VOLUME 37, ISSUE 6

CHECKPOINT LEARNING

TAX REPORT

JULY 2024

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Topics for future editions may include:

Experts Forum



EXECUTIVE SUMMARY

PART 1. CURRENT DEVELOPMENTS

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: 28:46]

Learning Objective:

Upon completion of this segment, the user should be able to understand a variety of current tax issues including: (1) evaluate the valuation methodology for conservation easement charitable contributions, (2) determine the requirements for the energy credits under IRC§45Z, (3) assess the use of life insurance funded buy-sell agreements running as a corporate obligation.

PART 2. INDIVIDUAL TAXATION

OVERVIEW OF CLEAN VEHICLE CREDITS......13

The Inflation Reduction Act renamed and significantly modified the credit available under IRC §30D as the Clean Vehicle Credit and added two additional credits for the purchase of clean vehicles: The Previously Owned Clean Vehicle Credit under IRC §25E; and The Qualified Commercial Clean Vehicle Credit under IRC §45W. Mike Giangrande reviews all three of these clean vehicle credits. [Running time: 51:35]

Learning Objective:

Upon completion of this segment, the user should be able to discuss: (1) the types of Clean Vehicle Credits available, (2) the AGI limits associated with the different credits, (3) how much each credit is; and (4) how often a taxpayer can claim each credit

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

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

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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 charitable contributions and valuation methodologies, clean fuel production credits, legal challenges to the Corporate Transparency Act, and a new Offer in Compromise booklet.

Let's join Ian.

Mr. Redpath

Hi everybody, welcome to the program. I'm Ian Redpath. It's great to be with you again. This is the segment where we go over things that have happened at the IRS since we last got together, the Internal Revenue Service, the courts, there have been a lot of things going on. And so this is our kind of an update, a potpourri of different topics to cover.

A. Excelsior Aggregates LLC, T.C. Memo 2024-60

So, I want to start right in with a Tax Court memo case. This is Excelsior Aggregates, LLC. This is an interesting case because this is a consolidation of 13 cases where the Tax Court essentially was looking at charitable contributions related to conservation easements. So what they did was they looked at it, but they also looked at the valuation methodologies for determining the appropriate level of contribution deduction. Essentially what we had here is, we had three entities, three partnerships, Excelsior, Alabama S &G, and Barnes-Escambia Properties, LLC. Basically, in this particular circumstance, there were 13 parcels that are part of the Big Escambia Tract in rural Alabama, and the partnerships claimed \$187 million in charitable contribution deductions through both easements and fee simple deductions. The IRS came in and the IRS denied of the 187 million, they denied 30 million on the partnership returns and had a notice of final partnership administration adjustment. So the Tax Court looked at each particular case in this situation and they looked at what the donee received during the tax year and the donee received 100% of the real property interest within each parcel, which equates to the parcel's before value. So these before values were used then to determine the total allowable contribution deduction.

Now there were appraisals for each partnership, but they were done by the same individual who appraised the two conservation easements based on highest and best use. So the appraiser determined the highest and best use was commercial sand and gravel mining, which the partnership and the IRS expert argued about at the trial. So ultimately the Tax Court found that the highest and best use, of the parcels before granting the easements was silvicultural, recreation, limited residential, and the potential mining of remaining sand and gravel reserves for basically local consumption.

The Tax Court sided with the IRS on this. There was another parcel there that the Tax Court agreed with the petitioners in this particular case, because what they did in that case is that they looked at comparative sale analysis. And so they said, well, they looked at comparative sale analysis and they looked at the parcel's non-contiguous nature and they were satisfied that the appraisals had looked at the appropriate analysis in the comparables. So the Tax Court in this particular case though said that the separate appraisals allowed them to select transactions involving properties again whose location, size were very, very similar.

What's interesting about this case though is to go through and look at the analysis of the Tax Court when determining the valuation methodology on these various parcels of property. And so, if you have an issue relative to a client who has a conservation easement deduction or is looking to take a conservation easement deduction, you may want to look at this case. Again, there were 13 consolidated cases in the Excelsior Aggregates situation.

B. IR 2024-153

We now have an IR, IR 2024 -153. And essentially, the IRS has provided guidance on the clean fuel production credit registration. And Notice 2024-49, which the IRS has emphasized that the taxpayer to get the credit, and this is important, must first be a registered producer of clean fuel under § 4101 at the time of the production. It also provides background information and related definitions.... What you have are two types of credits under section 45Z, the sustainable aviation fuel, SAF, and non-SAF transportation fuel, other transportation fuel. And so the IRS points out in Notice 2024 -49 that for SAF production, you must provide a certification from an unrelated party showing compliance with supply chain traceability and information transmission and the other requirements here. So you have to look now at the registration and the IRS points out that simply because you have registered. Now remember that this registration has to be dated before January 1, 2025. The IRS in this notice, they indicate that if applications are submitted by July 15th, they will probably be processed by January 1. They don't say what's going to happen if you do this later than that. So it looks like there's going to be a kind of a long term period that they're looking at to get the certifications out. So if you have something like this, you should be looking at getting the certification as soon as possible. Again, the IRS notes that just getting a registration letter doesn't mean you qualify for the credit. So you can be a registered clean fuel producer, but not produce eligible fuel. So there's a two -fold. You have to get the certification, the registration, and then you have to meet the other requirements in order to take the credit. So the registration Form 637 is going to be used and if it's SAF, then you'll use activity letter CA, non-SAF will use activity letter CN. And again, if you're doing both, you can apply for both on the same 637 form.

C. CONNELLY, AS EXECUTOR OF THE ESTATE OF CONNELLY v. UNITED STATES, Supreme Court No. 23-146

Now, the interesting case, we've talked about this before, that this was going up to the Supreme Court and that the Supreme Court had heard arguments, but we finally have a decision and this is Connelly. This is the estate of *Connelly versus the United States*, and it went up to the Supreme Court, and this is the issue of a life insurance to fund buy – sell requirements. This was a unanimous decision of the Supreme Court, and they found that for federal estate tax purposes, a closely held family business obligation to redeem the shares at fair market value didn't offset the value of the life insurance used to redeem that. So, essentially, the buy-sell ran with the company. When the company received \$3 million on the buy-sell to fund it, that's an asset of the estate subject to tax. The obligation to buy it is not a liability that would reduce that amount. So the insurance increased the value subject to tax.

So, and again, a refresher on this, we did talk about the case, but Michael and Thomas Connelly owned a roofing and siding business called Crown C Supply. They entered into a buy-sell agreement for the first to die. The idea was that it was an offer, a right of first refusal by the other brother. If not, then the company, Crown C, was required to buy the shares back. So to fund that, the company bought life insurance to make sure that it had enough cash to buy it back. So when Michael dies, Thomas declines to purchasing the shares and a value of three million was agreed upon between Michael's son and Thomas, and they had life insurance to protect that. So the insurance, the estate paid the taxes but the IRS disputed the valuation of the shares.

