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CPE NETWORK TAX REPORT

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Topics for future editions may include:

- Rental real estate

CERIF

EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

EXPERTS' FORUM..... 3

The tax landscape is ever changing with new court cases, IRS actions, and sometimes, legislation. Practitioners need to be cognizant of changes to properly advise clients. This material covers some changes since last month. [Running time 36:25]

Learning Objectives:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including how to: (1) analyze the unauthorized practice of law and BOI requirements; (2) determine how to deal with improper Letter 105Cs with ERC claims; and (3) evaluate NIL collectives and §501(c)(3).

PART 2. INDIVIDUAL TAXATION

Key Considerations of Taxing Rental

Real Estate: Part 1..... 14

In Part 1 of a two-part series Renee Rodda discusses rental real estate. In this portion, Renee covers short-term rentals, converting a property to or from a rental to a residence, and passive losses. [Running time 40:19]

Learning Objectives:

Upon completion of this segment, the user should be able to discuss: (1) the personal use threshold for property and vacation rentals, (2) discuss the “Augusta Rule”, (3) identify non-qualified use in the context of the Section 121 exclusion and its effect on the sale of a principal residence; and (4) identify active participation in a rental activity.

ABOUT THE SPEAKERS

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Program Level	Update
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Advance preparation	None required
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—From a Declaration of Principles jointly adopted by a *Committee of the American Bar Association* and *Committee of Publishers and Association*

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

This month Ian Redpath looks at the unauthorized practice of law and BOI requirements, and NIL collectives and 501(c)(3)s.

Let's join Ian.

Mr. Ian Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. This is a segment where we go over a number of things that have happened with the courts, the IRS, Congress, since the last time we spoke. Very, very interesting things have happened.

The first one. And if you recall from other programs we've done on the Corporate Transparency Act, the CTA, and the BOI, the Beneficial Ownership Reporting Rules. One of the things that I mentioned several times was that there's kind of an argument there as to whether or not this is practicing law when you fill out the BOI forms. Now, some of you may remember that there's a case out of Alabama which has a limited injunction, only those members of the organization claiming that the BOI rules violate the Constitution in that this is a state's rights issue and it deals with incorporation and is putting an additional burden that should be the province of the states. Okay, so that case is out there, that case is still pending, and for members of that organization there is an injunction against having to report. But for the rest of the country, for most of you out there, the BOI rules are in effect and have to be followed, and there's some stringent penalties that apply.

Well, in an interesting report, the New Jersey Supreme Court Committee issued an opinion on whether CPAs can provide BOI services. Now, caveat, this only applies in New Jersey, but I'm sure other states are going to have similar types of rulings, but it kind of gives you a good idea where this is heading as you look at the BOI. And so the first thing was that the New Jersey Society of CPAs requested that the New Jersey Supreme Court Committee on the Unauthorized Practice of Law issue an opinion as to whether or not providing beneficial ownership information, reporting assistance, by a CPA would be considered the unauthorized practice of law. Well, then the committee from the New Jersey Supreme Court basically said, yes, it is. It is this practice of law. So they said, the BOI services themselves constitute the practice of law because they said whether providing guidance to clients or filing reports, you have to determine the look at the law, very complicated law, interpret the law, and to then apply it to the given set of facts. Well, that's the practice of law, they said. However, and this is...kind of a caveat, like, okay, what does this really mean? Because they said, well, it is not the unauthorized practice of law to prepare filings if the filing is straightforward and not complex. Okay, the BOI rules are not complex. Absolutely they're not complex for a large majority of our clients. However, you start talking about tiered partnerships, for example, all of a sudden, you've got some additional complexity here. So if there is complexity, then it becomes the practice of law. Well, how do you know if it's complex or not? Well, the committee in New Jersey says, well, you have to use your professional judgment as to whether it's straightforward or complex. They said that it is in the public interest to permit non-lawyers to engage in this activity. But again, only if the reporting itself is straightforward. You have a two-member LLC, relatively straightforward in the initial reporting. However, they also said that the CPA is required to tell the client that it may be advisable to consult an attorney. And that is even in the case of it being straightforward. And that's the language because they use the term straightforward. Absolutely, though, complex filings require a lawyer's judgment, their expertise and analysis and they said this is especially important with the types of penalties that are involved in these types of circumstances. I'm not sure this is.

This isn't okay. You can do it without it being the unauthorized practice of law. I think something, and again, I've pointed this out in a number of different programs when we've talked about the BOI, I've raised this question. Is this the unauthorized practice of law? Well, in New Jersey, it kind of is. It is, but, well, if it's straightforward, CPAs can do it.

So you're going to have to make that professional judgment is, is it straightforward? Now, where else might we have a problem? I'd be calling my malpractice carrier. I would like an opinion from my malpractice carrier. If I prepare BOI filings, am I protected? And to what extent am I protected?

Because, all of a sudden you could have your malpractice carrier come in and go, no, that's the unauthorized practice of law. And we don't care whether it was straightforward or not. We're not going to cover you for any liability because, and again, this is, is it a legal decision as to whether it's straightforward or not? You're looking at the law. And I think there's some common sense here. Obviously, a two-person LLC, no problem making your filing that's relatively straightforward, but at what point does it become complex? So the committee says they have to rely on the professionalism of CPAs to ensure that they're going to not be attempting to file complex matters and that an attorney is the one preparing them. So unauthorized practice of law, yes.

Exception CPAs can do it if it is straightforward. Caveat? What does that mean? Again, I'm going to, and by the way, again, this is only New Jersey. You need to go to advise the client. So this is the main guidance that's out there right now. If I were you, I would be looking at this and saying, okay, was this what my state might do? Very possibly. And... there's some guidance now, granted only binding in New Jersey, but we have some guidance on the BOI and the practice of law. So it may be in your best interest, regardless to notify the client at least that they should, that they could contact an attorney, but that you feel it's straightforward and you're going to be able to do it. But contact your malpractice carrier. That would be the first step I would do after watching this program. I would be contacting my malpractice carrier if I have to file any BOI reporting.

So now, FinCEN has come out and you know FinCEN has been giving advice on this corporate transparency and they updated the FAQs, they updated them relative to the BOI FAQs, included a new one on disregarded entities. Boy, is that, you got disregarded entities, how is that going to be? Is that complexity that's added and see where that can go could go? There are some updated issues on the FAQs So just a reminder, you know that the penalties are rather stiff for noncompliance, up to \$10,000 in fines and two years imprisonment. The rules basically came into effect and FinCEN began accepting reports in January.

Most existing small businesses are required to submit their reports by January 1 of 2025. Newly established, established after January 1 of 2024, they have a much shorter reporting period. And so I would advise you to look closely at those reporting periods. Keep in mind one other thing. When you have changes, you also have to change your BOI reporting. And so it's important to make sure that you have updated your information with your BOI reporting to FinCEN or again with all of the heavy fines that can be involved here it's important that you follow up.

In addition, remember that if you go to the FinCEN website, there are 23 exemptions available that say, well, this is not within the scope of the BOI rules. So again, in those things, do you need an attorney? Do you need an accountant? Well, you got to figure out, is it fall within the exemptions in this particular case?

Again, small businesses trying to make a good faith effort to comply are not going to get hit with these huge penalties. But again, I think it's really important to keep up on it, especially with changes. And again, the updated FAQs on the FinCEN website, I would direct you to those. In addition, the FinCEN issued a notice clarifying that financial institution customers may be required to report BOI to FinCEN directly as well as to the financial institution as part of a federal customer due diligence requirements. So BOI reporting may have even broader significance for financial institutions that are going to be required to get this information, the BOI reporting, as part of their due diligence requirements. And again, this is something that the FinCEN is taking very, very seriously.

The IRS issued Rev. Proc. 2024-24 and that provides guidance on requests for private letter rulings related to Code Section 355 and divisive reorganizations. And basically, if you're involved with a divisive reorganization, it limits the type of debt exchanges that taxpayers can request a private letter ruling for, so it kind of limits it. And this is something that, again, if you're involved with it, you may very well want to look at this particular Rev. Proc. because it does change some of the issues. And also there's... a Notice 2024-38 and the IRS requested, they requested feedback on their new provisions. Note that this modifies Rev. Proc. 2017-52 and that was superseded by 2018-53.

Interesting. What's going on some things in Congress? Well, interestingly enough, we have a bill that's been introduced. Senator Herono from Hawaii and Representative Jill Takuta, also of Hawaii. And the bill is to phase out the caps on Social Security. And the idea is this would extend the ability to pay full benefits by 19 years. So the wage, as you know, there are two parts of it. There is the social security part and then the high portion. The social security portion, which, and again, if you're an employer, it's matched. If you're self-employed and you're paying self-employment tax, it's the same thing. It's just the difference is that you are paying it all as self-employment and deducting half of it. And the employer deducts their contribution to FICA, but the employee doesn't. It's double taxed. So currently, it's 15.3%, but it's 6.2 matched to 12.4 on a wage base. In 2024, the wage base is set at 168,600. There is no wage base on the high portion. So the high portion is 2.9 combined or 1.45 matched. Well, that doesn't currently have a base. There is no base on that. So it's the social security part that we're talking about. And the idea is to eliminate the base on social security on the social security portion.

Ian Redpath

The projection for next year is that 2025 is the wage base is expected to increase to \$174,900 bringing more and more people into having to pay a large amount of Social Security tax or self-employment tax. So the FICA self-employment tax, the idea is you just are going to pay and I'm going to use the matching numbers. You're going to pay 15.3 on everything; half of it being paid by the employer, half of it by the employee or self-employed the full amount but deducting half of it. So keep that in mind as it what as it winds its way through Congress, and we'll keep up on that in future programs as to where that might stand.

The ERC, my God, here we go again, right? The ERC raising its ugly head again. Not so bad this time, not so bad. First, there's a legal challenge. Stenson, Tamadon, LLC, they filed an action and basically, their business is a tax advisory firm assisting businesses and filing tax credits. And they get a significant portion of their profit from clients that get back refunds due to these claims for credits. So you'll recall from other programs that the IRS announced on September 14, 2023 that there was going to be a moratorium on processing. You can still file and as you know, I've recommended that you file if you have a legitimate claim that you file but there'd be no processing. But when processing begins, you'd already be in the queue. Well, the moratorium, they didn't put a date on it, but then they announced that it was going to continue through December 31, 2023. And then they announced it was going to continue indefinitely. Well, indefinitely is a long time when the statute of limitations on filing and that's why again recommended filing the final statute runs April 15, 2025 and that's for the 2021 year for the 2020 year that was April 15, 2024. In Stenson they sought a nationwide injunction on the IRS, an injunction against the moratorium. In other words, you got to start processing these.

The court basically said, there's no legal basis to force the IRS to process these. They also noted, interestingly enough, that the IRS is well known for processing delays. they said, know, Stentam, that's an acronym, Stentam built its business on tax credits, knowing that there is a likelihood because it's common practice to have processing delays and that they have to take some of the responsibility for knowing this. So they refused.

So now we have IR 2024-203. The IRS says they're going to move forward with processing employee retention credit claims, and you know the IRS will start processing the claims filed between September 14 and January 31st 2024. So anything that's been in the queue since September 14th, since the moratorium went into effect, they're going to start processing. There's a big backlog, but they're going to process, and then, they're going to process new claims that are filed. And again, the processing will be for September 14, 2023 through January 31, 2024. In addition, the IRS sent out 28,000 letters disallowing what they say are improper ERC claims, the employee retention credit, and that this amounted to about \$5 billion in claims. The IRS also identified 50,000 valid claims and said they're going to move those forward quickly, get those processed. Well, one of the problems in IR 2024-169, the IRS did announce that they're planning to deny tens of thousands of improper ERC claims. Within a month, businesses all across the country started getting letter 105C, claim disallowed. So business owners and practitioners started finding inaccuracies in these letters.

Also, and there's two things, either it was inaccurate or they were insufficient or totally lacked giving notice of an administrative appeal. So after this denial of the claim, they have 30 days to file in appeals. Well, many of these either were inadequate in giving information to the taxpayers or simply didn't give any information. Bottom line is,

practitioners need to be aware of the deadlines even though...it may not be specifically in the notices. So again, that's letter 105C. And so again, referring you to Publication five, which is your appeal rights and how to prepare a protest if you disagree. And again, you can go to the independent office of appeals within 30 days of the disallowance letter, and collect all the necessary data to support your claim.

Now keep in mind that depending on the amount involved, a written protest may be required. So there's two ways, a small case or a formal protest and the formal protest, if the amount claimed in the refund is \$25,000 or more, a formal protest is necessary. A formal protest, you say why they're wrong. You document, provide authority for your position. So it's really much more detailed. Whereas in the small, you just basically ask for appeal because the IRS's denial of the claim is inaccurate or inappropriate. You got to be really specific and detail everything. And from the practitioner's standpoint, you're required to sign this protest under penalties of perjury. So it's important that either the client signs it or if you're going to sign it, make sure you have in there language that says that this is to the best of your information and belief. You are not certifying that all of this is correct. You're saying it is correct to the best of your knowledge, information, and belief. So again, make sure you have something there, language in that protest to protect yourself.

All right, we now have *Bibeau*, which is an Eight Circuit Court of Appeals case. And in this particular case, Frank Bibeau, is a member of the Minnesota Chippewa tribe. He practices law on the reservation. He filed joint returns with his wife. He had an operating loss for one of the years, but he still owed self-employment taxes. The IRS sent him a letter. Basically, he comes back and he points out an 1837 treaty that says that members of the tribe have the right to make a modest living. A modest living. Well, the Tax Court came back and said the treaty only guarantees the privilege of hunting, fishing, and gathering wild rice in the reservation, not the practice of law. And so they said it was never intended to provide a tax-free living and so, therefore, it's subject to tax.

We now have new final regs, which were issued reflecting the changes to Secure and Secure 2.0 changes. Part of this is that the final regs update the required minimum distribution rules in order to reflect Secure and Secure 2.0. So again, at what age do you have to start? Depends on your birth year that's in there. They also, there was a conflict with proposed regs regarding what is the applicable, if you were born in 1959. And that was just a wording mistake. These say, no, that it's 73 because what they said was it was 73 for those born after January 1 of 1951 and before January 1 of 1959, and then, 75 for those born after January 1 of 1960. Well, what if you were born between January 1 of 1959 and January 1 of 1960? If you were born between that, it didn't really...have any year. So again, they clarified that it is 73 is the appropriate year. And again, you know, it basically trends right along with the proposed regulations that were out there relative to, know, who are designated beneficiaries, what's the role of a Roth. What's the role of corrective distributions.

Then we have an interesting one, and I'm saying this is an interesting one from the standpoint that many of you will probably never be involved with them, other than you might have clients who want to support the athletic programs at their alma mater's or their favorite school. Well, this...NIL, name image likeness. One of the things that when the name image likeness case the NCAA versus Alston that Students could profit from their name image likeness, you know the schools selling all these jerseys with the number and the name on it the student should be able to profit from it. So the idea is these collectives started, which was to provide opportunity. So basically these are boosters or promoters. The NIL collectives are legally separate from the university or athletic department. They pool donations to match make student athlete and NIL opportunities with partnering businesses or charities. Now, they were initially seeking, and many received it, tax-exempt status, but not just tax-exempt status. They got exempt status under 501(c)(3) as charities. Well, the IRS began issuing guidance.

So Chief Counsel Memorandum 2023-004 they said in most cases these are providing private benefits to the athletes and that's not a 501(c)(3). Then we had three private letter rulings in 2024, which essentially said the same thing. They said, 501(c)(3), you can't qualify because you're providing a benefit to an individual. It's a private inurement to individuals not a charitable purpose. this it's not going to a charity. It's kind of the operational test so they said they fail the operational test because they're offering private benefits to student athletes, and so those donations if they're not a 501(c)(3) now [are no longer tax-exempt]. Granted they were 501(c)(3), status was granted to a lot of NIL collectives early on. I think what you're going to see is the IRS is going to start withdrawing their 501(c)(3) status

revoking it, so I would be looking on the TEOS system, a tax exempt organization, the tax exempt organization system on the IRS website to see if an organization that was 501(c)(3), if they have in fact had their status revoked. So kind of a major change.

