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Topics for future editions may include:

- Net operating losses
- Form 1099K
- Divorce Tax Planning

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EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

EXPERTS' FORUM.. 3

The tax landscape is ever changing with new court cases, IRS actions, and sometimes, legislation. Practitioners need to be cognizant of changes to properly advise clients. This material covers some changes since last month. [Running time: 33:04]

Learning Objective:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including how to: (1) apply the realization concept for income, (2) determine the application of Chevron Deference and (3) analyze the use of partnerships for basis shifting and why the IRS is focused on them.

PART 2. BUSINESS TAXATION

NAVIGATING SOLAR ENERGY CREDITS..... 13

Mike Giangrande reviews solar credits, what property qualifies, and what entities. [Running time: 47:10]

Learning Objective:

Upon completion of this segment, the user should be able to discuss: (1) the types of property to which solar energy credits apply and where the guidance is located, (2) the effect of solar credits on basis, and (3) the maximum output threshold for a project to be exempt from wage and apprenticeship requirements.

ABOUT THE SPEAKERS

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

Mike Giangrande, JD, LLM, is a California licensed attorney and has been a tax practitioner for 25 years. He is licensed to practice before the United States Tax Court, has a B.S. in Accounting, an L.L.M. in Tax from Chapman University, and a J.D. from Whittier Law School with a certificate of concentration in business law. Mike has spent time as an adjunct professor of law and has served as a member of the Orange County Assessment Appeals Board.

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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)	• Basic Accounting and Auditing professional experience
	• Basic Tax professional experience
	• Basic Governmental professional experience
Advance preparation	None required
Course registration and, where applicable, attendance requirements (1)	

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EXPERT ANALYSIS AND COMMENTARY

PART 1. CURRENT DEVELOPMENTS

Experts' Forum

Experts' Forum is a popular feature in which we review recent developments in taxation. This month Ian Redpath looks at the mandatory repatriation tax, the Loper case and Skidmore deference, and the increased focus on partnerships by the IRS.

Let's join Ian.

Mr. Redpath

Hi everybody, welcome to the program. I'm Ian Redpath and this is a segment where we go over things that have happened since the last time we spoke. We have some really interesting things that have happened since the last time we spoke and we're going to focus primarily on three areas. Normally we would be saying Supreme Court and tax cases? The Supreme Court never has tax cases. I mean rarely do they take up a tax issue. Well, here we are. We have two major cases coming out of the Supreme Court.

Some commentators are saying it is the most important decision in the last 40 years relative to the regulatory environment. The other, unfortunately or fortunately, whichever way you want to look at it, the Supreme Court was able to answer the question without getting into what many, many commentators were saying was going to be the key issue to come into this case. What we thought was going to come out didn't really come out the way it was anticipated that it would.

A. *Moore v. United States, Supreme Court* Docket 22–800

Let's start right off with the Moore case. And the Moore case dealt with the mandatory repatriation tax. And I know what you're saying, well, I don't have clients that have the mandatory repatriation tax. So why do I worry about it? Well, the issue that was involved in the case is that, prior to the adoption in the Tax Cut and Jobs Act of this mandatory repatriation tax, there were companies that were having trillions, not millions, not billions, trillions of dollars offshore. They weren't repatriating the profit, so therefore the U.S. was never getting its share of the tax.

Now for those of you who have done any international, you're probably familiar with the concept of subpart F income. Well, in subpart F income, just briefly, if it's a controlled foreign corporation, then the U .S. shareholders on certain types of income, and that's a whole program in itself, will be taxed even though the proceeds, the profits, have not been repatriated. They then adjust, the corporations will adjust the E &P so that when it is repatriated, it's going to come out of a pool of previously taxed income, so it won't be subject to taxation again. But that's not the same for foreign corporations or for income that wasn't subpart F, until the profits are repatriated, that income is not going to be subject to U.S. taxation. And so the U.S. felt that there were trillions of dollars offshore.

One of the reasons was, why repatriate the profit and have it subjected to high rates of tax. They generally do not qualify for the special rates on dividends, and so those would be taxed at the time, 35%. The mandatory repatriation tax says, okay, there's going to be a one -time tax. It can be as low as 8%. And there's a formula in there that it could go up closer to, most of it's a little over 12. We're going to tax it one time, then the profits can be repatriated, not subject to the high rates at that time or even the 21%, not subject to the high rates at the individual level, the high rate of tax, because again, these are not domestic and so, they would generally not be qualified dividends. So there's going to be a one -time tax.

What happened was at the end of 2017 the MRT (Mandatory Repatriation Tax) resulted in a tax bill of a little over $14,000 for the Moores based upon their pro rata share of the KisanKraft's accumulated income. Again, this was what is already offshore from 2006 to 2017. In other words, they were having to pay tax at this reduced rate on their share of the profit being held offshore.

Well, they challenged this and said this was a direct tax, and therefore, had to be apportioned. I it was unconstitutional because it was not properly apportioned under the Constitution. The district court dismissed it. The Ninth Circuit affirmed the district court. And so, now we get to the Supreme Court.

The issue that really a lot of commentators thought this was going to focus on was, okay, let's assume it's an income tax. It's not a direct tax. So there weren't many commentators that felt that the Moores would win on the direct tax issue. However, the issue that did seem to be important was they said, look it's not realized. The Moores had no realization of that. They didn't get anything. They haven't accessed those funds. So why should they have to pay tax on unrealized gains? So why does this basically seem so important? Well, one, when Biden first took office, his green book of tax proposals, and it didn't go anywhere but at least the thought was there, was to tax certain higher income individuals on their unrealized gain. Now there was no discussion what happened with unrealized losses or anything like that, but it was a proposal to tax the unrealized gains. That was the only thing that was discussed of certain wealthier individuals, high income individuals being taxed even though there was no realization event. Now that didn't go anywhere and there was criticism, basic accounting, right? Can't have income if you don't have a realization event. Well, what happened in this case? Everybody thought, well, the realization, will the Supreme Court really say that there doesn't have to be a realization event for income? Well, the Supreme Court didn't answer the question. They said, we don't have to answer that question really because there is a realization event here. They drew an analogy and they said, Congress has chosen to tax these profits much like they do an S-corp or a partnership.

Our clients come in and we try to explain to them why they're paying tax on $100,000 when they only took 20 out of the business. Well, that's your share of the income. The shareholders, the partners paying tax on their share of the income. And they said, that's exactly what this is. So there is a realization event, but the realization event is at the entity level. They've chosen to pass through additional tax on that realization, realized income to the shareholders. Subpart F, the realization is by the company, not by the U.S. shareholders. So they said there is a realization event. When the entity realized the income, there's your realization event.

Now, where does this currently come into play? Well, because the chairman of the Senate Finance Committee, Ron Wyden, has proposed...that individuals with at least $100 million for three consecutive years should have to pay tax on their unrealized gains. That is the so -called billionaire’s tax. So to what extent will that apply? We'll have to wait and see, but we didn't get any clarity on the issue that a lot of commentators thought we would with the Moore case. The clarity is that this idea of passing through the tax as a realization event by an entity is... a concept that the courts are going to recognize. And if you think about it, it really is a pretty good analogy of an S-corp or a partnership because as you know sometimes with your clients when you explain why you have to pay tax when you didn't, I didn't take that amount out. Why do I got to pay tax on that? Well, that's your share of the income. So same concept here.

B. *Relentless, Inc. v. Dept. of Commerce,* Dkt. No. 22-1219, and *Loper Bright Enterprises v. Raimondo,* Dkt. No. 22-451.

Then we have the Loper case. You might say, okay, I've heard about the Loper case and I know it has something to do with Chevron, but it had nothing to do with tax. So why is Ian going to talk about it when it has nothing to do with tax? Well, it does. Yes, it did not have to do with tax regulations, but it had to do with all federal tax regulations and the role of the taxing entity, and more importantly, the role of the court. So why is this an issue? Well, we can go way back. There was a 1944 case called Skidmore, and that's often referred to as Skidmore deference. What does deference mean? Deference means that the courts are going to defer to the administrative agency's interpretation of the statutes. They're going to defer to the interpretation of the entity.

Now, as you know, there's different types of regulations. The legislative regs, the procedural regs, and the interpretive regs. The legislative regs, you know, that's like attacking the law. So how do you know if something is a legislative reg? Well, how are you going to know it's a legislative reg is you're going to look at the statute. And a good example is consolidated returns. If you read the tax code, there's almost nothing in there on consolidated returns, very, very little. However, Section 1502 says the secretary, the secretary of the treasury, who delegates it then to the IRS, the secretary shall promulgate such regulations as shall be necessary to determine the income, deductions, credits, et cetera of the consolidated group. And so, that tells you that the regulations under there are legislative. Now again, you know, there's some constitutional issues because, essentially, Congress is giving its power to the administrative agency because essentially when they pass these regulations, when they adopt them, they become essentially the law. That's why they're called legislative regulations. Very difficult to challenge because those regulations have the force and effect of law. Then we get to the interpretive regs. And procedural regs, dealing with procedural matters, we generally aren't challenging those, but they would fall into the same concept as interpretive regs.

The interpretive regs are the IRS's interpretation. And so when we're doing research to take a position for compliance, for planning, we're going to be looking at the law and the regulations and determining, yes, I can take this position. But sometimes you may find a regulation and you go, well, I don't think this regulation is correct. I don't think it follows the Code. Well, what do you do? Well, deference, you can always say, well, we can go to court.

Well, the courts are going to give deference to the IRS' interpretation. So unless you can prove that the IRS' interpretation is incorrect or unreasonable. Now, how might you do that? Well, one way you might do that is you might do that is by saying, read the committee reports. This is how Congress interpreted that, and the IRS' interpretation does not follow that. All right, that's a pretty good argument to make. But short of something like that, you are not going to be able to challenge that regulation because the courts determined, and this is in the early 1980s, in the case called Chevron, they determined that administrative agencies, when the statute is ambiguous deference should be given to their interpretation.

So we have two things here. Is the statute ambiguous? And then, if it is, deference has to be given to the IRS interpretation. Well, Skidmore, 1944 case, the court simply said, we're going to look at, and we're going to give some heavy weight to the IRS' interpretation because of their experience in the tax law and they've been dealing with these things regularly. They deal with the tax law all the time. We're going to look at that and we're going to determine what weight to give their interpretation, but they're not required to defer to them. The court can use its own judgment. Then we have the Auer case, A -U -E -R, and there's called Auer -deference. But Auer -deference is a little different in that or -deference says that if there is a regulation that is ambiguous, again we're going back to, if it's ambiguous, then deference will be given to the administrative agency, in this case the IRS' interpretation of their own ambiguous regulation.

Now, you know, sometimes things aren't ambiguous. They may not be right, but they aren't ambiguous. QIP property is the perfect example. You may recall that QIP was not subject to bonus depreciation. And the reason was Congress said it was. Congress specifically said it was, except when they wrote the law, they didn't change the number of years for cost recovery of QIP property. It was just a mistake, but it was left at 39. But...the statute is clear that bonus 15 years or less. The IRS said our hands are tied. We can't do anything about it administratively because the statute is unambiguous. It says bonus depreciation, cost recovery 15 years or less, and Congress neglected to change the recovery period on QIP property. Qualified improvement property (QIP), if you're not familiar with the acronym. So what happened?

Well, Congress came finally, and it took a long time, but Congress did come back and they changed that. And they said, okay, it's now 15 years. Now you can be eligible for bonus depreciation. But it's not ambiguous. So the IRS said, yes, even in the committee reports, Congress said this would qualify. We know that was the intent of Congress, clearly the intent, but that's not what they said. It's unambiguous what they said. 15 years or less, this property is 39 years. It doesn't qualify. Congress has to change that. It's unambiguous. So that's what they mean by ambiguity. The IRS can't just come out with their own interpretation when the statute is clearly unambiguous.

So then we get to Chevron. And Chevron, which has been the law since the early 80s, in Chevron, and by the way, it applies to all administrative regulations. So in Chevron, the courts came down and said, if the statute is ambiguous, we are going to give deference to the Internal Revenue Service's interpretation, unless it's clearly erroneous or clearly unreasonable. We're not going to put our judgment, however, over and above the administrative agency, the IRS. The Loper case has nothing to do with the IRS, okay? Nothing to do with tax. But the implication is because it's all federal regulations. So we're looking at this and going, okay, so we have this deference. So when we're looking at something, , I don't agree with the IRS, but can I really challenge it? Should I really take that position, even though I believe it's defensible, it doesn't follow. The law's ambiguous, but the IRS says you can't do that. Now we can go to court and say, the law's ambiguous. This is our interpretation. We have a reasonable interpretation of that Code section. Great advantage that we've got, right? Great advantage that we've got in this particular situation.

Now, you're probably familiar because on many programs in the past, we've talked about how taxpayers have been going after and the IRS has been losing in the court on the issue of especially the extinguishment regs under the APA, the Administrative Procedures Act, where they said, you didn't follow the APA, so that notice, that regulation is invalid. Well, now, and by the way, the courts have been willing to listen to the APA argument. Well, now we've got another argument. So taxpayers have had another win.

We can now go to the courts and say, we don't agree with the IRS' interpretation of that statute. Now remember, the statute has to be determined to be ambiguous. Well, it could be interpreted in different ways, and that's how to look at ambiguity. It could be interpreted in different ways. And this is our interpretation. We think we are correct.

I had a situation once where even the regulation, now this would be Oauer, but the regulation, I looked at the regulation and I said, you know what? I looked at the statute and I thought, yes, the statute, it's a little ambiguous. I looked at the regulation and the regulation, my client fit into both A and B, I thought, but totally different tax results. So I contacted some people at the IRS and I said, what do you think? Where do you think this might fit? And they said, you know, you're right. You've got a unique situation, but it fits in both A and B. They said, I guess we know which one you're going to take. I said, well, obviously the one that's a better situation, the no tax situation. But that's a situation where, not only was the statute ambiguous, but now we go to Chevron, but the IRS's regulations were ambiguous. So now we go to Oauer. So these all have an interplay together. So major case, as far as dealing with the IRS this is probably the most important case we've had since the 80s. Some people say it's one of the most important cases overall in the history of the country. So major, major case. Again, don't dismiss it because it doesn't deal with tax. Yes, it does deal with tax because it deals with the power and deference of administrative agencies, which includes the IRS, includes the regulations of the IRS.

C. Notice 2024-54; Reg – 124593-23; FS-2024-21 and Rev. Rul. 2024-14

Now another area which has come out that you should pay some attention to is the IRS has recently come out with three pieces of guidance. And we know on other programs we've talked about over the years, we've talked about the IRS saying they're going after partnerships. The IRS says they're going after partnerships. The IRS wants to attack partnerships. Well, now they're getting really serious about going after partnerships. In fact, the IRS will now be creating a new associate office exclusively dealing with partnerships, S -Corps, estates and trusts with the primary focus being partnerships. They're getting serious.

In late June, early July, we got three guidances. Notice 2024 -54, a set of proposed regs, and then, revenue ruling 2024 -14. Now, if we put all of these together, I'm not going to go into all the details of all of them. I will leave those for your reading, but essentially, they deal with issues that we've talked about on a number of programs. And I've had a number of questions from viewers on this. And that is, we have a 754 election, 743, 734, the adjustments to inside basis, and normally, we think step up in basis, right? Well the IRS, and they look at different scenarios here, but these all focus on the same thing, basis shifting. Shifting basis from one item to the next. So if I can shift basis from a capital asset to a seven -year asset not a bad deal. We could make a distribution, make a distribution of a high basis asset that's capital so the partner will pay tax as capital gain, but we're going to get a step up in basis in the partnership, the inside basis in assets that are seven -year assets, for example. So what we did was we shifted basis over at little tax consequence.

These go through a number of scenarios where people transfer assets and use 743 and 734 in order to simply shift basis to get a greater tax benefit. And the idea is, in some cases, you can do the shifting with no tax consequence on one side and a great tax benefit to the other by the step -up in basis. All of these, these three, are geared--and by the way, Notice 2024, the IRS just says, we're going to come out with regs, proposed regs. We haven't done them yet, but we are going to come out with them. Then they have two sets of proposed regs. They also are going to identify these shifting transactions as transactions of interest.

What does that mean? It means there's going to be disclosure requirements. Now, right now, what the IRS is saying is, if the net accumulated adjustment is five million or more, and no corresponding level of tax is paid, the step up in basis is five million or more, and there's...little or no tax paid on the other side to correspond with the benefit. All right, you're getting seven -year depreciation. What's the tax benefit? This is all the tax you paid to get that benefit because of the shifting under 743 and 734. So the IRS says you're going to have to report this. And right now they're looking at a five million threshold. That's the current discussion. Don't know exactly what it will be, but they're talking about an accumulated positive adjustment of seven million. So this is going to really change. But then they also look at 732.

And 732 transactions will also be, now 732 are distributions, and as you know, you shift basis over from your interest to the distribution you get. And so, if you are, essentially, doing this to shift a large amount of basis to tax favorable assets, this will become also subject to these rules. Now, what the IRS has said is we're going to adjust the depreciation and one thing that they've said is, look, one party got property, the other party got to step up in basis. Guess what? You can't take depreciation on that step up in basis until the other party disposes of the asset. So they can't sit on the asset and then you currently depreciate. They're paying no tax till they dispose of it. They don't dispose of it for 10 years. And so you're getting a benefit. They don't have to pay any tax on the property that was distributed. So you distribute property and so there's no tax right now because it's not disposed of by the partner But the partnership because of the 734 adjustments, 734(b) is stepping up the basis of its other assets. Oh those are basically seven -year assets. One of the proposals is, okay, then you don't get depreciation until they pick up the income. So they dispose of it, you get it. One of the big emphasis here is related party rules. They look at section 267, not section 318. They look at section 267. Section 318 is generally considered corporate. Now there's also proposals to deal with consolidated or related companies, could be just related companies, related entities. And again, the thing is if this is just something that happened, that's okay. But a lot of emphasis is on related parties. Are you related parties in doing this? Because they look at related parties as one economic unit. So as an economic unit, you and your child, were getting a step up in basis at no tax consequence or low tax consequence.

