Thank you for joining us today at

Ledgent CPE University

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

Tax Report

LEDGENT
FINANCE & ACCOUNTING
A Roth Staffing Company

866.702.6670

Ledgent.com

CPE Quizzer Answer Sheet

CHECKPOINT LEARNING

CPE Network Tax Report
CPEN001
08/21

You will have one year from your date of receipt to complete this program and submit the quizzer in order to obtain credit. This course does not qualify for AFSP professionals requiring "Federal Tax Law Update" credits.

First Name:__________________________________

Last Name:__________________________________

Firm Name:__________________________________

Firm Address:__________________________________

City:____________________ State /ZIP:____________

Firm Phone: ____________________ Fax No:____________________

Firm Fax No: __________________________________

Email: __________________________________

Licensing State: ____________________ License No:____________________

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

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

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

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

ANSWERS:

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

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

CHECKPOINT LEARNING

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

CPE NETWORK TAX REPORT

AUGUST 2021 VOLUME 34, ISSUE 7

Note: Please note that group sign-in sheets should indicate a sign-in and sign-out time per professional.

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

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

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

Topics for future editions may include:

- Child and Dependent Care Credit
- Trust Beneficiary Matters

THOMSON REUTERS™

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

- The Supreme Court, in ***New Hampshire v. Massachusetts,*** **U.S. S.Ct., Dkt. No. 154,** denied the State of New Hampshire's motion for leave to file a bill of complaint that asked the Court to rectify what it claimed was Massachusetts' unconstitutional misconduct in collecting income taxes from remote New Hampshire workers that worked in Massachusetts before the COVID-19 pandemic.

- **Rev. Proc. 2021-14, 2021-29 IRB,** sets out procedures for taxpayers that have a net operating loss (NOL) for any tax year that begins in 2018, 2019, or 2020, all or a portion of which consists of a farming loss, so that they can elect to not apply certain NOL rules contained in the CARES Act. It details how to make the election under §2303(e)(1) of the CARES Act, when a taxpayer is deemed to have made that election, how to revoke an election made under §§172(b)(1)(B)(iv) or 172(b)(3) to waive the two-year carryback period for the farming loss portion of an NOL incurred in a tax year beginning in 2018 or 2019, and how consolidated group rules affect these actions.

- The **Treasury Green Book** attempts to bring more conformity to self-employment taxes (SECA) for partners, proprietors, and S corp shareholders. President Biden proposes that SECA tax apply to all ordinary business income of active shareholders of S corporations who have adjusted gross income from all sources of $400,000 or more per year. This would treat S corporation shareholders like active partners and eliminate a primary advantage of S corporations. Another issue addressed in the Green Book is reporting of cryptocurrency. The proposal would require brokers to report gross proceeds from cryptocurrency transactions as well as possible other reporting. Further, brokers would be required to report beneficial ownership of entities holding cryptocurrency accounts. These proposals are in addition to The American Families Plan Tax Compliance Agenda, which calls for businesses to report the receipt of crypto assets with a value of more than $10,000. The expanded reporting requirements would be effective for tax returns required to be filed after December 31, 2022.

- In **Notice 2021-39, 2021-27 IRB; IR 2021-140,** and the accompanying news release, the IRS announced that it has released draft 2021 instructions for the K-2 and K-3 schedules for partnership and S corporation Forms 1065, 1120-S, and 8865. There will be transition relief from penalties for any incorrect or incomplete reporting on the Schedules K-2 and K-3. The draft forms were updated in June.

- **IR-2021-143** is a news release in which the IRS announced that users of its new Child Tax Credit Update Portal can use the portal to update their bank account information with respect to the advance payment of the child tax credit.

- The IRS, in **IR-2021-142, Notice 2021-42, 2021-29 IRB,** extended earlier guidance on employer leave-sharing programs that aid victims of the COVID-19 pandemic. As a result, cash payments employers make under a leave-sharing program, before January 1, 2022, to tax-exempt charitable organizations providing relief to victims of the COVID-19 pandemic, will not be treated as wages or compensation to the employees for federal tax purposes. Employees electing to forgo leave may not claim a charitable contribution deduction for the value of their forgone leave. An employer may deduct cash payments made pursuant to a leave-sharing program as a charitable contribution or as a business expense, provided the employer otherwise meets the requirements for taking such deductions. An employer should not include any cash payments made pursuant to a leave-sharing program in Box 1, 3, or 5 of the Form W-2 of an employee forgoing leave.

- ***Vestal v. Dept. of Treasury*****, CA, Fed Cir, 127 AFTR 2d 2021-2371,** is a decision of the Court of Appeals for the Federal Circuit affirming the IRS's employment termination of a revenue agent, due to the unauthorized disclosure of confidential taxpayer information. It was made to her attorney while preparing a defense to her earlier job suspension.

- In **Chief Counsel Advice 202123007**, the IRS held that a taxpayer's net negative §481(a) adjustment resulting from a change in its method of accounting for depreciation must be added back in the calculation of the taxpayer's §163(j) business interest deduction limitation. It also provides for the treatment of a net positive adjustment for depreciation and the calculation of adjusted taxable income (ATI) for §163(j) purposes. The addback of the depreciation amount, including any §481(a) adjustment for the year of change, for purposes of determining ATI, is allowed only for tax years beginning before January 1, 2022.

- **News Releases 2021-135, 137, 141, and 144** provide the IRS "Dirty dozen." They are separated into four separate categories:
  - Pandemic-related scams like Economic Impact Payment theft;
  - Personal information cons including phishing, ransomware, and phone "vishing;"
  - Ruses like fake charities focusing on unsuspecting victims and senior/immigrant fraud; and
  - Schemes that persuade taxpayers into unscrupulous actions such as Offer in Compromise mills and syndicated conservation easements.

Learning Objective: Upon completion of this segment, the user should be able to analyze current issues in taxation, including applying procedures for farming loss NOLs from 2018, 2019, and 2020, assessing proposals for cryptocurrency reporting, and assessing the IRS's "Dirty Dozen" fraud alerts. [*Running time 36:48*]

PART 2. INDIVIDUAL TAXATION

A taxpayer may claim a tax credit under §24 for each "qualifying child" (CTC) for whom the taxpayer is allowed a dependency deduction under §151. Enhanced CTC rules apply for tax years beginning in 2018 through 2025, with additional expanded rules applicable for tax year 2021 only. The amounts are subject to a two-step phaseout. Beginning in July, taxpayers could start receiving advance payments of the 2021 credit. This requires a reconciliation of the credit and advances taken when preparing the 2021 return.

Learning Objective: Upon completion of this segment, the user should be able to assess the basic tax rules applicable to the child tax credit, including evaluate who qualifies for the CTC, determine the CTC and phaseouts, and analyze the CTC if advance payments are received. [*Running time 29:27*]

PART 3. BUSINESS TAXATION

The President has made sweeping tax reform proposals. Most, if passed, would result in increased taxation on wealthier individuals and businesses. The Green Book outlines these proposals, some of which could have a significant impact on many clients. Practitioners should be aware of these proposals and mindful of how they might impact clients.

Learning Objective: Upon completion of this segment, the user should be able to analyze current tax issues proposed in the Green Book, including assessing the impact of taxation of long-term capital gain and qualified dividends; analyzing the impact of making gifts and transfers at death taxable events; and assessing treatment of contributions of appreciated property to a partnership. [*Running time 38:04*]

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

ABOUT THE SPEAKERS

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

Julie A. Welch, CPA, PFS, CFP is a partner/shareholder and Director of the Tax Department at Meara Brown Welch, P.C. in Leawood, Kansas. She has written numerous articles, is a co-columnist for the Journal of Financial Planning, and has co-authored a book entitled *101 Tax Saving Ideas*. She speaks nationally on tax-planning topics, has appeared on radio and television, and has been quoted in numerous publications. Julie is a member of several professional organizations including the AICPA, MSCPA, and FPA. She has over 30 years' experience advising individuals, business professionals, and their companies.

Ed Renn, JD, focuses his practice on domestic and international private client matters which includes U.S. and international estate planning, income maximization strategies, FLP and LLC planning, wealth preservation, business succession planning, international tax planning for entities and individuals, trust structures, estate administration, qualified Opportunity Zone Planning, and planning for single and multi-family offices. Ed frequently utilizes sophisticated life insurance strategies in both income and transfer tax planning. Ed is a frequent speaker, has co-authored several books, and has been featured in many articles on estate and tax planning topics.

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

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

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

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

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 with their taxes.

Let's join Ian.

A. *New Hampshire v. Massachusetts*

U.S. S.Ct., Dkt. No. 154, Orig., Motion to File Bill of Complaint Denied

Mr. Redpath

Hi. This is Ian Redpath. Welcome to the program. This is the segment where we update things that have happened since the last time we spoke, whether it be from the courts, the Internal Revenue Service, the executive branch. In this segment, we have one that our viewers have often said is one of their favorite segments and is certainly one of the more interesting ones, which is the IRS's Dirty Dozen. That's where the IRS tells us things that we should look out for as practitioners and things that we should be advising our taxpayer clients to look out for.

Let's start right in. We have a case out of the Supreme Court that's been bouncing around and people have been wondering, what's going to happen. The implications here are really wide ranging. But this was just not the right case. This is the case of *New Hampshire versus Massachusett*s. Under the pandemic, what happened is Massachusetts came out with a temporary provision that said that if you work for a Massachusetts company and you're working remotely, that you are going to be subject to Massachusetts tax, there's going to be withholding.

What happened is that New Hampshire, which doesn't have an income tax, said, "You can't do that. You can't take adverse action against our citizens because they're working remotely in New Hampshire." The Solicitor General took the position that this was not a case that can be heard because New Hampshire citizens have no harm. And New Hampshire itself, they don't have any standing, essentially because there's no loss of revenue to them by this provision.

Perhaps a citizen could sue; but certainly, the state of New Hampshire can't. The Supreme Court has essentially declined to allow the suit to go forward. This is what's called original jurisdiction, which means that the court was going to hear the case, not on appeal, but as an original case between two states.

Where do we stand? As of right now, that provision in Massachusetts still stands. We know that COVID is opening up now. We have some people going back to work; but a lot of companies are trying to decide whether to stay remote or not. I would certainly ask you to look at your clients and determine, are your clients in a situation where you need to look at other states because some states—and you've got a number of different things. For example, in this case, can Massachusetts require and tax the income of this remote… employee. So the employees working remotely for the Massachusetts company, Massachusetts says "Well, you're subject to our tax." But you also have to look at it from another perspective. And the other perspective is, does this create nexus in that state, for example, using this example, would it create nexus in New Hampshire so that New Hampshire could now tax the Massachusetts company? So would this create nexus in that state for income tax for the company?

There's a wide range of issues here that have to be addressed. States have been coming out with guidance regularly on how they're going to handle it. States are very different, so it's a state-by-state approach. As we come out of COVID, I would highly recommend that you look at your clients who have been doing business across state lines or they have employees that work across or live across state lines. What are the implications for the taxation of the employees? And to what extent might that create nexus for purposes of now subjecting that corporation to income tax in another state? Be careful on that; look into it. This is an area—nexus for state taxation with this new economic nexus approach has been kind of a wild west. We're seeing this constantly evolving; and this is just another area of evolution, especially as businesses decide that they may stay with a lot of remote employees. So, watch out for that. Again, this is the *New Hampshire versus Massachusetts* case.

B. Revenue Procedure 2021-14, 2021-29 IRB

Election by Taxpayers with 2018-2020 Farming Losses to Disregard CARES Act NOL Rules

We now have Rev. Proc. 2021-14 which came out; and there was the change that came about with the Tax Cuts and Jobs Act on NOLs. Then, NOLs for 2018, 2019, and 2020 under the CARES Act essentially allowed for a carryback again, a greater carryback, and also suspended the 80% limitation on NOLs. This revenue procedure sets out how taxpayers with NOLs for those years, how to address whether they want to carry back, and especially for farmers who want to elect or did elect and want to revoke an election relative to those carryback years. You should look at that if that is an issue on a 2018, 2019, or a 2020 return.

C. Treasury Green Book – S Corp Provision/Cryptocurrency Reporting

Now, the Green Book—last month, we talked about some of the provisions in the Green Book. We also have some other provisions that we need to at least address because these could have overriding implications for our taxpayers. In the Green Book, there's a proposal to tax, self-employment tax, on all business income of the—and the term that's used is—active shareholders of S corporations whose adjusted gross income from all sources is $400,000 or more.

There's also been a proposal to have a donut for FICA. Whatever the limit that has been set for that year until $400,000, there would be no amount withheld for the social security portion, the 6.2%; but then it would be reinstated again at $400,000. So, this is just another approach.

The IRS has said that they believe there's about 10.8 billion—with a "B"—dollars that they lose on self-employment tax for S corporations. There have been several provisions in Congress attempting to go after this. This is just another potential attempt to go after S corps. What's one of the major reasons we still use S corps is because of the ability to pass through the profits without having self-employment tax, unlike an LLC taxed as a partnership or a partnership. While this doesn't propose to hit everyone, it really is the first step to make it be consistent with partnerships—something to keep in mind.

The other thing is that major changes are being proposed in the Green Book for cryptocurrency. Basically, cryptocurrency is viewed as property. If you look at IRS Notice 2014-21 and Revenue Ruling 2019-24, you'll see the basic rules that apply to that. But basically, there's a question now, right up front on page one of the 1040 about having an account.

What the Green Book proposes to do is to expand the scope of reporting by brokers; and that includes any foreign jurisdiction that has an exchange of information with the United States. So, it's going to require brokers to report the gross proceeds from any cryptocurrency transactions in addition to information regarding the actual owner and the beneficial owner of entities holding cryptocurrency accounts. Also, in the American Families Plan tax compliance agenda that was issued in May of 2021, it called for businesses to report the receipt of crypto assets with a value of $10,000 or more. These are proposed to kick in, in 2021. It's really important to look at our clients who are dealing in cryptocurrency.

Some NFL players now have demanded part of their salaries be paid in cryptocurrency. This is getting somewhat mainstream; and, by the way, that has been approved, and at least one player on the Carolina Panthers elected to receive half of their salary in cryptocurrency.… The different sports, whether the agents have to get involved with unions, this is all up in the air. But certainly in the NFL, it is allowable; and in more and more sports, stars have said they want to do that. So, the IRS is going after cryptocurrency—no question about it. Again, they believe that—and probably rightfully so—that there's a lot of fraud going on. They also believe that there's a lot of funding of terrorist organizations and things like that through cryptocurrency. And so, they are definitely after cryptocurrency. Keep that in mind. And again, the wide-range reporting is at least something we should be aware of.

Again, these two aspects of the Green Book, I think we're going to see proposals and both of those can get bipartisan support. That's why I'm pointing these out to you so that we can address the issues beforehand with our clients, find out what their positions are.

D. Notice 2021-39, 2021-27 IRB; IR-2021-140

IRS Issues Draft Instructions for Passthrough Entity International Matters Forms

We also have Notice 2021-39, and in this notice, and there's also a news release 2021-140, the IRS has issued draft instructions and draft forms for the new K-2 and K-3 schedules that are to be filed by partnerships and S corporations. It's Forms 1065, 1120-S, and Form 8865. These are to be filed; and they relate essentially to foreign transactions and foreign controlled entities; and the IRS provides for significant penalties. However, they do provide for relief if you attempted to obtain the information, the accurate information. But the IRS does state that they clearly are aware that businesses and practitioners are not prepared with the information that will be needed to perhaps adequately prepare these returns, and that many businesses, the systems just aren't in place.

One of the things to talk to your clients about is to make changes to the systems, the processes, the procedures for collecting and processing the information relevant to the K-2 and the K-3s. Again, if you're just getting information from the partners, are there proper assumptions being made? What can you do if the information isn't obtained? And is the information reliable? All of these things need to be looked at; and if you have a client that will be subject to this reporting for the 2021 tax year, this is when it is to go into place. Be aware that this is out there. The K-2, K-3 filings, again for 1065s, for 1120-S, and for Form 8865. Just keep that in mind, this new reporting requirement.

E. IR-2021-143

Child Tax Credit Portal Now Allows Direct Deposit Information Updates

The IRS has announced in IR-2021-143, that the portal is available for the child credit. If you have a client that does not have the information for getting the direct deposit, they can go on, they can also change the information on the portal, or they could elect out of receiving the payments. The payments began July 15th; and they can, of course, elect out of those or elect into them. But the portal is now up and functioning.

F. IR-2021-142, 06/30/2021; Notice 2021-42, 2021-29 IRB

IRS Extends Guidance on Leave-Sharing Programs

The IRS has also, in IR-2021-142 and Notice 2021-42, they've announced that leave sharing, where basically you give up leave, vacation, personal leave, you give up those payments and have them made to a charity. Because of COVID, this was extended. It is now extended further to the end of the year, the end of 2021. Essentially, you have the money go directly from the employer to the charity. It has to be a charity. It's not taxable income and should not be reported on boxes one, three, or five of the W-2. It is not income. It's also not a deduction for the employee. For the employer, you can do one of two things. You can take it as a charitable deduction; but you can also take it as a business expense. Again, charitable deductions have limitations, so you may want to consider taking it simply as a business expense.

G. *Vestal v. Department of Treasury*

IRS Personnel—Employment Termination Suits—Willful Disclosure of Confidential Return Information

We have an interesting case, *Vestal versus the Department of Treasury*. It's Court of Appeals from the federal circuit, and what this is, is an individual suspended from their position with the IRS. They met with their legal counsel. They provided information about a taxpayer, presumably the taxpayer that was involved with the suspension. The IRS said, "You can't do that. You've disclosed private taxpayer information." They said, "We thought this was subject to attorney-client privilege." They said, "It doesn't matter. You intentionally disclosed confidential taxpayer information" and terminated the person.… It was upheld by the courts that, yes, this was not a proper disclosure, even though it was in the context of their attorney who was being used to defend them when they were suspended from the IRS. They ended up losing their job; but it's interesting that they provided that information to defend themselves and they ended up with the IRS going after them for disclosing confidential taxpayer information.

H. Chief Counsel Advice 202123007

Accounting Method Change Adjustment Affects Business Interest Deduction Calculation

We have a Chief Counsel Advice, 202123007. Interesting. This deals with 481 adjustments. You know that, in determining the deduction for business interest, the limitation on the deduction, you add back depreciation deduction at this point. And so, beginning before the end of the year, before January 1, 2022, depreciation is added back. What if you have a 481 adjustment because you've had a change of accounting method relative to the depreciation? Essentially, what they said, whether it's a positive or a negative adjustment for depreciation, it has to be taken into consideration in determining your adjusted taxable income for the business interest deduction.

And if it's a positive deduction, positive change, and the example they give is that you had written something off over seven when it was really a five-year asset. What they said is, if you have a positive adjustment, and you spread that over four years, you take the adjustment, the amount that you adjusted for each of the four years. You don't have to include it all in one year.

The negative adjustment, reversing that where your adjustment is going to be a negative. What you would do is, you would simply take it in the year because a negative 481 is taken all in that year. And they said, "That's what you'll do for the ATI adjustment."

I. News Releases 2021-135, 137, 141, and 144

Now we get to the "Dirty Dozen." This is always one of our favorite segments. Viewers always tell us that they are glad to hear it. I don't want to say they enjoy it, but the IRS comes out and says, "Look, these are the things that we're seeing." Now, a lot of frauds, interestingly enough, actually some areas, some frauds went down during the pandemic. Others went way up. And so, what the IRS did this year a little differently is they broke them down into pandemic-related fraud, such as economic impact theft; personal information cons like phishing, ransomware, vishing (phishing versus vishing); ruses, trying to take advantage of elderly, for example; and then schemes.

