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## CPE NETWORK TAX REPORT

SEPTEMBER 2021

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

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

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Topics for future editions may include:

- Offers in Compromise
- Cost Segregation



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## EXECUTIVE SUMMARY

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### PART 1. CURRENT DEVELOPMENTS

#### Experts' Forum..... 5

- The text of the 2,700+ page infrastructure bill, **H.R. 3684, issued by the Senate** includes some tax provisions including Cryptocurrency reporting and an early end to the Employee Retention Credit.
- **IRS Tax Tip 2021-110** reminds both taxpayers and tax professionals calling the IRS that they will be asked to verify their identity. The IRS provides what will be required as proof of identity.
- **Issue Number IR-2021-158** from the Security Summit of the IRS, state tax agencies, and the nation's tax industry reminds tax professionals about the IP PIN program available to anyone who can verify their identity.
- In correspondence with Thomson Reuters Checkpoint, the IRS provides instructions for returning advance child tax credit payments (CTCs) that the recipient did not qualify for or, for other reasons, wishes to return.
- The IRS issued the **Draft 2021 Form 1040 and Schedules 1, 2, and 3**. The draft versions are similar to the 2020 form and schedules but do contain some significant changes.
- On the **IRS webpage, Redesigned Collection Notices Empower Taxpayers and Increase Payment Compliance**, the IRS lists the IRS collection notices that contain Quick Response (QR) codes (a type of barcode) and how taxpayers can use those codes to resolve issues for which they might otherwise need to contact the IRS.
- In News Release **IR-2021-154**, the IRS has announced its launch of the **Tax Pro Account** website. This will allow taxpayers to control who can represent them and/or view their tax records by using an online tool.
- The IRS has released **Draft Instructions for Forms 2848 and 8821** that emphasize the use of the IRS's new online Tax Pro Account. The instructions also provide that a signature created using third-party software is an acceptable electronic signature method.

- **IR-2021-161** is a News Release in which the IRS announced that, beginning in August, it will begin sending letters to approximately 100,000 taxpayers with employer identification numbers (EINs) whose responsible party and address information appears to be outdated.
- On its webpage, **using a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) When Filing Your Tax Return**, the IRS says that for filing returns, taxpayers should use their Social Security number (SSN) even if the SSN does not authorize employment or authorizes employment but the authorization has been revoked.
- In Memo **SBSE-05-0721-0039: Levy Actions Involving Restaurant Revitalization Fund**, the IRS has issued temporary guidance to its employees to release levies on accounts containing Restaurant Revitalization Fund disbursements.
- **Tax Court Press Release (July 23, 2021)** acknowledges petition processing delays and delays in serving petitions on the IRS. It also provides guidance for petitioners.
- In **Notice 2021-48, 2021-33 IRB**, the IRS has provided guidance on the changes, made by the American Rescue Plan Act (ARPA), to the funding rules for single-employer defined benefit pension plans.
  - **The Tax Court in *Estate of Lee*, TC Memo 2021-92**, determined that an estate's executor was personally liable for the estate's unpaid estate taxes because he made distributions of estate assets knowing that the estate owed the taxes.

**Learning Objective:** Upon completion of this segment, the user should be able to analyze current issues in taxation, including evaluating the IP-PIN program, assessing the IRS Tax Pro Account, and applying the process for release of IRS levies on accounts with funds from the Restaurant Revitalization Funds (RRF). [Running time 29:37]

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## PART 2. INDIVIDUAL TAXATION

### IRS Audit Process ..... 19

The IRS has reduced the number of returns audited but has also increased its ability to identify returns that may result in positive revenue for the government. There are discussions to significantly increase IRS staffing and funding for audits in the future. It is important for practitioners to understand the basics of the audit process.

**Learning Objective:** Upon completion of this segment, the user should be able to respond appropriately to the different types of IRS audits, including assessing the Notice CP2000, analyzing the documentation and steps required to respond to each type of audit, and describing the post-audit appeals process. [*Running time 37:27*]

## PART 3. BUSINESS TAXATION

### Conservation Easements ..... 33

A qualified conservation contribution can provide great benefits for a client. However, this has been an area of significant fraud, and the IRS is increasing its enforcement, including criminal. Of particular concern are syndicated conservation easements. It is important that practitioners be aware of the benefits and pitfalls in this area to properly advise clients.

**Learning Objective:** Upon completion of this segment, the user should be able to analyze current tax issues related to conservation easements, including assessing the tax benefits of a conservation contribution; analyzing whether property is qualified; and assessing investments in syndicated conservation easements. [*Running time 39:33*]

## ABOUT THE SPEAKERS

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

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

**Lawrence K. Y. Pon, CPA/PFS, CFP**, is a Certified Public Accountant, Personal Financial Specialist, Certified Financial Planner, Enrolled Agent, United States Tax Court Practitioner, and Accredited Estate Planner in Redwood Shores, California. Mr. Pon has been in practice since 1986 and enjoys helping his clients reach their financial goals. He frequently speaks nationally on tax and financial planning topics to tax professionals, financial advisors, and the general public. Mr. Pon received his BS in Business Administration with emphasis in Accounting and Finance from the University of California, Berkeley and an MS in Taxation from Golden Gate University in San Francisco.

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	Basic Tax professional experience
	Basic Governmental professional experience
Advance preparation	None required
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### PART 1. CURRENT DEVELOPMENTS

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#### Experts' Forum

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This month we join Ian Redpath for Experts' Forum, a popular feature in which we review recent developments in taxation. This month we join Ian Redpath for Experts' Forum, a popular feature in which we review recent developments in taxation. We begin with a discussion about two significant provisions in the recent bipartisan infrastructure bill."

Let's join Ian.

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#### A. H.R. 3684 – Senate Issues Text of Infrastructure Bill

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##### Mr. Redpath

Hi, everybody. Welcome to the program. I'm Ian Redpath with Network Tax. This is a segment where we go over and update a number of things that have happened with the courts, the IRS, pronouncements, news releases. Let's just jump right in, and let's first look at Congress because there's something we need to keep a very close track of. Some of you may not have seen it because it seems like it was hidden in the 2,700 pages of H.R. 3684. So what is that? That is the bill that's commonly referred to as the bipartisan infrastructure bill. There's two provisions that we really do need to pay attention to here because we're going to have to talk to our clients about them.

The first one is that to pay for this infrastructure, one of the things that is proposed in the Senate bipartisan bill is to stop the employee retention credit as of September... 30th. However, the House does not even get back into session until September 20th. So, we'll see where that goes. But the proposal itself is to cover only wages paid up to September 30th, not through the end of the year. Again, something to be looking at and see the progress of that. As of right now, we'll see what happens, but that's one of the major areas of gaining some revenue to pay for this infrastructure bill. So, keep that in mind. The employee retention credit would be eliminated for wages paid after September 30th, so big change.

The other change. And we know these things are coming. It's just a matter of when. Last month, we talked about the Dirty Dozen, and one of the Dirty Dozen is cryptocurrency. Cryptocurrency is a huge issue with the IRS right now. We know in 2020, they moved right to the front of page one of the 1040 the question regarding cryptocurrency. And we're going to

talk in a little bit about the fact that the draft form for the 1040 is out, and they've changed the wording of that. And we may see new wording as a result of this legislation if it passes. Essentially, what this is going to do is require broker reporting much like the broker reporting that we now have on investments. They changed the terminology. For cryptocurrency, they use the term "digital assets." It means cryptocurrency, but it would seem to be broader than just the definition of cryptocurrency. It's an undefined term, but it's interesting that they're changing the terminology from cryptocurrency to digital assets. The brokers will have to report the basis and the character, the proceeds of any transaction, and then the character of the gain or loss just like they do with stocks and bonds. So, that will be a major change.

In addition, another change—and this is something for anyone who receives cryptocurrency—is any business that receives... more than \$10,000... of digital assets—using that terminology again—they'll have to report the receipt of it just like cash. The Form 8300, which is used for cash, will be amended to also provide for reporting of quote, "digital assets," whatever those may be. Let's keep that in mind. Certainly, there's going to be a significant amount of debate before this becomes law. Those are, especially this one, is one that certainly there's bipartisan support because of cryptocurrency issues.



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## B. IRS Tax Tip 2021-110

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### Be Ready to Verify Identity When Calling IRS

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The IRS on their website has [advised] taxpayers and professionals that they are going to require verification of ID. Anytime that you call the IRS, you can expect that if you are the designated representative, they are going to ask for certain information. They said, have the following available. The verbal, which isn't going to get you real far, but the written authorization from the third party to discuss the account. You have to be able to verify the social security number or the ITN number, the tax period, the tax forms that were filed, your PTIN number, or if it's a third-party designee, the

PIN number that was assigned. Again, you should have an up-to-date Form 8821, *Tax Information Authorization*; but for the most part, obviously for accountants and attorneys, it's going to be the Form 2848, the *Power of Attorney*. Keep in mind now that the IRS is saying that this is something that they are going to require. Also, if taxpayers contact them directly, they're going to ask for very similar types of information to identify what you're looking for and to verify the identity of the taxpayer.

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## C. Issue Number IR-2021-158

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### Obtain IP PIN

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In the Security Summit which took place, the IRS in IR-2021-158, the IRS—the Security Summit, if you haven't followed it, I would strongly suggest it as it deals with a number of issues related to security of our client's information—in this, [state] the tax pros should encourage clients to obtain an IP PIN, the identity protection PIN number. There's an opt-in program; and this can work significantly to protect against fraud. The IRS is actually recommending that, regardless of whether you've had any tax fraud issues or identity theft issues, that this is something that practitioners should be recommending to their clients. Now, you can make your own professional judgment on that; but it is highly recommended by the IRS. And they're asking for tax professionals to spread the word that the IP PIN number is available to anyone. They also created *Publication 5367* to discuss the whole idea of the program, and how it works, and what needs to be done.

You cannot obtain an IP PIN on behalf of a client. Taxpayers have to obtain their own. Again, the IRS isn't going to call anybody, taxpayers or preparers, to request that IP PIN number. Any tax professional who experiences a data theft, one of the things you should do is encourage all of your clients to get an IP PIN. It's a six-digit number that only the IRS and the taxpayer know, and of course, you, as the preparer. It's an opt-in. It's totally voluntary. The IP PIN number then should be entered onto any electronic form when prompted by the software product or on the paper form next to the name. It's valid for one calendar year. Each

year, you'll have to obtain a new one. And only dependents who can verify their identities can obtain an IP PIN. Again, the same idea—you should never share it or provide that information to anyone. Currently, you can obtain an IP PIN for 2021. A client can go and obtain one; and that's to be used for any filings during the year. The new PINs will be available starting in January of 2022. So the IRS has on its website secure access, how to register for online self-help tools. It's offline again between November and January. So, if someone is going to do it then, they should be looking at doing it now.

Form 15227 application for the IP PIN, that's to validate. So your identity online, if you can't validate it, and if your income is \$72,000 or less for a taxpayer, they can file Form 15227 to obtain that IP PIN. If they can't validate their identity, then they're going to have to set up an appointment with the IRS to obtain this. Then, they're going to have to provide a picture identification, another form of identification. They have to be able to verify their ID. Then, it will be sent within three weeks from the IRS. If you're interested in it, *Publication 4557* is really good about safeguarding taxpayer data. That's a really great publication for practitioners as well as small business information security for the fundamentals on that. Also, the IRS Identity Theft Central pages for tax pros, again on the website. I'd also refer you to *Publication 5293*, which is their data resource guide for tax professionals. So, a lot out there, a lot to consider, but with all of the

hacking that's been going on and identity theft. One of the things in the Dirty Dozen that we talked about last month that the IRS has warned about is people like hackers are going after tax professionals to get taxpayer IDs. It's a major issue. Especially payroll providers,

they're going after them. So something to keep in mind to protect our clients. Again, I would refer you to those. There's a lot of information out there. These security summits come out with a wealth of information.

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## **D. How to Return Advance Child Tax Credit Payment**

IRS correspondence with Thomson Reuters Checkpoint (7/21/2021)

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One question that has come up is, "Okay, I can opt out of ..." On the IRS website they came up with the portal, "I can opt out of or change the advanced child tax credit." Those payments started July 15th. If I want to change it, one of the questions is, "How do I return it? I got it. I didn't want it. How do I return it? Can I return it now? Do I have to wait to file my tax return? How does this work?" And the IRS really didn't have any particular guidance. So Thomson Reuters Checkpoint reached out to the IRS and in a letter, which is dated July 21st, 2021, the IRS responded. And what the IRS said is to do it exactly as you would return the EIP payments. And so, if you were returning those, they established a way of doing it. And so they said, "Just follow the same procedure." If you received the

payment by a paper check and did not cash it, the client should simply on the back in the endorsement, write void. Send the voided check back to the IRS. Don't bend it, staple it, just include it and include a brief explanation as to why the check is being returned. If the check has been cashed or it was directly deposited, then they said simply submit a personal check. Write on the check or the money order, "To the U.S. Treasury," and write, "2020." The guidance that they refer to is for the EIP. So, it says 2020 EIP. Presumably, you would instead write "2021 Advanced CTC (Child Tax Credit), the social security number or identification number of the recipient, and then again include a brief explanation as to why you are returning it.

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## **E. IRS Issues Draft 2021 Form 1040 and Schedules 1, 2, and 3**

The IRS has also come out now with draft forms for the 1040 and Schedules 1, 2, and 3. I mentioned earlier about the digital assets. They don't use that term... Again, another term, the problem here, virtual currency, cryptocurrency, now, digital assets. They're going to have to come up with a standardization here. The virtual currency question was changed to add to it "or disposed of" any financial interest in any virtual currency. Previously, it just said, for 2020, it said, "At any time

during 2020, did you receive, sell, exchange any financial interest in virtual currency? Now, it's added "or disposed of." The other thing is an expansion in the schedules—the drafts of Schedules 1 through 3, there's been an expansion. For example, there are now lines 8a through 8z for additional income. And then, of course, the additional expenses. They're providing more information or more lines to add to them.

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## **F. IRS Webpage - Redesigned Collection Notices Empower Taxpayers and Increase Payment Compliance**

The IRS has also, in IR-2020-233, announced—and it's in place now, so that's why I'm bringing this up—the QR codes or quick response codes that are being built into a number of the IRS's correspondence with taxpayers. This provides a lot of information to the IRS that's encoded on these. The QR codes will offer the taxpayers and their representatives access to the pages on IRS.gov. They're going to be able to log into the account and apply for an online payment arrangement,

contact the taxpayer advocate, a number of different things. But it should speed up the process.

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**F. IR-2021-154**

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**IRS Launches Tax Pro Account Website**

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Another thing to go along here is the IRS has launched Tax Pro Account website and now provides instructions for its use—IR-2021-154. So, it is now available. Form 2848, the power of attorney form, the tax pro professionals can go to the new Tax Pro Account on the [irs.gov](https://irs.gov) to digitally initiate either the power of attorney or the representative authorization. So Form 2848 or Form 8821 can be initiated there. When the tax professional initiates it then, the taxpayer will receive a request for approval and then on the online account—so they'll have to set up an account—they'll be able to approve it. If they approve it, it goes directly then to the central digital authorization and does not have to have manual processing. It will be automatically processed. The process, right now, they're saying that it could be up to six weeks delay to get a power of attorney actually manually entered. This they say will take 48 hours. It is, however, only available currently for individuals. It is not available for businesses right now. Hopefully, that is going to change. So, what you have to do to be able to use tax pro, again, you have to have a CAF number or Central Authorization File number. You have to be in good standing and assigned to a tax professional as an individual. The CAF has to have an

address in the 50 states or the District of Columbia. Again, you have to have a valid CAF number. For power of attorney, you have to be 1) authorized—a lawyer, a CPA, an EA. It will ask you if you're an actuarial, enrolled actuarial, enrolled retirement plan, or an enrolled agent. Question D asks you if you're licensed to practice in one of the 50 states or the District of Columbia. Obviously, that would only apply to an attorney or a certified public accountant. So, the Tax Pros is limited right now. Tax matters is authorized for year 2020 and going forward plus three future years. You pick the year and you can go forward for three of those. The 1040, Form 8857 for split spousal assessments, innocent spouse relief, shared responsibility payments, civil penalties. So, there's a number of issues that are available there

Submitting with the Tax Pro, here's the problem. It will revoke any prior power of attorney. If you don't want to revoke—for example, if you just want to expand an existing power of attorney—then, you're going to have to do it through the old channels and not use the Tax Pro, because once you go through Tax Pro, it is going to revoke any prior power of attorney from that client.

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**G. Draft Instructions for Forms 2848 and 8821**

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In addition, the IRS has issued draft instructions for the power of attorney form and the draft instructions for both the 2848 and for the 8821 for tax information authorization have now been updated to reflect the use of Tax Pro. Also, there's a change slightly in the language regarding partnerships and the signature of

what they call the tax matters partner. As we know, this would be under TEFRA audits; because now you have the personal representative, you don't have the tax matters partner. So, there's just a slight change in the language.