So, the IRS said that the three million in life insurance proceeds should have been included in the share value and assessed additional estate tax. So they paid estate taxes on the three million, the life insurance, but the three million increased the share value, which they didn't increase the share values in order to tax it again. So in essence, the idea here is it would appear that that three million will be taxed twice, once as life insurance and once as the value of the shares. They also tried to say that, well, even if it wasn't, there should have been an offset of the fair market value of the life insurance that was used to fund the redemption. In essence, that there was a liability that was created here. The court said no, that's not the case. The court rejected the estate's view that a hypothetical buyer was going to pay less because Crown is less valuable because of this obligation to pay the three million. So they're trying to look at it from two different perspectives. They'll treat the life insurance differently than the value of the estate. So the Supreme Court here, they rejected that argument. They said this obligation of redemption was not a liability. They were responsible, yes, but it wasn't a liability to reduce the value. What the court did say is, you may not like the tax results here, but you could have done it differently. You guys established how you wanted to do this transaction, we didn't,

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and this is how you did it, so you have to live with the tax results. And for example, they pointed out that the brothers had other options. One of the things they could have done is done a cross-purchase agreement between the brothers, not include the company in that.

Well, that's not what they did. So, you know, the Court said, we're bound by what you did, so we have to follow what you did. And by the way, you don't like the tax results. So keep that in mind as you're looking at buy-sell agreements. Read this case. It's very important because we know in all small businesses, one of the important things you look at, especially in families, is continuity and buy-sell agreements are very common. Stock transfer restrictions with buy-sell agreements funded by life insurance are a very common estate planning tool.

So, I'd suggest that you look at this Connelly case and see where the Supreme Court was coming from and of course sit down with the attorneys because the attorneys will often just draft these, kind of rote because a lot of the language is in form books. Be very careful of this and I would strongly suggest that this case be looked at and in structuring any type of, buy-sell type of agreements when you have a situation, especially in a small, closely held business.

D. Smith et al. v. Google LLC, No. 23-cv-3527, 2024 WL 2808270 (ND Cal.)

All right, we have a very interesting case going on. We talked about this once before, a while ago, and this was the idea that through Google Pixels, that people were, or I say people, companies, were tracking taxpayer data for a lot of different reasons, but advertising, targeting advertising, things of that nature.

This is a case that was brought, it's called Smith et al. versus Google. Google filed for summary judgment to have the case dismissed. The basis of the case was that they were using these invisible tracking tools to collect financial information about consumers using H &R Block and other tax software. Again, we covered this a while ago in a previous program. So the plaintiffs alleged that they're saying that this is the equivalent of state and federal wiretapping claims against Google and that they obtained *personally identifiable information*. Well, the judge rejected Google's argument that it merely provides the analytical tools to the preparer services and they decide what to do with them. So, you know, this is a very common thing as we say with things like Google is what is it? And we know that there is a, in essence, they're protected and often they're looked at as well they just report information that's out there, and so, therefore, they are not a "publisher" of the information. They're just saying what's there It's a fine line, but it does provide legal protection in general for especially search engines like Google, Safari, etc. But this is saying this went further than that because you were providing tools that they could use and this Google Analytics tracking pixel allowed, it was H &R Block, TaxSlayers, and other online services to secretly record the customer's interaction with the website. Child credit--here's all this information about a child. Charitable contribution--here's all this information. So...it allows for targeting based upon personal information.

Now, Google has maintained that there is no personally identifiable information. There's information, but it's not information that can be traced back to a person. They claim, well, they're just a vendor. It's what the others call it. Well, what do they do with it? Well, the so -called invisible web bug collects and transmits the customer's financial information, income, filing status, refunds, and it can do this in real time. And so, the idea is whether or not, they're just a mere vendor or whether or not they are actively engaged. Google says, web developers, not Google, choose whether to use analytics, and what if any information there is going to be sent to Google? So the district court judge in this case acknowledged that there's a split of authority among district courts, even within the Ninth Circuit, about whether a software vendor can be sued for wiretapping, stemming from a third party's use of the software, the Google Analytics Pixels. So the judge concluded that at this particular point in time, he didn't have to resolve that issue because the complaint includes allegations that Google actively processes and analyzes the data. And so therefore, and this is a legal thing, when there's a motion like this, you have to assume that all of the information is correct. So if we assume that yes, Google was doing this, if we assume that Google was actively engaged in it, then the case can't be dismissed. There's a cause of action against Google. They're more than just a mere vendor. Now that doesn't mean it happened. That doesn't mean that's exactly what's going to happen when the court, but it means at this point the case can proceed. So we'll wait and see what happens. It's an interesting case.

E. National Small Business United (DC AL 3/1/2024) 133 AFTR 2d 2024-885

Now, we recently talked about the case of the National Small Business United. This is the case where a judge, and this was a district court judge in Alabama, where he said, you know what? The Corporate Transparency Act violates the APA, the Corporate Transparency Act and of course the Beneficial Ownership Rules and reporting after it, they violate the Fourth Amendment protections against unreasonable searches and seizures and also the APA, for the regulations under that. Well, the judge issued an injunction against the government and FinCEN, that they're not to enforce collection of information from any member of the plaintiff, the National Small Business United, or the National Small Business Association.

Now what's happened? Well, you know, it's funny because when this first came out, the IRS, this is crazy. We clearly have the authority. This has nothing to do with the Fourth Amendment protections against unreasonable searches and seizures. It was also felt that this would be kind of a summary handled at the 11th Circuit Court of Appeals that this is an outlying judge. This is a local district judge who's just, who's over his skis at this point. And the 11th Circuit will clearly uphold the government. Whoa, hold on, not so fast. Now all of a sudden, we have, and recently, 22 states have filed amicus curiae, or friend of the court, we have an interest, so we want to help the court, have filed amicus curiae briefs, siding with the National Association. In addition, there's been a number of new lawsuits brought seeking to get injunctions for their members. So yes, the initial injunction was limited, but this is really steamrolling as we speak. Now the states contend that the Corporate Transparency Act doesn't actually change the way states implement and enforce their incorporation law. It still overtakes too much state law ground. They state that the CTA and using, if nothing else, the Commerce Clause, that the states zero in on that, and say, the CTA is an attempt to usurp the state's role by regulating entities at the time they incorporated. And before they engage in any commerce whatsoever, intrastate, interstate, international, it doesn't matter. They incorporate and suddenly you are putting this burden of reporting on them. And the states are saying forming a corporation doesn't implicate anything. It doesn't say it's going to be an instrumentality of interstate commerce or international commerce, that it will substantially affect interstate commerce. And so therefore, under the Commerce Clause, the federal government has no right to require this information. So the states are essentially saying this is an interference with the state's rights under the Commerce Clause. And of course they still, the same idea about the Fourth Amendment, that well if it doesn't, it still violates the Fourth Amendment.