So, they both those up into different areas. Let's start right in with number one, economic impact theft. A lot of this going on. IRS said people are sending text messages, phone calls, emails inquiring about information, sending people links to link onto, which is really to verify their information for the stimulus check. Don't do it. That's not how it's done; and everything should go directly through the IRS website. Clients should not respond to those types of things. They should be made aware that the IRS doesn't do that.

These things are happening; and some people send out newsletters to their clients. This is certainly one that, if nothing else, send out a client letter and make them aware of these types of things, because they may not be thinking of them. My mother, when she was 101 years old, she got one of these scam calls and she said, "My son is a tax attorney. Here's his phone number, give him a call." Click. They do try to pick on people. Clients aren't always aware.

Unemployment fraud leading to inaccurate 1099-Gs. Many people have lost their jobs, unemployment. A lot of fraudulent unemployment claims using stolen information. If your client gets a 1099-G reporting that they got unemployment, they should make sure they contact you right away because that means it was fraudulent somewhere. If they did not have unemployment, that was fraudulent. Then, one of the things the IRS points out is the ability to get an IP pin, which gives another layer. It's a six-digit code that the taxpayer knows, the IRS has it, and it helps prevent that identity. Electronic filing that doesn't contain an IP pin, if they have the IP pin, is going to be rejected. It will not be accepted.

The IRS has pointed out that state agencies have done things like asking for IDs from drivers' licenses. Many states now do that. New York requires a lot of information off of your [driver's license]—document number, expiration date, the number itself, which are two different numbers, the document number. So, they have a lot of verification that you need from your driver's license. And other states have the same thing. The IRS is now masking the personal information from tax transcripts.

It's important that filing in 2021 and beyond to know that online software products available both to taxpayers and tax professionals are going to contain options for multifactor authentication. To the extent you can, you should attempt to use this multi function. I should point out, these are in a series of releases—IR 135, 137, 141, and 144, put together, contain these.

Then, we have the personal information. Phishing, still there. One of the biggest areas now is going after and targeting tax professionals to get information. We know emails, text messages, social media messages. Remind your clients not to click on a link. I just received a text message from a client, and the wording was just weird; so I didn't respond. I contacted them directly. No, they didn't send me anything. So, this is happening.

They're trying to get the EFIN numbers. They're trying to get the CAF numbers. One of the things you should do with your e-services account is go in and make sure.… Is there something that's been ordered that you didn't order? In addition, you can find out how many, on your PTIN, how many returns were filed. If the numbers don't jive, something's going on. Somebody's got your PTIN number, probably.

So, also getting fictitious emails. Here's one that they see all the time now. The most recent is, it says "IRS tax e-filing." Don't open it. Don't open the attachments. It purports to come from the IRS. It doesn't. So, phishing the new client. This is a scam, generally. The new client scam. Here's an example. Right in there, they give you an example. "I just moved here from whatever state. I just moved here from Michigan." Or if you're in Michigan, "I just moved here from Wisconsin. I have an urgent tax issue and I was just hoping you could help me. I hope you're taking on new clients. I've attached a copy of an IRS notice. I've attached a copy of my tax return," or generally "I attached a copy of my IRS notice and my tax return. Please review and let me know if you can please help me." Of course, don't click on it. Those are just, they're scams. And they're trying to get information; and they're trying to get into your system.

There's another one they've been using, calling, claiming they're from a payroll service. And they're trying to get information to verify information from one of your clients. Don't give them the information. You better make sure to verify it first, that that's exactly who it is before you provide any information. This has been a common one that's been going on. Also, you can find it the other way around. You should make your clients aware who the contact person they'll be hearing from, because clients have been getting calls; and remember that they can duplicate your phone number. So, the client thinks they're getting a phone call from your office, asking for certain information. And then they provide that information and you know what happens next? That's a very common scam that's been going on against tax practitioners. Really, be very, very careful of it.

Now we know that vishing, that's with a V, voice. We know that there's been voicemail. I mentioned the one with my mother. There's been voicemail scams going on. The IRS doesn't call you related to a voicemail. I received one myself. And they said, "After reviewing your financial records." Of course, clearly the IRS is not going to say, "After reviewing your financial records for a period of time, we find you owe us, but we can take care of it right now."

And I mentioned social media. Social media scams, that's number five. They continue, you get emails impersonating different people. For example, families, friends, coworkers. There's a lot of information that people can get from social media; and scammers can email a potential victim and include a link to something of interest to them. And that's what they're doing. This is of interest, so they send them that link to something that is of interest because of what they've seen. The next thing you know, they click on the link and now that person is into their computer system. So watch out for that. Another one is soliciting small donations to fake charities to get the person to click on.

Ransomware—that's been in the news, right? The large ransomware stuff, China, Russia being involved. Ransomware, financial institutions should be aware, certainly putting malicious software or malware designed to block access to your systems. This has become a huge issue. They often resort to common tactics, wide scare phishing, targeted spear phishing, as it's called, targeting certain people to induce them to download it. It may be from an organization that you've shown interest in, and you click on that download, and the next thing you know, you've got some ransomware. One of the things that they're finding is that there seems to be ransomware groups forming partnerships to share advice, codes, trends, techniques. This is coming from the IRS. So they're finding that this is becoming widespread.

Number seven, fake charities, people setting up charities that don't exist. First off, tell your client, don't be pressured into giving. Be careful how a donation is paid. If they're looking for anything, if they're looking for all your credit card information, don't give it to them. If it's legitimate, they'll send you a notice by mail and you can return it. Ask a fundraiser, specific name, address, web address; tell them you'll get back to them. Tell your clients not to give over the phone even if it sounds like a legitimate charity. And if you're unsure of the charity—because charity, especially when events happen, like emergencies charities pop up all the time—make sure that you've checked the IRS website and the TEOS. Is it a valid charity? Validate that first that it actually is a valid charity.

Immigrant and senior fraud. This continues. People who have a poor command of the English language or senior citizens. Those scams continue to happen. With seniors, there is the 1040-SR. But just remind them of that.

Offer in compromise mills are a huge issue right now. They continue to be. The IRS says anybody with these inflated claims is a problem. Review the information, explain to the client. At a minimum, the IRS won't accept an offer in compromise unless at a minimum you offer your net worth plus what they can get over the remainder of the collections period. Actually on the IRS website, you can do an offer in compromise. There's a calculator. So, you can make some reasonable assumption whether or not you can get it. Just keep that in mind and keep your taxpayers well advised that there's something fishy about these extraordinary claims. I had $50,000 in tax and I settled for $100. Does it happen? Absolutely it happens. Does it happen very often? No, it doesn't. Very, very infrequently. It would have to be a very unique set of facts.

Number 10, unscrupulous tax return preparers. We're not going to really worry about those because I'm assuming everyone here is scrupulous. But things to watch out for, for our clients, are the so-called ghost preparers, people that they won't sign the return. They don't want to efile, but they certainly won't file.

Number 11, unemployment insurance fraud. This goes with the other we were talking about. But there has been a lot of unemployment fraud. So employers, well, I'm going to report so that you can qualify for unemployment. Maybe I'm going to pay you under the table, then you can qualify for unemployment. I'll pay you less. I'm going to report less income or more income so you can get more unemployment. And it talks about employee and employers working together in concert many times, as well as just individuals fraudulently applying for unemployment benefits. Some of the key flags, unemployment payments are coming from a state other than where the person works. And you've got a new client, they come in and you see this type of thing. "Wait a second. Why do you have unemployment from there?" The unemployment payments are made to another person. So, all of these things.

And then lastly, and very broadly, this comes in all the time, promoting illegal tax shelters. What are the things we need to watch out for? Syndicated conservation easements—the IRS keeps going after these and after these. Watch out for them. Your client comes in and says, "I have this opportunity to invest in this syndicated conservation easement." First thing I would do is look at it very askance and say, "We've got to really look into this."

Abuses micro capture, captive arrangements for insurance. You may or may not see that. Potentially abusive use of the U.S.-Malta Tax Treaty. If you have a client that comes in and says their financial advisor has talked about a use of a U.S.-Malta Tax Treaty, or if you've done it, just keep in mind the IRS says, "We're going to go after this." They haven't said for sure it's an abusive tax shelter; but they are saying that they are reviewing it because they believe it might be.

Improperly monetizing installment sales. A third party buys property. They buy it on installment notes, interest only, principal's paid a long time from now; and then, the clients are being told you can defer the gain until you collect a long time in the future. The IRS is saying that's probably a fraudulent scheme.

Then lastly, the improper claim for business credits. Watch out for that. It's important, especially when you get a new client. For the 2020 year, I had a new client come in; and I was questioning her on her business expenses. I kept saying, "What do you have of this?" She goes, "Well, nothing." I said, "Well, you deducted $6,000. You deducted $15,000 here." And she goes, "I don't even know what any of that is." I said, "Well, what did you do with your preparer?" A preparer is a preparer.

I said, "What did you do?" And they said, "I don't know. I just gave the person my W-2." I said, "Okay, so you have a job, but you also have a side business. I understand that." They said, "I gave them my 1099s from that side business." I said, " Well, what about all your expenses?" "I don't know. He just said that's what I could take." Okay. So, we know that this goes on out there. All right. Obviously, you're not going to do that; but if you get a new client, always ask for their prior tax returns and question them.

Thanks for being here. We went through a lot of information today. Certainly the "Dirty Dozen" gives us a lot to talk to our clients about and to think about. Thank you again, and please be safe.

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. *New Hampshire v. Massachusetts*

U.S. S.Ct., Dkt. No. 154, Orig., Motion to File Bill of Complaint Denied

The U.S. Supreme Court has denied the State of New Hampshire's motion for leave to file a bill of complaint that asked the Court to rectify what it claimed was Massachusetts' unconstitutional misconduct in collecting income taxes from remote New Hampshire workers that worked in Massachusetts before the COVID-19 pandemic.

In its bill of complaint, the State of New Hampshire pointed out that the state has a deliberate policy rejecting a broad-based personal earned income tax or a general sales tax and that this has resulted in higher per capita income, lower unemployment, and a competitive edge in attracting new businesses and residents. New Hampshire claimed that in the middle of a global pandemic, Massachusetts has taken deliberate aim at this "New Hampshire Advantage" by adopting a temporary emergency regulation declaring (for the first time) that nonresident income received for services performed outside Massachusetts would be subject to the state's income tax. New Hampshire claimed it was unconstitutional, extraterritorial conduct. In declining to hear the case, the Court's order came after the U.S. Acting Solicitor General in an amicus brief argued that this is not an appropriate case for the exercise of the Court's original jurisdiction because New Hampshire has no standing.

B. Revenue Procedure 2021-14, 2021-29 IRB

The IRS set out procedures for taxpayers that have a net operating loss (NOL) for any tax year that begins in 2018, 2019, or 2020, all or a portion of which consists of a farming loss, so that they can elect to not apply certain NOL rules contained in the CARES Act. It details how to make the election under §2303(e)(1) of the CARES Act, when a taxpayer is deemed to have made that election, how to revoke an election made under §§172(b)(1)(B)(iv) or 172(b)(3) to waive the two-year carryback period for the farming loss portion of an NOL incurred in a tax year beginning in 2018 or 2019, and how consolidated group rules affect these actions.

C. Treasury Green Book

The Green Book attempts to bring more conformity to self-employment taxes (SECA) for partners, proprietors, and S corp shareholders. Under current law, general partners and sole proprietors pay SECA on the full amount of their net trade or business income subject to certain exceptions. S corporation shareholders are not subject to SECA tax; but S corporation shareholders must receive "reasonable compensation" on which they pay FICA. Non-wage distributions to S corporation shareholders are not subject to FICA or SECA taxes. Currently, S corporation shareholders effectively avoid taxes by utilizing non-wage distributions. President Biden proposes that SECA tax apply to all ordinary business income of active shareholders of S corporations who have adjusted gross income from all sources of $400,000 or more per year. This would treat S corporation shareholders like active partners and eliminate a primary advantage of S corporations.

Another issue addressed in the Green Book is reporting of cryptocurrency. Currently, it is treated as "property," and the use of cryptocurrency and other virtual currencies to pay for goods or services, on conversion to legal tender, or in exchange for other virtual currencies or investments, can result in a taxable transaction and required income tax reporting. [Notice 2014-21 and Rev. Rul. 2019-24] The U.S. Treasury views the use of cryptocurrency as posing a significant risk of tax evasion. The Green Book proposes to expand the scope of reporting by cryptocurrency brokers both within the U.S. and in foreign jurisdictions with information-sharing/exchange agreements with the U.S. The proposal would require brokers to report gross proceeds from cryptocurrency transactions as well as possible other reporting. Further, brokers would be required to report beneficial ownership of entities holding cryptocurrency accounts. These proposals are in addition to The American Families Plan Tax Compliance Agenda, which calls for businesses to report the receipt of crypto assets with a value of more than $10,000. The expanded reporting requirements would be effective for tax returns required to be filed after December 31, 2022.

D. Notice 2021-39, 2021-27 IRB; IR-2021-140

In a notice and accompanying news release, the IRS has announced that it has released draft 2021 instructions for the K-2 and K-3 schedules for partnership and S corporation Forms 1065, 1120-S, and 8865. There will be transition relief from penalties for any incorrect or incomplete reporting on the Schedules K-2 and K-3. The draft forms were updated in June.

IRC §§6038(a)(1) and 6038(a)(5) and Reg. §1.6038-3 generally require a United States person that controls a foreign partnership or holds at least a 10% interest in a foreign partnership that is controlled by United States persons holding at least 10% interests (a U.S. partner) to furnish information relating to the partnership (a controlled foreign partnership or CFP). The forms are to be used for this purpose. The updated forms apply to any persons required to file Form 1065, 1120-S, or 8865, but only if the entity has items of international tax relevance (generally foreign activities or foreign partners). The changes do not affect partnerships and S corporations with no items of international tax relevance. IRS has provided transition relief for tax years that begin in 2021 with respect to Schedules K-2 and K-3 to Forms 1065, 1120-S, and 8865 based on a good faith effort to comply with the Schedules K-2 and K-3 filing requirements (and the Schedule K-3 furnishing requirements) per the instructions. For purposes of determining whether a Schedule K-2/K-3 filer makes such a good faith effort, the IRS will take into account the extent to which a Schedule K-2/K-3 filer has made changes to its systems, processes, and procedures for collecting and processing information relevant to filing the Schedules K-2 and K-3 and the extent to which a Schedule K-2/K-3 filer has obtained information from partners, shareholders, or the CFP, or applied reasonable assumptions when information is not obtained. The IRS will also take into account the steps taken by the Schedule K-2/K-3 filer to modify the partnership or S corporation agreement or governing instrument to facilitate the sharing of information with partners and shareholders that is relevant to determining whether and how to file Schedules K-2 and K-3.

E. IR-2021-143

In a news release, the IRS announced that users of its new Child Tax Credit Update Portal can use the portal to update their bank account information with respect to the advance payment of the Child Tax Credit.

In IR-2021-113, they provided information about the advance payments; and in IR 2021-130, the IRS announced the creation of the Child Tax Credit Update Portal which allows families to verify their eligibility for the payments and, if they choose to, unenroll or opt out from receiving the monthly payments. A bank account update feature has been added to the Child Tax Credit Update Portal. Any updates made by August 2 will apply to the August 13 payment and all subsequent monthly payments for the rest of 2021. Only one account number is permitted for each recipient; that is, the entire payment must be direct deposited in only one account.

F. IR 2021-142; Notice 2021-42, 2021-29 IRB

The IRS has extended earlier guidance on employer leave-sharing programs that aid victims of the COVID-19 pandemic. As a result, cash payments employers make under a leave-sharing program, before January 1, 2022, to tax-exempt charitable organizations providing relief to victims of the COVID-19 pandemic, will not be treated as wages or compensation to the employees for federal tax purposes. Employees electing to forgo leave may not claim a charitable contribution deduction for the value of their forgone leave. An employer may deduct cash payments made pursuant to a leave-sharing program as a charitable contribution or as a business expense, provided the employer otherwise meets the requirements for taking such deductions. An employer should not include any cash payments made pursuant to a leave-sharing program in Box 1, 3, or 5 of the Form W-2 of an employee forgoing leave.

G. *Vestal v. Dept. of Treasury*

CA, Fed Cir, 127 AFTR 2d 2021-2371

The Court of Appeals for the Federal Circuit affirmed the IRS's employment termination of a revenue agent, due to the unauthorized disclosure of confidential taxpayer information. It was made to her attorney while preparing a defense to her earlier job suspension. The argument that termination was so unconscionably disproportionate to her offense that it amounted to an abuse of discretion was unavailing when considering her conduct/disclosure violated §6103. Plus, she was aware she could have consulted with supervisors or others about the disclosure before making it, but didn't and didn't otherwise make any efforts to redact taxpayer information. Moreover, disclosure was "particularly serious in this context," when considering potential for erosion of public confidence in the IRS. Her actions were intentional since she intended to disclose the information to her attorney. Although she claimed she believed attorney-client privilege would protect her disclosure, that claim was misguided in that even if she didn't know it was wrong to disclose, it doesn't change the fact that she intended to make disclosure.

H. Chief Counsel Advice 202123007

In Chief Counsel Advice, the IRS held that a taxpayer's net negative §481(a) adjustment resulting from a change in its method of accounting for depreciation must be added back in the calculation of the taxpayer's §163(j) business interest deduction limitation. It also provides for the treatment of a net positive adjustment for depreciation and the calculation of adjusted taxable income (ATI) for §163(j) purposes. The addback of the depreciation amount, including any §481(a) adjustment for the year of change, for purposes of determining ATI is allowed only for tax years beginning before January 1, 2022.

I. News Releases 2021-135, 137, 141, and 144

This year's "Dirty Dozen" is separated into four separate categories:

- Pandemic-related scams like Economic Impact Payment theft;
- Personal information cons, including phishing, ransomware, and phone "vishing;"
- Ruses such as fake charities focusing on unsuspecting victims and senior/immigrant fraud; and
- Schemes that persuade taxpayers into unscrupulous actions such as offer in compromise mills and syndicated conservation easements.

1) Economic Impact Payment theft

A continuing threat to individuals is from identity thieves who try to steal Economic Impact Payments (EIPs), also known as stimulus payments. Most eligible people will get their payments automatically from the IRS. Taxpayers should watch out for these telltale signs of a scam: any text messages, random incoming phone calls, or emails inquiring about bank account information or requesting recipients to click a link or verify data should be considered suspicious and deleted without opening. Also, be alert to mailbox theft.

2) Unemployment fraud leading to inaccurate taxpayer 1099-Gs

Because of the COVID-19 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. Be on the lookout for a Form 1099-G reporting unemployment compensation that wasn't received, and contact the appropriate state agency. Perhaps consideration should be given for an IP PIN, adding another layer of security.

3) Tax-related phishing scams persist

The IRS warns taxpayers, businesses, and tax professionals to be alert for a continuing surge of fake emails, text messages, websites, and social media attempts to steal personal information. These attacks tend to increase during tax season and remain a major cause of identity theft throughout the year. The IRS warns tax professionals about phishing scams involving verification of Electronic Filing Identification Numbers (EFIN) and Centralized Authorization File (CAF) numbers. The agency has seen an increase in these kinds of scams, along with offers to buy and sell EFINs and CAFs.