Then this is an interesting one. Program manager technical advice 2024-004. You know, if you fly at all like I do, you get to the point that it seems like anything you do, they want a premium charge. Great, great to take that flight. Well, but then you got to pay to select your seat. Then you got to pay for your bags. You know, it seems like they're just fees on top of fees on top of fees. Suddenly that discounted fare doesn't seem so discounted anymore. Well, in this program manager technical advice, the IRS said, and this comes out of the chief counsel's office, the IRS said, that additional fees that are paid for premium economy seating on a flight doesn't matter where you pay them, whether you pay them when you book it or whether you pay them at the time you ticket it, it doesn't matter. But the amount paid is for taxable transportation at premium seating. So what does that mean? It means you got to pay tax on it. They said that it's subject to excise taxes on transportation under Section 4261A. So that premium seat selection is even more expensive now as you've got to pay not just the fee, you've got to pay the excise taxes applicable to it.

Well, thank you for joining me today. We had a lot of things to go over, a lot of interesting things going on out there. I certainly still want to warn you about that practicing law issue and definitely check with your malpractice carrier. One other thing I do want to mention to you is that if you were involved at all with that 1 % tax on the repurchasing of shares of stock the final regs came in and the IRS says that you have to file Form 720 and this goes all the way back to when this initially came in so all the way back to January 1, 2023 you have to file form 720 by October 31st of 2024. So the back ones that you were, they kept pushing off that you didn't have to file, you now have to file by October 31, 2024. So thanks a lot for joining me today. As always, please be safe and I'll see you next month. Bye now.

SUPPLEMENTAL MATERIALS

Experts' Forum

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

A. July 9th Opinion of NJ Supreme Court Committee on CPAs Providing BOI Services

In past programs we have discussed issues related to the Beneficial Ownership Information (BOI) rules implemented under the Corporate Transparency Act (CTA). I have suggested that CPAs discuss the preparation of BOI forms for clients and whether it is the practice of law. Many commentators disagreed and said it is not the unauthorized practice of law (UPL). The New Jersey Society of CPAs submitted a request to the New Jersey Supreme Court's Committee on the Unauthorized Practice of Law to determine whether BOI reporting assistance provided by CPAs is considered the unauthorized practice of law (UPL) in New Jersey. The Committee found that it is the UPL, but provided an exception for simple straightforward information reports. The CPA must use their professional judgement in determining if the filing is not complex. Regardless, the CPA is **required to tell the client that it may be advisable to consult with a lawyer.**

The Committee found that reports under the CTA require that the public be protected, given the complexity of some matters and the significant civil and criminal penalties for noncompliance. Complex filings require a lawyer's judgment, training, and expertise – the analysis may be tricky and the risk of penalties, if the analysis is faulty, is greater. However, most filings will be straightforward. For example, all matters where there is a single owner of a limited liability company will be simple and does not require a lawyer to determine the necessary information to include in a beneficial owner information report.”

This opinion is only applicable to New Jersey, however, it may clearly be followed by other states. It is highly recommended that the CPA discuss this matter with their State Association and malpractice insurance carrier.

B. FinCEN Explains, Refines Beneficial Ownership Reporting Requirements

FinCEN has recently updated its FAQs, addressing "disregarded entities" and providing guidance on obtaining tax identification numbers for entities subject to the Corporate Transparency Act. This Act mandates small businesses and certain entities to report beneficial ownership information (BOI) starting January 2024, with existing businesses generally required to submit reports by January 1, 2025, and earlier deadlines for new entities. Non-compliance carries severe penalties, including fines up to \$10,000 and potential imprisonment for up to two years, though 23 exemptions are available on FinCEN's website. Notably, FinCEN clarified that even entities "disregarded" for U.S. tax purposes must report BOI if they meet the "reporting company" criteria, using various types of tax identification numbers depending on their circumstances. Foreign reporting companies may use identification numbers issued by foreign jurisdictions if they lack a U.S. tax ID. Additionally, FinCEN issued a notice on July 26 explaining that financial institution customers may need to report BOI both to FinCEN and their financial institution, with the notice detailing differences in reporting requirements and beneficial owner definitions between the Corporate Transparency Act and existing customer due diligence provisions. This may necessitate revisions to financial institutions' customer due diligence procedures to align with the new Act's requirements.

C. Rev. Proc. 2024-24

The IRS has issued guidance on requests for private letter rulings (PLR) reversing its position on direct issuance transactions, these involve certain divisive reorganizations which limit the types of debt exchanges taxpayers can request a PLR for. The Rev. Proc. provides guidance on requests for PLRs on §355 divisive transactions. It modified Rev. Proc. 2017-52 and superseded Rev. Proc. 2018-53. Released alongside the revenue procedure was Notice 2024-38, where the IRS requested feedback on the new provisions.

The revenue procedure outlines the requirements taxpayers demonstrate that

1. An intermediary will not acquire Distributing's debt from Distributing, Controlled, or a related person; or
2. All of Distributing's debt will be acquired before the "Earliest Applicable Date."

Under the guidance, this date means 60 days before the earliest of the following dates:

- The date of the first public announcement of the divisive reorganization or a similar transaction
- The date Distributing enters into a binding agreement to engage in the divisive reorganization or a similar transaction
- The date Distributing's board of directors approves the divisive reorganization or similar transaction

Thus, taxpayers will need to use pre-existing debt in a debt exchange or refinance existing debt not later than the Earliest Applicable Date. This will result in a change in market practice because it will no longer be possible to use newly incurred short-term debt to facilitate a debt-for-debt or debt-for-equity exchange."

D. July 31 response from the Social Security Administration (SSA)

On July 31 the SSA responded by letter regarding a request to estimate the financial effects on Social Security with a new bill introduced by Senator Mazie Hirono (D-HI) and Representative Jill Tokuda (D-HI), to eliminate the earnings cap for the social security portion of payroll taxes. The Bill phases this out over a period ending 2030. It is estimated it would extend the ability to pay full benefits by 19 years. The wage base for 2024 is \$168,600 – projected for 2025 to be \$174,900.

E. *Stenson Tamaddon LLC v. US IRS et al*, DC AZ, Dkt. No. CV-24-01123-PHX-SPL

A federal district court in Arizona denied a request for a nationwide injunction against the IRS that would lift the moratorium on processing new Employee Retention Credit (ERC) claims that the Service had announced on September 14, 2023 and initially to be continued at least through December 31, 2023. It remained in effect until recently (see below). ERC claims related to the 2021 tax period may be filed through April 15, 2025.

Stenson Tamaddon (StenTam), an Arizona tax advisory firm that assists businesses with filing tax credits and partially derives profits from tax refunds received by their clients, sought an injunction and asserted that the IRS improperly implemented the ERC moratorium on new claims which led to a backlog of 1.4 million claims. The Court declined a nationwide injunction. The court was not persuaded by StenTam's argument that the IRS would not suffer harm by lifting the moratorium and reasoned that investigating potential fraud was much more costly than preventing it on the front end. StenTam's argument of estimates of mounting interest payouts once processing of new ERC claims resume was found speculative at best by the court.

Finally, the court noted that the IRS is "notorious for processing delays" and that StenTam built its business on tax credits knowing this likelihood.

F. IR 2024-203

The IRS announced it is processing Employee Retention Credit claims filed between September 14, 2023, and January 31, 2024. Recently, the IRS sent out 28,000 letters to businesses disallowing improper ERC claims amounting to approximately \$5 billion. Denials of ERC claims can be appealed by responding to the address on the denial letter, even if the denial letter doesn't address appeal rights. Businesses may receive payments for some quarters while the IRS continues to review other periods for eligibility.

G. Steps to Mitigate Inaccuracies and How to Preserve the Right to Appeal

In IR 2024-169, the IRS announced it was planning to deny tens of thousands of improper "high-risk" ERC claims. There have been problems with the Letter 105C, "Claim Disallowed." Especially (1) inaccurate or inapplicable bases for disallowing the claim, and (2) insufficient (or, in some cases, entirely lacking) notice of administrative appeals rights. Practitioners should be aware that the Taxpayer Bill of Rights protects the right to appeal an IRS decision in an independent forum irrespective of whether the IRS provided appeals language in the letter. Reference should be made to IRS Publication 5, *Your Appeal Rights and How to Prepare a Protest if You Disagree*.

H. Bibeau, (CA8, 7/19/2024) 134 AFTR 2d 2024-5033

The court upheld the Tax Court ruling that there is no treaty between the federal government and a Minnesota Native American tribe, nor any statute "expressly or implicitly" exempting an enrolled tribe member's self-employment income from taxation, the Eighth Circuit held. Bibeau petitioned to the Tax Court, arguing the 1837 treaty affords him the right to make a "modest living." But as the Tax Court noted, the treaty only guarantees the "privilege of hunting, fishing, and gathering the wild rice" in the protected territory. To Bibeau, his law practice is analogous to these activities because he interpreted the phrasing to mean the right to "food, clothing and shelter and travel, whereby the new canoe is the automobile." Tax Court said that the treaty does not intend for a "modest, *tax-free living*."

I. §§ 1.401(a)(9)-1 through 1.401(a)(9)-9, 1.403(b)-6(e), 1.408-8, 1.402(c)-2 and § 54.4974-1

The IRS issued final regulations updating the required minimum distribution (RMD) rules applicable to qualified plans, including 401(k) plans, to reflect changes made by the SECURE and SECURE 2.0 Acts. These regulations generally follow proposed regulations released in 2022, with some changes and clarifications. The IRS has also released proposed regulations addressing additional RMD issues under the SECURE 2.0 Act that are specifically reserved in the final regulations. Here are highlights applicable to 401(k) plans. The final rules generally apply when determining RMDs for calendar years beginning on or after January 1, 2025, using a reasonable, good faith interpretation of SECURE Act amendments and, for 2023 and 2024 distribution calendar years, SECURE 2.0 Act amendments.

J. PLR 202428008; PLR 202416015; and PLR 202414007

The IRS has cracked down on Name, Image and Likeness (NIL) collectives in granting them §501(c)(3) status. The Service has been disallowing applications for tax-exempt status filed by organizations created to facilitate NIL opportunities between student-athletes and their universities, generally called NIL collectives.

NIL collectives are generally legally separate entities from a university or its athletics department. They pool donations to match make student-athlete NIL opportunities with partnering businesses or charities. Collectives often seek tax-exempt status under §501(c)(3) by arguing that their fundraising, promotional, or other support work constitutes "exempt purposes."

The IRS in a generic legal advice memo, (Chief Counsel Memorandum AM 2023-004) addressed the proliferation of NIL collectives and reiterated that organizations bear the burden of proof in clearing this "operational test." Overall, Chief Counsel concluded that NIL collectives "in most cases" provide private benefits that fall outside the scope of tax-exempt purposes.

The operational test and the qualitative/quantitative aspects of the § 501(c)(3) requirements as summarized in the memo have been applied to multiple denials of NIL collectives seeking tax-exempt status including the three private letter rulings. The Service contends that each applying organization's activities directly offer a private benefit to student-athletes, who are not a charitable class. Each was denied tax-exempt status because it failed to meet the operational test.

This area has been highly controversial. Recently the NCAA agreed to settle a case allowing for schools to pay athletes directly. This will raise significant issues both for tax purposes and under employment law.

K. Program Manager Technical Advice 2024-004

The IRS has determined that additional fees paid for premium economy seating on a flight, whether paid at the time of ticketing or at some other time before takeoff, are "an amount paid for taxable transportation" subject to the excise tax in §4261(a) as a transportation cost. This seat selection fee does not include any other goods, services, or extra perks, such as access to extra-legroom seating. According to the Advice, the amount the passenger paid for seat selection is an "amount paid for taxable transportation," which is subject to the air transportation excise tax. The seat selection relates directly to the passenger's transportation since they need a seat before take-off.

GROUP STUDY MATERIALS

A. Discussion Problems

1. Your clients, Juan and Joan, have set up an LLC. You are asked to prepare and file the BOI report.
2. Another client, Alicia, had filed an amended return claiming an ERC. She just received a denial via a Letter 105C. You believe the IRS has some inaccuracy but there is no mention of a right to appeal.
3. A third client, Jamie, has been approached by some boosters to “donate” to an NIL collective at his alma mater. He is considering a large donation and assumes that it must be a 501(c)(3) since it is for his alma mater.

Required:

Discuss the issues fairly presented in the above independent sets of facts.

B. Suggested Answers to Discussion Problems

1. There is little guidance on whether this is the unauthorized practice of law. The guidance from New Jersey is that it is, but a CPA can do it if it is simple and straightforward. They also require that the CPA notify the client(s) that they may want to consult with an attorney. Under this guidance the CPA must use his/her professional judgement to determine if they believe it is simple and straightforward. You should contact your state association and malpractice carrier for guidance.
2. There is a right to appeal the denial by the IRS. Some denials have contained inaccuracies and properly informed taxpayers of their right to appeal. Reference should be made to Publication 5 for further guidance.
3. While some NIL collectives have been granted §501(c)(3) guidance, others have not and the Service is unlikely to grant newer ones such status. You need to make sure the client verifies that it has such charitable status.

PART 2. INDIVIDUAL TAXATION

Key Considerations of Taxing Rental Real Estate: Part 1

Many times when the housing industry for real estate takes off, some are forced into the rental market. Unlike some other markets, the real estate market can vary by region and sometimes even by neighborhood. In recent years, VRBO and other short-term rentals have also become the norm. In the first of a two-part series on rental real estate, we'll focus on short-term rentals, using a home for both personal and rental use, and converting a vacation or rental property to personal use.

For more on reporting the income, recovering depreciation, and conversion effects, let's join Renee Rodda.

Ms. Rodda

First of all, I want to start on page one dash one where we have just sort of an introduction to what this chapter is really covering. And I think, one thing that we've been discussing in pretty much every webinar we have lately is how our industry is changing and how we as tax practitioners are no longer people who just prepare tax returns. And really, I don't think any of you have been just a tax return preparer for a very long time. You provide a lot of services to your clients.

But as the industry changes and as artificial intelligence or AI changes the way tax returns are produced and automates more of those processes, it really becomes important to embrace that advisory side of your practice and really make sure you're helping your clients maximize deductions, minimize tax liabilities, take advantage of credits. All of those pieces and parts become very important. And I think rental property is one of those places where you can see a significant impact for clients. You may have a lot of clients that may have rental properties. And rental income is passive income by default, but there's always exceptions. And one thing we hear in a lot of discussions is about who is and who is not a real estate professional, and who is and is not materially participating in their rental real estate activities.

And I think that real estate professional status is really more elusive than a lot of people think. So we're going to spend some time discussing those rules and really helping to prepare you to take a position for your clients and to have a conversation with your clients so they really understand those rules because we all know that a lot of people think they are in fact real estate professionals when they are not. And then even though that rental income is passive, it can be business income for...179, 199A and net investment income tax purposes. There are pros and cons to that. And we'll go through all of those issues as we work through the materials today.

The first item that's discussed there on page 1-1 is self-employment tax. So net rental income is not subject to self-employment tax, even if the income is non-passive. So even if we had someone who was a real estate professional, for example. But not all real estate income is exempt. This is something that causes some confusion from time to time. So if you have clients who are dealers in real estate or if they're running a hotel or a B & B business, then we're going to have a self-employment tax issue. But generally when we're talking about income from rental or investment properties, we're typically talking about income that is not subject to self-employment tax. And I think the biggest area of discussion over the last several years maybe even longer now. Time seems to be that weird vacuum. Things that felt like they were yesterday were actually a decade ago, and things that feel like they were years ago were actually just a couple months ago. And so we've been talking about short-term rentals through sites like Airbnb, VRBO, et cetera, for years. I do think that they continue to grow. So we continue to see more clients investing in properties that they are then renting out through these vehicles. We've also seen some more restrictions and some more guidance in this area. So I think one of the things to be clear on is that your clients often don't understand the tax consequences of these investments. And the one problem that you're going to see is there's no sort of one size fits all answer. You can't just say, well, this is how these properties are taxed because how they are taxed depends on the host's behavior.