So, and again, related parties could very easily manipulate 743, 734, and 732 on distributions. So this could have major impact on what we do when we're talking about various partnership transactions. Distributions, a new incoming partner who buys an interest from a third party, and then on distributions. So there's been a lot going on, some major issues since the last time we spoke.

Experts' Forum

By Ian J. Redpath, JD, LLM

A. *Moore v. United States, Supreme Court* Docket 22–800

The United States Supreme Court ruled that the Mandatory Repatriation of Profits tax under the TCJA was constitutional. The Moores challenged the tax claiming that it taxed income that was unrealized and thus should not be considered income to them until "realized". The Court disagreed with the concept that it was unrealized drawing an analogy to partnership and S corporation taxation. According to the Court, the income was realized by the foreign corporation and thus, there was a realization event much like a partnership or S corporation where the income is realized to the corporation or partnership and taxed to the shareholders or partners, even if they did not directly receive any distributions from those entities. Additionally, the concept of Subpart F also relies on taxing US shareholders on income realized by the foreign entity if the income is considered Subpart F income.

Charles and Kathleen Moore invested $40,000 in an Indian business named KisanKraft in 2005, in exchange for 11% of the company's equity. KisanKraft is a controlled foreign corporation (CFC). The company made a profit every year of its existence, and reinvested profits in the business rather than making any distributions to the shareholders. Prior to the passage of the Tax Cut and Jobs Act of 2017 (TCJA) income on such earnings, absent certain provisions of Subpart F, generally did not have to be paid until they were distributed to shareholders. The TCJA changed the treatment to focus on domestic profits, and imposed a one-time mandatory repatriation tax on profits held overseas. The Moores paid the $14,729 in tax owed and challenged the law as being unconstitutional in violation of the Sixteenth Amendment. They claimed that the Sixteenth Amendment imposes a realization requirement for income to be taxed [see *Eisner v. Macombe*r, 252 U.S. 189 (1920)]. The District Court ruled for the government, and the Ninth Circuit Court of Appeals affirmed that decision that there is no realization requirement for taxation of income in the Sixteenth Amendment.

The case did not address the issue most commentators expected as they avoided the realization to the Moores by looking at S corporation and partnership taxation for analogous concepts. Some commentators also felt this would have wide-ranging implications for estate and gift taxes – would that be considered taxing unrealized income? However, it should be remembered that those wealth taxes are under the general taxing power and not the Sixteenth Amendment. A decision should be coming down shortly.

B. *Relentless, Inc. v. Dept. of Commerce,* Dkt. No. 22-1219, and *Loper Bright Enterprises v. Raimondo,* Dkt. No. 22-451.

The Supreme Court ruled on two cases determining the weight of authority to be given to interpretive regulations of the government. While not tax cases, the issue is applicable to all administrative regulations of the government. The Court overturned 40 years of judicial precedent set forth in Chevron (*Chevron, U.S.A., Inc. v. NRDC,* 467 U.S. 837 (1984)). The Court held that the Courts do not have to grant deference to administrative interpretations of ambiguous statutes and the Court should not be limited in their review. This is referred to as the *Loper* decision.

There are two types of deference given by the courts to administrative agencies interpretation of regulations. Auer deference (*Auer v. Robbins*, 519 U.S. 452 (1997) provides that the courts will defer to the administrative agency's interpretation of its own ambiguous regulations unless it is "plainly erroneous or inconsistent with the regulation". This was not at issue here but it could be argued that the ruling would be equally applicable to Auer deference.

The ruling of the Court has fundamentally changed how both federal and some state courts decide cases involving tax regulations where the statute is ambiguous. Chevron Deference provided that, in that situation, the courts will defer to the administrative agencies interpretation of the statute as long as those regulations are based on a "permissible construction" of the statute. With Chevron, the first inquiry is whether the statute is ambiguous. If the statute is unambiguous, the court must simply give effect to the clearly stated intent of the legislature. If the statute is ambiguous, the court previously could not adopt its own construction of the statute; instead, the court must defer to the agency's interpretation if the interpretation is based on a "permissible construction of the statute." This dual inquiry—whether the statute is ambiguous and whether the agency's interpretation is reasonable—has come to be known as the "Chevron two-step." Putting an end to the Chevron doctrine upended precedent and at the same time will create new opportunities for taxpayers to challenge IRS rules and regulations.

While the Chevron Doctrine is federal, many states have adopted the concept of regulatory interpretation. Those cases would likely have the same effect at the state level for those states.

C. Notice 2024-54; Reg – 124593-23; FS-2024-21 and Rev. Rul. 2024-14

The Service issued guidance's, a Revenue Ruling and proposed 2 new regulations to challenge the use of basis-shifting transactions by complex partnerships. Additionally, the Office of Chief Counsel announced the creation of a new Associate Office that will focus exclusively on partnerships, S corporations, trusts and estates, and which will work closely with a new pass-through work group being established in the IRS's Large Business & International Division.

Basis shifts occur in one of three ways, per a new IRS Fact Sheet. These are "covered transactions":

1. A partner with a low share of the partnership's "inside" tax basis and a high "outside" tax basis transfers the interest in a tax-free transaction to a related person or to a person who is related to other partners in the partnership. This related-party transfer generates a tax-free basis increase to the transferee partner's share of "inside" basis, which often is subject to cost recovery, amortization or immediate expensing.

2. A partnership with related partners distributes a high-basis asset to one of the related partners that has a low outside basis. After this, the distributee partner reduces the basis of the distributed asset and the partnership increases the basis of its remaining assets without a current tax consequence to the distributee partner.

3. A partnership with related partners liquidates and distributes (1) a low-basis asset that is subject to accelerated cost recovery or for which the parties intend to sell to a partner with a high outside basis and (2) a high-basis property that is subject to longer cost recovery (or no cost recovery at all) or for which the parties intend to sell to a partner with a low outside basis. Under the partnership liquidation rules, the first related partner increases the basis of the property with a shorter life or which is held for sale while the second related partner decreases the basis of the long-lived or non-depreciable property, with the result that the related parties generate or accelerate tax benefits.

In Notice 2024-54, the IRS announced 2 sets of proposed regulations. One would require partnerships to treat basis adjustments from covered transactions to avoid deriving inappropriate tax benefits from those adjustments. The other set of regulations would provide rules to ensure clear reflection of the taxable income and tax liability of a consolidated group of corporations when members of the group own interest in partnerships. These covered transactions would involve basis adjustments under §§§732, 734(b) and/or 743(b).

The IRS intends to issue regulations identifying these basis shifting transactions by partnerships as transactions of interest ("TOI"). There is currently a proposal for a threshold of positive basis adjustments of $5 million or more under §§§ 732, 734(b) and/or 743(b) to be considered a TOI. As a TOI it will require certain disclosure notifications to the IRS when such transactions occur.

Finally, the IRS issued Rev. Rul. 2024-14 providing that the IRS would apply the economic substance doctrine in §7701(o) to challenge the related party transactions which:

- Create inside/outside basis disparities through various methods, including the use of certain partnership allocations and distributions,

- Capitalize on the disparity by either transferring a partnership interest in a nonrecognition transaction or making a current or liquidating distribution of partnership property to a partner, and

- Claim a basis adjustment under Code sections 732(b), 734(b), or 743(b) resulting from the nonrecognition transaction or distribution.

The Ruling walks through each scenario in detail and concludes that the transactions in each scenario lack economic substance.

The IRS says filings for large pass-through businesses used for the type of tax avoidance in the guidance increased 70% between 2010 and 2019 while audit rates fell from 3.8% to 0.1% in the same time frame. The IRS plans to raise audit rates on companies with assets above $250 million.

GROUP STUDY MATERIALS

A. Discussion Problems

1. Your client owns an interest in a corporation located in a foreign country. She did not pay the Mandatory Repatriation tax because her prior accountant told her that the income was not realized thus not subject to tax. The IRS is auditing her return and claims she owes $60,000 based on the tax. She asks for your advice.

2. Your client has a unique situation and the statutory authority is not clear. In doing research, you find an IRS interpretive regulation that is contrary to what you believe is allowable. The IRS is taking a hardline position based on the regulation. Your client asks what options there might be in this situation.

3. Your clients', related parties, lawyer has suggested that their partnership distribute a high-basis asset to one of the related partners that has a low outside basis as this would get a high basis adjustment to the partnership and the partner will not recognize any current income. They ask your advice.

   Required:

   Discussed the issues fairly raised in the above three fact patterns.

B. Suggested Answers to Discussion Problems

1. In the Moore case, the Supreme Court determined that similar to an S corporation or partnership, the realization takes place by the foreign corporation and is taxed to the owners. Thus there is a realization event. The tax is constitutional.

2. If you believe that you have a reasonable interpretation of the ambiguous statute, you will have the opportunity to have the Courts determine if your position is sustainable even though it is contrary to the regulation of the IRS. In *Loper*, the court overturned the Chevron Deference.

3. This is the type of transaction the IRS is going after with its latest guidance and proposed regulations. There would be a step up in basis for the partnership without any current tax to the related party distributee. Since the parties are related this is a mere shifting of basis to obtain tax benefits that would not otherwise be available.

PART 2. BUSINESS TAXATION

Navigating Solar Energy Credits

While previously we discussed clean vehicle credits, this month we want to discuss solar credits for both individuals and businesses.

Energy efficient home improvement credits and residential clean energy credits are covered under IRC §§ 25C and 25D, respectively. Before passage of the Inflation Reduction Act in August 2022, these credits were known as the nonbusiness energy property credit and the residential energy efficient property credit. The credits allowed under these two Code sections are often discussed together because both are residential energy-related credits. For this reason, the requirements of each credit are often confused for the other. However, only IRC §25D contains credits for installing solar energy property.

IRC § 48 provides credits for expenditures on nonresidential energy property. The Energy Credit provided under this section is part of the Investment Tax Credit provided under IRC §46, which, in turn, is part of the General Business Credit provided under IRC §38. We will focus solely on the qualifying solar property. Special rules for energy businesses are beyond the scope of this program and are not addressed here.

Let's join Mike to learn more about solar credits and maximizing their use.

Mr. Giangrande

We're going to talk about solar energy credits, but I want to start by drawing a comparison between §§ 25C and 25D. These are the two internal revenue code sections that contain residential energy credits. Section 25C is the credit for energy efficient windows, doors, skylights, home energy audits, that sort of thing. I always like to at least compare these two up front because the requirements for the two are often confused with one another. The solar credits are only contained in § 25D. That is solar credits for residential properties. That's any property you're using as a personal use property. That's your principal residence, second residence, fourth vacation home, 12th vacation home. If it's not an investment property, we're talking about § 25D for our solar credits. If you've got business or investment property, you're going to look at the business energy credits on the investment credit specifically under § 48, and we will talk about the business energy credits a little later.

Under § 25D, there are multiple types of property that qualify for the credit. Only this section contains solar credits for residential properties, but it also contains some other property that qualifies for the credit. And I've got these listed on for you. But the two types of solar property are qualified solar water heating property. Think of those as like solar panels are dedicated to your water heater, and then, qualified solar electric property. That's what we all think of like the solar panels on your roof. But the credit under § 25D can also be claimed for qualified fuel cell property, small wind property, geothermal heat pumps and qualified battery storage. So the ones of these that I do see more than others are geothermal heat pumps. I think I've had two or three clients install those in the last probably two or three years. And then the battery storage, right? Those are your home batteries, so we do see those.

We are focusing mainly on, really on the solar aspects of those property, but keep in mind there are other types of property that qualify for the same 30% credit. A chart of those items is on page three for you. Now the credit was restored retroactively as part of the OG, I think it was the Inflation Reduction Act. It's already been a couple of years now, but we have now back to a 30% credit for qualifying property all the way through 2032. So we've got a bit of time there before we see the reduction to 26, 22, and then 0 % credit in 2034, which is, well, 10 years away. Sorry, after 2034. But let's talk about some special rules, because this is where we really start to get into some of the nuance of our solar stuff. Home batteries--let's talk about these.

Before the Inflation Reduction Act, home batteries only qualified for the credit under Section 25D to the extent that they were connected to a solar energy system on your home. And what that meant was before the Inflation Reduction Act, so before 2023, if you had installed a home battery on your home but you didn't own any solar panels, you didn't get a credit for the home. There was nothing available there.

The Inflation Reduction Act came along and defined home batteries as their own separate standalone type of property that qualifies for the Section 25D credit. So now, I know some of you up in the Bay Area have big canopies of trees over your home, maybe solar doesn't make sense. You guys are constantly living in overcast skies and areas. So maybe solar panels don't make sense, but you want to have a home battery, maybe for power outages to help for whatever you got going on there. So now starting in 2023, if you install that home battery, you can claim the 30% credit, even though you are not hooked up to a solar energy system.

If you're curious what the rules were like before that, before 2023, we do have a PLR, private letter ruling from the IRS. We have cited bottom of page four that's private letter ruling (PLR) 201809003. That was the private letter ruling that came out and said, if you meet certain requirements, then your home battery qualifies for the section 25D credit. Those requirements were essentially you were hooking the home battery so it is drawing its power from your solar energy system. That's essentially what that said.

Let's talk about labor and installation costs. Cause here's where we get to be, where you and I get to be the doers of battle against the evil forces, and I will say evil forces, of the solar salespeople. So when it comes to the costs that your client has to install the solar, what actually qualifies for the solar credit, the 30% credit? Well, labor and installation costs do count. So whatever it takes to install your solar panels on the roof--the wiring, the bracketing, not all that is solar, technically solar property, but you're going to have conduit, you're going to have things that are necessary in order to install this property. The labor costs that go into it, that is all included. What's not included though, are any financing costs, any warranty costs, and this is the big one, this next one, roof repairs and replacements.

A lot of solar companies will not put solar panels on your roof if the roof is too far gone, or at least they don't recommend it. Because what happens if you've got a 20-year roof and you're in year 19? And those solar panels are expected to be on your roof themselves for 15 to 20 years. Well, you don't want to install solar panels on that roof just to a couple of years later, spend the money, to pull them down and then have them reinstalled when you put a new roof on. You don't want to go through that extra expense. It's unnecessary. So what a lot of the installers will do is they'll sell you on a new roof or if your roof just needs repairs, they'll sell you on roof repairs and try to build that cost into the solar. It does not count. Any roof repairs do not count. That is end of sentence, period, full stop. Then I'm going to add, I probably shouldn't say it, and add an exception, but there is sort of an exception.

The exception is where the roofing materials themselves are the solar panels. Think about the solar shingles that are now being sold, right? Where the roof material itself is a solar panel. In that case, you can essentially claim a solar credit for a new roof because what you're installing isn't some tile roof, it is a solar panel that is just keeping the rain out. When the roofing material itself is solar property, then you essentially have a backdoor way of claiming solar credit for putting on a new roof. So in that case, it's not really an exception to the no roof repair or replacement requirement. You're just simply, instead of putting on a new tile or, well, gosh, what's that material? The name of the material is the flexible stuff. It's like, I know, that most of us have on our roofs. the name of that stuff's escaping me, but instead of that, you're actually putting on a bunch of little solar panels and that qualifies.

Swimming pools. If you're installing solar panels just to heat a swimming pool, that's a no-go; doesn't count. Now I will say I've had solar credits audited. I actually have a client right now with their solar credit being audited. I have not yet had an auditor who says, but your client also has a swimming pool, so we're not going to give you a credit for the whole thing. If you've got solar panels on the roof, they're powering the house and your client just happens to have a swimming pool. I haven't seen the IRS go after that one, but technically if you've got solar panels that are used to heat a swimming pool, that doesn't count for the credit.

Condos and co -ops. What happens if your client is a member of a condo association? Maybe they're in a high rise and they just put solar panels on their roof that benefit everybody in there. What do you do? In that scenario, your client gets to take a proportional share of the solar credit.

Let's look at an example of that at the bottom of page five. James lives in the condominium that he owns. And in that condo, are 100 units, so 100 owners. In 2024, the condo association spent $2 million to install qualified solar electric property that provides energy to its tenants. James is treated as if he paid $20,000, $2 million divided by the 100 owners, and can claim a residential energy credit of $6,000, which is $20,000 times his 30 % credit. So for condos and co -ops, your client can still get a proportional share.

Now what happens if you've got some business use for your solar? If you've got a property, you install solar panels. If the business use of the property is 20% or less, then you can claim the credit under section 25D for the entire solar credit as a residential solar credit. And I think that that's a good 20%, a pretty good percentage there because I think that for the vast majority of our clients with say home offices, they don't have to worry about doing some kind of an allocation between the business use and the non -business use for their home office. But if the business use of their property is greater than 20%, then you've got to prorate your costs. And what you do is you prorate the costs and you say, okay, I put in $50,000. You know, let's make the numbers easier. Let's say it costs $100,000 to put solar panels on. And . . . the property is a triplex, let's say, and your client lives in one unit of the triplex and rents out the other two units. Assume all three units are equal, right? Equal in size and all that. What you've got to do then is your client, because they only live in 33% and the business use, the rental portion is 67%, right? That's greater than 20%. Your client can claim the section 25D credit for 33% of the costs. So if it costs 100,000, the real cost for your client is 33,333, multiply that by 30%, and that's their section 25D credit on their personal return.