And again, there's been some other cases filed as other entities are trying to fall into their own injunction against reporting. Now that being said, the IRS, FinCEN, is saying, you've got to report. We're not, unless you're subject to that injunction, you got to file these reports. We're not letting you off. So that's kind of where we're at right now, an interesting case. Follow it through, look and see if there's a situation where you have a client who is not going to be required currently to file under the Corporate Transparency Act and the BOI, the Beneficial Ownership Rules. So again, this very well means that there's a possibility that these rules will be overturned. The IRS warns, you have to comply. Unless you're under the injunction, you have to comply. Complying is always the best unless there's an injunction against it. But again, there are numerous new lawsuits have been filed by others trying to get injunctions for members of their organizations.

F. New Form 656-B (Offer in Compromise Booklet)

All right, we've got a new form, 656 -B.

That is the Offer in Compromise booklet. So the new version is April 2024 version and the IRS says that in order to be properly processed, you need to use the most current forms. So if you're looking at an Offer in Compromise, make sure you're using the most current booklet. So again, remember that to make a filing under the Offer in Compromise. You have to file all tax returns that are legally required, have received a bill for at least one debt included, make all estimated tax payments for the current year, and for business owners with employees, that you've made all of the required federal tax deposits for the current quarter and the previous two. Then you file using the new booklet, the April version, Form 656-B.

All right, so that brings us to the end of today's session. I certainly want to thank you all for attending. And, as always, please be safe.

SUPPLEMENTAL MATERIALS

Experts' Forum

By Ian J. Redpath, JD, LLM

A. Excelsior Aggregates LLC, T.C. Memo 2024-60

This case is a consolidation of 13 cases involving conservation easement values for charitable deduction purposes. The Tax Court determined the appropriate valuation methods for the property interests donated.

Excelsior Aggregates LLC (EAG), Alabama S&G (ASG), and Barnes-Escambia Properties LLC (BEP) donated interests in 13 parcels of property in the Big Escambia Tract in rural Alabama. The total charitable contribution deductions claimed for all properties was \$187 million, which included both easement deductions and fee simple deductions. There was no easement deduction claimed by BEP, but all three took fee simple deductions. The Service denied a total of \$30 million of the contribution deductions reported on the partnerships' returns for 2014.

The Tax Court determined that, in each case, the donee received 100% of the real property interests in each parcel. This is considered the parcel's before value, which were used to determine the total allowable charitable contribution deductions. The appraisals were originally done by the same individual, who appraised the two conservation easements based on the highest and best use (HBU) of each parcel which was commercial sand and gravel mining (S&G mining). This was a matter of contention with the Service's expert. Ultimately, the Tax Court agreed with Service that the HBU of the parcels before granting the easements, was silviculture, recreation, limited residential use, and potential mining of remaining S&G reserves. The Court did agree with the taxpayer's expert concerning on property because the valuation tailored comparative sales analysis to the parcel's "noncontiguous nature." The appraisal looked at transactions involving properties whose location, size, topography, usage, and physical characteristics more closely resembled those of the ten constituent sub-parcels.

B. IR 2024-153

The IRS issued guidance on the Clean Fuel Production Credit to clarify registration requirements for the two fuel categories for eligibility purposes under IRC §45Z. This credit, introduced in the Inflation Reduction Act (PL 117-169), incentivizes transportation fuel produced by a taxpayer in the United States by the taxpayer at a qualified facility after December 31, 2024. It must be sold to an unrelated party. There are two types of § 45Z fuel: sustainable aviation fuel (SAF) and non-SAF transportation fuel. The credit is generally determined by the applicable per-gallon amount for transportation fuel produced at a qualified facility and the emissions factor for that fuel type.

In Notice 2024-49, the Service emphasizes that in order to claim the credit, a taxpayer, at the time of production, must be a registered producer of clean fuel under IRC §4101. The guidance also provides background information and related definitions. For SAF production, a taxpayer must provide certification from an unrelated party showing compliance with supply chain traceability, information transmission, and other requirements. Note that being registered, in and of itself, does not mean the taxpayer will receive the credit, but is a precondition to being eligible.

Proof of registration to be considered registered and eligible for the §45Z credit for production starting next year, the taxpayer needs a signed registration letter from the IRS dated **before January 1, 2025**. Applications submitted by July 15, 2024, are more likely to be processed before January 1 than those submitted afterwards, but the Service gives no assurances that they will be registered by January 1, 2025. Even if the taxpayer is registered, the fuel produced must be eligible fuel and must be produced at a qualified facility (IRC §45Z).

To obtain registration, taxpayers must use Form 637, Application for Registration (for Certain Excise Tax Activities). SAF fuel producers will use Activity Letter "CA" and non-SAF transportation fuel producers will use Activity Letter "CN." The IRS is revising the form to add both Activity Letters. Taxpayers should use the most current Form 637 and write in the Activity Letters until the revised Form is released. Note that a taxpayer may apply for registration for both using the same Form 637 noting both Activity Letters on the same Form. The guidance provides additional instructions for other Activity Letters that should be selected depending on other specific fuel types.

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C. CONNELLY, AS EXECUTOR OF THE ESTATE OF CONNELLY v. UNITED STATES, Supreme Court No. 23-146

Supplemental Materials

The Supreme Court, in a unanimous opinion found that, for federal estate tax purposes, a closely held family business' obligation to redeem shares at fair market value didn't offset the value the value of the life-insurance proceeds used to redeem those shares. This case is a warning to those engaged in succession planning as the result is a major increase in tax for the estate.

Crown C Supply, a roofing and siding company was owned by two brothers, Michael and Thomas Connelly. For succession planning purposes, they, with the Company, entered into a buy-back agreement. The agreement provided the surviving brother the right of first refusal to purchase the shares of the first brother to die. If the surviving brother did not execute that right, then the company was required to buy back the shares. To ensure that it would have the cash to purchase the shares should the surviving brother not do so, Crown obtained a life insurance policy on the lives of the brothers.

Michael died in October 2013 and his brother declined his right to purchase Michael's shares. The company then redeemed his shares for \$3 million. The value was determined by agreement of Michael's son and Thomas. Crown used the life-insurance proceeds to cover its purchase obligation.

The Estate paid estate taxes on the \$3 million, and then, valued the shares without consideration of the insurance proceeds. The IRS disputed the estate's valuation of the shares and asserted that the \$3 million in life-insurance proceeds should have also been included in the shares' valuation and assessed additional estate taxes. The executor of Michael's estate, paid the deficiency and filed a refund suit, arguing in part that the buy-back agreement controlled the shares' valuation.

The refund claim was rejected by both the District Court in Missouri and the Eighth Circuit Court of Appeals holding that the \$3 million in life-insurance proceeds must be counted to accurately value Michael's shares. The rationale set forth by the Court was that, under customary valuation principles, Crown's obligation to redeem Michael's shares was not a liability that reduced the corporation's fair market value. Thus, Crown's redemption obligation did not offset the life-insurance proceeds. The Supreme Court granted Certiorari.

