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CPE NETWORK TAX REPORT

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Topics for future editions may include:

- Taxation of High-Income Individuals
- Changing Tax Risks



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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum 3

The tax law is constantly evolving with changes and updates from the IRS, courts, and Congress. This segment highlights some of the changes and updates with discussion of some very timely topics affecting taxpayers and practitioners.

Learning Objective:

Upon completion of this segment, the user should be able to analyze current issues in taxation, including applying the rules for PPP loan forgiveness income exclusion, determining the tax implications for NIL collectives, and assessing the ability of the IRS to subpoena bank records on possible unreported crypto transactions. [Running time 34:38]

PART 2. INDIVIDUAL TAXATION

Home Energy Tax Credits 17

A significant part of the Inflation Reduction Act (IRA) of 2022 includes provisions related to “green” energy and the climate initiatives. For many taxpayers, there are benefits for improvements and upgrades to a residence. The provisions have nuances that practitioners need to be aware of in advising clients.

Learning Objective:

Upon completion of this segment, the user should be able to analyze issues related to tax law changes related to residential energy, including applying the Energy Efficient Home Improvement Credit, analyzing use of the residential clean energy credit, and assessing the energy rebate programs under the IRA. [Running time 29:57]

PART 3. BUSINESS TAXATION

Foreign Tax Credit..... 31

As there is more globalization, how to avoid double taxation is important for any individuals and businesses. Taxpayers have many different options available for different types of income, and practitioners need to be cognizant of the basics of these options.

Learning Objective:

Upon completion of this segment, the user should be able to analyze issues related to the recent changes and updates to tax laws on the foreign tax credit, including analyzing different options, determining the taxes subject to the FTC, and assessing the overall FTC limit. [Running time 40:21]

ABOUT THE SPEAKERS

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Lawrence Pon 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.

Renata Stasaityte, CPA is a Senior Manager with Martin DeCruze in Stamford, CT. Renata has over fifteen years of broad professional experience in a variety of areas. Her focus is business and international tax, ranging from getting technology start-ups off the ground to tax planning for complex international transactions. She has extensive experience assisting clients with U.S. tax reporting and compliance for offshore assets and foreign accounts. Renata has worked extensively in the area of U.S. international tax reporting, including FBAR and Forms 5471, 8865, 8858, 8621, 5472, 1042.

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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"> • Basic Accounting and Auditing professional experience • Basic Tax professional experience • Basic Governmental professional experience
Advance preparation	None required
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PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month, we begin with a discussion about Chief Counsel Advice 202037010. This advice relates to whether a taxpayer must include PPP loan proceeds in gross income if their loan was forgiven even though the taxpayer did not qualify for forgiveness.

Let's join Ian.

A. IR 2022-162; Chief Counsel Advice 202237010

Mr. Redpath

Hi, I'm Ian Redpath. Welcome to the program. This is the segment that we go through a number of changes, some things that have happened with the IRS, the courts, and then some topics that just happen to be timely. Let's jump right in because we have a real interesting one. It's a Chief Counsel Advice 202237010, Chief Counsel memorandum that is dealing with PPP loans. You say, "Oh, PPP loans, they're over." Well, not necessarily, and this really addresses an issue. There were people who may not even have seen their accountant; maybe you weren't their accountant back then. And the issue of the PPP loan, they may have used a provider. There were people out there calling processors who were processing PPP loans. I had a client that this fits right into this circumstance because the PPP loan, it was an individual—I would call them a PPP mill, and they processed it. The person never qualified for the PPP loan. And then, of course, they wanted to charge him an outrageous fee for doing it. So, the issue here is that there was a PPP loan. As we know, there were a lot of changes there on what the expenditures could be, whether they were deductible or not. If they were paid with the PPP loan, that got resolved. Then we had some questions on people got forgiveness, and now they had some deductible expenses that they hadn't used. So, there were lots of issues that came up with this PPP loan as it kind of evolved.

Well, one of the issues that now has to be addressed is did the individual meet all the criteria? So, for example, the loan recipient had to be an eligible recipient, which means that it's a small business, independent contractor, self-employed, sole proprietor. Certain types of tax-exempt entities, they had to be in business before February 15th of 2020, had employees or independent

contractors who were paid for their services, or again, was self-employed. The borrower used the loan proceeds to pay what were eligible expenses, payroll, rent, interest, utilities, and a borrower applied for loan forgiveness. And on the loan forgiveness forms, the attestation on the application that they were eligible for the PPP loan, that they used the proceeds for eligible expenses, and that the financial information they provided is correct. And there were some other qualifications; but those were the main qualifications. So, the issue here is what if they didn't qualify? What if they didn't qualify for the loan? Or what if they didn't qualify for forgiveness? So, those are two issues, didn't qualify for the loan in the first place. Obviously, if they didn't qualify for the loan in the first place, they'd never qualify for the forgiveness. But they may have gotten the loan, applied for forgiveness, especially with smaller loans. And so, the question then becomes what happens here when you either didn't qualify, or you didn't qualify for forgiveness and you were forgiven?

The Chief Counsel says, "Look, if you were improperly forgiven a PPP loan, you have got to include that in income." And that means you may have to go back and amend returns to pick that up into income. This is something that we may need to discuss, especially with newer clients. But there may be the need for an amended return because basically what the advice is saying is that the PPP loan would've been forgiven based upon misrepresentations on the forgiveness. And that also means if the financial information on the forgiveness application if you were using the full application form, that would also mean that you had a misrepresentation in obtaining that forgiveness; therefore, it's income. The exception for forgiveness doesn't apply if there was a misrepresentation. In addition, the IRS says the Small Business

Administration, they can still pursue loan repayment for misuse of the funds, for example. But because you kept the funds under a claim of right, it's still income to you regardless of whether the SBA pursues you later for repayment.

So, look carefully, because I know there were a lot of changes there. Maybe you have a new client. Maybe the client didn't use you to do their PPP loan. Look at all of these things as potential because again, especially for larger loans, you could see this could be a significant

impact on them to have to go back and pick up that income on an amended return. The IRS didn't address—presumably if you have to pay that back, you would be entitled to a deduction in the future—the IRS didn't address that, but they did say you'd have to pick it up into income. Going back to the year of the forgiveness, you would pick it back up into income; and then penalties and interest can apply. So, in the year it was forgiven—many of these were forgiven back in 2020 and 2021—that is going to be an amended return to pick up that income.

B. IR-2022-170

Appeals has been going through a lot of changes—the Independent Office of Appeals—and the IRS came out with a news release, 2022-170; and in that, they've revised their contact letters. So, new contact letters are going to be used; and that should be beginning this month in November. And basically, with the Independent Office of Appeals, you ask for an appeal. You either have filed a protest if the amount is high enough, or the small claims-type of approach, where you just have to ask for an appeal. So, you've asked for an appeal, and you're going to get back an appeal letter. It will be assigned to an appeals officer. That appeals officer, then—you are going to get an introductory letter as it's called, providing you information. And it says, "Hey, if you represent them—you, the taxpayer, or the taxpayer's representative—what your options are." Well, what they wanted to do was kind of make it clearer to taxpayers what the options are.

So, the first revision to the letter is that the initial contact letter now is going to clarify that taxpayers and their representatives can choose how to meet with appeals through conferences, telephone, video, or in person. Also, appeals can work with you through the mail, secure electronic messaging. Remember, they won't work with you through general email; it has to be through the secure messaging system. And that how you choose to deal with appeals is not going to affect the ultimate decision at appeals.

Second, the initial contact letter's going to provide the name and phone number of that appeals officer's manager, so that you know you don't have to try to run around if you're trying to get additional help. If you don't feel like you're getting anywhere with the appeals officer, and you're not sure that you want to take it and have it go to court. It's just going to give you the

information right up front, here's the manager. And while it's rare, it does happen. There's no question about it. If you've done appeals work long enough, you've run into an appeals officer that just is not trying to be helpful at all.

I once had a situation with an appeals officer, and this is very rare, but he started off by saying, "Let me remind you and your client what contemporaneous documentation is." And I said to him, "Well, we do know that, and we do have it." And he said, "Well, you drop everything that you have, all of your client's records, everything, and I'll go through everything, and I'll decide what I want to look at, and if I need anything more." And I said, "Well, that's not how it works. I'm not going to give you every business record from their business." It turns out that this was the way this particular individual was with everyone. But to get beyond that person to get someone to come in sometimes becomes a little difficult. So now, you're going to get that name right up front. In that particular case, we ended up going to tax court. I just said, "Give me my stat notice." We went to tax court, and IRS counsel called me, and had a good chuckle, and said, "This happens all the time with that appeals officer. We're going to concede the case." So, that was lucky, but this is going to be great because you're going to get that right up front. You're going to get that appeals officer's manager.

So, this is going to be something that gives more information up front. But here's something to keep in mind. Effective October 3rd of 2016, the IRS said they no longer would automatically honor an in-person conference to send it to your local office. That yes, you can always have an in-person conference; but they weren't going to automatically send it to your local

office. That it really became an issue of whether the appeals... So again, contrary to their past practice where it was automatic, they said, "We're no longer going to grant in-person conferences just on a request. You can still have it, but you may have to go a thousand miles away."

The in-person, they said that the team manager is instructed to look at the following facts: Whether they're substantial books and records that need to be reviewed and can't be easily referenced—so, page numbers, indexes, things like that. Whether an in-person conference is necessary to judge the credibility of the taxpayer's testimony. Whether the taxpayer has special needs that need to be accommodated only with an in-person conference. Whether there's a risk of any unauthorized disclosure or breach of confidentiality due to numerous conference participants—it'd be a number of different people in the conference. Whether the alternative conference procedures, such as post-appeals mediation or rapid appeals process involving separate caucuses, will be used. And whether the Internal Revenue Manual section calls for an in-person conference.

Those are the issues that the IRS says we are going to look at in determining an in-person conference. So, no longer automatic. We kind of lost that, especially during COVID where it we weren't doing in-person. But even though it says that in the letter—and this is why I'm trying to clarify it—even though it says it in the letter, keep in mind the IRS says that their procedure is not automatic. You can't just say, "Hey, we want an in-person conference on anything," and it gets sent back to the local office. So, they're trying to take away that option; and in their mind, they're spreading the workload. And because of video conferencing, etc., the IRS's view is that it's not necessary to always be face-to-face in-person. I prefer face-to-face myself, but this is the process. Now, I will also tell you that since that has been in place, any time I've asked for a face-to-face, I've still gotten it sent back to the local office for that purpose; but it's not required of the IRS. So, at least from my experience, I haven't had any problems getting it sent to the local office; and that's really what I'm usually trying to do. But the IRS said, "Hey, we're really looking to do this stuff by video, just by correspondence, by mail, etc." So, keep that in mind where appeals is heading on that.

C. Name, Image, Likeness (NIL), College Collectives

As we're speaking, we're in football season, college football season. A lot of people out there in the audience are college football fans. Many of you may have families who have athletes who are involved with college athletics, or maybe you represent a school. Well, what's the big thing going on right now? The NIL—the name, image, and likeness. So, the Supreme Court ruled that student-athletes can be compensated for the use of their name, image, and likeness. Okay. I mean, the school is selling jerseys with someone's name on it. Maybe that person should get some compensation for that. They could be advertising for tickets, etc., the name, image, and likeness. But it also allows for them to, in essence, be out there getting compensated. You may have seen, if you've watched any college football this year, you may have seen that Bryce Young, who's still in college, is now appearing on these ads for the Heisman House. And he walks in the door, and Tim Tebow says, "Oh, they let you off campus." And he mentions, "I was the first sophomore to win the Heisman." He couldn't have done this back then when he won it. But Bryce Young isn't just showing up; he's getting compensated for that commercial. He's also doing commercials, I saw, for Dr. Pepper. You may be

seeing athletes doing local commercials. They're able to get compensated for their name, image, and likeness.

And the case was the *NCAA v. Alston*. And the Circuit, the Ninth Circuit, had said yes, that they are entitled to compensation. And the Supreme Court said that the NCAA was violating antitrust law, the Sherman Act specifically, and that yes, they're entitled to be compensated. And they applied legally what we call the rule of reason to say that the NCAA had no justification for not allowing them to benefit from their name, image, and likeness. So, there's a lot of stuff going on out there. If you follow college football, you know there was the issue where Nick Saban made some comments about Jimbo Fisher at Texas A&M, about his essentially alluding that he had bought the number one recruiting class, and all these things going on, allegations back and forth. But this is becoming an issue. Is it being used for recruiting? Certainly, I followed one situation where the allegation is that the school backed the truck up to get this five-star to commit. There's all that stuff out there.

But the thing is that they're getting these NIL collectives. They're affiliated with, but independent

from, the college and university; but they generate funding to support NIL opportunities with student-athletes. And this is different from a company like a Dr. Pepper just going out and getting Bryce Young. That's clearly income for Bryce Young without any question. But what about these cooperatives that are being set up? There's different types of structures of things. The collectives can potentially earn millions of dollars, depending on the sport and the market. The deals vary in their structure. They can have up-front payments, monthly payments, other incentives. But to encourage donations to these collectives. And again, I'm not talking about the direct ads. I'm talking about, essentially, they're called collectives. I know of one where essentially the fans can buy in, and they get special access to the college football players; and the college football players have to agree to appear at certain types of events and this type of thing. But to encourage that, because they are kind of affiliated with the school, the donations to the collectives, for the most part, they are granting contributions, they're writing them off as charitable contributions. Many of these collectives, they just apply and they receive tax-exempt status from the IRS, which allows the contributions to be charitable contributions even though essentially what they're going to do is just pay, compensate, these athletes.

Now, again, technically, it's name, image, likeness; so there has to be something there that they're compensating. So, at the end of September, September 28th, John Thune from South Dakota and Ben Cardin from Maryland introduced legislation directly aimed at NIL collectives. They're both members of the Senate Finance Committee, and so they're dealing with taxation. They're, again, an oversight of the IRS. So, Thune is the ranking member. And it's entitled The Athlete Opportunity and Taxpayer Integrity; and it would bar individuals and organizations from claiming any tax deduction for donations used by collectives for any NIL payout to a student-athlete. So, it's not going after the student-athlete. But it's saying if you want to donate to these collectives, you're not going to get a tax deduction for it. Now, the other organizations that are using them are deducting it, what they're paying them, they're deducting that as part of their advertising expense. So, they're not an issue.

But the other issue they said is that there's some misunderstanding that some people seem to think that these are scholarships, or they're some form of scholarship aid. And the reality is they're not. They're in fact compensation for services. Even in the NIL

collective, they're compensation for services, and they have to be reported. Now, depending on how it's been set up, they may have to be reported on a 1040, always on the 1040; but they may be a W-2 potentially, but usually not. Normally, it's going to be reported on the 1099-NEC. Now, that kicks in another issue. If they're being compensated for name, image, and likeness, and they're 1099, then they could also be subject to self-employment tax. So, the 1099-NEC for the payor; if they hit the \$600, they're going to have to give them a 1099-NEC. They're going to have to pick it up. In addition, anybody involved with it would have to complete the W-9 before conducting any NIL activities. So, all of these things have to take place, which as they've said, many of them are not. And again, they also are looking at, "Well, what about if they're using peer-to-peer platforms for NIL payments, like Venmo or PayPal? Those should still be taxable." So, they warn. I mean, the IRS is saying student-athletes need to make quarterly estimates potentially because there's not being withholding, and reminding of the Social Security, self-employment issues that have to be addressed. So, November 8th of 2021, there was a guidance letter; the Department of Education clarified that NIL compensation isn't considered in financial aid as an EFA for FAFSA purposes. EFA is estimated financial assistance. However, it does go in because it's part of wages. And so, it would not be considered EFA or estimated financial aid from the institution; but it would be considered wages in determining how much financial aid the individual needs.

So, this is a whole new world out there for college athletes. If you have a client who has an athlete, or you're representing an athlete who is in college, and we used to think just got their scholarship, it's a whole new world out there. If you're involved with an institution that's looking to set up the NIL collectives, all sorts of issues there. Or maybe you do represent an NIL collective issue, a lot of things that you need to look at. And again, currently we know that with the NIL issue, it's going to be considered wages. It means they could lose other financial aid that certain student-athletes could get, like a Pell Grant, for example. So, a lot of issues here. And then, when the client comes in and wants to donate to their favorite school with an NIL, keep in mind that currently it's deductible if it's an NIL collective. But understand that bipartisan bill is in the Senate, and it looks like it has some support. If it wasn't a situation where it's an election year, it would probably go through without any problem. But, of course, we are in an election year.

D. Cryptocurrency

All right, cryptocurrency. At the Financial Stability Oversight Council meeting on October 3rd, Secretary Yellen said that the whole issue is growing out of control. There's a lot of capital and, obviously, interest in both retail and institutional investors in cryptocurrency. This is a huge issue, and there's a belief that this could have a very negative impact on financial stability.... It used to be very decentralized, the cryptocurrency markets. Secretary Yellen says, "No, they're now becoming so interrelated." But what's happening is they're serving so many different

functions that in the traditional, say investment securities market, they couldn't do. So, there's an absolute need for additional oversight there. And again, keep in mind that there's also the bill, which we've talked about in prior programs, that is a bipartisan bill that's in the Senate, which is to basically give the Commodities and Exchange [CFTC].... If the cryptocurrency or the digital asset is not considered a traditional security, then it would be under the oversight of the Commodities and Exchange [CFTC]. So, there is an attempt to go after that.

