its employees.

Required:

1. What issues are relevant for the 2020/2021 ERC?
2. What are the reporting issues?
3. What is the SOL applicable to the ERC?

B. Suggested Answers to Discussion Problems

1. A determination should be made if the company qualifies for an ERC for any or all of the quarters of 2020 and 2021. If available, the applicable wages paid March 12, 2020 to September 30, 2021 are subject to an ERC. If the business qualifies as a Recovery Start-up Business, it will also get the ERC for the last quarter of 2021.
2. If the business qualifies for any quarter for the ERC, then it would be considered an overpayment since the credit would reduce the tax due. There are two methods to correct or recover an overpayment:
 - under the adjustment process, an employer can claim the credit against regular payroll tax due on its next Form 941 filing and then file the required Form 941-X to report the correction; or
 - under the claim process, a refund of the employer's share of overreported amounts can be requested directly on Form 941-X.
3. The SOL period for filing a refund claim on Form 941-X is the later of:
 - three (3) years from the date the employer filed its original return, or
 - two (2) years from the date the tax was paid. [§6511]

The five-year period only applies to the IRS assessment period and does not apply to the taxpayer SOL.

GLOSSARY OF KEY TERMS

Ancillary Asset—Ancillary asset refers to an intangible, fungible asset that is offered, sold, or otherwise provided to a person in connection with the purchase and sale of a security through an arrangement or scheme that constitutes an investment contract.

Broker—A broker is any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers.

Digital Asset—TBD For purposes of the Responsible Financial Innovation act, digital asset is defined a natively electronic asset that confers economic, proprietary, or access rights or powers and is recorded using cryptographically secured distributed ledger technology, or any similar analogue.

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

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.

Spear Phishing—Spear Phishing is the fraudulent practice of sending emails ostensibly from a known or trusted sender in order to induce targeted individuals to reveal confidential information—for example, an email scam that attempts to steal a tax professional's software preparation credentials.

Wash Sale—A wash sale occurs when a taxpayer disposes of stock or securities at a loss and acquires substantially identical stock or securities within the 61-day disallowance period—30 days before or after the date of the loss sale.

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Jemiolo, Shannon	July	Redpath, Ian	Jan-Mar, May-Aug
Lickwar, Robert C.	Jan, Mar, May	Welch, Julie	Aug
Mathew, Shiny Rachel	Jan-Feb		

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

1. According to Ian Redpath, what is the potential range for accuracy penalties for monetized installment sales?
 - A. 10% to 30%
 - B. 15% to 35%
 - C. 20% to 40%
 - D. 25% to 45%

2. According to Ian Redpath, which of the following is the civil fraud penalty percentage for monetized installment sales in addition to tax due?
 - A. 100%
 - B. 75%
 - C. 50%
 - D. 25%

3. According to Ian Redpath, the IRS examines what percentage of the deals related to syndicated conservation easements?
 - A. 100%
 - B. 75%
 - C. 50%
 - D. 25%

4. According to Ian Redpath, Senate Bill 4356, the Responsible Financial Innovation Act, proposes to establish a regulatory framework for digital assets and grant regulatory authority for the vast majority of digital assets to which organization?
 - A. Commodities Futures Trading Commission
 - B. Congress
 - C. Internal Revenue Service
 - D. Securities and Exchange Commission

5. According to Ian Redpath, what is the maximum percentage of the original investment allowable as a charitable deduction under the proposed Charitable Conservation Easement Program Integrity Act as it was presented in the Senate?
 - A. 50%
 - B. 100%
 - C. 200%
 - D. 250%