So for example, if they buy a property that's a vacation property that they're going to use for themselves part of the time, and then they're also going to rent it out, we're going to have to use those vacation rental rules. If it's strictly a rental property, then we follow the regular rental property rules. But we may also see a situation where a portion of the home is used for the rental, not the whole thing. Maybe it raises to the level of a hotel or a bed and breakfast. And so there are a number of facts and circumstances that we have to look at to make some of these decisions.

So if your client has a property that is a short-term rental, but they use it themselves as well, if their personal use exceeds 14 days or 10 % of the total days it was rented to others, then we use the vacation rental rules. So we have an example of this for you on page one dash two.

We have Jane who owns a vacation rental in Mammoth Lakes that she rents to others for 315 days during the year. Jane's an avid skier and she loves to fish, so she does use the property for 15 days in the winter and 15 days in the summer. Jane's total personal use days, 30, does not exceed the 10 % of the total days her property is rented to others, which is 315 (30 personal use days over the 315 days rented to others). She only has 9.5%. So Jane is not deemed to have used the property as a residence during the year because she has such minimal use of the property.

If you have clients in that situation, we want to make sure that we're treating it as a true rental and not a vacation rental because the rules are a little more restrictive on those vacation rental rules. If we have a vacation rental, our deductions are limited to rental income and we don't get any carryover of the excess, right? So we can take deductions to eliminate the tax on the income, but we're not going to get to carry over any of those credits that we can't or any of those deductions that we don't get to take the benefit of in the current year. Those deductions are claimed in a specific order. So we have expenses directly related to the rental property. So that's things like advertising or commissions that they pay. Interest and taxes, those are those sort of always deductible expenses. We'll talk about prorating them. Operating costs that don't affect basis and depreciation. So we have that specific order of how we take those deductions. And if you take a look on page one dash three, if we go back to the example of Jane, the impact of personal use has a huge effect on the tax liability. Jane's personal use is so low that she gets to deduct all of her rental income and expenses. She might be limited by passive loss rules, but she doesn't lose the deductions, right? Any deductions that she doesn't get to take in the current year are carried forward. They can be freed up when she sells the activity. And the treatment of a residence can change from year to year. So it's not just an automatic assumption that the property is the same each year. You want to make sure that you're asking questions of your clients to make sure we're treating that property properly.

And on page one dash three is a discussion of what we call the Augusta Rule. And this is something that we get a lot of questions about. I think because many practitioners think that it's just too good to be true. It's been around for quite a while. It is not a new rule, but certainly something that we all want to make sure we remember. If your client's total rental days are 14 days or less for the year, all of the income is excluded, it is tax free. They don't get any deductions. They'll still get all of their regular real estate deductions for the property they own as either their personal residence or their vacation property, but they don't have to recognize any tax on the income. And I've seen this pop up in a number of interesting areas.

First of all, if you have clients that live somewhere, the reason this is called the Augusta rule is it started, the term started around people who lived near the Augusta Golf Club where the Masters is held and people would rent their properties for very high rental fees around the time of the tournament, but it was for one week. And so because they only got that rent for a one week period, they didn't have to pay tax on the income. You often see this type of activity in areas where there are large events like that, where maybe there is limited access to hotels or you see large groups coming in. I know some people do this here in California at Pebble Beach near the Pro-Am or if the US Open is held there. We see it at places where they have Comic-Con, for example. Or I've also seen some people rent properties for production activities. So they rent out to be a location, someone's filming a music video or some other type of recording. All of that activity when it's for 14 days or less during the year, it is tax-exempt income. It's just one of those things where it feels too good to be true. And it's one of the few times where I get to tell you it truly is income that is not subject to tax.

But let's go on a little lower on page three and onto page four and talk about really some of the more important details about this short-term rental income. So typically income from short-term rentals is Schedule E income. If the activity rises to the level of an active trade or business, it could be Schedule C income and we'll talk about the type of activity that would be required for it to be Schedule C income. But the direct rental expenses are 100 % deductible from those short-term rentals. The always deductible items are prorated based on rental days as a percentage of the year.

And then general expenses are prorated based on rental days compared to days used for personal purposes. We do have a box for you on page 1-4, just kind of illustrating this. But I like to remind people the always deductible things are things like your property tax, your mortgage interest. So you're going to prorate that based on the days that the property is rented versus the total days in the year. The general expenses things like utility bills are going to be prorated based on rental days compared to days used for personal purposes to get the proper amount of those deductions.

If only a portion of the property is rented, then we further prorate that. So let's say, for example, that you have a large property that has maybe, especially people who have ranches or things of that nature, they may rent a structure on the property, but not the main house or a house with a guest house. They may rent the guest house. So if only a portion of the property is rented, then the deductions are further prorated for that portion of the property where the rental is. And then depreciation is also prorated using the rental days over days in the year. I have an example on page 1-5, if you want to walk through it with me, so you can kind of see how these deductions play out.

So Jean lives in her San Diego condo for 200 days during the year, and then she leaves and rents it out for 100 days and brings in \$10,000 of rental income. You probably need to update that rental number because if anybody's tried to rent anything in Southern California recently, we know that that number is a little bit low, but it's an easy round number for purposes of this discussion. The condo remains vacant for the remaining 65 days of the year. So we have total rental days, which is 100 over days in the year, that's 27.4%. And then total rental days used, we have 100 over days that the property is used in total, which is 300, because remember it's vacant for 65 days during the year. So we have those direct expenses that are related to the rental. There's \$2,000 of them, 100 % of that is deductible against that rental income. We have interest and taxes, \$26,000 in interest in taxes, 27.4 % is going to be allocated to that Schedule E activity. And then the general expenses and the depreciation where we're going to take the total rental days over the days used. So 33 % goes towards that rental activity. And then keep in mind that the deductions are limited to the gross rental income. So when we look at Jean's deductions,

She can't go over \$10,000 per year. So we don't get any depreciation because we're up to the cap of that \$10,000 of income. So she's going to report the interest in taxes of \$18,876 on her schedule A. So that's the total interest in taxes minus the amount that shows up on the schedule E. And then she'll carry forward general expenses and depreciation of \$1,333.

Then let's talk about calculating days of use because the rules are a little different depending on the type of day that we're counting. So we get to count as a rental day any day that the property is rented at a fair rental price, even if the host used it for a portion of the day. So let's say that I started renting the property on, I rented it out from Monday to Sunday, but the tenants checked in at noon on Monday and I was there until Monday morning. Monday still counts as a rental day. It's a personal day if for any part of the day the property was used by the taxpayer or another owner, a family member, or if we have reciprocal agreement where we're not paying fair rent. So for example, some people will put their properties into these pools where you can say, all right, I'm going to rent my cabin in the mountains, but instead of taking an actual rental fee, what I'm going to do is trade for this person's condo at the beach. So they get five days in the mountains and I get five days at the beach and we swap those properties. That's something that we're seeing more of as well.

Cleaning and repair days don't count for personal or rental days. And if you have clients who put their property up for charitable purposes, you see it often at auctions, right? You can buy five days at somebody's vacation property as part of a package or however they do it at the charity auction. Those days that were donated to the charity are considered personal use days.

And we do have an example of the maintenance and work days for you on page 1-6. Al and Peggy own a lakeside cottage that they rent during the summer. Al and Peggy arrived late Thursday evening after a long drive to prepare the cottage for the rental season. Al and Peggy prepared dinner, but do no work on the unit that evening. Al spends a normal work day working on the unit on Friday and Saturday. Peggy helps for a few hours each day, but spends most of the time relaxing. By Saturday evening, the necessary maintenance work is complete. Neither Al nor Peggy works on the unit on Sunday and they depart shortly before noon. The principal purpose of the unit from Thursday evening through Sunday morning is to perform maintenance work on the unit. Consequently, the use during this period is not counted as personal use. So even though they didn't do actual work on every one of those days, they are not counted as personal use days.

We do have a very handy chart for you here on page 1-6 that talks about the type of expenses, the description of what we mean. So if it's a direct expense or an always deductible expense, what's included in there, how much of it do we get to deduct and where do we report that item? So I think that's a handy chart. And one thing I like to remind attendees of is these charts aren't just for you. Feel free to share them with your clients.

Sometimes I think people need that visual to sort of lay everything out and understand, because you can go through this set of rules with them ad nauseum, and they may not retain any of the information, but they could look at that chart, and then it can really help to bring things home for them. So feel free to share these items with your clients.

I mentioned that if the activity rises to the level of a hotel or a bed and breakfast, then the income is reported on a schedule C. When I say rises to the level of a hotel or B &B, we can rent either a portion of the residence or the entire residence to guests. And that portion is not used as a home for any part of the year. So either those rooms or the entire property are not used for personal purposes for any portion of the year. Then we may be able to treat it as a hotel or B &B activity, but they also have to be providing substantial services, meaning meals, cleaning services, all of those typical things that you would see in a hotel or B &B type activity. If they're doing that, then that activity does rise to the level of a Schedule C activity.

Keep in mind though, that if we have any dual use areas in the property, we don't get to take deductions for that. So let's say for example, the home has one kitchen. They use it for the hotel or B &B activity, but they also use it for their personal services. We wouldn't get to count any portion of the kitchen for purposes of determining expenses related to that Schedule C activity. And if it is Schedule C activity, then it is considered self-employment income, but it also means we don't have to worry about passive activity limitations or vacation rental rules, right? So when we have a typical rental activity, then we do have passive income unless we have that real estate professional standard, which we'll talk about in just a moment. And we have to look at, do they have enough personal use that we have to follow the vacation rental rules, which means the deductions are then limited to the income and we don't get to carry those additional amounts forward. So, you know, there are pros and cons sort of across the board here. And like I said, there is no one size fits all answer. I also think there's no what's the best type of treatment. Every client is going to have something that benefits them more than others. And so you really just have to look at the overall picture for your clients.

One thing I always like to remind people about when they are considering investing in a property for purposes of rental, especially if they want to use Airbnb or VRBO or those types of sites, they need to consider things other than just tax ramifications or typical income tax return tax ramifications.

There are also things called transient occupancy taxes. There's an example for you on page 1-7. I think I lied to you. Nope, they're here. This give you the amounts of the transient occupancy taxes. So if you take a look, for example, in Chicago, it's 10.5 %. San Francisco charges 14%. San Diego is 10 and a half percent plus a 55 % tourism marketing district assessment.

So if your clients are going to purchase a property for rent in one of these areas, really anywhere, you want them to do some research into whether they're subject to these taxes. And then they also need to consider what platform they're using, because the platform may or may not collect the tax. If the platform takes the burden of collecting the tax for your clients, that makes it easier. But if the platform doesn't, then that's an additional tax form that they may need to file and remit. And that's something they need to be aware of.

Most cities are also going to charge business license fees or taxes. And then the other thing we're seeing come into play now is personal property taxes. Here in California, we have a new form. This is addressed for you on page 1-8. It's the BOE 571 STR. So it's the short-term rental property statement. This is similar to the business personal property tax forms, we've been helping clients prepare for years.

This started in May of 2024, so this is a very new form. Each county is going to have their own slightly different version of the form. It does have to be filed annually. The form reports, furniture, kitchen items, electronics, art, all of those things that are contained within that short-term rental property. Keep in mind, your clients are only required to file this form if the personal property has a total value of \$100,000 or more.

So what that means is for most of your clients, this form is not going to be an issue unless we're truly talking about larger luxury properties. We probably don't have more than \$100,000 of items within the home. And I shouldn't say truly luxury properties because we could get to \$100,000 pretty quickly. But what I will say is that if your client is even close to that \$100,000 threshold, I would consider filing the form proactively to establish a lower value ahead of a county assessment that you may then have to come back and fight. Because I think what we're going to start seeing is counties, especially in more affluent areas, which is going to be common with a vacation rental, right? If your clients are looking at an area to invest in a property, it's probably because they're going to get good rents there. And those counties are going to say, well, if you're collecting this much rent, you must have a certain standard of living within that home. And so then we assume the assets are valued at X amount. And I think we're going to see a lot of assumptions here. And I think this is a great way to be proactive and to sort of help your clients avoid problems is by proactively filing that form before the county issues an assessment against them that then you have to fight.

As far as other non-tax issues on page 1-8 and onto page 1-9, there are laws that cities, counties, or associations may form limiting short-term rental activity. We actually see associations, for example, limiting all rental activity in some cases. And so this is something you want to make sure if your clients are considering this type of investment, make sure they're aware that they need to look into these potential other limitations that can be placed on that activity. And I think, you know, I mentioned earlier that we're all sort of looking for ways to better serve clients above and beyond tax return preparation. I've also mentioned this many times before, but we learned especially during the pandemic that your clients rely on you for a whole lot more than tax advice, right? They tend to rely on you for all sorts of financial advice. Now, obviously certain clients have specific financial advisors and you may be working with those advisors. But there's a lot of clients that fall into that middle area that don't have a lot of direct contact with their financial advisors. And so they tend to come to you for a lot of advice in these areas. And I think any extra information you can give them is always helpful. So I like to remind people to review the laws of the local area before they invest in the property.

We have an example of a case here on the bottom of page 1-8 and onto the top of page 1-9 where a taxpayer invested in a property, they had some rental activity, they didn't properly report or follow the rules, and they ended up paying a \$25,000 fine. So I think it's just a great illustration of the type of problems your clients can face and the type of thing we want them to try and avoid before it happens.

Starting on page 1-9, we have a discussion of converting a rental property into a residence. Now, this was a tried and true technique for years. Your clients would maybe have a rental property they'd had for a long time. They have a lot of appreciation in that property. They wanted to reduce or eliminate the tax on the sale of the property.

So they would move into the property, live there for two years. So they met the two out of five years rule and take their 121 exclusions of 250,000 or 500,000. We now have a rule relating to what we call non-qualified use, meaning if there was a period where you owned the property and rented it or used it for non-residential purposes, prior to the years that you lived there, that's going to limit the availability of the 121 exclusion because only a portion of your gain is going to qualify for that exclusion. I think the best way to talk about this is to sort of walk through an example that I have for you here and then I'll show you a formula that we've created that gives you sort of a calculation sheet to help clients determine how much of their gain will qualify for the 121 exclusion.

So in the example on page 1-9, we have Joe who bought a property on January 1st of 2019 for \$600,000 and used it as a rental property for two years, claiming \$30,000 of depreciation. So his adjusted basis is now \$570,000. And on January 1st of 2021, he converts the property to his principal residence. The fair market value, let's assume, is still \$600,000. And on January 1st of 2023, Joe moves out.

He sells the property for \$800,000 on January 1st of 2024. So his sales price is \$800,000. His basis is \$570,000. His gain is \$230,000. The \$30,000 of gain attributable to the deduction for depreciation is going to be recaptured. And we'll talk about depreciation recapture more in just a minute, but I think that's a general rule that we're all comfortable with, at least in theory.

Of the remaining \$200,000 of gain, 40 % is non-qualified use because we have two years of non-qualified out of five years of total ownership. So the gain attributable to the non-qualified use is \$80,000 or 40 % of the 200,000. So the remaining \$200,000 of gain is taxed as follows. We take the \$200,000 of gain, we back out the \$80,000 that's the reduction for the non-qualified use. We have \$120,000 of gain remaining. So we can use the 121 exclusion against that \$120,000 of gain. We still have the non-qualified gain of \$80,000 there. So the total recognized gain that should say is \$80,000, not \$40,000. I don't know why that typo is there, but that should give you the \$80,000 number.