The "New Client" scam continues to be a prevalent form of phishing for tax pros. Here's an example in the form of an email: "I just moved here from Michigan. I have an urgent tax issue and I was hoping you could help. I hope you are taking on new clients." The email says one attachment is an IRS notice and the other attachment is the prospective client's prior-year tax return. This scam has many variations; tax professionals should be wary and avoid opening attachments or clicking links when they don't know the e-mail sender.

4) Impersonator phone calls/vishing

Individuals should be wary of unexpected phone calls asking for personal financial information. The IRS has seen an increase in voice-related phishing, or "vishing," particularly from scams related to federal tax liens. For those receiving phone calls out of the blue, security experts recommend asking questions of the caller but not providing any personal information. If in doubt, hang up immediately.

5) Social media scams continue

Taxpayers should be aware of social media scams, which frequently use events like COVID-19 to try to trick people. Social media enables unscrupulous individuals to lurk on accounts and extract personal information to use against the victim. These cons may send emails impersonating the victim's family, friends, or co-workers. The basic element of social media scams is convincing a potential victim that he or she is dealing with a person close to them that they trust via email, text, or social media messaging. One way to circumvent these scams is to review privacy settings and limit data that is publicly shared.

6) Ransomware on the rise

Financial institutions should be aware of trends and indicators of ransomware, which is a form of malicious software ("malware") designed to block access to a computer system or data. Access is often blocked by encrypting data or programs on information technology (IT) systems to extort ransom payments from victims in exchange for decrypting the information and restoring victims' access to their systems or data. In some cases, in addition to the attack, the perpetrators threaten to publish sensitive files belonging to the victims, which can be individuals or business entities.

Ransomware actors are increasingly engaging in selective targeting of larger enterprises to demand bigger payouts – commonly referred to as "big game hunting." Many cybercriminals are sharing resources to enhance the effectiveness of ransomware attacks, such as ransomware exploit-kits that come with ready-made malicious codes and tools. These kits can be purchased, although they are also offered free of charge.

The IRS reminds taxpayers and tax professionals to keep abreast of news about fraud-related behavior. Report any instances of fraud immediately.

7) Fake charities

The IRS advises taxpayers to be on the lookout for scammers who set up fake organizations to take advantage of the public's generosity. They especially take advantage of tragedies and disasters, such as the COVID-19 pandemic. To check the status of a charity, use the IRS Select Check tool.

8) Immigrant/senior fraud

IRS impersonators and other scammers are known to target groups with limited English proficiency as well as senior citizens. These scams are often threatening in nature. This is where a taxpayer receives a telephone call threatening jail time, deportation, or revocation of a driver's license from someone claiming to be with the IRS. Taxpayers who are recent immigrants often are the most vulnerable and should ignore these threats and not engage the scammers. The IRS reminds taxpayers that the first contact with the IRS will usually be through mail, not over the phone.

9) Offer in Compromise 'mills'

Offer in compromise 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. The IRS reminds taxpayers to beware of promoters claiming their services are needed to settle with the IRS, that their tax debts can be settled for "pennies on the dollar" or that there is a limited window of time to resolve tax debts through the Offer in Compromise (OIC) program.

10) Unscrupulous tax return preparers

Although most tax preparers are ethical and trustworthy, taxpayers should be wary of preparers who will not sign the tax returns they prepare, often referred to as ghost preparers. For e-filed returns, the "ghost" will prepare the return but refuse to digitally sign as the paid preparer.

11) Unemployment insurance fraud

Unemployment fraud often involves individuals acting in coordination with or against employers and financial institutions to get state and local assistance to which they are not entitled. These scams can pose problems that can adversely affect taxpayers in the long run. Here is a short list of financial red flag indicators of unemployment fraud:

- Unemployment payments are coming from a state other than the state in which the customer reportedly resides or has previously worked.

- Multiple state unemployment payments are made within the same disbursement timeframe.

- Unemployment payments are made in the name of a person other than the account holder or in the names of multiple unemployment payment recipients.

- Numerous deposits or electronic funds transfers (EFTs) are made that indicate they are unemployment payments from one or more states to people other than the account holder(s).

- A higher amount of unemployment payments is seen in the same timeframe compared to similar customers and the amount they received.

12) Promoting Abusive Tax Shelters

The IRS is targeting certain types of tax shelters as having the potential for abuse. Among these are syndicated conservation easements, abusive micro-captive arrangements, potentially abusive use of the US-Malta tax treaty, improper claims of business credits and improper monetized installment sales. The IRS continues to pursue actions against promoters of these schemes as well as the taxpayers who participate in them.

A. Discussion Problems

Your new client, Sarah, is engaged in farming. She has farming losses that were incurred in 2018 and 2019. She previously made an election to waive the two-year carryback period.

Sarah informs you that she is actively engaged in a side business in the gig economy and that she regularly uses and transacts in cryptocurrency. She has heard there is no required reporting to the IRS.

Your office has hired new staff in the tax area, and you are considering issues to discuss with them.

Required:

1) Is there anything Sarah can do if you determine the election should not have been made in regard to the farming NOLs?

2) What discussions should you have with Sarah concerning cryptocurrency?

3) Should the staff be informed of the "Dirty Dozen?"

B. Suggested Answers to Discussion Problems

1) The IRS has provided procedures in Rev. Proc. 2021-14 regarding taxpayers with NOLs from farming in 2018, 2019, and 2020. This includes revoking the election to waive the carryback period on farming losses. Those procedures should be reviewed.

2) The IRS is currently looking closely at cryptocurrency. An analysis of Sarah's transactions should be made. It doesn't matter if she received cash or cryptocurrency for her gig work; she must pay tax. She should be made aware that the Green Book proposals will significantly increase reporting. Regardless of reporting, she still has tax obligations to the government.

3) Staff, old and new, should be made aware of tax fraud schemes and ruses that the government is seeing. Some of the fraud is being targeting at tax professionals. Staff should be cognizant of the telltale indicators of possible fraud.

PART 2. INDIVIDUAL TAXATION

Child Tax Credit

Under IRC Section 24, a taxpayer may claim the Child Tax Credit (or CTC) for each qualifying child for whom the taxpayer is allowed a dependency exemption under Section 151 of the Code. Enhanced child tax credit rules apply for tax years 2018 through 2025, with expanded rules applicable only for tax year 2021. After 2025, the much less favorable pre-2018 CTC rules will once again apply. Ian Redpath and Julie Welch discuss the CTC rules in effect through 2025 with emphasis on the specific rules in effect only for 2021.

Let's join Ian Redpath and Julie Welch as they discuss the child tax credit.

Mr. Redpath

Julie, welcome to the program.

Ms. Welch

Thanks, Ian. Glad to be here.

Mr. Redpath

It's always great to have you here to get your insight. We've got an interesting program today because, as we're speaking right now, a lot of people are saying, "Wow, I'm lucky. I'm getting money from the government!" Something not unusual these days, but for a different reason.

The child tax credit—something that I think was expanded when they did away with the exemption or at least suspended the exemptions—they increased this, and it got increased even more for 2021. What exactly is the child tax credit?

Ms. Welch

The child tax credit is a way to give money to taxpayers who have children. It started out, I think prior to 2018, for many years, it was $1,000 per qualifying child. So, that was great. But then, 2018 came along, and they said, "We're going to increase that to $2,000 per qualifying child." And that's what the normal rule is right now through 2025. However, for 2021, now we have even better rules with the child tax credit. Normally, it's $3,000, but if the child is under six, then it's $3,600. So, $3,600—it's a huge credit for people.

Mr. Redpath

Is there any difference then in age? You say qualifying child. What does that mean, a qualifying child?

Ms. Welch

Well, there are some phaseouts with this too, before we get into qualifying child, if we want to talk about those first.

Mr. Redpath

Sure.

Ms. Welch

Because we'd probably want to talk about who might actually get it, and it's phased out for certain taxpayers. For 2021, it makes it really a little more complex because there's two different phaseout rules. We have the phaseout rules for the old part of it, the $2,000 part of it. And then we have a different phaseout for the new part of it. The old part of it gets a higher limit. More people will get the full amount of the $2,000, but the other amount has a different phaseout. So, they have two different sets of phaseout rules on it. And for 2021, normally the child tax credit is partially refundable. And right now in this timeframe, it was supposed to be for 2020 and 2021, it was refundable up to $1,400. Well, now for 2021, it's going to be fully refundable in certain cases. So, it gets it a little more complex, but it's better rules for taxpayers.

Mr. Redpath

It sounds like this is what we needed, right? A little more complexity on something that was relatively straightforward. So, the government managed to give a benefit, but certainly making it a little more complicated to determine what that benefit is.

Ms. Welch

And they've also added advanced payments in there. A lot of people got letters. I think they sent out like 36 million letters to people who may be eligible for advanced payments on this child tax credit. What happens there is, when the rules came into play, they said, “We’re going to make 50% of that eligible for advanced payments.” So IRS, “Figure out how to get money to people in advance so they don’t have to wait until they file their tax return to get this. And let’s figure out how to send it out on a monthly basis.”

So, the IRS is going to start sending out these advance payments of up to 50% of what they think the eligible child tax credit is for that taxpayer starting on July 15th and around the 15th of each month. It varies a little bit if the 15th is on a holiday or a weekend. But other than that, it’s going to be on the 15th of the month. So July 15th would be the first one. Now, how is the IRS going to compute this?

Mr. Redpath

An interesting thing, Julie, I think you mentioned it there is... And I’ve had clients say, “Well, what do I have to do?” You said what the IRS thinks and clients are saying, “What do I have to do? I heard that the checks are going to come in the mail for a child credit. What do I have to do?” What is that? I mean, what is the IRS telling us to do?

Ms. Welch

The IRS says you have to do nothing, “We already have the information. If you filed a 2020 tax return, we’ll use that information. And if you haven’t filed for 2020 yet and you only have 2019 on record, we’ll use that information.” Now, they’re going to use that information to calculate both the number of dependents that you have and what your income level is to make sure you’re eligible for the credits and they’re not phased out or fully phased out.

There is a way now, an IRS portal on www.irs.gov, that allows taxpayers to go in and update their information or to elect out of those advance payments. And there are cases where you might want to elect out of those advance payments. Number one, if you do have a change in your situation and you don’t want to have to deal with the other stuff, you just elect out and say don’t send me any of those advance payments. Or you may want a big refund next year, because a lot of people plan on that as their refund. So, they may want to elect out. But otherwise, you’re going to get a monthly check.

Mr. Redpath

That interest-free savings account from the government. We let the government keep our money for nothing. I think another one too is if you have a divorce, for example, and you’re splitting the exemption each year and the child credit, that may be another reason why you might want to opt out because in 2020, that was a qualifying child but may not be a qualifying child in 2021. But if they’re basing it on 2020, then that direct deposit is going to come to you. That’s another thing to think about that.

So, a lot of interesting things here that we really need to sit down with some of our clients and as you said, do they want to take it? Do we have clients that are in that circumstance? Go on the IRS website. It does provide that information.

We talked earlier, “What’s a qualifying child?” It’s a good point. Who qualifies? Is it every child? Any child? What is a qualifying child for this purpose? Because we know we don’t have exemptions; those are phased out. What does it mean to be a qualifying child?

Ms. Welch

In most cases, it’s going to be a child of the taxpayer. But for 2021 only, they expanded who is a qualifying child to include somebody who’s now 17. Generally, you had to be under 17 to get the child tax credit. For 2021, you just have to be under the age of 18. As long as they’re 17 by the close of the year, so they can’t turn older than that. As long as they’re 17 at the end of 2021, you can count them as a qualifying child.

Mr. Redpath

There’s a dependent credit also, and that has been around for awhile. What is it? And has it changed at all for 2021?

Ms. Welch

Yes. The other credit, the $500, is a nonrefundable credit for other dependents. These are people who wouldn’t fall under the old rule of who’s a dependent; so, this is another person. Maybe it’s somebody that’s older, a child that’s older than the age. So, for 2021, it’d be older than 17. It could be an 18 year old. Maybe they’re still in school, they’re still your dependent, and all of that, but they don’t qualify for the regular child tax credit. You can get this other $500 credit. So, that’s a pretty good deal.

Mr. Redpath

Yes. And we’re basically using the definitions that we use for exemptions, right? I mean those definitions in §151, they still apply here even though the exemptions per se don’t exist. Correct?

Ms. Welch

That's exactly right. Generally, it's somebody related to the taxpayer, lives with the taxpayer, meets the age requirement, hasn't provided over half of their own support, and they haven't filed a joint tax return with somebody else, generally the typical rules there.

Mr. Redpath

And yet, even that child who has reached 18 doesn't mean you don't necessarily get anything. You could still have them as a qualifying relative and get that $500 amount. So, that's still there.

Ms. Welch

Exactly. You know, the other point is if somebody has a child who unfortunately dies during the year. As long as they were alive at some point during the year, then they would be treated as a child or in the case of other qualifying relative, you'd have that same thing. But they'd have to be alive during the year.

Mr. Redpath

At some point, even for a minute during 2021.

Ms. Welch

Exactly.

Mr. Redpath

We talked about the phaseout. As you mentioned, the phaseout is a little bit different for 2021 because we've got two different rules that apply. What exactly are we doing with these phaseouts?

Ms. Welch

For the phaseout, beginning in 2021 only like I mentioned, we have a second phaseout for the increased portion of the limit.… The $2,000 child tax credit and the $500 credit, those phase out $50 for each $1,000 by which the, what they call, modified adjusted gross income—which, in many cases, is just adjusted gross income—exceeds the threshold amount. That threshold amount for that old part of the credit, the $2,000 amount, or the $500 other dependent credit is $400,000 for a joint return and $200,000 for all other returns. And that $400,000 amount isn't indexed for inflation, just like the old rules. So, the length of the phaseout range is affected by the number of the taxpayer's qualifying children. The more children you have, the higher dollar amount you might be able to go on that.

Mr. Redpath

And you mentioned it's modified adjusted gross income. But basically, if you don't have foreign income or you're not a resident of Samoa or Puerto Rico, you're not really worried about that. If you are and you've had an exclusion, those added back in. But other than that, for most taxpayers, the vast majority, it's just simply your AGI.

This 2021 phaseout though, and this is kind of bizarre in the sense that you use the old phaseout for the first $2,000, and then you use a special phaseout for the 2021 additional $1,000 or $1,600. What is that additional phaseout?

Ms. Welch

Now, these phaseout ranges, it's $150,000 for joint filers and surviving spouses. It's $112,500 for heads of households. And it's $75,000 for all other taxpayers, which would typically be your single taxpayers or people who file married filing separately. So this additional phaseout, this second phaseout level, but it's going to come first because it's the lower amount.

So first, you're going to figure out, "Do I get this extra child tax credit," the $1000 or the $1,600 per child? And then, once you get over that hurdle, if you get that full amount, then you're going to get the full $2,000 amount because those are higher phaseout levels. But if you don't get any of that, you still might get some of the old part of the credit, the $2,000 credit, depending on those phaseout levels.

Mr. Redpath

It's just going to be a little bit added complexity as we have two different phaseout ranges applying to essentially the same thing. And you have this applicable credit increase, which is the $1,000 or $1,600, and then basically instead of the $50, it's 5%, right? It's 5% of that phaseout range. So, really, it's even calculated differently. Different phaseout, different calculation instead of 50%. I think it's going to be something we want to make sure we check our software initially and make sure that it's doing it correctly.

Ms. Welch

You're exactly right, Ian. And with the rules, you can go through and calculate it manually, but you'll want to make sure you double check it. Usually what happens is we let the computer calculate it and then we go back and double check to make sure it makes sense if somebody is in that phaseout range. Would it be easiest to give an example on this?

Mr. Redpath

Sure. We have an example that we can put up. We have an example of Sarah. Sarah is a head of household with one child, modified adjusted gross income of $140,000 in 2021, qualifies for the increased child tax credit of $3,000. But the increased portion of the child tax credit is completely phased out because of the phaseout range.

We have a phaseout of $50 for each $1,000 that modified adjusted gross income is over [$112,500]. $140,000 minus $112,500. So, $27,500 divided by $1,000, which results in a reduction of the credit of $1,400. That $1,400 amount then is limited to a reduction of $1,000, the increase in the child tax credit amount. The lesser of the applicable credit increase, $1,000, or 5% of the applicable range, which is the 5% of $87,500. So, we have two different sets of rules here that are going to apply. We're going to phase out the additional amount first. And then, we go to look to the phaseout of the second portion. So, phaseout the additional; then look to phaseout the—what can we call that—the original credit?

Ms. Welch

Yes. I think that's a good way to call it.

Mr. Redpath

The original credit. Yes, this is an interesting one. And then for 2021, what is this refundability then? Because this is going to be a benefit for a lot of people.

Ms. Welch

This is going to be a benefit, because like we mentioned before, normally part of it was refundable and part of it was non-refundable; and the old rule was supposed to be $1,400 was the refundable portion. But for 2021, the full amount is going to be refundable. If you don't have tax liability, you get a refund; you get excess money back. So, that's what the refundability is about. Again, that's for 2021 only.

Mr. Redpath

And there's that 15% rule, that essentially 15% of the excess over $3,000 is going to be refundable for all taxpayers with qualifying children, regardless of the number of children. Again, this 15% rule is, I think, something unusual again that's going to apply now. We have all of these. Is there anything that we have to be aware of? I know, the social security number, for example.

Ms. Welch

Yes. Starting in 2018, you are now required to include the social security number of the child on the tax return. If you don't have a social security number, you don't get the credit. And you have to have that before the date of filing the tax return. Now, the good news is if somebody has a baby, typically they apply for the social security number before you leave the hospital; and so, you have that number very, very quickly and you have it before you need to file the tax return. But that is very critical that you do have a social security number in order to be able to get the credit.

Mr. Redpath

As you said, if you have a child, that's being sent in essentially while they're still in the hospital. But you do have to have it in order to take the credit.

The credit can be denied for a number of reasons. And there's a real problem; and I think one of the things we always have to remember is the child tax credit is subject to preparer due diligence. That's why it's so important that you have double checked the information and not just relied on the fact that someone comes in and says, "Well, I've got five children. I've got Muffy and Fido…" And you say, "Well, we need a little more information," because this is subject to preparer due diligence, isn't it?

Ms. Welch

It is. As a preparer, we have to complete and submit Form 8867 with the tax return. This due diligence form originally started with the earned income credit, because there was so much fraud, I guess you might call it, in that case. Or misconstruing the rule. They first started with that, and then they've added some other credits to this form.

If you do have the child tax credit, the refundable portion of the child tax credit, you must fill out a Form 8867 and it's got to be based on information that the taxpayer has provided or, that as the tax return preparer, you've reasonably obtained or you know it to be true.

Typically with ours, if it's a new client or even with current clients, we have a checklist that we go through; and then, we even have what we call our due diligence form for the client to read through, to sign. Because with this credit, if the client got it disallowed during the past, depending on if it's fraud or reckless disregard of the rules, how long you can't take that credit after a period of time. If there was fraud involved, then you can't take the credit for ten years after that year. And if it's not fraud, but it's just—what do they call it—reckless disregard?

Mr. Redpath

Reckless disregard or negligence.

Ms. Welch

Negligence. There you go. Then, it's a two-year period. But you do have to watch those rules. And you do have to ask the client, "Has this credit been denied by the IRS?" And if so, what year was it denied to make sure you can get back on track for getting the credit?

Mr. Redpath

I think you say something that really is best practice. And that is, don't just go through the checklist on the form for due diligence—check, check, check. You really need that information from the client; and like you said, I want the client to answer those questions. I want something that, if the IRS comes knocking on my door, as a preparer, or the firm's door, we want to make sure that we can document where we got that.