Continued on next page

6. According to Ian Redpath and Julie Welch, which of the following is a related party for Code Section 267 purposes?
 - A. Cousin
 - B. Spouse
 - C. Stepfather
 - D. Uncle
7. According to Ian Redpath and Julie Welch, in which of the following situations would a taxpayer be able to recognize a loss under Code Section 267?
 - A. Sold a personal use asset at fair market value to a nephew
 - B. Sold a personal use asset at fair market value to a spouse
 - C. Sold stock at fair market value to a daughter
 - D. Sold stock at fair market value to an ex-spouse
8. According to Ian Redpath and Julie Welch, in which of the following date ranges would the wash sale rules apply for an asset sold on March 31, 2022?
 - A. March 1, 2022 – April 29, 2022
 - B. March 1, 2022 – April 30, 2022
 - C. March 1, 2022 – May 1, 2022
 - D. March 2, 2022 – April 30, 2022
9. According to Ian Redpath and Julie Welch, in which of the following date ranges would the wash sale rules apply for an asset sold on October 1, 2022?
 - A. September 1, 2022 – October 30, 2022
 - B. September 1, 2022 – October 31, 2022
 - C. September 1, 2022 – November 1, 2022
 - D. September 2, 2022 – October 31, 2022
10. According to Ian Redpath and Julie Welch, which of the following would generally be considered substantially identical?
 - A. Investments in convertible preferred stock and common stock in the same company
 - B. Investments in preferred stock and common stock in the same company
 - C. Investments in two different mutual funds
 - D. Investments in two different stocks in the same industry

Continued on next page

11. According to Ian Redpath and Karen Davis, which of the following forms was used by a corporation to request an advance of the Employee Retention Credit?
 - A. Form 941
 - B. Form 941-X
 - C. Form 1120
 - D. Form 7200
12. According to Ian Redpath and Karen Davis, the Infrastructure Act retroactively cancelled the ERC for most businesses for which quarter?
 - A. Quarter 4, 2021
 - B. Quarter 3, 2021
 - C. Quarter 2, 2021
 - D. Quarter 1, 2021
13. According to Ian Redpath and Karen Davis, how long do taxpayers have to file an amended payroll tax return (Form 941-X) after an original payroll return (Form 941) is filed? (Note: Disregard the timing regarding payment of the tax.)
 - A. One year
 - B. Three years
 - C. Four years
 - D. Five years
14. According to Ian Redpath and Karen Davis, what was the decline in revenue required in 2020 to trigger qualification for the ERC?
 - A. 20%
 - B. 30%
 - C. 40%
 - D. 50%
15. According to Ian Redpath and Karen Davis, what was the decline in revenue required in 2021 to trigger qualification for the ERC?
 - A. 20%
 - B. 30%
 - C. 40%
 - D. 50%

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 August 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	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Tax Loss Limitations and Harvesting	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Employee Retention Credit	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Which segments of the August 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 August 2022 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5 highest):

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	<input type="text"/>	<input type="text"/>	<input type="text"/>
Julie Welch	<input type="text"/>	<input type="text"/>	<input type="text"/>
Karen Davis	<input type="text"/>	<input type="text"/>	<input type="text"/>

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®

Firm/Company Name: _____

Account #:

Location:

Program Title: _____ Date: _____

Name _____

Email

(if applicable Tax only)

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:

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.

[illegible]

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

CPE Network program materials are copyrighted and may not be reproduced in another document or manuscript in any form without the permission of the publisher. As a subscriber of the **CPE Network Series**, you may reproduce the necessary number of participant manuals needed to conduct your group study session.

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

Use the **attendance sheet**. This lists the instructor(s) name and credentials, as well as the first and last name of each participant attending the seminar. The participant is expected to initial the sheet for their morning attendance and provide their signature for their afternoon attendance. If a participant arrives late, leaves early, or is a “no show,” the actual hours they

attended should be documented on the sign-in sheet and will be reflected on the participant's CPE certificate.

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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.