Now, if you look at the calculation on the next page, let's say that instead, Joe's gain was \$600,000 and we still had the same period of non-qualified use over the total period of ownership. So we'd still have the \$600,000 of gain minus the 40 % that's non-qualified. So that'd be \$240,000. That would leave us with \$361,000 of gain that was eligible for the 121 exclusion, we could then use our full \$110,000 of 121 exclusion. And then we would add back that non-qualified gain of \$240,000. And we'd have \$350,000 of gain that we would pay tax on out of the 600,000. So you can see how that math works there. I think that worksheet really makes it very helpful. But generally, you just want to look at what percentage of the time that they owned it, did they live in it versus what percentage of the time did they use it as a rental property? Any percentage of time it was used as a rental property, the gain associated with that period of time is not going to qualify for the 121 exclusion. Now, unfortunately, we can't say, well, the gain happened in these years and not these years, so it's just a percentage based on number of days. There is one exception to this non-qualified use rule.

Any time after the taxpayer last lived in the home is not considered non-qualified use. So your client could move out of the property. And because we have the two out of five years rule, they still have three years where they can rent the property before they sell. Take a look at the example on page 1-10. Jerry purchased his home on January 1st of 2013 for \$600,000 and used it as his principal residence until January 1st of 2022. We begin renting it out.

At that time, the fair market value of the property was greater than \$600,000. On January 1st of 2023, he sold the home for \$850,000. There's no period of non-qualified use because the rental period occurred after the last use as a principal residence. So he gets to exclude the full \$250,000 up gain. So just remember any rental after the last date they lived in it doesn't count as non-qualified use.

Now, I do think it's important to talk about what we use for basis purposes for depreciation when we are converting a residence to a rental property. And I think now is a really interesting time to have that conversation because I think we have a lot of people who own properties that they currently live in with a very low interest rate, depending on when they got the loan.

When we look at interest rates now, they are significantly higher. And so a lot of clients are thinking, well, rents are pretty high, my interest rate is low, maybe I'll keep this house and use it as a rental. I have three years to sort of decide what I want to do. And so I think that's something we're seeing quite a bit of. The depreciable basis of the residence converted to a rental property is the lesser of the property's adjusted basis or its fair market value at the time of conversion.

I have some examples for you on page 1-10 and 1-11. I don't think I really need to walk through those examples. It's pretty straightforward. Very rarely is the fair market value at the time of conversion going to be less than the property's adjusted basis. We did see that in 2008, 2009, when we had the market crash here in California, you did have some

clients whose fair market value of the property when they converted it to a rental because they couldn't sell it was actually lower than the adjusted basis. But for right now's time period, typically that adjusted basis is going to be less than the fair market value at the time of conversion.

On page 1-11, if you have a single dwelling unit, so one dwelling unit, but you have a portion that's used for residential purposes and a portion that's used for rental purposes, all of the gain qualifies for the 121 exclusion. It can't be detached or have its own entrance. So some people have a guest house or an ADU in the backyard.

Certainly then we wouldn't say all of the gain qualifies for a 121 exclusion. Some people have a situation where maybe they have like a basement-type apartment. So it's all in one structure, but it has its own unit. So entrance, its own kitchen. It really is its own standalone unit. Then again, not everything would qualify for a 121 exclusion. And I have an example for you on page 1-11.

Molly is a financial planner with a home office she used exclusively for business. It met all of the requirements deductible as our home office, including depreciation. When Molly sold her home, no allocation of gain was necessary as both the residential and non-residential portions were within the same dwelling unit.

Even though a portion of the residence was business related at the time of the sale, it was not disqualified from excluding the applicable 121 amounts. Depreciation recapture was taxed as an unrecaptured 1250 gain subject to the 25 % tax rate. Again, we're going to talk about that depreciation recapture in just a moment.

Now, what if we have multiple units? So now we have a situation where I live in part of the property and I rent part of the property but they're separate like that ADU in the yard, for example, or that basement apartment. Now the tax basis and the sales proceeds are split pro rata. So we look at the percentage of the property that's used for personal purposes versus the percentage of the property that's used for rental purposes. It's typically done using square footage. That's the easiest way to do it. The gain attributable to the residence qualifies for the 121 exclusion.

This also applies if we have farm buildings, duplexes or multi-use property, but we have a great example for you on page 1-12. Tran built a mechanic shop in the back of his one acre property. It had a separate driveway and entrance with a fence enclosure. The structure shared utilities, internet, phone system and security with the main house. And the fair market value of Tran's home prior to the shop building was \$400,000. His cost basis was \$300,000.

The cost of the shop structure was \$100,000. When construction was completed, the fair market value increased to a total of \$600,000. And Tran deducted \$12,000 of depreciation based on the lesser of fair market value or cost. He sold the home and the shop for a million dollars. So let's calculate his taxable gain. We have the original cost of the home and the land was \$300,000. So that's 75%. Here we did it on a cost basis, not a square footage.

We have the cost of the shop, which was \$100,000, so that's 25%. So we have a total cost of \$400,000. The shop building adjusted basis is \$100,000 minus \$12,000, so that's \$88,000. We have the gain on the home sale. So we have the million dollars times 75 % is \$750,000 minus the original cost minus his 121 exclusion. That gives us the \$200,000 capital gain on the home sale.

And for the gain on the shop portion, we have \$250,000 minus the \$88,000 adjusted basis. That gives us a net \$162,000 capital gain of \$162,000 related to the shop. And I mentioned some people do it using square footage. Some people do it using fair market value. It was easy in this case because he built the extra portion of the property so we could allocate a cost specifically to it.

Square footage tends to be easier for taxpayers that aren't doing that type of construction, but any type of reasonable method where you can allocate that percentage of cost or allocate based on square footage is going to work for you.

And let's talk a little bit about depreciation recapture, right? We've talked about how do we tax the income from the short-term rental? And we mentioned a couple of times during the discussion that we do have to recapture that depreciation. And like I said, I think all of us are comfortable with the fact that we have depreciation recapture. And

at the end of the day, I think one of the things that causes confusion in this area is that your software handles a lot of this for you. But the rules, for what gets depreciated and recaptured are a little different depending on what was rented. And I think it's important to make sure that you understand these rules so we make sure that that depreciation recapture is handled properly.

If you rent just a room in your house, you're going to recapture any depreciation claimed, any additional gain would qualify for the 121 exclusion. If you're renting a separate unit, the depreciation is still recaptured, but the 121 exclusion is only available for the portion of the gain allocated to the residence. So I think that's something you saw on the last two examples, talking about how we can recapture depreciation and look at that 121 exclusion. Don't get too focused on the 121 exclusion. If you're helping clients try and plan for what should I do? Should I convert a residence to a rental property? I would say it isn't for everyone, right?

Having a rental property has its pros and cons. And I think we have to look beyond, how long can we use the 121 exclusion? We have to look beyond the tax ramifications. They need to understand what it is to be a landlord. They need to understand that even though they're expecting X amount of rent, there may be months where that property goes unrented. And if that's going to cause a financial hardship for them, that's something they want to be very careful about.

I mentioned interest rates a moment ago. I think interest rates are a major consideration right now. I think that the high interest rates do mean some people are trying to hold on to older loans where the interest rates are low because that's going to benefit them into the future if they can hold on to that property with that low interest rate. But on the flip side of that, the high interest rates that we have now to buy a property mean that some people do have to sell that original property because they can't afford to take on the extra debt at the higher rate, you know, hoping that they'll be able to refi in a few years if interest rates drop. We just don't know where we're going to stand with that. And so I think there are pros and cons on both sides. And I think if you're trying to help clients plan, you want to be careful not to focus just on how long they get a 121 exclusion or what they can do to exclude the gain. You really have to look at all of those pros and cons.

All right, on page 1-14, there is a discussion of passive activity losses. And I do have sort of a practice pointer box for you on page 1-14, if you want to take a look at that, some of the considerations to take in, to think about if your clients are considering converting their personal residence to an income property. I think it's a good box of sort of a decision matrix to walk through.

But I mentioned, we talked about the taxation of the income, we talked about the deductions. What about the passive activity losses? So real estate activities are per se passive. So losses are limited to passive income. Active participants get \$25,000 deduction if their AGI is \$100,000 or less, \$50,000 for married filing separate.

It phases out \$1 for each dollar over the threshold. So it's gone at \$150,000. If they actively participate, so they have to have owned at least 10 % and made management decisions, et cetera. The exception does not apply for short-term rentals. So if their average rental period is seven days or less, then they don't qualify for that \$25,000 deduction. So this is really for longer term rental properties. And again, their AGI has to be below those thresholds. So most of your clients end up not qualifying for that exclusion.

SUPPLEMENTAL MATERIALS

Rental Real Estate: Part 1

INTRODUCTION

Rental property tax issues are a critical area of focus for tax professionals because the tax treatment of rental income and expenses can significantly impact a client's overall tax liability. This discussion focuses on key areas such as short-term rentals and passive income. Part 2 of the discussion focuses on depreciation and other considerations.

For purposes of the passive loss rules under IRC §469, rental income is deemed passive income by default. However, there are exceptions to the passive activity loss rule. If a taxpayer is a real estate professional and materially participates in their rental activities, then their rental income is nonpassive. This distinction is important because passive losses can only be deducted against passive income, while nonpassive losses can be deducted against all other income, including ordinary income.

But remember that although a rental activity may be considered passive for purposes of the passive loss rules, it can be treated as a "trade or business" for other rules, such as IRC §179 expensing, or the IRC §199A qualified business income deduction, or as nonpassive for purposes of the net investment income tax. We'll discuss this in more detail below.

Comment

Net rental income is not subject to self-employment tax. This statement is true whether the taxpayer is a passive investor or a materially participating real estate professional who treats their rental income or loss as nonpassive.

However, that does not mean that all income from real estate is exempt from self-employment taxes. For example, dealers in real estate who hold real estate as inventory, as well as hotel or bed and breakfast businesses, are subject to self-employment tax. Dealers in real estate are beyond the scope of today's discussion, but we will discuss short-term rentals treated as Schedule C businesses.

SHORT-TERM RENTALS

With the explosion of the "sharing economy," chances are you have at least one client who is renting out their home or part of their home through Airbnb, VRBO, Booking.com, or similar hosting platform.

However, clients don't always think about all of the tax consequences of renting out their home, or a portion of it.

Types of Rentals

How the income is treated depends on whether the "host" continues to use the residence between or during rentals, or completely vacates the residence to use it for rentals only:

- If the host continues to use the residence, deductions are computed under the vacation rental rules (IRC §280A);
- In contrast, if the host does not use the dwelling as a residence, then all expenses are deductible for the year or part of the year that the property was used or held for rental purposes, subject to the passive activity loss rules (IRC §469); and
- If a portion of the house is used exclusively for rentals, the hotel/bed and breakfast rules may apply. (IRC §280A(f)(1)(B); Prop. Treas. Regs. §1.280A-1(c)(2))

How the income is reported will impact which deductions may be claimed.

Use as a Residence: Vacation Rules

If a taxpayer uses the dwelling as a residence, the rental falls under the “vacation home rules.” A taxpayer uses a dwelling unit as a residence during the taxable year if they use the property for personal purposes for a number of days which exceeds the greater of:

- 14 days; or
- 10% of the total days it was rented to others. (IRC §280A(d)(1)(B))

Example of counting personal days

Jane owns a vacation rental in Mammoth Lakes that she rents to others for 315 days during the year. Jane is an avid skier and loves to fish, so she uses the property for 15 days in the winter and 15 days in the summer.

Jane’s total personal use days (30) does not exceed 10% of the total days her property is rented to others (315) ($30 \text{ personal use days} \div 315 \text{ days rented to others} = 9.5\%$).

Jane is not deemed to have used the property as a residence during the year.

If a home or portion of the home is used as a residence, rental deductions are limited to the amount of rental income. Any deductions that cannot be claimed may be carried over to future years. (Prop. Treas. Regs. §1.280A-3(d)(3))

Deductions must be claimed in the following order:

1. Expenses directly related to the rental (e.g., advertising, commissions, which can range from between 3% to 12%, etc.);
2. Interest and taxes (always-deductible expenses);
3. Operating costs that do not affect basis; and
4. Depreciation. (IRC §280A(g)).

Note however, if the taxpayer rents out a portion of the house and never uses that portion for personal purposes, the bed and breakfast rules apply.

Comment

Revisiting the example of Jane above, we quickly see the impact of a rental property that is also used as a residence. For Jane, because the number of days she uses her property is low enough that the property is not treated as a residence, she can deduct all of her rental income and expenses. Rental losses may be limited by the passive loss rules but not the vacation home rules of IRC §280A.

However, if Jane’s personal use days are great enough that the property is treated as a residence during the year, then her rental losses are first limited to rental income based on the ordering rules of IRC §280A before the passive loss rules come into play.

Whether a property is treated as a residence is a determination that must be made each year and can change year-to-year.

RENTAL FOR 14 DAYS OR LESS DURING THE YEAR (AUGUSTA RULE)

If a taxpayer uses a dwelling as a residence during the tax year and rents the dwelling for 14 days or less during the year, then the rental income is excluded from the taxpayer’s gross income (meaning that it’s not reported at all). The taxpayer also cannot claim any deductions related to the rental. (IRC §280A(g)) However, they can still deduct items that are deductible in the absence of the rules related to rental properties (which are generally itemized deductions for mortgage interest and property taxes).

The income is not required to be reported on the return, and Schedule E does not need to be completed to claim this exclusion, but the taxpayer should make sure to keep good records regarding which days the housing was rented and which days the home was used for personal use.

Comment

This tax treatment is known as the Masters Rule (or the Augusta Rule) due to the use of this provision by the residents of Augusta, Georgia, during the annual Masters Golf Tournament.

This is especially beneficial in cities, like Augusta, that host major events that bring in thousands of visitors to the city for a short period (e.g., Comic-Con in San Diego, Bay to Breakers in San Francisco, the Boston Marathon, and certain host cities for certain events, such as the Super Bowl). Some people have been known to collect the rent, store valuable items, take a European vacation, and still pocket a little cash.

HOW TO REPORT SHORT-TERM RENTAL INCOME

For those clients who are renting out a dwelling *they use as a residence* based on the days of personal use discussed earlier—either a room in their home or an entire home—income received from the rental must be included in the taxpayer's gross income.

Most taxpayers will likely report this income on Schedule E. However, if the activity rises to the level of a trade or business, the income will be reported on Schedule C.

Direct expenses 100% deductible

When a rental is used as a residence, direct expenses are 100% deductible to the extent they do not exceed the taxpayer's gross rental income from that rental activity. Direct expenses include Airbnb commissions, advertising, credit background checks, rental insurance, linens and bedding (if used exclusively for rental purposes), etc.

Prorate always-deductible expenses

Always-deductible rental expenses are deducted on a *pro rata* basis: days rented over days in the year. (IRC §280A(b)) Always-deductible expenses are deductible as rental expenses to the extent they do not exceed the taxpayer's gross rental income from that rental activity, and the balance is deductible on Schedule A.

Always-deductible expenses generally involve interest and taxes.

Prorate general expenses

General expenses are also deducted on a *pro rata* basis: days rented over days used. (IRC §280A(e)) Days used is a combination of both fair rental days and days used by the taxpayer as a residence.

General expenses include utilities, insurance repairs, etc.



Practice Pointer

There is an important distinction that must be made between prorating always-deductible expenses versus general expenses.

Always-deductible expenses are prorated using the formula:

$$\frac{\text{Days rented}}{\text{Days in the year}}$$

General expenses are prorated using the formula:

$$\frac{\text{Days rented}}{\text{Days used}}$$

Depreciation

If only a portion of the unit is rented, the expenses must be further prorated to account for the portion of the house/unit that is actually rented.

Depreciation deductions may also be claimed for the rental portion of the home or for the days of the year the entire home was rented. The basis for purposes of depreciating a principal residence converted to a rental is the lesser of the adjusted basis of the property or its fair market value at the time of conversion, after subtracting the amount allocated to nondepreciable land. (Treas. Regs. §1.167(a)-5 and (g)-1)

Any excess amounts over the income limitation are carried over.