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**H. IR-2021-161**

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**EINs with Outdated Contact Information**

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The IRS—and you might get a client who's surprised—but in IR-2021-161, they said that beginning August, they're going to send out 100,000 notices to businesses... who have EINs that they believe that the responsible party's information appears to be outdated. You may want to look at that and make sure that the information is correct. If your client gets one, gets a notice, again, it's just a matter of notifying the IRS, updating the information or notifying them that it is

correct. The IRS requires that taxpayers with EINs update that responsible party and address within 60 days of any change. Obviously, if they haven't done it, you could still do that. It's Form 8822-B that you would file. Again, beginning in August, the IRS is starting to send out 100,000 [notices].

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## **I. IRS Webpage – Use Social Security Number When Filing Tax Return**

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Another thing that the IRS has noticed, and this was on their website [about] using the social security number. The IRS said, “You should use the social security number of someone even if it’s only an authorization to work. If it’s not a full social security number, if you’re filing the tax return, use that number.” Basically, you have your social security number that is what we normally think of as a social security number. You get

to work. You use your filings. There’s another social security number that’s issued that’s valid for work only with DHS authorization. Then, there’s another one that’s not valid for employment. With these, you don’t have to concern yourself now with what type of social security number they have. If they have a social security number, use it in preparing the return.

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## **J. SBSE-05-0721-0039**

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### **Levy Actions Involving Restaurant Revitalization Funds**

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Many of you may have been involved. I had a number of clients that took advantage of the restaurant revitalization fund program. At least for many of my clients in the restaurant industry, it was a great boon to them, really helped them out. SBSE-05-0721-0039—in a memo, the IRS has said that they will not levy against and will release levies that have been made on the proceeds of the restaurant revitalization funds. So, if a client has those funds, they are to be used for certain purposes, basically much like the PPP loan. Unfortunately, the IRS in many cases, filed liens and levies against the assets; and some of those assets were these funds. Now, the taxpayers can’t use those funds. The IRS said, “We’re not going to levy against any portion of an account where the funds relate to the restaurant revitalization grant.” If they received this

grant, notify the IRS that you can trace this money. This is where it came from, it’s for the grant; and they will have to release any levy that they have on the RRF funds. The only exception is what’s called exigent circumstances. If the IRS can show that they’re not going to be able to collect—for example, the example that’s used here is the statute of limitations is ready to run. If in fact, they believe there’s exigent circumstances, the IRS has to elevate it immediately to the area director or campus director and document the matter in the taxpayer’s case history that they’ve challenged this as RRF funds. One of the things they said is, if a taxpayer says they’re going into bankruptcy, that’s not exigent circumstances. The guidance is effective until the end of the year, until December 31st of 2021.

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## **K. Tax Court Press Release – July 2021**

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### **Petition Processing Delays**

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We’ve had a number of delays we know in the IRS. Some of you may have, unfortunately you may have filed within the tax court and you’re still getting notices from the IRS or the IRS is still attempting collection process. Why? When you file in the tax court, the tax court is supposed to immediately, they’re supposed to serve process on the IRS. The tax court came out with a press release and said, “Sorry guys, we’re so busy, we can’t. We’re so far behind that we haven’t been serving these on the IRS as we’re supposed to.” The IRS says to send an email, [taxcourt.petitioner.premature.assessment@irs.gov](mailto:taxcourt.petitioner.premature.assessment@irs.gov). Send an email. Give the tax court number. So, get the docket number because you’ll get that from the tax court as soon as you file. Get the docket number, the

assessment obviously that you’re talking about, and let them know that this has been filed and that they cannot proceed with any additional collection items.

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**L. Notice 2021-48, 2021-33 IRB**

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**Guidance on ARPA Single-Employer Retirement Plans**

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The IRS issued Notice 2021-48. If you have a defined single-employer defined benefit plan, the contribution is your normal cost; and if there's any shortfall, that was to be amortized over seven years. The American Rescue Plan extended that to 15 years. This notice provides guidance on determining the contributions that must be made. If you have a client who has this, I'd refer you to that in determining how to make those contributions. Again, it's a defined benefit. Many don't have it.

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**M. *Estate of Lee*, TC Memo 2021-92**

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**Estate's Executor Personally Liable for Estate Taxes**

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We have an interesting case, a tax court memo case, the *Estate of Lee*. In this tax court memo case, the executor claimed, "I made distribution. I didn't know that the taxes were due." Well, the tax court and the IRS didn't agree with that. The tax court and the IRS believed that he had notice, he had knowledge, and therefore, by making the distributions, he became personally liable for the IRS's claim. So, he distributed assets; and then, there were not enough assets left to pay the IRS's claim. The executor became personally liable. Something to make sure that our clients are aware of it.

Well, I want to thank you for joining me today. A lot of interesting things going on and a lot of information. Thanks again for being here and we'll see you next month. Thank you.

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## SUPPLEMENTAL MATERIALS

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### Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

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#### A. H.R. 3684 – Senate Issues Text of Infrastructure Bill

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The text of the 2,700+ page infrastructure bill (H.R. 3684), contains some tax provisions including Cryptocurrency reporting and an early end to the Employee Retention Credit. House Speaker Nancy Pelosi has said she wants to simultaneously take up the bipartisan infrastructure bill with a \$3.5 trillion budget package that does not have bipartisan support.

The bill requires brokers to report the basis and character of gain or loss of transactions involving “digital assets” (a new undefined term which should include cryptocurrency or virtual currency) just like brokers now report the basis and character of gain or loss of stock and bond sales. Brokers will also have to report certain other transfers of digital assets even if the transfer is not a sale or exchange. Also, any business that receives more than \$10,000 of digital assets will have to report such receipt just as it must report the receipt of more than \$10,000 of cash using Form 8300.

The employer retention credit (ERC) is currently set to expire at the end of 2021. The bill would end it for wages paid after September 30, 2021.

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#### B. IRS Tax Tip 2021-110

Be Ready to Verify Identity When Calling IRS

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Both taxpayers and tax professionals calling the IRS will be asked to verify their identity. The IRS provides what will be required as proof of identity.

Taxpayers will need:

- Social Security numbers and birth dates for those who were named on the tax return
- An Individual Taxpayer Identification Number letter if the taxpayer has one instead of an SSN
- Their filing status: single, head of household, married filing joint, or married filing separate
- The prior-year tax return. (Phone assistants may need to verify taxpayer identity with information from the return before answering certain questions.)
- A copy of the tax return in question
- Any IRS letters or notices received by the taxpayer

If taxpayers or tax professionals are calling about someone else's account, they should be prepared to verify their identities and provide information about the person they are representing, including:

- Verbal or written authorization from the third party to discuss the account
- The ability to verify the taxpayer's name, SSN or ITIN, tax period, and tax forms filed
- Preparer Tax Identification Number or PIN if a third-party designee
- One of these forms, which is current, completed, and signed:
  - Form 8821, *Tax Information Authorization*
  - Form 2848, *Power of Attorney and Declaration of Representative*

See <https://go.usa.gov/xFT67>.

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## C. Issue Number IR-2021-158

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### Obtain IP PIN

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Part of the Security Summit of the IRS, state tax agencies, and the nation's tax industry have reminded tax professionals about the IP PIN program available to anyone who can verify their identity. This program is an "Opt-In" program. Taxpayers must obtain their own IP PIN.

The IRS created Publication 5367, *IP PIN Opt-In Program for Taxpayers*. Tax professionals should never store clients' IP PINs on computer systems. Tax professionals who experience a data theft can assist clients by urging them to quickly obtain an IP PIN. Even if a thief already has filed a fraudulent return, an IP PIN would still offer protections for later years and prevent taxpayers from being repeat victims of tax-related identity theft.

The IRS notes:

- The IP-PIN is a six-digit number known only to the taxpayer and the IRS.
- The opt-in program is voluntary.
- The IP PIN should be entered onto the electronic tax return when prompted by the software product or onto a paper return next to the signature line.
- The IP PIN is valid for one calendar year; taxpayers must obtain a new IP PIN each year.
- Only dependents who can verify their identities may obtain an IP PIN.

- IP PIN users should never share their number with anyone but the IRS and their trusted tax preparation provider. The IRS will never call, email, or text a request for the IP PIN.

Currently, taxpayers may obtain an IP PIN for 2021, which should be used when filing any federal tax returns during the year. New IP PINs will be available starting in January 2022. To obtain an IP PIN, the best option is the "Get an IP PIN," the IRS online tool. Taxpayers must validate their identities through Secure Access authentication to access the tool and their IP PIN. The tool is offline between mid-November and mid-January.

If the taxpayer is unable to validate his/her identity online and if income is \$72,000 or less, Form 15227 may be used. The IRS will call the telephone number provided on Form 15227 to validate the taxpayer's identity. However, for security reasons, the IRS will assign an IP PIN for the next filing season. The IP PIN cannot be used for the current filing season. Taxpayers who cannot validate their identities online, or on the phone with an IRS employee after submitting a Form 15227, or who are ineligible to file a Form 15227 may call the IRS to make an appointment at a Taxpayer Assistance Center. They will need to bring one picture identification document and another identification document to prove their identity. Once verified, the taxpayer will receive an IP PIN via U.S. Postal Service within three weeks.

The IP PIN process for confirmed victims of identity theft remains unchanged. These victims will automatically receive an IP PIN each year.

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## D. How to Return Advance Child Tax Credit Payment

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### IRS Correspondence with Thomson Reuters Checkpoint

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In correspondence with Checkpoint dated July 2021, the IRS provided instructions for returning advance child tax credit payments (CTCs) that the recipient did not qualify for or, for other reasons, wishes to return. According to the IRS, the same procedures apply for returning these advance payments as applied to the return of the Economic Impact Payments. The IRS

refers taxpayers to Economic Impact Payment Information Center — Topic I: Returning the Economic Impact Payment. Presumably, the only change that an advance CTC returner needs to make to the instructions is to write "2021 advance CTC," instead of "2020 EIP" on any personal check that the taxpayer submits to the IRS.

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## **E. IRS Issues Draft 2021 Form 1040 and Schedules 1, 2, & 3**

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The IRS has released draft versions of the tax year 2021 Form 1040 and its Schedules 1, 2, and 3 (*Additional Income and Adjustments to Income*, *Additional Taxes*, and *Additional Credits and Payments*). The draft versions are similar to the 2020 form and schedules, although, among other things, the draft Form 1040 has

changed the wording of the virtual currency question to “otherwise dispose of” rather than “otherwise acquire” and the schedules now list specific adjustments, taxes, and credits, rather than merely having a catch-all “other” line. It has also been updated to reflect changes in the earned income credit for 2021.

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## **F. IRS Webpage – Redesigned Collection Notices Empower Taxpayers and Increase Payment Compliance**

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The IRS lists the IRS collection notices that contain Quick Response (QR) codes (a type of barcode) and how taxpayers can use those codes to resolve issues for which they might otherwise need to contact the IRS.

The QR codes offer taxpayers access to pages on IRS.gov to create or log into their online account, apply for a payment plan through Online Payment Agreement (OPA), or contact the Taxpayer Advocate Service.

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## **G. IR-2021-154**

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### **IRS Launches Tax Pro Account Website**

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In a news release and on their webpage, the IRS has announced its launch of the Tax Pro Account website. This will allow taxpayers to control who can represent them and/or view their tax records by using an online tool. This is currently available only to individual taxpayers with an address in the 50 United States or the District of Columbia.

Tax professionals may go to the new Tax Pro Account on IRS.gov to digitally initiate POAs and TIAs. These are simplified versions of Forms 2848 and 8821. Once completed and submitted by the tax professional, the authorization requests will appear in the taxpayers’ Online Account for their review, approval, or rejection and electronic signature. Because the taxpayer’s identity is already verified at the time of login, they need only check a box as their signature and submit the authorization request to the IRS. At that point, completed digital authorization, if accurate, will go directly to the IRS’s Centralized Authorization File (CAF) database and will not require manual processing. Most requests will be immediately recorded and appear on the list of approved authorizations in the taxpayer’s Online Account and the tax professional’s Tax Pro Account or within 48 hours. Tax professionals may then go to e-Services Transcript Delivery Service to see the taxpayer’s records. Submitting with Tax Pro Account will revoke any prior authorization(s) on file with the IRS for the same tax matters, tax periods, and

authorization types. If that is not intended, Form 2848 or 8821 must be submitted by fax, mail, or online.

Tax professionals must have:

- For Tax Information Authorization: a) a Centralized Authorization File (CAF) number in good standing assigned to the tax professional as an individual; and b) a CAF address in the 50 United States or the District of Columbia.
- For Power of Attorney: a) a Centralized Authorization File (CAF) number in good standing assigned to the tax professional as an individual; b) a CAF address in the 50 United States or the District of Columbia; c) authority to practice before the IRS as an attorney, certified public accountant, enrolled agent, enrolled actuary, or enrolled retirement plan agent; and d) license to practice in the 50 United States or the District of Columbia as an attorney or certified public accountant.

Tax matters can be authorized from year 2000 and forward, plus three future years (calendar year only, not fiscal year) with respect to a limited number of forms, including Form 1040.



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## H. Draft Instructions for Forms 2848 and 8821

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The IRS has released draft instructions for Form 2848 (*Power of Attorney and Declaration of Representative*) and Form 8821 (*Tax Information Authorization*) that emphasize the use of the IRS's new online Tax Pro Account. They also provide that a signature created using third-party software is an acceptable electronic signature method.

Regarding tax matter partners (TMPs) and TEFRA (related to certain partnership tax years beginning prior

to January 1, 2018), the draft instructions for Form 2848 now read, "For purposes of executing Form 2848 in the case of a TEFRA partnership audit, the TMP must sign the Form 2848." Previously that instruction read, "For purposes of executing Form 2848 in the case of a TEFRA partnership audit, the TMP has authority to act in the name of the partnership and may sign the Form 2848."

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## I. IR 2021-161

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### EINs with Outdated Contact Information

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In a news release, the IRS announced that, beginning in August, it will begin sending letters to approximately 100,000 taxpayers with employer identification numbers (EINs) whose responsible party and address information appears to be outdated. A "responsible party" is the individual or entity who "controls, manages, or directs the applicant entity and the

disposition of its funds and assets." The individual (or entity) named as the responsible party in a taxpayer's EIN application becomes the IRS's contact person for tax issues related to that EIN. The IRS requires taxpayers with EINs to update their responsible party and address information within 60 days of any change by filing Form 8822-B.

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## J. IRS Webpage – Use Social Security Number When Filing Tax Return

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On its webpage, the IRS says that for filing returns, taxpayers should use their Social Security number (SSN) even if the SSN does not authorize employment or authorizes employment but the authorization has been revoked. There are three types of Social Security cards issued by the Social Security Administration

(ones issued to U.S. citizens and permanent residents; ones issued that say, "VALID FOR WORK ONLY WITH DHS AUTHORIZATION;" and ones issued that say, "NOT VALID FOR EMPLOYMENT"). (See "Types of Social Security Cards.")

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## K. SBSE-05-0721-0039

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### Levy Actions Involving Restaurant Revitalization Funds

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In a memo, the IRS has issued temporary guidance to its employees to release levies on accounts containing Restaurant Revitalization Fund disbursements. This temporary guidance deviates from the usual procedures for releasing levies. If a taxpayer indicates that an IRS levy attaches to RRF funds, IRS employees should obtain documentation verifying when and what amount of RRF funds the taxpayer received. Once verified, the employee should release the levy on the RRF funds unless there is an "exigent circumstance" not to release it. At that point, the IRS employee must (1) elevate the issue to their Area Director or Campus Director, and (2)

document the matter in the taxpayer's case history. The guidance is effective through December 31, 2021.

The memo notes that an "exigent circumstance" involves the final loss of opportunity for the IRS to collect any taxes due from the taxpayer, such as the expiration of the statute of limitations. It does not include possible bankruptcy filing.

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**L. Tax Court Press Release – July 2021**

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**Petition Processing Delays**

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The Tax Court acknowledged petition processing delays and delays in serving petitions on the IRS. It provides petitioners guidance on what to do if they receive an IRS assessment or collection notice after timely filing a Tax Court petition disputing the same taxes mentioned in the notice. The taxpayer should email the IRS at [taxcourt.petitioner.premature.assessment@irs.gov](mailto:taxcourt.petitioner.premature.assessment@irs.gov) and provide the taxpayer's name and the docket number (i.e., the filing number).

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**M. Notice 2021-48, 2021-33 IRB**

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**IRS Guidance on ARPA Single-Employer Retirement Plans**

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In Notice 2021-48, the IRS provides guidance on the changes made by the American Rescue Plan Act (ARPA) to the funding rules for single-employer defined benefit pension plans. The notice also provides guidance on the funding-based limits on benefits, the optional 15-year amortization of funding shortfalls, and a number of other issues regarding the funding rules.

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**N. Estate of Lee, TC Memo 2021-92**

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**Estate's Executor Personally Liable for Estate Taxes**

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The Tax Court determined that an estate's executor was personally liable for the estate's unpaid estate taxes because he made distributions of estate assets knowing that the estate owed the taxes. An executor is personally liable for the unpaid "claims" of the U.S. to the extent the executor distributes assets from the estate when either (1) the estate was insolvent at the time of the distribution, or (2) the distribution rendered the estate insolvent and the executor had *knowledge or notice* of the U.S.'s claim. [31 USC §3713(b)]

According to the Tax Court, the Executor had both knowledge *and* notice of the estate tax claim in February 2007 when he distributed the estate's assets. In April 2006, he received a deficiency notice from the IRS with respect to estate tax liabilities received by an executor before the distribution of estate assets satisfies the notice requirement in the FPS. Also, the Court found that the Executor had actual knowledge of the estate tax claim because he was a named party in

the Tax Court petition the estate filed disputing the deficiency notice it received in April 2006.