E. John Doe Summons

Interesting, a New York City Bank, this is a John Doe summons to M.Y. Safra Bank. The IRS did an investigation as they were really going after cryptocurrency of the crypto trading platform sFOX, that's sFOX. And they believed that 10 individuals had failed to disclose or pay tax on their crypto transactions that were conducted by the Sachs, which uses the M.Y. Safra banking services. The IRS indicated that they've been really hawkish on tax evasion schemes that take advantage of the worldwide web—the newest version, Web 3.0, which is the newest iteration of the worldwide web—and these decentralized platforms and

blockchain for crypto technology. So, they want to crack down on noncompliance. So sFOX, a cryptocurrency prime dealer and trading platform that connects digital currency exchanges over the counter, virtual currency brokers, and liquidity providers globally. It has 175,000 users and facilitated over \$12 billion since it was founded in 2014. Now, there's no allegation that the bank did anything wrong. But the IRS says, "We want to look at the banking information for the transactions on this sFOX platform." So, the court granted the John Doe summons; and the bank has to provide those customer records that were requested.

F. Dual-Purpose Communications

The Supreme Court in an interesting case—it's *In Re Grand Jury*, it's number 21-1397 in the Supreme Court. This is testing the issue, and this is going to set a precedent for the country on the issue of dual-purpose communications with clients and dual-purpose work. I do the tax work, and I do the financial work. So, the question is, what is entitled to work-product protection that isn't subject to disclosure? This firm gave the client information about the tax implications of their anticipated expatriation and discussed and prepared their taxes. They filed the 8854 for the annual expatriation statement. The firm said it specializes in advising the tax consequences of expatriation. The Ninth Circuit found that, that information was not subject, or excuse me, was subject to disclosure, and that they had to disclose it. So, they responded with about 20,000 pages of documents; but they withheld anything that they said was a dual-purpose record. They said that this was privileged, attorney-client privilege, and that the work-product

doctrine would apply. There's been questions on this, the dual-purpose communications between an attorney and a client. The primary purpose test has to be applied to determine whether they were shielded from the subpoenas. Was the primary purpose tax or legal advice? If it's primary purpose tax, it's not shielded under attorney-client privilege. If it's legal, it is. So, this is an interesting case that is dealing with that. Where do you see this in the accountant realm? Cases like *Textron* or *Deloitte*, which have kind of set a standard that what happens when you as an accountant are dealing with an attorney. What is privileged communication? Do you fall under their privilege? Can they get records related to what has been said that is your work papers, that maybe are being prepared and are going to be used by the attorney? So, this whole issue of dual purpose does apply. It does apply to a great degree to accountants also, especially when you're dealing with corporations and with attorneys. So, keep that in mind.

Again, I want to thank you for being here. We always have some interesting things. Please be safe, and we'll see you next month. Thanks a lot.

SUPPLEMENTAL MATERIALS

Current Material: Experts' Forum

By Ian J. Redpath, JD, LLM

A. IR 2022-162; Chief Counsel Advice 202237010

The IRS Chief Counsel's Office issued an Advice Memorandum concluding that any Paycheck Protection Program (PPP) loans that are improperly forgiven will not qualify for the exclusion from income provided properly discharged PPP loans. The IRS indicated that any PPP borrower whose loan was improperly forgiven should file original or amended returns that include such improperly forgiven loan amounts in income.

PPP loans were established to help small U.S. businesses adversely affected by the COVID-19 pandemic cover certain expenses. The program provided criteria for obtaining the loan, the type of expenses that could be paid from the proceeds, and for forgiveness. There were issues such as deductibility of expenses paid by the loan proceeds that were subject to later IRS guidance. Lenders can forgive the loan if the borrower meets three conditions:

1. The loan recipient was eligible to receive the PPP loan. An eligible loan recipient is a small business concern, independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt entity; was in business on or before February 15, 2020; and had employees or independent contractors who were paid for their services, or was a self-employed individual, sole proprietor, or independent contractor.
2. The borrower used the loan proceeds to pay eligible expenses, such as payroll costs, rent, business mortgage interest, and utilities.

3. The borrower applied for loan forgiveness and attested on the application that they were eligible for a PPP loan, they used the loan proceeds for eligible expenses, certain financial information was correct, and they met other legal qualifications.

All three must be met for any portion of the loan to be forgiven. The amounts cancelled are not subject to income inclusion under the normal cancellation of debt rules. If the conditions are not met, loan forgiveness that doesn't meet the requirements above must be included in income and is subject to tax.

In this situation, the taxpayer applied for a PPP loan in 2020, but did not use the loan proceeds for eligible expenses. She misrepresented that on her loan forgiveness application; and the loan was forgiven based on the misrepresentations or omissions in her forgiveness application. Because the taxpayer's PPP loan forgiveness was based on omissions and misrepresentations, the loan was not eligible for forgiveness. As a result, the loan proceeds could not be excluded from the taxpayer's income because the taxpayer had "an accession to wealth, clearly realized, and over which they had complete dominion."

It should be noted that, even though the Small Business Administration could pursue repayment of the loan for misuse of the loan proceeds, the taxpayer retained the proceeds under a claim of right during the tax year at issue. Therefore, the forgiven loan proceeds were income.

B. News Release 2022-170, 10/04/2022

In this release, the IRS Independent Office of Appeals provides that it has revised initial contact letters as part of its effort to enhance the taxpayer experience. "Appeals resolves federal tax disputes, without litigation, in a way that is fair and impartial to taxpayers and the government," said April Adams-Johnson, the Senior Level Advisor to the Chief of Appeals and Appeals' first Taxpayer Experience Officer. "Typically, at the start of the process, the Appeals Officer assigned the case sends a letter with some introductory

information and invites the taxpayer or their representative to a conference. We want this letter to be clear and easy to understand for all taxpayers."

There are two key revisions to these initial contact letters in response to feedback from taxpayers and practitioners:

1. The revised initial contact letter will clarify that generally, taxpayers and representatives can choose how they meet with Appeals through conferences

that can be held by telephone, video, or in-person. In addition, Appeals can work with taxpayers and representatives through the mail or secure electronic messaging. Appeals employees can successfully resolve disputes in every type of conference; and the type of conference does not impact Appeals' decision.

2. In addition to the Appeals Officer's contact information, the initial contact letter will now provide the name and phone number of the Appeals Officer's manager. While the Appeals Officer remains the primary contact for all their assigned cases, the addition of the manager's contact information will ensure an appeal stays on track in the rare instance additional help is needed. Going forward, taxpayers and representatives will see the new language providing manager contact information and clarifying conference choice in the initial contact letters sent for most cases received in Appeals, including cases relating to an IRS examination determination, penalties, an offer in compromise, a request for a Collection Due Process hearing, or participation in IRS e-file.

It should be remembered that, effective October 3, 2016, the IRS revised its in-person conference practices. At that time, Ms. Wielobob clarified that Appeals is continuing to offer personal contact for all cases and in-person conferences where Appeals determines that such will aid in resolving cases, and that taxpayers will continue to have a range of conference

options depending on the nature of their case—telephone, correspondence, in-person, etc. However, contrary to past practice, Appeals will no longer grant in-person conferences solely upon taxpayer request. In deciding when an in-person conference is appropriate, the team manager is instructed to consider the following facts and circumstances [IRM §8.6.1.4.1, ¶(4)]:

1. Whether there are substantial books and records to review that cannot be easily referenced with page numbers or indexes;
2. Whether an in-person conference is necessary to judge the credibility of the taxpayer's oral testimony;
3. Whether the taxpayer has special needs that can only be accommodated with an in-person conference;
4. Whether there is a risk of an unauthorized disclosure or breach of confidentiality due to numerous conference participants;
5. Whether an alternative conference procedure (e.g., Post Appeals Mediation or Rapid Appeals Process) involving separate caucuses will be used; and
6. Whether another IRM section calls for an in-person conference.

C. Tax Implications of College Collectives, NIL Deals

Checkpoint Article by Tim Shaw

The National Collegiate Athletic Association (NCAA) historically prohibited student-athletes from profiting from Name Image Likeness (NIL) opportunities such as advertisements, social media sponsorships, and event appearances. In June 2021, the Supreme Court unanimously upheld the Ninth Circuit's ruling in *NCAA v. Alston* 141 S. Ct. 2141 (2021) which removed limits on student-athlete reimbursements and pay for certain expenses determining that the NCAA violated antitrust law under the Sherman Act. The Supreme Court affirmed the Ninth Circuit's application of the "rule of reason" to assess whether the NCAA had justification under antitrust law to constrict amateur athlete benefits.

Since *Alston*, groups of college boosters—third-party entities that promote an athletic program's interests—have formed what are known as NIL collectives. They are affiliated with but independent from the institution and generate funding to support NIL opportunities for student-athletes. These can provide some student-athletes upwards of millions of dollars, depending on the sport and market. The deals can include upfront amounts, monthly payments, and other incentives. To encourage donations to collectives, many apply for, and easily receive, tax-exempt status from the IRS, allowing a tax write-off for charitable contributions.

On September 28, Senators John Thune, a South Dakota Republican and Ben Cardin, Democrat of

Maryland, introduced legislation aimed at NIL collectives. Thune and Cardin are members of the Senate Finance subcommittee on taxation and IRS oversight, with Thune serving as its ranking member. The so-called Athlete Opportunity and Taxpayer Integrity Act would bar individuals and organizations from claiming tax deductions for donations used by collectives for NIL payouts to student-athletes. The proposed bill seems to simply want to create tax laws that will show the rules for a determination of tax-exempt status. Another issue is whether they will be considered 'scholarships' or income for services and taxed. Without further guidance, they should be considered to be for services and subject to tax.

Importantly, since student-athletes are not considered employees of a collective, their school, or the NCAA, they may be on the hook for self-employment tax as independent contractors. As such, student-athletes should complete a Form W-9 before conducting NIL activities. By January 31 in the year following NIL work, student-athletes should receive a Form 1099-NEC, *Nonemployee Compensation*, if the total earnings exceed \$600. Additional information returns should be provided for cash receipts from peer-to-peer platforms such as Venmo or PayPal. They will also need to make quarterly estimated tax payments. The self-employment Social Security and Medicare rate is 15.3%.

NIL agreements may have ramifications on a student's financial aid. In a November 8, 2021 guidance letter, the Department of Education clarified that NIL compensation is not considered estimated financial assistance (EFA) for Free Application for Federal Student Aid (FAFSA) purposes. "When a student receives a resource because of postsecondary enrollment, it generally counts as EFA only if it is not considered wages according to federal or state rules, or if it is considered wages that are derived from employment that is based on financial need," explained Annmarie Weisman, deputy assistant education secretary for policy, planning, and innovation. "If the award is considered wages and is not based on need, then it is not EFA and is instead considered income to be reported on the FAFSA in the applicable base year." Students who receive Pell Grants or other student aid tied to need could unknowingly lose their eligibility for financial assistance because of the income they now receive from NIL.

Following its Supreme Court loss, the NCAA promptly issued an interim NIL policy setting initial ground rules for how current and prospective student-athletes could

begin engaging in NIL opportunities. Under the policy, which took effect in July 2021—it will remain in place until enactment of federal legislation or the adoption of new NCAA rules—student-athletes' eligibility for intercollegiate spots are no longer affected by NIL activity. The policy generally defers to state laws and requires student-athletes to know their state's and institution's specific NIL rules. As of July this year, 29 states have NIL laws, 24 of which have laws currently in effect.

Student-athletes can also use a professional services provider, which a subsequent FAQ defined as a third party, such as "an agent, tax adviser, marketing consultant, attorney, brand management company, or anyone who is employed or associated with such persons." NIL activities do not have to be reported to the school. The policy also disallows NIL payouts from being performance-based.

A common critique of collectives is that they serve only to court the nation's top high school prospects and potential college transfers to commit to the collective's affiliated school. Despite explicitly barring NIL compensation from being contingent upon enrollment as part of the recruiting process, the NCAA was compelled to release additional guidance in May to crack down on the emergence of collectives exploiting the new NIL landscape. The guidance updates the definitions of a booster and also a collective. "Specifically, the guidance defines a booster as any third-party entity that promotes an athletics program, assists with recruiting or assists with providing benefits to recruits, enrolled student-athletes or their family members," read an NCAA press release. "The definition could include 'collectives' set up to funnel name, image and likeness deals to prospective student-athletes or enrolled student-athletes who might be considering transferring." While the guidance doesn't make any concrete changes to the interim guidance, the move followed a meeting by the Division I board of directors to curtail practices that are in clear violation of the NCAA's recruitment rules. The NCAA sought to make clear that NIL agreements can occur only once a student has enrolled in a school, and that "pay for play" arrangements are strictly prohibited.

Lawmakers have also corresponded with college athletic organizations outside the NCAA in support of corralling NIL rules. In August, former college football coach and current Republican Alabama Senator Tommy Tuberville, along with Senator Joe Manchin, a

Democrat from West Virginia, solicited input from Amy Perko, CEO of the Knight Commission on Intercollegiate Athletics. The senators wrote that there has been a "lack of meaningful leadership and a lack of clarity" regarding NILs as a result of *Alston*. Perko responded in an August 29 email outlining the Knight Commission's guiding NIL principles. Among these is the need for independent oversight outside of NCAA staff or the association's member schools, ideally led by current and former college athletes. Further, there

should be uniformity in federal law to correct inconsistent state rules, according to Perko. Student-athletes should be required to be educated on their NIL rights and given access to information, she wrote. "College athletes, most of whom will not be represented by counsel when they enter NIL deals, are vulnerable to abuse, exploitation or incompetence by third parties that could have significant impact on their financial aid, immigration status, taxes, and intellectual property rights."

D. Financial Stability Oversight Council Report

The Financial Stability Oversight Council met in October and issued a 120-page report on cryptocurrency. Composed of leaders from federal finance agencies including the Securities and Exchange Commission and the Commodity Futures Trading Commission, they identified vulnerabilities within the crypto ecosystem and detailed the need for increased government oversight. They warned of the risks posed by the proliferation of digital assets and urged Congress to pass legislation that addresses gaps in the financial system. Treasury Secretary Janet Yellen said that digital assets "have grown significantly in scale and scope over recent years" and have "attracted a large amount of capital and interest from both retail and institutional investors." "At the same time, we have seen very significant shocks and volatility within the crypto-assets system, particularly over the last year," she continued. These concerns should be remedied through closer enforcement of current rules, as well as the passage of legislation, the council recommended in a new report unanimously approved at the meeting.

"The Council's report finds that the current regulatory framework has helped largely insulate traditional financial institutions from crypto-asset-related financial stability risks," Yellen said. "But it states that crypto-asset activities could pose risks to U.S. financial stability if their interconnections with the traditional financial system or their overall scale were to grow without adherence to or being paired with appropriate

regulation, including enforcement of the existing regulatory structure." According to a fact sheet accompanying the report, parties that issue crypto assets or facilitate crypto trading, such as exchange platforms, are at least partly responsible for creating these risks. In the FSOC's view, market participants purposefully avoid implementing guardrails for consumer protection and are prone to speculation-based trading, which make crypto prices volatile.

It was noted that crypto assets that are not considered securities lack federal oversight, which can lead to exploitative practices and a lack of transparency. Next, businesses may not have clear regulatory arbitrage, as different affiliates or subsidiaries may operate under different rules inconsistent across the business as a whole. The report lastly raised concern with some trading platforms that have considered vertically integrating services provided by intermediaries to allow customers "direct access to markets," which may expose customers to certain practices, like automated liquidation. SEC Chair Gary Gensler said the industry is no longer as decentralized as previously advertised to early adopters. "Now, we see this industry populated by large, concentrated intermediaries, which often are an amalgam of services that typically are separated from each other in the rest of the securities markets," he said. Gensler took the position that most crypto tokens should be considered securities, and that right now there's widespread noncompliance with securities laws.

E. John Doe Summons to M.Y. Safra Bank

The District Court for the Southern District of New York granted the IRS's ex parte petition for leave to serve a John Doe warrant forcing M.Y. Safra to disclose certain banking records following an investigation into the crypto trading platform, SFOX. Judge Paul Gardephe agreed there was a "reasonable basis for

believing" at least 10 individuals may have failed to disclose and pay tax on crypto transactions conducted by the taxpayers via SFOX, which uses M.Y. Safra's banking services. This follows similar IRS's John Doe summonses against Coinbase, Inc., Circle Internet Financial, and Payward Ventures, Inc. d/b/a Kraken.

The persons are not identified, but the IRS believes they may have failed to report to the IRS profits from crypto sales and pay tax on applicable gains, which the agency can determine by obtaining bank records from M.Y. Safra. The IRS, and the federal government overall, have become hawkish on tax evasion schemes that take advantage of Web 3.0 (the newest iteration of the World Wide Web, often denoted by decentralized platforms and blockchains) crypto technologies.

In a September 22 statement, the Justice Department described SFOX as "a cryptocurrency prime dealer and trading platform that connects digital currency

exchanges, over-the-counter virtual currency brokers, and liquidity providers globally." The platform has more than 175,000 users and has facilitated over \$12 billion since it was founded in 2014.