The Supreme Court asserted that when calculating the federal estate tax, the value of a decedent's shares in a closely held corporation must reflect the corporation's fair market value. And life-insurance proceeds payable to a corporation are an asset that increases the corporation's fair market value. Thus, the Court said, the correct consideration is how much the shares were worth at the time Michael died, not what they were worth after the redemption. They rejected the estate's argument that a hypothetical buyer would pay less for Michael's shares because Crown would be less valuable after the redemption. According to the Court, a hypothetical buyer purchasing Michael's shares wouldn't treat Crown's obligation to redeem his shares at fair market value as a factor that reduced the value of those shares because under a fair market value share redemption, the value of each share is the same before and after a redemption. The Court rejected the estate's argument that Crown's redemption obligation was a liability, saying that argument could not be reconciled with the basic mechanics of a stock redemption. The Court explained that when a shareholder redeems his shares, he "is essentially 'cashing out' his shares of ownership in the company and its assets." That transaction necessarily reduces a corporation's total value. And, because there are fewer outstanding shares after the redemption, the remaining shareholders are left with a larger proportional ownership interest in the less valuable corporation.

The estate argued that the Service's position would make succession planning more difficult for closely held corporations. The Court noted that "the result here is simply a consequence of how the Connelly brothers chose to structure their agreement." The brothers had other options such as a cross-purchase agreement funded by life insurance on each other. This would have avoided the life-insurance proceeds increasing the shares' value and accomplished the same end result of the surviving brother owning the company.

D. Smith et al. v. Google LLC, No. 23-cv-3527, 2024 WL 2808270 (ND Cal.)

A Federal Judge for the Northern District of California has refused to dismiss a proposed class action accusing Google LLC of using "invisible" tracking tools to collect and aggregate the financial information of consumers who use H&R Block and other online tax preparation services. According to the Court, the plaintiffs adequately alleged in their state and federal wiretapping claims that Google collected their personally identifiable information, the judge rejected Google's argument that it merely provides analytics tools to the tax preparation services, which then decide whether to use them to collect their customers' Personal Identifiable Information (PII).

Mary Smith originally sued Google. LLC in July 2023, alleging that the Google Analytics' tracking pixel allows H&R Block, TaxSlayer and other online tax preparation services to secretly record customers' interactions with their websites. The complaint says the pixel collects and transmits customers' sensitive financial information, such as income, filing status and refund amounts, to Google in real time. It accuses Google of unlawful wiretapping in violation of the Federal Wiretap Act, 18 USCA § 2510; the California Invasion of Privacy Act, Cal. Penal Code § 631; and similar laws in Florida, Illinois and Texas. Google moved to dismiss the consolidated complaint arguing that it could not be held liable for wiretapping because it was operating as a "mere vendor" when it provided the tracking pixel to the tax preparation services. Google alleges that web developers, not Google, choose whether to use Google Analytics, and what (if any) information to send to Google.

Judge Pitts denied the motion to dismiss, however, he recognized that there is a split of authority among district courts within the 9th Circuit about whether a software vendor can be sued for wiretapping offenses stemming from a third party's use of its software. In this matter, the judge concluded that he need not resolve that issue because the complaint includes allegations that Google actively processes and analyzes the data it receives from the tax preparation services. Thus, Google is reading and/or using the data it collects. For purposes of this motion, it is taken as true and as such is enough to provide a reasonable inference that Google is liable.

E. National Small Business United (DC AL 3/1/2024) 133 AFTR 2d 2024-885

The Eleventh Circuit has been urged by 22 states to uphold a lower court decision enjoining enforcement of the Corporate Transparency Act's reporting requirements for plaintiffs in that case, two more lawsuits have been filed seeking similar relief. The primary basis power of the federal government verses the states.

The CTA requires business entities to file beneficial ownership information about their owners, officers, and other control persons with Treasury's Financial Crimes Enforcement Network (FinCEN). Initial reporting requirements went into effect this January. Intended by Congress to combat money laundering, financing of terrorist activities, and tax evasion, opponents of the law contend it exceeds Congress' authority, violates Fourth Amendment protections against unreasonable search and seizure, and more. The National Small Business Association (NSBA) challenged the CTA and an Alabama federal district court agreed that Congress had exceeded its authority in enacting the CTA. The district court enjoined enforcement of the CTA's beneficial ownership information filing requirements, but only to NSBA members. The case is now on appeal before the Eleventh Circuit.

The states contend that though the CTA doesn't actually change the way states implement and enforce their incorporation laws, it still overtakes too much state-law ground. They point to the stated purpose of the CTA, which is to set a clear, Federal standard for incorporation practices – the province of the states. The states alleged the CTA violates the Constitution's Commerce Clause, arguing that the CTA is an attempt to usurp the States' role by regulating entities at the time they incorporate and before they engage in commerce of any kind. Forming a legal corporation, is not, in and of itself, engaging in or substantially affecting interstate commerce

A number of groups echoed the states' federalism concerns in amicus briefs filed the same day. Those groups include business groups like the National Federation of Independent Business (NFIB) and the Small Business Association of Michigan, and political advocacy groups like Americans for Prosperity and Advancing American Freedom.

The IRS warns corporations not covered by the injunction to comply with the CTA to avoid possible fines for non-compliance.

F. New Form 656-B (Offer in Compromise Booklet)

The IRS released the latest version of Form 656-B (April 2024 version), *Offer in Compromise Booklet*. Remember to make sure you are using the latest version of the booklet when filing an offer in compromise (OIC). This will avoid possible delays in processing the OIC request.

If you haven't done one, an OIC is an agreement between a taxpayer and the IRS to compromise a tax debt(s). It is based on the ability of the taxpayer to pay. The IRS won't accept an offer if the taxpayer can pay their tax debt in full through an installment agreement or equity in assets. Generally, a taxpayer must offer their net worth plus expendable income for the remainder of the collection period. The taxpayer will be required to provide financial information so the service can determine the ability to pay. There are different options to pay available to the taxpayer.

To be eligible for consideration of an OIC settlement by the Service, the taxpayer must (1) file all tax returns they are legally required to file; (2) have received a bill for at least one tax debt included in the offer; (3) make all required estimated tax payments for the current year; and (4) for business owners with employees, make all required federal tax deposits for the current quarter and the two preceding quarters.

GROUP STUDY MATERIALS

A. Discussion Problems

- 1. You client has been offered to participate in a transaction that would possibly allow for a very large charitable contribution deduction as a conservation easement. She brings in an appraisal of various aspects of the property but does not include highest and best use nor comparable. She is asking your advice.
- 2. Your client is producing eligible fuel at a qualified facility under IRC §45Z. The credit will have an impact on the 2025 taxes. Is there anything they should be aware of now to take the credit after Jan. 1, 2025?
- 3. JonesCo is a small family owned corporation. Three siblings are the shareholders. The intent is to keep the company in the family's control after the death of one or more of the siblings. Their attorney has recommended that there be a right of first refusal for the surviving shareholder(s) and if they decline the corporation be required to purchase the shares. She suggests they fund it by having the corporation purchase life insurance on the life of the owners for an amount equal to the value of the corporation. Are there any concerns?