And that last two, especially right now, it wouldn't be unusual for a taxpayer to say, "Oh, my preparer says I can't take this. So, I'm going to go find a new preparer. I'm going to find one that's going to do this for me." And so, at least if you've got that answer, that, "Okay, you said you didn't have it denied," and the IRS comes in and says, "Well, that was denied." At least you have that from the client. You've done your due diligence to the best you can.

I think what you said is absolutely a best practice that everyone should do with the child tax credit. And make sure that it does have questions related to "Have you ever been denied the credit?" Not just, do you have a child, do you have social security numbers, and that. But actually asking those questions, I think, is very important from a due diligence perspective.

Ms. Welch

Yes. And it's usually the questions that are right on that tax form. Use that form as a guide for what the due diligence questions you should be asking the clients.

Mr. Redpath

Right. You can make sure that, hopefully, they're telling you the truth; but at least you've got something that you can rely on.

We mentioned these advance payments and people will be getting them. Are there any things that you see in the advance payment that is going to be a problem? Because you've taken the advance, now you're doing the 2021 tax return in 2022, and you know they've taken the advance, so how is that going to work? What are we going to do? We had an advance credit. How will we approach that when it comes time to doing the 2021 tax returns?

Ms. Welch

Like you said Ian, it's called an advance payment. So, it's merely an advance. If you get too much, if you're not eligible for the full amount of that credit, you have to repay it. So, it's not like the economic stimulus payments. When those got calculated, if you got too much, great, you got to keep the excess. In this case, in most cases, it's going to have to be repaid. So, you're going to calculate what the real credit is; and you're going to subtract off what the advance payment is. That difference is either the additional credit that you get or how much you have to repay.

There is a rule for what I'm going to call fairly low-income people. If they're really low-income people, then they don't have the repayment situation. And they call that a safe harbor amount. The rules, kind of like we talked about some of these other rules, they're a little convoluted. But it's out there to protect those who have really low income. Usually, the safe harbor amount that you're looking at is $60,000 for a joint couple, $50,000 for a head of household, or $40,000 for other taxpayers. Under those amounts, you're probably okay. But then, if you're over that, then there's a formula you have to go through to see how much of it you have to repay. But as you get into much higher income, just look at it that way. You're going to have to be repaying it.

Mr. Redpath

I think we're going to have clients coming in saying, "Well, I heard I didn't have to repay that." You'll say, "Well, you have a little too much income." There is a threshold. But again, it's relatively low when it comes to not having to repay that. But certainly, I mean, it's something to look at if you have it.

Julie, this is a really interesting year anyway, as 2020 was extremely interesting. This is also interesting because we have a lot of things going on and even a lot of proposals that are out there that will really affect a number of our clients. Again, this is one of those things I think that it takes time to dig into the weeds in exactly what you're doing. If you could kind of summarize, what should we be talking to our clients about with the child tax credit for 2021 as we're looking at the middle of the year right now?

Ms. Welch

What I would be looking at is determining whether they want to receive the credit just like it's set up, what the IRS comes out with, or if they want to go into that portal to elect out. Now, I had some people look at that portal because it's really new out there, and the IRS has really come together to try to get these payments out to people so quickly because it's a big amount. It's $250 per child if they're six or older; and if they're five and under, it's $300. And that's per month that people are going to get these payments.

So, if you want to elect out, you use the portal. If you're going to use the portal, the way I understand it, you want to spend some time and be prepared to spend some time to get into it. Because unless the taxpayer already has an account set up, they have to have a photo identification and they have to get that photo identification through the computer into the system in order to be recognized and be able to use that portal. But once that's set up, then apparently it's pretty easy to make those changes to say, I opt out or I'm going to change my number of dependents.

The example you gave earlier, Ian, was somebody got divorced. Or if you have a new baby being born, you might want to add that in there to get the money up front. And you mentioned proposals. Proposals are to try to take this credit and keep it going where people on a monthly basis get that credit spread out because they need the money to pay rent or living expenses or groceries or whatever for the children. That's the goal of these new rules about trying to get more money out and getting it out on a monthly basis. Right now, it's set for just the last six months here of 2021. But the proposals are to try to take that into the future.

Mr. Redpath

I think once the IRS has this down, then it's going to be relatively simple to continue it. It's not going to be much to say, "Okay, we're just going to continue using the same programs, we got it all set up. Let's just make it." I think one of the reasons that they were able to propose doing this is the IRS was already set up with the economic stimulus payments, that they were already set up to be able to make these types of payments. It wasn't a big leap to then adjust the programs to provide for this prepayment of the tax credit.

I think the fact that they have it, the fact that it's going to be set up, will make it really easy to do. That's probably a proposal that would get bipartisan support, I would think. Because, as you said, it's an advance of a credit; and so, I think that probably could get some bipartisan support to go through.

Julie. I want to thank you for being here. This is a really interesting credit. It's always been relatively simple, we thought. A lot of complexity, but a lot of advantages in 2021. I want to thank you for being here. Always great to have you and your insights. Julie, thanks a lot. And we'll have you on another program soon. Thank you.

Ms. Welch

All right. Thanks, Ian. See you later.

Child Tax Credit 2021

By Ian J. Redpath, JD, LLM

A. Introduction

A taxpayer may claim a tax credit ("CTC") under §24 for each "qualifying child" for whom the taxpayer is allowed a dependency deduction under §151. Enhanced CTC rules apply for tax years beginning in 2018 through 2025, with additional expanded rules applicable for tax year 2021 only. After tax year 2025, the much less favorable, pre-2018 CTC rules will once again apply.

For 2018–2025 tax years, other than 2021, the CTC is $2,000 per qualifying child. For 2021, there is an enhanced CTC of $3,000 ($3,600 for children under age six) per qualifying child. After 2025, it drops back down to $1,000 per qualifying child, which was the pre-TCJA CTC.

The CTC is subject to a phaseout for taxpayers with modified adjusted gross income (MAGI) above certain levels. For 2021, taxpayers are subject to two different sets of phaseout rules:

- a phaseout of the increased CTC amount (i.e. $1,000 or $1,600), and
- the general phaseout rules for the $2,000 credit amount.

The CTC is also partially refundable (other than 2021):

(1) to the extent of 15% of the taxpayer's earned income in excess of $2,500 ($3,000 after 2025), or, if greater

(2) for taxpayers with three or more qualifying children, to the extent the taxpayer's social security taxes exceed the taxpayer's earned income credit (EIC).

But, under these rules, the maximum refundable credit for any qualifying child cannot exceed a specified amount: $1,400, adjusted annually for inflation. This partially refundable credit is known as the "additional child tax credit" or "ACTC." However, for 2021 only, the **CTC is fully refundable** for a taxpayer, either spouse for a joint return, with a principal place of abode in the U.S. for more than one-half of the tax year, or for a taxpayer who is a bona fide resident of Puerto Rico for the tax year.

Under §7527A, beginning in July 2021 through December 2021, the IRS will make temporary monthly advance payments equal to 50% of eligible taxpayers' 2021 CTC. These will generally be by direct deposit. To determine eligibility for the advance payments, the IRS will look at taxpayers' 2020 returns, or if they are not yet filed, their 2019 returns. The amount of a taxpayer's CTC allowed for 2021 must be reduced by the aggregate advance payments the taxpayer receives during the tax year. Taxpayers who receive advance CTC payments in excess of the CTC allowable to the taxpayer for 2021 must, generally, repay the excess amounts (by increasing the taxpayers' tax liability reported on their 2021 returns). However, for taxpayers with MAGI below certain thresholds, the excess may be reduced by a safe harbor amount, limiting the amount by which the taxpayer has to increase tax liability, and allowing the taxpayer to keep a portion of the excess amount.

In IR-2021-113, the IRS provided information about the advance payments, and in IR-2021-130, announced the creation of the Child Tax Credit Update Portal which allows families to verify their eligibility for the payments and, if they choose to, unenroll or opt out from receiving the monthly payments. A bank account update feature has been added to the Child Tax Credit Update Portal. In IR-2021-143, the IRS announced that users of its new Child Tax Credit Update Portal can use the portal to update their bank account information with respect to the advance payment of the Child Tax Credit. Any updates made by August 2 will apply to the August 13 payment and all subsequent monthly payments for the rest of 2021. Only one account number is permitted for each recipient; that is, the entire payment must be direct deposited in only one account.

There is also credit available for other qualifying relatives. For 2018–2025, there is a $500 nonrefundable credit for those qualifying relatives who are not qualifying children under the CTC rules. This is the other dependent credit (ODC). The ODC is subject to the same phaseout based on MAGI that applies to the $2,000 CTC.

The CTC is in addition to the child and dependent care credit and the earned income credit. No CTC is allowed for a tax year of fewer than 12 months, except where a tax year is closed by reason of the taxpayer's death

B. Qualifying Child

For purposes of the CTC, a "qualifying child" is a qualifying child of the taxpayer, as defined in §152(c) for the dependency exemption, who has not attained age 17 before the close of the tax year. For 2021 only, the definition is expanded to include a child who has not attained age 18 before the close of 2021. A taxpayer for any tax year is an individual who:

(1) bears a relationship to the taxpayer;

(2) has the same principal place of abode as the taxpayer for more than one-half of that tax year, except that a child of divorced or separated parents will be treated as the noncustodial parent's qualifying child if the custodial parent has released the claim to the child's dependency exemption to the noncustodial parent under §152(a);

(3) meets the age requirement;

(4) has not provided over one-half of the individual's own support for the calendar year in which the taxpayer's tax year begins; and

(5) has not filed a joint return (other than for a refund claim) with the individual's spouse for the tax year beginning in the calendar year in which the taxpayer's tax year begins.

To be a qualifying child, the child will have to be the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or a descendant of any of these individuals. An eligible foster child will be treated as the taxpayer's child. If the taxpayer's child does not meet the definition of a "qualifying child," for example because the child does not meet the age test, the child might still be able to qualify as a dependent under the "qualifying relative" test and thus the ODC. A taxpayer is allowed to treat a child who was born alive or dies during the tax year, including a child who dies in the same year as being born, as having had the same principal place of abode as the taxpayer for more than half of the tax year, if the taxpayer's main home is the child's main home for more than half of the time the child is alive in the tax year. Whether a child is born alive will depend on state law. The child cannot provide more than half of the child's own support. The person claiming the child's support is not relevant; therefore, multiple support agreements will not apply to qualifying children.

If more than one eligible parent claims the individual as a qualifying child, and those eligible parents do not file a joint return, then the child would be treated as the qualifying child of:

- the parent with whom the child resided for the longer period of time during the tax year, as determined under Prop. Reg. §1.152-4(c)(3) et seq; or

- if the child resided with both parents for the same amount of time during the tax year, then the parent with the higher AGI.

If an individual's parents can claim the individual as a qualifying child but no parent does, then another taxpayer will be able to claim the individual as a qualifying child, but only if that taxpayer's AGI is higher than the AGI of either parent of the individual. If a parent can claim a particular qualifying child, then no other individual will be able to claim that child unless:

- no parent claims the qualifying child;

- another individual is otherwise eligible to claim the child; and

- that individual has a higher AGI for the tax year than any parent eligible to claim the child.

The term "qualifying relative" means an individual:

(1) who bears a relationship to the taxpayer,

(2) whose gross income for the calendar year in which that tax year begins is less than the exemption amount,

(3) for whom the taxpayer provides over one-half of the individual's support for the calendar year in which that tax year begins, and

(4) who isn't a qualifying child of that taxpayer or of any other taxpayer for any tax year that begins in the calendar year in which that tax year begins.

C. Phaseout

The $2,000 [or $1,000 after 2025] CTC, and the $500 ODC allowed for 2018–2025 are phased out for taxpayers with modified adjusted gross income above certain threshold levels. For 2021, a second phaseout applies to the 2021 increased CTC. This phaseout applies in addition to the regular phaseout rules and begins at lower MAGI threshold levels. For 2021, the amount of the CTC allowable, determined without regard to the phaseout rules for the $2,000 CTC, is reduced by $50 for each $1,000, or fraction thereof, by which the taxpayer's MAGI exceeds the following threshold amounts:

(a) $150,000 for joint filers and surviving spouses,

(b) $112,500 for heads of households, and

(c) $75,000 for all other filers.

For tax years beginning in 2018–2025, the threshold amounts for applying the phaseout of the $2,000 CTC (also apply to the $500 ODC) are:

(i) $400,000 for a joint return; and

(ii) $200,000 for all other returns.

The $400,000/$200,000 phaseout threshold amounts are not indexed for inflation. The length of the phaseout range is affected by the number of the taxpayer's qualifying children. Marital status for phaseout thresholds is determined under the general §7703 rules.

The reduction in the credit due to the additional phaseout is limited to the lesser of:

- the "applicable credit increase amount" or
- 5% of the "applicable phaseout threshold range."

The "applicable credit increase amount" is the excess (if any) of:

- the aggregate CTC allowable for 2021 (i.e., $3,000 or $3,600), over
- the aggregate CTC allowable, without regard to the increased amounts for 2021 (i.e., $2,000)—both determined without application of any phaseout.

The "applicable phaseout range" is the excess of:

- the threshold amount for the taxpayer (i.e., the $400,000 (joint filers)/$200,000 (others) in effect for 2018–2025), over
- the applicable thresholds provided under the separate phaseout rule (i.e., $150,000/$112,500/$75,000.

Thus, the applicable phaseout range is:

- $250,000 for joint filers ($400,000 − $150,000);
- $87,500 for heads of households ($200,000 − $112,500);
- $50,000 for surviving spouses ($200,000 − $150,000); and
- $125,000 for all other taxpayers (i.e., singles and marrieds filing separately) ($200,000 − $75,000).

After applying the phaseout on the increased CTC amounts for 2021, the taxpayer's $2,000 of CTC is subject to the general phaseout rules.

So, for 2021 tax years, the CTC is subject to two sets of phaseout rules—i.e., one for the increased amounts, and one for the $2,000 CTC amount. A taxpayer eligible for any increased CTC amount (the additional $1,000 or $1,600) first applies the §24(i)(4) phaseout rules above to the increased amount(s), and then applies the §§24(b)/24(h)(3) phaseout rules above to the remaining $2,000 of the CTC(s).

Example: Sarah, a head of household with one child and modified AGI of $140,000 in 2021, qualifies for the increased CTC of $3,000. But the increased portion of her CTC ($1,000) is completely phased out under §24(i)(4) at a phaseout rate of $50 for each $1,000 of modified AGI over $112,500 ($140,000 minus $112,500 [$27,500] divided by $1,000 [27.5; rounded up to 28] times $50, which results in a reduction in the credit of $1,400. That $1,400 reduction amount is then limited to a reduction of $1,000 (the 2021 increased CTC amount) [computed as the lesser of (i) the applicable credit increase amount of $1,000 ($3,000 − $2,000), or (ii) 5% of the applicable threshold range]—i.e., $4,375 (.05 × $87,500). Under the existing §§24(b) and 24(h)(3) phaseout rules, Sarah's remaining $2,000 of CTC will not be reduced because her modified AGI is less than the $200,000 phaseout threshold; so, she can claim a $2,000 CTC for 2021.

MAGI is adjusted gross income (AGI) increased by any amount excluded from gross income under:

- foreign earned income exclusion for U.S. citizens or residents living abroad,
- exclusion for bona fide residents of American Samoa, or
- exclusion of income for residents of Puerto Rico.

D. Refundability

Other than 2021, the CTC is generally a nonrefundable tax credit taken against both regular tax and the alternative minimum tax (AMT). However, the CTC may be treated as a partially refundable credit known as the "additional child tax credit" or "ACTC." For 2021 tax years only, the **CTC is a fully refundable credit** for a taxpayer, either spouse for a joint return:

A. with a principal place of abode in the U.S. for more than one-half of the tax year, or

B. who is a bona fide resident of Puerto Rico for the tax year.

The MAGI limitations apply regardless of refundability, and the ODC remains a nonrefundable credit.

E. Denial of CTC

For tax years beginning after December 31, 2017, and before January 1, 2026, no CTC is allowed to a taxpayer for any qualifying child unless the taxpayer includes the social security number (SSN) of that child on the tax return for the tax year.

If an individual's claim of the CTC is denied and it is determined to be due to fraud or reckless or intentional disregard of the rules, that individual may not claim the CTC for the next ten or two years, respectively. The 10-tax-year period after the most recent tax year for which there was a final determination that the taxpayer's CTC claim was due to fraud, and the two-tax-year period after the most recent tax year for which there was a final determination that the taxpayer's CTC claim was due to reckless or intentional disregard of rules and regulations. The taxpayer must then follow the recertification procedure when next claiming the CTC.

F. Reconciliation of Advance Payments

The amount of the CTC allowed must be reduced (but not below zero) by the aggregate amount of advance CTC payments made to that taxpayer during that tax year. Any failure to so reduce the credit will be treated as a mathematical or clerical error subject to summary assessment under §6213(b)(1) [§24(j)(1)]. Taxpayers who receive advance CTC payments in excess of the CTC allowable to the taxpayer for 2021 must, generally, repay the excess amounts by increasing the taxpayers' tax liability reported on their 2021 returns. But, for taxpayers with modified AGI below certain thresholds, the excess may be reduced by a safe harbor amount, limiting the amount by which the taxpayer has to increase tax liability and allowing the taxpayer to keep a portion of the excess amount [§24(j)(2)]. Specifically, if the aggregate amount of advance CTC payments during the tax year exceeds the amount of CTC allowed for that tax year, the federal income tax imposed for that tax year will be increased by the amount of the excess. Any failure to so increase the tax will be treated as a mathematical or clerical error subject to summary assessment under Code Sec. 6213(b)(1).

If a taxpayer's modified adjusted gross income for the tax year does not exceed 200% of the "applicable income threshold," the amount of the required increase to income tax will be reduced, but not below zero, by the "safe harbor amount." For a taxpayer with MAGI for the tax year that exceeds the "applicable income threshold," the safe harbor amount will be reduced by the amount which bears the same ratio to that amount as the excess bears to the applicable income threshold. The "applicable income thresholds" for the safe harbor rule means:

- $60,000 for a joint return or surviving spouse
- $50,000 in the case of a head of household; and
- $40,000 in any other case.

The "safe harbor amount" means, for any tax year:

(1) the product of

(a) $2,000, multiplied by

(b) the excess (if any) of the number of qualified children taken into account in determining the annual advance CTC amount for the taxpayer with respect to months beginning in that tax year, over

(2) the number of qualified children taken into account in determining the credit for the tax year.

Thus, it is $2,000 × the difference, if any, in the number of qualifying children used to determine the advance payment and the number of qualified children used to determine the credit for the tax year. So, applying the safe harbor rules, where a taxpayer receives excess advance payments due to net changes in the number of qualifying children between 2020 (or 2019) and 2021, the taxpayer's repayment obligation will be reduced if the taxpayer has income below the thresholds. There will be no repayment up to $2,000 per qualifying child of the advance credit overpayments they received. Taxpayers with income above the threshold amounts—but below $80,000 for single filers and marrieds-filing-separately, $100,000 for heads-of-households, and $120,000 for joint filers and surviving spouses—will gradually have their safe harbor amount reduced to $0 per qualifying child. Taxpayers with income over $80,000 for single filers and marrieds filing separately, $100,000 for heads of households, and $120,000 for joint filers and surviving spouses, will need to repay the entire amount of the overpayment.