The Justice Department clarified there was "no allegation" that the bank engaged in any wrongdoing. The John Doe summonses serve only to identify the unknown individuals suspected of having outstanding tax liabilities.

F. In Re Grand Jury, Case No. 21-1397, U.S. Supreme Court.

The U.S. Supreme Court agreed to hear a case brought by a law firm seeking to shield client communications from grand jury subpoenas, arguing that attorney-client privilege should prevail even when a mix of tax and legal advice (dual purpose) is provided.

The Ninth Circuit held in contempt an unnamed tax law firm because it hadn't complied with federal grand jury subpoenas seeking documents on so-called dual-purpose communications with clients. The firm gave a client information about the tax implications of their anticipated expatriation and at the same time discussed tax preparation with the client. The briefs showed that the firm prepared tax returns for the client, including a Form 8854, *Initial and Annual Expatriation Statement*.

The firm asked the Supreme Court to clarify the law as to when attorney-client privilege protects communications that entail both legal and nonlegal advice. According to the firm, which said it specializes in advising clients on the tax consequences of expatriation, the justices should review the Ninth Circuit ruling from September 2021 that found that the firm must comply with the grand jury subpoenas for documents regarding tax advice to an unnamed client who had been criminally charged. Although it responded to the subpoenas by surrendering some 20,000 pages of documents, the firm withheld what it described as dual-purpose records, citing privilege and the doctrine of work product, according to the petition. It said certain documents were withheld because they involved legal advice about taxes as part of preparation of the client's tax returns. Some courts have held that if the primary purpose is tax rather than legal, they are not protected. However, other courts have said that if there is a significant legal purpose, they are protected.

GROUP STUDY MATERIALS

A. Discussion Problems

- 1) Your new client, Pedro, applied for a PPP loan of \$300,000 in 2020. The loan was fully forgiven in 2021. In going over this tax information, you discover that he did not qualify for a PPP loan in the first place.
- 2) You have discovered that Pedro is a major supporter of the Local University football program. He has invested significantly in an NIL collective. You have discovered that the NIL collective is considered a §501(c)(3) tax-exempt entity. He has mentioned that they provide "scholarships" to football players.
- 3) Pedro also has large investments in cryptocurrency. He believes that, for the most part, the IRS can't track his crypto assets and transactions.

Required:

Address all the issues fairly raised in the three fact patterns.

B. Suggested Answers to Discussion Problems

- 1) The IRS Chief Counsel has indicated that if a PPP loan or forgiveness is the result of any omission or misrepresentations, then the general rules of cancellation of debt will apply and the forgiven amount cannot be excluded. In this case, Pedro should be advised that the proceeds were income, and amended returns should be filed.
- 2) Currently, many NIL collectives have received §501(c)(3) treatment; and thus, contributions are deductible. Pedro should be made aware there is legislation proposed in Congress to eliminate this deduction. As to the student-athlete, these are not scholarships but taxable income and may be subject to self-employment tax.
- 3) The IRS has been very aggressive in going after taxpayers they believe have unreported income from crypto transactions. They have been successful in having subpoenas for bank records upheld, forcing those subpoenaed to provide records of clients.

PART 2. INDIVIDUAL TAXATION

Home Energy Tax Credits

Home improvements that may boost the energy efficiency of the home may save some money under the Inflation Adjustment Act that was signed into law in August 2022. One of the bill's main goals is to address climate change and slow down global warming. It includes incentives such as tax breaks for ordinary Americans to install new energy-efficient windows, doors, water heaters, and air conditioners in their homes or to purchase electric vehicles. Ian Redpath and Larry Pon discuss some of the home energy tax credits available and their effective dates.

Let's join Ian Redpath and Larry Pon as they discuss issues related to home energy credits.

Mr. Redpath

Larry, welcome to the program.

Mr. Pon

Hi, Ian.

Mr. Redpath

This is an interesting topic we have because people don't quite understand the Inflation Reduction Act. Obviously, by the title, you would think that there's all these provisions to reduce inflation. The CBO says it's going to have a minor impact on inflation. However, they indicate that this is really a cut-down version of the Build Back Better. And there certainly are a lot of provisions dealing with the climate. And there's a lot of misunderstanding out there because people are saying, "Well, what do I have?" Now, you and I are going to do another program, if everybody's concerned, on vehicles. But today's program, we're going to focus in on homes, on houses. What are we going to do and what do we have available? Because I hear from practitioners, "Well, when does this apply? I'm not sure." And clients, do we advise clients to, "Well, look, you've already used up your credit, so wait till next year to do that work." There's all sorts of different things to look at here. So, Larry, what do we tell our client? They come in the door, and they say, "I'm thinking about doing something, but I already did in the past." Or maybe they're saying, "Hey, I'm thinking about doing it. I've never done anything in the past." So, what do we advise that type of person who's a client who comes in and wants to know, "Hey, I heard all this about all this energy stuff that we get all these credits and wow, this is great news." And you've got to tell them what?

Mr. Pon

Right. And we're seeing the TV commercials already too, from the home improvement providers and all that. The Inflation Reduction Act is over 700 pages and it's not a trillion dollars, but it's up there. It's \$700-and-something billion. So, it's a pretty big bill. A portion of the bill we're going to talk about today is the Home Energy Efficient Credits. We'll talk about those. So, let's first talk about what we had and what we're going to have. So, under the old law, it was called the Nonbusiness Energy Property Credit. And it was basically a 10% credit if you made certain home energy-efficient improvements. And there's a whole list of that. The biggest limitation of that credit is that there's a \$500 lifetime credit. So, once you got to your \$500 credit, you can't get it again. And the IRS has a very good memory.

Mr. Redpath

There was an internal, right? For windows, you could only get a \$200 lifetime credit, I think. So, they're internal, even smaller limits. I had a lot of clients tell me, "Really, that's all I get? It's not even worth it. That's not worth dealing with. What do I have to pay you to prepare the return by taking the credit?" It wasn't a big deal for most clients. Where are we in 2022? So, the client comes in today and says, "I just heard on the news that I get all this, or I heard, as you said, an ad from someone saying, oh, we have all these credits you're going to be able to get." Where do we stand in 2022? What do we tell them for the 2022 year?

Mr. Pon

It's Form 5695. The residential energy credits are on that form, on the second side of the form. Look at the instructions. It has details about which items are worth \$150, some are worth \$250 with the lifetime credit of

\$500. So, once you get your \$500 credit, that's it. Now, it expired at the end of 2021, but as a result of this legislation, the old law was reinstated for 2022.

Mr. Redpath

I think a lot of people have missed that, Larry. I think a lot of people have missed that the old law was retroactively reinstated because every focus has been on the new law, what's coming in, and people are forgetting that is there if a client has already done something. If you've already done it, they've come in, they still have a potential of having that credit if they haven't used up their \$500 in the past.

Mr. Pon

And that's why those questions are on our organizers asking about installation, windows, energy efficient water heaters, furnaces, and all those sorts of things. So, still can't be forgotten. However, now not only do we do tax planning, we also have to do home improvement planning.

Mr. Redpath

And for 2022 in the past, the old law, which is 2022, roofing and air circulating fans, those types of things could qualify. But for 2023 and beyond, they were taken out.

Mr. Pon

Yes. So, let's talk about 2023. What's the biggest change in 2023? The biggest change is, instead of a \$500 lifetime limit, it's a \$1,200 annual limit. So, every year you can get \$1,200. The credit's called the Energy Efficient Home Improvement Credit, and it goes from—the way the law is written today—it goes from 2023 to 2032. That's the way the law is written. So, the biggest change also, besides a \$1,200 annual limit, it also went up from 10% to 30%. So, if you're going to make a purchase on something, you might want to hold off until January of next year because you'll get a 30% credit instead of a 10% credit. It'll be worth more. So, that's a big change.

Mr. Redpath

Now Larry, can I ask you? So, the clients come in, they've already done it, okay. They've already done something, or maybe I could look at it, and they could say, "Well, we're going to do a few different things and install as we do it, take our time." And I might look and go, if you have air circulating or fans or you have this

and you haven't used your \$500 credit, you could do that this year because it doesn't qualify next year. So, as you said, we're doing some planning for them as to what to put in when. One of the questions I've had from people is, "Well, I used up my \$500 credit. Does that mean I don't get anything going forward?" Yes, the \$500's been eliminated, but what does that mean as far as going forward? Does that mean I start anew and I get annual credits every year? How does that change apply to someone who has already met their maximum?

Mr. Pon

Well, you start anew again. So, in 2023, for example, exterior windows and skylights. Under the old law, it was \$200 maximum. Now it's \$600 per year, \$600 for windows. Now, is that a practical consideration where, okay, I'll do those windows now and then do the others next year? I'm not sure if that's a practical consideration. But maybe you do one side of the house, another side of the house. It's going to be some plan. Or maybe we do windows this year and we'll do skylights next year. For exterior doors, and that includes garage doors, especially at the certain R factor where they have an insulated garage door; and that's \$250 each for a maximum of \$500 per year maximum. Those are for the doors.

Mr. Redpath

Now, as I understand, Larry, what we're doing is we're having internal limits on certain types of property that, added together, \$1,200 is the total we can take in one year. But we have internal limits on different things. Is that how it's being applied?

Mr. Pon

Exactly. So, the qualified expenses are our energy-efficient windows, energy-efficient doors, certain HVAC systems, heat pumps, biomass stoves, insulation, which includes air sealing material and systems.

Mr. Redpath

So, don't you think a lot of these things, we're going to have to rely on the contractor and say, "You need to tell us what's qualifying."

Mr. Pon

And for the heat pumps, and the stoves, and the improvements, and all that, it's got to meet the Energy Department Energy Star, or the International Energy

Conservation Code standard. So, there's got to be some requirement there also for it to meet. Now, you're wondering, well can I just willy-nilly buy things? Well, one requirement that's going to take in effect in 2025 is that you're going to need to include the product identification numbers for certain items, kind of like the VIN number for cars. So, you can't claim the credit multiple times with the same items.

Mr. Redpath

And I think there's giving some time to report on that, but they're going to crack down on this. I think they're perceiving there's going to be some abuse. But it's going to take a little time. So, Larry, we've got this thing called a home energy audit, and you can get \$150 for that.

Mr. Pon

Yes, you get \$150 for a home energy audit.

Mr. Redpath

What is that? What does that mean?

Mr. Pon

Well, I don't really know because I can get a home energy audit for free from my local utility. And I don't know about other utilities if they're free or not, but you get up to \$150 for a home energy audit. They can take a look at your house and see if you're leaking heat in certain places, or certain areas you can put in better insulation, or it's time to get rid of that 70-year-old boiler you have in your basement. Those kinds of things.

Mr. Redpath

Right. Well, and I think what's going to happen is people, companies... What I'm not sure about is exactly how that certification of the person doing the audit is going to be. But I'm sure the IRS will come out and say, "Well they have to have some certain qualification to certify the home audit." But people are going to be advertising that, "Hey, we'll come out. We'll do an energy audit of your house, show where you're leaking in the windows and the doors, and make recommendations." Well, you can get a credit. You can get a credit up to \$150 for that.

So, the \$1,200 credit, that's the maximum. Is it refundable? Nonrefundable? Are there carrybacks? What exactly do we do with that?

Mr. Pon

Well, before we talk about that, there are other items where you get a \$2,000 credit. So, not just the \$1,200, \$2,000. Yes, that's the maximum credit for heat pumps. Heat pump water heaters and biomass stoves and boilers. For those items, you can get a maximum of \$2,000. And I did go to my local store and start to take a look at the prices. And the heat exchange water heater costs about three times a traditional water heater. So, before you go out, because I get a tax credit for the heat pump water heater, does it really make sense?

Mr. Redpath

Right. Well yes, all of this sounds good, but is it still making financial sense?

Mr. Pon

You've still got to do the financial analysis to see if it makes sense. We have clients who, all they care about is tax credits; they don't care about what it costs. So, speaking of these credits, so they are a nonrefundable credit; and also, there's no carryover. So, if you happen to buy tens of thousands of dollars of housing materials, you're still limited to that \$1,200 a year. So, there's no carryover; there's no carrying it back. But here's one big change, is that applies to not just your principal residence, but also your second home and your vacation home. Previously, it was just on your principal residence only.

Mr. Redpath

Wow, Larry. I mean, shoot, I was worried about my second home and my vacation home.

Mr. Pon

There you go. There you go.

Mr. Redpath

Right. Oh my gosh, I was really worried about that one. But you're right. We do have clients who have these, and they will be able to qualify for these. So, really makes a difference. We also have the New Energy Efficient Home Credit. What is that?

Mr. Pon

The New Energy Efficient Home Credit, NEEHC; and that's available to eligible contractors for qualified new energy efficient homes. And there's certain requirements they've got to meet. And this credit's been

extended to 2032; and it could be \$500, \$1,000, \$2,500, or \$5,000, depending on which energy efficient requirements they meet.

Mr. Redpath

But that's contractors. That's not the homeowner.

Mr. Pon

Here's the new change to this. We did have this under the old law. But one big change is whether the construction of the home meets prevailing wage requirements. So, that's another thing there.

Mr. Redpath

There's also a provision in there, I believe, that talks about apprenticeship also. Does it have an apprenticeship program? Essentially—for people who aren't aware of what prevailing wage generally means—if you have any clients in the contracting business, it's not unusual. I have a couple of clients that what they do is they have a company that's their union company, and a company that's their non-union company, and depending on the job that they'll bid on. But what will happen is some jobs, especially government-related jobs, they'll say, "Well, we'll take a bid, and we'll even hire a non-union shop. But you have to pay prevailing wage." Which is essentially you have to pay what would be the union wages for that job. So, that's what prevailing wage means. Some people confuse that with minimum wage. Not at all. Nothing like that at all.

Mr. Pon

So, prevailing wage doesn't mean these have to be union workers. So, it's the wage component of that; because for union workers, you've also got the health and welfare amounts and all those kinds of things that get added on top.

Mr. Redpath

It's just the wage. It's wage. And there's this apprenticeship; and I'm not quite sure where they're going to head with that on regulation because the way the law is written, it requires both. I'm not sure how that's going to ultimately come out with the regulation.

Mr. Pon

Well, we're going to see some guidance come out on this one. I'm sure we will.

Mr. Redpath

Right, for that one for sure. And we also see that, by the way, with a number of other credits in this act. Well, provided they're paying prevailing wage and apprenticeship. So, we have another one. [Residential] Clean Energy Credit. What is this?

Mr. Pon

[Residential] Clean Energy Credit, that replaces the Residential Energy Efficient Property Credit. In 2022, under the existing law, the credit was reduced to 26%. But as a result of the Inflation Reduction Act, this retroactively bumps it back up to the 30% credit for installing solar panels, solar water heaters, fuel cells, wind, and biomass, and geothermal. And this goes all the way to 2034. It extended, because it was scheduled to be dropping. Do you know who's the luckiest person? My neighbor, because before this law was signed, he installed solar panels. I did some math, and I think he made an extra \$800 because of the increase in the tax credit. He didn't know it, but there he is.

Mr. Redpath

And it also includes, but not till next year, battery storage.

Mr. Pon

The thing is, if the battery storage was integral to the solar system, that still applies for 2022. For 2023, there's no requirement that you have solar. It's just storage only. And we have lot of places, here in California, we have wildfires; and they shut off the power when there's a fire burning to prevent fires. So, the battery backup can kick in at that point.

Mr. Redpath

So, for 2022, the battery has to be related to solar.

Mr. Pon

Solar or wind.

Mr. Redpath

2023 and beyond, it does not. Is that correct?

Mr. Pon

It does not. Just go get the battery. A lot of people have done that already without the tax credit because of the blackouts and all those sorts of things.

Mr. Redpath

Yes, absolutely. We don't worry about wildfires where I am, but we certainly worry about snow and ice and wind.

Mr. Pon

Right. Well, that all affects us too.

Mr. Redpath

So, what else should we know about this [Residential] Clean Energy Credit?

Mr. Pon

There are no AGI or cost limitations. Some of our clients buy some really expensive systems; they get the 30% credit. There's no upper limit on how much you can spend. But one thing our client's need to look out for is that they're getting pitched by these vendors where they'll say, "Hey, we'll give you the roof for free, but we'll put all the costs on the solar." And you've got to be careful about that. So, if you're getting a new roof, that doesn't qualify. It's just for the solar panels, the inverter, and all the components connected to the system.

Mr. Redpath

But if it's 2022, the new roof might qualify for the other credit, the 10% credit up to \$500 max.

Mr. Pon

The different credit, right. And the way the old credit was, especially if you've got a heat reflecting roof, basically a white roof that reflects the heat, that's under the old rules. It's pretty tricky, isn't it? We have to stay on top of this.

Mr. Redpath

And now for some people, this does make a big difference, with electric vehicles, not that we're going to talk about vehicles. I said we're going to do a separate program on that. But what about charging stations? Because this becomes an issue especially-

Mr. Pon

Exactly, exactly.

Mr. Redpath

I don't have an electric vehicle. I'll admit it. My neighbor does have one and is always complaining about they didn't buy a charging station and how long it takes for them to charge their vehicle. So, what's going on here with the charging station?