Required:

Discuss the issues raised by the independent factual situations above.

B. Suggested Answers to Discussion Problems

1. Assuming the transaction will qualify as a charitable contribution of a conservation easement, the valuation appraisal seems questionable. Failing to address highest and best use and the lack of any comparable may not be sustained on audit. See Excelsior Aggregates LLC for a good discussion of valuation methodology.

- 2. The client needs to register ASAP. The registration is done using Form 637, Application for Registration (for Certain Excise Tax Activities). SAF fuel producers will use Activity Letter "CA" and non-SAF transportation fuel producers will use Activity Letter "CN." A taxpayer may apply for registration for both using the same Form 637 noting both Activity Letters on the same Form. Proof of registration to be considered registered and eligible for the §45Z credit for production starting next year, the taxpayer needs a signed registration letter from the IRS dated before January 1, 2025. Applications submitted by July 15, 2024, are more likely to be processed before January 1 than those submitted afterwards, but the Service gives no assurances that they will be registered by January 1, 2025.
- 3. Reference should be made to the fact pattern in a Supreme Court decision in *Connelly, as Executor of the Estate of Connelly v. United States*. In a similar situation, the estate of the deceased paid tax on the life insurance proceeds and then more tax because the life insurance proceeds were added to the value of the stock.

PART 2. INDIVIDUAL TAXATION

Overview of Clean Vehicle Credits

While sustainability has several different dimensions, the environmental piece is the one many people think of first. Clean vehicles assist in those sustainability goals with improved fuel economy and reduced emissions. Both electric vehicles and fuel cell vehicles may qualify for tax credits, and those credits are not just available for new vehicles, but for used as well. Both personal and commercial use vehicles may qualify.

Let's join Mike Giangrande to learn more on clean vehicle credits and maximizing their use for your clients.

Mr. Giangrande

Now starting in 2023, we have three separate Clean Vehicle Credits available to us. We have the Clean Vehicle Credit under Section 30D. That was the only Clean Vehicle Credit available before 2023. It wasn't called the Clean Vehicle Credit, it was called the New Plug -in Motor Drive Vehicle Credit, I think is what it was called, some long name. It is now simply renamed as the Clean Vehicle Credit, also modified thanks to the Inflation Reduction Act.

Then we've got now the previously owned Clean Vehicle Credit. You'll hear me just call it the Used Clean Vehicle Credit. That's under Section 25E. And then we've got the qualified commercial clean vehicle credit under section 45W. Now I want to make sure I point out something way up in the front. And we will talk about this topic really at the end. But technically any one of these credits could be claimed for a business vehicle. There is some nuance in there that we need to talk about. But when it comes to the, for example, previously owned clean vehicle credit under section 25 E, that credit is only available on the 1040. So a business entity cannot purchase a used clean vehicle and claim a credit, but an individual who purchases a used clean vehicle, they use in say their schedule C business can claim a clean vehicle credit. So there's a lot of nuance there and we will get through it. Because I got to tell you, there's a lot of hoops to jump through with these three credits.

So diving right into the section 30D, collectively we do refer to these as the clean vehicle credits, but under section 30 cap D this is the one that is actually titled the clean vehicle credit. That's sort of like those of you in Ohio, right? The Ohio State University; the clean vehicle credit. This one is only available for new vehicles placed in service by December 31st, 2032, that's the expiration date here. So you have plenty of time to claim this credit year over year for the next nearly decade.

What does placed in service mean? That is really the date the taxpayer takes delivery of the vehicle. That's what we're looking at. And this credit can only be claimed one time per vehicle. Now, if you've got a client who, maybe you've got a client who's got quintuplets at home and they all turn 16 and you go buy five Teslas for them. Assuming that your AGI limitation is low enough to allow you to buy five Teslas and also claim this credit, you could theoretically claim the credit for each of the cars. There is no limit to the number of vehicles you can claim this credit for. There is only a limit here for the number of times you can claim the credit for any one car, which makes sense.

It's a new clean vehicle credit. You're only going to sell that vehicle new one time. Like I said, there's no limit to the number of vehicles per taxpayer. But as we're going to talk about, the clean vehicle credit does have an AGI limitation. So certainly, you're not going to be able to put too many cars in service while still being below the AGI limitation. However, as we'll talk about a little later, a business, say a C corporation, that purchases clean vehicle credits in its business, C -Corporation doesn't have an AGI. So the AGI limitation won't apply to them. And so a C -Corporation that purchases, say, 100 qualifying vehicles could claim the Section 30D credit 100 times, right? One time for each vehicle. Again, we'll talk about some of the business use items toward the end, and that's where they appear in our materials. I'll try to scatter the discussion throughout though, where I think it applies.

The IRS though does now limit the number of times you can claim the advanced credit at the dealership because starting for sales in 2024, right, not the sales in 2023 that you're reporting in the 2024 return, but for vehicles that are sold in 2024 and after, our clients can claim their clean vehicle credit at the dealership, get that advanced credit, which means that starting next spring, we prepare income tax returns, we're going to have to reconcile that credit on the

income tax return to make sure our client doesn't have to recapture or repay some of that credit. What the IRS says is you're only allowed to claim the advanced credit at the dealership two times per year. If you buy, say, three vehicles in 2024 that all qualify for the credit, you can claim the advanced vehicle credit twice. The third vehicle, while you can claim the credit for it, you got to wait until you file your income tax return to claim the credit for that vehicle. And that's just how that works. So just limiting your advanced credit, the advanced credit to two vehicles per year. The credits though here are nonrefundable and any unused credits do not carry forward when it comes to the Section 30D credit.

Now that will be the case for the Section 30D credit for a personal use vehicle. And that will be the case for the Section 25E previously owned clean vehicle credit. I'll tell you now though, when it comes to business vehicles under Section 30D or business vehicles that you purchase and claim the credit under 45W, the qualified commercial clean vehicle credit, in those two instances, you're claiming the credit as part of the general business credit under Section 38, right? That nice form 3800 that you've got. And so any credit that shows up on the Form 3800 as part of the general business credit can have a carryover provision. There is a carryover for general business credits. So in that respect, some portion of your clean vehicle credits may be able to carry forward. But for a personal use vehicle, non -business vehicle, these are non -refundable credits that do not carry forward.