The Executor, a licensed attorney, made the February 2007 distribution knowing that the IRS had determined an estate tax deficiency against the estate and that an action disputing that deficiency claim was pending before the Tax Court. Any advice he may have received from a tax professional regarding the distribution did not absolve him from liability.



## GROUP STUDY MATERIALS

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### A. Discussion Problems

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- 1) During the 2021 tax season, several of your clients indicate they are concerned with identity theft and how it might impact their tax filings. They ask if there is any protection available.
- 2) Your client, Carmella, comes into the office with a notice from the IRS. You will be representing her and want to access her transcript. Since you believe you need to act quickly, is there anything you can do to expedite the process?
- 3) Another client, Juan, previously received a Restaurant Revitalization Fund Grant. The IRS has levied against the account into which the funds were dispersed. Is there anything that can be done?

#### **Required:**

Respond to the questions/issues raised in the above facts.

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**B. Suggested Answers to Discussion Problems**

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- 1) You should consider whether your clients should obtain IP-PINs for 2021. This is an added layer of protection for filers and is recommended by the IRS and the Security Summit.
- 2) The use of the new Tax Pro Account website will expedite the process of filing Form 2848. You will need to work with the client to obtain an account so they can approve your representation.
- 3) The IRS has issued temporary guidance that the IRS should release any levy against RRF funds. You should notify the IRS that the account has RRFs in it. Provided there are no “exigent circumstances” such as the statute of limitations running out, the IRS should release the levy. You will need to verify the amount of Restaurant Revitalization Funds and the date they were deposited.

## PART 2. INDIVIDUAL TAXATION

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### IRS Audit Process

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Dealing with an IRS audit can be simple at times but can also become complicated and time-consuming for taxpayers and practitioners. It is important to understand the types of audits that are conducted and the options available in responding to an IRS audit. Ian Redpath and Shiny Mathew discuss the audit process for correspondence or in-person audits. They carry this discussion through appeals and reconsiderations.

Let's join Ian Redpath and Shiny Mathew as they discuss the IRS audit process.

**Mr. Redpath**

Shiny, welcome to the program.

**Ms. Mathew**

Thank you so much for having me. It's good to be here, Ian.

**Mr. Redpath**

A lot of our viewers always think if you're an accountant, you must be working with the IRS all the time, and that's really not correct. Especially now, a lot of people aren't doing audits, or they haven't really been actively engaged in an audit. Can we start with the audit process and then we'll kind of work from there? Basically, what happens in an audit, and what do we need to do to get prepared?

**Ms. Mathew**

First, there's two different types of audits. There's a correspondence audit, which is a little more straightforward to the extent that it's the IRS sending letters from their examination division, saying we have questions about your tax return. Usually it's discrepancies between what's reported on your tax return and what was reported to the IRS. These discrepancies sometimes will automatically kick out letters saying, "We've made changes to your tax return, or please provide information on X, Y, and Z that you reported."

**Mr. Redpath**

So, the audit, you get the notice that it's a correspondence audit. More and more correspondence audits as the IRS has more difficulty with staffing, more and more correspondence audits.

What about when you get the audit? There's kind of two types—office audit and a field audit. Field audit just means that it's broad audit. They're looking at a lot of

stuff. Office audit's more targeted. Maybe they're looking at you're a sole proprietor and they're looking at your meals and entertainment—your meals. Can't say entertainment anymore. They're looking at your meals or they're looking at your travel, but they're targeting a few items to look at. How do you recommend that a practitioner reacts when the client gets this notice? I've heard practitioners say, "Should I bring my client? Should I not bring my client? What do I do if the IRS insists that my client be there?" How do you handle those things?

**Ms. Mathew**

Times have really changed, honestly, over the last 10 years, the last decade in terms of what we're seeing the IRS doing and, just as a physical note, if we're going in or not. We're seeing more field audits where we are receiving letters from revenue agents who have opened a taxpayer's tax return or returns for audit and are asking for specific documentation they want... you to send them, and that may expand into something more. We're seeing less office audits where we're bringing in the taxpayer, we're bringing our client into the office, to discuss the documentation specifically. I don't know if that's so much a function of COVID specifically or if the IRS is moving more towards that. Actually, the IRS is having a tax forum right now for the next month or so. And they're looking at, they're discussing, how they are trying to improve all these various functions of the IRS itself.

**Mr. Redpath**

You've got to make sure you're limited to the period that is under question.

**Ms. Mathew**

Yes, absolutely. I would say that's very important. It's an important tip for practitioners, especially. This is where you want to make sure you're not, for lack of a

better word, you want to make sure you're putting in the adequate preparation for your client in representing them in an audit. If the IRS says, "Give us everything," you don't just give them everything. They are not entitled to that. And it's opening a can of worms for the IRS. They would love everything. They would love to know all the little pieces they haven't examined yet or haven't thought to examine that maybe they should, or maybe you wouldn't be able to substantiate based on the documentation you've provided. Instead, if they're asking for a specific item, provide that specific item and try to get justification on why it should be expanded further.

I'm not advising you to push back too hard on the IRS at this stage. I actually think that the initial audit stage isn't the point where you need to push the hardest. I think you can provide the documentation. You can make your arguments. But truthfully, that person in the scheme of who has the most discretion, that individual has some liberty and they can make some decisions; but we find the toughest ruling to be with that first initial revenue agent. So, it's not skin off my back if that first initial revenue agent disallows expenses that I think we can justifiably allow because we have appeals rights from that assessment and we can go up. In practical terms, you petition to tax court the assessment of an audit, but that doesn't actually mean you go to tax court.

I think this is an important distinction to make for any practitioners that are listening. Some don't even petition the tax court because they think, "Okay, I'm not an attorney, and I don't want to go to tax court. And if I petition the tax court, then I'm going to have to go make arguments in front of a judge." That's simply not the case. Petitioning tax court off of an audit assessment gives you the right to have an appellate individual within the examination division take a look at what maybe procedurally was done wrong on that audit or what was substantively not calculated correctly.

### **Mr. Redpath**

You get the audit and you get the results of the audit.... There's a step in there that you can take, which is asking for reconsideration of the audit. Now, we asked for a reconsideration or we were talking about it, and the auditor said, "If you want to have a reconsideration, then everything's open. We're going to start over from square one, not just the items you have questions. Most of the time, if we're going to do a reconsideration, it's on the issues we couldn't agree on. What's your thought on asking for a reconsideration?"

### **Ms. Mathew**

An audit reconsideration, personally, I like to take that step after I come out of tax court itself. The only reason is because you can open an audit reconsideration on the grounds that you have documentation that was not previously considered. So, from a practical perspective, if I have an audit and then receive that assessment, and within the audit itself, as the auditor, the revenue agent makes changes, they are then also allowed to open two other years. Typically, it's two previous years, usually because those would have been outside of the statute of limitations. They can bring it into this audit in that respect, but it could be any two other years. Usually, you're coming out of an audit in many cases with three years now that have been assessed. Personally, I like to petition the tax court at that stage because that then gives me the right to an appeals individual; and then it's set for the docket at whatever point. But between the appellate individual's decision and tax court, then there's another intermediary individual that tries to see if some agreement could be reached prior to tax court.

Now, if tax court concludes, and I don't like the decision, I'm all for an audit reconsideration. Or if I didn't have any rights to petition the tax court or other appellate rights, I'm 100% in favor of filing for an audit reconsideration to get that opened and have an opportunity, hopefully an independent opportunity—Is it ever independent with the IRS?—to see what the right answer is on this tax return.

### **Mr. Redpath**

With appeals now, you've mentioned that the tax court; but again, most CPAs are not really that familiar with the tax court and aren't allowed to practice unless they've been admitted. So, you can just go to appeals. I mean, you can file a request for an appeal. You have to file a formal protest depending on the amount that's involved. With the protest, that really becomes more of a legal document because you have to give your citations of authority. It's not just saying we want you to consider this. Whereas in many cases, you can just say, "I'm requesting appeals," and it's sent to an appeals. In the old days, you might be like, I'm in New York. I would get something from somebody in San Jose, California saying that they'd been assigned the case. And then we would just say face to face, they would ship it to a local office. That's not the case anymore, is it?

**Ms. Mathew**

No. Now we're seeing far fewer face-to-face appeal avenues. We're seeing, and I would say in part it was COVID, but we were already seeing the IRS prior to COVID trying to struggle with their resources and be as efficient as possible. Part of that was less face-to-face meetings, more individuals working from home, particularly in appeals—and in my opinion, in these sort of off hours that seemed difficult to reach these individuals in appeals that were working from home pre-COVID, post-COVID.

**Mr. Redpath**

No, I don't think it really mattered. I think the fact is that they started this process beforehand. A lot of people just have never been to appeals. They don't know. Certainly an accountant can go to appeals. An accountant can do that. What happens in appeals? They talk about an appeals hearing. It's not like going into court. What really happens in appeals? And I guess secondarily, what is the authority of the appeals officer that's different than the revenue agent?

**Ms. Mathew**

The individual who's going to handle the appeal, there are two different prongs that they're going to look at. First, they're going to look at was everything procedurally correct? Procedurally in terms of what are their requirements by the tax code, what does the internal revenue manual say, and did they meet the threshold of those requirements?

I would say in most cases, procedurally, things are handled correctly. And I say most cases in that sometimes there may have been a meeting that was missed. Sometimes there might have been a phone call that was missed. There have been some one-offs here and there procedurally by the IRS, but not to the point that any due process rights were violated. So, procedurally, that's one thing that the appellate individual's going to look at. The second part, which is the part that usually is the reason for the appeal is what substantively should be reviewed, or taken a look at, or could be changed. Here, you're limited on what could be opened up to a substantive review. And so, if the audit itself was open to discuss X, Y, and Z, changes were made that you think were inappropriate in line with that, this appellate person has some discretion to take a look at were these changes made in line with this supposed review of X, Y, and Z. The appellate individual actually does have a good deal of discretion to make some decisions.

**Mr. Redpath**

Yes. They can also take into consideration if this does go to court, what's the hazard of litigation? What's the chances of us winning? What's the chances of us losing? Or is this even an issue that we want to take up?

**Ms. Mathew**

If you are a practitioner, if you're a CPA and you're concerned about appeals, or you're concerned, "Am I going to go in front of a judge?" No, there's many different ways it's held. Sometimes it's over the phone. Sometimes it's still via correspondence. Sometimes it can be in person. Our right to request in person has been diminishing; and the IRS is moving away from allowing... voluntary choice on the taxpayer's part to have in-person meetings. But you have a great deal of latitude in those appeals. And this individual that you're having an appeal with is also not an attorney. They're going to be someone similar to the revenue agent, but in a higher role, and often likely with a greater understanding of the tax code itself. So you can make some more substantive arguments that they have, and not just substantive arguments honestly on the code. I have found that the appellate individual has more liberty to reach an equitable outcome given all the factors, and equitable doesn't necessarily mean exactly the black letter law, which is what I have found to be wonderful.

**Mr. Redpath**

You're right. They have a lot of settlement authority; and sometimes, as you said, you can come up with an equitable decision on something that really isn't the area of authority for a revenue agent on an audit. They're not supposed to say, "Well, maybe. Yes, I think you owe this." We can negotiate that. That's not really their position at that level. You can, if you don't feel like you're getting anywhere. I had one case where I just said to the appeals, I said, "We're not getting anywhere. Just give me my stat notice." Stat is the statutory notice, or your 90-day letter. I said, "I'm just wasting my time here." Now, once they assess it, and you've mentioned tax court, so that you get your assessment, that's your 90-day letter. It says you have 90 days in which to apply to the tax court or pay, or we're going to start collection. So that 90-day letter and assessment... What is the tax court and what's the role of the tax court versus perhaps the district court or the federal... claims court?



**Ms. Mathew**

Prior to actually having your case on the docket, you have about a two-year window right now. In that window, they have somebody assigned. Typically it's from the general counsel's office, but you're making the same types of arguments on the law itself, the interpretation of the law, the application to your client's situation, and why these facts and circumstances merit this taxpayer taking whatever deductions or credits that they had claimed and why that should be allowed. Again, that person again has even more latitude in making a decision to settle this. The majority of cases that we've petitioned to tax court intending to get on the docket in that two-year window—before it would ever be on a docket, most, the majority settle.

**Mr. Redpath**

The IRS, that's IRS counsel, and people sometimes confuse IRS counsel with, for example, the federal attorney general. It's a separate division that, essentially, that's just what they do. IRS counsel deals with the tax court cases or the cases once it goes past appeals. But it's part of the same group that's writing regulations and everything. It's just, these are kind of the litigators within the IRS.

**Ms. Mathew**

Right. And then, if you have a different type of case where let's say you have a statute of limitation that's expiring, or maybe there's a jeopardy assessment, or there's a myriad of reasons why, but other cases may go to the federal system through the Department of Justice. Often, it's they need to foreclose on an asset or there's a myriad of reasons why; but the Department of Justice attorneys and those cases would be filed in federal court, which is distinct and different from tax court.

So, tax court, one important piece I would mention, I have said a few times tax court, it will take about two years to get on the docket. One of the reasons for that is that the tax court judges are actually all located in Washington DC, and they are on a rotation around the country. They go around the country to different cities for a one-week tax court docket. And on that docket, your case may be set; but it's one docket in the fall, one docket in the spring, and it's in a city for that one week. There's very few cases that are actually set for that docket; and of the few that are set, most settle even before they get to that one week.

**Mr. Redpath**

Yes. My experience is like yours. Most cases that end up in the tax court end up getting settled, there's no question. What people should understand is, if I'm IRS counsel and I'm dealing with you, we may have a motion and we're going to be on the phone with the judge. The judge could be anywhere in the country, and we're going to be talking to them on the phone. You mentioned earlier it gets into tax court. The tax court does not want to hear a case until you've gone through all of the administrative. I had an interesting case once where the tax court judge kept saying to IRS counsel, "What's your objection to this going back to appeals? Why are you objecting?" Because I kept saying it didn't get a proper, they didn't look at all the issues on it at appeals that they should have. And the tax court judge agreed. He kept saying, "Why are you arguing with this?" And then he ordered it back to appeals, and we settled it in appeals. But normally what will happen is if it didn't go through the appeals process, it's going to end up before the tax court, they're going to send it back to appeals. Right?

**Ms. Mathew**

Yes. I would say so. That would be a good example of having an error in procedure. So, the tax court would say, "We erred, procedurally erred, in providing this person with their due process rights, so that we are going to remand this back to appeals." So that you're not deprived of those appeals rights before it comes to tax court. Now, when it comes before the judge themselves, let's say you do procedurally reach tax court appropriately and you don't have procedural grounds of merit. At that point, when it's on the docket and in front of the judge, it comes down to what is the law and how should the law be interpreted? And if you're making those arguments in front of a judge, you should have some precedent on what you're relying. It doesn't have to be your judge who made this ruling, and it doesn't have to be your specific tax court in your specific city, but you'll need to do some research to see how has the court been leaning.

And if there's an interpretation that is open for question, what the general counsel's office from the IRS will have done is they'll look for authority to support their position. And so the piece that you need to do is do some research on how has the court been leaning, because you may just get them to lean your way even if it's one step further than what the current position has been.

**Mr. Redpath**

You mentioned going into the tax court. We could have—and this is difficult to understand sometimes—you and I could have identical cases. The only difference is the name, but my case is in New York; and we might have the same tax court judge who's going to rule in my favor and against you and everything's identical, same facts sync, everything's identical, same judge. Well, how can that happen? That's kind of the Golsen Rule about precedent. Can you explain how that can happen and why we can't just say I found a case?

**Ms. Mathew**

I think that's such a good point. I'm glad you brought that up. I'm going to explain it, and I'm saying upfront, this is not something I agree with or think is wise. I think the court does try to get to a place where they're more uniformly making decisions for the court's sake and for the public's sake; but your jurisdiction matters, which is why sometimes you hear, "Oh, this is a more business-friendly place. This is a more worker-friendly place." Those things actually matter. And it matters when it comes to the laws that are written and particularly how they're interpreted. And so when things are open for interpretation, you may be in one district that's going to rule the opposite of a different district by the same judge who's rotated from that district to the other. And it's based on the precedence that has been set in that district and somebody not coming to make the opposite argument.

This is where precedence does matter. I could take a case. Right now, I'm in Miami, Florida. I could take a case that's in Miami, Florida and say, "They ruled the opposite, Your Honor, in New York." But if you look at the majority of districts in the country, they are ruling for the position I'm arguing today. And the judge would take that under consideration and say, "Well, we've always ruled this way in Miami, Florida; but with the majority of tax courts ruling in this direction, the court has an interest in having a more uniform precedence." It's just that the defendant has to make that argument in order for the judge to change the precedent.