Mr. Pon

Well, I do have an electric vehicle, and I do have solar panels; and the beautiful thing is my solar panels are actually generating more electricity than I use. So, I run a negative when it comes to the energy, which has been great. I just plug in my car into my power outlet. But that's just using a standard 120 voltage. Yes, I can install a charging station which will be the 240 voltage, which means you can charge a car a lot faster. So, there is a 30% credit for individuals to install that. Not just for charging your car, but also you can install a natural gas outlet in your garage to power up your natural gas car or even hydrogen. So, any alternative fueling. So, for individuals, it's 30% credit; and they're not that expensive. However, I did talk to my clients who have a shopping center, or they have an apartment complex. I said, "Hey look, you might want to consider putting this in your business." And I ran the numbers for how much money they can make; because they can charge for people parking there, whatever the electricity usage, whatever. You have different ways you can charge. And I did some calculations how much math it would be and the different ways you can do it. If you buy the system, you get a 6% credit for a business; and for a business, you might have multiple stations. The maximum is \$100,000 credit. So, that's a great incentive for shopping centers. I think movie theaters would be a perfect place. You watch a movie while your car charges.

Mr. Redpath

Yes, don't worry about your car.

Mr. Pon

And I talked to one of my clients. He has a bunch of restaurants, and he doesn't want people to stick around too long. I said, "That's okay. You can set the timer on these that after two hours, you've got to move your car or we're going to charge you 10 bucks an hour or something like that."

Mr. Redpath

A local mall by me has charging stations by it. I'm sure people charge while you're in shopping.

Mr. Pon

Exactly. The thing is, I look for places that have chargers. When I stay at a hotel that has a charger. And that's great because there's some locales where you can't find a charger.

Mr. Redpath

You don't want to have an extension cord running up to your room, right?

Mr. Pon

That's not going to work.

Mr. Redpath

Now, a lot of people have heard that there's these home energy rebates. But I think that's... What do we know? Because there's an awful lot we don't know yet about these. So, what exactly are these home energy rebates?

Mr. Pon

These home energy rebates, it's a really big program. It could be worth up to \$14,000 worth of rebates to someone. However, they are administered by the states. So, the states will have to apply for the grants, and it is administered by the states. And so, that's going to be a bit of a rollout here. Some states are more efficient at this than others, and we'll see how that all works out. They have to administer this program. Now, in a lot of cases, these rebates, you get them at the time of purchase. If I buy the water heater, or the washing machine, or whatever the appliance is. But the individuals have to meet some income limits; and that varies from locale to locale. So, it depends on what the area's median income is to qualify. So, I think it's one of those things we need to stay tuned because we really can't go into detail because every state's going to be a little different on how they administer it. Are they going to do it at the place you buy the appliances? Or do you have to fill out a form and get a check later? It's going to depend.

Mr. Redpath

And states can vary. Until we get real guidance on this, states could vary as to what their requirements are. But if you cut your energy by 20%, you could get a rebate

of \$2,000 or half the cost of the retrofit, whichever's less. That can go up to \$4,000 if it's at least 35%. But then, there's double the rebates, but for lower-income households. And the question there is going to be, well, to what extent are the lower income households going to be doing the retrofits? So yes, there's a larger credit. And again, it's really to try to incentivize, especially lower income, to go and retrofit because many of those people will be living in older homes, older communities, which can use it. So, there's logic behind doing that that does make some sense. But there are limitations on different types of properties. Is that correct?

Mr. Pon

Right. And I hope the states would partner with certain nonprofits who are really good at this. Locally here, we've got a nonprofit that teaches financial literacy, helps people save money, helps people buy cars; and they can also help people buy appliances and retrofit their homes and help them navigate through these programs. And I think as tax professionals for our volunteer efforts, I think it's a good source of help we can help people with.

Mr. Redpath

This will apply to appliances, right? So, it could apply to a stove, heat pumps, dryers, clothes dryers, things like that.

Mr. Pon

Right, all those kinds of things.

Mr. Redpath

Insulation again, air sealing. So, this goes up to \$14,000. Where are we as far as can we double dip? Can we double dip the credit?

Mr. Pon

The tax credit and the rebates. Now, where all the devils are in the detail, when are we going to see that? That's something we need to stay tuned for and see when that's all going to come out with the specifics on this.

Mr. Redpath

Now, the rebates are not going to be available if your household income—and I'm not sure what household income's going to be defined as. Is it going to have the same definition as we have for the ACA, for example,

that uses the term household income? I don't know what that term will be. But if it's over 150% of the area's median income—and as you said, what's your area—then you don't qualify for any of the rebates. But you still qualify for the credits. You would still be able to get the credits.

Mr. Pon

Exactly. But it is really targeted at people whose income is 80% of the area's median income. So, it's targeted at that level of income, 80% or less.

Mr. Redpath

So, in addition to energy credits, we're talking about the federal because we've got 50 different states to talk about as well as territories, if we start talking about it. But many states have their own forms of credits for that state and/or even different types of rebates that are available. I bought a tankless water heater and got a rebate on that; I had to send in all the information about it and a copy of the receipt, and I got a rebate. So, states have their own types of rules on this; and many states do have different types of energy credits, correct? Or deductions, however they want to do it.

Mr. Pon

Yes. So, you need to check with your state on what kind of credits or rebates they might have and that's really helpful. Also, not just the states, but also the utilities. Sometimes utilities will have a rebate; because when I got my solar panels, I got a rebate from my utility. Once we got the hook up to them, and we got a check for \$250.

Mr. Redpath

The rebate I got was \$300 from the utility on purchasing an Energy Star, whatever the rating is on it, tankless hot water heater. So yes, that came directly from... That's a rebate program through the energy provider. And that's a great point because a lot of them, in most states, energy providers do have these rebates. They may not be advertised as it, but they are available. Contractors should know about that. But our clients will expect us to know about it. So, that's maybe something else we need to look into to advise our clients in this area. A lot of stuff going on for starting next year where we have to be up on. But we still, clients come in, we still do have some things available for this year. Very limited, but we should look into it. And I think you said it best. We've become not just tax advisors, but we're home

improvement advisors too. I think that was a great way to put it, Larry, that this is the way we have to do it. Maybe we should put tax consulting and home improvement.

Mr. Pon

Or we can just tell a contractor, you park your truck outside and you can help out our clients. Something like that.

Mr. Redpath

Right. That's for sure. Larry, thank you very much for joining me. This is a lot of great information, things we need to look at. And I do think it's something, and you mentioned it earlier, maybe we've got to start looking at are there different things we should be adding to, or subtracting from, our client organizers? Are there things we want to make them aware of? Do you have a newsletter? Maybe this is something you want to tell them about. "Hey look, next year, you get this if you're thinking about it." So, whether you use a newsletter or up on your website, this is great information to provide the client because you know that people are out there and they're hearing, as you said, ads on the television. It's like, "Oh, wow, I'm going to go buy this." Well, no, you only got a \$500 credit. If you'd had waited until next year, it would've been significantly higher. So, a lot of great information today, Larry. Thanks for joining me today and we'll have you on another program. We're going to do a program on the new vehicles because there's an awful lot going on with new vehicles. So, we'll have a separate program on that. Larry, thank you. And we'll see you on the program for new vehicles.

Mr. Pon

All right. Well, thank you, Ian. Look forward to that.

Mr. Redpath

Thank you.

SUPPLEMENTAL MATERIALS

Home Energy Credits and Rebates

By Ian J. Redpath, JD, LLM

A. Introduction

The Inflation Reduction Act (IRA) of 2022 contains many provisions related to the climate and energy. It contains a multitude of new environmentally related tax credits for individuals and small businesses as well as extending and modifying some pre-existing tax credits. While the IRS focuses on businesses, there are incentives for individual taxpayers to go green. Energy-efficient homes are a part of this legislation. Low- and

moderate-income families may also qualify for rebates if they purchase energy-efficient appliances. Taxpayers will be able to reduce their tax liability if they install such things as new energy-efficient windows, doors, water heaters, furnaces, and air conditioners. The legislation extends and enhances two tax credits that reward "green" upgrades.

B. Energy Efficient Home Improvement Credit

The Nonbusiness Energy Property Credit (NEEP) expired at the end of 2021. However, the IRA not only reinstates it; it enhances it substantially and gives it a new name, the Energy Efficient Home Improvement Credit (EEHIC) [§25(C)].

The NEEP was worth 10% of the costs of installing certain energy-efficient insulation, windows, doors, roofing, and similar energy-saving improvements in a taxpayer's home. There was also a credit for 100% of the costs associated with installing certain energy-efficient water heaters, heat pumps, central air conditioning systems, furnaces, hot water boilers, and air circulating fans. The credit itself, while good in theory, was of nominal value to taxpayers due to a lifetime credit cap of \$500. Once the lifetime cap was met, nothing further was available. Additionally, there were some caps within the cap for certain types of energy-efficient improvements; for example: a lifetime limit of \$200 for new windows, \$50 for air circulating fans, \$150 for some furnaces and boilers, and \$300 for certain water heaters, heat pumps, and air conditioning systems. The credit was only available for improvements to the taxpayer's primary residence. The limited amount of the credit served as a relatively insignificant incentive to "go green."

The credit is revived for the 2022 tax year, applying the old rules. Starting in 2023, the credit will be equal to 30% of the costs for all eligible home improvements made during the year. It will also be expanded to cover the cost of certain biomass stoves and boilers, electric panels and related equipment, and home energy audits.

However, roofing and air circulating fans will no longer qualify for the credit. Some of the energy-efficiency standards will be updated as well. The credit is extended through 2032.

The IRA increases the credit for a tax year to an amount equal to 30% of the sum of (a) the amount paid or incurred by the taxpayer for qualified energy-efficiency improvements installed during that year, and (b) the amount of the residential energy property expenditures paid or incurred by the taxpayer during that year. [§25C(a)]. The \$500 lifetime credit limit and \$200 lifetime limit on windows is replaced by a \$1,200 annual limit on the credit amount with no lifetime limit. Taxpayers will be allowed to claim the maximum amount for each qualifying expenditure made during the tax year. Spreading out improvement credits can increase the value to the taxpayer. The annual limits for specific types of qualifying improvements are also modified. Beginning in 2023, they will be:

- \$150 for home energy audits;
- \$250 for an exterior door, including garage doors (\$500 total for all exterior doors);
- \$600 for exterior windows and skylights; central air conditioners; electric panels and certain related equipment; natural gas, propane, or oil water heaters; natural gas, propane, or oil furnaces or hot water boilers; and

- \$2,000 for electric or natural gas heat pump water heaters, electric or natural gas heat pumps, and biomass stoves and boilers. (Note that for this category, the \$1,200 annual limit is increased.)

To qualify for the credit, the equipment must be installed in a home that is located in the U.S. and used as a residence by the taxpayer. For fuel cell property, the residence must be the taxpayer's primary residence. For the other types of property, it can be any residence of the taxpayer that is located in the United States, including a second home or vacation home owned by the taxpayer. Note that the credit is per taxpayer per year, not per residence.

Even though the credit is available for certain water heating equipment, it cannot be claimed for equipment that is used to heat a swimming pool or hot tub. Also, if otherwise eligible equipment is used more than 20% for business purposes, only the expenses allocable to nonbusiness use qualify for the credit.

Starting in 2025, taxpayers will have to submit a product identification number to claim the credit. A qualified manufacturer is any manufacturer of specified property which enters into an agreement with the IRS which provides that the manufacturer will comply with the product identification number requirements. [§25C(h)(3)] Not putting the correct product identification number will be treated as a math or clerical error.

The energy-efficiency certification requirements for building envelope components eliminates treatment of roofs as building envelope components and adds air

sealing insulation to the definition of a building envelope component. It also substantially revises the definition of residential energy property expenditures, including repeal of the requirement that residential energy property expenditures must be made with respect to the taxpayer's principal residence. Required energy-efficiency standards are changed to automatically update over time without requiring additional legislative action. In general, improvements must meet Energy Department Energy Star or International Energy Conservation Code standards. Each type of equipment must meet energy-efficiency requirements. Taxpayers can rely on a manufacturer's certification that a component meets those requirements. The certificate does not have to be attached to the return but should be kept in the client's file.

A 30% credit, up to \$150, is allowed for home energy audits. A home energy audit is an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence which (a) identifies the most significant and cost-effective energy-efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement, and (b) is conducted and prepared by a home energy auditor that meets the certification or other requirements specified by the IRS.

In essence, the credit applies to the first \$4,000 of qualified expenditures for a tax year ($\$4,000 \times 30\% = \$1,200$ credit). There is no carryover of any unused credit amounts. The credit is claimed using Form 5695.

C. Residential Clean Energy Credit (RCE)

The ACT restores, extends, modifies, and renames the Residential Energy Efficient Property Credit through December 31, 2034. It is now the residential clean energy credit (RCE) through 2034. This is a nonrefundable personal credit under §25D. The credit rate reduces over time and is set at the following percentage of the costs of qualifying property:

- 30% for property placed in service in 2022 through 2032;
- 26% for property placed in service in 2033; and
- 22% for property placed in service in 2034.

Qualifying property includes solar electric, solar water heaters, fuel cells, wind, biomass, and geothermal energy generating systems. Beginning in 2023, it will no longer apply to biomass furnaces and water heaters; but it will apply to battery storage technology with a capacity of at least three kilowatt hours, including biogas property and microgrid controllers. The power does not need to be supplied by solar or wind. The expenditures must relate to a dwelling unit located in the U.S. and used by the taxpayer as a residence. In the case of fuel cell property, it must be a principal residence. The credit for fuel cell property is limited to \$500 for each 0.5 kilowatt of capacity. When the credit is taken, there is a basis reduction for the amount allowed. Form 5695 is used to report the credit.

A taxpayer who qualifies for both the EEHI and RCE credits can claim both. The EEHI may be easier for taxpayers to claim because it applies to items that are relatively inexpensive and easy-to-do, maybe even by the taxpayer. It also includes more expensive and more complicated items that are still common, such as central

air conditioning and heat pumps. The RCE credit, on the other hand, deals with items that are less common and comparatively more expensive—solar electric, solar hot water, fuel cell, small wind energy, geothermal heat pump, and battery storage property.

D. Energy Rebates

Section 50122 of the IRA creates a new rebate program to encourage low- and middle-income households to buy energy-efficient appliances and make energy-efficient upgrades. The programs are grant programs to the states and are to be administered by state energy offices under guidelines set by the U.S. Department of Energy. States will have to apply for the grants, worth \$8.8 billion total. The available rebates to consumers will vary based on the income levels and energy savings. The goal is to provide consumers with money at or near the point of purchase. The details of the program have yet to be worked out; and states and Native American Tribes are to create programs over the next two years.

Taxpayers who cut energy by 20% are eligible for a maximum rebate of \$2,000 or ½ the cost of the retrofit, whichever is less. The dollar threshold rises to \$4,000 for those who cut energy by at least 35%; and the rebates double for lower-income households whose income is 80% or less of an area's median income. Energy retrofits include insulation and HVAC installations.

Under the high-efficiency electric home rebate program, rebates are available to certain taxpayers for

various upgrades. Efficient electric appliances and limitations are:

- Up to \$1,750 for heat pump water heater;
- Up to \$8,000 for a heat pump for space heating or cooling;
- Up to \$840 for an electric stove or an electric heat pump clothes dryer;
- \$4,000 for an electric load service center upgrade;
- \$1,600 for insulation, air sealing and ventilation; and
- \$2,500 for electric wiring.

Rebates will not be available to households earning over 150% of an area's median income. Those taxpayers with income below 80% of the area median income can claim rebate for the full cost of their upgrades, with a \$14,000 cap. Households that fall between 80% and 150% of the area median income are eligible for rebates of 50% of the cost up to \$14,000. Taxpayers cannot claim both rebates but can claim an eligible credit and a rebate.

E. New Energy Efficient Home Credit

The IRA reinstates the credit under §45L available for eligible contractors for building and selling qualifying energy-efficient new homes. Qualified new energy-efficient homes acquired before January 1, 2033 are eligible for credits of \$500, \$1,000, \$2,500, or \$5,000, depending on which energy-efficiency requirements the home satisfies and whether the construction of the home meets the prevailing wage requirements. A dwelling unit qualifies for the credit if it's certified as a zero-energy ready home under the zero-energy ready home program of the Department of Energy as in effect on January 1, 2023, or any successor program, and it satisfies a set of requirements based up the type of

home. Taxpayers claiming the low-income housing tax credit do not have to reduce their basis for credits claimed under this section.

F. Alternative Fuel Vehicle Refueling Property Credit

Another credit that may apply to a home is related to alternative fuel vehicle refueling property. If a taxpayer has an alternative fuel vehicle, there is an incentive to add a refueling property. Of course, this may also have a business application.

The IRA extends the credit to eligible property placed in service before January 1, 2033. The original credit expired on December 31, 2021. It includes electric car charging stations and natural gas outlets for natural gas-powered vehicles. The credit is 30% for individuals and 6% for businesses; this is increased to 30% if certain prevailing wage and apprenticeship requirements are met. The maximum amount for business is \$100,000,

up from \$30,000. The definition of eligible property as of now includes bidirectional charging equipment and provides that the credit is available for electric charging stations for two- and three-wheeled vehicles that are intended for use on public roads.