Example of allowable deductions for a vacation rental

Jean lives in her San Diego condominium for 200 days during the year and leaves and rents it out for 100 days and brings in \$10,000 of rental income. The condominium is vacant the remaining 65 days of the year.

Total rental days over total days **in year**: $100 \div 365 = 27.4\%$

Total rental days over total days **used**: $100 \div 300 = 33.3\%$

Allowable deductions					
	Total expense	Applicable percentage	Allocable amount	Schedule E deduction	Cumulative deduction
Direct expenses	\$ 2,000	100.0%	\$2,000	\$2,000	\$ 2,000
Interest and taxes	\$26,000	27.4%	\$7,124	\$7,124	\$ 9,124
General expense	\$ 6,000	33.3%	\$2,000	\$ 876*	\$10,000
Depreciation	\$ 4,000	33.3%	\$1,333	\$ 0	\$10,000
* Deductions are limited to gross rental income, so Jean's cumulative deductions cannot exceed \$10,000 for the year					

Jean reports interest and taxes of \$18,876 (\$26,000 – \$7,124) on her Schedule A (interest and taxes are broken out ratably).

She carries forward general expenses of \$1,124 (\$2,000 – \$876) and depreciation of \$1,333.

DAYS OF USE

When is a day a “rental use” day?

A rental use day is:

- Any day the unit is rented at a fair rental price is a day of rental use even if the host used the unit for personal purposes that day (this rule does not apply when determining whether the host used the unit as a home); and
- Any day the unit is available for rent but not actually rented is not a day of rental use if the unit is subject to the vacation home rules of IRC §280A. (IRS Publication 527, Residential Rental Property (Including Rental of Vacation Homes))

When is a day a “personal use” day?

A taxpayer is considered to have used a dwelling unit for personal purposes on any day if, for any part of the day, the unit is used by:

- The taxpayer or any other person who owns an interest in the unit;

- The taxpayer's family members, including a spouse, sibling, half-sibling, lineal ancestor, and lineal descendant (unless the family member is pays full rental value);
- Anyone who uses the unit under a reciprocal agreement ("I use your place, you use mine"); and
- Any other individual who uses the unit without paying fair rental.

A day spent cleaning, repairing, or otherwise maintaining the property is not a day of personal use (it is neither a rental use day nor a personal use day). Any day that the unit is donated for charitable use is counted as a personal use day.

Example of maintenance work days

Al and Peggy own a lakeside cottage that they rent during the summer. Al and Peggy arrive late Thursday evening after a long drive to prepare the cottage for the rental season. Al and Peggy prepare dinner but do no work on the unit that evening. Al spends a normal work day working on the unit on Friday and Saturday; Peggy helps for a few hours each day but spends most of the time relaxing. By Saturday evening, the necessary maintenance work is complete. Neither Al nor Peggy works on the unit on Sunday; they depart shortly before noon.

The principal purpose of the use of the unit from Thursday evening through Sunday morning is to perform maintenance work on the unit. Consequently, the use during this period is not counted as personal use. (Prop. Treas. Regs. §1.280A-1(e)(7) Example 3)

Where to Claim Rental Expenses

Type of expense	Description	How much to deduct	Where to report
Direct expenses	Include Airbnb or other hosting-platform commissions, advertising, credit background checks, rental insurance, linens/beddings/other supplies (if used exclusively for rental purposes)	100% deductible subject to income limitations	Schedule E or Schedule C if rises to a trade or business
Always-deductible expenses	Generally interest and taxes	Deductible as rental expenses <i>pro rata</i> : days rented/days in year*	Schedule E or Schedule C if rises to a trade or business Balance may be deductible as itemized deductions on Schedule A
General expenses	Utilities, insurance, repairs, etc.	Deductible as rental expense <i>pro rata</i> : days rented/days used*	Schedule E or if rises to a trade or business, Schedule C

* If only a portion of the unit is rented, the expenses must be further prorated to account for the portion of the house/unit that is actually rented

Comment

If the rental activities rise to the level of a trade or business the taxpayer may also qualify for an IRC §199A deduction.

But remember, the tests for determining whether an activity is a trade or business may not be the same for all purposes. For instance, just because a rental activity is a trade or business for IRC §199A purposes doesn't mean it's also a trade or business for other purposes.

HOTEL OR BED AND BREAKFAST

In some instances, the rental of a room or a residence may be treated as a hotel or a bed and breakfast, which requires the host to treat the rentals as a trade or business, reportable on Schedule C. This applies in situations where a room or a residence is regularly made available for occupancy by paying customers and isn't used by an owner as a "home" during the year.

If a host provides substantial services such as regular cleaning, breakfast or other meals, changing linen, or maid service, then the activity is treated as a bed and breakfast. Under the exclusive-use rule, deductions for expenses incurred for dual-use areas such as kitchens, offices, and laundry rooms are not allowed.

Hosts that fall into this category must report the income on Schedule C, if a sole proprietor, and are required to pay self-employment taxes on the income. However, because the activity is treated as from a sole proprietorship, neither the passive activity loss rules nor the vacation home rules apply.

LOCAL RESTRICTIONS**Transient occupancy taxes**

Many localities impose a transient occupancy tax (TOT) or hotel occupancy tax (HOT) on rentals of 30 days or less. The following are the rates for some larger cities:

- **Chicago:** 10.5%;
- **Dallas:** 7%
- **Los Angeles:** 12%;
- **New York:** 5.87% plus a per-rental-unit flat fee;
- **San Diego:** 10.5% plus a 0.55% Tourism Marketing District Assessment; and
- **San Francisco:** 14%.

It is important for hosts to contact their cities to see if the city imposes a TOT or HOT. Airbnb and other hosting platforms are beginning to collect and remit these taxes in some cities. A listing of the cities where Airbnb collects TOT taxes is available at:

□ Website

www.airbnb.com/help/article/653?topic=264

Note: These taxes may be claimed as a deductible direct expense but not in excess of the rental income if the vacation rental rules apply.

Business license fees/taxes

Some cities also require hosts to obtain a business license and pay a business fee in addition to the transient occupancy tax. For instance, San Francisco requires qualified hosts to register with the city and pay a \$50 fee. Chicago requires hosts to register and pay a \$125 registration fee.

Personal property taxes

Many states and localities require short-term rental hosts to file a business personal property tax statement and pay the personal property tax on the property reported.

For instance, starting in May 2024, owners of short-term rentals (such as rentals offered through a platform like Airbnb) in California must complete new Form BOE-571-STR, Short Term Rental Property Statement, to report business personal property (although some counties such as San Francisco had required this in previous years). Unlike real property, business personal property generally is reappraised annually. Business owners must file a business property statement each year detailing costs of all supplies, equipment, and fixtures at each location.

Items such as furniture (televisions, computers, bed frames, mattresses, tables, chairs, entertainment units, artwork), kitchen items (such as dishes, flatware, and appliances), washing/drying machines, and any other property provided to renters as part of the rental activity are considered business personal property.

The form that was approved by the BOE for counties to adopt contains a table for itemizing the original cost of belongings for various rooms and the furniture and equipment/supplies that may appear in each, plus an “other” category for items such as bikes, hot tub, gazebo, sports equipment, vacuum cleaner, security system, patio furniture, and pool equipment.

While the form is only required if the taxable personal property has an aggregate cost of \$100,000 or more, it may be prudent for the host to file the form even if the value is less than \$100,000 so the county assessor doesn’t make assumptions about the value of the property that far exceeds the actual costs.

We’ve heard of other states, such as Washington, also requiring similar reporting. It’s important to check with the local county assessor of where the rental property is located to determine if a similar report is required in that jurisdiction.

OTHER NONTAX ISSUES

The news is filled with all types of controversies surrounding Airbnb-type rentals, and localities are responding with a whole array of approaches to handle the effects of short-term rentals on communities.

Communities are truly divided over the best way to deal with this booming shared economy. It is important to advise your clients of all the potential implications and to advise them to do their research to see just how expensive this supposedly easy income endeavor might be.

Many localities are limiting who can host short-term rentals. Examples include limiting:

- Short-term rentals to those rooms or units where an owner lives on the premises;
- The number of days in a year a unit can be rented for short-term occupancy; or
- The number of short-term rental occupancy licenses that will be issued in a municipality.

Hosts should also be careful to review their leases, homeowner association and subdivision rules, and rent control/zoning ordinances to see if they may be at risk of evictions or fines for renting out their units/rooms. In San Diego, the city issued a \$25,000 fine against a homeowner who failed to register her home as a bed and breakfast when she rented out two of her five bedrooms on Airbnb, even though she didn’t provide breakfast to any of her short-term renters. (Hargrove, Dorian (August 10, 2015) “AirBnb, the Elephant in the Room,” *San Diego Reader*)

CONVERTING RENTAL TO RESIDENCE OR VICE VERSA

Conversion to Rental and Nonqualified Use

Under IRC §121(a), for home sales after December 31, 2008, the gain from the sale or exchange of a principal residence is not excluded from gross income for periods that the home was not used as the principal residence (nonqualified use). (IRC §121(b)(4))

Nonqualified use is commonly an issue for taxpayers who convert a rental to a residence and then subsequently sell the property, hoping to exclude 100% of the gain from the sale of the home under IRC §121. However, periods during which taxpayers owned a second home and didn't use it as a principal residence is also considered nonqualified use. For example, a taxpayer who owns a vacation home and moves into it for two years before selling it must also grapple with nonqualified use issues.

The amount of gain allocated to periods of nonqualified use is the amount of gain multiplied by a fraction: The numerator is the aggregate periods of nonqualified use during the period the property was owned by the taxpayer, and the denominator is the period the taxpayer owned the property.

Example of rental converted to a residence

Joe bought a property on January 1, 2019, for \$600,000 and used it as rental property for two years, claiming \$30,000 of depreciation deductions. Thus, his adjusted basis is \$570,000. On January 1, 2021, Joe converted the property to his principal residence when the fair market value was still \$600,000. On January 1, 2023, Joe moved out. He sold the property for \$800,000 on January 1, 2024.

Sales price	\$800,000
Basis	<u>570,000</u>
Gain	\$230,000

The \$30,000 gain attributable to the deduction for depreciation is recaptured. Of the remaining \$200,000 gain, 40% is nonqualified use (two years nonqualified out of five years total ownership). Gain attributable to nonqualified use is \$80,000 (40% of \$200,000).

As such, the remaining \$200,000 gain is taxed as follows:

Gain	\$200,000
Reduction for nonqualified use	<u>(80,000)</u>
Remaining gain	120,000
IRC §121 exclusion amount	<u>(120,000)</u>
Gain after exclusion	0
Nonqualified gain	<u>80,000</u>
Total recognized gain	\$ 80,000

Calculation: Computing the gain with a period of nonqualified use

Follow these steps to compute the taxable gain on the sale of a principal residence:

Step 1

$$\text{Gain} \times \frac{\text{Period of nonqualified use}}{\text{Total period of ownership}} = \text{Nonqualified gain}$$

Step 2

Total gain	_____
Less nonqualified gain	(_____)
Excludable gain under IRC §121	_____
Less IRC §121 exclusion	(_____)
Gain after exclusion (not less than zero)	_____
Add nonqualified gain	_____
Total recognized gain	=====

Exception to nonqualified use

One of the exceptions to the IRC §121 primary residence two-year qualified use requirement is where a taxpayer converts a residence into a rental property and then sells the home within three years of the conversion. (IRC §121(b)(5)(C)(ii)) In this scenario, the taxpayer still meets the two-out-of-five-year test.

Example of rental use after last use as a principal residence

Jerry purchased his home on January 1, 2013, for \$600,000 and used it as his principal residence until January 1, 2022, when he began renting it out. At that time, the FMV of the property was greater than \$600,000. On January 1, 2023, he sold the home for \$850,000. There is no period of nonqualified use because the rental period occurred after the last use as a principal residence. He may exclude the entire \$250,000 gain.

The exception only applies to any portion of the five-year period that is after the last date that the property is used as the principal residence of the taxpayer or the taxpayer's spouse.

DEPRECIABLE BASIS WHEN RESIDENCE CONVERTED TO RENTAL

The depreciable basis of a residence converted to a rental property is the lesser of:

- The property's adjusted basis; or
- Its fair market value at the time of conversion.
(Treas. Regs. §§1.165-9(b)(2), 1.167(g)-1)

Example #1 of depreciable basis of former residence

Mary purchased her principal residence on May 10, 2012, for \$500,000 (\$200,000 allocated to land and \$300,000 allocated to buildings). On June 27, 2023, Mary converted her residence to a rental property when the fair market value of her home was \$800,000 (\$320,000 allocated to land and \$480,000 allocated to buildings).

The depreciable basis for Mary's former residence based on the lesser of basis or FMV is \$300,000 (depreciable over 27.5 years) and \$200,000 to nondepreciable land (the lesser of adjusted basis or fair market value at the time of conversion).

Example #2 of depreciable basis of former residence

Luke purchased his principal residence on September 12, 2017, for \$500,000 (\$200,000 allocated to land and \$300,000 allocated to buildings). On July 9, 2023, Luke converted his residence to a rental property when the fair market value of his home was \$400,000 (\$160,000 allocated to land and \$240,000 allocated to buildings). The depreciable basis for Luke's former residence based on the lesser of the original basis or FMV is \$240,000 (depreciable over 27.5 years) and \$160,000 to nondepreciable land (the lesser of adjusted basis or fair market value at the time of conversion).

SINGLE DWELLING UNIT HOME USED FOR BOTH PERSONAL AND BUSINESS PURPOSES

Taxpayers may treat the entire home as a single unit if the residential part and the rental or business part are both within the same dwelling. (Treas. Regs. §1.121-1(e)(2)) In this case, the entire property qualifies for the gain exclusion if it otherwise meets the requirements for a residence.

A single structure may have more than one dwelling unit. A dwelling unit includes a house, apartment, condominium, boat, mobile home, or similar property. It does not include a detached garage; a basement or any part of the home that has its own entrance, bathroom, and cooking facilities; a guest house; or any other structure separate and away from the main residence.

Example of a single dwelling unit

Molly is a financial planner with a home office she used exclusively for business. It met all of the requirements to be deductible as her home office, including depreciation. When Molly sold her home, no allocation of gain was necessary as both the residential and nonresidential portions were within the same dwelling unit. Even though a portion of the residence was business-related at the time of the sale, it was not disqualified from excluding the applicable IRC §121 amount. Depreciation recapture was taxed as an unrecaptured IRC §1250 gain subject to a maximum 25% tax rate.

MULTI-DWELLING UNIT HOME USED FOR BOTH PERSONAL AND BUSINESS PURPOSES

Properties with multiple structures used for both personal and business purposes must be allocated *pro rata* to the entire property. (Treas. Regs. §1.121-1(e)) When the property is sold, the transaction is treated as separate sales. The tax basis and sales proceeds are allocated between the business unit and residence. The gain attributable to the residence portion qualifies for the IRC §121 exclusion if otherwise applicable.

Example of multi-dwelling unit

Tran built a mechanics shop in the back of his one-acre property. It had a separate driveway and entrance with a fence enclosure. The structure shared utilities, internet, phone system, and security with the main house. The FMV of Tran's home prior to the shop building was \$400,000. His cost basis was \$300,000. The cost of the shop structure was \$100,000. When construction was completed, the FMV increased in total to \$600,000. Tran deducted \$12,000 of depreciation based on the lesser of FMV or cost. He sold the home and shop for \$1 million. Tran's taxable gain is calculated as follows:

Original cost of home and land	\$300,000	75%
Cost of shop	<u>100,000</u>	25%
Total cost	\$400,000	
Shop building adjusted basis (\$100,000 – \$12,000)	\$ 88,000	
Gain on home sale		
Allocated sale price (\$1,000,000 × 75%)	\$750,000	
Original cost	(300,000)	
IRC §121 gain exclusion	<u>(250,000)</u>	
Tran's capital gain on home sale	\$200,000	
Gain on shop portion		
Allocated sale price (\$1,000,000 × 25%)	\$250,000	
Adjusted basis	<u>(88,000)</u>	
Net IRC §1250 capital gain	\$162,000	

Other examples of property separate from the residential dwelling excludable from IRC §121 are:

- Ranch or farm buildings not attached to the taxpayer's home;
- A duplex in which the taxpayer lives in one unit and rents the other unit; and
- A commercial building such as a store where the building owner lives in an upstairs apartment.