The other portion, the $67 ,000 of your costs that are allocable to the investment portion of the property, the rentals, has to be claimed as the business solar credit under Section 48, which could have its own limitations. And we'll talk about that when we get there. I don't want to jump the gun on that one, so we'll get there when we get there. Just know that you're going to have to do a proration. You get some of the credit as section 25D, credit some of the credit as a section 48 business credit.

Now, when do we get to claim the credit for a residential credit? When we're installing solar panels on a home, you claim the credit in the year the project is completed. And it's on that date that all expenses associated with the project are deemed paid. So it doesn't matter that your client is a cash basis taxpayer, and year one, they spent all the money. They bought the panels and they prepaid for the project. The project doesn't get completed until year two. They don't get the credit until year two because it's in year two, they're deemed to have paid for the project. Now, when is the project completed? That is a very key question here. Your project is deemed completed when the project is signed off, approved by the local energy company, and you are hooked up to the energy grid.

The way most solar works, unless you're living in the boonies where you're actually drawing from your own solar power, I live in Orange County here, and for us, we have Southern California Edison as my utility, so for example, the solar panels on my roof don't feed my house directly. All of the energy in my house comes from Southern California Edison's energy grid. My solar panels just feed the grid. That'll be an important point on another topic we're going get to in a minute. So all of my solar panels just feed the grid and I'm still pulling from the energy grid. So if the power goes out, Edison goes out, I still don't have power even though I have solar panels. That's how the vast majority of your clients are going to work as well. So the project is completed when you're hooked up to the energy grid. I'll tell you, I've got a solar audit going on right now for a client. It just started a couple of weeks ago. We got the examination notice. The IRS just wants to audit the solar issue. And one of the things they're looking for is, they're looking for that sign off, when did the utility company approve the project and when did the electricity from those solar panels start flowing to the energy grid?

Let's talk about new construction. What happens if your client buys a new home that has solar panels already installed? The question here you can approach from two directions. Can the home builder claim a solar credit or does the home buyer claim the credit? The answer here is it's the home buyer. The home builder does not claim the credit.

The home buyer claims the credit and they claim the credit in the year they take possession of the home. Two examples of that bottom of page six. I think that's pretty self-explanatory. So even if the home is built in year one, solar panels are installed in year one. If your client buys the home in year two, then they get a claim to a solar credit in year two. And there's two ways to calculate the solar credit. Either you can get a report or statement, something from the builder that tells the home buyer how much of their purchase price of the home is allocable to the solar panels, or your client can make a reasonable allocation if they don't have that information from the home builder.

Let's talk about basis adjustments. Solar panels or even a lot of the other property under section 25D, geothermal heat pumps, home batteries and these things are all considered to be capital improvements to the home. They increase your basis of the home, but you cannot, but then you have to reduce that basis increase by the amount of the credit you received. That prevents you from getting a double benefit.

So let's look at a quick example of that on top of page seven. Laura purchased and installed qualifying solar energy property, solar panels on her principal residence at a cost of $60,000. At the time of installation, Laura's basis in her home was $1.2 million. Laura's new basis is $1,242,000. She takes her $1.2 million basis adds the $60,000 cost of the solar, backs down from that, the 30% credit of $18,000 to get to her new adjusted basis. I'll foreshadow on the business solar credits. There's sort of a really nice added benefit on the business solar credits, whether you're putting them on a business you own or even a rental property, on the business side of things, you only have to decrease your basis by 50 % of the credit claimed, sort of as an incentive to businesses to install solar panels.

So while the credits under section 25D are non-refundable, that is really the only limitation to them because there is no maximum credit, either annual or lifetime. If you own 12 vacation homes and you put solar panels on six of them this year, six of them next year, you can claim the entire credits. You're not limited by your AGI. Solar credits can offset alternative minimum taxes. And even though the credits are non-refundable, they do carry forward indefinitely. Unlike say the car credits, right? If you can't use a car credit, it's lost; it's gone. It's non-refundable and it goes away. Solar credits though, even though they're non-refundable, they carry forward and there is no limitation, right? There's no five-year limitation on the carry forward like there is with say charitable contributions. It carries forward indefinitely.

California does not offer any tax credits, so it's a California conformity item. California and a lot of other states do offer non-tax rebates. That's not something you and I have to deal with on an income tax return. Our clients may ask about them, but the answer there for our clients is, there may be rebates available. It's not something I know much about because it's not tax related. You've got to go through California's. I think in California SGIPO is called, I've already forgotten what California calls it. Self -generation incentive program is the rebate program. And I'll talk about that in a short while. But again, not related to tax work. And that's what I think you and I really care about. It's not something we're going to be claiming for our clients. Usually that's a rebate that the solar installer is going to help your client try to claim.

If you receive subsidies, say from the energy company for installing solar panels, you do not get the double benefit. You've got to take the cost of your solar panels, reduce it by the amount of the subsidy you received, and then you calculate your 30% credit based on that net amount. Pretty simple concept there. Example of that top of page eight, if you're interested. I'm not going to go through it. Pretty simple concept, I think.

When it comes to investment and rental properties, again, I'll get to section 48 in more detail later. I just want to mention it. If you have a rental property and there is any personal use, say like vacation rental, remember, if the business use is greater than 20%, you've got to allocate. So if you only use it 5% for personal rental property, guess what, that's still greater than 20%. So 5 % of your solar costs get transferred to the Section 25D credit, 95% of your costs have to be claimed as a Section 48 business credit. So watch out where you've got greater than 20% business use.

Lease versus purchasing. You only get a credit where you purchase these solar panels. There is no credit for leasing the panels at all. And so what we have for you there is a simple chart because sometimes even though you get a tax credit for buying, maybe that's not the best decision. Maybe you'd rather lease. We have a chart comparing purchase or lease here. There's also a third option that I know SolarCredit, I assume they're still doing it, and it's called a purchase power agreement, which is not a lease.

In a purchase power agreement, the solar company owns the panels on your roof and you're simply buying the electricity from them. That can be a good option. I'll tell you, when I put solar panels on my roof, I did a purchase power agreement because the way my contract works is I pay the solar company one cent per kilowatt hour beneath Edison's lowest tier one rate, just locked in no matter how long I have the panels. So once I use up all my solar, and then I have to start really pulling, drawing on Edison, I don't think I ever hit their tier two rate ever. I'm always paying only at the tier one rate or one cent per kilowatt hour under it. It's worked out for me even though I didn't get a tax credit for it. So just a personal experience on that one.

Let’s go back a sec, so we do also have a box on page nine that talks about some of the disadvantages of leasing. The biggest one there is if you go to sell your home, well, you've got this solar contract the buyer of your home is going to have to take over that lease for you. And they're going to have to get qualified by the solar company. So it's a little bit of an extra hoop when it comes to selling your home. The buyer may decide they don't want it, but I don't think I've ever really seen, I've never had a client who has leased solar panels and who had a hard time. I think if someone qualifies to buy your home, they're probably going to qualify to take over the solar contract as well. That technically would also be the case if you've got a purchase power agreement as well.

Let's talk about selling excess electricity. You technically only get to claim the credit under section 25D for solar property that's designed to generate electricity for your home, not the excess. If you've ever gone and gotten solar or even inquired with a solar company, they tell you, give us your electric bills for the last 12 months. Because they want to see how much you're using and they want to say, here's how many of our solar panels you need to generate power for your home. And so what they often use, therefore, is a net metering. The electric company, I know Southern California Edison does--and net metering is, I don't pay electricity as the year goes along, or I don't pay Edison, I should say. And so, . . .my solar panels are going to generate more electricity than I'm using. Some months it's less. And at the end of my 12-month relevant period, which was really the anniversary of when I had the solar panels installed, I get a bill from Edison that says, here's how much you still owe us for the last 12 months. That's a net metering project or net metering system. But anyway, back to the point.

You only get credit for solar panels necessary to generate electricity for your home, not the excess. So if your home is going to require say 12 solar panels and you say, you know what? I've got a really big roof. I want to put on 24 solar panels because I want to sell my electricity back to the utility company. If you do that, one, it's a bad investment, I'll tell you that, because you're not going to get back your costs. But two, that electricity that you generate, that excess electricity that you sell is taxable income to you, but you still only get a claim in the residential energy credit for the 12 panels it took to generate electricity for your home.

The other 12 panels, technically that's an investment. As you're trying to generate this extra electricity for the purpose of selling it, that's really a schedule C business. And I hesitate to say that because I've seen solar companies that try to play this game and tell your clients that they can claim credits or they can claim a business for the solar. They'll try to put a couple extra solar panels on your property and then they'll even prepare the schedule C for you. Aren't they nice? They're preparing the Schedule C for me as a tax professional. And when I look at these schedule C's prepared by the solar company that I've seen, oh my goodness. First of all, they're depreciating 100% of the solar panels so that you can sell $12 of electricity back to the solar company trying to call that a schedule C business. That doesn't work. Don't do that. Can I just say that? I'm just going to be short and say don't do that.

Community shared residential solar credit. This is a situation where your client, maybe they can't purchase solar panels for their own home. Maybe they're living in a homeowners association that doesn't want the ugly solar panels. Maybe your client is living in a condo building and they're on the ground floor, they can't install them. Maybe you've got too much shade where you live, but your client still wants to invest in solar. You can purchase solar panels on sort of a large array, maybe a solar farm out in the desert and still claim the solar energy credit on your home. But there's three requirements that must be met. They're listed on page 10 here.

The taxpayer has got to enter into a direct contractual arrangement with the local public utility company. The taxpayer provides electricity to the grid using net metering, that utility's energy grid. And under the contract, the taxpayer owns the energy transmitted. So remember what I said earlier about how solar works on your home. You put the solar panels on your roof and your solar panels don't feed your home directly. They feed the energy grid and then you're always pulling from the energy grid. Well, if you buy into one of these solar energy farms, essentially, it works the same way. As long as the solar panels that you purchase are feeding into the energy grid and it's the same energy grid that your home pulls from, then it's working the same way as putting solar panels on your home, and you can claim the credit for that community shared solar credit.

So they say California doesn't offer rebates. That's the California Solar Initiative available to customers with PG&E, Southern California Edison, and San Diego Gas and Electric. There are separate programs that public utilities offer, but again, these are non -tax items. So these are typically going to be the solar sales companies that are going to help you grab those rebates. You can finance your solar project through HERO and PACE programs. PACE is the Property Assessed Clean Energy program, and HERO is the home energy renovation opportunity program. If you finance through these programs, you repay your solar through your property tax bill, but you don't get to deduct those repayments as property taxes. However, you can deduct them as interest because that is technically acquisition interest, because you've built or improved the home. Solar panels are an improvement to the home. You can claim mortgage interest if all the other acquisition interest requirements are met. If your home is already over the $750,000 or a million dollar acquisition debt limit, well then technically your interest is not deductible because you don't have any more room in that interest bucket to deduct them. I mentioned earlier, you can have refinance difficulties. That's similar to the difficulty in selling your property and having to requalify.

So if you go to refinance your home, you may be forced to repay the HERO and PACE program. And right now we're in a pretty high interest rate environment for homes. What if you get into your home, you're at say 7.5 percent interest today, and then you finance your solar through your HERO or PACE program. Then three, four years down the road, maybe interest rates drop back down to 4.5%, 5%. You're going to want to refinance to really drop monthly payments by quite a bit at that point, but you may be forced to pay off the HERO and PACE program at that time as well, which can be a bit difficult if you're looking to just do a straight refinance. Where do you report the credit? Report the credit for under section 25D on form 5695 page 1. It'll ultimately then carry to your 1040.

So solar credits for businesses are part of this hierarchy. They are part of the Section 48, Energy Credit, which in turn is part of the Section 46, Investment Credit, which in turn is part of the Section 38, General Business Credit. So we're going to talk about specifically the limitations that apply to the solar credit portion here today, but you can have a solar energy project where you meet all the solar credit requirements, but maybe you're limited because Section 38 general business credit limits you based on general business credit rules. In that case, you could find your credit limited and then it's subject to carryover rules. We're not going to talk about those rules. We're going to keep it to just the solar aspect of the rules.

How much is the credit? Well, thanks to the Inflation Reduction Act, we now have a two -tiered credit system for most energy credits. Now the base credit is 6%, multiplied five times up to 30% credit if the wage and apprenticeship requirements of the Inflation Reduction Act are met. If the project is small enough to be exempt from the wage and apprenticeship requirement, or if the construction of your facility began before January 30, 2023.

I'm going to pause here and mention the small project. I will tell you right here, right now, if you're worried about the Inflation Reduction Act requirements for rental properties, don't be. You're going to have a real hard time on a rental property that is over the small project. And I'm going to talk about that in just a minute. There it is, okay, here we go. Most solar projects will meet the small project exemption because the wage and apprenticeship requirements, the other inflation reduction requirements only apply for facilities that have a one megawatt maximum output of their capacity. When I say facility, I mean the solar facility. One megawatt, based on what the average residential solar panel does today, that's enough solar panels to power about 800 homes. So if you're talking about putting a solar project on the roof of a single residential rental, heck even a quadplex, hell, a hundred unit apartment complex, you're still not going to hit a 100-megawatt project. So like I said, the one megawatt is going to be about 800 homes worth of electricity. So as long as you're under that one megawatt, you don't have to meet the wage and apprenticeship requirements and all the other Inflation Reduction Act requirements.

If you do have to meet those requirements though, what are they? Well, you've got to pay prevailing wages and prevailing wages or whatever is prevailing wages in the location where your project is and based on the workers for that project. The electricians are going to have one minimum wage requirement versus the base installers, the guys who are the roofers versus the other type of trades. Every trade is different. I'm not going go into those requirements because those are very, very large projects and they're going to be conducted by contractors who are going to know those rules very well. Now what is the construction begin date because that matters. When we talked about the residential solar credits, we said that all of the costs associated with your project are deemed paid when the project is completed, and it's in that year when the project is completed that you claim the credit.

When it comes to the business solar credit, it's a little different. You claim the credit based on the credit that was available when your project began, but you don't actually claim the credit itself until the year you complete the project. And so right now for the next few years, this is not going to be a big deal for us. So I'm going to try to go through this pretty quickly. This will become a big deal where you start your project in the year when the solar credit is 30%, but you don't finish it until the year when the solar credit is say 22 % or 0 % because you claim the business credit based on the year construction begins. And this was an issue before the Inflation Reduction Act because we were into that from 30% down to 26%, 22%. We were doing that reduction.

In preparation for that reduction, the IRS had put out notice 2018-59, which defined the two methods you use to determine when construction begins. That's the physical work test and the 5% safe harbor test. Essentially, the physical work test says, if you've started work of a significant nature, there's a little bit of definition on what that means, but not a lot. The 5% safe harbor says that if you pay or incur at least 5% of the total cost of the project, then you are deemed to have started the project. Now, once you meet either the physical work test or the 5 % safe harbor test, you have to make continuous progress towards finishing your project in order to use the notice 2018-59 construction begin. Can't start construction now, but not finish it until 20 years later. You've got to make continuous progress.

So there's a continuity requirement in there and that continuity requirement itself has a safe harbor, which essentially says you complete the project by the end of the year, containing the four year anniversary from the date your project started. If you finish the project by then, then you're deemed to have made continuous progress. So there's really only going to be an issue for those really, really big solar projects.

Let's define solar property for purposes of the business credit. This is equipment used to generate solar electricity. It has to be originally used property, can't buy used property, must be depreciable property, which essentially means it can't be leased property. However, I will tell you if it's a capital lease and you're depreciating it, then it would qualify. Because the rules don't say that you cannot lease it. It simply says the property must be depreciable to the taxpayer. So whether you purchase it or you're leasing it under a capital lease, either of those scenarios, you are the one depreciating the property, you get to claim the credit.

Then you've got to meet certain performance standards. I'm not going to get into those. Those are highly technical requirements. I will tell you, I've had many clients over the years install solar panels on their property. I've had clients get audited on the issue. I have never once asked the client or gone through the requirements to say, does your property meet the performance standards? Because that's what they're being sold on by the solar company. We're going to take the solar company's word for it that what they're putting on, their panels meet the requirements. I'm not going to go to my client's house and test their panels. I wouldn't even know how to test their panels.

Depreciable life for solar business property. It is five-year MACRS property and it is therefore bonus eligible. Nice benefit there when it comes to business solar. Get big depreciation deductions right up front. I mentioned the basis adjustment earlier when it comes to the basis adjustments for business solar. Business solar like residential solar increases the basis of your property, but you only have to reduce your basis by 50 % of the credit claimed, not the full amount of the credit claimed. So that's good news there.

Let me go through an example quickly on that top of page 18. This is Penco. Penco is a C corporation manufacturer and owns a factory with an adjusted basis of $7 million. Penco purchased and installed solar panels on its factory on August 4, 2024, at a cost of $230,000 and it received the investment credit of $69,000, that's 230 times 30%. The new basis of Penco's building is 7,195,500 calculated by taking our $7 million basis, adding $230,000 panels, and then, reducing by only 50 % of the credit. So that's an extra benefit. So when it comes to business solar, there is a double benefit to be had and that is done on purpose by Congress to try to encourage businesses to get into solar.