Note that for businesses, the credit limitation applies per single item of qualified alternative fuel vehicle refueling property instead of all such property at an individual location. Charging or refueling property will only be eligible if placed in service within a low-income or rural census area. The new rules apply 2023 through 2032.

G. Energy Efficient Commercial Buildings Deduction

The IRA updates §179D's energy-efficiency commercial building requirements by providing that a qualifying building must increase its efficiency relative to a reference building by 25% rather than 50%. The deduction is \$0.50 per square foot and increases \$0.02 for each percentage point the certified efficiency improvements reduce energy and power costs, up to a maximum amount of \$1.00 per square foot. Additionally, the project must meet prevailing wage and registered apprenticeship requirements. The base amount is \$2.50, increased by \$0.10 for each

percentage point increase in energy efficiency, up to a maximum amount of \$5.00 per square foot. The maximum deduction amount would be the total deduction a building can claim less deductions claimed with respect to the building in the preceding three years (prior law was all years). The IRA establishes an election for a new alternative deduction for energy-efficient building retrofit property which is taken in the year of qualifying final certification. There is also a modification of deduction timing for REIT earnings and profits.

H. Other Credits

There are a number of other credits that may apply to individual taxpayers in the incentive to "go green." For example, there are incentives to purchase both new and used clean fuel vehicles.

I. Conclusion

The IRA can have a significant impact on taxpayers and decisions that are made relative to improvements and upgrades to a residence. Some issues that a client may not consider are the types of improvements/upgrades and the timing of each. For example, can a project be installed over one or more tax years and increase the amount of available credit? This may be further impacted if the improvements are being made to more than one residence. Timing is also important as some credits phase down or are not available until 2023 and

beyond. In addition, with some credits, the anticipated future income of the taxpayer must be considered when advising on when to do these improvements/upgrades. Once in place, the availability of a rebate and a credit may be significant for many taxpayers, especially lower-income clients. Practitioners need to make clients aware of the many nuances that apply to these credits to maximize the tax benefits to the client.

GROUP STUDY MATERIALS

A. Discussion Problems

Your client, Alphonso, indicates that he is considering making certain energy-efficient upgrades to his primary residence in 2022. He is disappointed because he understands that he has already met his \$500 lifetime cap and there will be no tax benefit for him. He also has a winter home in Florida where he wants to make improvements. He is not sure exactly what he should do.

Required:

Discuss the issues fairly raised by the facts as they relate to the 1) EEHI, 2) RCE, and 3) rebate programs.

B. Suggested Answers to Discussion Problems

- 1) Alphonso is correct that for 2022, the lifetime cap of \$500 applies. He should consider making the improvements in 2023. Under the EEHI credit, he can take a credit equal to 30% of the qualifying costs with an annual credit limit of \$1,200. It should be noted that there are internal limits for some items such as windows and doors. If he is going to maximize the credit in 2023, he should determine if he can spread out the project over 2023 and 2024 to maximize the credit. Another issue is the Florida residence. Beginning in 2023, the credit is no longer limited to the primary residence. Again, when to do these upgrades and improvements should be considered to maximize the credit.
- 2) The RCE tends to apply to more costly improvements/upgrades. It can be taken in the same year as the EEHI. Again, in order to maximize the credits, consideration should be given as to what improvements to make and when to do them. The RCE can apply to both properties since they are residences in the U.S.
- 3) The rebate programs have not been rolled out and will probably not be available for at least another two years. If the programs are available in Alphonso's states, he may not qualify for the full or even partial rebate amounts, depending on his income relative to the median income for his area. There are different rebates, and he cannot qualify for more than one rebate on one expenditure; but he can qualify for a credit and a rebate on the same property.

PART 3. BUSINESS TAXATION

Foreign Tax Credit

With increased international travel, expansion of businesses, and the TCJA, international taxation has become more complicated. It has been further impacted by final regulations issued by the IRS and the Treasury in January 2022. These regulations revised the definition of a foreign income tax and provide significant guidance on the determination of whether a foreign tax is eligible for the U.S. foreign tax credit. Ian Redpath and Renata Stasaityte discuss key factors in navigating the Internal Revenue Code, tax treaties, and the foreign tax credit.

Let's join Ian and Renata as they discuss regulations and guidance related to the foreign tax credit for individuals and businesses.

Mr. Redpath

Hi everybody, I'm Ian Redpath. Welcome to the program today. I'm really pleased. Today, we have an expert with us who's going to talk to something that a lot of people say, well I don't deal with this. What do I have to do with international things? And then, you start thinking, and you have maybe a client who happens to live in a foreign country sometimes or has that place that they spend a lot of time in, in a foreign country, and that country wants to tax them also. And then businesses. I know, I live in a border area; so, a lot of our businesses are going across border, and corporations are setting up businesses. And so, this topic is really timely; and there's a lot been going on in the whole area of international tax. But this is really U.S. tax. We're going to be talking about how the U.S. is handling this.

So, Renata, welcome to the program. Really great to have you here.

Ms. Stasaityte

Thank you for having me.

Mr. Redpath

And so, can you give us the, we'll start with just from your opinion, am I right? Is this really a topic that people see probably more than they really realize off the top of their head?

Ms. Stasaityte

Yes, the international area has been expanding greatly for two reasons, I think. TCJA just revamped everything when it comes to the international tax; and there's still a lot of developments happening in this area. The IRS is still issuing regulations about it. They're still

tweaking things. So, there's a lot of movement in this area from the legislative and regulatory perspective. And there's also a lot of movement from the taxpayer perspective because international, everybody is expanding internationally. Everybody's producing something internationally. Everybody's trying to offshore work internationally. So, there's a lot more international activities just going on. I'm based in New York; and I can tell you that in the past five years, every single client that came in through the door had something international going on.

Mr. Redpath

That's fascinating. I mean, that's an awful lot. But I was contacted by a firm a few years ago and I did some work for them, some consulting. This is a tax firm. And I was speaking to them recently and they just opened up offices in the Virgin Islands and they opened up offices in Aruba. Now, maybe that's because they're nice places in the winter, I don't know. I'm not going to say that. But they've had such an expansion of clientele that they felt it was necessary to do that. So, I agree with you, we have a big expansion. And I don't know how many times I hear from clients or from other CPAs saying, "My client's thinking about expanding their markets. What's the tax implication in doing that?" I agree with you. I think it's something that we, that's really becoming more and more of an issue as people are trying to expand their markets. One thing that people will often say, and I think there's a misunderstanding, maybe because the U.S. is a little strange when it comes to this. But people will say, "Well, isn't that in the tax treaty? Don't we just look to the tax treaties? I mean, am I done with my research? I just want to know how this is going to be handled. I should just pull out the treaty." Is that the case in the U.S., that you just worry about a tax treaty if you have one?

Ms. Stasaityte

Well, no. So, the first place you start is the Internal Revenue Code. That applies to everybody. That's your basics. That your general rules for everything. And then, if you have specific transactions with a specific country, then you can go into the tax treaty and look if it helps you. Tax treaties are optional. You don't have to claim the tax treaty benefits. You can if you want to, but you don't have to. And if you want to claim it, you have to jump through the hoops. You have to make sure you qualify. You have to make sure you apply it correctly. You have to make sure you file the tax treaty disclosure forms. So, it's not an automatic thing that you just take it.

Mr. Redpath

Yes. And I think one of the confusing things with U.S. tax, especially speaking with people from other countries. I had a situation where I was researching an issue, and I was dealing with someone in Israel, and it was an Israeli-U.S. tax issue. And basically, they're looking at the tax treaty and saying, "Well, this is how it's handled." And I'm looking at it and going, "Well, that's true except we have an internal law that's a little different than the treaty. And what the Constitution says is that treaties and statutes are the supreme law of the land and people are to apply. And the Supreme Court said, "Well, if they're both equal, they adopted a last-in-time rule." So, if our internal law conflicts with a treaty, last in time. Was the treaty last? Apply the treaty provision. If the internal law was last, apply the internal law. And these are generally called treaty overrides. Congress overrides treaties all the time. When they adopted the Foreign Investment in Real Property Tax Act, they overwrote every single treaty we had in place at the time on that provision, on taxing of that real property. So, you've got to be really careful in the United States when you're dealing internationally, because it's not just look at the treaty. It's because of the Constitution saying the supreme law treaties and statutes, and the Supreme Court says "Hey, it's a last in time." You know you really have to do an extra amount of research from the American side in dealing with these. But this is something we give away, right? I mean, you don't have to look at the treaty necessarily because we give this foreign tax credit away anyway, right?

Ms. Stasaityte

Correct. So, the foreign tax credit is something baked into the Internal Revenue Code. You don't have to have

a tax treaty with the country to get the credit. And really, the general idea here is to just minimize the double taxation; because as we all know, United States taxes worldwide income. So, it doesn't matter where you live, where you work, where you receive the money from, it's taxable in the United States. But other countries are not just going to give up their revenue source; and they will tax people who, for example, work abroad based on the income that they received abroad. So, a lot of countries will tax the source income, and the United States will just tax everything. So, there's baked-in double tax right there; and the foreign tax credit is designed to alleviate that problem. It's not going to completely solve it. There's all kinds of nuances that don't make it work perfectly most of the time, but the idea is there.

Mr. Redpath

So, the foreign tax credit, I mean, it can apply; and again, the U.S. taxes their citizens on their worldwide income. Residents get taxed on their worldwide income even if you have a green card, even though it's actually rose color. But if you have a green card, it doesn't matter if you live in the United States or not, you're considered a resident, you're going to be taxed. And as you pointed out, other countries look at that very differently and say, "Well, residents and source, that's how we tax. So, if you're not a resident, if it's not sourced here, okay fine, we're not going to tax it, but if it is we're going to tax it." But we're talking about an individual. How does this relate? Does this apply to businesses? Does it apply to corporations?

Ms. Stasaityte

Same concept applies. The general idea of the foreign tax credit applies across the board to all taxpayers. Whether it's individual or corporation, the same idea is to alleviate the double taxation.

Mr. Redpath

So, let's look then, because I know there's a lot of terminology that we have to look at. I have nightmares at the idea of foreign-source income because it sounds so simple, not necessarily so simple when you're talking about businesses. So, can you give us the overview? What is this concept of foreign-source income, and why is that so important?

Ms. Stasaityte

So, a little step back is that to get the foreign tax credit, you really need two critical components. I like to say

it's like the recipe for a tea. You just need two components. You need tea leaves, and you need hot water. That's basically what you need to get the tea. And to get the foreign tax credit, you need two things. First, you need the foreign-source income; and second, you need the income tax paid to a foreign jurisdiction.

The first component is the foreign-source income. The concept there is that you look at your income, your taxable income; and you're trying to determine whether it's coming from sources within the United States or sources outside of the United States, which is just, we call foreign-source income. The complications there is that really there is no general rule. Every income type will have its own specific rule in the code and regulations; and it varies widely from one income type to another. So, most popular ones for example, are interest and dividends. So, in those cases, you look purely who paid it. If a foreign bank or foreign institution or foreign company paid the interest or dividend to you, it's foreign-source income. If a U.S. bank paid it to you, if a U.S. company issued dividend to you, it's U.S.-source income. And you're really looking just where the company is incorporated.

Some other items are a bit more complicated. So, for business income for example, for services, you're really looking where services are provided. Services are provided by people. So, you're really looking at where your employees, where your people are located. If they all sit in the United States, great, you just have U.S.-source income. If they travel abroad and they generate revenue by doing work abroad, that's going to be foreign-source income. And there are specific rules for different types of income. So, you really have to look at... And some of them can get really, really complicated. For example, software, there's two whole separate regulations solely devoted to what you do with software and how you source software revenue. And it could be created in three different ways, depending on exactly how you generate the revenue, what exactly you're selling. So, it can get very complicated, this division of revenue.

Mr. Redpath

Yes. And I think that even, I mean, there's even small technicalities about a domestic company, depending on where their income is sourced could end up changing the [definition]. So, there's a lot of really complex [issues]; but for the average person, for most taxpayer, it's pretty simplistic. Where was it sourced? And keep

in mind, viewers, this doesn't mean just because you have a foreign tax credit, you still, for example, if you had someone working abroad and they qualified, they could take the foreign earned income exclusion. So, that can be taken also. And then, of course, you wouldn't be paying any U.S. tax on that, so you wouldn't be getting a credit for that.

One of the issues that I think also is you mentioned you have to pay foreign income tax because it's an income tax credit. But there's a lot of countries out there that have other types of taxation, but yet you still can get... So, there's this concept out there, "in lieu of an income tax." What does that mean and what do our viewers have to look at if they have, for example, a business has a tax and you go well, this isn't an income tax. Maybe you still get the credit, right?

Ms. Stasaityte

Right. So, this is another area where there have been a lot of developments in the last year because the IRS issued regulations in December 2021 or January 2022 depending on when they published it exactly. And they're really revising the definition of what is considered income tax and gets into the technical details. And what they're really trying to achieve there is that they're trying to say that it has to be an income tax, meaning that you take your gross revenue, you subtract expenses, and you're left with your net income. And that net income is your tax base, which is then multiplied by whatever tax rates the foreign jurisdiction applies. But they're really trying to squeeze it into the, almost like U.S. tax principles. And there is a lot of controversy about it; and a lot of multinational companies are very unhappy about it; and they've been lobbying against it because it forces a lot more work on the tax preparers to go out and figure out how does the foreign jurisdiction tax. You really need to understand the tax laws. You really need to look into the tax returns. You really need to figure out almost like the entire legal basis of the foreign restriction, which for an average accountant is mission impossible.

But generally speaking, what you look at is that it's an income tax, as I mentioned, gross income less expenses equals net income multiplied by a tax rate. That's your tax. So, what is not an income tax that definitely doesn't qualify? Your sales taxes or what's very popular in Europe, which is VAT, value added taxes, or things like real estate taxes, inheritance taxes, import duties, tariffs, etc. Those kinds of things would definitely not

qualify for income tax credit. But you also need to look at and make sure that your tax doesn't include things like interest or penalties if you filed it late or if you didn't file it quite correctly and you got assessed a tax later on. So, you have to discount interest and penalties as well. And it also has to be nonrefundable, which really means that if you could file a petition, even if you have to wait five years for the bureaucracy to move its wheels, if you could file a petition and get a refund out of it, it's not creditable tax. It has to be legally imposed and legally due, and you have to actually pay it.

Mr. Redpath

Wow. I mean, so it seems common sense, but it's a little more complicated. So, we've talked about foreign-source income. We've got a great table here on foreign-source income. We have a slide. I don't want to go over all of them, but can you summarize some of the important ones here on this slide for our viewers?

Ms. Stasaityte

Right. I guess the two main groups are the business income, which is where you either provide services or sell your inventory to someone else. And those, as I mentioned before, the service income depends on where the services are performed, and that's where your people are, where your employees are. For sale of inventory, that's two different rules depending on whether you're just simply reselling the inventory at that point is just where the title passes. Essentially, based on your shipping terms, if the title passes in the United States, it's United States-source income. If title passes upon delivering in a foreign country, it's going to be foreign-source income. If you're producing inventory, you look at to where the production takes place; and there, you could have a mixed result if say, for example, you've started the production in one country, imported it to another country, and then finished it. So, you could have some sort of allocation between the two countries based on how much production takes place in the two countries. And as you can guess, it can get hairy and complicated....

Mr. Redpath

We have.... Okay, I'm sorry, go ahead.

Ms. Stasaityte

So, the other items that are most popular are interest and dividends. Really, you are looking at who paid it and where that company is located. And then, a bunch of

other things related to physical objects like rents, real estate items are looking to where the property is located.

Mr. Redpath

We have an example here. Could you go over this example for us, Renata?

Ms. Stasaityte

Sure. So, it's an example of somebody who imports raw materials; and in this case, it's Mexico. And then, we are manufacturing a component part in Michigan, in the United States. And then, we are selling the part to a customer out in Canada and we're charging a one-time installation fee of \$200. And that installation happens on the customer's premises in Canada. So, the question is what do we do with that revenue of \$1,200? How do we source it? And we really need to look into the component parts of it. The piece that is completely irrelevant in this case is the raw materials from Mexico. We don't really care; unless it happens to be a related party, then things might change. But if it's unrelated party, we don't really care where you got your stuff, who your suppliers are. Where we care is, because this is a manufacturing operation, we care where the production takes place. We're producing an item in the United States, so the sale of the item is U.S.-source income. So, \$1,000 is U.S.-source income. And then, there's that installation fee, which is a service, right? So, that service is where it's being performed; and if it happens on the customer's premises out in Canada, that's Canadian-source income. And we could get a foreign tax credit if, for some reason, we paid any taxes in Canada on that \$200 or something else.

Mr. Redpath

Now, let me ask you a question. What if Canada says oh no, no, that inventory is Canadian-sourced, and the U.S. says it's U.S.-sourced. So, if the U.S. is saying it's U.S.-sourced, then you're not going to be able to get a foreign tax credit.

Ms. Stasaityte

Correct.

Mr. Redpath

But if Canada, they said it is Canadian-sourced, they could say well no, you have to pay tax here in Canada on it. So, what happens in that circumstance because under the U.S., you're not entitled to a foreign tax credit.