G. Due Diligence

Any person who is a tax return preparer of any return or claim for refund who fails to comply with due diligence requirements imposed by the regulations with regard to determining eligibility to file a CTC or an ACTC, must pay a penalty unless an exception applies under Reg. §1.6695-2(d) does not apply. A tax preparer must meet the due diligence requirements using Form 8867.

H. Conclusion

Practitioners should work with clients to assure the correct amount of CTC will be available for 2021. Additionally, care needs to be taken to determine the extent to which advance payment should be taken during 2021 if there is any change in circumstances.

GROUP STUDY MATERIALS

A. Discussion Problems

Colleen and Jim are married, filed a joint return for 2020 and anticipate doing the same in 2021. They have three children who live with them and whom they fully support. The children are ages 5, 11, and 14. Their MAGI is $180,000. They began receiving advanced child tax credit (CTC) payments in July 2021.

Required:

1) How much will the CTC be for 2021 without considering any reductions?

2) How much will the actual CTC be for 2021?

3) What is the impact of the advance payments?

B. Suggested Answers to Discussion Problems

1) All three children appear to be qualifying children. The age requirement for the 2021 child tax credit is a qualifying child under the age of 18, so all three qualify.

2) For 2021, there is an enhanced CTC of $3,000 for the children 11 and 14. The enhanced credit for the child age 5 is $3,600. There are two phaseouts based on MAGI. The first phaseout is of the enhanced amount for 2021 ($1,000 and $1,600). The next phaseout applies to the regular CTC amount, or $2,000. The increased portion of the CTC ($1,000) is phased out at a rate of $50 for each $1,000 of MAGI over $150,000. $180,000 minus $150,000 = $30,000; $30,000 divided by 1,000 = 30; 30 x $50 = $1,500, resulting in a reduction in the credit of $1,500. That $1,500 reduction amount is then limited to an amount computed as the lesser of (i) the applicable credit increase amount of $3,600 or (ii) 5% of the applicable threshold range—i.e., $12,500 (.05 × $250,000). The remaining $6,000 of CTC will not be reduced because the MAGI is less than $400,000. The amount of the CTC for 2021 is $2,000 per child plus the 2021 additional enhanced amount of $2,100 ($3,600 – $1,500 reduction amount).

3) Colleen and Jim are eligible to receive advance payments of the CTC for the period beginning July 15th until December 31 equal to 50% of the projected CTC. They could opt out on the IRS portal. They will be required to reconcile the actual credit on their return by reducing, but not below zero, the amount of the credit by the advance payment received in 2021.

PART 3. BUSINESS TAXATION

Biden's Green Book

The Green Book is effectively President Biden's wish list for future tax policy to provide funding for his proposed budget. It is a proposal. It is not yet legislation and it is clearly not law. It is an insight into where changes in the tax code might occur. It is important for taxpayers to understand what types of transactions will be impacted if part or all of the Green Book becomes law. Ian Redpath and Ed Renn discuss some items that were included and some that were omitted from Biden's Green Book and how this could impact the economic interests of taxpayers going forward.

Let's join Ian Redpath and Ed Renn as they discuss Biden's Green Book.

Mr. Redpath

Ed, welcome to the program.

Mr. Renn

Great to be here, Ian.

Mr. Redpath

It's great to have you. I've done other things with you over the years, but this is the first time you've been on our program; and our viewers are in for a treat, because you certainly one of the gurus of tax around the country. So, really happy to have you here.

Mr. Renn

Thank you.

Mr. Redpath

We have a lot of proposals. I think, Ed, one of the things people sometimes look at as they go, "Whoa, proposals, why do we even worry about them? I'm not even going to think about those until they actually are passed." And maybe that's something to think about in today's political environment, but I don't know. I think there's so many things going on right now that it's really worth doing some thought and sitting with our clients. What do you think about that?

Mr. Renn

Yes, I think you're right. They're proposals. This isn't law. This isn't something that we actually have to react to. But it's good to know what's out there and the direction that both the income tax and the estate tax provisions of the code are headed. Clients want direction; clients want to not be surprised. And just to make them aware. Some of these topics, I frankly would have been flabbergasted about two years ago, and now they seem almost mainstream. Times have changed, and I think clients want to understand what might affect them in their economic interests going forward.

Mr. Redpath

I think another thing is we don't want our clients to be blindsided either and coming in and say, "Oh my gosh, I heard this passed. What is that going to mean?" Because there are some things here that are going to have a dramatic change. I think some of the things, even though they're proposals, they've been around for a while. For example, with S corporations, and that could change the whole dynamic in using S corporations, eliminate the reason for them. But that proposal is not a new one. That almost made it into law back in 2010. In fact, it was in the bill in the conference, and it got pulled out at the last minute. Some of these things, it's not just that they're proposals. They do have a good chance of getting through at some point.

Mr. Renn

Yes, I think carried interest is another good example of that. I mean, it's been being kicked around for at least a decade, and probably the time is right.

Mr. Redpath

Well, I think everybody realizes—and it doesn't matter which side of the political aisle you're on. I mean, one side wants a little more expense than the other. But nonetheless, I think there is a recognition that, especially after the pandemic, we're kicking the can down the road when it comes to revenue, and there's going to have to be some more revenue. I don't think there's a question on that. How you get it is a political issue, but we'll kind of stay off the politics side of it. Let's start with the individual and a huge issue here with capital gains and how they will be taxed. What's going on with that? Because this is a huge potential change.

Mr. Renn

Yes, I mean the capital gains provisions have taken people by surprise to some extent. Biden had stated during his candidacy while he was running in the Democratic primaries that he was in favor of raising capital gains. He is proposing raising the rate to the top marginal rate, plus the net investment income tax for any individuals that make over $1 million a year. Sounds like a lot of money, but that's going to also pick up the guy that's spent 40 years building up a business and he's going to sell it for a few million dollars. In the year he sells that business, he's going to be in those top brackets. And that lifetime of savings or investment is going to be taxed at 43.4%. That's effectively what it's going to be.

Interestingly, this is the one provision in the Green Book that at least suggests they'd like to make it retroactive. This was announced in May, and it went back to an April 28th date, which actually was the date Biden proposed the American Families Plan Act and came out with about a 15- or 16-page flyer on that. I don't know if we're going to see retroactivity. We've never had a retroactive capital gains tax. I think it's constitutional. I don't think that's the issue. It just somehow seems it doesn't fit with kindergarten fairness. They're trying to front-run the fact that clients will sell everything in anticipation of the changes; and they look back to the '90s when this happened. But that said, they'd raised a heck of a lot of revenue if every client that had an appreciated position decided to cash out before the rates doubled.

I'm not sure that really wouldn't be a better position. Economists argue about what's the best rate of capital gains tax, because at some point clients don't transact, so you don't collect the tax. Certainly, most of the studies would say we're talking about rates that will have people holding indefinitely. But that sort of goes to the other big surprise in the capital gains space and in the Green Book, which is, there's not going to be a step-up on death for a lot of our clients. There's going to be a mark-to-market event if I gift an asset to my children. So those things kind of suggest that you can pay me now by selling the asset, or you can hold it, and you can pay me later. But either way, you're going to pay me.

Mr. Redpath

Ed, you mentioned the rate, but that's another proposal to raise the rate back to the Obama [administration]. But if this proposal comes through, we're still talking about a 37% rate plus the 3.8. So we're still talking about a 40.8. One of the problems is, if we're talking about planning or talking to our clients about their investments, if there is retroactivity, there's nothing we can do. That's a done deal. But I agree with you on that. Really, we've had retroactive provisions. Remember the year that they retroactively changed depreciation, and they did that in July and made it retroactive. Those were all taxpayer-friendly provisions that they were allowed.

I don't see this, as you said, kindergarten fairness to say, "Okay, now we're going to go back, and there's nothing you can do." As you rightly pointed out, the government had a huge inflow of revenue back when the Clinton administration raised the capital gains rates, because people said, "Okay, I'm going to sell." To lead into the next topic, it also, I think, changes investment strategy as does our next topic. It does change people's thoughts on investment strategies. By the way, is this going to apply to dividends also? Because we talked about capital gains.

Mr. Renn

Yes, it is, Ian. It's going to apply to the dividend preference for anybody that makes over $1 million a year. It'll affect them as well.

Mr. Redpath

So, another issue to bring up. We've had a number of major changes over the years. Remember that we did away with estate tax, kind of. And then we retroactively said, "Well, we do have it, but you can elect to have it or not have it in 2010." But we also implemented a carryover basis regime. Now, this is a major change in taxation of gifts and estates. We've always said a gift, you can pay gift tax. But it's excluded by the donee. Inheritances, the recipient gets them tax-free; but there's estate tax, and estate taxes can go up as high as 40%. Now we've got this whole change. And I think people should realize there are other countries, like Canada, that have similar rules to this.

We're not the only country that would have something like this, but it's how you implement it with estate tax. What is the provision that we're looking at? Because, again, I think this is a huge change in our thought process, especially when we're talking to our wealthier clients and talking about, do you hold, do you sell, do you gift, do you keep it to your death? What do you do? What do you invest in? All of this estate planning that we go through tend to be with our older, wealthier clients. What's going on with this?

Mr. Renn

What Biden has proposed is the idea that right now, as you point out, if I make a gift, I give my son $15,000 of stock that I've got a $5,000 basis in, it's not an income tax event. It's a gift, and he takes a carryover basis. And when he sells the asset, he pays the tax. The proposal is… There are exclusions. We'll talk about those, but for the wealthy, if you make that same gift of $15,000 in fair market value, you would trigger a tax on $10,000 or the appreciation in that asset. So, one of the changes is gifting will be a taxable event for income tax purposes even if you have gift tax exemption, or it's an annual exclusion gift, or however you're structuring it. The second thing that's really even more powerful from the IRS's standpoint in terms of raising revenue, and perhaps putting the damper on some planning, is clients are going to have to recognize capital gains on the assets they hold at death.

It's not at all uncommon with very elderly clients, somebody in their late 80s or early 90s, they've got a big concentrated position in something, they've had it for years. Maybe it was the family business and it went public. Maybe it's just something they've had for a long time. It's appreciated very nicely. And nobody even wants to think twice about selling it because there's a huge embedded capital gain. Under the current system, you die, that asset is subject to the estate tax; but the trust or the heirs get it with a stepped-up basis, so they get it at fair market value. So if we started it at zero, they get it, and it's worth 100. They get it with a basis of 100 and $100 of the estate tax. Well, there'd be estate tax on that $100 value, or $40 under the current rates.

So, that's been the trade-off. Now, it's true that Canada has a mark-to-market system, where if you die with a zero basis asset and it's worth $100, you pay capital gains. But what Canada doesn't have is an estate tax behind it. They did very briefly when they brought in the mark-to-market system. It wasn't the national government that had it, but the provinces did. Effectively, within nine months, they all had to jettison the estate tax because it was confiscatory. It really, really takes a big slice of the low-basis asset in this kind of a scenario.

Mr. Redpath

At least, our clients should be aware of this. If this goes through, this is going to be a major sea change. In addition, the proposal is to change how we value. Basically, they want to do away with discounting.

Mr. Renn

Yes. That's absolutely right. They've come right out and said it. I mean, there's a number of ways they could actually go with this, including reviving some of the old regulatory projects that got shelved during Trump. But this clearly just says no discounting in these scenarios. There are some exclusions. This isn't going to apply to everybody. Transfer to a spouse would just take it at carryover basis. Transfers of family-owned businesses or family-operated businesses—and those aren't defined terms yet, but we think we know what they mean—those will take a carryover basis. And there may be security interests and things like that, that the IRS takes in the asset, but that would be postponed as long as the family continued to operate the business.

I don't know what happens if gen two operates it for their entire lifetime, and now it's passing to gen three, but they gave us 140 pages of ideas. And it's going to take a lot more than that to flush it all out. There's a 15-year installment provision that feels a whole lot like 6166 in terms of installments on estate tax. That's available for non-liquid assets. So, I think that would be, you own timberland, or you own a lot of real estate, or you have a closely held business. But they go out of their way to say, "If it's publicly traded, if it's a marketable security or a mutual fund or a bond, that's liquid. You can get rid of that, and you can pay us the tax. So, you're not going to qualify for installment payments there." Again, there will be security provisions, so it's going to be a little complicated, and there's a lot to be written that we don't have yet.

Mr. Redpath

What about this 90-year rule that they're proposing?

Mr. Renn

Well, that was a surprise. The idea there is, families keep assets for a very long time sometimes. My firm does a lot of very high-end estate planning work. And I've had this conversation with a number of my partners. We've really reduced it to a relatively short list of assets. This is going to apply to nice vacation compounds that families have kept in the family for

100 years. It's going to apply, in some cases, to family owned businesses. We think a lot of ranches and farms might be affected by this. And to some extent, collectibles. The Matisse over the fireplace that just goes down through the generations. Very few of our clients have a publicly traded security that they bought and held for 90 years.

Mr. Redpath

It goes back to 1940, right? So it's really not going to kick in until 2030, would be the first time. But essentially what I'm saying is you're going to pay tax on it even if you still hold it.

Mr. Renn

You're going to pay tax on it even though you still hold it. And I guess your basis is whatever the basis was when it went into the trust or the partnership way back when. And it's not real clear who's going to pay it. I mean, what if the only thing in that trust is the vacation compound or the ranch, and it's appreciated 100 or 150 times? I'm not sure where that liquidity is coming from.

Mr. Redpath

I agree. And then we have a million dollar lifetime exclusion, right?

Mr. Renn

Right. Each individual will have a million dollars that they can apply of appreciation against any assets. And that covers an awful lot of people. That avoids the issue that mom and dad bought the house after the Korean War, they bought it in a nice town. The $20,000 house is now an $800,000 house, and the kids are looking at significant appreciation. We won't have that scenario.

Mr. Redpath

The residence [exclusion still applies], right? The 250, 500, that still applies?

Mr. Renn

Yes, and that's actually been broadened. It no longer has to be a principal residence, it can be any residence. So the ski house or the beach house, lake house, they'll all get picked up by that.

Mr. Redpath

There's one interesting one that I think kind of, at first reading it, I slid over it. But this idea of transfers of property into or distributions from a trust, partnership, or other non-corporate entity, we're talking about changing Section 721 and the whole idea of non-taxable contributions, aren't we?

Mr. Renn

Yes. I think this is supposed to be, probably, intended to be aimed only at family entities, the old family limited partnership. But the way it's drafted, it's not limited. And there's nothing that suggests they didn't mean what they said. Which basically is precisely what you said, Ian, that contributions to a partnership are going to be a recognition to them going forward. And I can't believe they really meant that, or want to do that, but it's what it says.

Mr. Redpath

Yes. That is what it says.… So, now let's look at the corporation. Where are the changes there?

Mr. Renn

On the corporate side, there's a lot on the international space. But domestically, we're really looking at a proposal that'll take the 21% corporate rate up to 28%. The likelihood of that happening is probably already dead. It was probably already dead when Biden proposed it, because Manchin had made it very clear that he thought that the corporate tax rates shouldn't be higher than 25%. So, really, that's probably what we'll see. But yes, there's a real possibility that you will see a significant increase in the corporate rate.

Mr. Redpath

[That raises] the age-old question, who pays corporate tax?… Is it the shareholder? Or is this out in space where something called a corporation pays it. But I think what's interesting is if you combine these two proposals, and I'm going to just use the proposals, and you've now got an analysis of the OECD. You see that we will be significantly higher in the tax if you look at the dividends; and combining that with the corporate rate, we will be significantly higher. And I mean significantly higher than any other country in the world.

Mr. Renn

Yes, I mean, just the corporate rate alone, ignore the dividends for a second, would make us probably the second priciest country out there at 28%. If you combine the idea of 43.4% tax on the dividends for folks making over a million bucks, you've got an effective rate north of 58%. That's a lot of tax.

Mr. Redpath

And that's not even looking at state and local taxes that might apply.

Mr. Renn

Correct, yes. Everything is just federal here. Yes, you start to put in the California or New York, and people won't believe you when you tell them how much the government's going to take.

Mr. Redpath

Right, absolutely. It really changed the whole idea of capital, how businesses raise capital. As you said, investment strategies are going to change dramatically. What about carried interest? You mentioned that earlier. Where do we stand on that?

Mr. Renn

We sort of had the first run of carried interest back with TCJA at the end of 2017, where basically everything had to qualify for a three-year holding period. It's funny because the change from capital gains rates to ordinary rates would take away the capital gain preference completely, right? So, effectively, a successful hedge fund or private equity or real estate fund guy would now be paying top rates anyway. But they're going out of their way to make sure they make the legislative change that eliminates carry in case rates come back down. They're just out to say, "Look, in reality, a hedge fund principal is really earning comp when he goes to work and picks stocks and shorts stocks for the portfolio. That's his job, that's his compensation. And why should that be any different than a steamfitter?"

This has been kicked around for a while. This is one of those ones that we've seen a lot of times, and really the surprise is that it wasn't enacted sooner. It's going to be like it finally got its way into a bill. I think this one's going to happen. I represent a lot of hedge fund, private equity, and real estate families. They're not happy about it, but I unfortunately think, politically, this one's going to happen.

Mr. Redpath

Yes. I would agree with you on that. For some reason, the government has gone after like-kind exchanges. First they said, "Okay, well now it only applies to real estate." And now the Biden proposal is to eliminate it for a lot of people. In fact, at least in my experience, any like-kind exchange that I have done is not going to get like-kind treatment. What's the proposal?

Mr. Renn

The proposal is that you wouldn't get like-kind treatment for anything that had more than $500,000 of appreciation in it. So, realistically, a married couple can get a million dollars, but I'm with you. Most of my clients that are doing these exchanges are doing bigger exchanges. A lot of times I'm talking to somebody in their 70s or 80s, and they're on 1031, 6, or 7. And it's not because they really want to do it, but they think that they've got the optimal price for the property they have now, and they don't want to recognize all those gains. So, it really has been a defer, defer, defer. And when you die, you get the step-up, you pay the estate tax, and away you go.

And, effectively, you have escaped the capital gains tax. But, when you talk to real estate families, this is very important. This is part of the reason why they're able to do new projects and why they're willing to take new projects on and redevelop structures that need work and that kind of thing. Again, unfortunately I think this one, because it's such a small slice, they may be able to sell it politically; but I'm not sure it's really the best thing for commercial real estate.

Mr. Redpath

I agree with you. Even to do the small business that exchanged their photocopy machine for a new photocopy machine. What if you took that away and said, "Wait a second?" That's not a like-kind exchange anymore. Just things like that. Your delivery truck, and you've got a new delivery truck, that was no longer. I thought that was kind of foolish to do. I didn't see the great savings and revenue to the government, but okay. But, now to do this? Essentially, they might as well eliminate it, because, as you said, most like-kind exchanges are above those levels.

The next one, proposal, I do see this happening. I know the IRS estimates that they lose 10.8 billion, with a B, billion dollars a year in self-employment tax because of the S corps. We know that the major reason you do an S corp today, and that's a major reason people for legal reasons, for protections, and differences will do an LLC, and then check the box to be a corporation and elect S is this self-employment tax. This is a provision to eliminate it. Where do we stand on that?

Mr. Renn

When you look at this in the light of day and you say partners pay it, LLC members pay it, employees pay it, it's a little hard to justify it. I think if they're able to get anything to move, this provision is probably going to be there. And you're right, Ian. Clients love the idea that I got paid reasonable comp and we're never quite sure what that is. But once they've been paid reasonable comp, the rest of the distributions out of the S corp haven't been attracting a 12.4% tax. And that's going to change.