And I've already alluded to this pretty clearly, I think, but you can claim the Section 30D Clean Vehicle Credit for a personal use vehicle or a business vehicle. We'll talk about the business use special rules. We've already talked about a couple of them a little bit, but we'll dig into them in more detail later on. And interestingly enough, I guess this is a sidebar. I think it's interesting. I almost thought it was a mistake that Congress allowed you to claim the Clean Vehicle Credit here under section 30D for a business use vehicle. Because that was the only clean vehicle credit before. So under section 30 cap D little subsection C, there's a provision that that subsection allows you to claim this clean vehicle credit for a business use vehicle. But when the Inflation Reduction Act was passed and section 45W qualified commercial clean vehicle credit was created, it seemed to me that the design of that code section, that Congress's intent was, to create a separate credit for business use vehicles and that they simply forgot to, oops, remove section 30D subsection C. And because of that, you can claim the business use for the same vehicle under two different credits, which is really weird. And so I guess I'll foreshadow one of the big things we're going to talk about later is when you claim the clean vehicle credit under section 30D, the vehicle's got a battery and material component sourcing rules, it's got a North American assembly rule, car has got to be assembled in North America, those are not the requirements under section 45W. You could have a car that is a clean vehicle, but let's say it's assembled not in North America where it does so because of that it doesn't qualify for section 30D but it does qualify under section 45W. And so you're going to have a lot of vehicles, those vehicles that are under 14,000 pounds. And you'll see it as we go along here where you've got, you'll have the option, which credit do we claim here? So there's going to be some thinking that's going to have to be done on your part,

Let's talk about a brief bit of transition relief. I don't think this is going to apply to too many taxpayers anymore but maybe some of the returns you're preparing here in 2023. So, excuse me, taxpayers who signed a binding written agreement to purchase a qualifying clean vehicle before August 17th, 2022, which is the date the Inflation Reduction Act was passed, are available to take advantage of this transition relief. If you signed a binding written contract, not just that you put a deposit down, but a binding written contract to purchase a vehicle. I know people who bought Rivians or Lucids and they did this. The pre-inflation reduction act rules. So even though a Rivian or a Lucid might not claim a credit today, if you signed a binding written contract with that vehicle before August 17th, 2022, but then your client took delivery, let's say in June of 2023, your client can apply the pre -inflation reduction act rules and claim the credit for the vehicle. But what the IRS requires though, is that even though you've taken delivery of that vehicle in 2023, you've got to go back and file an amended 2022 return and claim that credit. I'll tell you, I had to do that for one of my clients. I had a client who signed a binding written contract on August 16th, 2022 for a Rivian, took delivery in March. I think it was like three weeks after we filed their return. And then the IRS came out and said that they got to go back and do amended 2022 returns. We went back, filed an amended return and claimed the credit for them. So it's a really weird scenario here with this transition relief. Take delivery in 2023, but you've got to amend your 2022 return to claim the credit for the vehicle. We've got a chart on page two with a summary of some of the rules related to this transition relief. Again, it's going to apply to people who signed a binding written contract before August 17th, 2022.

Leased vehicles, very simply, the credit is not available to the person who leases, lessee cannot claim a clean vehicle credit. The language of the Code is really weird here in this situation, because it says that the clean vehicle credit is available for anyone who acquires a vehicle for use or lease and what the Code means when it says acquires a vehicle for use or lease, you might read that and think, cool, I leased a vehicle, I can claim the clean vehicle credit. The way the IRS has interpreted that is they say, no, no, no, that's not how that works. It means you've either acquired the vehicle to use it yourself or you have acquired the vehicle to lease it to somebody else. In which case it is the lessor of the vehicle who claims the credit, not the lessee.

So, if you are simply just going to a dealership and leasing a vehicle, you cannot claim the clean vehicle credit. Now, the dealer wants to somehow pass along the credit savings, the credit they're getting to your client in terms of a reduced payment or something, that's fine. But that's between your client and the dealer. That's not something you're dealing with in terms of claiming a credit on an income tax return. The lessor is the one claiming the tax credit, quite simply.

The qualified commercial clean vehicle credit we're talking about in a little while has the same provision. What's the credit amount for the new clean vehicle credit under Section 30D? It is \$7,500 for vehicles that meet the critical material and battery component requirements. If you only meet one of those requirements, the credit is cut in half. You don't meet either one and there is no credit. Now, the material and battery component requirements only apply to vehicles that took delivery after April 17, 2023. And the reason for that is even though these requirements technically go into place starting in the beginning of 2023, what the IRS had said, I think what the Inflation Reduction Act says, is that the material and battery requirements will go into effect once the IRS puts forth regulations.

Well, they didn't put forth regulations that were effective until April 17th, 2023. So if your client purchased a car, right, you're preparing 2023 returns here and they took delivery of that car in February of 2023, let's say, that's before April 17th, obviously of 2023. Therefore, it doesn't matter where the vehicle's battery or material components came from. Now on page three, we have an IRS website link for you. When you go to that link, you can actually look up the different sets of, look up that vehicle based on when you took delivery and you'll be able to see, does this vehicle qualify for the credit? Because you had a bunch of vehicles that qualified for a credit from January 1 through April 17th. But then as soon as those material and battery components requirements came out, as of April 17th, a lot of cars dropped off of that eligibility list.

So, you've got to look up the date and the vehicle, use that website link on page three. For that reason, because we got to look these up, I really am not going to get into this webinar on what are these requirements? Because you and I don't care. Am I going to dig into the engineering requirements? No, I don't care. I'm going to look at the darn IRS website. Does my car count? Yes or no. Because I'm not going to spend that much time trying to figure that credit out on an income tax return. I want to get returns done and out the door. So use that website link on page three to figure out if your car qualifies or your client's car.

In addition to the battery and material components, final assembly point must be in North America. What the IRS says there is you can rely on the vehicle's window sticker, right? That window sticker we're all familiar with new cars and that window sticker has on it the final assembly point. If that has a location that's in North America, great, you're good to go. North America, Canada, U.S. or Mexico, or any territory of those three countries. Website link on page four will also allow you to look up that particular car's VIN number and tell you if it was assembled in North America if you want to do it that way.

Qualifying vehicles, we've got the technical requirements, like I said, are irrelevant, so I'm not going to go through those. Just use the website links to figure out if that particular car qualifies. You don't care about the technical requirements. Leave that between the Treasury Department nerds and the auto manufacturers. We just want to know the quick answer so we can bill our client for it. AGI limitations starting on page four.

We have an AGI limitation for purposes of claiming the clean vehicle credit. These AGIs are a cliff. They are not a phase out. And the credit is available if our AGI is below the AGI limit in either the year we take delivery of the vehicle or the prior year. And those limits bottom of page four, it's \$300,000 for AGI limit for a married couple filing jointly, 225,000 for head of household and 150,000 for all others.

If the client's AGI is \$300,001 for a married couple filing jointly, there's no credit. Like I said, it's a cliff, not a phase out. Also, we use our client's filing status for the year that we are looking at to determine if they meet the AGI. This is going to be an issue if you've got a client who, let's say they bought the car in 2023 as a married couple, but in 2022, they were not married and you got two single individuals.