Ms. Stasaityte

Right. So, you might look into the tax treaty and see if there's anything in there that can help you. In this specific case, there is a tax treaty with Canada. If there isn't, there are going to be situations where you will end up paying double tax in both countries; and there's not much that can help you with that. Real life example, I had issues with Brazil where there were capital gains on the sale of a Brazilian corporation. Brazil taxes that gain because they're saying you sold a Brazilian corporation, that's Brazilian-source gains. We're taxing you there. U.S. says capital gains are sourced to where the person lives, and the person lived in the United States. So, they were saying it's U.S.-source income. There is no tax treaty between Brazil and the United States. That doesn't help us. We do end up paying tax in both countries. And there is, unfortunately, not much that can be done. That tax that you paid in Brazil, you could get it as a credit if you had any other Brazilian-source income.

Mr. Redpath

So, the credit is a credit against the U.S. tax; but you can't get a credit for greater than what you actually paid the foreign government, correct?

Ms. Stasaityte

Correct.

Mr. Redpath

So – you're paying the higher, whichever. If the U.S. is higher, that's the amount that you're ultimately going to pay. If the foreign jurisdiction is higher, it's just a question of who gets it, right? The foreign jurisdiction or the U.S.

Ms. Stasaityte

Correct, yes.

Mr. Redpath

We have an example here on the foreign tax credit formula. Could you go over that one for us, Renata?

Ms. Stasaityte

Sure. The idea here is that you compute your total taxable income under the U.S. tax principle. So, that's the total column here. We're starting with \$100,000. We're subtracting some deductions, coming up with taxable income; and we're just going to assume 20% tax

rate. What we need to do to figure out the foreign tax credit, we need to break out those income and deductions into what is considered U.S.-source and what is considered foreign-source income and deductions. And we need to compute the split of the taxable income based on what's U.S. source and what's based on foreign source. And then, we need to compute the tax liability that would be due on the foreign-source income, taxable income that's being determined under U.S. tax principles, and see how much tax U.S. would impose on it. And then, in this case it's \$7,000. And in this example, we paid \$8,000 of foreign taxes to a foreign jurisdiction on some foreign income. So now, we have the leftover of \$1,000, which we cannot use because foreign tax credit is not refundable. It's limited to U.S. tax liability that would be due on that income. And then we can carry forward that \$1,000 for 10 years. Maybe we'll find we'll get more of foreign-source income from somewhere else and are able to utilize that credit.

Mr. Redpath

So basically, it's the foreign-source income over the worldwide income times the U.S. tax.

Ms. Stasaityte

Correct.

Mr. Redpath

Not to exceed what you actually paid that foreign government, correct?

Ms. Stasaityte

Correct.

Mr. Redpath

So, I know that there's some additional complexity here. What about, for example, qualified dividends, things of that nature? Some of the complexity in determining those things, what should our viewers be looking for?

Ms. Stasaityte

Right. So, this is a super basic example. But where the complexity comes in is that you need to determine the foreign-source income. You need to determine the foreign-source deductions. And a lot of people forget about it that you really need to also portion all of your deductions. So, even things like standard deduction get

apportioned to some of the foreign-source income. And say, for example, for dividends, for qualified dividends, what happens is that you don't just take foreign dividend and say oh, total dividend is my entire foreign-source income. You have to account for the tax rate differential between the maximum 35 or 37% tax rate that's in the U.S. and the 15 or 20% rate that you pay on the foreign tax dividends. So, there is a mathematical formula ratio that you need to apply to your dividend income before you get to the what's your gross income in the foreign-source column. Some other complexities here, just as an example, is what happens if you have a loss in any of these columns, in total, U.S. source, or foreign source? There's a whole separate NOL almost carryforward schedule that you have to keep to compute your future U.S.-source or your future foreign-source income, taking into account that NOL carryforward, which is just for this purpose. You might not have an overall NOL.

Mr. Redpath

So, we've talked about overall foreign tax credit, but it gets a little more complicated than that because that's the simplistic, and that overall applies to everybody. But then, we've got the baskets.

Ms. Stasaityte

Yes.

Mr. Redpath

And the issue of, well the baskets, so you have within that overall limit, there's also internal limits within baskets. So, we have a number of baskets. We have a slide on that if you can go over them; because a lot of times, you just hear while the major baskets is all people talk about, but there are a lot of different baskets. And one of the problems is the ability, you can't take that excess credit from that example and move it into a different basket of income, right?

Ms. Stasaityte

Correct. So, where it gets really nitty-gritty complicated is that, so you take your U.S.-source column, you leave that be; but the foreign-source column, you have to divide it into the baskets. And there's what? Seven, I believe, baskets overall. By far, the most popular ones, the most common ones, are the passive category. So, that's for all of your investment income type, all your interest and dividends will go there. And then, there's the general category, which the way it's written, it's a

leftover category, everything that didn't fit anywhere else. But in real life, what ends up in there is the business-type income. So, if you have a business that's doing activities outside of the U.S., that income will end up in the general category.

The other things that you sometimes see is the GILTI category, which is a very unique category because that's one category that doesn't allow you any foreign tax credit carryovers or carrybacks. Then, you have the foreign branch category, which is really, if you have a disregarded entity abroad, income of that disregarded entity will fall into the branch category. And that's a pretty new development, again, with the TCJA.

Mr. Redpath

But it's not going to fall into that general category, correct?

Ms. Stasaityte

Correct.

Mr. Redpath

So how you're doing, how you've structured your business can tell you which category that might go in.

Ms. Stasaityte

Right. What really happened is that TCJA essentially split the general category into the general and then the branch category. And then, there are three others that we really don't see a whole lot is sanctioned countries, which is right now just four of them—Iran, North Korea, Sudan, and Syria—which just don't allow foreign tax credits, period. And then, you have some specific circumstances if you're using a tax treaty to resource income. So, if you, for example, have capital gains and you want to change the source of it you can do that, but it ends up in its own category. It doesn't end up in the passive bucket. And then, there's some very specific rules for pension plans.

Mr. Redpath

So, are we applying, essentially, that same formula overall? Are we applying that also, is it the same formula we would use in each of our baskets?

Ms. Stasaityte

Correct.

Mr. Redpath

But applying it to the income in that basket.

Ms. Stasaityte

Correct. So, you really need to break out that foreign-source column into seven other columns and apply the same limitation per each column. And just talking about developments in this area, what they're even further talking about is dividing those columns into by-country columns. Right now, everything ends up in the same category, and you're supposed to show it by country; but at the end of the process, it doesn't really make a whole lot of difference. But there are proposals out there to even further granularly break it down and show it by country and have those limitations applied by country. It's not there yet. I'm hoping it's not going to get there because it's already way too complicated.

Mr. Redpath

So, let me ask you this then. Let's go back to that example with the \$1,000. You had a \$1,000 excess credit. And you said you carry it back, and then you have a carryforward. But when you carry it back or forward, does it stay in the basket that it was in, or does it now just become a general against the overall limit?

Ms. Stasaityte

No, it very much stays in the same basket that it was originally from. And the whole reason for these baskets is to really limit how much credit people can take. So, it's not a taxpayer-friendly provision by any means.

Mr. Redpath

I see people come in, and they get all confused. They'll have a broker statement, and it'll say something about, usually Form 1116. And then, they'll go, "Well, where's 1116? Where are you filing that?" "Well, you don't have to file it for this case." So, can you explain that because I know sometimes people get confused because it'll say on the broker statement that an 1116 is required. So, how do you report the foreign tax credit?

Ms. Stasaityte

Right. Individuals and trusts file Form 1116. Corporations file Form 1118. And the idea, and those forms are complicated and intimidating because there's a lot of complexity built into there. But it's trying to get to the same result where we are trying to break it out into the different baskets, into the different columns,

and apply the limitations separately over there. One thing that I find a lot of people appreciate is that for small taxpayers, for small individual taxpayers who only have less than \$300 or \$600 if they're married filing jointly, foreign taxes paid that are coming from a 1099 or a K-1 or some sort of payee statement. If you have that and it's less than \$300, you don't actually have to file the form. You can just claim the tax right there on the 1040, on the foreign credit line, up to the amount of tax that you actually paid. So, I like that because it eliminates a bunch of pages from the return, and it also doesn't apply any limitations. I see a lot of returns that if you go through the foreign tax credit limitations and they get disallowed, they pay \$200 in foreign tax credit and they get disallowed \$10 of it, which you don't have to track, carry forward, you don't have to do that. There's a way to just claim up to \$300 or \$600 if married filing joint.

Mr. Redpath

And that's the one where I was saying people go, "Well, I have to file this form." No, you don't if it's a smaller amount. What about the baskets? Do you have to file a separate form for each basket, or is it all just combined onto one?

Ms. Stasaityte

It's a separate form per each basket. And what even gets more complicated if you are subject to AMT, the alternative minimum tax, you might even have a second form for the same basket just for AMT purposes. So, as I said, if you start filing these forms, your software will produce a whole lot of pages for the regular tax, for each basket, then for AMT, then supporting schedules. So, it can easily be 20 pages of stuff.

Mr. Redpath

Now, foreign taxes would pass through to the owners of partnerships and S corps. And in 2021, we got these new schedules, K-2 and K-3. Can you briefly tell us what those are all about?

Ms. Stasaityte

So, it's something new that the IRS introduced and it's all good intentions. They're trying to standardize how foreign information is being reported to taxpayers because everyone did their own thing before and was all over the place. So, good intentions, execution is... Because if you look at those schedules, they're like 20 pages long. It has a lot of information, way more

detailed than anyone expected. But what it's really trying to do is really trying to break down all of the income and all of the deductions into those seven columns, into the U.S. source and then the different foreign baskets and then say, okay, how much tax was paid on which column? So, they're really trying to facilitate the preparation of foreign income tax credit, Form 1116, by the individuals. How successful in their efforts? I mean, to be seen. I see a lot of partnerships really struggling to complete that information accurately and completely. But it's also the first year. We're all still learning about it. I'm hoping it will get smoother as we go along because the idea is there. If it's used correctly, it's really helpful. It's just, unfortunately, the form is way too complicated and way too long.

Mr. Redpath

Foreign tax credit, complicated. Who would've guessed, right?!

Renata, I really want to thank you for being here. You've really given us a lot of great insight into the foreign tax credit. It really is something that I think practitioners more and more are going to become involved with as businesses and individuals have foreign income. So, Renata, thank you for being here. I really appreciate it. We'll have you on another program soon. Thanks a lot.

Ms. Stasaityte

Thank you so much.

SUPPLEMENTAL MATERIALS

Basics of the Foreign Tax Credit

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

A. Introduction

The United States taxes its citizens and residents on their worldwide income. This is also applicable to U.S. corporations and businesses that generate foreign-sourced income. Because of this jurisdiction to tax issue, many taxpayers find themselves subject to tax in more than one country on the same income. To alleviate this double tax problem, the United States provides several methods to reduce the tax burden. The available method depends on the type of taxpayer and the type of foreign tax that was paid.

For federal, but not generally state purposes, taxpayers may take either a deduction or a credit for certain foreign taxes paid or accrued during the year.

Individuals may also potentially take advantage of the Foreign Earned Income Exclusion.

A deduction is only worth the taxpayer's tax bracket. For example, a corporation that takes a \$100 deduction has a reduction in tax of \$21 (\$100 x 21%). For individuals taking the Foreign Earned Income Exclusion, that income is not taxed in the U.S.; so, the savings depends on the taxpayer's tax bracket. On the other hand, taking the Foreign Tax Credit will reduce the taxpayer's tax on a dollar-for-dollar basis. It must be determined on a case-by-case basis, which is most beneficial.

B. Foreign Earned Income Exclusion

Many countries tax based on either residence of the taxpayer, source of the income, or both. The United States used worldwide income for citizens and residents. The result for persons subject to U.S. tax working abroad is that they may be subject to double tax. To encourage companies to employ U.S. workers, even abroad, and in fairness to those who may just work abroad, Congress added a Foreign Earned Income Exclusion under §911. Taxpayers can elect different treatment of the income. They can include the foreign earned income from their taxable income and then claim a deduction or credit for foreign taxes paid or to exclude up to \$112,000 (2022 amount) of foreign earned income from their U.S. return. It should be noted that the tax on the income in excess of the exclusion is taxed at the marginal rate that would have applied if the exclusion had not been used.

As the title suggests, this is a narrow exception that applies only to Foreign Earned Income. Generally, that is earnings from the individual's personal services rendered in a foreign country except as an employee of the U.S. Government. There are certain requirements that must be met to qualify for the exclusion. The taxpayer must be either:

- A bona fide resident of the foreign country (or countries), or

- Present in a foreign country (or countries) for at least 330 days during any 12 consecutive months.

The exclusion could straddle two tax years since it is "any 12 consecutive months." When that happens, the exclusion must be computed on a daily basis. The tax on the income in excess of the excluded amount is taxed at the marginal rate that would apply without the exclusion (i.e., as though the excluded income were included in taxable income). In addition to the income exclusion, certain employees can also exclude or deduct a foreign housing amount.

Example: Jade qualifies for the foreign earned income exclusion. She was present in Spain for all of 2022. Jade's salary for 2022 is \$120,000. Because all of the days in 2022 are qualifying days, Jade can exclude \$112,000 of her \$120,000 salary. Assume instead that only 342 days were qualifying days. Then, Jade's exclusion is limited to \$104,942, computed as follows:

$\frac{342 \text{ days}}{365 \text{ days}} \times \$112,000$	$= \$104,942$
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Example: Pam is not married and had taxable income of \$30,000 after excluding \$112,000 of foreign earned income. Without the benefit of the exclusion, her

taxable income would have been \$142,000 (\$30,000 + \$112,000). The tax on the taxable income of \$30,000 is calculated using the marginal rate applicable to income between \$112,000 and \$142,000, which is 24%.

The taxpayer may elect to take a deduction or a Foreign Tax Credit in lieu of the exclusion. Once an election is made, it applies to all subsequent years unless affirmatively revoked. A revocation is effective for the year of the change and the four subsequent years. The election can be made:

- 1) with a timely filed return (including extensions),
- 2) by amending a timely filed return, or
- 3) on a delinquent return filed within one year after the due date of the return (determined without regard to any extensions).

For delinquent returns filed more than one year after the original due date (excluding extensions), the exclusion election can be made (1) on any late return if the

taxpayer owes no federal income tax after considering the exclusion, or (2) on any late return filed before IRS discovers that the taxpayer failed to make the exclusion election if the taxpayer owes federal income tax after considering the exclusion. If an exclusion election is made on a late return filed more than one year after the due date excluding extensions, the taxpayer must place the following statement at the top of the first page of Form 1040: "Filed Pursuant to Reg. §1.911-7(a)(2)(i)(D)."

The election is made by attaching Form 2555, *Foreign Earned Income*, or a comparable attachment to the Form 1040. Although technically not an election, a taxpayer who decides to deduct his foreign housing cost amount instead of claiming the exclusion also uses Form 2555 to compute that deduction. [§911(a); Reg. §1.911-7(a) and Reg. §1.911-7(b)]

C. Deduction

The deductibility of business-related and non-business-related foreign taxes is governed by the rules of §164. For tax years beginning after December 31, 2017, and before January 1, 2026, for individual taxpayers, the deduction for nonbusiness foreign (as well as nonbusiness state and local) taxes is subject to the following limits:

1. foreign real property tax that isn't paid or accrued in carrying on a trade or business or in an activity described in §212 may not be deducted at all; and
2. the aggregate deduction for nonbusiness state and local real property taxes, state and local personal property taxes, state and local, and foreign, income,

war profits, excess profits taxes, and (if elected) general sales taxes for any tax year is limited to \$10,000 (\$5,000 for marrieds filing separately). The \$10,000 doesn't apply to: (i) foreign income, war profits, and excess profits taxes; (ii) state and local, and foreign, real property taxes; and (iii) state and local personal property taxes—if the taxes listed in (i) through (iii) are paid or accrued in carrying on a trade or business or in an activity described in §212. For tax years beginning after December 31, 2025, in determining taxable income, deductions for certain foreign taxes, whether or not they're paid or incurred with respect to a trade or business may be deductible.

D. Foreign Tax Credit (FTC)

The FTC is a tax credit against U.S. tax for citizens and residents who pay income taxes imposed by a foreign country or U.S. possession. The credit is the lesser of the foreign tax paid or the U.S. tax on the foreign-source income. If you opt for the tax credit, it is determined on Form 1116, which is attached to the taxpayer's U.S. tax return.

Foreign taxes on income, wages, dividends, interest, and royalties generally qualify for the foreign tax credit. If you paid taxes to a foreign country or U.S. possession, it most likely is also subject to tax in the U.S. The exclusion only applies to individuals and is limited to "earned" income and limited in application—

the time rules and cap amount. The deduction is only as good as the tax bracket for the taxpayer and, in some cases, for individuals and may not be deductible currently. The FTC provides relief for taxpayers on income taxes.