One of Biden's proposals is to have that OASDI kick back in after taxable wage base, about $143,000 now. He was going to have it kick back in when you got to $400,000. So, there'd be a donut hole of about $260,000 where you didn't pay any OASDI tax, and then it would kick back in at $400,000. Frankly, for a lot of self-employed individuals, for partners, or even executives only paying half of the cost, it's going to be a huge number. It's going to be much more significant than the move from 37% to 39.6%.

Mr. Redpath

And that's double tax. So you're getting hit at the higher rate and with this. You're right. I'm going to put it this way, there's an appetite in Congress for money. We know the Social Security system is nearly broke. We know that Medicare has significant problems. How are you going to fund all these things? The population base is getting older. The people who are going on are significantly more people. And if you go back, I think, when social security was first established, it was something like 16 workers for every retired person. Now it's down, I think, to two or three at most. So, how do you afford this?

I remember Patrick Moynihan, the famous Senator from New York. I think this was probably in the '60s or '70s when he proposed this has got to go on a pay-as-you-go. It's not sustainable. I think we found that, so I think both sides of the aisle understand that. How many years in elections have we heard? I remember Al Gore and his famous lockbox and all of these. We've talked about this over the years on both sides. We've got to do it; but, as I say, it's the third rail of politics. Nobody has wanted to touch it, but something's got to be done.

Mr. Renn

Yes, I think as long as the Social Security revenues go to the Social Security program, it's probably something we have to do. We've got, what, a runway of 9, 10 years now while we're still solvent. And after that, who knows what's going to happen? I think, again, this one isn't a surprise. Now, that OASDI and over for $400,000 is not part of this proposal, but it's something that Biden's proposed before. But the S corp clearly is part of this proposal, and is probably… If any of this moves, it's likely to happen.

Mr. Redpath

Yes, as I said, we've had those proposals coming in the House Ways and Means Committee for a number of years. And that's under Republican and Democratic. It made it into the conference bill initially in 2010. This was the one Obama signed on, I believe, December 28th; but it got taken out at the last minute. It was interesting, because they took it out because of the wording. As Congress can do, it was screwy, and it had aggregation rules. It was interesting because the IRS said it didn't go far enough, and the AICPA said it went too far. They had opposite views as to why it should be pulled out. But bottom line was, they pulled it out. But, again, I agree with you.

Then lastly, and as you said, there are a number of provisions on international, but most of our viewers are not in areas doing international that would be affected by these provisions. Cryptocurrency. We know the IRS has said it's property, but then they said it's not subject to FBAR reporting. And we've gone through all of these things. Then, all of a sudden, right at the top of the 1040, you got a question about that. Clearly, the IRS is going after this. What's the proposal on cryptocurrency?

Mr. Renn

The proposal on crypto is actually the issue, a ton more of regulation. Which, frankly, I'd be happy to see, because I think there's more unanswered questions in the crypto space than answered questions right now. And, as you point out, it's not a currency. It's a thing, and clients are trying to figure out what to do with it. I think part of the reaction to all of this is the fact that crypto is seen as that asset that just goes into a black hole, that has no reporting, that nobody can really account for. I really love the idea that if I forget my password, I lose my account.

Mr. Redpath

Most people have no idea of things like, what is mining? What does mining cryptocurrency mean? You've got all of these terms in there that people don't quite understand.… This has tax result, this doesn't.

There's a whole misunderstanding.… Some businesses now, especially in the gig economy, people are saying, "I want to be paid in cryptocurrency." Recently, you had an NFL player for the Carolina Panthers who said, "I want half of my salary in cryptocurrency." And the NFL Players Association and the NFL went along with it. So, he's going to get half. Now, there apparently is a rush to do it. The NBA players now, some of them, have said, "We want to be paid part of our salary in cryptocurrency." So, this is a movement in professional athletics. Somebody advised them. Now, all of a sudden, we want part of our payment in cryptocurrency. It's becoming, not just an issue that some people were involved with, but it's becoming more mainstream.

Mr. Renn

Yes, definitely. The one thing that's really kind of surprising in the regulations is it sounds like the IRS is wise to the fact that most of these exchanges in most of these mining sites are not necessarily in the United States. And they want a FATCA-like requirement on these offshore exchanges. I don't quite understand how they're going to enforce that, but it's certainly out there. And, I do think they do need to regulate this stuff, because an awful lot of it is tied to illicit gains. It is tied to terrorism. It is tied to things that… I think everybody's entitled to their privacy, but on some level, the way crypto has been used, it is a little bit of a scary asset.

Mr. Redpath

Yes. I think you're right. And, Ed, there's a number of provisions. Some of them I'm not sure will ever go through internationally. I don't see every country agreeing, even in the G7, I don't see them agreeing to a minimum tax. Everybody wants to have a lower tax so businesses come there. Are there any particular provisions internationally that you think that our average viewer should be aware of?

Mr. Renn

If they're impacted by GILTI, basically, rates are going to double. There are proposals to have tax credits to bring jobs back onshore. Not a lot of details on how those are going to work. In terms of credits, there's a lot of new credits for alternative energy in the Green Book, and basically 13 different things that impact existing oil and gas companies that they're going to lose, in terms of depreciation, credits, preferences. Clearly, if you read the Green Book, we're moving to a solar wind-driven electric network rather than the oil and gas networks that most of us have grown up with. Certainly, coal is unthinkable.

Mr. Redpath

I think the point is that, yes, these are proposals. Some of these proposals, as we pointed out, have some bipartisan support. When we talk about planning, I think we should at least be aware and track these, because it will have some major impact going forward. So, it's not something just wait and see what happens. Especially with the two majors for individual, I think the capital gains/dividend rates and the gift and estate tax, the changing of the rules there, that is really significant. And on the corporate side, that S corp, really a significant change.

Mr. Renn

Ian, I think it's as important to point out to our viewers what isn't in the Green Book, as what is there. Right up until the 11th hour, and the 59th minute, and, I think, about the 58th second, we thought we were going to get the estate tax rate increased from 40 to 45%. And we thought Biden was going to bring the exemption down from the $11.7 to $3.5 million per U.S. person. That didn't happen. So, as we sit here today, if your clients are wealthy enough, and they have their exemption, and they haven't used it, or if they haven't used all of it, it's probably a good thing to think about whether or not they should be doing some planning in 2021. Can't promise that nothing retroactive is going to happen, but it doesn't seem all that likely.

The second thing that wasn't in the Green Book that we expected to be there was basically an attack on 199A. And they left that alone. I don't quite understand why, but they left it alone. So, that's still out there. In some cases, you'll look at what's there and you'll look… Now that doesn't mean that some congressmen or some senator isn't going to say, "Hey, this is a way we can raise $200 billion, let's throw it in." Because this is just a proposal. This is just something to tee up some bills that have already really morphed since the Green Book came along. But what's not there is as interesting as what's there.

Mr. Redpath

I can think of two people right off the top of my head that are somewhat influential, Chuck Schumer and Nancy Pelosi. And what wasn't in here was getting rid of the SALT limitation. Everybody expected that. And if you live in New York, California, Connecticut, New Jersey, that SALT limitation is a big issue.

Mr. Renn

It's huge.

Mr. Redpath

Everybody expected that was going to be, if nothing else, at least raised significantly. That wasn't there. And, as you mentioned earlier, the $400,000 donut hole, where then the FICA and self-employment tax would kick back in—that was not in there. It's good to see some of the things that weren't. They may be reinstated if a bill ever comes through.

Ed, I want to thank you very much for your insight. I think it's very important that we be aware of all of these things that are going on, because certainly some of these, certainly not all of them, but some of these are definitely going to pass. Again, Ed, thanks for your insight. Appreciate it. We'll have you soon on another program.

Mr. Renn

Thanks for having me, Ian.

Mr. Redpath

Thank you.

Biden's Tax Policy Proposal (Green Book)

By Ian J. Redpath, JD, LLM

A. Introduction

The Green Book is a wish list of President Biden's future tax policy. Much of it is related to funding the proposed budget. It must be remembered that it is a proposal. However, it provides an insight into where changes in the tax code might occur. Practitioners need to be cognizant of these possible changes, many of which will become part of the law, even if in a modified form. This is a highlight of provisions that could have a serious impact on many of our clients. While much of the Green Book has been mentioned in broad terms by the administration, it does contain some surprises.

While what is in the Green Book is important, it is also important to look at what was not included in the proposal. For example, there is no discussion of estate tax increases, or limiting the qualified business income deduction under §199A for owners of pass-through entities. It also omits the controversial proposal to the OASDI portion of Social Security (6.2%) on wages or self-employment income at or above a $400,000 threshold. One important proposal to many was the repeal of the SALT limitation on the deduction of state and local taxes. This was also not included in the proposal.

B. Individual Tax Changes

1. Individual Income Tax Rates

The top marginal individual income tax rate would be raised to 39.6% from 37%. There would also be rate compression. Beginning in 2022, the top marginal rate would apply to taxable income in excess of $509,300 for married couples filing jointly (as opposed to $628,300 in 2021), $452,700 for single taxpayers (as opposed to $523,600 in 2021), $481,000 for head of household filers (as opposed to $523,600 in 2021), and $254,650 for married individuals filing separately (as opposed to $314,000 in 2021). This would be effective for tax years beginning after December 31, 2021 and the thresholds indexed for inflation after 2022.

2. Capital Gains Tax/Qualified Dividends

The tax on long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be the same as the ordinary income tax rate (37% in 2021 and 39% in 2022). The $1 million dollar threshold will be indexed for inflation after 2022. The 3.8% tax on net investment income (NIIT) would still apply. The capital gains rate increases are proposed to be retroactive to April 28, 2021, the date President Biden announced the American Families Plan.

For taxpayers with adjusted gross income over $1 million in 2021, the long-term capital gains tax rate for gains arising on or after April 28 would be 40.8%, with the 3.8% NIIT. The U.S. has never had a retroactive capital gains rate hike.

Example: Jane earns $900,000 in salary and $200,000 in long-term capital gains in 2021. $100,000 of capital gain would be taxed at the current capital gain rate (20%), and $100,000 would be taxed at ordinary income tax rates; not the full $200,000.

3. Gifts and Transfers at Death

The proposal is to treat transfers of appreciated property by gift or at death as realization events, thus triggering recognition for tax on the capital gain at the time of transfer or death on the appreciation of the asset. There are some exclusions. The "step-up" of basis at death is largely eliminated for wealthy taxpayers and would be limited to the exclusions provided. With respect to transfers at death, the decedent's capital losses and carryforwards could be used to offset capital gains income and up to $3,000 of ordinary income on the decedent's final income tax return. Additionally, the decedent's estate would be allowed a corresponding deduction for any tax levied on gains deemed realized at death on the decedent's estate tax return if the decedent has a taxable estate.

Example: Tomas has an asset with basis of \$0 and a fair market value of \$100 at date of death in 2022. Assume Tomas has used up his \$1 million of exclusion during his lifetime.

\$100 (Gain)

X 43.4% (Tax rate)

\$43.40 Capital Gains tax

The \$43.40 of tax apparently would be subtracted from the \$100 fair market value of the asset to calculate the estate tax.

\$100 (Fair market value)

- \$43.40 (Capital gains tax)

\$56.60 (Value subject to estate tax)

\$56.60

X 40% (Current estate tax rate)

\$22.64 Estate tax

\$43.40 (Capital gains tax)

+\$22.64 (Estate tax)

\$66.04 Total Tax

\$33.96 Value left for heirs

This does not include any state taxes that might apply. The proposal would be effective for gains on property transferred by gift or at death after December 31, 2021.

The proposal provides for certain exclusions from the capital gain recognition:

i) Marital Exclusion

Transfers by gift or at death to the U.S. spouse of the decedent would carry over the decedent's basis in the property transferred, and no tax event would be triggered. The capital gain would not be recognized until the surviving U.S. spouse dies or disposes of the asset.

ii) Charitable Exclusion

The capital gains tax would not be imposed on appreciated property transferred to a qualified charity. However, the transfer of appreciated property to a split-interest trust, such as a charitable remainder trust (CRT), would be excluded only to the extent of the charity's share of the gain based on the charity's proportional share of the value transferred. The balance is taxable. While the term "charity" is not mentioned, presumably it will be the same as §501(c)(3).

iii) \$1,000,000 Lifetime Exclusion

The Green Book provides a **\$1 million per-person exclusion** from recognition of unrealized capital gains on property transferred by gift or at death. The individual exclusion would be indexed for inflation after 2022 and would be **portable to the surviving spouse.** The result is a combined \$2 million exclusion per married couple. This exclusion will require planning on when to apply the exclusion and to what property transfers as there could be significant tax differences based on the timing. Here are three possible scenarios:

- Use of Exclusion on Transfer of Property at Death: The decedent's estate would not be taxed on appreciation of up to \$1 million, and the recipient's basis in property received by transfer at death of the decedent would be the property's fair market value at time of death. Result: no tax, basis equal to fair market value.
- Use of Exclusion on Gifted Property: The donor would not pay any tax on the \$1 million of appreciation, and the donee's basis in property received by gift during the donor's life would be the donor's basis at the time of transfer if the property is shielded by the donor's exclusion amount. The recipient would pay capital gains tax on the carried over basis upon eventual disposition of the property. Result: carryover basis, no tax
- Property Not Sheltered by the Donor's Exclusion Amount: The donor or decedent's estate would pay capital gains tax on any unrealized appreciation and the recipient's basis in property received by gift or by death would be the property's fair market value at the time of transfer,. Result: tax, basis equal to fair market value.

iv) Exclusion for Tangible Personal Property and \$250,000 Exclusion on Personal Residences

The proposal would also exclude from tax any gain on tangible personal property (i.e. household furniture and personal items other than collectibles).

Additionally, the §121 $250,000 per-person exclusion for gain on a principal residence would be expanded to cover all residences and would be portable to a surviving spouse. This would effectively create a $500,000 exclusion for appreciation attributable to all residences for a married couple.

v) Other Provisions

Transfers related to small businesses would defer the payment of tax on the unrealized appreciation of certain family owned and operated businesses on death until the business is sold or ceases to be family owned and operated. Security and reporting to protect the IRS would be necessary.

One issue is the payment of tax when there is illiquid appreciated property transferred at death. The proposal would allow a 15-year fixed-rate payment plan for the imposed tax. This would likely be similar to the rules of §6166. Transferred liquid assets such as publicly traded securities, would not qualify for the 15-year payment plan. The proposal would also authorize the IRS to require and obtain security at any time where security is reasonably necessitated by the deferral of payment.

A highly controversial provision in the Green Book is the recognition of gain on property held by a trust, partnership, or other noncorporate entity, with unrealized appreciation if that property has not been the subject of a recognition event within the preceding 90 years. The assessment period would be set back to January 1, 1940, which means the first possible recognition event for any taxpayer would be December 31, 2030. Family owned businesses, art, farms, ranches, or vacation homes that have been held by the same entity for multiple generations would face imposition of capital gains tax on 90 years of unrealized appreciation as soon as 2030 if this Green Book proposal is enacted into law.

The current exclusion under §1202 of capital gain on specified small business stock would remain under the Green Book.

Discounting would be eliminated under the proposal. A transferred partial interest would be valued at its proportional share of the fair market value of the entire asset. The IRS would be given very broad authority to draft regulations in this area.

4. Transfers to Trusts, Partnerships, and Other Noncorporate Entities Trigger Capital Gain on Appreciation

Another proposal that could significantly change long-standing tax policy and law is the proposal to tax transfers of property into, and distributions in kind from, a trust, partnership, or other noncorporate entity, except a grantor trust deemed wholly owned and revocable by the grantor. While perhaps meant to target only "Family Partnerships," on its face, this Green Book proposal is not limited to them and would be a major change to taxation of partnerships on contributions §721 and §731.

For revocable grantor trusts, the deemed owner would recognize gain on the unrealized appreciation of any property distributed from the trust to any beneficiary other than the deemed owner or a U.S. spouse.

The proposal would be effective for gains on property transferred to trusts, partnerships, and other noncorporate entities on or after January 1, 2022.

C. Corporate Provisions

1. Changes to Corporate Income Tax Rate

The Green Book proposes to increase the income tax rate applicable to C corporations from 21% to 28%. When the TCJA lowered the corporate tax rate to 21%, it increased the parity between the overall effective tax rate that applied to ordinary income earned by a pass-through entity and ordinary income earned by corporations when considering both the 21% corporate income tax rate and the tax on dividend distributions to shareholders. Now, the proposed increase to the corporate rate coincides with a Green Book proposal to raise the tax on qualified dividends to 40.8% in 2021 for those with AGI in excess of $1 million. This could result in a federal effective income tax rate of 58.2% on income earned by a C corporation and paid out as qualified dividends. If the proposal is enacted, pass-through entities may again offer a significantly lower overall effective tax rate as compared to C corporations. It should also be noted that, according to OECD data, this would make the U.S. the highest tax jurisdiction in the world for corporations. This proposal would be effective for taxable years beginning after December 31, 2021. For corporations with tax years that begin after January 1, 2021, the increase in the corporate tax rate would be phased in by applying the increased rate to the portion of the tax year that occurs in 2022. Therefore, for 2021 fiscal years, there will be a need to bifurcate the income between periods before and after January 1, 2022.

2. Carried Interests

There has been a lot of controversy for many years over the treatment of "carried interest" for hedge fund, private equity, and real estate principals. Typically, they receive "carried interests" in the funds they manage as an equity component of their compensation. Under §1061, the manager's share of profits attributable to a carried interest can, and typically does, include long-term capital gains and qualified dividends which are taxed at preferential long-term capital gains rates as compared to compensation income taxed at ordinary income rates. Sales of carried interests also generate capital gains and not compensation income. In addition, allocated capital gains and qualified dividends are not subject to self-employment taxes, but are subject to the 3.8% NIIT. The TCJA modified the rules by providing for long-term capital gains treatment only for fund assets held for more than three years rather than one year.

Under the Green Book proposal, a manager's share of fund income attributed to a carried interest would be taxed as ordinary income regardless of the character, if the manager's income from all sources exceeds $400,000. In addition, all Investment Services Partnership Income (ISPI) allocated to a manager would be subject to self-employment taxes, and gain from the sale of an ISPI by a manager would also be taxed as ordinary income. Income and gain from interests held by managers attributed to contributed capital are treated similarly to interests of other partners who invested capital in the fund and would not be subject to reclassification.

The proposal includes anti-abuse language intended to prevent circumvention of the new rules through compensation arrangements other than carried interests (such as convertible debt, options, or derivatives). The changes, if adopted, would be effective for tax years beginning after December 31, 2021. It should be noted that even if the proposal is not enacted, if the proposed change in the capital gains rate to 37% for taxpayers with AGI of over $1,000,000 occurs, it would largely capture the intent of the proposal, except as to taxpayers earning between $400,000 and $1,000,000.

3. Tax-Free Exchanges under §1031

Gain on the sale or exchange of real property used in a trade or business or held for investment can be deferred if exchanged for property of a "like kind" in a transaction meeting the requirements of IRS §1031. Generally, deferral is accomplished by assigning the tax basis of the property relinquished to the replacement property received. Application of IRS §1031 would be limited under the Green Book proposal to **$500,000 of annual gain deferral per taxpayer** for eligible like kind real estate exchanges and sales. Currently, most §1031 transactions exceed the $500,000 limit. The proposal would be effective for exchanges completed in taxable years beginning after December 31, 2021.