So what happens though when you reduce your basis? Well, basis reductions themselves are subject to recapture. . . . Before I get to the recapture, I want to mention the basis adjustments in the case of an S corporation or a partnership before I get to the recapture. This is middle of page 18. So the adjusted basis of partner's interest or S corporation shareholder's interest also has to be adjusted to take into account the entity's basis adjustments in the energy property that's held by the corporation or the partnership. And I want to go through the example middle of page 18 on this.

So let's take our Penco example. Let's assume Penco is an S Corporation with two shareholders. In the previous example, it was a C corporation. Let's assume it was an S-Corporation with two shareholders, Mary and Amanda. Mary owns 25 % of Penco and Amanda owns 75%. Mary and Amanda would each reduce the basis of their Penco stock by their proportionate share, which is $34,500 downward basis adjustment. Penco as calculated in the prior example, 25 % to Mary, 75 % to Amanda.

The next topic is credit recapture. This one is an interesting one because when it comes to the residential solar credit, we talked about under section 25D, you could put solar panels on your home. Again, it can be a principal residence or a vacation home, but you could put the solar panels on day one. On day two, sell the property and you get to keep the entire credit because it was on your home when you installed it. That's not the case when it comes to business property. With business or investment property, if the property is sold or is no longer used as business property within five years, five years, of installing the solar, then you must recapture some or all of the credit.

Here's where I've seen this become an issue in my practice, and maybe you will. It's with your smaller taxpayers mostly who have a rental property that they plan to move into. If your client's got a rental property say, yes, I want to put solar panels on and I want to make all these improvements to it. Because I'm going to turn it into a rental property now, but I want to live in it as my retirement home. And you say, whoa, hang on a minute. Because if they put the solar panels on and make all these improvements to this rental property, and the next year they move into the property, they're going to have to repay that solar credit. They're not going to be able to go back and claim the credit as a residential property. They're much better off waiting until they move into the property, and then, putting the solar panels on and claiming the full 30 % credit. And so, the credit has to be recaptured. This is the chart on page 19. One hundred percent of the credit must be recaptured if the property is sold or otherwise no longer used as a business or investment property within one year of claiming the credit of one year of the property that'll be placed in service drops to 80 % in the second year, 60%, 40%, 20 % through those first five years.

Let's go through the example bottom of page 19, sort of a continuation of our Penco example. If Penco from our earlier examples sells its building on December 1, 2026, remember it installed its solar panels on August 4, 2024. And so it sells this building on December 1, 2026. It must recapture $41,400, in other words, repay $41,400 of the original $69,000 credit. And it does that as an addition to tax in 2025 when it sells the building, and you see the recapture table here. From August 4th, 2024 when you installed to August 3rd, 2025, then one year, that's a full and it drops down 80%, 60%, right? And we happen to have sold the property in our example at a time when we have to recapture 60 % of our credit. Plan ahead for this. Clients who want to put solar panels on do not know that they have to recapture. I guarantee they do not know. That's one item where I've had clients really be blindsided by my advice because I tell you, the solar people are not going to tell your client they got to repay the credit if they plan on turning around and selling the building right away. So watch out for that! When it comes to an unused business solar credit; you can't use the credit. You get a one year carry back, 20 year carry forward.

Ineligible property, any property used outside the United States does not qualify. Your client's got a vacation home abroad. They do not get a claim to solar credit for putting solar on that property. When it comes to tax exempt organizations, you can only claim the solar credit if you register with the IRS. Prior to claiming the credit on their income tax return, the IRS wants at least 40 days before you file your return because the IRS has to issue your client a registration number. And when it comes to a tax-exempt organization, your client is not technically claiming the solar credit. What they're doing is, they're electing to treat their solar credit as a tax payment, and then they claim a refund for that payment. And they do so on Form 990T.

Even if you've got a client that doesn't normally file a 990T, that's the form you've got to claim the credit on. I'll share with you an example from my own practice. I have a client that's a 990. So a tax exempt organization, and it's an ultra-low income senior housing, senior apartment complex is what it is, but it's an exempt organization. They put solar panels on the roof and now they want to claim a solar credit. When the IRS's registration opened up, and it only opened up this last January, to register, I went online. I registered right away. Then, within the registration, we didn't get any notices from the IRS, they didn't say, hey, here's your number, this or that, I logged back on about six weeks later and discovered the IRS had sent me a note within the registration information that said, hey, there's an error, you have to fix something. So I fixed my little error that I made.

Confession, I do make errors. And then I had to keep checking back every week to get a registration number, which we did get. We got the registration number. But you're going to have to go on the IRS's website. The registration process took me about, oh, I think about 15, 30 minutes somewhere in there. But if there's a problem, the IRS will give you a note within that area you've got to log on. But they're not going to send you an email. not going to send the client a paper notice. They will tell you, you've got to check back every week until you get that registration number.

So I recommend registering as early as possible. Government entities, they have a similar requirement, state and local governments, where they can elect to treat the credit as a tax payment. When it comes to reporting the energy credits for businesses, you use Form 3468 part three, line 12, to initially claim the credit. Remember that credit is part ultimately of the general business credit. Whatever credit you calculate in the Form 3468 will flow up to the Form 3800 for general business credits and will be reported on part three, line 4A. Then the general business credit limitations will be applied to determine whether you get a claim to credit this year or if you've got to carry it back and or carry over all the good wonderful general business credits.

RESIDENTIAL CLEAN ENERGY CREDIT

FOCUS OF THESE MATERIALS

Energy efficient home improvement credits and residential clean energy credits are covered under IRC §§25C and 25D, respectively. Prior to the passage of the Inflation Reduction Act in August 2022, these credits were known as the nonbusiness energy property credit (IRC §25C) and the residential energy efficient property (REEP) credit (IRC §25D).

The credits allowed under these two Code sections are often discussed together because both are residential energy-related credits. For this reason, the requirements of each credit are often confused for the other. However, only IRC §25D contains credits for installing solar energy property. Although the credits under IRC §25C are not solar credits, the following chart comparing the IRC §§25C and 25D credits is included for reference purposes.

Residential Energy Efficiency Tax Credits Comparison Chart		
	IRC §25C credit	**IRC §25D credit**
Types of qualifying property	Qualifying energy efficiency improvements: • Building envelope components (e.g., doors, windows and skylights, insulation); • Home energy audits; • Residential energy property (e.g., air conditioners, water heaters, furnaces); and • Heat pumps, biomass stoves, and biomass boilers	Solar property: • Solar electric; and • Solar water heating Other energy efficient property: • Fuel cell; • Small wind energy; • Geothermal heat pumps; and • Qualified battery storage
Calculation of credit	Up to 30% of qualifying energy property installed plus qualifying energy property expenditures	30% of residential energy efficient property Reduced to: • 26% for property placed in service in 2033; and • 22% for property placed in service in 2034
		(continued)

Residential Energy Efficiency Tax Credits Comparison Chart (continued)		
	IRC §25C credit	**IRC §25D credit**
Credit cap	$1,200 (annual cap for most property) ($600 for windows and skylights and $2,000 for heat pumps, biomass stoves and biomass boilers)	**Fuel cell:** $500 per 0.5kW of capacity per taxable year
Qualifying residence	Must own the home and use it as principal residence for: • Exterior doors; • Windows/skylights; • Insulation materials; and • Air sealing materials Must use the home as a residence (but doesn't have to be principal residence and doesn't have to be owned by the taxpayer): • Central air conditioning; • Eligible water heaters and hot water boilers; • Eligible heat pumps; • Biomass stoves and boilers; and • Limited other property Must use the home as a principal residence (but doesn't have to be owned by the taxpayer): • Home energy audits	Any residence of the taxpayer (except for fuel cell — principal residence only). Both existing residence and new residence qualify
Applicable against AMT	Yes	Yes
Refundable	No	No
Carryover	No	Yes (indefinite)
Expiration	December 31, 2032	December 31, 2034

The IRS has posted FAQs addressing both of these credits at:

Website
www.irs.gov/pub/taxpros/fs-2022-40.pdf

This webinar is focused solely on the solar credits available to both individuals and businesses. We do not discuss the IRC §25C Energy Efficient Home Improvement Credit.

The first part of these materials will focus on the residential solar credits, which are defined in IRC §25D(d)(1) and (2). Other solar energy credits are contained in IRC §48 as part of the Energy Investment Tax Credit, which is part of the General Business Credit. These credits will be covered in the second part, "Solar credits for businesses."

The clean energy credit also provides credits for purchases of qualified fuel cell property, qualified small wind energy property, and qualified geothermal heat pump property, which are defined in IRC §25D(d)(3), (4), and (5), respectively.

The credit for these purchases also has the same phasedown and scheduled expiration date as the credit for residential solar property discussed below.

SOLAR PROPERTY QUALIFYING FOR THE RESIDENTIAL CLEAN ENERGY CREDIT

Many of the terms used to describe qualified property in IRC §25D can be difficult to understand. The following chart lists the types of property that qualify for the credits under IRC §25D and their plain English translation.

Types of Property Qualifying for Residential Clean Energy Credit		
Residential clean energy property	**Translation**	**Solar-based credit**
Qualified solar water heating property expenditure (IRC §25D(d)(1))	A water heater that typically has its own dedicated solar panels that are used to collect energy and heat the water. The water heater's solar panels are in addition to other solar panels installed on a home	Yes
Qualified solar electric property expenditure (IRC §25D(d)(2))	Your typical solar panels, usually installed on the roof of the taxpayer's home	Yes
Qualified fuel cell property expenditure (IRC §25D(d)(3))	A system that typically uses natural gas or propane to produce electricity and is not dependent on an electric energy grid	No
Qualified small wind energy property expenditure (IRC §25D(d)(4))	A stand-alone wind turbine system that produces electricity	No
Qualified geothermal heat pump property expenditure (IRC §25D(d)(5))	A closed-loop underground pipe system that circulates water to transfer heat from the ground to the home in the winter and cools the home in the summer	No
Qualified battery storage technology expenditures (IRC §25D(d)(6))	Home batteries	No

AMOUNT OF THE CREDIT

The amount of the Residential Clean Energy Credit depends on the calendar year it is placed in service as follows:

Residential Clean Energy Credit	
Date qualified property placed in service	**Credit amount**
January 1, 2022–December 31, 2032	30%
January 1, 2033–December 31, 2033	26%
January 1, 2034–December 31, 2034	22%

SOLAR CREDIT COMPARISON

The following chart highlights the notable similarities and differences in the Residential Clean Energy Credit for qualified solar water heating property versus qualified solar electric property.

Comparison of Solar Credits		
	Qualified solar water heater property (IRC §25D(d)(1))	**Qualified solar electric property (IRC §25D(d)(2))**
Maximum credit	No maximum credit	
Dates system must be placed in service	January 1, 2006–December 31, 2034	
Principal residence restriction	Home served by the system can be the taxpayer's primary residence or a vacation home but cannot be an investment or rental property. The taxpayer does not have to own the home to claim the credit.	
Certification	Equipment must be certified for performance by the Solar Rating Certification Corporation (SRCC) or a comparable entity endorsed by the government of the state in which the property is installed.	None
Energy use	At least half the energy used to heat the dwelling's water must be from solar to qualify for the credit.	None

SPECIAL RULES

Home batteries

The Inflation Reduction Act added qualified battery storage technology expenditures to the list of qualified expenditures eligible for the credit, applicable to expenditures made after December 31, 2022.

For taxable years 2022 and earlier, home batteries qualified for the Residential Clean Energy Credit (aka the residential energy efficient property credit) under IRC §25D, but only if the battery was used to store power generated by a taxpayer's solar panels. (PLR 201809003)

In the IRS's 2018 private letter ruling, home batteries qualify for the solar credit even if they were installed years after the solar panels and do not generate solar power (they are merely integrated into an existing solar energy system).

Comment

The IRS's 2018 private letter ruling is essentially superseded by the Inflation Reduction Act starting in 2023 because home batteries now qualify for the credit under IRC §25D even if they are not attached to a solar energy system.

California conformity

California offers a rebate for home batteries as well. See "California home battery rebate program" for more details.

Labor and related installation costs

Labor and installation costs allocable to the onsite preparation, assembly, or original installation of the qualified solar electric property and for piping or wiring to connect to the residence can be taken into account in computing the credit. (IRC §25D(e)(1))

However, the credit cannot be claimed for:

- Financing costs, including interest and origination fees;
- Extended warranty costs; or
- Roof repairs and replacements.

Solar panels used as roofing/structural components

Where solar panels and equipment are installed as roofing material, the costs associated with the solar property qualify for the credit even though they constitute a structural component of the building. (IRC §25D(e)(2))

Using solar panels as roofing is becoming more common on school and park playgrounds and in parking lots. Solar panels that are installed in lieu of roofing materials on a carport or over a school playground as shade qualify for solar credits, as well as the structural components of the carport or shade as long as the main purpose of the structural components is to hold the solar panels.

Solar roof shingles are becoming more common in the home solar market. Because the roofing material itself is solar property, homeowners can claim a solar credit for roofs that are replaced with solar shingles.

Swimming pools, etc., used as storage medium

The credit cannot be claimed for expenditures allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such energy storage. (IRC §25D(e)(3))

Tenant-stockholders in cooperative housing corporations and condominiums

Co-op and condo owners can claim a proportional share of qualified expenditures incurred by the co-op or condo management association. (IRC §25D(e)(5) and (6))

Example of co-op housing corporation/condo association

James lives in a condominium that he owns. There are 100 owners. In 2024, the condo association spends $2 million to install qualified solar electric property that provides energy to its tenants.

James is treated as if he paid $20,000 ($2 million ÷ 100 owners) and may claim a Residential Clean Energy Credit of $6,000 ($20,000 × 30%).

"Condominium management association" is an organization that meets the requirements of IRC §528(c)(1) with respect to a condominium project where substantially all of the units are used as residences.

Business use allocation

If more than 20% of the property's use is for business, the qualified expenditures must be allocated between business and nonbusiness purposes. Only the nonbusiness expenditures are eligible for the Residential Clean Energy Credit. (IRC §25D(e)(7))

Taxpayers who use more than 20% of their home for business purposes should be aware that their solar credit may be limited.

> ***Comment***
>
> Where a taxpayer uses more than 20% of their home for business and must allocate the solar costs between business and nonbusiness use, then both solar credits come into play:
>
> - The costs allocated to nonbusiness use are eligible for the Residential Clean Energy Credit under IRC §25D; and
> - The costs allocated to business use are eligible for the Energy Investment Tax Credit under IRC §48, discussed in more detail in the "Solar credits for businesses" section.

Timing of expenditures

All expenditures qualifying for the Residential Clean Energy Credit are treated as made when the original installation of the property is completed. (IRC §25D(e)(8)) This is significant for taxpayers undertaking solar projects toward the end of a tax year. If the project is not completed before December 31, then the taxpayer must wait another tax year to claim the credit.

New construction

A taxpayer may claim the credit if a qualifying property is installed in or on an existing home or a newly constructed home. For property installed on a new home, the taxpayer may request that the homebuilder make a reasonable allocation — or the taxpayer may use any other reasonable method — to determine the cost of the property that is eligible for the credit. (Notice 2013-70) The credit is allowed in the year the taxpayer occupies the residence.

> ***Example of new construction***
>
> Homebuilder constructed a house in which qualifying solar property was installed in Year 1. The house was not sold and used as a residence until Year 2. The homeowner takes the credit in Year 2.

> ***Example of model home***
>
> Homebuilder constructed a house in which qualifying property was installed in Year 1. The house was used as a model home by Homebuilder, during which time the qualifying property was used. The home was sold, and the buyer occupies the home in Year 2. The credit is claimed by the homeowner in Year 2.

BASIS ADJUSTMENTS

The home's basis must be reduced by the amount of any credit allowed. (IRC §25D(f))

> ***Example of basis adjustment***
>
> Laura purchases and installs qualifying solar electric property (solar panels) on her principal residence at a cost of $60,000. At the time of the installation, Laura's basis in her home was $1.2 million. Laura's new basis is $1,242,000, calculated as follows:

Basis of home at time of solar installation	$1,200,000
Solar installation (capital improvement)	60,000
Less: solar credit ($60,000 × 30%)	(18,000)
Adjusted basis	$1,242,000

TAXPAYER LIMITATIONS

The amount of the Residential Clean Energy Credit available to taxpayers carries no real limitation. As such, it is a credit that high income taxpayers can take without fear of reduction. The main points are as follows:

- There is no maximum credit any taxpayer can take (annually or lifetime);
- The credit is not limited by the taxpayer's AGI;
- The credit can offset AMT; and
- The credit is nonrefundable, but any unused portion may be carried forward indefinitely (even into years after new solar credits have expired).

California nonconformity

California has no comparable credit.

INTERACTION OF CREDIT AND SUBSIDY

Double benefit disallowed

There is no credit allowed for energy efficient property to the extent that an energy conservation subsidy for that expenditure was excluded from income. (IRC §136(b)) An excluded subsidy is one that a public utility provides, directly or indirectly, to a customer to buy or install energy conservation property.

The rule applies whether a third-party contractor receives the subsidy on behalf of the taxpayer or the taxpayer receives the subsidy directly. (Notice 2013-70)

Looking to the phrase "directly or indirectly," the IRS has concluded that state subsidies paid to solar installation contractors, rather than to the system owners, are excludible to the system owners under IRC §136. (PLR 201607004) IRC §136 provides that gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure. Because the subsidies paid to the contractors bring down the cost to the end user (the homeowner), the legislative intent of IRC §136 is met.