To get the credit, taxpayers at a minimum need two items:

1. Foreign-source income, and
2. Income taxes paid to a foreign jurisdiction.

Income sourcing rules are a very complex area full of exceptions. Generally, the rules are found in §§861 through 865. Each income type has a different rule, and there is no “overriding general rule” or shortcut. If foreign sourcing cannot be shown, the default is to treat income as U.S.-source and thus not subject to the credit—even if it is taxed by the other jurisdiction. Here are some common approaches to sourcing:

Income type	Generally sourced to
Business income: Personal services	Where services performed
Business income: Sale of inventory – purchased	Where sold (where title passes)
Business income: Sale of inventory – produced	Where produced (allocation may be necessary)
Interest	Residence of payor (not the recipient)
Dividends	Residence of payor
Guaranteed payments: Services	Where partner performed services
Rents	Where property is located
Royalties: Natural resources	Where property is located
Royalties: Patents, copyrights, etc.	Where property is used or permitted to be used
Sale of real property	Where property is located
Sale of personal property: Non-depreciable	Seller's (partner's) tax home (different from residency for tax purposes)
Sale of personal property: Depreciable	Where sold (separate rules for amounts related to depreciation recapture)

Example: DEF LLC imports raw materials from Mexico to manufacture component parts of precision equipment in its plant in Michigan. It sells one part to a customer in Canada for \$1,000. It also charges a one-time installation fee of \$200 (work done by DEF employee on customer's premises in Canada). What is the source of \$1,200 of DEF revenue?

Analysis:

- Source of materials and supplies is irrelevant;

- Since DEF produced inventory in the U.S., the sale of the part for \$1,000 is U.S.-source income; and
- Since DEF performed installation services in Canada, the service fee of \$200 is Canada-source income.

Generally, only income, war profits, and excess profits taxes are eligible for the credit. There is a concept of “in lieu of,” which is that the tax is not in an income tax regime, but the U.S. allows it as a creditable tax.

Foreign taxes on wages, dividends, interest, and royalties also qualify. The Regulations issued in December 2021 [TD 9959] modify definitions of what is considered “income tax” and excludes value added tax (VAT), sales tax, tariffs, import duties, real estate taxes, etc. These were the third set of final regulations that have been issued with respect to the core provisions of the FTC regime following the 2017 Tax Cuts and Jobs Act. The Final Regulations provide guidance in the following areas:

- the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction under Section 245A;
- the allocation and apportionment of foreign income taxes, interest expense, and certain deductions of life insurance companies;
- the definition of a foreign income tax and a tax in lieu of an income tax, including a new attribution requirement (previously the 'jurisdictional nexus' requirement);
- the definition of foreign branch category income; and
- the time at which foreign taxes accrue and can be claimed as a credit.

The regulations also contain clarifying rules relating to foreign-derived intangible income (FDII). The 2021 Final Regulations affect taxpayers that claim credits or deductions for foreign income taxes or that claim a deduction for FDII.

The 2021 Final Regulations are among the most significant developments in the FTC regime since its inception. They fundamentally change the definition of what is a creditable foreign income tax under §§901 and 903. The regulations are expected to significantly reduce the amount of FTCs that taxpayers may claim. On July 26, 2022, Treasury released corrections (2022-15867 and 2022-15868) to the final foreign tax credit (FTC) regulations. The corrections address 'substantive issues' under §§245A, 338, 367, 861, 901, 904, 905, 951A, and 960, including clarifying the cost recovery requirement of the definition of a foreign income tax. On July 26, 2022, Treasury released corrections (2022-15867 and 2022-15868) to the final foreign tax credit (FTC) regulations that were published on January 4,

2022 in the Federal Register (2021 regulations). The 2022-15867 corrections address 'substantive issues' under Sections 245A, 338, 367, 861, 901, 904, 905, 951A, and 960, including clarifying the cost recovery requirement of the definition of a foreign income tax. The 2022-15868 corrections address 'drafting issues' in the preambles addressing regulations under Section 861, 901, and 903.

The 2021 regulations address, among other things, the definition of a foreign income tax and a tax in lieu of an income tax; the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a §245A dividends-received deduction; the allocation and apportionment of interest expense, foreign income tax expense, and certain deductions of life insurance companies; the definition of foreign branch category income; and the time at which foreign taxes accrue and can be claimed as a credit. The corrections are effective July 27, 2022.

In addition, the taxes must be:

- legally imposed by a foreign country or its subdivision,
- not refundable, and
- not a penalty or interest.

The FTC is limited to the lesser of the U.S. tax that would be imposed on the foreign-source income or the actual amount paid the foreign jurisdiction. If foreign tax is higher than U.S. tax, there will be excess credit that can be carried back one year or forward for 10 years. If foreign tax is lower than the U.S. tax, there will be a U.S. income tax due on the balance.

The formula is:

FTC =	$\frac{\text{Foreign Source Income}}{\text{Worldwide Income}}$	X U.S. tax on the foreign-source income
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This is limited to the actual taxes paid the foreign jurisdiction.

Example:

	Total
Gross income	100,000
Less: deductions	(15,000)
Equal: taxable income (Form 1040, line 15)	85,000
Tax (assume 20%) (Form 1040, line 16)	17,000
Foreign tax paid	8,000
Foreign tax credit allowed	(7,000)
Net U.S. income tax	10,000

U.S.-source	Foreign-source
60,000	40,000
(10,000)	(5,000)
50,000	35,000
10,000	7,000
	8,000
	(7,000)
10,000	0

The excess of the \$8,000 less the \$7,000 or \$1,000 can be carried back one year and forward 10 years.

The foreign tax credit formula is complex and nuanced. For example: Foreign-source qualified dividends and long-term capital gains need to be reduced to account for the preferential 15%/20% tax rates in the U.S.

Example: Cindy received \$10,000 in qualified dividends from Alibaba. Assuming this income is subject to 20% federal rate, she needs to multiply the dividend by 0.5405 (= 20%/37%) and enter \$5,405 as her gross foreign-source income.

If there is an overall loss in the U.S.-source or foreign-source column, the loss creates overall foreign loss or overall domestic loss accounts that impact future foreign tax credit calculations.

Example: Tom has a rental property abroad. In 2020, the rental incurred a loss of \$10,000 which was deducted against other income on Tom's Form 1040. This \$10,000 loss creates overall foreign loss which is carried forward. In 2021, the rental earned \$3,000 of profit. This income needs to be reduced by \$1,500 of losses from 2020. Therefore, for 2021, Tom has only \$1,500 in foreign-source income for foreign tax credit calculation purposes.

The foreign-source column is further subdivided into "baskets" or separate categories of income. The formula is applied to each basket using the foreign-sourced income in the basket. The carryback/carryover

is within the basket. The result is there is no cross-crediting where an excess credit from one basket can offset tax from another. The baskets are:

1. Passive income (investment-type income)
2. General income (active business-type income)
3. Section 951A income (GILTI income from Controlled Foreign Corporations)
4. Foreign branch income
5. Section 901(j) income (income from sanctioned countries: Iran, North Korea, Sudan, Syria)—no foreign tax credit is allowed
6. Income re-sourced by treaty
7. Lump-sum distributions from a foreign pension plan

As mentioned earlier, the FTC is claimed on Form 1116 (individuals, trusts, and estates) and Form 1118 (C corporations). Separate forms need to be filed for each foreign income basket. In addition, income, deductions, and foreign taxes need to be reported on a country-by-country basis. Partnerships and S corporations pass foreign information to their owners so that the owners can claim foreign tax credit on their returns. In 2021, new Schedules K-2 and K-3 were introduced to partnership and S corporation returns to standardize the

reporting of foreign information. There is an election to claim foreign tax credit without filing Form 1116 if:

- Qualified foreign taxes for the tax year are not more than \$300 (\$600 if MFJ);
- Only foreign-source gross income for the tax year is passive category income; and

- All of gross foreign income and the foreign taxes are reported on a payee statement (such as Form 1099-DIV, Form 1099-INT, Schedule K-3).

The benefit is that no foreign income limitation is applied, and there are less forms and pages in the return.

E. Treaty Benefits

For countries with which the U.S. has a tax treaty, reference should be made to the applicable treaty to determine if there are any specific benefits allowable

under the treaties. Often certain types of (such as dividends, for example) may not be taxed or subject to special rates.

F. Conclusion

When taxpayers pay taxes in more than one jurisdiction, it is important to determine if there is any relief provided by the U.S. tax code. The options may vary; and the rules for the FTC can be highly complex. For practitioners with clients that may be in the situation of having taxation in multiple jurisdictions, a basic understanding of the options and applicable rules is essential both for planning and compliance.

Foreign Tax Credit: Income Sourcing

Income type	Generally sourced to
Business income: Personal services	Where services performed
Business income: Sale of inventory - purchased	Where sold (where title passes)
Business income: Sale of inventory - produced	Where produced (allocation may be necessary)
Interest	Residence of payor (not the recipient)
Dividends	Residence of payor (not the recipient)
Guaranteed payments: Services	Where partner performed services
Rents	Where property is located
Royalties: Natural resources	Where property is located
Royalties: Patents, copyrights, etc.	Where property is used or permitted to be used
Sale of real property	Where property is located
Sale of personal property: <u>Nondepreciable</u>	Seller's (partner's) tax home (different from residency for tax purposes)
Sale of personal property: Depreciable	Where sold (separate rules for amounts related to depreciation recapture)

Foreign Tax Credit: Formula

	Total	U.S.- source	Foreign- source
Gross income	\$100,000	\$60,000	\$40,000
Less: deductions	(15,000)	(10,000)	(5,000)
Equal: taxable income (Form 1040, line 15)	85,000	50,000	35,000
Tax (assume 20%) (Form 1040, line 16)	17,000	10,000	7,000
Foreign tax paid	8,000		8,000
Foreign tax credit allowed	(7,000)		(7,000)
Net U.S. income tax	\$ 10,000	\$10,000	\$ 0

Excess \$1,000 of foreign tax can be carried back one year and carried forward for 10 years

GROUP STUDY MATERIALS

A. Discussion Problems

Your client, Pam, is a citizen of the United States and resides part of the year in New York and part of the year in Spain. While in Spain, she has a job where she anticipates earning \$120,000 in 2022. She also owns real property and pays real property taxes to the local Spanish government. She has some investments in offshore accounts and foreign companies that earn interest and dividends. The Spanish government taxes all of her income. The United States will also tax all her income.

Required:

- 1) Discuss the options in the United States that are available for the taxes in the fact pattern.
- 2) Discuss the taxes that will be subject to the FTC.
- 3) Discuss the overall FTC limits.

B. Suggested Answers to Discussion Problems

- 1) In regard to the taxes paid in Spain, there are different options depending on the type of income. The United States options are, where applicable, to include the foreign earned income and then claim a deduction, take the exclusion, or a deduction for the foreign taxes paid as well as possibly the FTC. Currently, the taxes paid on the real property would not be deductible. The earned income would be subject to the exclusion. It would have to be determined if she meets the 330 out of 365 days presence rule or is considered a bona fide resident of Spain for tax purposes. The additional amount of earned income is taxed at a rate as if the exclusion had not been taken.
- 2) Only certain taxes are subject to the FTC. They are generally income taxes. The real estate taxes are not an income tax regime. The taxes on the earned income, interest, and dividends will be creditable taxes.
- 3) There is an overall FTC limit and internal limits within the “baskets.” There is no cross-crediting within baskets. The annual limit is the U.S. tax on the foreign-source income limited to the amount of foreign tax actually paid on the foreign-source income. If there is an excess credit, it can be carried back one year and forward 10 years and stays in the same basket. Reference should be made to the different types of income and the applicable baskets.

GLOSSARY OF KEY TERMS

Dual-Purpose Communications—Communications which contain both legal and non-legal advice.

Foreign Earned Income Exclusion—A U.S. citizen or resident alien of the United States living abroad may qualify to exclude from income up to an amount of their foreign earnings adjusted annually for inflation. Form 2555 or Form 2555-EZ is used to calculate the foreign earned income exclusion.

Foreign Source Income— A class of gross income arising from within a foreign country.

Foreign Tax Credit— The United States taxes domestic entities and individuals on their worldwide income. This worldwide taxation may result in double taxation of the foreign income (i.e., once in the foreign country and once in the United States). To mitigate this double taxation, a credit against U.S. taxes for taxes paid to foreign governments is allowed. The basic function of the *foreign tax credit* is to prevent double taxation of foreign-source income.

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

New Energy Efficient Home Credit— The IRA reinstates the credit under §45L available for eligible contractors for building and selling qualifying energy-efficient new homes. Qualified new energy-efficient homes acquired before January 1, 2033 are eligible for credits of \$500, \$1,000, \$2,500, or \$5,000, depending on which energy-efficiency requirements the home satisfies and whether the construction of the home meets the prevailing wage requirements.

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.

Value Added Tax (VAT)—Tax assessed on increased value of goods at each point in the chain of production from raw material to final consumption. The tax is levied on the amount the seller increases the value of items they purchase and resell.

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Mathew, Shiny Rachel.....	Jan-Feb	Urban, Greg.....	Sep
O'Sullivan, Brian.....	Feb	Welch, Julie.....	Aug, Oct

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

1. According to Ian Redpath, a taxpayer that has a PPP loan improperly forgiven must do which of the following?
 - A. Include it as a payable
 - B. Include it as a receivable
 - C. Include it as an expense
 - D. Include it in income
2. According to Ian Redpath, the IRS news release, 2022-170, advises that the Independent Office of Appeals has done which of the following?
 - A. Revised their contact letters
 - B. Revised their interest notices
 - C. Revised their penalty notices
 - D. Revised their refund notices
3. According to Ian Redpath, which of the following is generally **not** true regarding payments to college athletes for name, image, and likeness?
 - A. They are deemed to be payments for services.
 - B. They are deemed to be scholarship aid.
 - C. They are subject to income tax if deemed to be compensation.
 - D. They are subject to self-employment tax if deemed to be self-employment.
4. According to Ian Redpath, a John Doe summons was issued to M.Y. Safra Bank for what purpose?
 - A. To investigate corporations that they believe neglected to pay tax on crypto transactions
 - B. To investigate individuals that they believe neglected to pay tax on crypto transactions
 - C. To investigate M.Y. Safra Bank's activities related to cryptocurrency
 - D. To investigate the sFOX platform's activities related to cryptocurrency
5. According to Ian Redpath, which of the following is correct regarding Supreme Court case #21-1397 and dual-purpose communications?
 - A. If the primary purpose of the communication is legal, it is not shielded under attorney-client privilege.
 - B. If the primary purpose of the communication is tax, it is not shielded under attorney-client privilege.
 - C. All dual-purpose communications are shielded under attorney-client privilege.
 - D. No dual-purpose communications are shielded under attorney-client privilege.

Continued on next page

6. According to Ian Redpath and Larry Pon, which of the following is the lifetime limit for the Nonbusiness Energy Property Credit available in 2021?
 - A. \$100
 - B. \$500
 - C. \$1,000
 - D. \$1,200
7. According to Ian Redpath and Larry Pon, which of the following is the lifetime limit for the Nonbusiness Energy Property Credit available in 2022?
 - A. \$1,200
 - B. \$1,000
 - C. \$500
 - D. \$100
8. According to Ian Redpath and Larry Pon, which of the following is the annual limit for the Energy Efficient Home Improvement Credit available in 2023?
 - A. \$100
 - B. \$500
 - C. \$1,000
 - D. \$1,200
9. According to Ian Redpath and Larry Pon, the Residential Clean Energy Credit (RCE) that replaces the Residential Energy Efficient Property Credit has been extended through which year?
 - A. 2025
 - B. 2026
 - C. 2028
 - D. 2034
10. According to Ian Redpath and Larry Pon, what is the maximum home energy rebate that will potentially be available through programs that will be administered by the states within the next couple of years?
 - A. \$15,000
 - B. \$14,000
 - C. \$7,500
 - D. \$7,000

Continued on next page

11. According to Ian Redpath and Renata Stasaityte, which of the following is correct regarding the last-in-time rule?
- A. The Internal Revenue Code always takes precedence over a tax treaty.
 - B. Basic/general rules always take precedence over the Internal Revenue Code.
 - C. A tax treaty always takes precedence over the basic/general rules.
 - D. When internal law conflicts with a tax treaty, whichever takes effect last is the one that is applicable.
12. According to Ian Redpath and Renata Stasaityte, which are the two components needed for a U.S. citizen to obtain the foreign tax credit?
- A. Foreign-source income and income tax paid to a foreign jurisdiction
 - B. Foreign-source income and income tax paid to the United States
 - C. U.S.-source income and income tax paid to a foreign jurisdiction
 - D. U.S.-source income and income tax paid to the United States
13. According to Ian Redpath and Renata Stasaityte, which of the following is correct regarding the foreign tax credit and the foreign earned income exclusion?
- A. U.S. citizens cannot take either the foreign tax credit or the foreign earned income exclusion.
 - B. U.S. citizens cannot take the foreign earned income exclusion but can take the foreign tax credit.
 - C. U.S. citizens cannot take the foreign tax credit but can take the foreign earned income exclusion.
 - D. U.S. citizens might be able to take both the foreign tax credit and the foreign earned income exclusion in the same year.
14. According to Ian Redpath and Renata Stasaityte, which of the following is correct regarding sourcing of income involving reselling inventory?
- A. If title passes in the foreign country, it is foreign-source income.
 - B. If title passes in the United States, the taxpayer has the option to deem it either foreign- or U.S.-source income.
 - C. Regardless of where title passes, it is deemed to be foreign-source income
 - D. Regardless of where title passes, it is deemed to be U.S.-source income.
15. According to Ian Redpath and Renata Stasaityte, which of the following categories does **not** allow any foreign tax credit carryovers or carrybacks?
- A. General
 - B. GILTI
 - C. Passive
 - D. Pension plan

Subscriber Survey Evaluation Form

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

How would you rate the topics covered in the November 2022 **CPE Network® Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Home Energy Tax Credits	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Foreign Tax Credit	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

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

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

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

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	<input type="text"/>	<input type="text"/>	<input type="text"/>
Lawrence Pon	<input type="text"/>	<input type="text"/>	<input type="text"/>
Renata Stasaityte	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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

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

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

Were program materials accurate? Yes ☐ No ☐ _____

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

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

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

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

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

Specific Comments: _____

Name/Company _____

Address _____

City/State/Zip _____

Email _____

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

CPE Network®

Firm/Company Name: _____

Account #:

Location:

Program Title: _____

Date: _____

[illegible]

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

Instructor Name: _____

Date: _____

E-mail address:

License State and Number:

CPE Network/Webinar Delivery Tracking Report

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

[illegible]

CHECKPOINT LEARNING NETWORK

CPE NETWORK[®]

USER GUIDE

REVISED SEPTEMBER 3, 2021

Welcome to CPE Network!