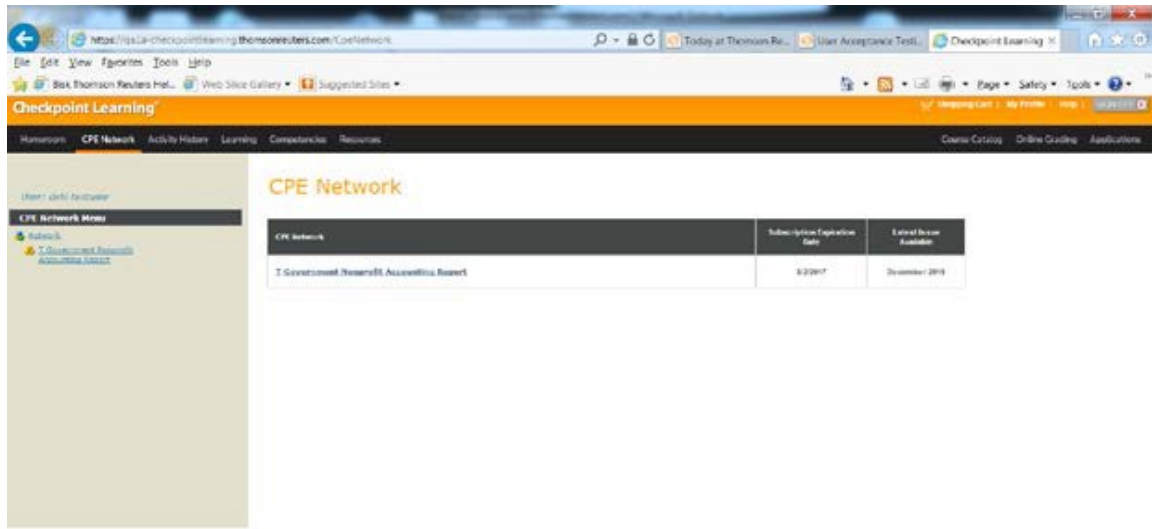


Seminars and conferences

In-person networking, dynamic instructors, nationwide locations plus vacation destinations.

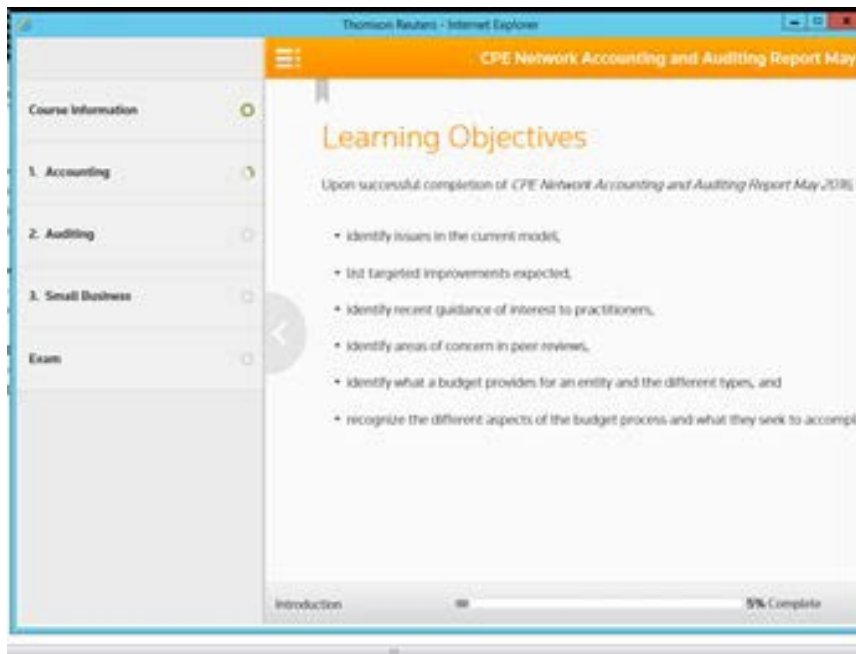


- In the **Network** tab, select the Network Report for the month desired.