CONVERTING VACATION OR RENTAL PROPERTY TO PERSONAL RESIDENCE

When a taxpayer converts a vacation or rental property to their principal residence, any gain upon the sale attributable to the period of nonqualified use after 2008 is taxable and not eligible for any benefit from the IRC §121 exclusion. Nonexcludable gain is calculated *pro rata* based on the period of ownership to the period of nonqualified use.

$$\frac{\text{Nonqualified use}}{\text{Years of ownership}} \times \text{Total gain} = \text{Nonexcludable gain}$$

The consequences to taxpayers for renting out their home are different depending on whether the host:

- Rented out a room in their home;
- Rented out a separate unit; or
- Rented out their own home for a portion of the year.

Renting of rooms

If the Airbnb host rented out a room in their home and the room/rooms were not separate units, when they sell the home:

- They must recapture any depreciation claimed for the rooms; and
- The amount of any IRC §121 primary residence gain exclusion is reduced by any depreciation recapture. (Treas. Regs. §1.121-1(e)(1))

Example of reduction of IRC §121 gain exclusion

Javier has rented two rooms in his home on Airbnb for the last five years and claimed \$9,000 in depreciation for these rooms. He sells his home for a \$100,000 gain. He must report the \$9,000 in depreciation recapture and can only exclude \$91,000 of the gain under §121.

Renting out a separate unit in a home

If a taxpayer lives in a home but converts a part of the home or a garage into a separate unit with a separate entrance, the portion of the gain attributable to the separate unit will not be eligible for the primary residence exclusion. (Treas. Regs. §1.121-1(e)(1)) The depreciation deductions taken on the separate unit will be subject to depreciation recapture. (Treas. Regs. §1.121-1(d))

Example of separate dwelling unit

In 2016, Anika bought a three-story townhouse and converted the basement level, which has a separate entrance, into a separate apartment by installing a kitchenette and bathroom and removing the interior stairway that leads from the basement to the upper floors. After the conversion, the property is comprised of two dwelling units.

Anika used the first and second floors of the townhouse as her principal residence and rented the basement level to Airbnb guests from 2019 to 2023. Anika claimed depreciation deductions of \$2,000 for that period with respect to the basement apartment. She sells the entire property in 2023, realizing gain of \$20,000, with \$2,000 depreciation recapture.

Because the basement apartment and the upper floors of the townhouse are separate dwelling units, Anika must allocate the gain between the portion of the property that she used as her principal residence and the portion of the property that she used for nonresidential purposes. The basement unit is one third of the property.

Anika must recapture the \$2,000 of depreciation, leaving a gain of \$18,000. One-third of the gain is allocated to the rental property. (Treas. Regs. §1.121-1(e)(4), Ex. 3)

Anika's gain is computed as follows:

Basement apartment		Principal residence	
Depreciation recapture	\$2,000	Gain	\$12,000
Gain (Form 4797)	<u>6,000</u>	IRC §121 exclusion	<u>(12,000)</u>
Total recognized gain	\$8,000	Total recognized gain	\$ 0

Beware of new basis

Remember that the depreciable basis for a residence converted to a rental property is the lesser of:

- The property's adjusted basis; or
- Its fair market value at the time of conversion. (Treas. Regs. §§1.165-9(b)(2), 1.167(g)-1)

Example of depreciable basis of former residence

Larry purchased his principal residence on September 12, 2020, for \$450,000 (\$175,000 allocated to land and \$275,000 allocated to buildings). On July 9, 2023, Larry converted his residence to a rental property when the fair market value of his home was \$400,000 (\$160,000 allocated to nondepreciable land and \$240,000 allocated to buildings).

The depreciable basis for Larry's former residence is the lesser of the FMV, \$240,000, or his adjusted basis, \$275,000.

 **Practice Pointer**

There are many tax planning strategies to consider when advising clients on converting their personal residence to an income property. While excluding taxable gain under IRC §121 is viewed as an appealing tax planning opportunity and benefit, you and the taxpayer may want to consider some of the following points before making that final decision:

- Rental property operational expenses are deductible—utilities, repairs, maintenance;
- There is no limit on property tax deductions for rentals;
- There is no mortgage interest deduction limit on rentals;
- Passive losses generated by the rental may offset other passive income;
- Passive income generated may offset other passive losses;
- Loss on the sale of property used exclusively for business is deductible;
- Loss on the sale of a personal residence is not deductible; and
- Being a landlord takes time, patience, and can be challenging.

 **Practice Pointer (Continued)**

Converting a residence to a rental brings on more scrutiny by the IRS. An auditor will look closely at:

- The purpose, intentions, and primary motivation for the conversion;
- Having a rental or other income property requires more stringent record keeping, and creates extra tax filings and compliance; and
- Owning rental property increases the taxpayer's liability risk.

PASSIVE ACTIVITY LOSSES

Rental real estate activities are treated as *per se* passive for purposes of the passive activity rules. This means losses generated from rental real estate are nondeductible against nonpassive income, with the limited exception of a maximum \$25,000 deduction for active participation and the exception for "real estate professionals" under IRC §469(c)(7).

Similar rules apply to tax credits. Tax credits attributable to passive activities may only be used to offset taxes attributable to income from passive activities unless the real estate professional exception applies.

\$25,000 DEDUCTION

Taxpayers who actively participate in a rental real estate activity may qualify for limited relief from the passive activity rules. (IRC §469(i))

If the taxpayer's AGI is \$100,000 or less (\$50,000 for married taxpayers filing separately), then a taxpayer may be able to deduct up to \$25,000 (\$12,500 for MFS) of their Schedule E rental losses, even if they have no other passive income. The \$25,000 maximum amount is reduced when the taxpayer's AGI exceeds \$100,000 and is fully phased out once their AGI reaches \$150,000 (\$75,000 for MFS). These numbers are not subject to inflation adjustments and haven't changed since IRC §469 was added to the Internal Revenue Code in 1986.

A taxpayer actively participates in a rental real estate activity if:

- They owned at least 10% of the rental property; and
- Made management decisions or arranged for others to provide services (such as repairs) in a significant and bona fide sense.

The active participation standard is easier to satisfy than the material participation standard. In order to meet the active participation standard, the taxpayer must simply participate in the rental activity in a significant way, including making management decisions or arranging for others to provide services (such as hiring the plumber to fix a leak), approving new tenants, setting rental policies and terms, and approving capital expenditures and repairs. (*Madler v. Comm.*, TCM 1998-112)

Example of active participation

Al and Mira are siblings, and each owns 50% of a residential rental property they inherited when their mother died. They use a management company for the day-to-day rental activity.

Al is the main contact with the management company. He approves rental applications, pays the semi-annual property tax bill, makes the monthly mortgage payments, and he approves any major expenditures proposed by the management company. Mira cashes a monthly check she receives.

In this scenario, Al actively participates in the rental activity, but Mira does not.

A taxpayer cannot satisfy the active participation standard if their ownership in the rental activity drops below 10% at any point during the year. (IRC §469(i)(6)(A))

LOSSES FROM SHORT-TERM RENTALS

The \$25,000 passive loss limitation exception does not apply if the taxpayer's average rental period is seven days or less. This short-term rental property is technically removed from the Code's definition of "rental activity." (Treas. Regs. §1.469-1T(e)(3)(ii)(A)) This means that these short-term rentals are not treated as "per se" passive, and the \$25,000 passive loss limitation exception will not apply for many short-term rentals on Airbnb and VRBO, etc.

It also means that hours spent in short-term rentals do not count toward meeting the real estate professional tests.

GROUP STUDY MATERIALS

A. Discussion Questions

1. How does the tax treatment of rental income differ between properties used as a residence versus those used exclusively for rental purposes? What factors determine whether a property is considered a "residence" for tax purposes?
2. Discuss the "Augusta Rule" (14-day rental exception) and its potential tax benefits. In what situations might taxpayers take advantage of this rule?
3. What are the key differences in tax treatment between short-term rentals (average rental period of 7 days or less) and long-term rentals? How does this impact the application of passive activity loss rules?
4. How does converting a personal residence to a rental property affect the property's depreciable basis? What considerations should taxpayers keep in mind when making this conversion?
5. Explain the concept of "nonqualified use" in relation to the IRC §121 exclusion for gain on the sale of a principal residence. How does this impact taxpayers who convert rental properties to personal residences?
6. What are the requirements for a taxpayer to qualify for the \$25,000 passive loss deduction for rental real estate activities? How does this differ from the requirements for being considered a "real estate professional" under IRC §469(c)(7)?

B. Suggested Answers to Discussion Questions

1. The tax treatment of rental income differs based on whether the property is used as a residence or exclusively for rental:

For properties used as a residence (personal use exceeds 14 days or 10% of rental days), rental deductions are limited to rental income, and expenses must be allocated between personal and rental use. Excess deductions can be carried forward.

For properties used exclusively for rental, all expenses are deductible subject to passive activity loss rules. A property is considered a "residence" if personal use exceeds the greater of 14 days or 10% of the total days rented at fair market value.

2. The "Augusta Rule" allows taxpayers to exclude rental income from their gross income if they rent their home for 14 days or less during the tax year. This can be beneficial for taxpayers in areas with major events (like the Masters Golf Tournament in Augusta) where short-term rentals command high prices. Taxpayers can earn tax-free income without having to report it or allocate expenses between personal and rental use.
3. Short-term rentals (average rental period of 7 days or less) are not considered "per se" passive activities, unlike long-term rentals. This means:
- Short-term rental losses don't qualify for the \$25,000 passive loss limitation exception.
 - Hours spent on short-term rentals don't count towards meeting the real estate professional tests.
 - Taxpayers may need to materially participate in short-term rentals to deduct losses against other income.
4. When converting a personal residence to a rental property, the depreciable basis is the lesser of:
- The property's adjusted basis, or
 - Its fair market value at the time of conversion.

Taxpayers should consider:

- Potential future capital gains when selling the property
 - The impact on property tax deductions and mortgage interest limits
 - The ability to offset rental income with depreciation deductions
5. "Nonqualified use" refers to periods when the property was not used as the taxpayer's principal residence. When selling a home, gain allocated to periods of nonqualified use is not eligible for the IRC §121 exclusion. This impacts taxpayers who convert rental properties to personal residences by potentially reducing the amount of gain they can exclude from taxation when they sell the property.
6. To qualify for the \$25,000 passive loss deduction for rental real estate:
- Taxpayer must actively participate in the rental activity
 - Own at least 10% of the rental property
 - AGI must be \$100,000 or less for full deduction (phases out completely at \$150,000)

This differs from "real estate professional" status under IRC §469(c)(7), which requires:

- More than half of personal services performed in real property trades or businesses
- More than 750 hours of services in real property trades or businesses
- Material participation in each rental real estate activity

The real estate professional status allows unlimited loss deductions, while the \$25,000 allowance is limited and subject to income phaseouts.

GLOSSARY OF KEY TERMS

BOI—Beneficial Ownership Interest

CTA—Corporate Transparency Act

ERC—Employee Retention Credit

FinCEN—Financial Crimes Enforcement Network

NIL—Name, Image, Likeness

PLR—Private Letter Ruling

Publication 5—Your Appeal Rights and How to Prepare a Protest if You Disagree

RMD—Required Minimum Distribution

UPL—Unauthorized practice of law

Tax Report

Volume 37, Issue 8

September 2024

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

1. According to Ian Redpath, according to the New Jersey Supreme Court Committee, when can CPAs provide Beneficial Ownership Information (BOI) reporting services without it being considered unauthorized practice of law?
 - A. Never, it's always considered practicing law.
 - B. Only if the filing is straightforward and not complex.
 - C. Only if they have a law degree.
 - D. Always, it's never considered practicing law.

2. According to Ian Redpath, what is the maximum penalty for non-compliance with BOI reporting requirements?
 - A. \$5,000 fine.
 - B. \$10,000 fine and 1 year imprisonment.
 - C. \$10,000 fine and 2 years imprisonment.
 - D. \$25,000 fine.

3. According to Ian Redpath, in the Bibeau case, what was the court's ruling regarding the 1837 treaty and tax obligations?
 - A. The treaty provides complete tax exemption.
 - B. The treaty allows for partial tax exemption.
 - C. The treaty voids all tax obligations for tribe members.
 - D. The treaty only applies to hunting and fishing, not law practice.

4. According to Ian Redpath, in accordance with recent IRS guidance, why are most Name, Image, and Likeness (NIL) collectives likely to lose their 501(c)(3) status?
 - A. They provide private benefits to athletes.
 - B. They don't file proper tax returns.
 - C. They are too closely associated with universities.
 - D. They don't raise enough money.

5. According to Ian Redpath, How did the IRS rule on premium economy seating fees in Program Manager Technical Advice 2024-004?
 - A. The fees are tax-deductible.
 - B. The fees are exempt from taxes.
 - C. The fees are subject to excise taxes on transportation.
 - D. The fees should be reported as income by passengers

Continued on next page

6. According to Renee Rodda, what is the personal use threshold for a property to be considered a vacation rental?
 - A. 7 days or 5% of rental days
 - B. 14 days or 10% of rental days
 - C. 30 days or 15% of rental days
 - D. 60 days or 20% of rental days
7. According to Renee Rodda, under the "Augusta Rule," how many days can a property be rented out tax-free?
 - A. 7 days
 - B. 10 days
 - C. 14 days
 - D. 21 days
8. According to Renee Rodda, how are "always deductible" expenses (like mortgage interest and property taxes) allocated for rental properties?
 - A. Based on square footage.
 - B. Based on rental days / total days in year.
 - C. Based on rental income / total income
 - D. 100% to the rental activity
9. According to Renee Rodda, what is the impact of treating a rental as a hotel/B&B for tax purposes?
 - A. Income is reported on Schedule C and subject to self-employment tax.
 - B. Income is reported on Schedule E.
 - C. Rental losses are always fully deductible.
 - D. The activity is automatically considered passive.
10. According to Renee Rodda, what is "non-qualified use" in the context of the Section 121 exclusion?
 - A. Any use of the property for rental purposes
 - B. Use of the property for business purposes
 - C. Use of the property by family members
 - D. Periods when the property wasn't used as the principal residence

Continued on next page

11. According to Renee Rodda, how does non-qualified use affect the Section 121 exclusion on the sale of a principal residence?
- A. It disqualifies the entire exclusion.
 - B. It reduces the exclusion proportionally based on non-qualified use period.
 - C. It only affects the exclusion if the non-qualified use exceeds 3 years.
 - D. It has no effect on the exclusion.
12. According to Renee Rodda, what is the depreciable basis of a residence converted to a rental property?
- A. The original purchase price
 - B. The fair market value at the time of conversion
 - C. The lesser of adjusted basis or fair market value at conversion
 - D. The assessed value for property tax purposes
13. According to Renee Rodda, how is depreciation recapture treated when selling a home where a room was rented out?
- A. No depreciation recapture is required
 - B. Depreciation is recaptured, but gain still qualifies for Section 121 exclusion
 - C. Depreciation is recaptured and no Section 121 exclusion is allowed
 - D. Depreciation recapture is prorated based on rental use percentage
14. According to Renee Rodda, what is the AGI threshold for the \$25,000 passive activity loss allowance for rental real estate?
- A. \$50,000.
 - B. \$75,000.
 - C. \$100,000.
 - D. \$150,000.
15. According to Renee Rodda, what is required for a taxpayer to "actively participate" in a rental activity?
- A. They must work full-time managing the property.
 - B. They must live in the property for part of the year.
 - C. They must have a real estate license.
 - D. They must own at least 10% of the property and make management decisions.