4. Make the Excess Business Loss Limitation of Noncorporate Taxpayers Permanent

Section 461(l), excess business loss limitation, was part of the TCJA effective 2018. It has a "sunset" in 2026. The provision limits the losses from noncorporate businesses that can be taken against other income of a taxpayer. A married taxpayer filing jointly can use no more than $500,000 of losses to offset income from other businesses in a given year. It is $250,000 for others. The CARES Act suspended the limitation for 2018, 2019, and 2020 tax years. It also increased the ability to take net operating losses (NOLs). The American Rescue Plan extended the sunset by one year to 2027. The Green Book would make the excess loss limitation permanent.

5. Self-Employment Taxes and S Corporation Shareholders

One of the driving forces for an S corporation as a choice of entity is that the net earnings from an S corporation are not considered net earnings from self-employment and thus not subject to SECA. Partners, members of an LLC taxed as a partnership, and sole proprietors do not enjoy this same advantage. Under current law, they generally pay SECA on the full amount of their net trade or business income subject to certain exceptions. For an S corporation, traditionally, the owner-employee is paid a low, but reasonable, salary which is subject to FICA as wages. The non-wage distributions to S corporation shareholders are not subject to FICA or SECA taxes. The Green Book attempts to limit this advantage for S corporations and apply SECA tax to all ordinary business income of active shareholders of S corporations who have AGI from all sources of $400,000 or more per year. The Green Book would effectively treat those S corporation shareholders like active partners and eliminate a primary advantage of S corporation status for high earners.

6. Cryptocurrency Reporting

Cryptocurrency has been a matter of great concern for the IRS. They believe that, not only is there abuse and tax evasion going on, but it may be being used for many questionable and illegal purposes. It is for that reason that they moved a question on cryptocurrency to the front of the Form 1040 in 2020 and have announced they intend to expand reporting. For U.S. tax purposes, cryptocurrency is currently treated as "property," and the use of cryptocurrency and other virtual currencies to pay for goods or services, on conversion to legal tender, or in exchange for other virtual currencies or investments, can result in a taxable transaction and required income tax reporting. [See IRS Notice 2014-21 and Revenue Ruling 2019-24.]

The U.S. Treasury views the use of cryptocurrency as posing a significant risk of tax evasion because of its digital nature and the ease of using offshore crypto exchanges not subject to IRS reporting. To combat the potential for tax evasion, the Green Book proposes to expand the scope of reporting by cryptocurrency brokers both within the U.S. and in foreign jurisdictions with information sharing/exchange agreements with the U.S. The proposal would require brokers to report gross proceeds from cryptocurrency transactions in addition to other information the Secretary of the Treasury may require. Further, brokers would be required to report beneficial ownership of entities holding cryptocurrency accounts. These proposals supplement those made in The American Families Plan Tax Compliance Agenda issued May 20, 2021, which calls for businesses to report the receipt of crypto assets with a value of more than $10,000. The expanded reporting requirements would be effective for tax returns required to be filed after December 31, 2022.

D. International Business Taxes

There are a number of provisions aimed at international businesses, primarily large corporations. Included in those provisions are:

- a global minimum;
- repeal of the qualified business income asset exception;
- repeal of the foreign derived intangible income deduction;
- impose strict limitations on the ability of U.S. corporations to do inversions; and
- replace the base erosion anti-abuse tax (BEAT) with SHIELD.

E. Conclusion

It is important to remember that these proposals are not yet law, and may evolve substantially or disappear before any bill is passed. There are, however, significant tax changes for both individuals and corporations to be considered. Further, if clients are engaged internationally, the proposals, if enacted, could result in significantly higher taxes.

GROUP STUDY MATERIALS

A. Discussion Problems

Your client, Sarah Rose, came into your office to discuss both estate and income tax planning. She is single and currently has an annual income in excess of $1 million dollars. She is considering combining one of her sole proprietorships with another person's business and setting up an LLC to be taxed as a partnership.

Required:

1) Discuss with her the Biden proposals on capital gains and qualified dividends.

2) Discuss with her the Biden proposals on gift and estate transfers.

3) Discuss how the Biden proposals could affect her if she contributes property to the proposed LLC.

B. Suggested Answers to Discussion Problems

1) The Biden proposal is to eliminate the tax favorable rates applicable to qualified dividends and long-term capital gains. They would be subject to tax the same as ordinary income for her since she has income in excess of $1 million. For 2021, the tax would be at 37% and, if the NIIT applies, 40.8%. If the proposals for higher rates on ordinary income are passed in 2022, it would be 39%/42.8%. It should be noted that the current proposal is to apply the change for capital gains and qualified dividends retroactively.

2) Beginning in 2022, the Biden proposal would make gifts and transfers at death realization events for tax purposes, like a sale of the assets at FMV. There is a $1 million life-time exclusion proposed as well as retaining exclusions like the contributions to charity.

3) The Biden proposal would make property contributions to a partnership or LLC taxed as a partnership a taxable event rather than tax free. In addition, the proposal would make distributions of appreciated property a taxable event.

GLOSSARY OF KEY TERMS

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)—H.R. 748, also known as the CARES Act, is the third coronavirus relief package and was signed into law on March 27, 2020. This bill had bipartisan support in both the Senate and House and contains both tax and non-tax provisions applicable to individuals and businesses.

Phishing—Phishing is the fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.

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.

Tax Cuts and Jobs Act (TCJA)—Public Law No. 115-97, an act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, was signed into law by President Trump on December 22, 2017. Although not the official name for the new legislation, it is most commonly referred to as the Tax Cuts and Jobs Act (TCJA).

Vishing—Vishing is the fraudulent practice of making phone calls or leaving voice messages purporting to be from reputable companies in order to induce individuals to reveal personal information, such as bank details and credit card numbers.

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

CUMULATIVE INDEX 2021

BY TOPIC

BY CITATION

BY SPEAKER

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

1. According to Ian Redpath, which of the following details procedures for taxpayers dealing with a 2018, 2019, or 2020 farming net operating loss?

   A. Green Book
   B. IR-2021-143
   C. Notice 2021-39
   D. Revenue Procedure 2021-14

2. According to Ian Redpath, which of the following addresses transition relief from penalties for incorrect or incomplete reporting on Schedules K-2 and K-3?

   A. IR-2021-142
   B. IR-2021-143
   C. Notice 2021-39
   D. Revenue Procedure 2021-14

3. According to Ian Redpath, which of the following indicates the IRS has extended earlier guidance on employer leave-sharing programs designed to aid victims of the COVID-19 pandemic?

   A. IR-2021-142
   B. IR-2021-143
   C. Notice 2021-39
   D. Revenue Procedure 2021-14

4. According to Ian Redpath, which of the following is a type of voicemail scam the IRS warns about in their recently issued "Dirty Dozen?"

   A. Phishing
   B. Ransomware
   C. Targeted spear phishing
   D. Vishing

5. According to Ian Redpath, which of the following is ***not*** included in the illegal tax shelter category in the IRS's recently issued "Dirty Dozen?"
   A. Improperly monetizing installment sales
   B. Syndicated conservation easement
   C. Unemployment fraud
   D. Use of a U.S.-Malta Tax Treaty

Continued on next page

6. According to Ian Redpath and Julie Welch, what is the maximum 2021 child tax credit for a qualifying child born in December 2021?

   A. $300
   B. $2,000
   C. $3,000
   D. $3,600

7. According to Ian Redpath and Julie Welch, what is the maximum 2021 child tax credit for a qualifying child who is 6 years old at the end of 2021?

   A. $300
   B. $2,000
   C. $3,000
   D. $3,600

8. According to Ian Redpath and Julie Welch, what is the maximum 2022 child tax credit for a qualifying child who is 6 years old at the end of 2022?

   A. $300
   B. $2,000
   C. $3,000
   D. $3,600

9. According to Ian Redpath and Julie Welch, what is the maximum 2021 child tax credit for a qualifying child who is 18 years old at the end of 2021?

   A. $0
   B. $2,000
   C. $3,000
   D. $3,600

10. According to Ian Redpath and Julie Welch, what is the maximum 2021 monthly child tax credit advance payment for a qualifying child who is 5 years old at the end of 2021?

    A. $0
    B. $250
    C. $300
    D. $3,600

Continued on next page

11. According to Ian Redpath and Ed Renn, which of the following statements is correct regarding all of the proposals in Biden's Green Book?

    A. They are retroactively effective as of January 1, 2020.
    B. They are retroactively effective as of January 1, 2021.
    C. They will be effective January 1, 2022.
    D. Some of the proposals may never become effective, and if they do, they most likely will have varied effective dates rather than one date for all of the proposals.

12. According to Ian Redpath and Ed Renn, if the 90-year rule becomes law as proposed, tax would first have to be paid for what year on affected assets?

    A. 2021
    B. 2025
    C. 2030
    D. 2040

13. According to Ian Redpath and Ed Renn, which of the following is proposed in the Green Book relative to self-employment tax?

    A. Certain taxpayers must start paying self-employment tax on C corporation distributions.
    B. Certain taxpayers must start paying self-employment tax on partnership distributions.
    C. Certain taxpayers must start paying self-employment tax on S corporation net earnings.
    D. Certain taxpayers must start paying self-employment tax on W-2 wages.

14. According to Ian Redpath and Ed Renn, which of the following is one of the proposals outlined in the Green Book?

    A. Increase in capital gains tax rate
    B. Increase in estate tax rate
    C. Limitation of QBID deduction for pass-through entities
    D. Repeal of the SALT limitation

15. According to Ian Redpath and Ed Renn, which of the following is proposed in the Green Book regarding cryptocurrency?

    A. Eliminate cryptocurrency transactions.
    B. Require more reporting.
    C. Reclassify it as currency.
    D. Reclassify it as an intangible asset.

CPE Network®
Tax Report
Volume 34, Issue 7 **August 2021**

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 2021 **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	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Child Tax Credit	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Biden's Green Book	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

Which segments of the August 2021 issue of **CPE Network® Tax Report** did you like the most, and why?

____

____

____

____

Which segments of the August 2021 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 2021 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5 highest):

	Overall	**Knowledge of Topic**	**Presentation Skills**
Ian Redpath	|______|	|______|	|______|
Julie Welch	|______|	|______|	|______|
Ed Renn	|______|	|______|	|______|

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 ☐ ____________________

Specific Comments: ____

____

Name/Company ____

Address ____

City/State/Zip ____

Email ____

Once Again, Thank You…
Your Input Can Have a Direct Influence on Future Issues!

CPE Network®

CPE Group Attendance Sheet

Firm/Company Name: ____________________

Account #: ____________________

Location: ____________________

Program Title: CPE Network Tax Report, August 2021 Date: __________

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

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

Instructor Name: ____________________ Date: __________

E-mail address: ____________________

License State and Number: ____________________

CHECKPOINT LEARNING NETWORK

CPE NETWORK®
USER GUIDE

Group Live CPE Credit (Sponsored by "Checkpoint Learning Network")

Promotional Information:
CPE Program Sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. If you are delivering this course within your firm, you should complete the following table and circulate it to attendees prior to the classroom course delivery. Refer to the executive summary for certain information noted below. Be sure to include the completed sheet when you request certificates for this event.

Title of Course (Enter full title)	
Date of Class (MM/DD/YYYY)	
Time (Enter time of class)	
Location (Enter location of class)	
Learning Objectives (Refer to executive summary)	
Program Description (Refer to executive summary)	
Instructional delivery method	Group Live
Recommended CPE credit	3.0 Credits
Recommended field of study(ies) (Refer to executive summary)	
Program Level	Update
Prerequisites (Circle One)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
	• Basic Governmental professional experience
Advance preparation	None required
Course registration and, where applicable, attendance requirements (1)	

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

Determining CPE Credit Increments

Group study sessions 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. Discussion leaders must monitor the program length and the participants' attendance in order to request the appropriate numberof CPE credits.

Note: All Network CPE products are developed and intended to be delivered as 3 CPE credits.*

Monitoring 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 CPE group attendance 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 sign the CPE group attendance sheet at the beginning and sign out at the end of the session. If a participant arrives late and/or leaves early, the hours actual hours they attended should be documented on the sign-in sheet and should be reflected on the participant's CPE certificate.

***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 designed by Checkpoint Learning Network. After November 1, 2018, Checkpoint Learning Network will no longer 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).

Note that Checkpoint Learning CPE Network can still be tailored by firms to smaller courses (e.g., 1 credit or 2 credit deliveries); however, when this is done, "Checkpoint Learning Network" cannot act as the sponsor and will not issue certificates of completions to participants. If a firm wishes to tailor (i.e., shorten. lengthen, and/or adjust field(s) of study), the firm delivering the tailored content must become the sponsor and that firm's name and sponsor identification number must appear on the certificates of completion. In these cases, there is no need to send attendance sheets back to Checkpoint Learning Network. If attendance sheets are submitted to Checkpoint Learning Network for modified deliveries as noted above (not withstanding late arrivals and early departures), the attendance sheets will be returned to you.

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 print materials are used, the user should read the materials, watch the DVD, 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 study documentation is received (and providing the course is delivered as 3 CPE credits). The certificate of completions should 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

NASBA requires the group study session to include a means for evaluating quality. At the conclusion of the group live session, evaluations should be distributed and collected from participants and sent to Checkpoint Learning Network along with the other course materials. 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

Copyrighted Materials

The 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.

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/

Request Participant CPE Certificates

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

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

Email: CPLgrading@thomsonreuters.com

Fax: 888.286.9070

Before sending your package to Thomson Reuters, please be sure to include the following:

___ Promotional Sheet (completed)

___ Group Attendance Sheets (indicating any late arrivals and/or early departures)

___ Subscriber Survey Evaluation Forms

___ Name, title, and credentials of discussion leader(s) entered at the bottom of Group Attendance Sheet

CPE Network Self-Study Options

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

Best Practices Via Teams/Zoom

With the events surrounding the coronavirus many groups are unable to meet in person. Playing the video via Teams/Zoom or other conferencing software is one means of viewing the video. While the video from the Checkpoint Learning online accounts can be played through Teams/Zoom, the user experience will be better if the video files are shared via the desktop, which can be accomplished by copying the files from the DVD to the desktop and then sharing. Please note to enable viewers to hear the video being played follow the below instructions.

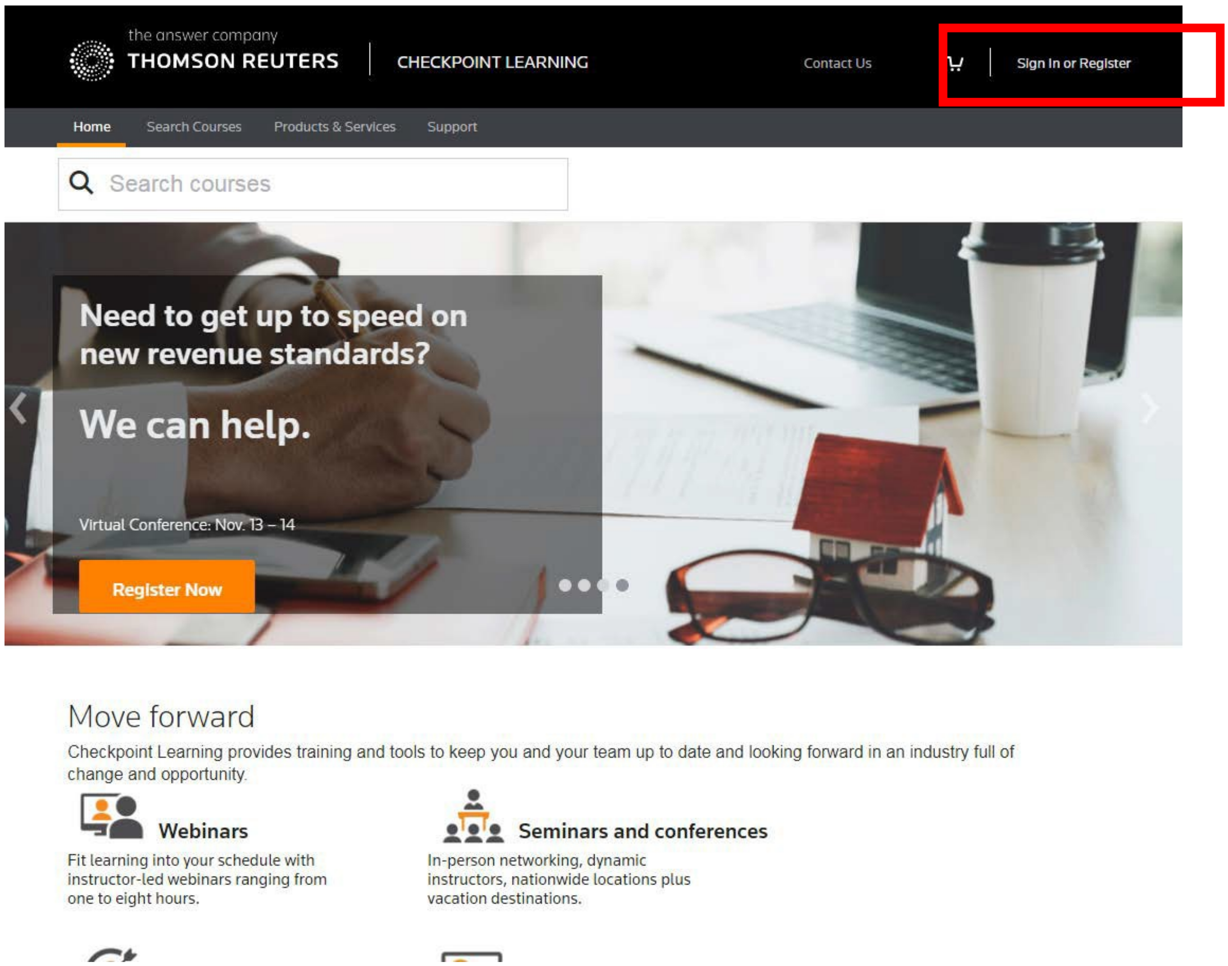
In Teams, when sharing the desktop with others, be sure to check the Share system audio box directly above the desktop to be shared, for the video's audio to be heard by others.

In Zoom, click the Share Screen button in the toolbar. Check the box to Share computer sound at the bottom of the Share Screen popup. Adjust the volume to an appropriate level. Do make sure the video is visible to participants.