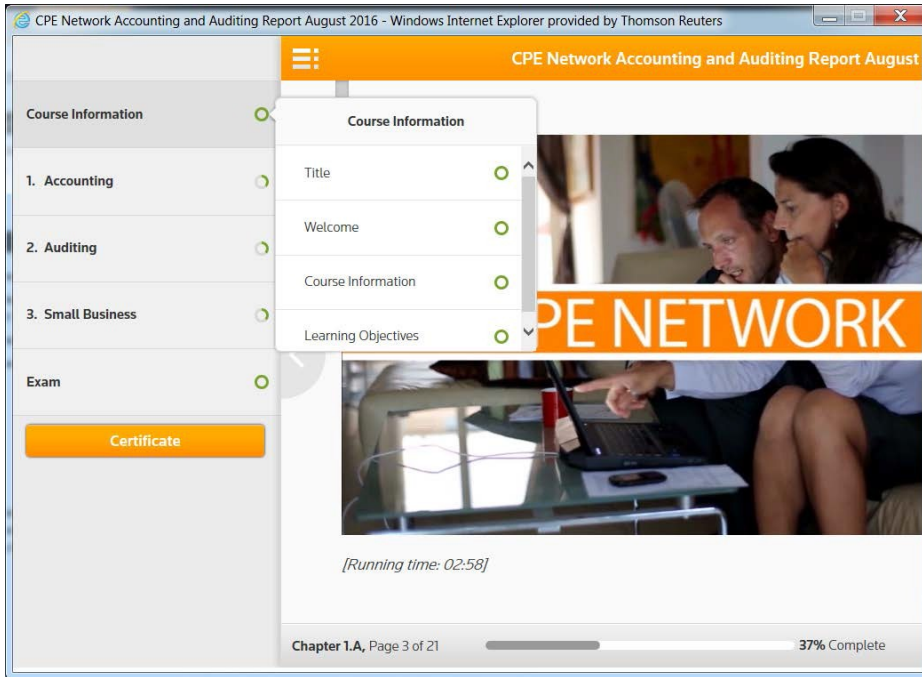
<https://go1a-checkpointlearning.thomsonreuters.com/CpeNetwork/CpeNetworkDetails/Page?SubscriptionId=177994>

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

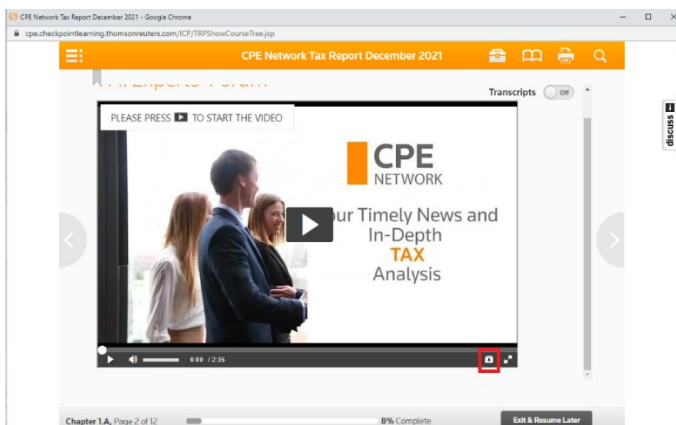


Click down to access the dropdown menu and move between the program Chapters.

- **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.

Thomson Reuters - Internet Explorer

CPE Network Accounting and Auditing Report May 2016

Transcripts ☒

Chapter 1 Liabilities and Equity: Another Look at the Model

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

For more on the targeted improvements in this area, let's join Paul Munter, professor in practice for the University of Colorado at Boulder, and CPE Network's Debi Grove Casey.