Example of subsidy

Zack pays for and installs solar panels on his primary residence. The cost for the panels and installation is $50,000, but Zack receives an excludable energy conservation subsidy of $6,500 from his electric company. Zack's Residential Clean Energy Credit is $13,050 calculated as follows:

Cost	$50,000
Subsidy	(6,500)
Net cost to Zack	43,500
Credit	30%
Total	$13,050

California conformity

California conforms to the IRC §136 exclusion for energy subsidies. (R&TC §24326) If a grant received by an individual from a city to install solar panels qualifies for the §136 exclusion, it would not be taxable for California. There are no California-specific exclusions for solar subsidies.

INVESTMENT AND RENTAL PROPERTIES

Taxpayers may not claim the Residential Clean Energy Credit for expenditures for improvements made to an investment property, such as rental property, that is not also used as a residence by the taxpayer. (Notice 2013-70, Q&A-6) In other words, the credit is available to taxpayers who install qualifying property on a multifamily dwelling that serves as both the taxpayer's primary residence and a rental property, subject to the 20% business use allocation previously discussed.

Taxpayers who install solar property on an investment or rental property may still claim a solar credit under IRC §48. See "Solar credits for businesses."

LEASED SOLAR PANELS

A taxpayer must purchase the qualifying property to claim the Residential Clean Energy Credit, and therefore taxpayers who lease a solar system are ineligible for the credit. (Notice 2013-70)

Typically, when taxpayers lease panels, the company that installs the panels maintains them and also keeps any government subsidy. (www.npr.org/2015/02/10/384958332/the-great-solar-panel-debate-to-lease-or-to-buy) Leases usually run for 15–20 years.

Taxpayers generally have four options at the end of the lease:

- Request to renew the agreement;
- Have the solar provider remove the system;
- Purchase the system (varies by state and provider); or
- Upgrade to a new system.

To compare the benefits of leasing versus buying, go to:

Website
https://ilsr.org/ultimate-solar-calculator/

Comparison of Purchasing Versus Leasing	
Purchasing	**Leasing**
Maximizes the financial benefits of installing a solar panel system, rather than solely benefitting from the system's environmental benefits	Primarily for those interested in using electricity generated from renewable resources, rather than maximizing the financial benefits of installing a solar panel system
Eligible to reduce tax liability through federal credits	Avoids the responsibility of maintenance or repairs for a solar panel system
If a business, can realize tax benefits by treating the solar panel system as a depreciable asset	Ineligible for federal or state investment tax credits resulting from investment in a solar panel system
Increases the market value of a home by installing a solar panel system	Get the reduced electricity bills right away without the financial outlay of purchasing the system.
Source: www.energysage.com/solar/financing/should-you-buy-or-lease-your-solar-panel-system	

Some disadvantages of leasing

Leased systems are considered personal property rather than part of a house. For potential home buyers, a solar lease may be a liability rather than an asset and may drive some buyers away. Typically, the buyer must assume the lease payments for what could be a lengthy period of time, depending on how far into the lease the seller is.

If a buyer does want to take over the lease contract, the solar provider must approve the new leaseholder. If the buyer's credit score is short of the solar company's minimum, it could be rejected. However, in the majority of cases, buyers who qualify for a mortgage will also qualify to take over a solar lease.

When selling a solar home, taxpayers may have the following options, depending on their solar provider:

- Transfer the solar energy contract and monthly payments to the new homeowner (lessor must agree to transfer);
- Prepay the agreement with a one-time discounted payment, which equals all remaining payments and applicable tax under the solar agreement; or
- Move the system to the new home, which may be possible within the same utility district and if the utility company allows it. There may be a fee to move the panels and damage to the roof during removal.

SELLING EXCESS ELECTRICITY

The taxpayer may only claim the credit for the portion of the solar electric property expenditure that relates to the electricity generated for use in the taxpayer's home. (IRS Notice 2013-70, Q&A #27) Taxpayers who install solar property on their home and sell more than a minimal amount of excess electricity to a utility may not claim the credit for the full amount of the solar expenditures.

The taxpayer may be able to claim the IRC §48 Energy Credit for a portion of the solar electric property expenditure if the requirements of IRC §48 are satisfied (see "Solar credits for businesses" for more details).

Sale of excess electricity taxable

If a taxpayer generates electricity in excess of their home's usage, then any electricity sold back to the utility company is taxable.

Net energy metering (NEM) programs operate on an annual cycle, often referred to as a solar customer's 12-month relevant period. A homeowner's 12-month relevant period starts on the date their solar panels are put in service and ends at the end of that 12-month period. Most utility companies will credit taxpayers for excess electricity generated month-to-month, but once a taxpayer's 12-month relevant period ends, they can elect to either receive a payment for their excess generation or roll it over to their next 12-month relevant period.

COMMUNITY-SHARED SOLAR CREDIT

Taxpayers qualify for the Residential Clean Energy Credit even if the solar panels are not directly located on the taxpayer's residence (primary or vacation), but solar energy is used to generate electricity directly for the home.

However, in order to take the credit, off-site solar panels must generally work in this fashion:

- The taxpayer enters into a direct contractual arrangement with the local public utility that supplies electricity to the taxpayer's residence;
- The taxpayer provides electricity to the grid using a "net metering" system that measures the amount of electricity produced by the taxpayer's solar panels and transmitted to the grid and the amount of electricity used by the taxpayer's residence and drawn from the grid; and

- Under the contract, the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at their residence.

The panels ordinarily won't generate more electricity than is expected to be consumed at the taxpayer's residence. If the panels generate an excess of electricity and the taxpayer sells the excess to the utility, the excess energy rules discussed above apply.

PLR on point

The IRS issued a 2015 private letter ruling to an individual owner of solar panels installed in an off-site net metered community-shared solar project. (PLR 201536017)

The taxpayer purchased solar panels that were placed on a ground-mounted solar array located in the taxpayer's state. The array included other panels owned by other individuals. The taxpayer also purchased a partial ownership in racking equipment, inverter equipment, and wiring and other equipment, as well as installation services required for the integration of the panels in the array and the interconnection of the array to the public utility's electric distribution system. All members of the array were customers of the public utility company. The entire array was installed and completed in the same tax year.

All of the electricity that the array generated was delivered to the public utility. The public utility calculated a net metering credit based on the aggregate amount of electricity delivered to it from the array. The public utility then applied a portion of that net metering credit against amounts due from the taxpayer for the public utility's provision of electric services to the taxpayer's residence.

It was estimated that the taxpayer's net metering credit would not generally offset more than the amounts that the taxpayer owed the public utility for the provision of electric service to the taxpayer's residence.

In this PLR, the IRS said it would allow the credit when:

- The array provides energy to the taxpayer's local utility;
- The local utility credits the taxpayer for the taxpayer's share of the electricity generated; and
- The taxpayer's share of the solar panels is not expected to generate electricity in excess of the taxpayer's expected needs.

CALIFORNIA SOLAR REBATES

California home battery rebate program

California provides a rebate program for energy storage. The program is called the Self-Generation Incentive Program (SGIP), and it provides rebates for battery storage systems so that homeowners can store solar power they generate instead of sending it back to the energy grid. The program also permits solar energy systems to generate power even when the external energy power grid is down.

Like other state rebates, the SGIP rebate is applied for directly through the state and is limited to the funds set aside by the state. Once the funds have been depleted for the year, no more rebates are available. Most companies selling equipment that qualifies for the rebates will handle the rebate application as well.

More information regarding California's Self-Generation Incentive Program (SGIP) is available at:

Website
www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/self-generation-incentive-program

SOLAR PANEL PAYMENTS AND PROPERTY TAXES

Two programs, PACE (Property Assessed Clear Energy) and HERO (Home Energy Renovation Opportunity) programs allow homeowners to finance solar panels through their property tax bills. Neither the principal nor interest amounts paid on a taxpayer's property tax bill for energy saving projects are deductible real estate taxes. (CCA 201310029) However, taxpayers may be able to deduct some or all of the interest as a home mortgage interest deduction. (FTB Tax News, July 2016)

IRS Information Letter 2012-0018 states that assessments based on anything other than the assessed value of the property may be deductible in certain circumstances if they are levied:

- For the general public welfare;
- By a proper taxing authority;
- At a like rate; and
- On owners of all properties in the taxing authority's jurisdiction.

Amounts assessed only on specific properties for a local benefit (such as for solar panels) cannot be deducted as real property taxes. However, taxpayers are permitted a deduction for the portion of the local benefit assessments that were imposed to repair, maintain, or meet interest charges for these local benefits. (Treas. Regs. §1.164-(b))

The best way to address these payments is to treat them as a second mortgage for home improvements. This would mean that the interest portion of the payment is a deductible payment, but the principal portion is not. (IRC §163(h))

Interest deduction

If the loans are on commercial property, interest on the loans will generally be deductible as a business expense.

If the loans are on a personal residence, interest on the loans may be deductible as home mortgage interest because the loan is secured by the residence.

Acquisition indebtedness

If the work done on the property is a "substantial improvement" to the property, the loan is acquisition indebtedness. If not, the loan is home equity indebtedness, which is not deductible on the federal return for the 2018 through 2025 tax years under the Tax Cuts and Jobs Act (TCJA).

Generally, solar property will be considered a substantial improvement and will increase the taxpayer's basis in their home (see the discussion of basis adjustments). As such, mortgage interest allocated to the purchase and installation of solar property and components is acquisition interest. An example of solar property that may not be considered an improvement would be home batteries. If the home battery can easily be removed and taken when the taxpayer sells their home, then it may be more akin to an appliance than a home improvement.

Property tax exclusion

Although the solar panel payments are not deductible as property taxes, the installation of the panels will not result in an increased property tax assessment in California. (R&TC §73)

Comment

Be sure to check state laws for clients living outside of California to determine whether the installation of solar property will subject your client to additional property tax assessments.

REPORTING AND CLAIMING RESIDENTIAL SOLAR CREDITS

Residential energy credits are calculated on Form 5695, which then flows up to the Form 1040. The Residential Clean Energy Credit is claimed on page 1 of Form 5695.

SOLAR CREDITS FOR BUSINESSES

GENERALLY

IRC §48 provides for credits for expenditures on nonresidential energy property. The Energy Credit provided under IRC §48 is part of the Investment Tax Credit provided under IRC §46, which, in turn, is part of the General Business Credit provided under IRC §38.

Similar to the qualifying property covered in the residential solar credit portion above, not all energy property qualifying for the Energy Credit under IRC §48 is solar property. We will focus solely on the qualifying solar property. This report is further limited to those not in the energy business, such as utility companies. Special rules for energy businesses are beyond the scope of this program.

AMOUNT OF THE CREDIT

The base amount of the Energy Credit for equipment that generates solar energy under IRC §48(a)(3)(A)(i) and (ii) is 6% of the basis of such property. (IRC §48(a)(2)(A)(i)(II)) The credit is increased five times and becomes a 30% "bonus credit rate" if:

- Certain wage and apprenticeship requirements are met (IRC §48(a)(9)(A)(i));
- The project is small enough to be exempt from the wage and apprenticeship requirements (IRC §48(a)(9)(B)(i)); or
- Construction of the facility began prior to January 30, 2023, (IRS Notice 2022-61)

Old phaseouts retroactively repealed

Taxpayers may claim the full 30% credit if the property is placed in service in 2022.

Under pre-Inflation Reduction Act law, the amount of the Energy Credit was phased down to 26% for solar energy property, qualified fuel cell property, and qualified small wind property if the construction began after 2019 and the property was placed in service prior to 2026. The credit was scheduled to be further reduced to 22% if the construction began after 2022. The Inflation Reduction Act limits the application of the 26% rate to those properties that were placed in service prior to 2022.

Small projects

If the facility upon which the solar energy property is constructed has a maximum net output of electrical or thermal energy of less than 1 megawatt, then the taxpayer can claim the bonus credit rate of 30% without having to meet the wage and apprenticeship requirements put in place by the Inflation Reduction Act. (IRC §48(a)(9)(B)(i))

The average home in the United States requires 1,223 watts of power. (www.forbes.com/home-improvement/home/how-many-watts-run-house/) In other words, 1 megawatt of output is the equivalent of over 800 average homes.

The vast majority of solar projects, including those for most residential rental and even commercial buildings, are unlikely to be constructed on buildings whose electricity output is greater than 800 average homes. As such, most taxpayers can claim the 30% bonus credit rate without having to comply with the Inflation Reduction Act's wage and apprenticeship requirements.

Wage and apprenticeship requirements

Business solar projects that don't qualify for the exceptions listed above must meet certain prevailing wage and apprenticeship requirements in order to qualify for the 30% bonus credit rate.

Prevailing wages

Taxpayers satisfy the prevailing wage requirements of the Inflation Reduction Act by paying at least the prevailing wages for the geographic area and type(s) of construction applicable to the facility on which work is being performed, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics.

The prevailing wage rates are published by the Secretary of Labor at:

Website
www.sam.gov

If the Secretary of Labor has not published a prevailing wage determination for the geographic area and type of construction for the facility on www.sam.gov (or if one or more labor classifications for the project are not listed), then the taxpayer must contact the Department of Labor Wage and Hour Division via e-mail and request the correct prevailing wage rate for the worker(s) at issue.

When e-mailing the Department of Labor Wage and Hour Division, the taxpayer must provide the following information to the department for each classification that is not listed:

- Type of facility;
- Facility location;
- Proposed labor classifications;
- Proposed prevailing wage rates;
- Job description and duties; and
- Any rationale for the proposed classifications.

The e-mail address is:

E-mail
iraprevailingwage@dol.gov

Even though the Inflation Reduction Act requires the payment of prevailing wages, the term "wages" includes amounts paid to all individuals performing services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or independent contractor for other federal tax purposes.

When calculating whether prevailing wages are paid, taxpayers include any *bona fide* fringe benefits defined under 29 CFR §5.2(p).

Apprenticeship requirement

In order to satisfy the apprenticeship requirements, taxpayers must:

- Satisfy the apprenticeship labor hour requirements;
- Satisfy the apprenticeship participation requirements; and
- Comply with the same general bookkeeping requirements that apply to the prevailing wage requirement under IRC §6001 and Treas. Regs. §1.6001-1 et seq.

If a taxpayer cannot satisfy either the apprenticeship labor hour requirements or the participation requirements, then the taxpayer is deemed to have met the requirements if they meet the good faith effort exception. (IRC §45(b)(8)(D)(ii)) Under the good faith exception, the taxpayer must:

- Request qualified apprentices from a registered apprenticeship program, as defined in IRC §3131(e)(3)(B); and
- Either:
    - The request must have been denied (for purposes other than the taxpayer's failure to meet the requirements of the apprenticeship program's established standards); or
    - The registered apprenticeship program fails to respond to the taxpayer's request within five business days from the date the registered apprenticeship program received the taxpayer's request.

Under the apprenticeship labor hour requirement, the taxpayer must ensure that at least the applicable percentage of the total labor hours for the project is performed by qualified apprentices. The applicable percentages are:

- 12.5% for projects which begin in 2023; and
- 15% for projects that begin after December 31, 2023.

Under the apprenticeship participation requirement, each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the facility for which an applicable credit or deduction is claimed must employ at least one qualified apprentice. (IRC §45(b)(8)(B))

Comment

Certain provisions of the Inflation Reduction Act, such as IRC §§45, 45Y, and 48, require prevailing wages to be maintained for any alterations or repairs on a facility for which enhanced credits were claimed for up to 10 years.

BEGINNING OF CONSTRUCTION

The IRS allows two methods to establish the beginning of construction:

- The physical work test; and
- The 5% safe harbor.
  (IRS Notice 2018-59)

A taxpayer is deemed to have begun work on the earliest date the taxpayer satisfies either test.

The physical work test

A taxpayer satisfies the physical work test when physical work of a significant nature begins. This test focuses on the nature of the actual work performed, not the amount or the cost, and both off-site and on-site work may be taken into account. However, it does not include preliminary activities, even if the cost of the preliminary activities will be included in the depreciable basis of the property. Notice 2018-59 does not otherwise define "work of a significant nature."

The 5% safe harbor test

A taxpayer satisfies the 5% safe harbor test if:

- A taxpayer pays or incurs 5% or more of the total cost of the energy property; and
- Thereafter, the taxpayer makes continuous efforts to advance toward completion of the energy property.

All costs that will be part of the depreciable basis of the business solar property are taken into account to determine whether the 5% test is met.

Continuity requirement

Once a taxpayer meets either the physical work test or the 5% safe harbor test, the taxpayer must make continuous progress toward completion of the project. Whether a taxpayer meets the continuity requirement is based on all the facts and circumstances including, but not limited to:

- Paying or incurring additional amounts included in the total cost of the energy property;
- Entering into binding contracts for the manufacture, construction, or production of components of property or for future work to construct the energy property;
- Obtaining necessary permits; and
- Performing physical work of a significant nature.

Disruptions to the continuity requirement that are beyond the taxpayer's control are not an indication that the taxpayer has failed to satisfy the continuity requirement.

Continuity requirement safe harbor: The continuity requirement itself has a safe harbor. If the taxpayer places the business solar property in service by the end of the calendar year that is no more than four calendar years after the calendar year during which construction of the energy property began (referred to as the continuity safe harbor deadline), the energy property is deemed to satisfy the continuity requirement.

Example of continuity safe harbor

ABC, Inc. satisfied the physical work test and the 5% safe harbor test (and therefore began construction) on August 18, 2023. The continuity safe harbor deadline for ABC, Inc.'s solar project is December 31, 2027.

As long as the solar project is completed by December 31, 2027, then ABC, Inc. has satisfied the continuity requirement.