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

This User Guide has the following sections:

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

IMPORTANT: This User Guide outlines in detail what is required for each of the 3 formats above. Additionally, because you will be delivering the training within your firm, you should review the Sponsor Responsibilities section as well. To get certificates of completion for your participants

following your training, you must submit all the required documentation. (This is noted at the end of each section.) Checkpoint Learning Network will review your training documentation for completeness and adherence to all requirements. If all your materials are received and complete, certificates of completion will be issued for the participants attending your training. Failure to submit the required completed documentation will result in delays and/or denial of certificates.

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

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

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

Copyrighted Materials

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

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

Requesting Participant CPE Certificates

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

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

Email: CPLgrading@tr.com

Fax: 888.286.9070

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

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

Incomplete submissions will be returned to you.

“Group Internet Based” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

during the presentation). This can be achieved via the webinar chat box, and/or by unmuting participants and allowing them to speak directly to the moderator.

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

Requesting Participant CPE Certificates

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

Mail: Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008
Email: CPLgrading@tr.com
Fax: 888.286.9070

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

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

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Print

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

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

Thomson Reuters
PO Box 115008
Carrollton, TX 75011-5008

Self-Study—Online

Follow these simple steps to use the online program:

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



the answer company

THOMSON REUTERS

CHECKPOINT LEARNING

Contact Us



Sign In or Register

Home

Search Courses

Products & Services

Support



Search courses

Need to get up to speed on
new revenue standards?

We can help.

Virtual Conference: Nov. 13 – 14

Register Now

Move forward

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



Webinars

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

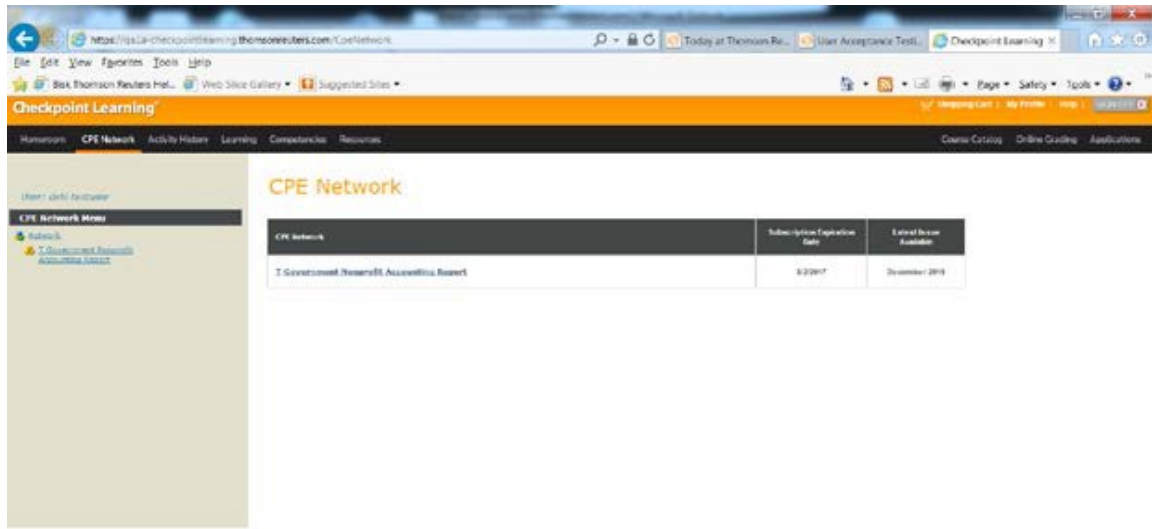


Seminars and conferences

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

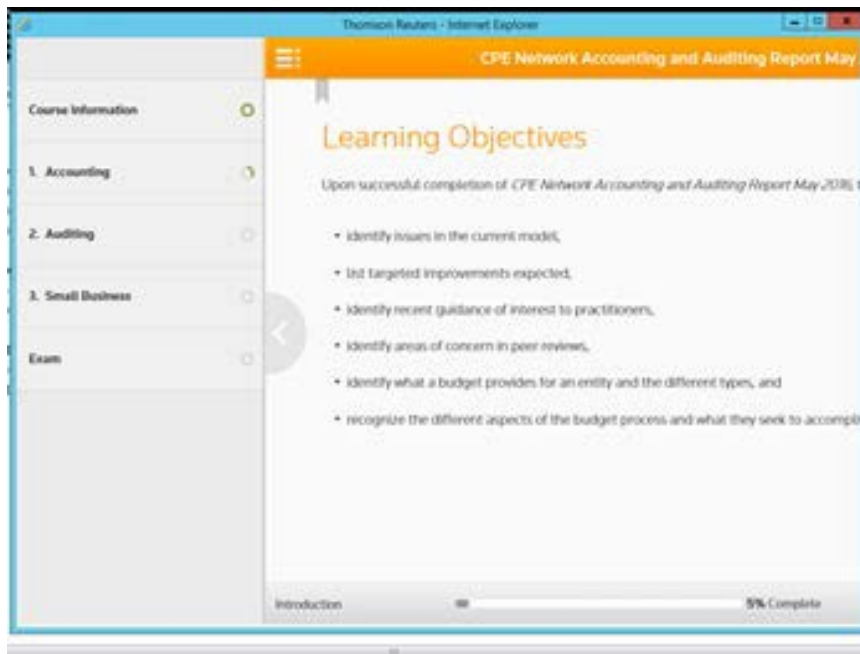


- In the **Network** tab, select the Network Report for the month desired.



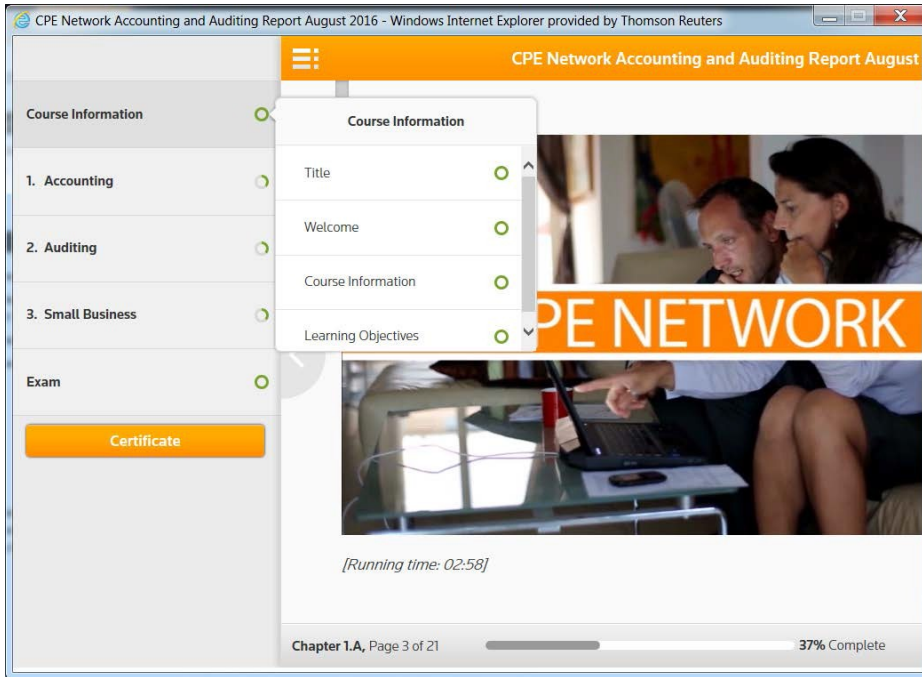
<https://go1a-checkpointlearning.thomsonreuters.com/CpeNetwork/CpeNetworkDetails/Page?SubscriptionId=177994>

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

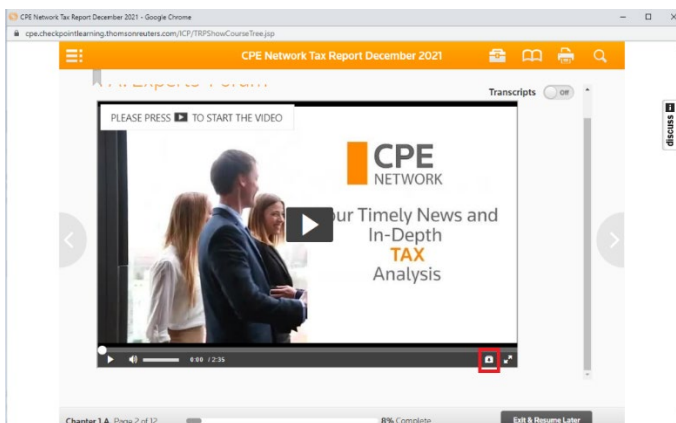


Click down to access the dropdown menu and move between the program Chapters.

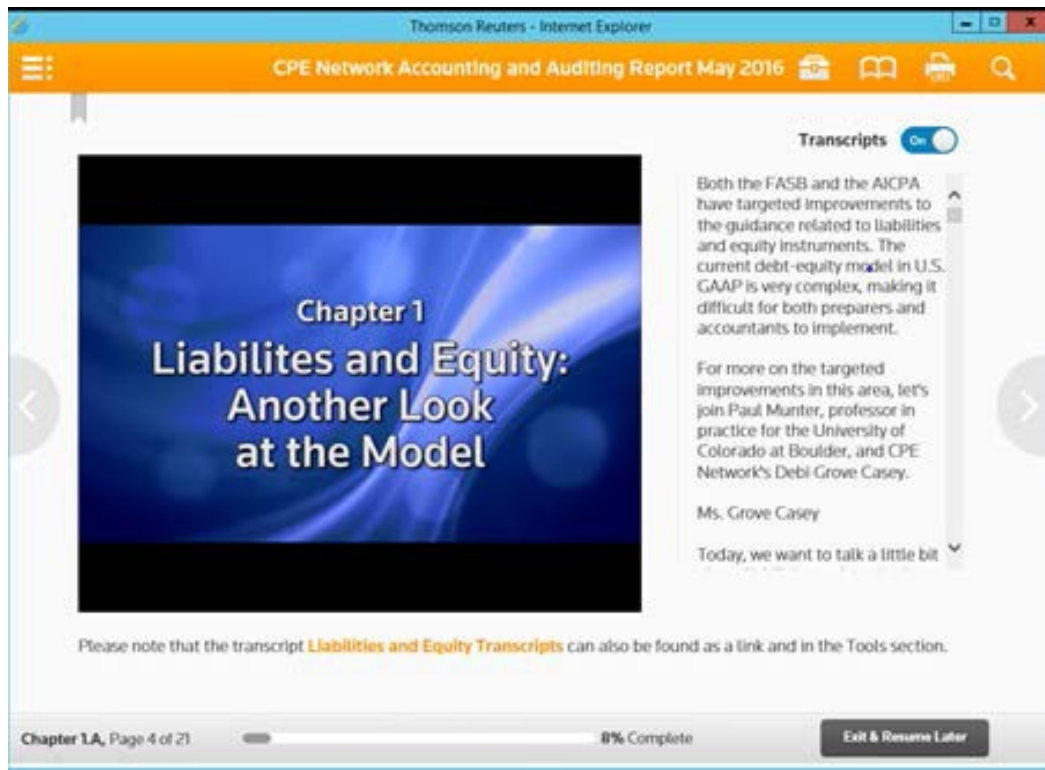
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



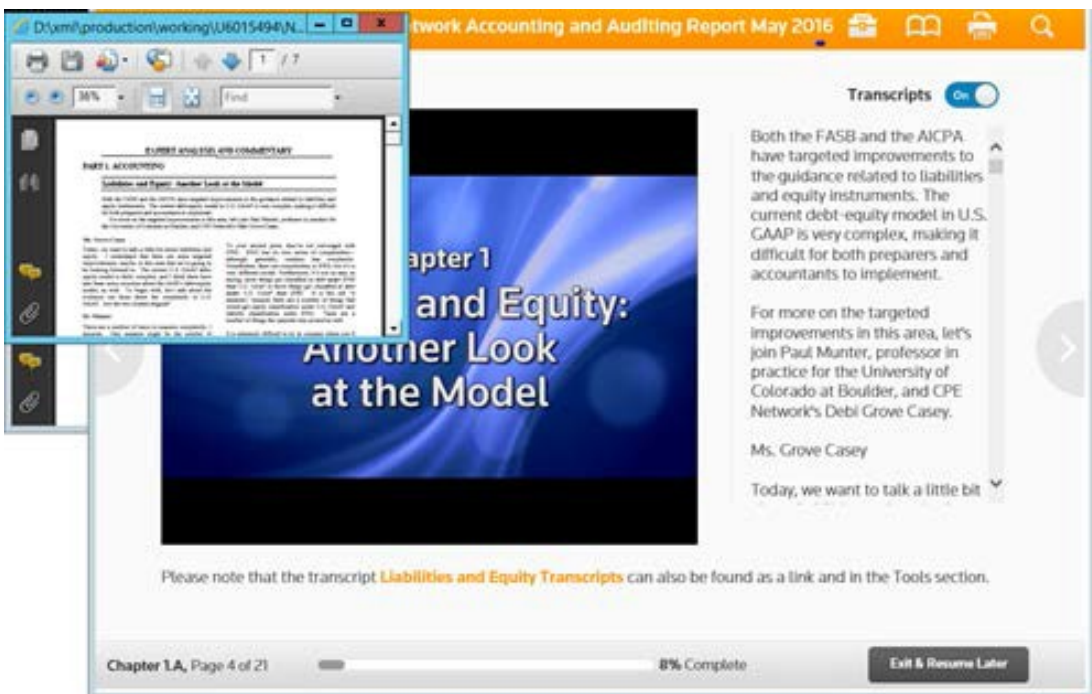
- **Each Chapter is now self-contained.** Years ago, when on the CPEasy site, the interview segments were all together, then all the supplemental materials, etc. Today, each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental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



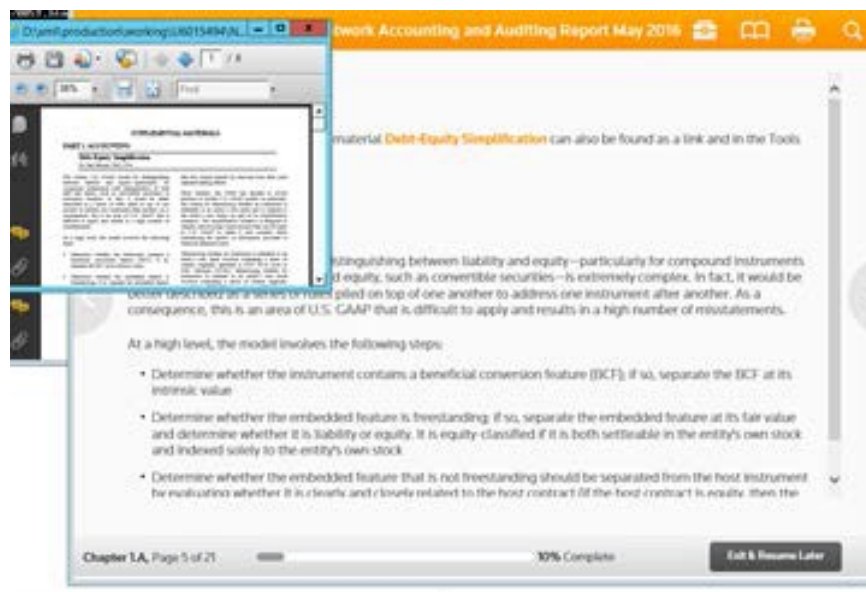
Video segments may be downloaded from the CPL player by clicking on the download button.



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 main content area is titled 'Suggested Answers to Discussion Problems'. It contains three numbered items:

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

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

At the bottom of the page, it says 'Chapter 3.A, Page 20 of 20' and '100% Complete'. There is an 'Exit & Resume Later' button.

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 main content area is titled 'Course Exams Completed'. It contains the following text:

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

At the bottom of the page, it says 'Course, Completed' and '100% Complete'. There is an 'Exit & Resume Later' button.

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

Additional Features Search

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

Search Results are displayed with the number of hits.

Print

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

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

information available in advance:

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

signable format)

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

Appendix: Forms

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

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

Getting Help

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

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