**Mr. Redpath**

The problem is that if the circuit court for—and I'm not sure what circuit off the top of my head Miami is in, but I'm in the second circuit. If the second circuit court of appeals has ruled, it doesn't matter what the tax court judge believes. They've got to follow the second circuit

precedent. I think the Schleicher case is one of the great ones. That was an age discrimination case brought against United Airlines. The pilots were all over the country; it was a class action suit. They ruled age discrimination. The pilots association, when people got their check, they said, "This is excludable income under 104 as a tort type action." The IRS challenged that all over the country. Some circuits agreed, some circuits didn't. Same facts, same case, everything's the same, except you had to pay tax because of where you lived and you didn't have to pay tax because of where you lived because the courts had different interpretations. That was one where the Supreme Court stepped in. The same thing with home office deduction, dependent on where you lived, whether or not you took the focal point of the earnings process. That was the Solomon case. Finally, the Supreme Court stepped in. That was an interesting one because Supreme Court agreed with the IRS; and then Congress came and overturned the Supreme Court by changing the law.

There's this thing that a lot of accountants don't understand, and they're looking, they're doing their research. They've gone into their, hopefully, to their RIA Checkpoint. They've gone in, they're doing their research, and they find this action on decision (AOD) or acquiescence, or they find a non-acquiescence by the IRS. They used to be limited just to tax court. Now, they do them on any tax case. What is acquiescence and non-acquiescence? What does that mean? What should we do if we see them?

**Ms. Mathew**

I would say, in general, when you're talking about tax law, I don't want to say there's a good deal that's open to interpretation, but we know there's always regulations rolling out, we may apply it one way today. And who knows how the IRS is going to rule tomorrow? But with these acquiescence and non-acquiescence holdings, I say, especially depending on the matter and what we do is if you have a situation where the IRS is acquiescing to the issue, or they're saying they're not giving their stamp of approval. What they're saying is you could, you can apply this. We understand the decision here. We're not codifying it; but we're not going to come after you, for the most part.

I would say that's a loose interpretation. For the situations where it's a non-acquiescence, the IRS is saying we are not acquiescing—I don't know what the term verb would be to that—you do need to have

caution. For both situations depending on the matter, as a practical matter, what I do is I try to get a private letter ruling. Even if I find that the IRS has [acquiesced] to a decision—they're saying, "We acquiescence. Our position is that we're going to take a position of acquiescence to this decision." I, depending on the dollars at stake, depending on the issue and if I'm claiming this for the years in the future, I prefer on either side of that to get a private letter ruling from the IRS. Because for my client's sake, I want to have a more definitive answer.

### **Mr. Redpath**

The acquiescence, the IRS can always withdraw that if you did it. But where the IRS gets around acquiescing to a case, and they haven't withdrawn that acquiescence, the way they get around it is they just say, well, your case is different. Your facts are a little different. We're not bound to it because it's not the same. You mentioned a private letter ruling. And I don't want to go past that because sometimes, and you mentioned my view and that's the dollars. I mean, if I've got a \$20 million corporate reorganization, my malpractice carrier would also like me to get a private letter ruling on that. What is a private letter ruling? How does that come about?

### **Ms. Mathew**

Right. A private letter ruling can be used for a number of situations, not just these tax court decisions, not just for published opinions, but also if you're reading the law and you believe that your client's situation... Actually, I'll phrase it this way. Oftentimes, where I might have a client's situation and their facts are such that I cannot find the exact right regulation or interpretation of the law for my client's situation. It could be this, it's a little bit of that. I know how I want to report it. I know how I want to classify it. I believe I know the deductions we can take. But rather than rolling the dice and having this person be potentially audited in the future, particularly in the situations where I feel, okay, this is what should be right. Let me make this argument to the IRS. Let me ask them. You can get a private letter ruling, which is a letter specific for your client, specific to the taxpayer, or specific to their entity for the specific facts that you've outlined.

And so you can't deviate far from that. You can't take that private letter ruling and make copies and hand it out to other people to use. This is the IRS saying, given what you've told us, given our understanding, given the

facts at hand, if they continue into the future with the same set of circumstances, here is our decision on what can be applied and what we will allow. For me, for my clients, it gives us a great deal of certainty. And particularly because everybody needs to know what their financial position is; and the IRS coming back and hitting them with an audit that is going to be costly, not just in taxes due, but we're talking about back year taxes, penalties, and interest that would have accrued, we need more certainty than that when I'm taking this deduction.

### **Mr. Redpath**

They're not cheap. And it does take time. It's not like you send something in and they come back to you tomorrow; but in some respects too, there's negotiation. So, it's a good thing.

One of the things I don't want to leave without mentioning, because a lot of practitioners don't use them to any great degree, even on the front end setting up transactions. And that's the Audit Technique Guides that the IRS has issued. A lot of people aren't even aware that they have these things. They are on the IRS website. They are numerous. They're industry specific or topic specific. It can be an industry, or it could be a topic like hobby losses, or it could be a specific industry—attorneys, taxicabs. What are these Audit Technique Guides that are out there?

### **Ms. Mathew**

I'm going to touch on two things. One, you had talked about people are not using private letter rulings, and I just want to expand on that a little bit.... I find them to be an effective tool because you almost get your own piece of the law that you get to create. I would encourage practitioners to use that avenue more often because the reality of tax law is it is very open for interpretation and you don't find exactly what you need for your exact situation every time. Sometimes, we're all taking a little bit of a gamble that I think that this covers this situation and here is why. And when we're talking about great sums of money, and you're hoping that you're choosing the best law that you think—I'm finding it could be this, it could be this, it could be this; well, this one saves my clients the most money and I think I have an argument for it. I prefer to get a private letter ruling, particularly because the private letter ruling isn't saying can I apply this law to my set of facts? You can do that. That's a very straightforward request, but what I like to use it for is to almost build a

cake. I can take a little bit of this ingredient and a little bit of that ingredient and a little bit of this ingredient. Here's what I want to do for this situation. I think it's in the best interest of the government. I think it's in line with what tax law says. And you get this cut out, carved out niche law just for your client that they can apply—and then sometimes there's expiration dates on them—that they can apply to their set of facts that nobody else gets. And you negotiate that and I think it's just a wonderful avenue to utilize.

**Mr. Redpath**

Do you think that accountants have a tendency to think there's an answer out there? Like there's a book of knowledge that has the answer to everything. I know as attorneys, attorneys look at it and know that it's gray. There's lots of gray out there. Sometimes, you find something that's exactly on point, but most of the time it's trying to draw an analogy. Well, this is similar to this, and it's similar to that and it's similar to this so I think I can apply that. And I think that's what you're saying here. But accountants do sometimes think that there is always an answer; and that's just not true, is it?

**Ms. Mathew**

No, absolutely. I would say, I think that's exactly right that attorneys live in the world of the gray. It's sort of the adage. There are no absolute truths. Well, even that adage is purporting an absolute truth, that there are no absolute truths. So I think it's a world of the gray, which is particularly why I like being an accountant and an attorney. I think all of us, anyone in the tax and accounting field, we have an analytical mind by nature. And then you get to bring in on the attorney side, I get to be creative and say, well, here's the spreadsheet, but now let's open Paint and take this Excel spreadsheet and then dissect it.

**Mr. Redpath**

Well, I mentioned the Audit Technique Guides. Again, I want to close with at least people realizing they're out there and they're great. Basically, the IRS says, here's the issue. Here's our interpretation of the law. You don't have to agree with it, but it's nice to know. Now, they were set up—and I know you and I have spoken in the past about the fact the IRS is underfunded and they don't necessarily have the same level of expertise as practitioners—this was meant, really, for training for the IRS. They're great because, in some cases, I've been to audits where they literally used it like a

checklist and went right down the audit technique. Great to know before the audit. But if you're structuring a transaction... There's something on used car dealers and collision shops. Well, if I have clients in that area, I'd like to know exactly what is the IRS looking at? I'm structuring this transaction. What are the things the IRS looks for as being indicative of an issue? And it will say, and remember it's written to the agent. So it will say, if you find this, then you should look for this. If you find this, you should ask for these documents. It's great to know ahead of time. Have you used them to any degree?

**Ms. Mathew**

Yes, I would say honestly, both the Audit Technique Guides, but also just the Internal Revenue Manual code, those guides on telling agents how to do their job. Same thing, used for training purposes. I like to use those when I'm arguing with the IRS, because I can refer to it. As you know, it wouldn't hold weight if we were in tax court. But when I'm talking to a revenue agent or talking to a revenue officer on the collection side, now I have the exact guide that they were supposed to be using to be trained on this exact function. And so, I use those guides to show how I'm meeting the very elements that they're purporting that I'm not.

**Mr. Redpath**

Yes, I think they're a great resource but an underused resource by accountants.

Shiny, I want to thank you for being here. We got a lot of insight into the audit process here and the legal process and how they fit together and some of the things practitioners can do.

**Ms. Mathew**

Thank you so much for having me. I really enjoyed it, Ian.

**Mr. Redpath**

Thanks again.



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## SUPPLEMENTAL MATERIALS

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### Understanding the Audit Process and Appeals

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By Ian J. Redpath, JD, LLM

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#### A. Introduction

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Until the Covid issues, the IRS was both effective and efficient in the collection of revenue for the government. President Biden has proposed significant increases in staffing and funding for IRS collections. While it is assumed that practitioners will not take a position on a return that does not have at least a

reasonable basis of being sustained on audit, this does not mean the position is correct. An audit notice is almost always a cause for concern by our clients. There are numerous challenges and decisions facing practitioners to bring the audit process to a successful conclusion.

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#### B. Tax Returns Selected for Audit

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Common reasons that returns are selected for audit include a high Discriminate Function System (DiF) score indicating a high chance of collecting additional tax, document matching with information returns, related examinations, specific IRS audit initiatives such as “reportable transactions,” (Reg. §1.6011-4) and tips.

It must be remembered that IRS Circular 230 and the

AICPA Statements on Standards in Tax Service provide that a CPA may not play the “audit lottery” by taking the audit risk into account when providing advice on federal tax matters. It should be noted that filing an amended return does not affect the selection process of the original return. Additionally, amended returns also go through a screening process and can be selected for audit.

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#### C. Audit Process

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Notification of an audit is by mail. If the statute of limitations is close to expiring, the IRS will ask the taxpayer to extend the statute of limitations with Form 970. Practitioners must determine if it is in the best interest of the client to do so. A practitioner may request to limit the scope of the extension to unresolved issues; however, this is up to the IRS’s discretion. Failing to do so may result in an assessment based on the information currently available.

IRS Notice CP 2000, Automated Underreporter Notice, is the most common notice sent out by the Service. The IRS computers match informational returns such as Forms W-2, 1098, and 1099 with what is reported by the taxpayer. The notice gives a taxpayer 30 days from the date of the letter (not the date received) to respond. This is not an audit and, if not agreed to, it is moved to collection.

There are different types of audits conducted by the IRS. The most common is the correspondence audit. IRS data shows that approximately three out of four audits of individual taxpayers are done by mail. These

audits usually challenge small amounts of credits or deductions on a return and require only a mail response, with documentation, to an IRS central campus location. They are initiated by requesting that the taxpayer verify specific deductions and/or exemptions shown on the relevant income tax return by providing appropriate documentation. Typical items that the IRS believes can be resolved by correspondence with a taxpayer include itemized deductions such as interest, taxes, contributions, medical expenses, and relatively uncomplicated miscellaneous deductions such as union dues and small tools. For issues other than relatively simple itemized deductions, the IRS will begin to issue computer-generated notices related to the audit issues on the return. A taxpayer generally has 30 days to respond to the notice. If the taxpayer’s response is satisfactory, the return will be accepted without change. If the explanation is not satisfactory, the IRS will issue a Notice of Deficiency advising the taxpayer of the proposed tax change. If the taxpayer requests an interview to discuss the matter or it is determined that an interview is necessary to resolve issues, the case is transferred to the District Office closest to the taxpayer.

Office audits are conducted in the local office of the IRS. They concern more complicated issues. The taxpayer will receive a notice requesting that the taxpayer appear at an IRS office on a certain date and bring along certain specific documents, usually substantiation for deductions the taxpayer has claimed. Taxpayers have a right to be represented at the office interview and, even though the IRS usually requests the taxpayer's presence at the office interview, the IRS may not require it unless it issues an administrative summons. Practitioners must weigh the negative created by not making the taxpayer available to the understanding that it could be compelled. If the taxpayer is present, the representative should control the conversation and prepare the taxpayer in advance as to what expect. IRS examiners generally limit their questions to issues raised at the time the return was selected for audit.

Field audits are not so limited. In a field audit, the IRS agents will go to the taxpayer's home or place of business for the purpose of conducting some or all of the audit. IRS agents will prepare a plan of examination

setting forth the issues that the agent expects to audit and a time budget for conducting the audit. This is a more open-ended audit and often is focused on unreported income. There is more emphasis on the quality of records and methods of accounting than in an office audit. An IRS field agent will generally prefer to conduct a field examination at the taxpayer's place of business because of the belief that more relevant information will be gained by being physically present at the taxpayer's business. Practitioners should attempt to move the audit to their office. The IRS is usually agreeable to this. This allows more control of the process by the practitioner and is highly recommended.

The IRS uses the Coordinated Examination Program to audit very large corporations. The Coordinated Examination Program is staffed by teams of the most experienced examiners and tax area specialists working for the IRS. As with small audits, the Coordinated Examination Program audit team will develop an audit plan, which is usually shared with the tax department of the corporation that is being audited and its representative.

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## **D. Preparing for the Audit**

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It is impossible to prepare an audit-proof return. However, appropriate up-front research may make the return positions sustainable on audit. Generally, the position taken on the return cannot be undone at audit. For example, if a sale is reported as an installment sale, it cannot be undone at audit. Therefore, time must be taken up front to establish an arguable position in the event of a potential audit.

The government generally provides us with its "game plan" through rulings, procedures, regulations, and other notices and pronouncements. One of the best tools available to practitioners in preparing for an audit, as well as establishing the initial position on the return, is the IRS Audit Techniques Guides (ATGs). These are essentially for use of the examiners to help them in particular market segments or issues. A market segment may be an industry such as construction or entertainment, a profession like attorneys or real estate agents. An issue is an ATG on passive activity losses or hobby losses. These guides contain a roadmap for the examiner in what to look for on audit and provide various examination techniques, common and unique industry issues, business practices, and industry terminology. They often have very specific interview

questions and procedures and other information to assist examiners in performing examinations. They detail the government's position and the legal basis for it.

Practitioners must respond to any Form 4564, Information Document Request, in a timely manner. However, many times, these may be "fishing" expeditions by the IRS. Be sure not to provide more information than is requested or ask the IRS to explain the need for any questionable information.

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## E. Audit Outcomes

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An IRS audit can be concluded in one of three ways:

- No change – an audit in which the taxpayer has substantiated all of the items being reviewed to the satisfaction of the IRS and results in no changes;
- Agreed – an audit where the IRS proposed changes and the taxpayer understands and agrees with the changes; or
- Disagreed – an audit where the IRS has proposed changes and the taxpayer disagrees with the changes.

If the taxpayer agrees with the IRS's audit findings, he or she will be asked to sign the examination report or a similar form depending upon the type of audit conducted evidencing his or her agreement with the audit findings. If the taxpayer disagrees with the IRS's audit findings, the taxpayer may request a conference with the manager of the IRS agent who conducted the audit for his or her review of the audit's conclusions. Seldom does the manager disagree with the agent's conclusions. In addition, the taxpayer may request an audit reconsideration or Fast Track Mediation or an Appeal may be filed.

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## F. Post-Audit Action

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As noted, a conference with the auditor's manager will seldom result in a change. Another request can be for a reconsideration of the audit. In making that request, the IRS often takes the position that it opens up all aspects of the return and not just the unagreed issues. Practitioners should be aware up front if a reconsideration would encompass the entire return or just the items still in dispute.

If there are unagreed matters upon completion of the audit, the taxpayer will get a 30-day letter. This tells the taxpayer they have 30 days to file with the Independent Office of Appeals for a conference. Appeals is the first level that can consider the hazards of litigation in settling the matter with the taxpayer. The mission of Appeals is to resolve tax controversies without litigation on a basis that is fair and impartial to both the taxpayer and the federal government. A simple request for an appeal conference is all that is necessary if the entire amount of additional tax and penalty proposed for each tax year is \$25,000 or less. These are called Small Case Requests. Note that employee plans, exempt organizations, S corporations, and partnerships are not eligible for this.

All other requests for Appeals require a written formal protest. If the representative prepares and signs the protest, it must have a substitute declaration for the penalties of perjury statement that includes:

- That he or she submitted the protest and any accompanying documents, and

- Whether he or she knows personally that the facts stated in the protest and any accompanying documents are true and correct.

Appeals will generally require that there be an extension of the statute of limitations on file or that the taxpayer agree to it before the matter is taken up on appeals. Generally, the IRS likes a 365-day additional window. It should also be noted that if a taxpayer raises new issues or provides new documentation, Appeals may send it back to the examiner.

IRM Section 8.6.1.4.1 instructs Appeals officers that all conferences are to be held by telephone unless the taxpayer requests a face-to-face meeting, which is only allowed in limited cases. The revisions to the IRM provide guidance for when an in-person conference is appropriate. If the case does not meet any of the criteria, a virtual conference is an alternative

If the matter cannot be resolved, the taxpayer will receive a 90-day letter. **This is the actual assessment of tax.** The taxpayer has 90 days to pay the tax or file with the tax court or the IRS will commence collection. In order to take a case to the Court of Claims or the District Court, the taxpayer must pay a substantial portion of the tax and then sue the government for a refund. This is not required for Tax Court. **The 90-day filing in Tax Court is a hard deadline with no extension for any cause.** Going to the District Court or Court of Claims requires paying the tax assessment in advance.