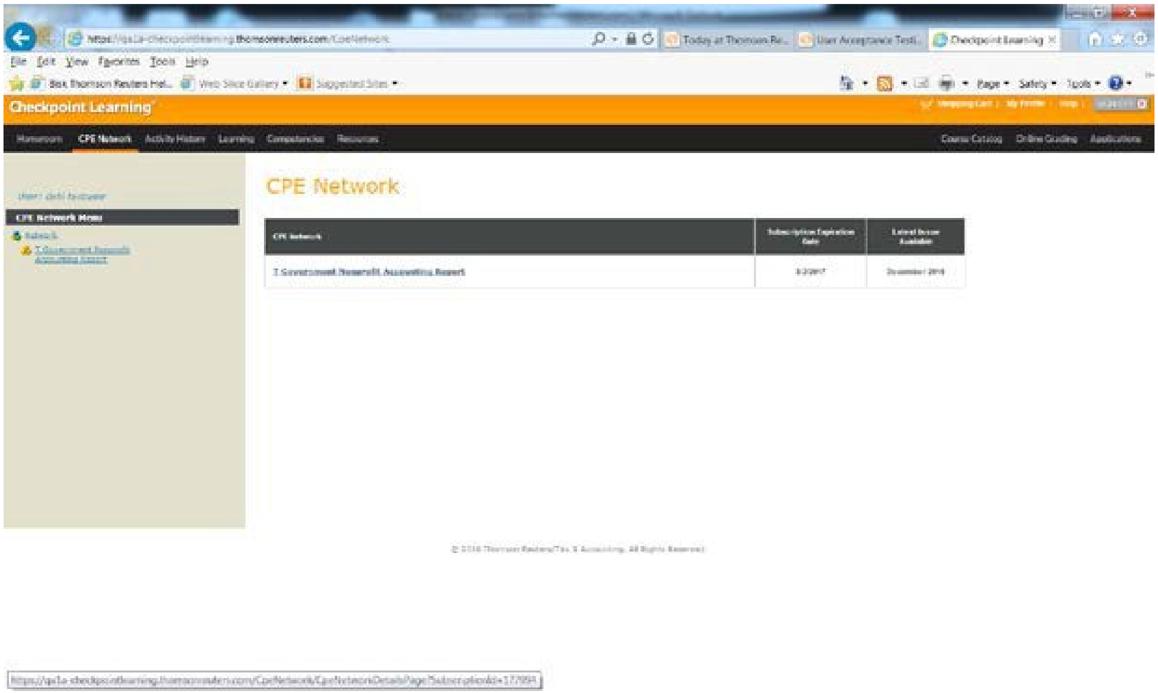
Self-Study—Online

Follow these simple steps to use the online program:

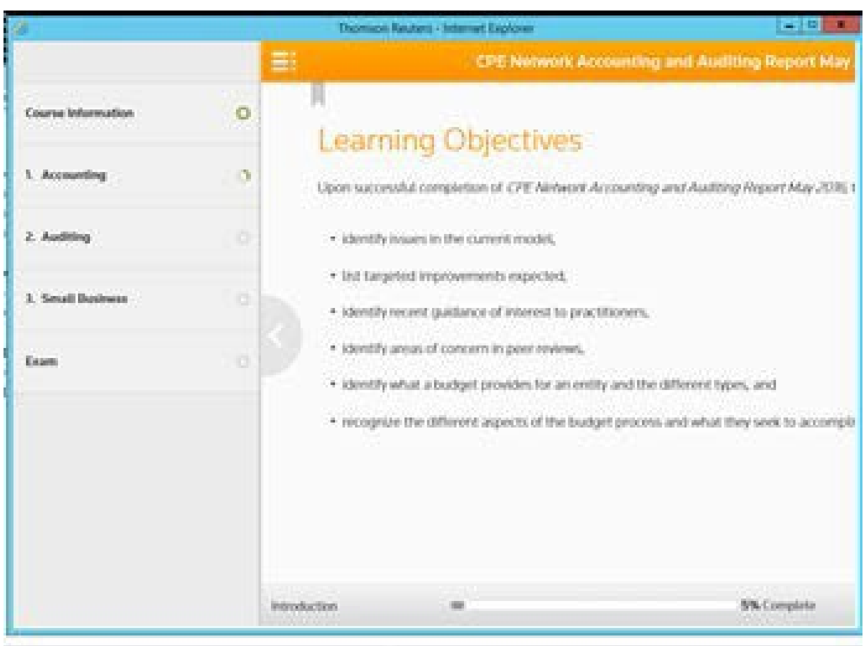
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Sign In or Register").



- In the **Network** tab, select the Network Report for the monthdesired.

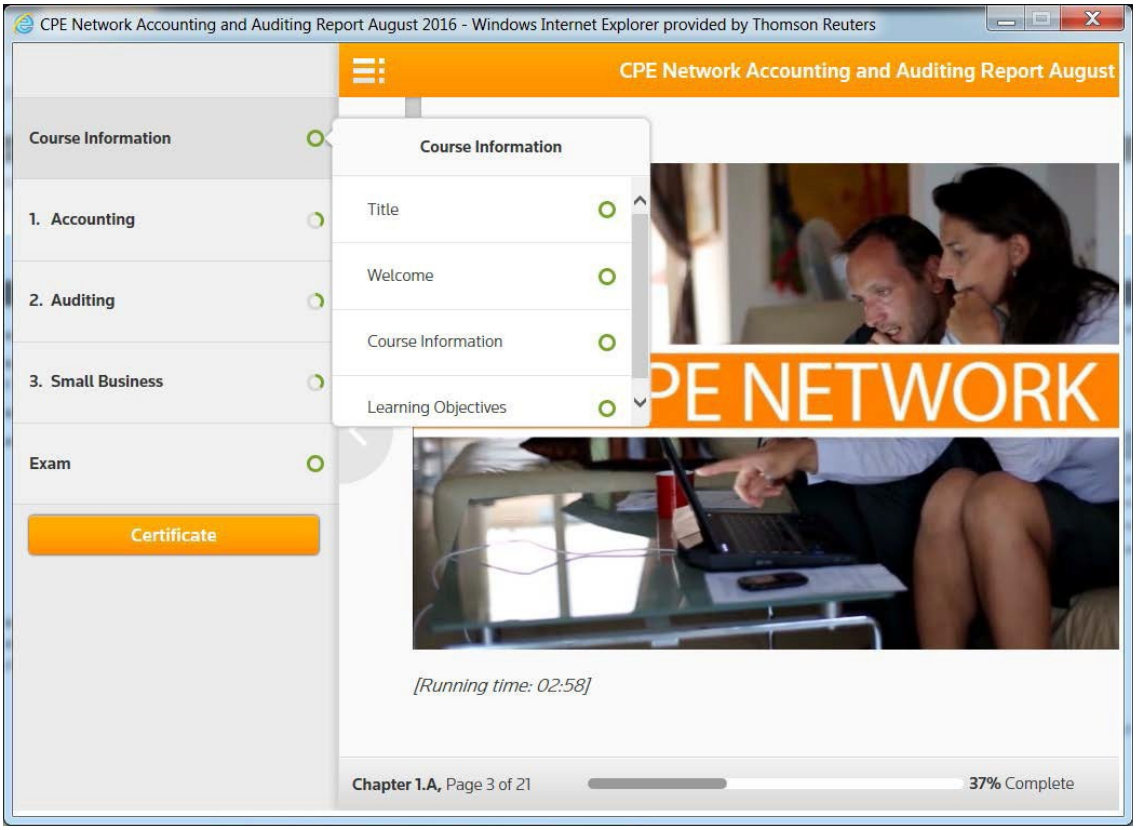


The Chapter Menu is in the gray bar at the left of your screen:

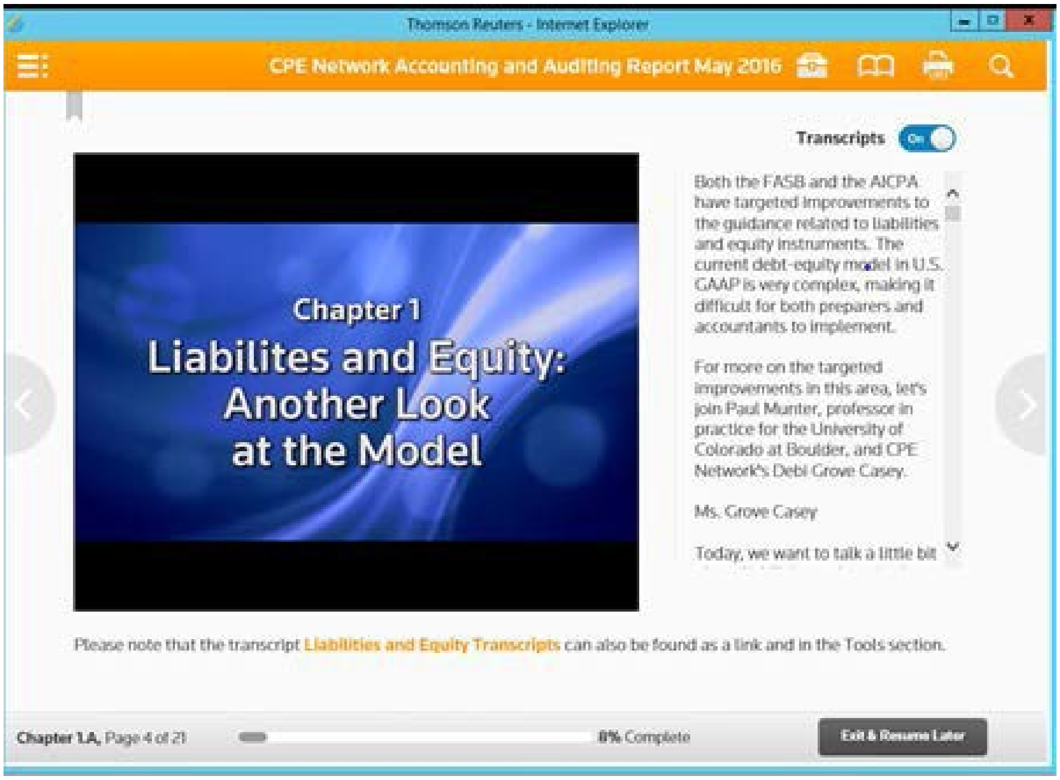


Click down to access the dropdown menu and move between the program Chapters.

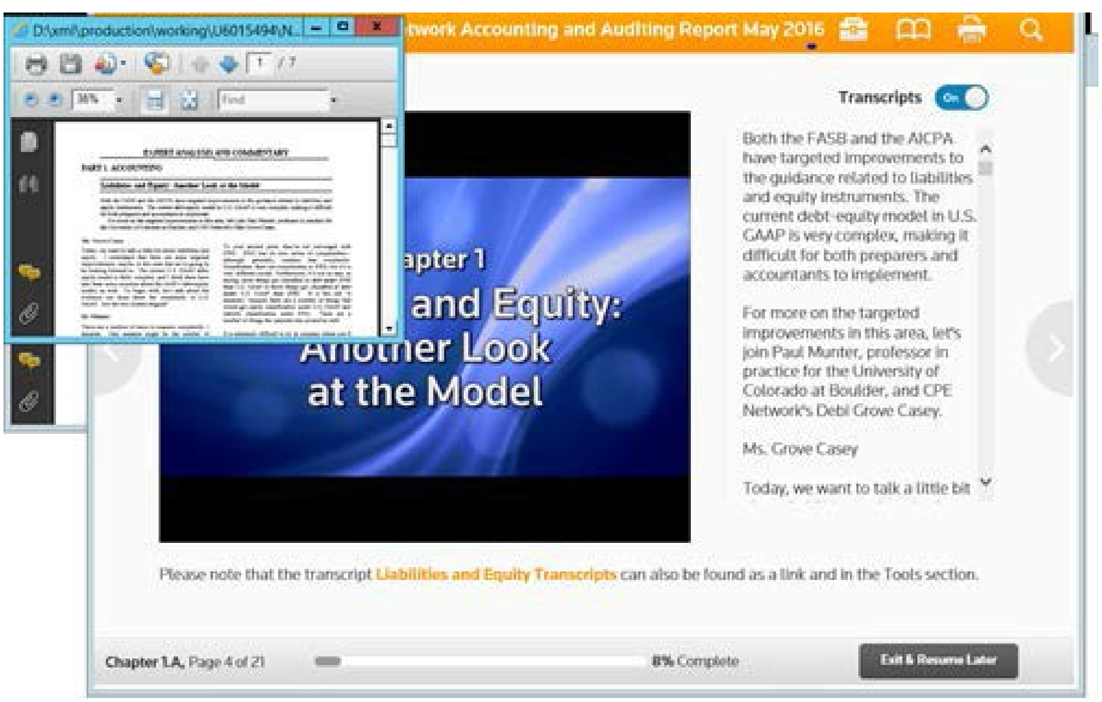
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



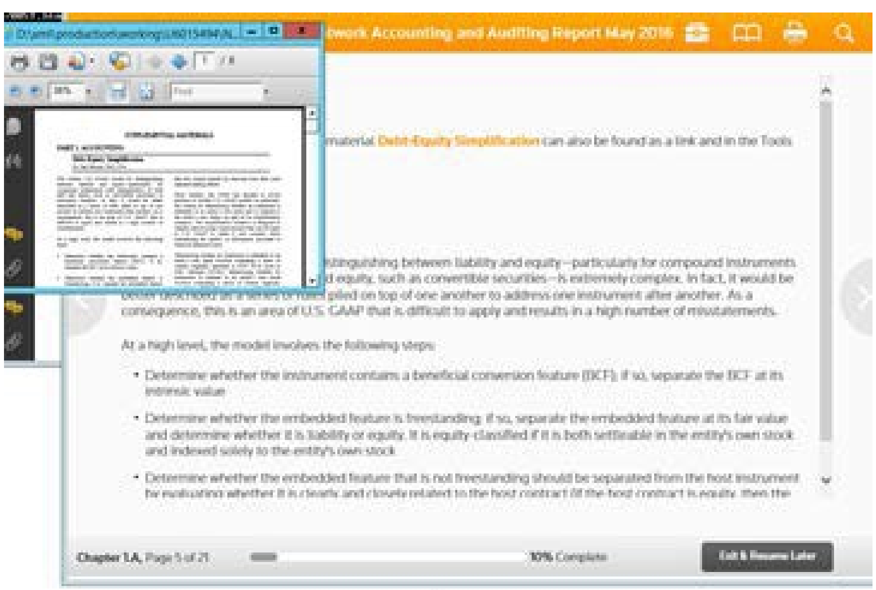
- **Each Chapter is now self-contained.** While on the CPEasy site the interview segments were all together, then all of the supplemental materials, etc., each chapter now contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials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



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

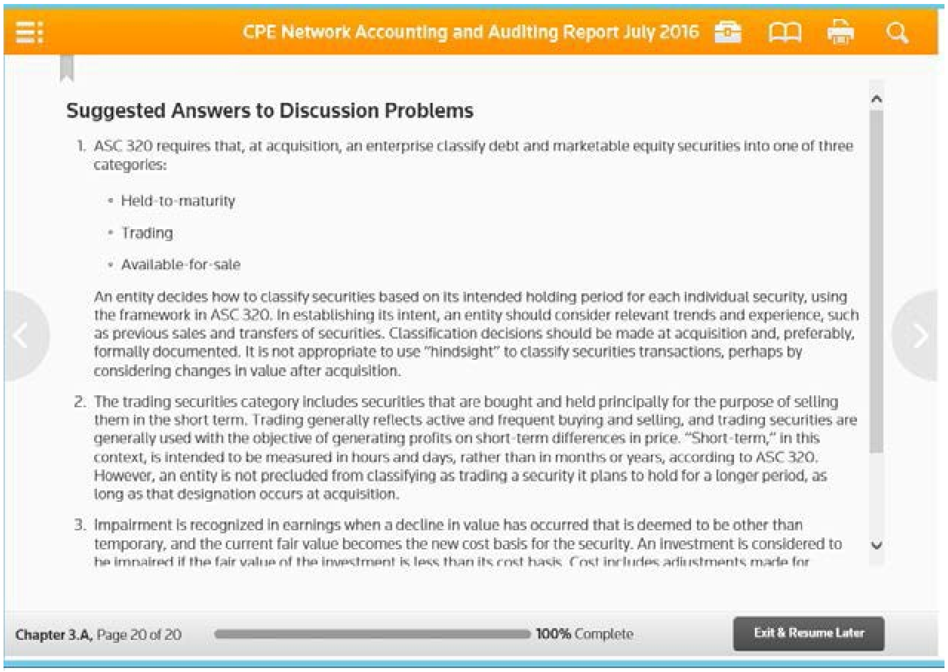


Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.



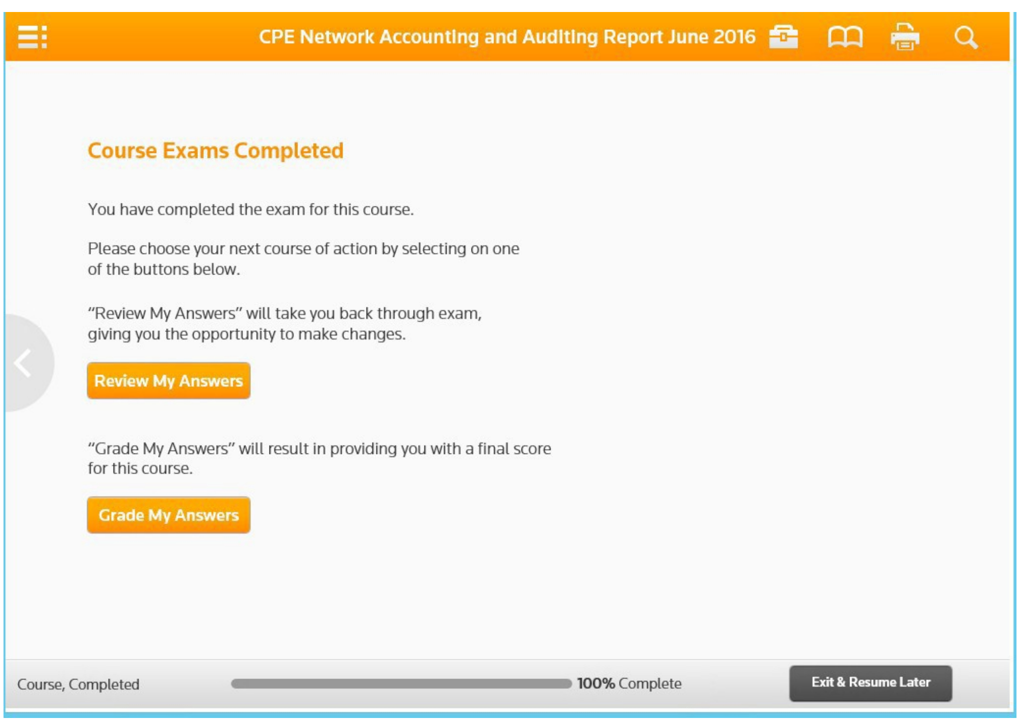
Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

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



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

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



- Click the button labeled **Certificate** to print your CPEcertificate.
- 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**.

GETTING HELP

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

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

Checkpoint Learning Network: CPE Compliance

Checkpoint Learning Network courses can be group live, group internet based, or self-study. Unless otherwise stated in each course's descriptive information, no other prerequisites or advanced preparation are required.

Checkpoint Learning Network is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.nasbaregistry.org.

Checkpoint Learning Network is approved for Group Live, Group Internet Based, and QAS Self Study delivery methods.

Checkpoint Learning Network is an approved IRS Continuing Education Provider to deliver CPE to Enrolled Agents and IRS tax preparers. The IRS Tax Preparer Office requires that any course to be used for IRS PTIN holders must be pre-registered with the IRS. If you are a PTIN holder and are interested in obtaining IRS CE credit, be sure to review the course details in Checkpoint Learning to determine if the course you are considering is accredited to IRS.

What Does It Mean To Be a CPE Sponsor?

Your organization is the CPE Sponsor for this monthly series. The sponsor highlights below 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 attendance of the participants (make notations of late arrivals, early departures, and "no shows")
- Solicit course evaluations from participants
- Award CPE credit
- 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 deliverymethods.
- 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 resolutionpolicy.
- Official NASBA sponsor statement, if an approved NASBA sponsor (explaining final authority of acceptance of CPEcredits**).**

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 weremet.
2. Prerequisite requirements were appropriate.
3. Program materials wereaccurate.
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 wereeffective.
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

(SAMPLE) Certificate of Attendance (SAMPLE)

This Certifies That:

Participant's Name

Attended:

Course Title

Field(s) of Study and Breakdown

Total CPE Credits

Completion Date

Location (City, State)

Instructor Name(s)

Sponsored By:

Sponsor's Name

Sponsor's Mailing Address

Sponsor's Identification Number

Sponsor's Signature

Sponsor's Signature

In accordance with the standards of the National Registry of CPE Sponsors, CPE credits have been granted based on a 50-minute hour. (Use this Statement if the Sponsor is Registered with NASBA.)