Ms. Grove Casey

Today, we want to talk a little bit

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

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

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

D:\xml\production\working\U6015494\N... Network Accounting and Auditing Report May 2016

Transcripts ☒

Chapter 1 Liabilities and Equity: Another Look at the Model

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

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

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

CHAPTER 1: ACCOUNTING

Liabilities and Equity: Another Look at the Model

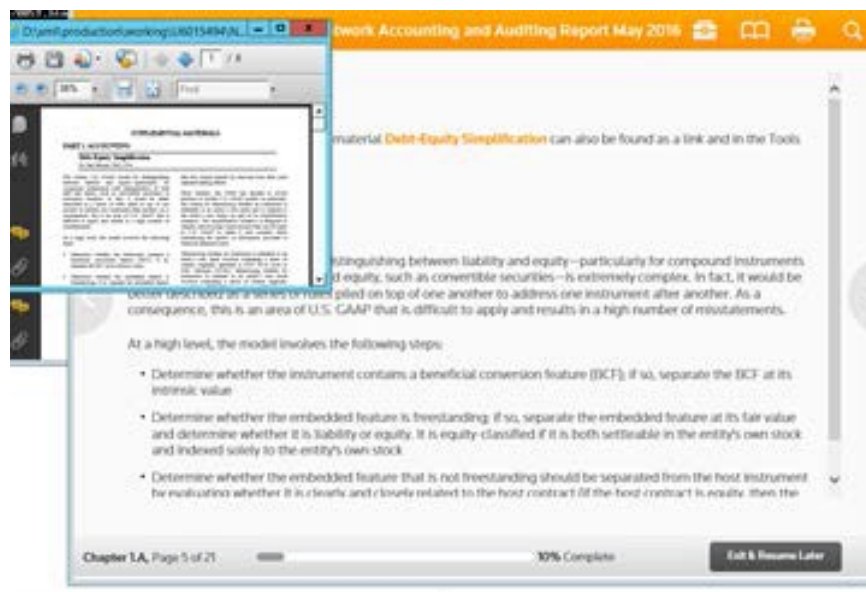
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For more on the targeted improvements in this area, let's join Paul Munter, professor in practice for the University of Colorado at Boulder, and CPE Network's Debi Grove Casey.

Ms. Grove Casey

Today, we want to talk a little bit

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



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

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

The screenshot shows a web interface for the CPE Network Accounting and Auditing Report July 2016. The header is orange with a menu icon, title, and icons for home, books, printer, and search. The main content area is titled "Suggested Answers to Discussion Problems" and contains three numbered items. Item 1 lists three categories: Held-to-maturity, Trading, and Available-for-sale, followed by a paragraph explaining the classification process. Item 2 describes the trading securities category. Item 3 discusses impairment recognition. The footer shows "Chapter 3.A, Page 20 of 20", a progress bar at 100% Complete, and an "Exit & Resume Later" button.

Suggested Answers to Discussion Problems

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

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

Chapter 3.A, Page 20 of 20 100% Complete Exit & Resume Later

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

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

The screenshot shows a web interface for the CPE Network Accounting and Auditing Report June 2016. The header is orange with a menu icon, title, and icons for home, books, printer, and search. The main content area is titled "Course Exams Completed" and contains text informing the user that the exam is completed. It provides two options: "Review My Answers" and "Grade My Answers", each with a brief description of what the action will do. The footer shows "Course, Completed", a progress bar at 100% Complete, and an "Exit & Resume Later" button.

Course Exams Completed

You have completed the exam for this course.

Please choose your next course of action by selecting on one of the buttons below.

"Review My Answers" will take you back through exam, giving you the opportunity to make changes.

Review My Answers

"Grade My Answers" will result in providing you with a final score for this course.

Grade My Answers

Course, Completed 100% Complete Exit & Resume Later

- 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	<ul style="list-style-type: none">• Browser-based• Certificate discrepancies• Accessing courses• Migration questions• Feed issues
Product Support	800.431.9025 (follow option prompts)	checkpointlearning.productsupport@thomsonreuters.com	<ul style="list-style-type: none">• Functionality (how to use, where to find)• Content questions• Login Assistance
Customer Support	800.431.9025 (follow option prompts)	checkpointlearning.cpecustomerservicet@thomsonreuters.com	<ul style="list-style-type: none">• Billing• Existing orders• Cancellations• Webinars• Certificates