Revenue Procedure 98-54 contains three situations that a taxpayer can use to force the IRS to rescind a 90-day letter; an example is an administrative error such as an assessment against the wrong taxpayer or for the wrong tax period. If the taxpayer wishes to settle the case immediately, it may make sense to make a rescission request. This goes directly to Appeals rather than through the Tax Court docket. It may also make sense if the client is a victim of identity theft since it generally takes longer than six months to resolve an identity theft issue. If the rescission request is not granted, the taxpayer retains his or her right to file a Tax Court petition within the 90-day period.

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## **G. Alternative Dispute Resolution**

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The Fast Track Settlement (FTS) is designed to expeditiously resolve disputes during an examination while the case is still in Examination or Collection. Fast Track Settlement brings Appeals resources to the audit site to resolve the dispute before the 30-day letter is issued. A specially trained Appeals employee facilitates the discussion between the taxpayer and the team manager or group manager to reach and execute a settlement.

Section 7121 allows the IRS to enter into a written agreement relating to the liability of a taxpayer for any taxable period ending prior or subsequent to the date of such agreement. Reg. §301.7121-1 provides that a request for a closing agreement that relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is docketed in the Tax Court.

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## **H. Conclusion**

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The key to any audit success is understanding the process and having proper documentation. Practitioners should be able to assist clients in navigating the process without too much trepidation.

## GROUP STUDY MATERIALS

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### A. Discussion Problems

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- 1) Your client, Jamie, informs you that she is being audited by the IRS. She brings in her letter from the IRS, which is Notice CP2000. She is concerned and wonders what this is about and what will happen.
- 2) Another client, Serena, called to say she received an audit notice from the IRS. It asks her to call and set up an appointment; and there are some questionnaires attached concerning several Schedule C items and Form 4564 and requesting some documents. She is concerned and wonders what this is about and what will happen.
- 3) Bjorn, another client, just underwent an audit. He has received a 30-day letter and does not agree with the findings of the IRS. He wants to know what his next steps should be in this matter.

#### **Required:**

Discuss the issues fairly raised in each of the three independent factual situations above.

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**B. Suggested Answers to Discussion Problems**

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- 1) IRS Notice CP 2000, Automated Underreporter Notice, is not an audit. Most likely, there is missing or incorrect information on the return from that reported on an informational return. The notice gives her 30 days from the date of the letter (not the date received) to respond. If it is agreed, she can pay the additional tax. If not, she can supply an explanation and the appropriate documentation. If she does nothing or the IRS does not agree with her response, it will be moved to collection and she may appeal from there.
- 2) There are three types of audit: correspondence, office, and field audits. This is most likely an office audit. In preparing for the audit, the practitioner should determine the appropriate documentation. Then, reference should be made to the law, regulations, and other IRS guidance. If an Audit Techniques Guide (ATG) is available on any of the issues, it would be important to review the guidance. Great care should be taken in responding to the Form 4564, *Information Document Request*. Response must be in a timely manner. Be sure not to provide more information than is requested or ask the IRS to explain the need for any questionable information.
- 3) The result of Bjorn's audit is a wholly or partially unagreed case. Consideration should be given to whether to request a review by the supervisor, a reconsideration of the audit, or most likely taking it to the Independent Office of Appeals for an independent review of the matters in dispute. If the entire amount of additional tax and penalty proposed for each tax year is \$25,000 or less, a simple request for an Appeals hearing is all that is necessary. However, if it is more than \$25,000 or involves an S corporation or partnership, then a formal protest must be filed. Of course, if nothing is done in 30 days, the IRS will issue an assessment or the 90-day letter and the matter can go to Tax Court. If it has not been in Appeals, the Tax Court will generally send it to Appeals for a review before hearing the case.

## PART 3. BUSINESS TAXATION

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### Conservation Easements

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Although charitable deductions generally are not allowed for donations of partial interests, Section 170(h) provides an exception for a qualified conservation contribution. There are very specific requirements regarding the types of eligible property, the necessary documentation, and the appraisal process. Ian Redpath and Larry Pon discuss the strict rules surrounding conservation easements and the potential risks of not complying with even one of those rules.

Let's join Ian Redpath and Larry Pon as they discuss conservation easements.

#### Mr. Redpath

Larry, welcome to the program.

#### Mr. Pon

Hi, Ian. How are you doing?

#### Mr. Redpath

I'm really glad to have you here. We've done some other things, and your insight is great, so I'm really glad to have you here. I think we have a really important topic today. Not just the fact that clients are hearing about conservation easements, or you may have clients, especially like farmers who may be seeing urban sprawl, and all of a sudden they want to protect that property. And there's some real benefits that are available; but this is an area where the courts have been really favorable to the IRS when it comes to cases. The IRS doesn't lose a lot of them when they go to court. It's also something that, as we go through it, I think we need to make sure our viewers are aware of the fact that this really does require some type of expertise, legal expertise, and I don't just mean go to the lawyer on the street corner. I mean someone who really has been involved with these and knows what to do. What exactly are these things, qualified conservation contributions, or often referred to as easements? What are these things?

#### Mr. Pon

Let's start at the very beginning here and take a step back on these. In the last decade or so, if you look at all the tax court cases regarding charitable contributions, most of them are related to conservation easements. That's a real hot topic with the IRS and with the tax courts. Now, if you go to the IRS website, [irs.gov](https://www.irs.gov), in the search box, just type in 'conservation easements,' you'll find a lot of information from the IRS about these and the warnings you get from the IRS.

So, let's take a step backwards first. Let's talk about charitable contributions. We all understand charitable contributions. We give cash to our favorite charities. We get a deduction for the cash we donate. We donate property to our favorite charities, our own donor advised funds, and we get a deduction for the fair market value of property we donate, such as you have stock that's worth \$10,000. Although your cost base is \$2,000, you get the deduction for \$10,000. Easements—and I think we might be familiar on a personal level of what easements are—easements could be we grant an easement to a utility. They're running the wires across our property so we get some money on an easement. Or our neighbor, to get to their garage, they have to cut through your driveway or something like that. So, those are what easements are.

Decades ago, some very creative people figured out that, "Hey, I own this farm. I own this property that has a lot of trees on it, and I promise to never build on it." So, that's an easement. It's known as a conservation easement. And they come in different forms. It's preserving natural habitat, so open space. You see that a lot. Even though you might still own the property, but you can get a tax deduction for donating the easement, like a forested area or something like that. Or historically, I've been involved with quite a few of these. We had a historical property in San Francisco, and their easement was a facade. They promised to never change the facade of the building and hired an expert to value what that easement's worth and got a tax deduction for that. Those are some very legitimate deals. We get an expert to value what that easement's worth, and you get a tax deduction for that easement.

#### Mr. Redpath

I think you mentioned one that's often overlooked, and that is that historical building. It might be a whole building. And there's a lot of cases where people have

a building on, for example, a Revolutionary War or a Civil War site, and they're living there, but they want to donate an easement for the public to come in and view their home. Of course, that could qualify as a conservation easement. You mentioned the general, and usually when we donate property, if we want to take fair market value, we have to reduce it to 30% of adjusted gross income, so we get a lesser deduction. What's beyond the fact that we get to donate and get something? You mentioned like timberland or there's even cases where golf courses have left open space. Farmers may say, "Well, I won't allow any building on this. We're going to keep the view." What's the advantage that you get to this that's beyond the normal just charitable contribution?

**Mr. Pon**

This is interesting. Generally, you have to donate your property to get the tax deduction. With an easement, a conservation easement, historical facade easement, or any of these type of easements, you still own the property. It's still yours. You still have legal title to the property, which means you've still got to pay the property tax, maintain the property, upkeep, and all that. You're just donating the easement. Usually the beneficiary or the charitable organization would be an open space organization, a conservation organization, or historical organization. Those tend to be the charities.

Let's go over the rules of where you can get this deduction. I'm going to read to you the magic words that apply. Number one, it's got to be a qualified real property interest. That's number one. And two is to a qualified organization. And number three, exclusively for conservation purpose. And number four, that prohibits the donee from making certain transfers. So, those four steps there. Now, all the court cases we have seen recently, the donor violated at least one or more of those steps. And as a reader, as a reader, we read these cases; and to me, they seem pretty obvious. They seem pretty obvious. Because there's some cases where the donor says, "Oh, in 15 years, I can put a condo on top of that property." Well, that violates it.

**Mr. Redpath**

Or in 15 years, I might decide to give you some other property, and I'm going to take that property back and build my condo there.

**Mr. Pon**

Exactly. So, the abuse of these cases, a lot of them were quite obvious. And the other abuse we've been seeing, especially most recently, are the appraisals. Sometimes, they might not hire a qualified appraiser. And the IRS or the tax code has specific rules on who's a qualified appraiser. And you can't use yourself. You can't use your brother. You can't use someone affiliated with you. Or in many cases, we've seen the appraisals just didn't make sense. You paid a dollar an acre for a property, and then the appraiser said, "Oh, it's worth a million dollars an acre." What? I don't know if that's right or not. But those are the cases we see that's been losing.

**Mr. Redpath**

I think one of the issues, to add to what you were saying, is we see a lot of cases on this "in perpetuity" issue, that you have to grant this forever, essentially. To get the conservation easement, it can't be a temporary, "Okay, you have it for 10 years." It has to be literally, we are giving this to the conservation, whatever group, qualified group, and it's forever. It's in perpetuity. There have been interesting cases where they've said, "Well, you can reserve the right to perhaps build on part of it." In fact, there was a recent case where they said, "Well, you could reserve the right to build, and you could substitute within that property, but you can't substitute properties." You can't say, "Well, you can have this other property over here, and we're going to take that back and develop it."

But they did say if you reserved building rights, and that's often the case where somebody says, "I'm going to give you the easement, but I'm going to reserve the right to build," or a farmer says, "I'm going to reserve the right to farm this particular piece of property. I have my buildings there. I'm going to grant you the easement, but I'm going to continue to want to use it." And those have not been found to be violative, as long as... You've got to understand what it is. You're giving it away, essentially, forever, but you can reserve certain rights.

**Mr. Pon**

A good example is a rancher. You can allow ranchers to run their cattle on the property because you need them to munch the grass down or the vegetation, so that's good fire prevention.

**Mr. Redpath**

You mentioned it, one, you get 50% of AGI. Right?... If you're a farmer, you can get up to 100% of AGI as your deduction. And you've got a longer carryover because we know if you can't take it in one year, you can carry it forward. You get, I believe, 15 years, isn't it, rather than the normal five?

**Mr. Pon**

Right. Conservation easements have a special place in the tax code. There's some exceptions to what the normal charitable contribution limits are. Normally, if you donate property, capital gains property, you have a 30%-of-AGI limitation. If you give cash, it is normally... Now it's 60%. It was 50%. As a result of the CARES Act, it's 100%. We'll see what happens with that. But with conservation easements, it's not 30%, but it's a 50%-of-AGI limitation. Yes, you're right, if you're a farmer, it can be up to 100% of your income. Now, instead of the five-year carryover, and that can go pretty quick, so we need do some special tax planning with clients who have large charitable contributions. But with conservation easements, you have a 15-year carryover.

**Mr. Redpath**

Yes. That can be a real benefit. I actually have a slide here, and I'll just go over this quickly. A landowner earning \$50,000 a year who donates a million dollars could take a \$15,000 in easement, \$15,000 deduction, 30% for the year of the donation, and then five-year carryforward. But as a conservation easement, they can deduct 50%, so they can deduct \$25,000; but they can carry that forward for 15 years. So, if we just continue the same amount of income, they have a \$400,000 deduction, which is rather significant. And if they were a farmer, they could offset 100% of their income, or \$50,000, and that would, in essence, give them an \$800,000 deduction over that 15-year period. As you said, this is really substantial when you come to look at it. When we're talking about the amount—you get a deduction—how do you value that? You mentioned you need an appraisal. You need to file the 8283. They didn't create anything new for that purpose. But how do you value this?

**Mr. Pon**

Before we talk about that, a lot of losing cases in the charitable contribution area is that the taxpayer doesn't fill out the Form 8283. The court looks at: Did you fill in all the boxes? And that's going to be really

important. Did you get a signature from the donee organization? Did you attach the appraisal? Read the Form 8283 instructions really carefully. You've got to include documentation for the fair market value of the underlying property—we'll talk about that in a second—before and after the gift, the conservation purpose of the gift, and whether the donor made the donation to get a permit or approval from a governing authority, or whether their donation was required by contract. So, all that information's got to be disclosed.

Again, when we read those tax court cases, the tax court is really strict on that. There was a recent case where someone made a \$33-million donation and the Form 8283 wasn't filled out. That's a big donation to lose. And there's another case. I'm in California. There's a California donor, \$13 million. Well, he is a real estate expert. He's a real estate appraiser. He appraised his own property, which is something you cannot do. He lost a \$13-million deduction. He even told the court, "Hey, I was lowballing it. I wasn't even being aggressive with that." So, it's important to get a qualified appraiser to value the property.

**Mr. Redpath**

I think it's also a point, is that the conservation purpose, it's not obvious. You can't just say, "Well, it's obvious. Look at the organization I donated it to." Right? You have to set forth in your statement that you attach to the 8283, you have to say what's the purpose, what is the purpose of this conservation easement. Don't just assume, because of the organization it was donated to, that's all you need to do. You need to set that purpose out. You mentioned the value. What is the value of the deduction? Because, as you said, these are often in the multimillions of dollars, the tens of millions of dollars.

**Mr. Pon**

Right. Again, it's important to hire a qualified appraiser, and they look at the value of the property before the donation. That's usually indicative of what you pay for the property, willing buyer, willing seller. That's a good indication what the value was when you bought it. Then, at the time of the donation, there's going to be a lot of calculations that need to be done to see what that is worth. I have to admit to you, I am not an appraisal expert, I am not an evaluation expert there, so there's a lot to it. I mean, I would be suspect if the report is a one-page report or if it's something that's produced by a realtor. That's probably not going to fly.

But a document that's probably 30 pages long, it goes through some analysis and calculations, some surveys, economic background. The hard part about it is that there's not a lot of comparable properties. When you get an appraisal for your house, that's relatively easy because there are houses similar to yours in your neighborhood; so I can use what's called comparable sales. That's relatively easy. But when it comes to easements, it is a bit complicated.

**Mr. Redpath**

Yes. You've got this beautiful land out in Vermont, out in the country, and you want to donate it for a conservation easement, there probably aren't any comparables. So, the importance of having that appraisal is significant. There's a qualified real property interest. What is that? Because that's what it has to be, it has to be a qualified real property interest that you're giving.

**Mr. Pon**

Yes. When you read some of these cases, you're donating something that you actually don't own, so there are some obvious things about what a qualified real property interest is. Let me just read it here because I have to admit to you, I don't have these words memorized, but "a qualified real property interest is a contribution of less than a taxpayer's entire interest in the property." Which means we're not giving the land, we're not giving the property, it's less than your entire interest; so you're giving a piece of it away. The question is "What's the value of that piece?" Specifically, a qualified real property interest means any of the following interests in real property. Number one, the entire interest of the donor other than a qualified mineral interest—and we'll talk about that a little later—a remainder interest, a perpetual conservation restriction. That's where the expertise of the appraiser is going to come to calculate what's a perpetual conservation restriction.

And those fall into all kinds of definitions. I've had some cases where up in Northern California—there's a lot of forest land up there—so they'll still own the property, but they'll give a certain number of acreage to open space. Or I love hiking the parks in our local area. A lot of it's open space, open space, and so they've been donated by property owners. They're still responsible for maintaining the property, but they've given rights for us general public to take a hike in there. So, what's the value of that?

Another one where it was a very interesting case, and we haven't heard from the IRS or anything like that, and this was over a dozen years ago. It was a client who promised never to drill for oil. That was their easement. It was a promise not to drill for oil. And this was before fracking and all those things came about. If we did this today, I'm sure we would get a much larger deduction because fracking technology didn't exist back then. So, it was just basically sticking a pipe into a hole and pulling oil out of there or gas out of there. This answer changes over time because it changes over what the value of the properties could be and technology, like in our case of drilling oil.

The historical one is interesting, too, because that varies. If you've seen in recent history here, there's some controversy of Confederate monuments. Before all this was going on, we actually have some in San Francisco that we got a pretty good valuation for. I bet you if we did this today, we'd probably get a much smaller valuation for those monuments. So, this answer, it's going to be very interesting.

**Mr. Redpath**

Now, it has to be a qualified organization. Just in general, what does that mean? Obviously, you need to look into it, but what would be the type of qualified organization?

**Mr. Pon**

That's a good question because it can't be just any random charity. It's an organization whose mission is to preserve property, to preserve resources, and also, most importantly, to be able to enforce these easements. That's the most important thing here. There's some questions such as, "Can I give this to my church?" Probably not because they're probably not a qualified organization. But there are certainly a lot of open space type organizations, nature conservation type places, historical preservation organizations—organizations that have a mission aligned with the easements.