Notice 2018-59 does not address what happens if the continuity requirement is disrupted. Presumably, if the continuity requirement is disrupted, the taxpayer would then be required to determine a new construction begin date.

Coordination with rehabilitation credit

Property that qualifies for the Rehabilitation Credit under IRC §47 cannot also qualify for the Energy Credit under IRC §48. (IRC §48(a)(2)(B))

DEFINING ENERGY PROPERTY

"Energy property" for purposes of the Energy Investment Tax Credit is equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (other than to heat a swimming pool) (IRC §48(a)(3)(A)(i)). Such property includes:

- Solar panels;
- Storage devices;
- Power conditioning equipment;
- Transfer equipment; and
- Parts related to the functioning of those items (e.g., solar cells or other collectors).

However, solar energy property used to generate electricity only includes equipment up to (but not including) the stage that transmits or uses electricity. (Treas. Regs. §1.48-9(d)(3))

> ***Comment***
>
> The Investment Tax Credit also contains provisions for solar energy property used to illuminate the inside of a structure using fiber-optic distributed sunlight. (IRC §48(a)(3)(A)(ii)) This type of solar energy property contains its own separate sets of rules not discussed here.

> **Caution**
>
> Because "energy property" is part of the larger Investment Tax Credit, which may contain lengthy and detailed rules applicable to all property encompassed within the Investment Tax Credit, additional rules may apply that are not discussed here. The purpose of this webinar is to clarify the rules solely applicable to the solar property used to generate power contained within the Investment Tax Credit.

Construction or original use

Only solar property that the taxpayer constructs, reconstructs, erects, or acquires for original use, or that is acquired by the taxpayer if the original use of the property commences with the taxpayer, is eligible for the credit. (IRC §48(a)(3)(B))

Must be depreciable or amortizable property

In order to qualify as "energy property," the property must be subject to the allowance for depreciation (or amortization in lieu of depreciation). (IRC §48(a)(3)(C))

No credit for lease unless capital lease

The requirements that the property be subject to the allowance for depreciation removes leased solar energy property from the credit. However, a lease treated as a capital lease would qualify because the property would be subject to the allowance for depreciation.

Depreciable life of solar property

Solar property falls under the five-year property classification under IRC §168 (MACRS) and is bonus depreciation eligible. (CCA 201032038; IRC §168(e)(3)(B)(vi)(I))

Property must meet performance and quality standards

The energy property must meet quality performance standards (if any) that have been prescribed by the IRS and are in effect at the time of the acquisition of the property. (IRC §48(a)(3)(D)) The IRS works with the Department of Energy to develop standards that change as technology changes. Practitioners should advise their clients to verify that the solar property they seek to install meets all current government standards.

BASIS ADJUSTMENTS

Basis adjustment to energy property within the Energy Investment Tax Credit

If a business receives an Investment Tax Credit for qualifying solar energy property, the basis of the property must be reduced by 50% of the credit. (IRC §50(c))

> ***Example of basis adjustment***
>
> Penco, Inc., a C corporation, is a manufacturer and owns a factory with an adjusted basis of $7 million. Penco purchases and installs solar panels on its factory on August 4, 2024, at a cost of $230,000 and receives an Investment Tax Credit of $69,000 ($230,000 × 30%).
>
> The new basis of Penco's building is $7,195,500 calculated as follows:

Adjusted basis before solar panels	$7,000,000
Plus solar panel installation (capital improvement)	230,000
Less 50% of credit	(34,500)
New basis	$7,195,500

Adjustment in basis of interest in partnership or S corporation

The adjusted basis of a partner's interest in a partnership or a shareholder's stock in an S corporation must also be adjusted to take into account the entity's basis adjustments in the energy property held by the partnership or S corporation. (IRC §50(c)(5))

> ***Example of partner/shareholder basis adjustment***
>
> In the above example, assume Penco is an S corporation with two shareholders, Mary and Amanda. Mary owns 25% of Penco's issued and outstanding shares, and Amanda owns 75%. Mary and Amanda would each reduce the basis of their Penco stock as follows:
>
> Mary:
> $34,500 downward basis adjustment × 25% = $8,625
>
> Amanda:
> $34,500 downward basis adjustment × 75% = $25,875
>
> Mary's and Amanda's K-1s from Penco should provide them with the information necessary to make their basis adjustments.
>
> If Penco is a partnership, then Mary and Amanda would make the adjustments to their outside basis in the partnership in the same way pursuant to Treas. Regs. §1.704-1(b)(2)(iv)(j).

Recapture of reductions

For purposes of IRC §§1245 and 1250, any reduction in basis due to the Energy Credit is treated as a deduction allowed for depreciation. (IRC §50(c)(4)(A))

For purposes of IRC §1250(b), the determination of what would have been a depreciation adjustment under the straight-line method is made as if there had been no reduction. (IRC §50(c)(4)(B))

Basis adjustments where credits are recaptured

If any amount of the credit is recaptured (discussed below) with respect to any energy investment property the basis of which was reduced, the basis of the property (immediately before the event resulting in recapture) is increased by an amount equal to such recapture amount.

The downward basis adjustments made by S corporation shareholders and partners in partnerships must be restored to the extent credits are recaptured.

Basis adjustments for subsidized financing and private activity bonds

The full credit may be claimed even if the property is financed by subsidized energy financing or through private activity bonds. "Subsidized energy financing" means financing provided under a federal, state, or local program, a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy. (IRC §48(a)(4)(C))

RECAPTURE IN CASE OF DISPOSITIONS, ETC.

The credit is subject to recapture if the solar energy property is disposed of, or otherwise ceases to qualify, within five years from the date the property is placed in service. The amount of credit that must be recaptured depends on the year the property is disposed of or ceases to qualify. (IRC §50(a)(1)(A)); IRS Notice 2013-12) The following table sets forth the recapture percentage during the year in the five-year recapture period the property is disposed of or ceases to be Investment Tax Credit property (IRC §50(a)(1)(B)):

Recapture Percentage	
If the property ceases to qualify within:	**The recapture percentage is:**
One full year after the property is placed in service	100%
The second full year	80%
The third full year	60%
The fourth full year	40%
The fifth full year	20%

Example of recapture

If Penco from the previous example sells its building on December 1, 2026, then it must recapture \$41,400 of the original \$69,000 credit as an addition to tax in 2025 (\$69,000 × 60%).

Recapture Table	
If the property ceases to be investment credit property within:	**The recapture amount is:**
August 4, 2024–August 3, 2025	\$69,000 (\$69,000 × 100%)
August 4, 2025– August 3, 2026	\$55,200 (\$69,000 × 80%)
August 4, 2026– August 3, 2027	\$41,400 (\$69,000 × 60%)
August 4, 2027– August 3, 2028	\$27,600 (\$69,000 × 40%)
August 4, 2028– August 3, 2029	\$13,800 (\$69,000 × 20%)
August 4, 2029, or later	No recapture

Unused credit carryovers must be adjusted

Unused business solar credits may be carried back one year and forward twenty years. If the solar investment credit property is disposed of or otherwise ceases to be investment credit property, then any carrybacks or carryforwards resulting from recaptured credits must be adjusted.

No adjustments necessary in certain cases

The aforementioned adjustments (for recapture and carryover/carrybacks) are not required in cases of:

- Transfers by reason of death;
- Corporate acquisition transactions to which IRC §381(a) applies; and
- Transfers between spouses or incident to divorce.

  (IRC §50(a)(4))

INELIGIBLE PROPERTY

Solar energy property may be ineligible for the Energy Investment Tax Credit under IRC §48 based on its use or the organization that uses the property.

Property used outside the United States

The credit may not be claimed for any property which is used predominantly outside the United States. (IRC §50(b)(1))

Property used by tax-exempt organizations

The Inflation Reduction Act allows eligible taxpayers to elect to be treated as having made a payment of tax equal to the value of the credit they would otherwise be eligible for, starting for the 2023 taxable year. This essentially turns these otherwise nonrefundable credits into refundable credits. (IRA ’22 §13801(a); IRC §6417(a))

Not all energy credits are eligible for this treatment, but the Energy Investment Tax Credit under IRC §48 is eligible.

> ***Comment***
>
> The purpose of IRC §6417, which allows certain entities to elect to treat some energy credits as tax payments, is to benefit tax-exempt entities. Income tax credits provide little or no benefit to tax-exempt organizations because they don’t typically have any income tax liabilities.
>
> By allowing these entities to elect to treat the credits as a tax payment under IRC §6417, they can now receive the same monetary benefit of energy credits that for-profit taxpayers receive.

The election is irrevocable and must be made on the entity’s timely filed (including extensions), original annual tax return. (Prop. Treas. Regs. §1.6417-2(b)) Form 990-T, Exempt Organization Business Income Tax Return, must be used for all entities not otherwise required to file a return.

The IRS has issued FAQs regarding the elective pay provisions. They are available at:

> **Website**
> www.irs.gov/credits-deductions/
> elective-pay-and-transferability-frequently-asked-questions-elective-pay

Mandatory IRS registration

On December 22, 2023, the IRS announced a new online registration tool for eligible taxpayers that want to monetize their energy credits. (IR-2023-249) Registration is required before any qualifying business, tax-exempt organization, or government or tribal entity can monetize their energy credits under the Inflation Reduction Act (P.L. 117-169) and the Creating Helpful Incentives to Produce Semiconductors Act (P.L. 117-167).

Monetizing business energy credits involves either selling the credits or electing to treat the credits as tax payments (the latter is generally limited to nonprofits and governmental agencies). Additionally, credit monetization is only available for taxable years beginning after December 31, 2022. (IRC §6418; REG-101610-23; IRC §6417; REG-101607-23; Prop. Treas. Regs. §1.6417-0 et seq.)

Once an entity registers through the IRS’s registration tool, which can be found at the following link, the entity must receive a registration number from the IRS before monetizing their energy credits. Entities should register after the energy property or facility has been placed in service, but the IRS recommends registering at least 120 days prior to filing the entity’s income tax returns for the year. The 120-day lead time is so the IRS has plenty of time to review the registration information provided and obtain additional information if needed. The registration number must be included on the entity’s income tax return. The registration website is:

> **Website**
> www.irs.gov/credits-deductions/register-for-elective-payment-or-transfer-of-credits

Property used by governmental units or foreign persons or entities

In general, no Investment Tax Credit is allowed with respect to property used by the United States, a state or political subdivision thereof, any possession of the United States, or any tax-exempt foreign person or entity. (IRC §50(b)(4))

> ***Comment***
>
> The IRC provides for exceptions for governmental units or foreign persons or entities that are beyond the scope of this report.

SPECIAL RULES FOR CERTAIN TAX-FAVORED ORGANIZATIONS

Special rules apply to certain tax-favored organizations, including regulated investment companies (RICs), public utilities, certain cooperative organizations, religious organizations, and others. Detailed discussions of specialized industries are beyond the scope of this special report but are mentioned here to make the practitioner aware that if their client is a business that receives tax-favored treatment, then they should be aware that their solar credits may be limited. (IRC §50(d))

CREDIT BASE AND AT-RISK RULES

Special rules reduce the credit base of investment credit property and subject such property to at-risk rules under IRC §49. However, energy property, including solar property, is excluded from these rules.

REPORTING AND CLAIMING THE ENERGY INVESTMENT TAX CREDIT

The Investment Credit is claimed on IRS Form 3468, Part VI. The credit is calculated on Form 3468, Part VI and then reported on Form 3800, Part III, line 4a as part of the General Business Credit.

GROUP STUDY MATERIALS

A. Discussion Questions

1. How does the Residential Clean Energy Credit differ from the Energy Investment Tax Credit for businesses, and what are the key considerations for taxpayers deciding between the two?

2. Discuss the impact of the Inflation Reduction Act on solar energy credits and how it has changed the landscape for both residential and business taxpayers.

3. What are the key considerations for taxpayers when deciding whether to purchase or lease a solar panel system for their home?

4. How do the recapture rules for the Energy Investment Tax Credit impact business decisions regarding solar energy property, and what strategies can businesses employ to mitigate recapture risk?

5. Discuss the implications of the new IRS registration requirement for monetizing energy credits and how this might affect tax planning for businesses and tax-exempt organizations.

6. How might the basis adjustment rules for solar energy property impact a taxpayer's overall tax strategy, considering both immediate benefits and long-term implications?

B. Suggested Answers to Discussion Questions

1. The Residential Clean Energy Credit (IRC §25D) applies to individuals for personal residences, while the Energy Investment Tax Credit (IRC §48) is for businesses. Key differences include credit percentages (30% for residential vs. 6-30% for business, depending on project size and wage/apprenticeship requirements), property types covered, and carryover provisions. Residential credits have no maximum and can be carried forward indefinitely, while business credits are part of the General Business Credit with specific carryback and carryforward rules. Taxpayers should consider their property's use (personal vs. business), project size, and ability to meet wage/apprenticeship requirements when deciding which credit to claim.

2. The Inflation Reduction Act significantly impacted solar energy credits. For residential taxpayers, it extended the 30% credit through 2032, added battery storage technology as qualifying property, and removed the previous phaseout schedule. For businesses, it introduced new wage and apprenticeship requirements for larger projects to qualify for the full 30% credit, while maintaining the 30% rate for smaller projects. The Act also created new options for tax-exempt organizations to benefit from these credits through direct pay provisions. These changes have made solar investments more attractive and accessible to a broader range of taxpayers, potentially accelerating the adoption of solar energy technology.

3. When deciding between purchasing and leasing solar panels, taxpayers should consider several factors. Purchasing allows for claiming the Residential Clean Energy Credit and potentially increases home value, but requires a larger upfront investment. Leasing avoids upfront costs and maintenance responsibilities but doesn't qualify for tax credits and may complicate home sales. Homeowners should evaluate their financial situation, long-term plans for the property, and potential electricity savings. They should also consider the impact on property taxes, as some jurisdictions offer property tax exemptions for owned solar systems. Ultimately, the decision depends on individual circumstances and goals related to energy savings and environmental impact.

4. The recapture rules for the Energy Investment Tax Credit require businesses to repay a portion of the credit if the solar property is disposed of or ceases to qualify within five years of being placed in service. This risk impacts decisions about property ownership and use. To mitigate recapture risk, businesses can: 1) plan for long-term use of the solar property, 2) carefully consider any potential sale or transfer of the property within the five-year period, 3) ensure ongoing compliance with qualification requirements, and 4) structure transactions to fall within exceptions to recapture, such as tax-free reorganizations. Additionally, businesses should maintain detailed records to support their credit claims and compliance with ongoing requirements.

5. The IRS's new online registration requirement for monetizing energy credits adds a layer of complexity to tax planning. Entities must now register and receive a number from the IRS before they can sell credits or elect to treat them as tax payments. This process, recommended to be started 120 days before filing tax returns, requires careful timing and planning. For businesses, this may impact cash flow projections and the timing of energy property installations. Tax-exempt organizations now have a clearer path to benefit from these credits, potentially making solar investments more attractive. However, all entities must now factor in this registration process when planning their tax strategies and project timelines for energy-efficient improvements.

6. The basis adjustment rules for solar energy property require taxpayers to reduce the property's basis by 50% of the energy credit claimed. This impacts both immediate and long-term tax strategies. In the short term, it allows taxpayers to claim the full credit while only reducing basis by half, providing a significant immediate tax benefit. However, the reduced basis affects future depreciation deductions and potential gain/loss calculations upon disposition of the property. For pass-through entities, these adjustments also impact partners' or shareholders' outside basis. Taxpayers should model the long-term effects of these basis adjustments against the immediate credit benefits to optimize their overall tax strategy, considering factors such as expected holding period and future tax rates.

GLOSSARY OF KEY TERMS

Auer Deference—in the context of administrative law, is a principle of judicial review of federal agency actions that requires a federal court to yield to an agency's interpretation of an ambiguous regulation that the agency has promulgated.

Chevron Deference— the latitude federal judges give agencies over how to interpret the statutes they administer when a dispute arises

Inflation Reduction Act—The Inflation Reduction Act modifies and extends the clean energy Investment Tax Credit to provide up to a 30% credit for qualifying investments in wind, solar, energy storage, and other renewable energy projects that meet prevailing wage standards and employ a sufficient proportion of qualified apprentices from registered apprenticeship programs.

Residential Clean Energy Credit— The Residential Clean Energy Credit equals 30% of the costs of new, qualified clean energy property for your home installed anytime from 2022 through 2032. The credit phases down to 26 percent for property installed in 2033 and 22 percent for that in 2034.

Solar energy property—new solar electric panels, solar water heaters, wind turbines, fuel cells, geothermal heat pumps, battery storage technology

TCJA—Tax Cuts and Jobs Act

CPE Network®
Tax Report
Volume 37, Issue 7 **August 2024**

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

1. According to Ian Redpath, what was the primary issue addressed in the *Moore v. United States* case?

   A. The constitutionality of the alternative minimum tax.
   B. The tax treatment of unrealized gains.
   C. The constitutionality of the mandatory repatriation tax.
   D. The tax treatment of S corporation distributions.

2. According to Ian Redpath, what is *Chevron* deference?

   A. Courts deferring to IRS interpretations in all cases.
   B. Courts deferring to administrative agencies' interpretations of ambiguous statutes.
   C. Courts rejecting all IRS interpretations.
   D. Courts deferring to Congress on tax matters.

3. According to Ian Redpath, what is *Auer* deference?

   A. Courts deferring to agencies' interpretations of their own ambiguous regulations
   B. Courts rejecting all agency interpretations.
   C. Courts deferring to Congress on all regulatory matters.
   D. Courts deferring to the IRS on all tax matters.