What you're going to do is whichever spouse purchased the car, you're going to look at the AGI this year when the year they're married. And if they're over the AGI limit, you're going to go backwards to the prior year. And if, let's say, it's the husband is the one that purchased the car, you're going to look at the husband's AGI on his single filed income tax return. You're not going to combine it with his spouse's single file tax return because they weren't married in that prior year.

And that gets into the point that we're going to talk about in a few minutes here is that there's only one purchaser of a vehicle. And so that may make a difference when you're choosing which spouse is listed on the purchase contract. We'll get into that in a minute. But we look at the filing status of our, the actual filing status of our client in the current year and the actual filing status of the purchaser in the prior year to determine if they meet this AGI limitation.

The vehicles themselves have price limitations based on MSRP. The MSRP is defined as the price of the vehicle as delivered from the manufacturer to the dealer. If the dealer then does add -ons to the car, we don't add those add -ons. We're looking at the manufacturer's suggested retail price as delivered to the dealer. Any dealer add -ons do not count. Sales tax does not count, right? Extended warranty costs, all that does not count. I'll be very clear there.

Our MSRP limitations, \$80,000 for advanced trucks and SUVs, \$55,000 for all the other cars. When you go to the IRS webpage that I've already given you for looking up a vehicle, the IRS webpage will tell you whether that car is classified as a van, truck, or SUV, or as something else. So use the same webpage and it will tell you if the \$80,000 limitation applies or the \$55,000. There's a couple of weird surprises in there. For example, did you know that the Ford Mustang plug -in car is classified as an SUV with an \$80,000 MSRP? I don't know, I think somebody at Ford might have slipped somebody in the Treasury Department a few Benjamins to get that classification. I don't know in what world a Ford Mustang, even that ugly plug-in Ford Mustang is an SUV, but apparently an ugly fastback qualifies as an SUV these days.

Neither one of these are adjusted for inflation. I'm not saying neither one, what I mean is neither the AGI limitation for our clients nor the vehicle price is adjusted for inflation. And what happens when these items are not adjusted for inflation? That means every year, fewer and fewer people are able to claim these credits because cars are not getting cheaper, they're only getting more expensive.

Advanced credit. So starting in 2024, like I said, taxpayers can claim advanced credits at the dealership at the point of sale. So thankfully, we're not going to be dealing with much of this on an income tax return right now, but your clients are going to be asking about it. Only the clean vehicle credit and the used clean vehicle credit are available for advanced credits. Cannot claim the qualified commercial clean vehicle credit as an advanced credit at the dealership. You can only claim the advanced credit for two vehicles per year, whether that's two clean vehicle credits or one clean vehicle credit and one used clean vehicle credit, doesn't matter, but two advanced credits at the dealership per year per purchaser. Each spouse is a different purchaser, which means you can claim even more, right? But one of the things you have to do is if you claim an advance credit at the dealership, the dealer and the taxpayer or the purchaser, I should say, each have disclosures they have to make to one another. One of the purchaser's disclosures that they make when they buy the vehicle is that they understand that they will file an income tax return for the year because they have to reconcile that credit on their income tax return. Even if you, for some reason, would not have a filing requirement otherwise, now, if you're buying a plug -in car, you should have enough income to file a tax return. But hypothetically, if you didn't, you still have to file the income tax return in order to claim the credit.

Dealer registration. So, I said credits, advanced or otherwise, are only available if a vehicle is purchased from a registered dealer. Dealers had to go through this registration process that opened up like last October, November. If a dealer is not registered with the IRS, then any vehicle purchased from that dealer is not eligible for any of the clean

vehicle credits. Make sure your dealer is registered. I can't imagine there's any dealers out there who are not registered simply because who's going to buy a car from them if they can't get a credit, but they can go down the street and buy the same exact car from somebody else and claim the credit. But just in case, get a copy of the dealer's report.

Dealers are required to give a disclosure report to purchasers of clean vehicles and that report tells the taxpayer everything they need to know that this vehicle qualifies for the clean vehicle credit and that would obviously would be provided only by a dealer who has registered. So like I said, the buyer and the dealer have required disclosures they have to make to one another. The dealer's disclosures, the whole point of them is to assure the buyer, the vehicle that they're purchasing qualifies for either the clean vehicle credit or the used clean vehicle credit. And the buyer's disclosures are designed as a way to make buyers aware of the tax rules that they are required to abide by. I have the disclosures for you listed on on page nine and leaking into the top of page 10. Nothing really sexy there to talk about, but like I said, the buyer has to attest that they're going to file an income tax return.

The dealer's attesting that this particular car qualifies, it's an available clean vehicle, such and such and the other thing. So just get a copy of that report. If your client gives you that report, that's all you're going to need in order to claim the credit on an income tax return. So you should just get in the habit of when the client says they bought a clean vehicle, give me a copy of the dealer report. Whenever I get a client during tax season, they tell me, I'm going to be buying a new piece of real estate or

I just bought a piece of real estate, even if it's long before the next tax season and I tell them, send me the closing statement. I want it on file, just send me the closing statement so I've got it ahead of time. Do the same thing with the clean vehicle credits. They say they bought a plug -in car, awesome. Give me a copy of the dealer report, stick it in your file and you won't have to have them hunting it down later. If the credit is claimed at the dealer, you must get confirmation at the point of sale.

If you do the advanced credit because if you have a car that qualifies for the advanced credit and you try to claim the advanced credit at the dealership, if that credit is denied by the IRS at the point of sale, according to the IRS you cannot then go claim the credit on an income tax return The credit has been denied for that vehicle. It does not qualify so make sure if your client claims an advanced credit at the dealership they get a copy of the confirmation there at the point of sale. It's a very important point.

Joint ownership on page 10. The credit cannot be split between two taxpayers and only the taxpayer listed on the dealer's report, because the dealer's report should have the taxpayer's name and their social. And only that taxpayer can claim the credit for that vehicle.

If you have a married couple, it's probably not that big of a deal, but maybe you've got a vehicle and you've got a co-signer on the car because maybe you don't qualify for credit, so your cousin co-signs on it. Well, the co-signer, the one with the stronger credit is probably going to be the one the dealer is going to want to list as the first buyer on the car. And if they list your cousin, your cousin Vinny, as the buyer, and you take that report and you try to...claim the car credit on an income tax return when, according to the dealer report, Vinny's social security number is associated with the purchase of that vehicle, you can't claim the credit. Your cousin's going to claim it. So make sure you know who is listed as number one on that credit. And if a client comes to you with that report and says, yeah, yeah, I bought this with my uncle or my cousin, but it's my car, so here's a dealer report. If somebody other than your client is the one listed, and their social is listed as the buyer, don't claim that credit on the tax return. Give it back to them and say, sorry, your friend or your cousin, your uncle, they're the one that's got to claim the credit. You're not allowed to claim it.