**Mr. Redpath**

There's a case out there where the person donated to a school board, and the court said, "The school board is really committed to protecting the environment and open space," and so they said, "That would be a qualified organization." I think if you have that, you want to dig in a little further; and you're going to have to have some further commitment, I think, on paper from them for the courts to buy that. But as you said,

you have to look beyond that. We mentioned “in perpetuity,” and that’s always a huge issue in all the courts. What does that mean, in perpetuity? And can I have a restriction in there? The courts have used this terminology that it is “so remote as to be negligible.” We see that terminology all the time. What does “in perpetuity” mean? And what does “so remote as to be negligible” mean?

**Mr. Pon**

To be honest with you, if I’m involved with any transactions, I’m pretty conservative when it comes to this. It’s like, no, no, no, no, no, no, we’re not going to give any loopholes here. The remote possibility? I’m a bit uncomfortable trying to invoke that because that’s like threading a really, really tight needle. It’s like the dictionary definition of perpetuity. What’s perpetuity mean? Right? To me, it means a very long time.

**Mr. Redpath**

Yes. It’s pretty much forever, right?

**Mr. Pon**

Yes, exactly.

**Mr. Redpath**

Although you can, and the courts have said you can provide in the document that the document can be amended in the future as long as the amendment is not inconsistent with the conservation purpose. So, we could change the document if it’s consistent. Just the fact that you have something in the document that says, “This could be subject to a future amendment,” that could ruin right there. But if you said that it had to be consistent with the purpose of a conservation easement, the courts have been willing to let that go through and not throw it out right in the beginning. So, you can have that. But this, so remote, because people put something on there and, “Well, this reverts back if....” And the courts are going to say, “What is the chance of the ‘if?’” I mean, I don’t want to go to court and try to argue that the “if” was so remote as to be negligible, that it’s a 99.99999% chance it’s never going to happen. How do you define negligible? I don’t think I want to go to court and try to argue that one, for sure.

**Mr. Pon**

It gets really tricky about certain types of property. Like the case you’re talking about was referring to something with a 99-year lease, a long-term lease. I mean, there’s a bit of uncertainty there. Right? What

happens after 99 years? Before you know it, that 99 years is going to come right up.

**Mr. Redpath**

That’s for sure. I actually had a piece of property that I rented. I own the building, but I rented the land, as did all the other cottagers. We all leased the land, and that 99 years came up faster because, all of a sudden, there we were. All of the cottagers associations’ 99-year leases ran up. We had an interesting one in New York where a lease had run up on an entire village. Again, this had been something that they had leased from the Seneca Nation; and all of a sudden, the lease ran up on the entire village. So, it does happen. That 99 years goes faster than you think.

**Mr. Pon**

To be honest with you, I would be careful about trying to donate an easement for something that you don’t own the land.

**Mr. Redpath**

That’s for sure. Now, we have a whole series of regulations called the extinguishment regs; and there’s some court cases where people have put extinguishment clauses in there. I think the courts have said pretty much that the only extinguishment can be by a court, where the court comes in and says, “We’re going to end this easement.” What does extinguishment mean?

**Mr. Pon**

Basically, it’s something where you don’t really have a whole lot of control. Like you said, it’s not something you have control over. It’s something that an outside party has control over. You don’t have any influence over that. So, it could be the court or some governmental body that can make some changes.

**Mr. Redpath**

So, I have a piece of property, I have a mortgage on it. Obviously, the mortgagee, the bank, is saying, “We want priority over this. You can give the easement, but if you don’t pay, we’re taking it back.” What do the courts say about mortgages because that could really be a problem?

**Mr. Pon**

That could be because, just like donating property subject to a mortgage, that causes some complications



because the risk of that is it could be considered a deemed sale, which could trigger a capital gain.

**Mr. Redpath**

You've got to be careful. I think the general rule is that if there's a mortgage on the property, they have to subrogate their rights, and the courts have said subrogate their rights at the time of the gift. There's actually a case where they subrogated their rights after the gift, and the court denied the conservation easement even though the lending institution said, "No, no, we're fine. We'll subrogate." And they said, "Not at the time of the gift. It failed. You don't get the conservation easement deduction."

Earlier, Larry, you mentioned mineral rights; and I know there's some issues with surface mining. What exactly goes on with mineral rights?

**Mr. Pon**

That could create a problem because if I donate a conservation easement, a property, but I retain the surface mineral rights, now that could violate the conservation easement, which means this would not be a qualified conservation contribution. So, that could be a problem. It can get a little tricky trying to figure out if the possibility of surface mining is going to be negligible. I would be very cautious when we're dealing with mineral rights and all that. I think you're trying to have your cake and eat it too. That's what you're trying to do in there. So, I would be really, really careful about that. The other way around, it's a little more obvious, like, "I promise never to drill here." I think that's pretty obvious. It's kind of like the park I'm hiking in, "Oh, by the way, that big hole in the ground there? We're still going to reserve the right to take the ore out of there." I don't know if that's going to give us a deduction.

**Mr. Redpath**

Yes, these are very difficult. We mentioned the extinguishment rights. But one of the things that is important is if the easement is extinguished, then what has to happen is that the organization has to get a pro-rata share of any value of the property, which is measured at the time of the gift. In other words, the percentage of the now fair market value, whatever that is. So, you say, "Okay, what was the value of the easement versus the value of the whole?" And they have to get that same pro-rata share at any extinguishment. And there's been cases that have said

unless state law says that, on extinguishment, that they're entitled to that, I'm sorry, if you have a reduction or they get nothing, you can't get the conservation easement. Very, very important here.

Now, we have a lot of cases where they've looked at a number of different issues. But I think one of the things to keep in mind is the syndication, syndicated conservation easements. The IRS, in their "Dirty Dozen"—and our viewers might be familiar, we went over the Dirty Dozen—the IRS said conservation easements, syndicated conservation easements, are one of the areas that they're going to go after. And this is not new. We can go back to 2004-41, Notice 2004-41, and the IRS says, "We're going to scrutinize donations, conservation donations. We think they're being abused."

Then, we had Notice 2017-10 where they said syndicated conservation easements are going to be listed transactions. You're now going to have to report them as listed transactions. And we have warnings to people. We have IR-2020-228, where the... Chief Counsel... came out and said, "Hey, look!" And they had Notice 2021-0001. And in all of these, basically, what they've said about conservation easements is if it's too good to be true.... But we actually have something to look at—the 250%. Where do we stand with syndicated? Because, if I have a client who comes in and says, "Hey, I've got this great investment idea," I think I've got to scrutinize it. Where do we stand with this because the IRS is really after these?

**Mr. Pon**

Yes, the IRS has really been after this, and it's been going on for a while, like you said. How do we catch it as tax professionals? Hopefully, none of us are recommending these to our clients because the IRS has also put us on alert as tax professionals, that we can be subject to preparer penalties for help aiding and abetting underpayment of taxes. So, it's not just your clients. It's you that you've got to watch out for when it comes to these things, and don't take a blind eye. When do you normally catch this? We're not recommending it. Hopefully, the client will mention to us. We do our best to talk them out of it.

I've had a client that had this situation. He worked for a company that went public, he made a lot of money, his stock became worth a lot of money, and he didn't want to pay the big tax bill. So, he got this tip from the CEO of the company to invest in these syndicated

conservation easement schemes—I call them schemes—and he kept buying them. So, I amended his 2017 return, I amended his 2018 return, and had him pay back the taxes on them. For example, he made \$100,000 investment in one of these, so he put \$100,000 in, and that's what it says on the capital account, he put \$100,000 in. And guess what the tax deduction was? \$400,000.

I said, "Okay, you put in \$100,000. You got a \$400,000 tax deduction. Do you know what that means?" "Oh, a great deal. Look at this great deal." He was so happy and excited about it. Then, I showed him the IRS memo that was on the IRS website about these conservation easement schemes and giving you as a taxpayer an opportunity to 'fess' up because it's going to get very expensive if the IRS audits you. And they are auditing all of these programs; they're auditing all of them. And then, what's on those partnerships? K-1s. What's on those K-1s? Your client's name, and address, and social security number. So, low-hanging fruit for the IRS.

### **Mr. Redpath**

They said 250%, right? They said, "If your return is 250% of your investment or more, I'm sorry, you have an issue, and you've got a huge problem." Right there, we at least have a bright line. As you said, yours was four times the [investment].

We have a bright line now that we can at least look at. It doesn't mean they're not going to attack it if it's less, but it means if it's that or more, you better be telling your client, "Absolutely not. You're going to be audited; and by the way, you're not going to be successful." Now, the IRS came out and said, essentially, if any cases are in the tax court, we're going to settle those, we're offering to settle, we're throwing out these if they're already in the tax court. But I think... we can look at that as guidance if you have a client, and certainly we can say, "Look, this is something that the IRS hopefully will settle with us with the same penalties." As you said, you've amended returns. That doesn't mean the IRS isn't going to come back on you. At least you're taken care of it; you've done what you can do at this point. So, I think this is a guide now to say, "If we get audited, maybe this is the guide to settling this because these are really abusive."

### **Mr. Pon**

Also, here's another hint. Normally, when we have a client invest in a partnership, we get a K-1 package, right? Normal K-1 package. It's got the K-1s page one,

two, and a bunch of footnotes. When someone invests in these conservation easements, not only do you get a K-1, you get an opinion letter from a law firm of why this is such a great idea. You get an opinion letter from a well-known CPA firm telling you why it's a great idea. And I think I saw a couple of other opinion letters. It was like the whole package was nearly 100 pages, nearly 100 pages. And the thing is, remember, if you're going to claim this deduction on your Schedule A, you have to attach Form 8283 and make sure that's all filled in correctly and completely. All the underlying documentation needs to be attached to the tax return. Even if you invest \$100,000, you might get a zero tax deduction if you haven't followed all the instructions of Form 8283.

### **Mr. Redpath**

This is an area, I think, if we haven't scared our viewers, we've at least made them aware that it's something they need to look at. If a client comes in with the idea of, "I want to plan a conservation easement," understand every single I dotted, T's crossed, proper documentation. I would refer to this as strict substantiation. Everything—the IRS and the courts have said, "Everything has to be there, and it has to be correct. We're not going to give a substance-over-form approach to this." Syndicated, big issue, as we've talked about. Watch out for that. Larry, is there anything else we need to really keep our viewers aware of here?

### **Mr. Pon**

Our clients are always asking us, "Hey, what can I do to lower my tax bill? I heard of this great idea. This guy's running around my office telling us about it." I can tell you that's true. There are people running around offices telling all their friends about it because they had a big event. There's a lot going on. The stock market's on a record high. There's a lot of IPOs going on. There's a lot of mergers and acquisitions going on. People are running into money, and they don't want to pay their big tax bill; and so, this has popped up as a solution for many people. Be very careful! Also, as tax professionals, we are approached by these promoters. We are. I have been approached by quite a few in the past few years, and they say, "Hey, let me help you make some money. I'll give you a cut. I'll give you a finder's fee," or something like that. Don't get persuaded by them.

There are legitimate ones out there. There are legitimate ones out there. And those are pretty reasonable. The ones with the farms, the forest land, the historicals, or your clients who might have properties where they can donate an easement. This is where you can be creative as a tax professional, how you can help your client. This is why it's important for us to know our clients. It's like, "Oh really? You have this barn that's been in your family for the last five generations? Really? I didn't know that." That could be meaningful. Or the surrounding area is all being developed except for yours. So, we can be helpful with the legitimate conservation easement contributions. We can do that. It's a great thing to do.

**Mr. Redpath**

Yes, I don't want to leave our viewers with thinking this isn't something to look at. This is absolutely... But I think it's really fact specific, isn't it? We know that if you... buy something that has an historical history, if you can get it and you're able to donate access to the building, or you're able to donate the facade, or especially farmers and ranchers, maybe have the opportunity.... I had a group of doctors that I represented on a different issue. But one of the things that came up was, "Look, you've got this property out here. It's gorgeous. It's beautiful. It's urban sprawl. So, I said, "Let's look at a conservation easement, see if we can do that." But that's legitimate. Those are legitimate things. And you've really got to watch out, though, because there's so much that's not legitimate out there.

Larry, I want to thank you for your expertise here, really provided our viewers with some great insight and things to look at, and hopefully I'll have you back soon on another program. So, I really want to thank you.

**Mr. Pon**

Thank you, Ian.

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## SUPPLEMENTAL MATERIALS

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### Qualified Conservation Contributions/Easements

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By Ian J. Redpath, JD, LLM

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#### A. Introduction

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The contribution of property to qualified charities provides benefits for both charity and the individual donor. These are enhanced when the contribution is a

qualified conservation contribution. The IRS has targeted these contributions and especially syndicated conservation easement.

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#### B. Property Contribution Limits

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Individual donors contributing capital gain property (property that would generate long-term capital gain if sold) to a 50% charity are generally limited to deducting the basis subject to the 50%-of-adjusted gross income (AGI) ceiling. However, the donor may make an election to deduct the full fair market value subject to the reduced 30%-of-AGI ceiling. The election will apply to all gifts of capital gain property to 50% charities made during that tax year. If the contribution is to a private foundation, it may be subject to a 20%-of-AGI ceiling. Any unused deduction may be carried over for five years. [§170(b)(1)(C)(iii); Reg. §1.170A-8(d)(2)]

Qualified conservation contributions are treated as contributions subject to the 50% charity limitation under §170(b)(1)(A), the 30% charity limitation under §170(b)(1)(B), or the 20% limitation under §170(b)(1)(D). An individual's aggregate conservation contributions are allowed up to the excess of 50% of the taxpayer's AGI over the amount of all other allowable charitable contributions, and the carryover is extended to 15 years. [§170(b)(1)(E)(i)] Qualifying farmers and ranchers are able to deduct up to 100% rather than 50% of AGI. These contributions are not taken into account in determining the amount of other allowable charitable contributions.

**Note that the following examples do not take into consideration the 2021 rule allowing 100% for cash contributed to 50% organizations.**

**Example:** Serena, a landowner with AGI of \$50,000 a year who donated a \$1 million could take a \$15,000 deduction (30% of AGI) for the year of the donation and for an additional five years, generating a total of \$90,000 in tax deductions. With the contribution treated as a conservation easement, she can deduct \$25,000

(50% of AGI) for the year of the donation and for each of an additional 15 years. This would result in a total of \$400,000 in deductions. If she is a farmer or rancher, she can deduct \$50,000 (100% of AGI) in the first year and then for each of the following 15 years, realizing a maximum of \$800,000 in deductions.

**Example:** Ciara, an individual, has an AGI of \$10,000 for the tax year. She makes \$8,000 of cash contributions to a 50% charity and a qualified conservation contribution of capital gain property worth \$10,000. Her deduction for the year is \$5,000 of the cash contributions (i.e., 50% of the \$10,000 contribution base) and she can carry forward the unused \$1,000 of cash contributions for up to five years. No current deduction is allowed for the \$8,000 qualified conservation contribution, but the entire contribution could be carried forward for up to 15 tax years. Thus, the five-year carryover period contributions are used first, saving the qualified conservation contributions.

**Example:** Assume Ciara has an AGI of \$10,000 and makes a qualified conservation contribution of property with an \$8,000 FMV. She also makes contributions subject to the 50% limitation of \$6,000. Ciara is allowed a deduction of \$5,000 in the current tax year for the other contributions (50% of the \$10,000) and is allowed to carry over the excess for up to five years. No current deduction is allowed for the qualified conservation contribution, but the entire \$8,000 qualified conservation contribution may be carried over for up to 15 years.

**Example:** Carlos, is an individual rancher with a contribution base of \$10,000. He makes a qualified conservation contribution of property with an \$8,000 FMV and makes other charitable contributions subject to the 50% limitation of \$6,000. He is allowed a

deduction of \$5,000 in the current tax year for the other contributions and carries over the excess \$1,000 for up to five years. Carlos is also allowed a deduction of \$5,000 in the current tax year for the qualified charitable contribution (the amount of the remaining contribution base – 50% of AGI). The excess \$3,000 may be carried over for up to 15 years as a contribution subject to the 100% limitation.

Generally, the amount deductible for a conservation easement is the difference between the value of the burdened property before and after the donation. It is possible that the value of the taxpayer's retained property may increase as a result of the easement. The contribution is deductible only to the extent that its value exceeds the value of the benefits received. (LTR 200208019)

## C. Requirements

Generally, charitable deductions are disallowed for donations of partial interests; however, §170(h) provides an exception for a “qualified conservation contribution.” Conservation purposes include protecting a natural habitat or preserving a land area, open space (including farmland and forest land), or a historically important land area or certified historic structure. It can also include the façade easement. There are serious restrictions on the contribution, and the IRS requires strict compliance with all of them.

A qualified conservation contribution is a contribution:

- of a “qualified real property interest,”
- to a “qualified organization,”
- exclusively for “conservation purposes,” and
- prohibits the donee from making certain transfers.

Capital gain property not meeting the rules may still be subject to the same limitations and carryover rules as other charitable contributions of capital gain property.