4. According to Ian Redpath, what was the significance of the *Loper* case for tax practitioners?

   A. It directly changed tax regulations.
   B. It potentially weakened Chevron deference for all federal regulations, including tax regulations.
   C. It strengthened the IRS's authority in interpreting tax law.
   D. It only affected fishing regulations.

5. According to Ian Redpath, what is the IRS's new focus regarding partnerships, as mentioned in the material?

   A. Eliminating all partnership taxation
   B. Increasing taxation of partnerships
   C. Simplifying partnership tax rules
   D. Creating a new associate office to focus on partnerships, S-Corps, estates, and trusts

Continued on next page

6. According to Mike Giangrande, which Internal Revenue Code section contains credits for installing solar energy property for residential use?

   A. IRC §25C
   B. IRC §25D
   C. IRC §48
   D. IRC §38

7. According to Mike Giangrande, which of the following is ***not*** eligible for the residential clean energy credit under IRC §25D?

   A. Solar water heating property
   B. Solar electric property
   C. Geothermal heat pumps
   D. Energy efficient windows

8. According to Mike Giangrande, what is the treatment of home batteries for the residential clean energy credit after the Inflation Reduction Act?

   A. They are only eligible if connected to a solar energy system.
   B. They are eligible as a standalone qualifying property.
   C. They are not eligible for the credit
   D. They are eligible only for business use

9. According to Mike Giangrande, how is the residential clean energy credit treated for a condominium owner?

   A. They cannot claim the credit.
   B. They can claim the full credit for the entire building.
   C. They can claim a proportional share based on their ownership percentage.
   D. They can only claim the credit if they live on the top floor.

10. According to Mike Giangrande, what is the business use threshold for allocating the residential solar credit?

   A. 10%
   B. 15%
   C. 20%
   D. 25%

Continued on next page

11. According to Mike Giangrande, how does claiming the residential solar credit affect the basis of the home?

    A. It increases the basis by the full cost of the solar system.
    B. It decreases the basis by the full amount of the credit.
    C. It has no effect on the basis.
    D. It increases the basis by the cost of the system, and then, decreases it by the amount of the credit.

12. According to Mike Giangrande, what is the carryforward period for unused residential solar credits?

    A. 5 years
    B. 10 years
    C. 20 years
    D. Indefinite

13. According to Mike Giangrande, what is the base credit percentage for business solar energy property under IRC §48?

    A. 6%
    B. 10%
    C. 22%
    D. 30%

14. According to Mike Giangrande, what is the maximum output threshold for a solar project to be exempt from wage and apprenticeship requirements?

    A. 0.5 megawatts.
    B. 1 megawatt.
    C. 2 megawatts.
    D. 5 megawatts.

15. According to Mike Giangrande, how does claiming the business solar credit affect the depreciable basis of the property?

    A. It reduces the basis by the full amount of the credit.
    B. It has no effect on the basis.
    C. It reduces the basis by 50% of the credit.
    D. It increases the basis by the amount of the credit.

CPE Network®
Tax Report
Volume 37, Issue 7 **August 2024**

SUBSCRIBER SURVEY

Evaluation Form

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

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

	Topic Relevance	Topic Content/ Coverage	Topic Timeliness	Video Quality	Audio Quality	Written Material
Experts' Forum	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|
Navigating Solar Energy Credits	|_______|	|_______|	|_______|	|_______|	|_______|	|_______|

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

____

____

____

____

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

____

____

____

____

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

____

____

____

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

____

____

____

____

How would you rate the effectiveness of the speakers in the August 2024 **CPE Network® Tax Report**? Rate each speaker on a scale of 1–5 (5=highest):

	Overall	Knowledge of Topic	Presentation Skills
Ian Redpath	|______|	|______|	|______|
Mike Giangrande	|______|	|______|	|______|

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

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

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

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

Were program materials accurate? Yes ☐ No ☐ ____________________

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

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

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

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

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

Specific Comments: ____

____

Name/Company ____

Address ____

City/State/Zip ____

Email ____

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

CPE Network®

CPE Group Attendance Sheet

Firm/Company Name: ______________________________

Account #: ______________________________

Location: ______________________________

Program Title: CPE Network Tax Report, August 2024 Date: __________

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

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

Instructor Name: ______________________________ Date: __________

E-mail address: ______________________________

License State and Number: ______________________________

CPLgrading@cerifi.com

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 3 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.

			First CPE Hour			CPE Hour 2			CPE Hour 3			FOR TR USE ONLY
First Name	**Last Name**	**Student Email**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Poll 1**	**Poll 2**	**Poll 3**	**Certificate Issued?**

CHECKPOINT LEARNING NETWORK

CPE NETWORK®
USER GUIDE

REVISED December 31, 2023

Welcome to CPE Network!

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

This User Guide has the following sections:

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

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

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

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

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

Copyrighted Materials

“Group Live” Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@cerifi.com

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

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

Incomplete submissions will be returned to you.

"Group Internet Based" Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance in a Webinar

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

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

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

Examples of polling questions:

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

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

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

Additional Notes on Monitoring Mechanisms:

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

Real Time Moderator During Program Presentation

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

Where individual participants log into a group live program they are required to enable two-way video to participate in a virtual face-to-face setting (with cameras on), elements of engagement are required (such as group discussion, polling questions, instructor posed questions with time for reflection, or a case study with engagement throughout the presentation) in order to award CPE credits to the participants. Participation in the two-way video conference must be monitored and documented by the instructor or attendance monitor in order to authenticate attendance for program duration. The participant-to-attendance monitor ratio must not exceed 25:1, unless there is a dedicated attendance monitor in which case the participant-to-attendance monitor ratio must not exceed 100:1.

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@CeriFi.com

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

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

Incomplete submissions will be returned to you.

“Self-Study” Format

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

Self-Study—Email

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

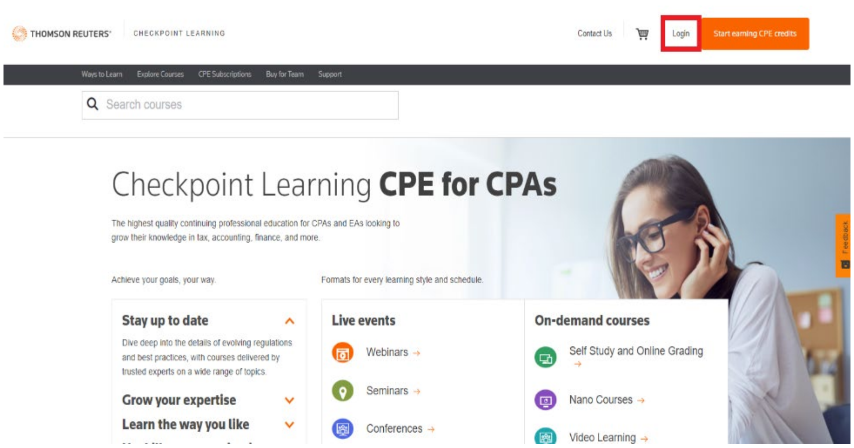
- Watch the video.
- Review the supplemental materials.
- Read the discussion problems and the suggested answers.
- Complete the quizzer by filling out the bubble sheet enclosed with the transcript package.
- Complete the survey. We welcome your feedback and suggestions for topics of interest to you.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

CPLgrading@cerifi.com

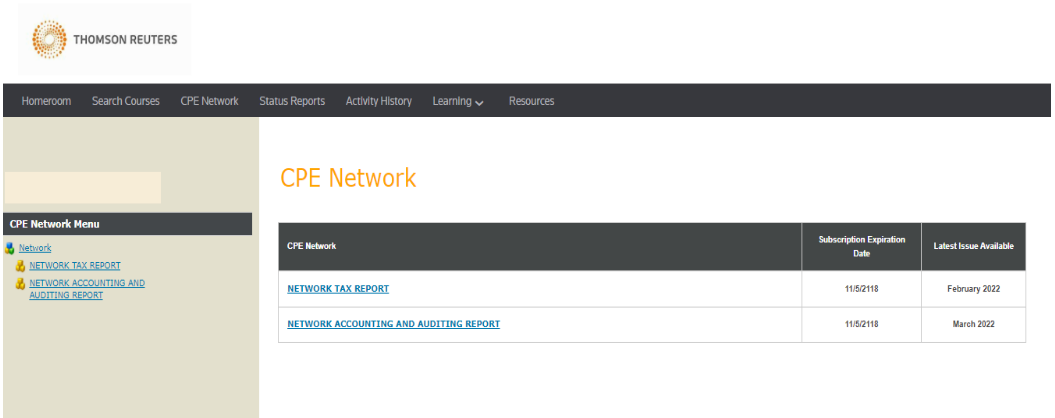
Self-Study—Online

Follow these simple steps to use the online program:

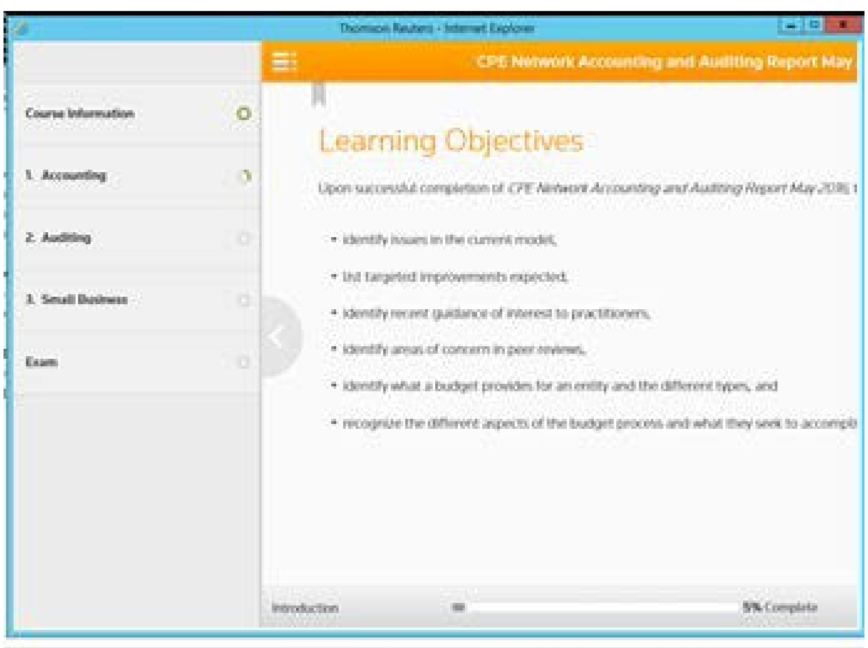
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm’s administrator in the upper right-hand margin (“Login or Register”).



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

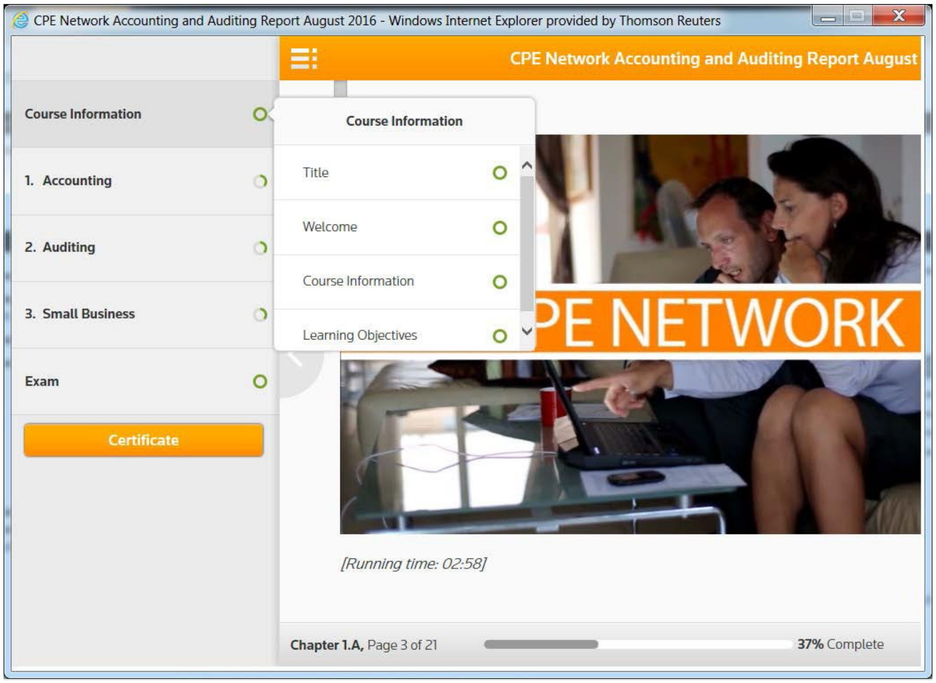


The Chapter Menu is in the gray bar at the left of your screen:

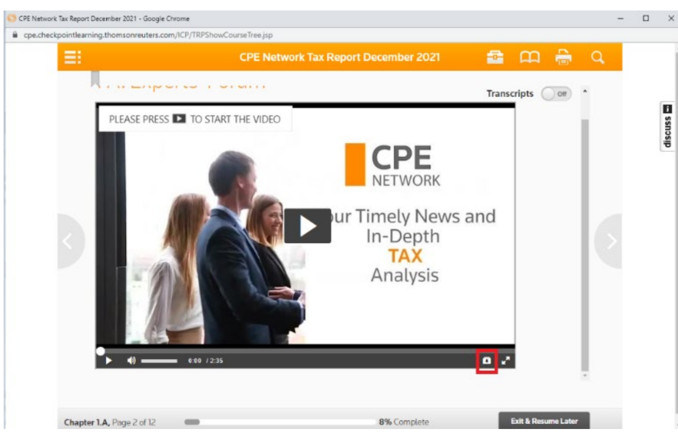


Click down to access the dropdown menu and move between the program Chapters.

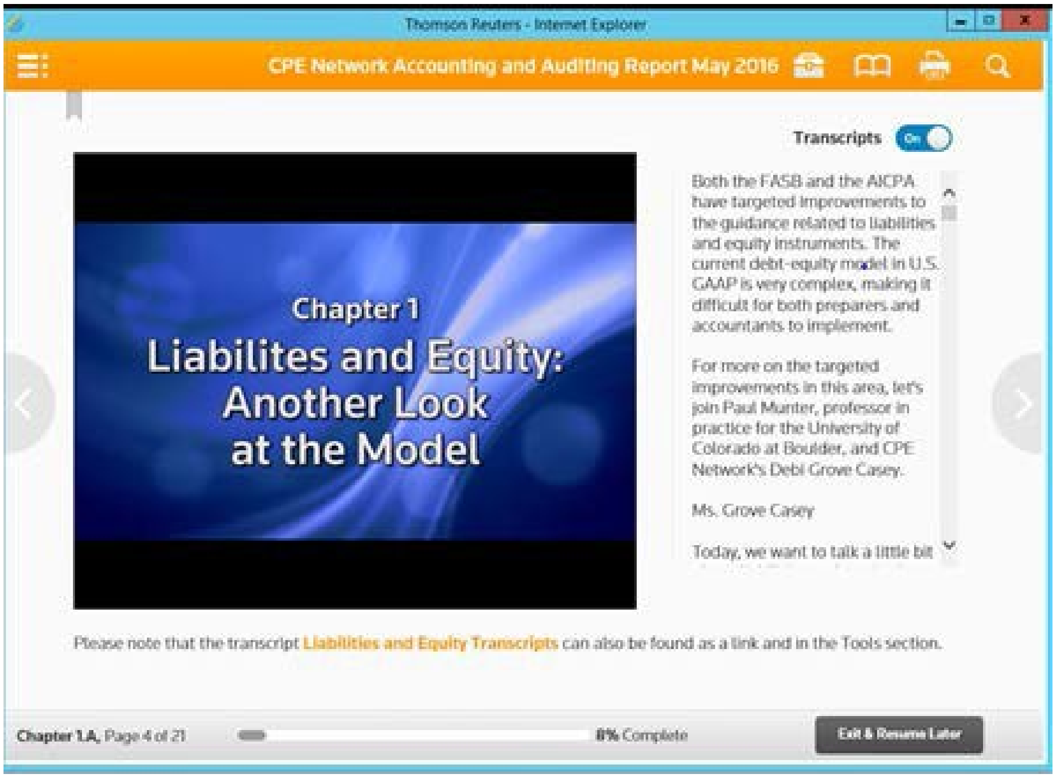
- **Course Information** is the course Overview, including information about the authors and the program learning objectives