SUBSCRIBER SURVEY
Evaluation Form

Please take a few minutes to complete this survey related to the **CPE Network® Tax Report** and return with your quizzer or group attendance sheet to CeriFi, LLC. All responses will be kept confidential. Comments in addition to the answers to these questions are also welcome. Please send comments to **CPLgrading@cerifi.com**.

How would you rate the topics covered in the September 2024 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Key Considerations of Taxing Rental Real Estate: Part 1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Which segments of the September 2024 issue of **CPE Network® Tax Report** did you like the most, and why?

Which segments of the September 2024 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 September 2024 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5=highest):

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	<input type="text"/>	<input type="text"/>	<input type="text"/>
Renee Rodda	<input type="text"/>	<input type="text"/>	<input type="text"/>

Which of the following would you use for viewing **CPE Network® Tax Report**? DVD ☐ Streaming ☐ Both ☐

Are you using **CPE Network® Tax Report** for: CPE Credit ☐ Information ☐ Both ☐ _____

Were the stated learning objectives met? Yes ☐ No ☐ _____

If applicable, were prerequisite requirements appropriate? Yes ☐ No ☐ _____

Were program materials accurate? Yes ☐ No ☐ _____

Were program materials relevant and contribute to the achievement of the learning objectives? Yes ☐ No ☐ _____

Were the time allocations for the program appropriate? Yes ☐ No ☐ _____

Were the supplemental reading materials satisfactory? Yes ☐ No ☐ _____

Were the discussion questions and answers satisfactory? Yes ☐ No ☐ _____

Were the audio and visual materials effective? Yes ☐ No ☐ _____

Specific Comments: _____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

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

CPE Network[®]

Firm/Company Name: _____

Account #:

Location:

Program Title: _____

Date: _____

[illegible]

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

Instructor Name: _____

Date: _____

E-mail address:

License State and Number:

CPE Network/Webinar Delivery Tracking Report

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

[illegible]

CHECKPOINT LEARNING NETWORK

CPE NETWORK[®]

USER GUIDE

REVISED December 31, 2023

Welcome to CPE Network!

CPE Network programs enable you to deliver training programs to those in your firm in a manageable way. You can choose how you want to deliver the training in a way that suits your firm's needs: in the classroom, virtual, or self-study. You must review and understand the requirements of each of these delivery methods before conducting your training to ensure you meet (and document) all the requirements.

This User Guide has the following sections:

- **“Group Live” Format:** The instructor and all the participants are gathered into a common area, such as a conference room or training room at a location of your choice.
- **“Group Internet Based” Format:** Deliver your training over the internet via Zoom, Teams, Webex, or other application that allows the instructor to present materials that all the participants can view at the same time.
- **“Self-Study” Format:** Each participant can take the self-study version of the CPE Network program on their own computers at a time and place of their convenience. No instructor is required for self-study.
- **Transitioning From DVDs:** For groups playing the video from the online platform, we suggest downloading the video from the Checkpoint Learning player to the desktop before projecting.
- **What Does It Mean to Be a CPE Sponsor?:** Should you decide to vary from any of the requirements in the 3 methods noted above (for example, provide less than 3 full CPE credits, alter subject areas, offer hybrid or variations to the methods described above), Checkpoint Learning Network will not be the sponsor and will not issue certificates. In this scenario, your firm will become the sponsor and must issue its own certificates of completion. This section outlines the sponsor's responsibilities that you must adhere to if you choose not to follow the requirements for the delivery methods.
- **Getting Help:** Refer to this section to get your questions answered.

IMPORTANT: This User Guide outlines in detail what is required for each of the 3 formats above. Additionally, because you will be delivering the training within your firm, you should review the Sponsor Responsibilities section as well. To get certificates of completion for your participants following your training, you must submit all the required documentation. (This is noted at the end of each section.) Checkpoint Learning Network will review your training documentation for completeness and adherence to all requirements. If all your materials are received and complete, certificates of completion will be issued for the participants attending your training. Failure to submit the required completed documentation will result in delays and/or denial of certificates.

IMPORTANT: If you vary from the instructions noted above, your firm will become the sponsor of the training event and you will have to create your own certificates of completions for your participants. In this case, you do not need to submit any documentation back to CeriFi, LLC.

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

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

Copyrighted Materials

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

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

Note: DVDs no longer ship with this product effective 3/1/2023.

When the DVD is inserted into a DVD drive, the video will immediately begin to play and the menu screen will pop up, taking the entire screen. Hitting the Esc key should minimize it to a smaller window. To locate the pdf file of the transcript either to save or email to others, go to the start button on the computer. In My Computer, open the drive with the DVD. The Adobe Acrobat files are the transcript files. If you do not currently have Adobe Acrobat Reader (Mac versions of the reader are also available), a free version of the reader may be downloaded at:

- <https://get.adobe.com/reader/>

The entire transcript is also available as a pdf in the Checkpoint Learning player in the resource toolbox at the top of the screen, or via the link in the email sent to administrators.

Requesting Participant CPE Certificates

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

Email: CPLgrading@cerifi.com

When sending your package to CeriFi, you must include ALL of the following items:

Form Name	Included?	Notes
Advertising / Promotional Page		Complete this form and circulate to your audience before the training event.
Attendance Sheet		Use this form to track attendance during your training session.
Subscriber Survey Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

1. You are using **Zoom** for your webinar. The moderator pauses approximately every 15 minutes and asks that participants confirm their attendance by using the “raise hands”

feature. Once the participants raise their hands, the moderator records the participants who have their hands up in the **webinar delivery tracking report** by putting a YES in the webinar delivery tracking report. After documenting in the spreadsheet, the instructor (or moderator) drops everyone's hands and continues the training.

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

Where individual participants log into a group live program they are required to enable two-way video to participate in a virtual face-to-face setting (with cameras on), elements of engagement are required (such as group discussion, polling questions, instructor posed questions with time for reflection, or a case study with engagement throughout the presentation) in order to award CPE credits to the participants. Participation in the two-way video conference must be monitored and documented by the instructor or attendance monitor in order to authenticate attendance for program duration. The participant-to-attendance

monitor ratio must not exceed 25:1, unless there is a dedicated attendance monitor in which case the participant-to-attendance monitor ratio must not exceed 100:1.

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

Note: DVDs are no longer shipped effective 3/1/2023

When the DVD is inserted into a DVD drive, the video will immediately begin to play and the menu screen will pop up, taking the entire screen. Hitting the Esc key should minimize it to a smaller window. To locate the pdf file of the transcript either to save or email to others, go to the start button on the computer. In My Computer, open the drive with the DVD. It should look something like the screenshot below. The Adobe Acrobat files are the transcript files. If you do not currently have Adobe Acrobat Reader (Mac versions of the reader are also available), a free version of the reader may be downloaded at:

- <https://get.adobe.com/reader/>

Alternatively, for those without a DVD drive, the email sent to administrators each month has a link to the pdf for the newsletter. The email may be forwarded to participants who may download the materials or print them as needed.

Requesting Participant CPE Certificates

When delivered as 3 CPE credits, documentation of your “group internet based” session should be sent to Checkpoint Learning Network by the following means:

Email: CPLgrading@CeriFi.com

When sending your package to CeriFi, you must include ALL the following items:

Form Name	Included?	Notes
Advertising / Promotional Page		Complete this form and circulate to your audience before the training event.
Webinar Delivery Tracking Report		Use this form to track the attendance (i.e., polling questions) during your training webinar.
Evaluation Form		Circulate the evaluation form at the end of your training session so that participants can review and comment on the training. Return to CeriFi any evaluations that were completed. You do not have to return an evaluation for every participant.

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Email

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

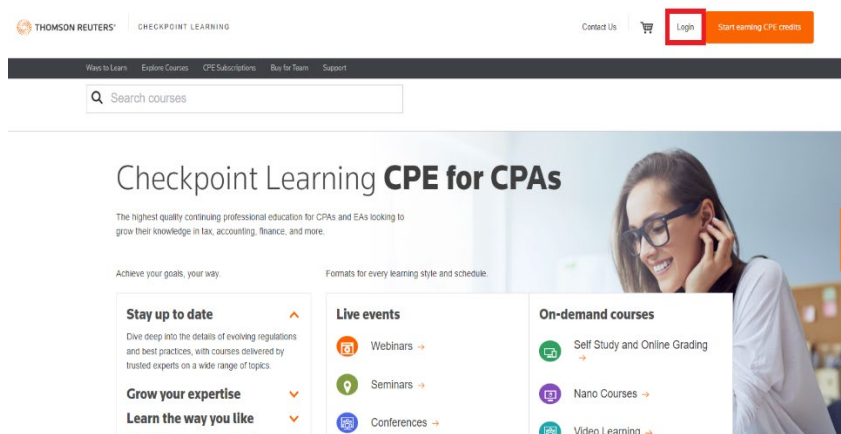
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

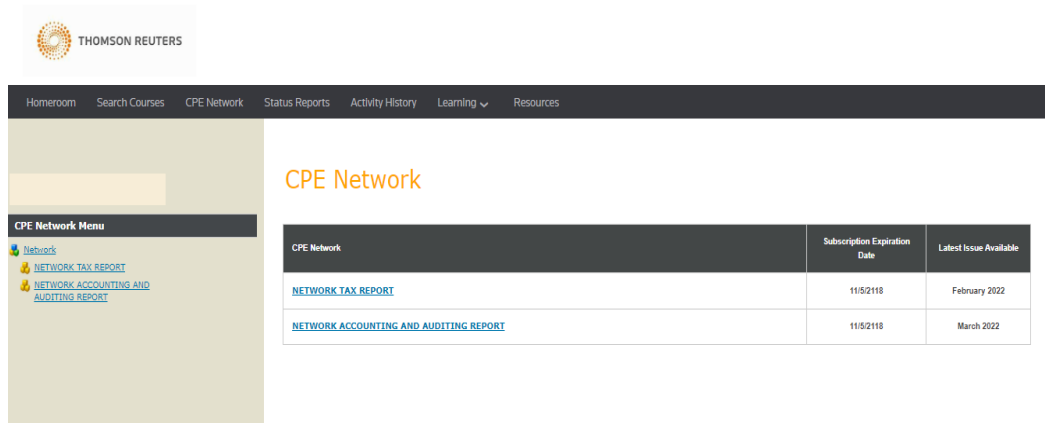
Self-Study—Online

Follow these simple steps to use the online program:

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

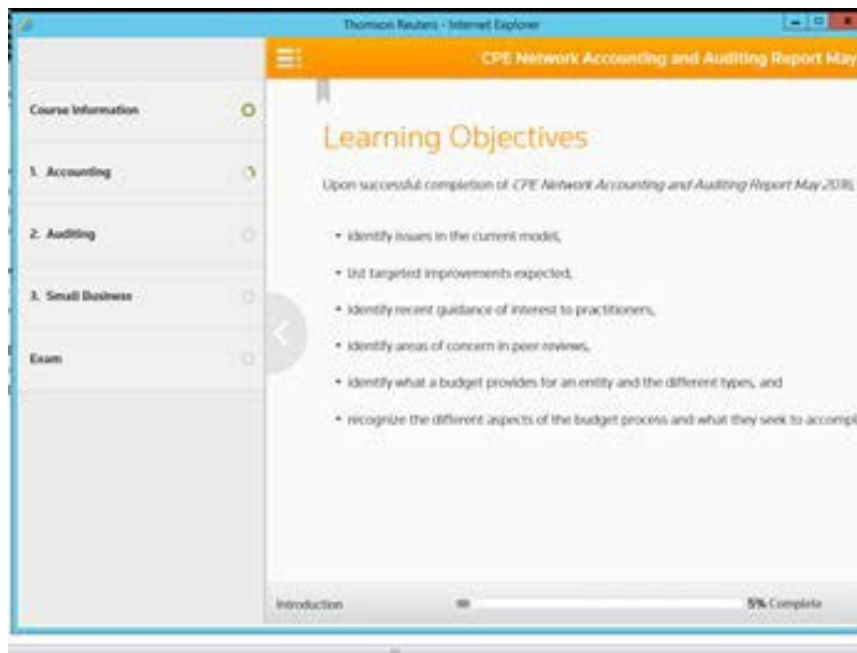


- In the **CPE Network** tab, select the desired Network Report and then the appropriate edition.



CPE Network	Subscription Expiration Date	Latest Issue Available
NETWORK TAX REPORT	11/5/2118	February 2022
NETWORK ACCOUNTING AND AUDITING REPORT	11/5/2118	March 2022

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



Learning Objectives

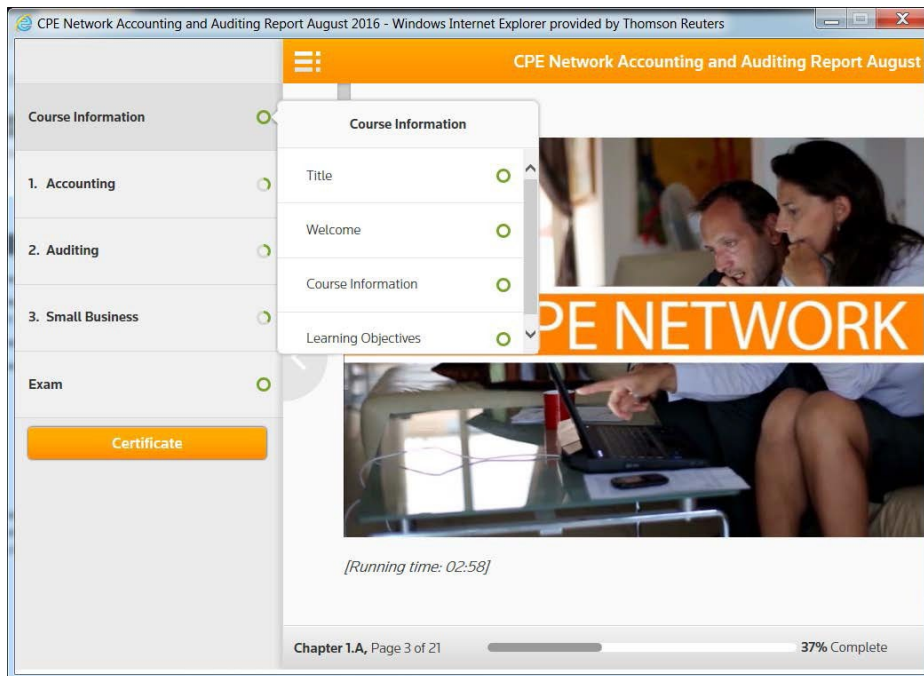
Upon successful completion of *CPE Network Accounting and Auditing Report May 2018*, 1

- identify issues in the current model,
- list targeted improvements expected,
- identify recent guidance of interest to practitioners,
- identify areas of concern in peer reviews,
- identify what a budget provides for an entity and the different types, and
- recognize the different aspects of the budget process and what they seek to accomplish

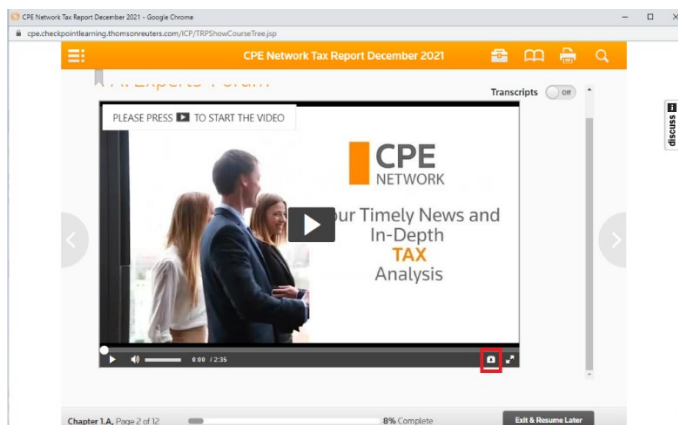
Introduction 5% Complete

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

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



- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access the related materials.



Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.

Thomson Reuters - Internet Explorer

CPE Network Accounting and Auditing Report May 2016

Transcripts ☒

Chapter 1 Liabilities and Equity: Another Look at the Model

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

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

Ms. Grove Casey

Today, we want to talk a little bit

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

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

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

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

Transcripts ☒

Chapter 1 Liabilities and Equity: Another Look at the Model

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

CHAPTER 1. ACCOUNTING

Liabilities and Equity: Another Look at the Model

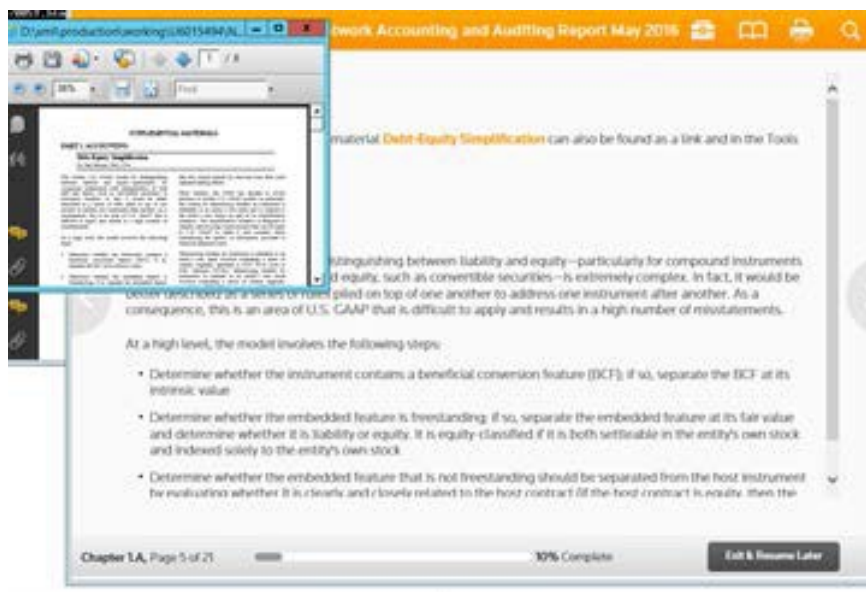
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Ms. Grove Casey

Today, we want to talk a little bit

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



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

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

The screenshot displays a web-based interface for a CPE (Continuing Professional Education) report. The header bar is orange and contains the text "CPE Network Accounting and Auditing Report July 2016" along with icons for a home page, a book, a printer, and a search function. Below the header, the main content area is titled "Suggested Answers to Discussion Problems". It contains three numbered items related to ASC 320:

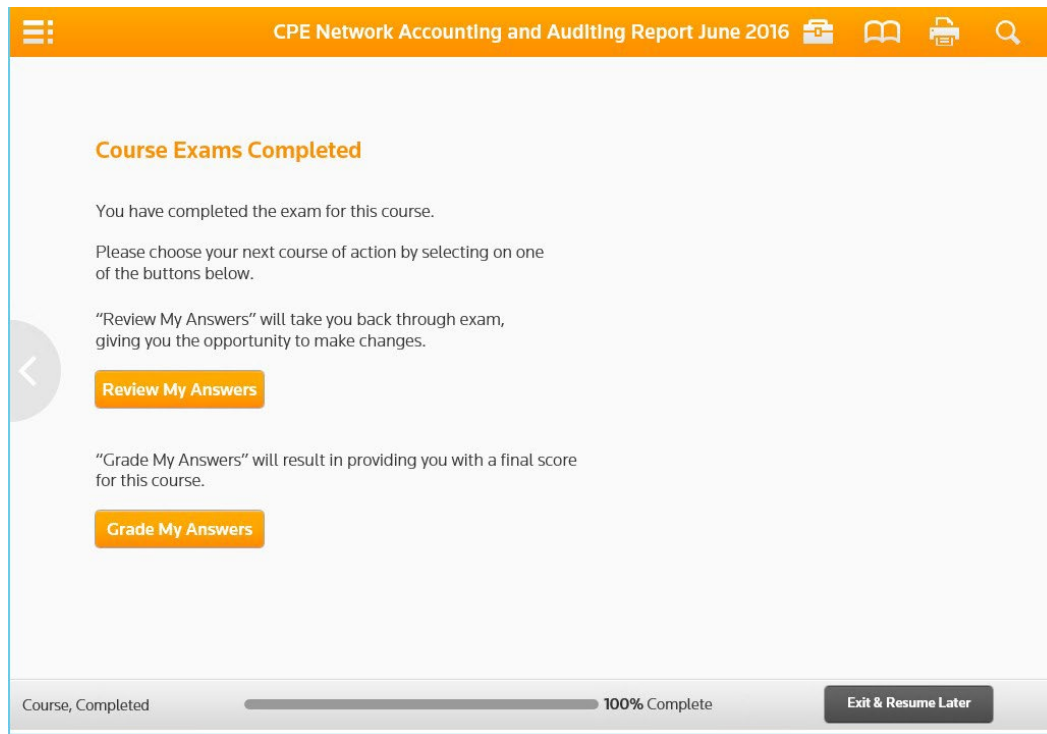
1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:
 - Held-to-maturity
 - Trading
 - Available-for-sale

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

At the bottom of the page, a footer bar shows "Chapter 3.A, Page 20 of 20", a progress indicator at "100% Complete", and a button labeled "Exit & Resume Later".

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

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



- Click the button labeled **Certificate** to print your CPE certificate.
- The final quizzer grade is displayed and you may view the graded answers by clicking the button labeled **view graded answer**.

Additional Features Search

Checkpoint Learning offers powerful search options. Click the **magnifying glass** at the upper right of the screen to begin your search. Enter your choice in the **Search For:** box.

Search Results are displayed with the number of hits.

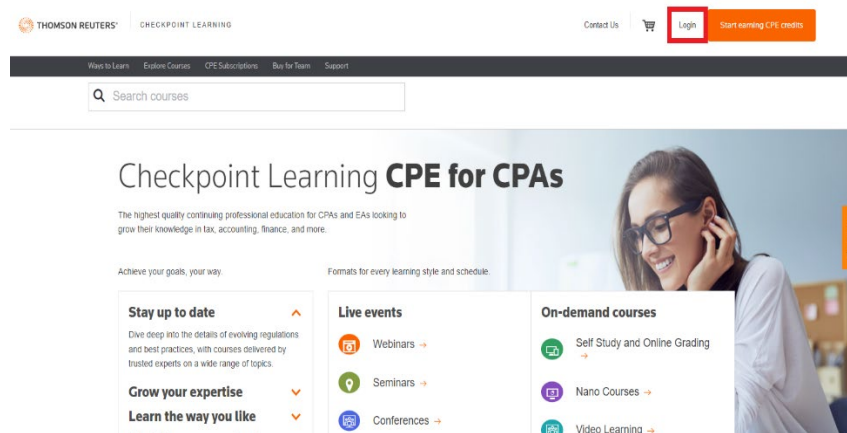
Print

To display the print menu, click the printer icon in the upper bar of your screen. You can print the entire course, the transcript, the glossary, all resources, or selected portions of the course. Click your choice and click the orange **Print**.

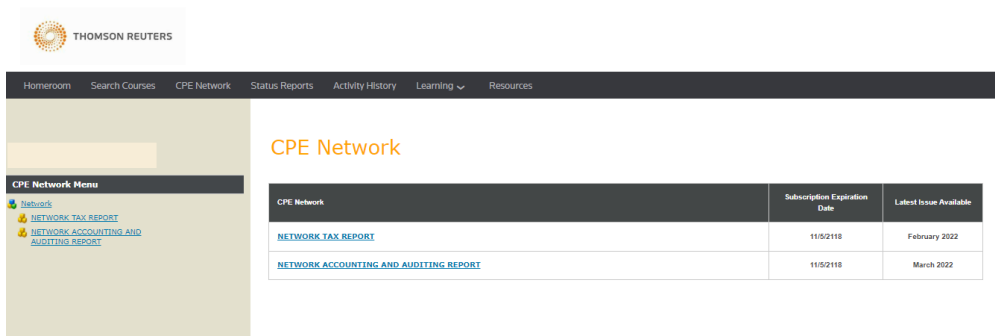
Transitioning From DVDs

Follow these simple steps to access the video and pdf for download from the online platform:

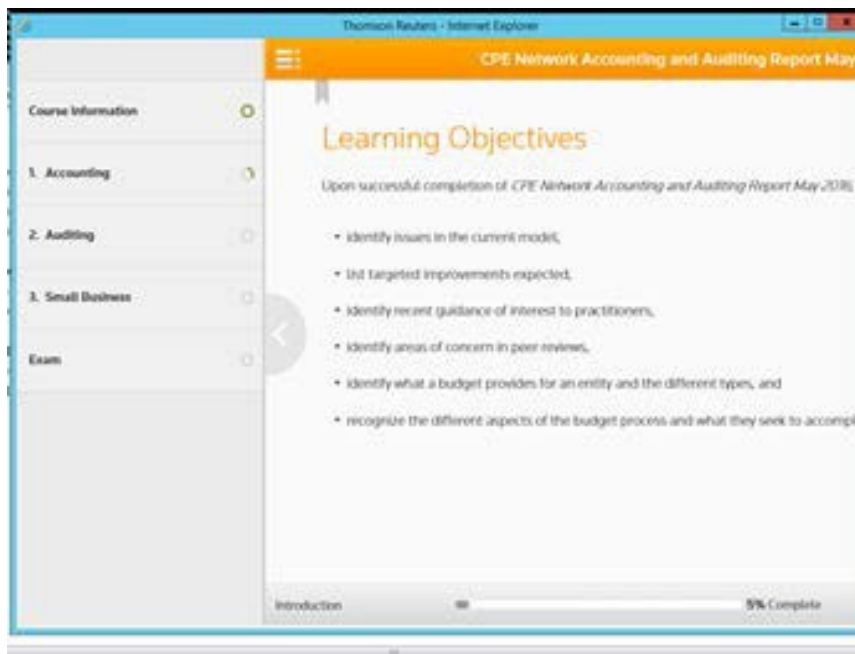
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



- In the CPE **Network** tab, select the desired Network Report by clicking on the title, then select the appropriate edition.

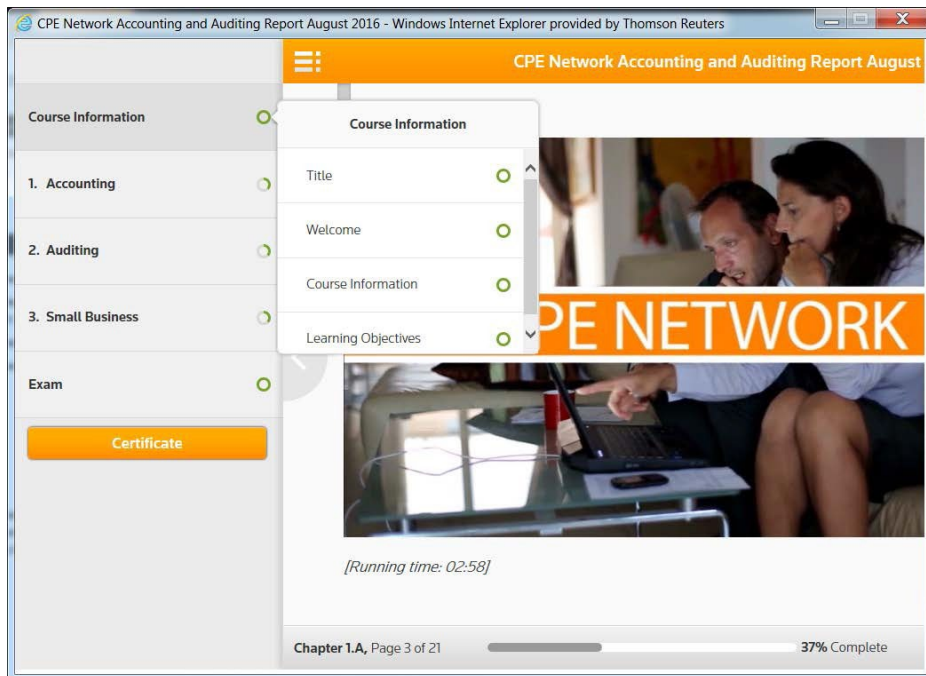


The Chapter Menu is in the gray bar at the left of your screen:

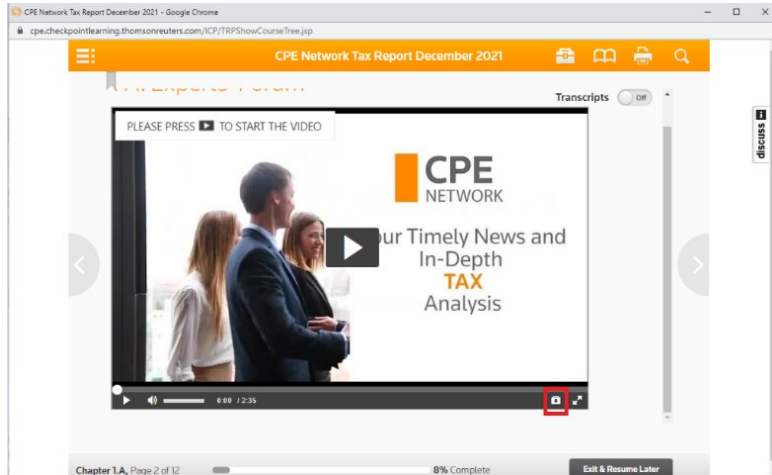


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- **Course Information** is the course Overview, including information about the authors and the program learning objectives



- Each Chapter is self-contained. Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions.



Video segments may be downloaded from the CPL player by clicking on the download button noted above. You may need to use the scroll bar to the right of the video to see the download button. **Tip: You may need to use the scroll bar to the right of the video to see the download button.**

PDFs may be downloaded from either the course toolbox in the upper right corner of the Checkpoint Learning screen or from the email sent to administrators with each release.

What Does It Mean to Be a CPE Sponsor?

If your organization chooses to vary from the instructions outlined in this User Guide, your firm will become the CPE Sponsor for this monthly series. The sponsor rules and requirements noted below are only highlights and reflect those of NASBA, the national body that sets guidance for development, presentation, and documentation for CPE programs. **For any specific questions about state sponsor requirements, please contact your state board. They are the final authority regarding CPE Sponsor requirements.** Generally, the following responsibilities are required of the sponsor:

- Arrange for a location for the presentation
- Advertise the course to your anticipated participants and disclose significant features of the program in advance
- Set the start time
- Establish participant sign-in procedures
- Coordinate audio-visual requirements with the facilitator
- Arrange appropriate breaks
- Have a real-time instructor during program presentation
- Ensure that the instructor delivers and documents elements of engagement
- Monitor participant attendance (make notations of late arrivals, early departures, and “no shows”)
- Solicit course evaluations from participants
- Award CPE credit and issue certificates of completion
- Retain records for five years

The following information includes instructions and generic forms to assist you in fulfilling your responsibilities as program sponsor.

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

The CPE certificate is the participant’s record of attendance and is awarded at the conclusion of the seminar. It should reflect the credit hours earned by the individual, with special calculation of credits for those who arrived late or left early.

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

- Record of participation (the original sign-in sheets, now in an editable, electronic signable format)
- Copy of the program materials
- Timed agenda with topics covered and elements of engagement used
- Date and location of course presentation
- Number of CPE credits and field of study breakdown earned by participants
- Instructor name(s) and credentials
- Results of program evaluations

Appendix: Forms

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

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

Getting Help

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

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Browser-based• Certificate discrepancies• Accessing courses• Migration questions• Feed issues
Product Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Functionality (how to use, where to find)• Content questions• Login Assistance
Customer Support	844.245.5970	Cplsupport@cerifi.com	<ul style="list-style-type: none">• Billing• Existing orders• Cancellations• Webinars• Certificates