The donor must attach Form 8283 to the donor's tax return with a statement showing the fair market value (FMV) of the underlying property before and after the gift and the conservation purpose furthered by the gift. The statement must set forth whether the donor made the donation to get a permit or approval from a governing authority and whether the donation was required by a contract. If the donor or a related person has an interest in nearby property, then the statement must describe that interest. If the exercise of rights reserved by the donor may impair conservation interests associated with the property, then the donor must, before the donation, provide sufficient documentation (called “baseline documentation”) to establish the property's condition at the time of the gift. [Reg. § 1.170A-14(g)(5)(i)] If the donation contains

restrictions as to a particular natural resource to be protected, such as water quality or air quality, then the condition of the resource at or near the time of the gift must be established and documented as well as donee's signed statement that the representation of the property is accurate. [Reg. § 1.170A-14(d)(4)(vi)(B)] Further, the donee must have the right to enter and inspect the premises at reasonable times and to enforce the conservation restriction. [Reg. § 1.170A-14(d)(4)(vi)(C)]

The donee must be a “qualified organization.” An organization is a qualified organization if the organization is described in:

- (a) §170(b)(1)(A)(v)19 (certain governmental units);
- (b) §170(b)(1)(A)(vi)20 (a “publicly supported” organization; or
- (c) §Sec. 501(c)(3) that also meets the requirements of either:
  - §509(a)(2)21 (certain membership and other broadly supported organizations); or
  - §Sec. 509(a)(3) [supporting organizations and is controlled by an organization described in (a), (b), or (c), above (§170(h)(3)(B)(ii); Reg §1.170A-14(c)(1)(iv)].

The qualified organization must have a commitment to protect the gift's conservation purpose and the resources. This requirement is satisfied where the donee is a conservation group organized or operated primarily or substantially for one of the conservation purposes specified in §170(h)(4)(A). A state-law nonprofit corporation is not necessarily a “qualified organization” if the corporation is not described in items (a)–(c) above.

The property contributed must be a “qualified real property interest.” [§170(h)(1)(A); Reg. §1.170A-14(a)] A donation of the taxpayer’s entire interest in property is not a qualified real property interest.

One of the most commonly challenged requirements for a conservation contribution is that the property must be “exclusively” for conservation purposes. This requires that the conservation purpose must be protected in perpetuity. [§170(h)(5)(A)] A conservation easement may contain a general amendment provision as long as it is consistent with the stated conservation purposes. [*Pine Mountain Preserve, LLLP*, (2018) 151 TC 247, affd on this issue (2020, CA11) 126 AFTR 2d 2020-6617] However, the retention of surface mining rights is generally disqualifying. This requirement was not met when state law put a limitation on easements of 99 years. [*Wachter, Patrick J.*, (2014) 142 TC 140]

In Chief Counsel Advice 202130014, the IRS has provided sample language to protect the “in perpetuity” requirement. That should be reviewed anytime a conservation contribution is made.

The terms of a “qualified conservation contribution” may not permit the destruction of significant conservation interests although one of the enumerated conservation purposes may also be accomplished. For example, the preservation of farmland under a state flood control program will not qualify if the contribution’s terms allow the use in the farm’s operation of pesticides that would injure a significant naturally occurring ecosystem. [Reg §1.170A-14(e)(2)]

Conservation purpose includes the preservation of open space (including farmland and forest land) if the preservation is for the general public’s scenic enjoyment or under a clearly delineated federal, state, or local governmental policy. In addition to satisfying those requirements, the preservation must yield a significant public benefit. [§170(h)(4)(A)(iii); Reg § 1.170A-14(d)(4)(i)] With respect to the relationship between the “scenic enjoyment” and “public benefit” requirements, since the degrees of scenic enjoyment are subjective (and not as easily delineated as increasingly specific levels of governmental policy), the significant public benefit of preserving a scenic view must be independently established in all cases. [Reg § 1.170A-14(d)(4)(vi)(B)] A facade easement which also prohibits vertical construction on the property qualifies as an open space easement.

Conservation purposes include the preservation of an “historically important land area” or a “certified historic structure.” [§170(h)(4)(A)(iv); Reg. §1.170A-14(d)(5)(i)] Additional requirements apply to a building in a registered historic district. If the contribution permits future development on the site, a deduction for the contribution is allowed only if the terms of the restriction require that the development conform with appropriate federal, state, or local standards for construction or rehabilitation in the district. [Reg. §1.170A-14(d)(5)(i)] There must also be some visual public access to the donated property. If the property is not visible from a public way, then the easement’s terms must provide that the general public is, on a regular basis, given the opportunity to view the characteristics and features of the donated property consistent with the property’s nature and condition. Reg. §1.170A-14(d)(5)(iv)(B) provides factors that will be considered.

**Example:** Taxpayer and his family live in a house in a certified historic district that is surrounded by a high stone wall. The property is not visible from the street. Under the terms of the donation, the house is open to the public for guided tours for one Sunday in May and November; the donee organization can photograph the house and distribute the photographs to publications; and educators, architects, and historical societies can visit by appointment. This would qualify.

If the property contributed is subject to a mortgage, the mortgagee must subrogate their rights to those of the donee. This subrogation must be in place at the time of the contribution. [Reg. §1.170A-14(g)(2)] A defect in this subrogation cannot be later cured.

The possibility that certain events may defeat the donated interest will not render a gift nonperpetual if the possibility is so **remote at the time of the gift as to be negligible**. Generally, this will be a question of fact.

If an unexpected change in conditions makes impossible or impractical the property’s continued use for conservation purposes, then the restrictions required to protect the conservation purpose can be extinguished by judicial proceedings. The so-called “extinguishment regs” require that the donee must use its share of the proceeds from the property’s later sale or exchange consistently with the contribution’s original conservation purpose. [Reg. §1.170A-14(g)(6)(i)] At the time of the gift, the donor must agree that the donation of the perpetual conservation restriction

creates a property right vested in the donee with a fair market value (FMV) at least equal to the proportionate value the restriction bears to the whole property's value at the time of the gift (the "proportionality requirement"). For these purposes, the proportionate value of the donee's property right is to remain constant. This does not apply if state law requires the donor to receive all the proceeds without regard to the restriction. [Reg. §1.170A-14(g)(6)(ii)] Chief Counsel Advice 202130014 provides that a conservation easement deed that decreased the portion of proceeds required to be allocated to the donee upon extinguishment would cause the easement to fail the requirements unless state law provided that the donor was entitled to full proceeds from extinguishment.

It is not unusual for a donation of property that is partially being used by the donor. For example, in *Belk, B.V., Jr.*, (2013) 140 TC No 1, the Tax Court agreed with the IRS that an easement donated to the Smoky Mountain National Land Trust did not qualify as a qualified real property interest, because taxpayer retained the right to change the property subject to it. The easement, which the IRS referred to as a "floating

easement," was on a golf course owned by taxpayer. The agreement provided that taxpayer could substitute different property for the golf course, although the easement's conservation purpose would have to be maintained. The court explained that retaining the conservation purpose in perpetuity relates to the requirement under §170(h)(5), not the §170(h)(2) requirement. This can be contrasted with *Pine Mountain Preserve, LLLP v. Commissioner*, CA 11, 126 AFTR 2d 2020-6617, in which the Court of Appeals overturned the Tax Court, upholding the contribution of property donated to a land trust for conservation purposes of habitat protection and open space preservation, but reserving to the donor certain rights to build a limited number of residential homes and accompanying structures. The areas are clearly defined, and any amendments must be approved and not be contrary to the conservation purposes. The Court found that those two easements clearly qualified when considering statutes plain—a restriction and in perpetuity language. The IRS's argument that the statute was meant to require that every inch of subject land be subject to restriction was rejected.

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## D. Syndicated Conservation Easements (SCE)

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SCEs have been a matter of great concern for the IRS and something regarding which practitioners should provide significant advice to clients. In Notice 2017-10, 2017-4 IRB 544, the IRS determined that an SCE transaction is a **listed transaction** if a pass-through entity taxed as a partnership owns real property and sends prospective investors promotional materials that offer the investor a charitable contribution deduction that equals or exceeds 250% of the investor's investment. In a typical transaction, the investor purchases an interest in the pass-through entity, which then contributes a grossly overvalued conservation easement encumbering the property to a qualified organization and allocates a charitable contribution deduction to the investor. Following that contribution, the investor gets a pass-through charitable contribution deduction based on the grossly overvalued appraisal of

the easement. In News Release 2019-182, the IRS announced that it will begin a significant increase in enforcement actions for SCEs. These are a priority compliance area. Coordinated examinations are being conducted across the IRS, including Criminal Investigations. They also appear in the "Dirty-Dozen" tax fraud schemes for both 2019 and 2020.

In IR-2020-228, Chief Counsel Notice 2021-001, the IRS provided information on the settlement options previously offered by the Office of Chief Counsel (CC) regarding syndicated conservation easement (SCE) transactions in certain cases pending before the United States Tax Court. This may be a good place to look at possible settlement if the IRS successfully challenges a client's deduction for an SCE.

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## E. Conclusion

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While qualified conservation contributions can provide significant benefits for a taxpayer, they should always be reviewed with great caution. The IRS and courts take

a strict compliance approach. It is important to have all the proper documentation.

## GROUP STUDY MATERIALS

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### A. Discussion Problems

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- 1) Your client, Jose, is a rancher. He wants to preserve the natural state of part of his ranch. It has a beautiful view of the ocean on one side and the mountains on the other and has varied plants, flowers, and animals. He knows that much of the land around him is being developed for housing, and he is considering selling his ranch sometime in the future. He wants to preserve that part of his land and asks if there is anything that he could do.
- 2) Jose also wants to know if there is any tax benefit to be derived from protecting this property.
- 3) Another client, Sarah, asks your advice on an investment suggested by her investment advisor. It is a syndicated conservation easement and promises returns in excess of three times the investment. She asks what your thoughts are before investing.

#### **Required:**

Discuss all issues fairly raised in the above situations.



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**B. Suggested Answers to Discussion Problems**

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- 1) Jose should consider a qualified conservation easement/contribution. He could contribute to a qualified organization provided it is exclusively for conservation purposes in perpetuity. These purposes include protecting a natural habitat, land area, or open space.
- 2) For a rancher, a qualified conservation easement/contribution will allow a deduction of up to 100% of AGI and a carryover of 15 years of any excess.
- 3) Syndicated conservation easements (SCEs) are a matter of concern to the IRS and are listed transactions. This return seems highly suspect and is more than the 2.5 times set forth in Notice 2017-10. Sarah should be told that the IRS is increasing enforcement in this area and probably should not make this investment.

## GLOSSARY OF KEY TERMS

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

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

**Exigent Circumstances**—Exigent circumstances refers to situations that demand unusual or immediate action, thus allowing people to circumvent usual procedures. (The statute of limitations running out is an example of exigent circumstances given in determining whether Restaurant Revitalization Funds can be levied.)

**Golsen Rule**—Under the rule articulated in *Golsen v. Commissioner of Internal Revenue*, the Tax Court may render different decisions, based on identical situations, for taxpayers that are differentiated only by the geographical area in which the Tax Court case is decided. *Golsen v. Commissioner* is a case in which the United States Tax Court stated the principle that where the court of appeals to which an appeal would be made in a given case has already established a rule of precedent for a legal issue to be decided by the Tax Court, the Tax Court will follow the decision of that court of appeals.

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

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

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

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



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Davis, Karen .....	Feb, Jun	Redpath, Ian J.....	Jan-Mar, Jun-Aug
Lickwar, Robert C. ....	Jan, Mar	Renn, Ed.....	Aug
Mathew, Shiney .....	Sep	Urban, Gregory .....	Feb, Jun
McGough, Verne .....	May	Welch, Julie A.....	Jan, Aug
Pon, Larry .....	Sep		



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

1. According to Ian Redpath, which of the following is proposed in H.R. 3684, the bipartisan infrastructure bill, recently passed by the Senate?
  - A. Extend the employee retention credit through the end of Quarter 1, 2022.
  - B. Extend the employee retention credit through the end of Quarter 2, 2022.
  - C. Discontinue the employee retention credit as of the end of Quarter 2, 2021.
  - D. Discontinue the employee retention credit as of the end of Quarter 3, 2021.
2. According to Ian Redpath, which of the following can be used to obtain an IP PIN for a taxpayer making less than \$72,000 per year?
  - A. Form 2848
  - B. Form 8300
  - C. Form 8821
  - D. Form 15227
3. According to Ian Redpath, which of the following addresses levies against Restaurant Revitalization Funds?
  - A. Tax Tip 2021-110
  - B. SBSE-05-0721-0039
  - C. IR-2021-161
  - D. IR-2021-154
4. According to Ian Redpath, which of the following is a new phrase on the 2021 Draft 1040 that was not included in the virtual currency question on the 2020 Form 1040?
  - A. Sell
  - B. Exchange
  - C. Dispose of
  - D. Acquire
5. According to Ian Redpath, which of the following provides guidance regarding single-employer retirement plans?
  - A. SBSE-05-0721-0039
  - B. Notice 2021-48
  - C. IR-2021-161
  - D. IR-2021-154

*Continued on next page*



6. According to Ian Redpath and Shiny Mathew, which of the following is generally the broadest type of IRS audit?
  - A. Correspondence audit
  - B. Field audit
  - C. In-person audit
  - D. Office audit
7. According to Ian Redpath and Shiny Mathew, which of the following is generally true once an appeals request has been granted?
  - A. All appeals are heard in the Tax Court
  - B. All appeals must be settled prior to reaching Tax Court.
  - C. Most appeals are heard in the Tax Court.
  - D. Most appeals are settled prior to reaching Tax Court.
8. According to Ian Redpath and Shiny Mathew, which of the following is known as a taxpayer's statutory notice?
  - A. 30-day letter
  - B. 45-day letter
  - C. 60-day letter
  - D. 90-day letter
9. According to Ian Redpath and Shiny Mathew, approximately what is the current length of time between a taxpayer's request to be heard in Tax Court and the time the case is actually set on the docket?
  - A. 24 months
  - B. 18 months
  - C. 12 months
  - D. 6 months
10. According to Ian Redpath and Shiny Mathew, which of the following is an IRS letter that cannot be applied to other taxpayers because it addresses a taxpayer's specific set of facts?
  - A. Private letter ruling
  - B. Non-acquiescence
  - C. Audit Technique Guide
  - D. Acquiescence

*Continued on next page*

11. According to Ian Redpath and Larry Pon, which of the following is the normal length of time required for a conservation easement?
  - A. 10 years
  - B. 50 years
  - C. 99 years
  - D. Indefinitely
12. According to Ian Redpath and Larry Pon, which of the following is the charitable contribution deduction limit for a farmer's 2022 conservation contribution?
  - A. 30% of AGI
  - B. 50% of AGI
  - C. 100% of AGI
  - D. 250% of AGI
13. According to Ian Redpath and Larry Pon, which of the following documentation is **not** required to be attached to the Form 8283?
  - A. Appraisal by taxpayer's relative
  - B. Fair market value of the property before the gift
  - C. Fair market value of the property after the gift
  - D. Signature from the donee organization
14. According to Ian Redpath and Larry Pon, what is the bright line percentage beyond which a conservation contribution would definitely not be allowable?
  - A. Return of 500% or more of investment
  - B. Return of 250% or more of investment
  - C. Return of 100% or more of investment
  - D. Return of 50% or more of investment
15. According to Ian Redpath and Larry Pon, Notice 2017-10 advises taxpayers that syndicated conservation easements described in the notice are which of the following?
  - A. Fantastic opportunities
  - B. Illegal
  - C. Listed transactions
  - D. Tax deductible



## Subscriber Survey Evaluation Form

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

How would you rate the topics covered in the September 2021 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic					
	Topic Relevance	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"/>
IRS Audit Process	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Conservation Easements	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

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

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

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How would you rate the effectiveness of the speakers in the September 2021 **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"/>
Shiny Mathew	<input type="text"/>	<input type="text"/>	<input type="text"/>
Larry Pon	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

Were the stated learning objectives met? Yes ☐ No ☐ \_\_\_\_\_

If applicable, were prerequisite requirements appropriate? Yes ☐ No ☐ \_\_\_\_\_

Were program materials accurate? Yes ☐ No ☐ \_\_\_\_\_

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

Were the time allocations for the program appropriate? Yes ☐ No ☐ \_\_\_\_\_

Were the supplemental reading materials satisfactory? Yes ☐ No ☐ \_\_\_\_\_

Were the discussion questions and answers satisfactory? Yes ☐ No ☐ \_\_\_\_\_

Specific Comments: \_\_\_\_\_

\_\_\_\_\_

Name/Company \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Email \_\_\_\_\_

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

# CPE Network®

## CPE Group Attendance Sheet

Firm/Company Name \_\_\_\_\_

Account # \_\_\_\_\_

Location \_\_\_\_\_

Program Title \_\_\_\_\_ CPE Network® Tax Report, September 2021 \_\_\_\_\_ Date \_\_\_\_\_

Name	Email	Total Hrs.	IRS PTIN (Tax only)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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.

Discussion Leader (name and credentials) \_\_\_\_\_ Date \_\_\_\_\_

E-mail address \_\_\_\_\_

License Number \_\_\_\_\_



**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:





# CHECKPOINT LEARNING NETWORK

## CPE NETWORK<sup>®</sup> USER GUIDE

### Group Live CPE Credit (Sponsored by “Checkpoint Learning Network”)

#### Promotional Information:

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

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

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

## Determining CPE Credit Increments

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

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

## Monitoring Attendance

While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must maintain a process to monitor individual attendance at group programs to assign the correct number of CPE credits. A participant's self-certification of attendance alone is not sufficient.