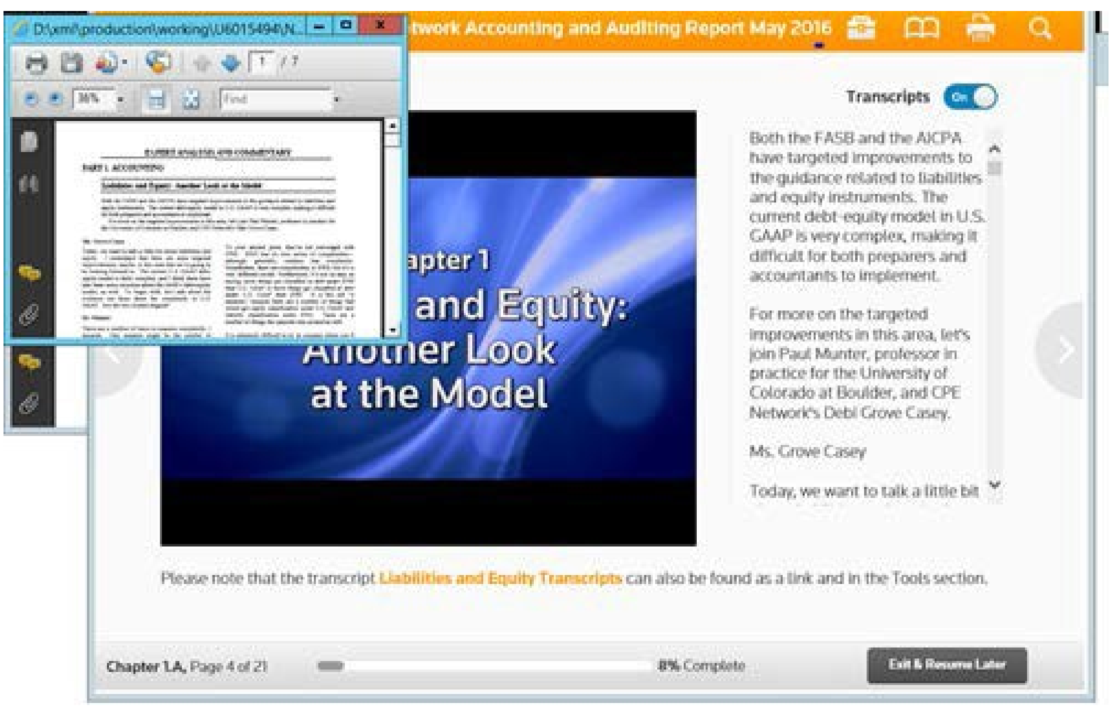
- **Each Chapter is self-contained.** Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access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



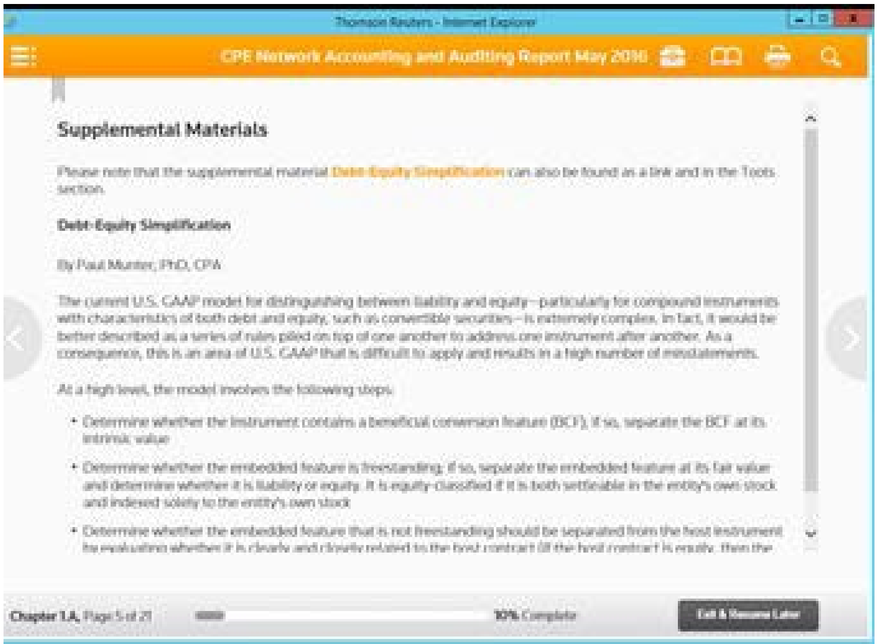
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.

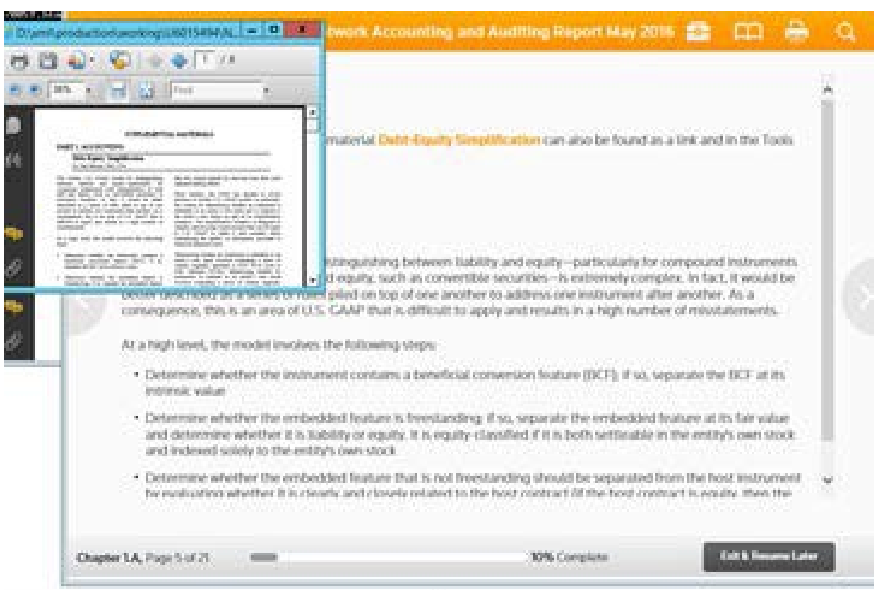


Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



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





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

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

Suggested Answers to Discussion Problems

1. ASC 320 requires that, at acquisition, an enterprise classify debt and marketable equity securities into one of three categories:

   - Held-to-maturity
   - Trading
   - Available-for-sale

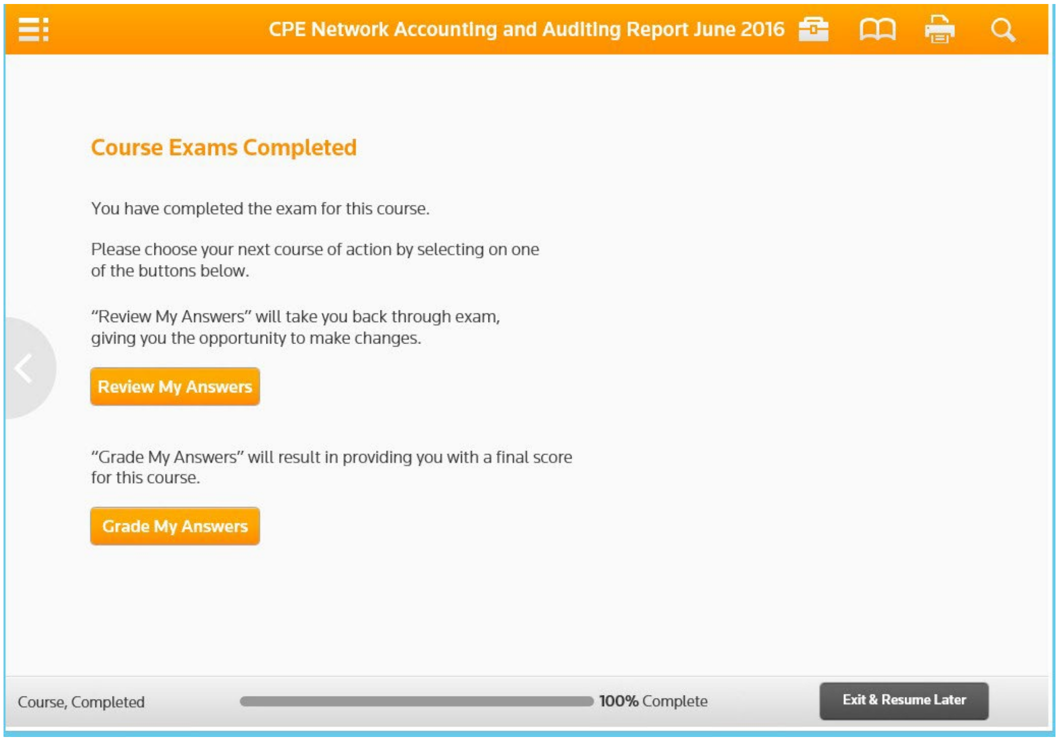
   An entity decides how to classify securities based on its intended holding period for each individual security, using the framework in ASC 320. In establishing its intent, an entity should consider relevant trends and experience, such as previous sales and transfers of securities. Classification decisions should be made at acquisition and, preferably, formally documented. It is not appropriate to use "hindsight" to classify securities transactions, perhaps by considering changes in value after acquisition.

2. The trading securities category includes securities that are bought and held principally for the purpose of selling them in the short term. Trading generally reflects active and frequent buying and selling, and trading securities are generally used with the objective of generating profits on short-term differences in price. "Short-term," in this context, is intended to be measured in hours and days, rather than in months or years, according to ASC 320. However, an entity is not precluded from classifying as trading a security it plans to hold for a longer period, as long as that designation occurs at acquisition.

3. Impairment is recognized in earnings when a decline in value has occurred that is deemed to be other than temporary, and the current fair value becomes the new cost basis for the security. An investment is considered to be impaired if the fair value of the investment is less than its cost basis. Cost includes adjustments made for

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

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



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

Additional Features Search

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

Search Results are displayed with the number of hits.

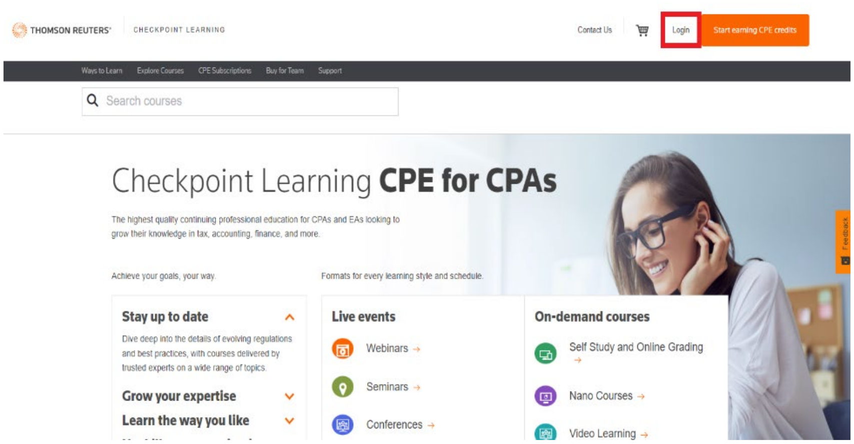
Print

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

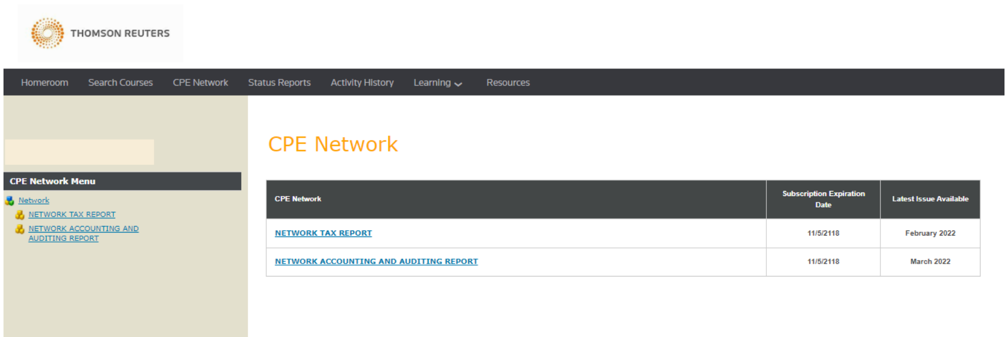
Transitioning From DVDs

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

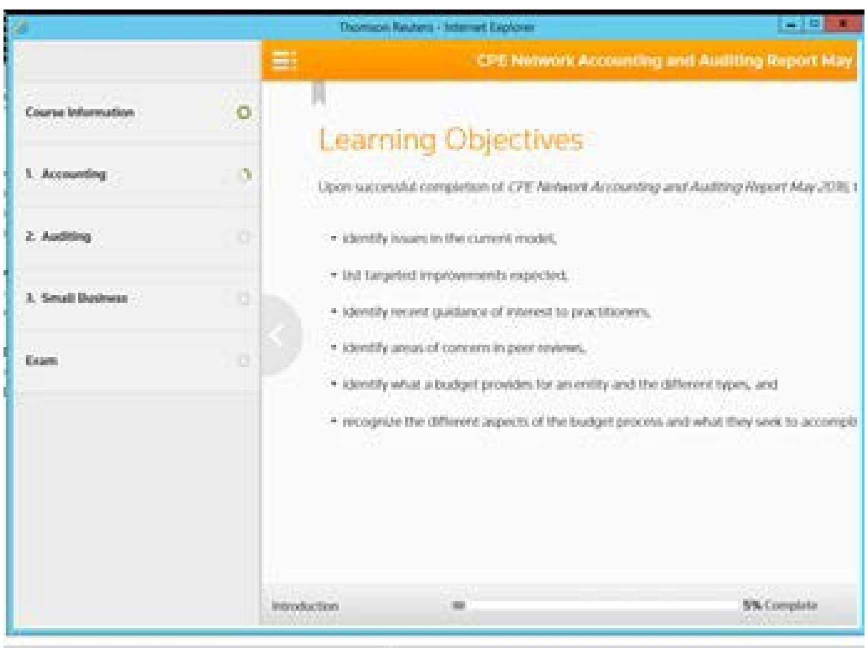
- Go to www.checkpointlearning.thomsonreuters.com .
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

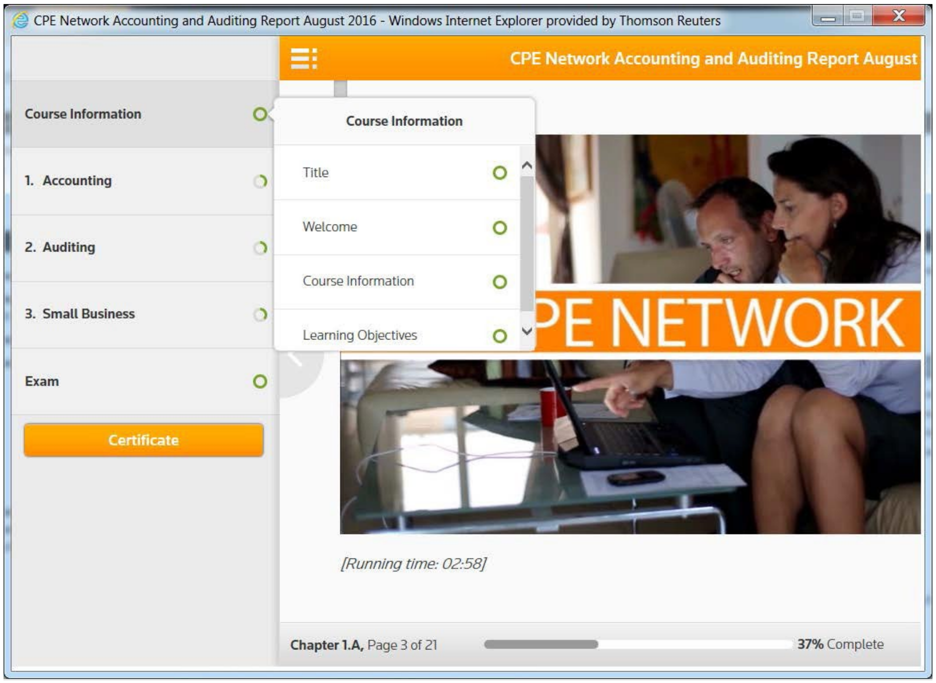


The Chapter Menu is in the gray bar at the left of your screen:

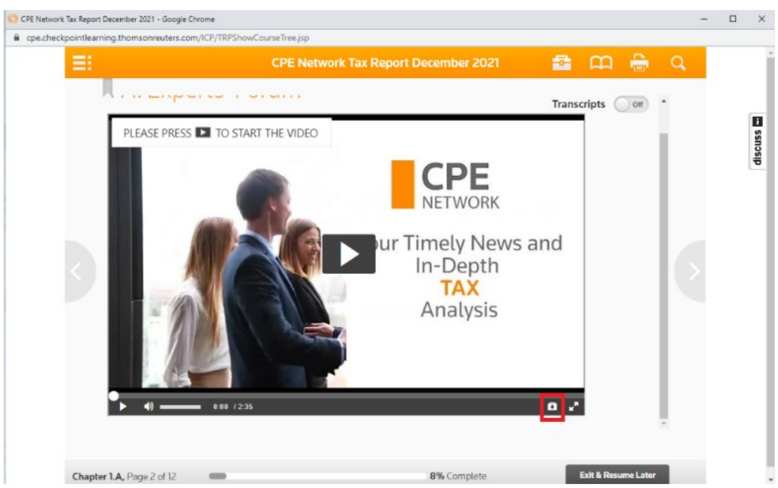


Click down to access the dropdown menu and move between the program Chapters.

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



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



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

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

What Does It Mean to Be a CPE Sponsor?

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

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

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

CPE Sponsor Requirements

Determining CPE Credit Increments

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

Program Presentation

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

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

Disclose Significant Features of Program in Advance

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

Monitor Attendance

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Awarding CPE Certificates

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

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

Seminar Quality Evaluations for Firm Sponsor

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

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

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

Retention of Records

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

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

Appendix: Forms

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

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

Getting Help

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

Support Group	Phone Number	Email Address	Typical Issues/Questions
Technical Support	844.245.5970	Cplsupport@cerifi.com	• Browser-based • Certificate discrepancies • Accessing courses • Migration questions • Feed issues
Product Support	844.245.5970	Cplsupport@cerifi.com	• Functionality (how to use, where to find) • Content questions • Login Assistance
Customer Support	844.245.5970	Cplsupport@cerifi.com	• Billing • Existing orders • Cancellations • Webinars • Certificates