The CPE group attendance sign-in sheet should list the names of each instructor and her/his credentials, as well as the name of each participant attending the seminar. The participant is expected to sign the CPE group attendance sheet at the beginning and sign out at the end of the session. If a participant arrives late and/or leaves early, the hours actual hours they attended should be documented on the sign-in sheet and should be reflected on the participant's CPE certificate.

**\*Effective November 1, 2018:** Checkpoint Learning CPE Network products 'group live' sessions must be delivered as 3 CPE credits and accredited to the field(s) of study as designed by Checkpoint Learning Network. After November 1, 2018, Checkpoint Learning Network will no longer issue certificates for "group live" deliveries of less than 3 CPE credits (unless the course was delivered as 3 credits and there are partial credit exceptions (such as late arrivals and early departures)).

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

## **Real Time Instructor During Program Presentation**

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

## **Elements of Engagement**

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

## **Make-Up Sessions**

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

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

## **Awarding CPE Certificates**

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

## **Subscriber Survey Evaluation Forms**

NASBA requires the group study session to include a means for evaluating quality. At the conclusion of the group live session, evaluations should be distributed and collected from participants and sent to Checkpoint Learning Network along with the other course materials. A preprinted evaluation form is included in the transcript each month for your convenience.

## **Retention of Records**

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

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

## **Copyrighted Materials**

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

## **Finding the Transcript**

When the DVD is inserted into a DVD drive, the video will immediately begin to play and the menu screen will pop up taking the entire screen. Hitting the Esc key should minimize it to a smaller window. To locate the pdf file of the transcript either to save or email to others, go to the start button on the computer. In My Computer, open the drive with the DVD. The Adobe

Acrobat files are the transcript files. If you do not currently have Adobe Acrobat Reader (Mac versions of the reader are also available.), a free version of the reader may be downloaded at:

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

### **Request Participant CPE Certificates**

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

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

**Email:** [CPLgrading@thomsonreuters.com](mailto:CPLgrading@thomsonreuters.com)

**Fax:** 888.286.9070

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

- \_\_\_ Promotional Sheet (completed)
- \_\_\_ Group Attendance Sheets (indicating any late arrivals and/or early departures)
- \_\_\_ Subscriber Survey Evaluation Forms
- \_\_\_ Name, title, and credentials of discussion leader(s) entered at the bottom of Group Attendance Sheet

## **CPE Network Self-Study Options**

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

### **Self-Study—Print**

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

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

**Thomson Reuters  
PO Box 115008  
Carrollton, TX 75011-5008**

### **Best Practices Via Teams/Zoom**

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

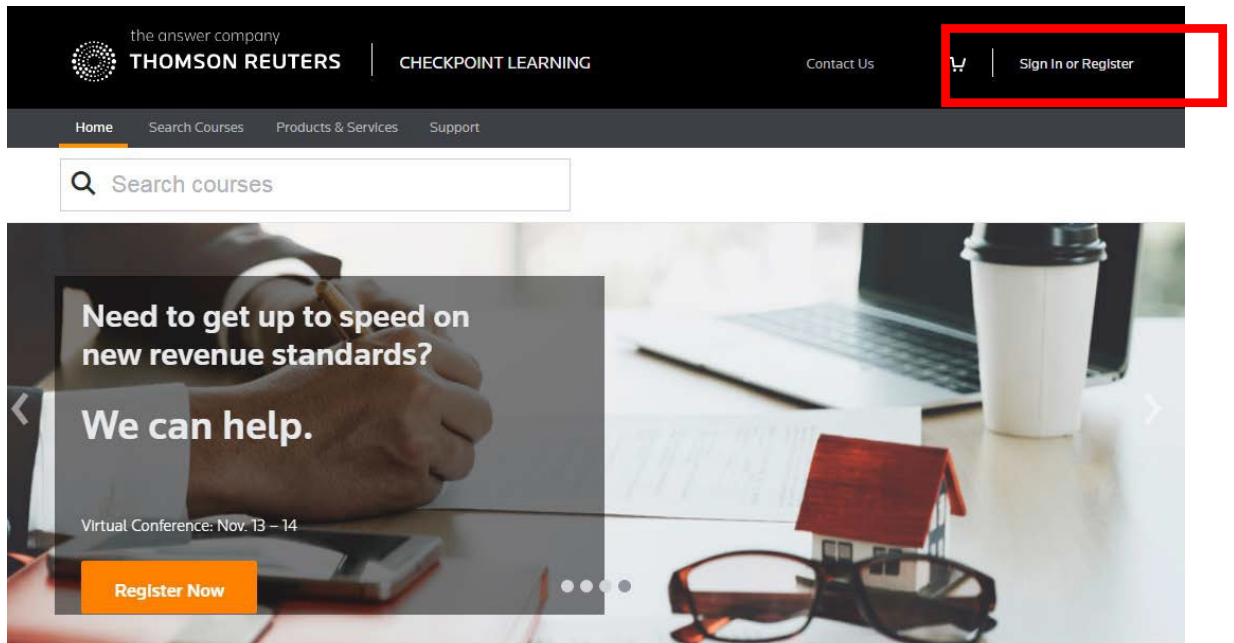
In Teams, when sharing the desktop with others, be sure to check the Share system audio box directly above the desktop to be shared, for the video's audio to be heard by others.

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

## Self-Study—Online

Follow these simple steps to use the online program:

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



### Move forward

Checkpoint Learning provides training and tools to keep you and your team up to date and looking forward in an industry full of change and opportunity.



#### Webinars

Fit learning into your schedule with instructor-led webinars ranging from one to eight hours.



#### Seminars and conferences

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



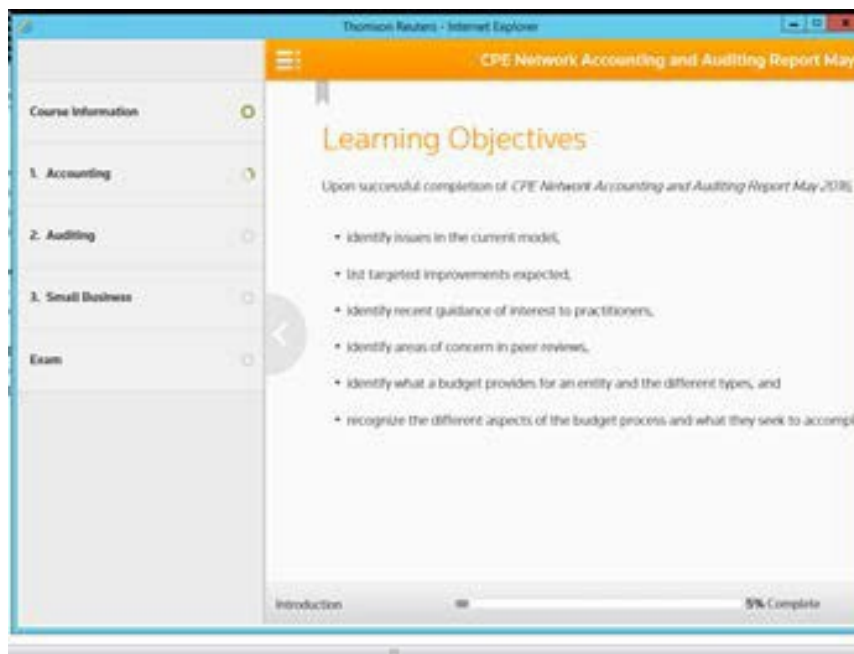


- In the **Network** tab, select the Network Report for the month desired.



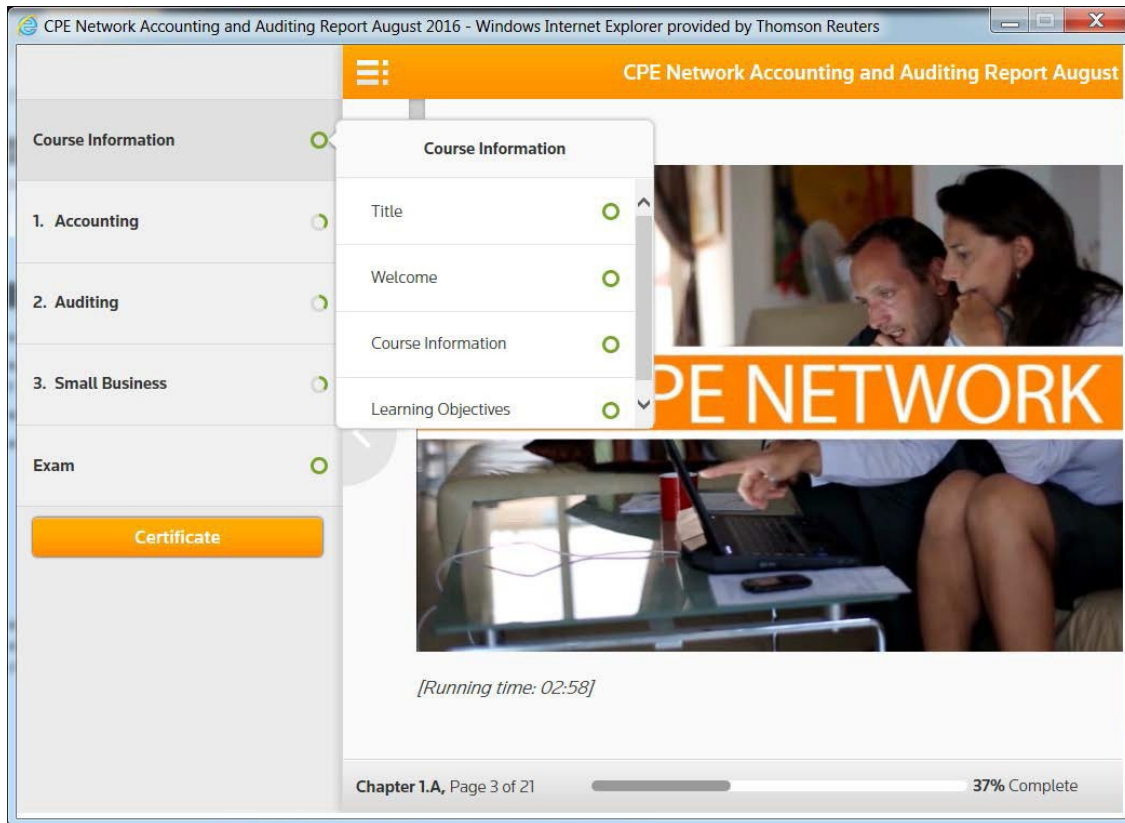
<https://qa.la-checkpointlearning.thomsonreuters.com/CpeNetwork/CpeNetworkDetailsPage?SubscriptionId=177994>

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

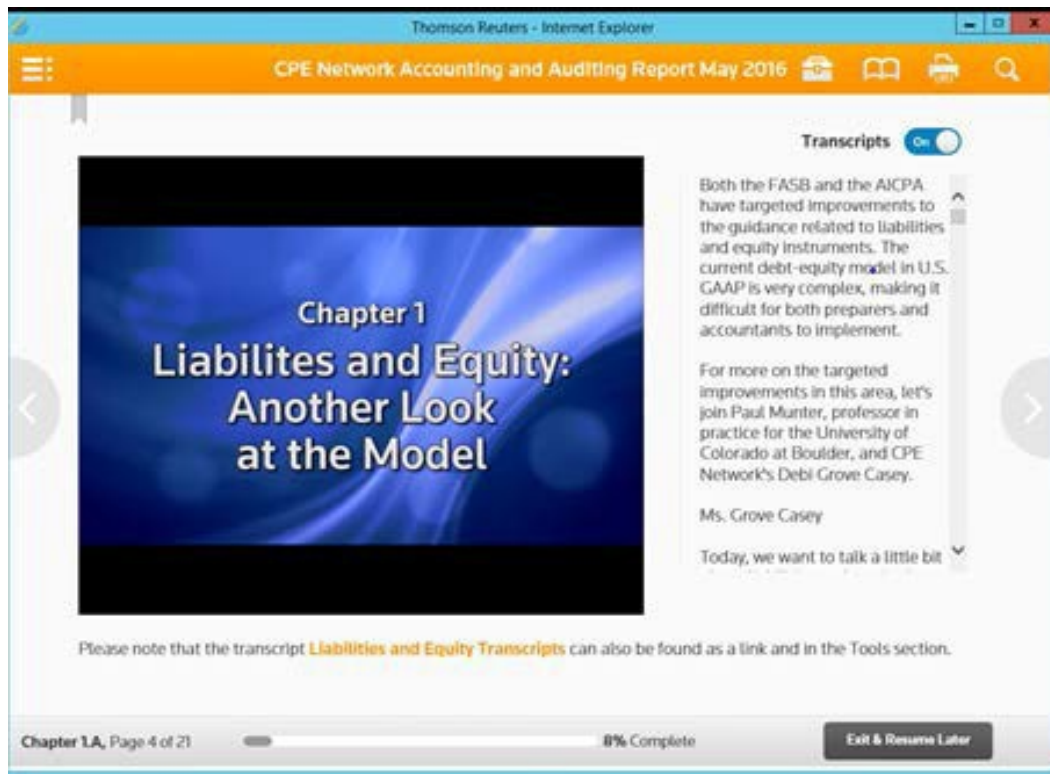


Click down to access the dropdown menu and move between the program Chapters.

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



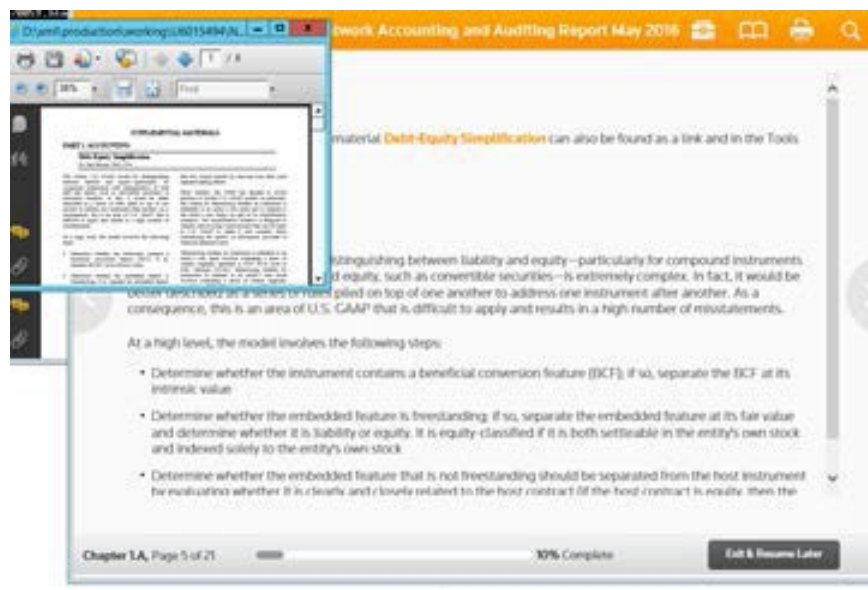
- **Each Chapter is now self-contained.** While on the CPEasy site the interview segments were all together, then all of the supplemental materials, etc., each chapter now contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials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



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



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



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

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

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

**Suggested Answers to Discussion Problems**

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

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

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

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

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

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

**Course Exams Completed**

You have completed the exam for this course.

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

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

**Review My Answers**

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

**Grade My Answers**

Course, Completed 100% Complete Exit & Resume Later

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

### Additional Features Search

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

**Search Results** are displayed with the number of hits.

### Print

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

## GETTING HELP

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

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



# Checkpoint Learning Network: CPE Compliance

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



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

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



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

## What Does It Mean To Be a CPE Sponsor?

Your organization is the CPE Sponsor for this monthly series. The sponsor highlights below reflect those of NASBA, the national body that sets guidance for development, presentation, and documentation for CPE programs. **For any specific questions about state sponsor requirements, please contact your state board. They are the final authority regarding CPE Sponsor requirements.** Generally, the following responsibilities are required of the sponsor:

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

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

## CPE Sponsor Requirements

### Determining CPE Credit Increments

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

### Program Presentation

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



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

### **Disclose Significant Features of Program in Advance**

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

### **Monitor Attendance**

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

### **Real Time Instructor During Program Presentation**

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

## **Elements of Engagement**

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

### **Awarding CPE Certificates**

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

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

### **Seminar Quality Evaluations for Firm Sponsor**

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

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

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

### **Retention of Records**

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

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

**(SAMPLE) Certificate of Attendance (SAMPLE)**

This Certifies That:

\_\_\_\_\_

Participant's Name

Attended:

\_\_\_\_\_

Course Title

\_\_\_\_\_

Field(s) of Study and Breakdown

\_\_\_\_\_

Total CPE Credits

\_\_\_\_\_

Completion Date

\_\_\_\_\_

Location (City, State)

\_\_\_\_\_

Instructor Name(s)

Sponsored By:

\_\_\_\_\_

Sponsor's Name

\_\_\_\_\_

Sponsor's Mailing Address

\_\_\_\_\_

Sponsor's Identification Number

\_\_\_\_\_

Sponsor's Signature

\_\_\_\_\_

Sponsor's Signature

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