Credit recapture. If you claim an advanced credit at the dealership, but the buyer doesn't qualify, maybe your AGI was too high in both the year you bought the car and the prior year, then you're going to have to repay the credit. That's what recapture means. You got to repay the credit. Example of that on page 10. And that's where you and I are going to have a wonderful time reconciling these credits on income tax returns starting next spring. There is an exception to the recapture though. Remember what I said before, these credits are not refundable and any unused portion can't carry forward. But if your client claims an advanced credit at the dealership, and they are not able to

claim the entire credit because their total tax liability was too low. So because of the non -refundable nature of the credit. In that case, you don't have to recapture the credit. And for that reason, it's a very good idea to claim the credit at the dealership.

Let's go through the example of Vic real quick on page 11. I think it's going to matter here for people. This is an example of the recapture exception. Vic purchased the vehicle on January 11, 2024 that qualifies for a \$7,500 clean vehicle credit. Vic's AGI is low enough to claim the credit, but his tax liability for the year is only \$3,500 before the credit. If Vic does not elect to transfer the credit to the dealership, then he can only claim a \$3,500 credit on his income tax return, right? Because it's not a refundable credit. So it can take his \$3,500 liability, take it down to zero. But, if Vic elects to transfer the credit to the dealership, that's what it is technically a transfer election, I'm calling it advanced credit, he's going to get the full \$7,500 credit at the dealership when he buys the car, and he's not going to be required to repay any of that credit. So by claiming the credit at the dealership, he gets a \$4,000 tax benefit that he would not have received had he just claimed the credit on his income tax return. And because of that credit recapture exception, it's a very good idea to claim your Clean Vehicle Credits at the dealership when it's available to you.

Short -term ownership on page 11. The IRS has got some scenarios here where they've got short -term ownership issues. The proposed regulations put these out. What they say here is kind of weird rules, so pay attention. The IRS says, if you cancel your vehicle purchase before you actually take delivery of the vehicle, then that vehicle is back on the shelf and the credit is available to the person who actually does purchase it and take delivery. You haven't taken delivery, the car still qualifies. But if you take delivery of a vehicle, but then return that vehicle to the dealer within 30 days, then the buyer does not qualify, the person who returned the vehicle, you don't qualify for the credit and that car is not available for a new credit again, because somebody, you, have already taken delivery of that vehicle.

So the next guy who comes along and buys that car can claim the used clean vehicle credit but cannot claim the new clean vehicle credit. I really wonder what dealers are going to do here. They're going to be pissed off if somebody returns a car, let's say, four days after buying it, because a dealer is going to have to repay to the IRS the advance credit that came through, but they can't offer that same \$7,500 credit to the next buyer. So is the person who drives off the lot the first time going to be out a few thousand dollars? I don't know. I don't know what dealers are going to do here.

Another situation is what happens if you resell the car? If you buy a car and then you resell it within 30 days, the IRS says you purchased that car without the intention of using it. You purchased it with the purpose of reselling it. And therefore, because you did not buy it for your personal use, you don't qualify for the credit. So if you get anybody, any clients out there, they get the wise idea that they're going to go buy a bunch of a bunch of clean vehicles, claim a bunch of credits and turn around and sell the vehicle to others, within a few days for some harebrained reason. Don't do that. Maybe your client buys the car and has second thoughts and they're going to sell it, to a friend or something. Be careful. Wait out that 30 days because that second purchaser can't claim the credit. So if you take delivery of that car and sell it within 30 days, you have to pay the credit back. When you go to reconcile the credit on the income tax return, you're going to have to recapture the credit. And the next person that bought it for you does not get a claim to credit. So some scenarios there, the IRS set up in the proposed regulations. Cancellations, returns, sorry I went through these. I'm talking about these without advancing my slides. There they are.

I'm going to keep hustling along because now we're moving on to the used clean vehicle credit, technically called the previously owned clean vehicle credit. But I just call it used because it fits easier on a slide under section 25E. Here we've got a vehicle price limitation. Vehicle's price cannot exceed \$25,000. That is the negotiated price between the dealer and the purchaser, does not include sales taxes, does not include delivery charges. That is the negotiated price between the two parties. The credit is 30 % of the purchase price with the \$4,000 maximum. We also have an AGI limitation under section 25E, works the same exact way as the clean vehicle credit. It's a cliff and your client has to be under the AGI limitation in either the year they take delivery or the prior year.

And the AGI limitation amounts are exactly one half of that of the clean vehicle credit. \$150,000 now for a married couple filing joint, \$112,500 for head of household or \$75,000 for single filers, single and married filing separately. The vehicle also must be at least two model years older than the calendar year they purchased the vehicle. So if you've

got a client who's purchasing a...used clean vehicle here in 2024, then it's got to be at least a 2022 or older vehicle. The credit is only available for the first qualifying resale of the vehicle. That phrase, first qualifying resale is interesting. That's not the first time this car was sold used, although it can be, but it is the first qualifying resale once again your clients going to go to a dealer. They're not going to be asking about prior sales they say all they want to know from the dealership is does this car qualify and the dealer has to give your client a report that tells them yes or no. If the vehicle doesn't qualify, your clients not getting a report, if the vehicle qualifies, your client is going to get a report that says this vehicle qualifies. This is the first qualifying resale of the vehicle, the negotiated sales price is under \$25,000 and so on and so forth. All the requirements you need to know to claim the credit. Taxpayers though can only claim the credit for one qualifying vehicle every three years. That's the date of the last sale, not the tax year. It's not once every three tax years, it's based on the date of the last sale. And every taxpayer, think of every social security number, is a separate taxpayer. So you can have spouse number one buy a vehicle this year, spouse number two buy a qualifying used vehicle next year, and you're okay.

We do have some strange nuances when it comes to the used clean vehicle credit, especially with that term, first qualifying resale. And so what I've got for you is, if you're curious, a very long example on page 15 there that lays out some of the weird factual scenarios on what's the first qualifying resale of that vehicle. I'm not going to go through that, but if you're curious, you can go through those. They are very interesting. I think they were interesting. They were interesting for me to write them. Really weird rules. But again, you and I don't care too much about that. It's nice to know them and be familiar with those rules. Get a copy of this report from the dealer. That's what you want. That's what matters.

Credit transfers. Just like the clean vehicle credit under section 30D, the used clean vehicle credit can be claimed as an advanced credit at the point of sale through a licensed dealer. Just like the new vehicle, the credit is non -refundable and unused credits cannot be carried forward. Same recapture rules, which means that if your client can't claim the full credit because their taxable income or their total tax liability wasn't high enough, they're not going to have to repay it. So that same exception that we talked about earlier. And so once again, what that means is if you qualify for the credit, you're better off as sort of a hedge for later, is to claim the credit from the dealer at the point of sale. That way you ensure that you're not going to have your credit limited by your taxable income when you file the income tax returns. Again, only going to be an issue for those lower income clients or maybe somebody's got, maybe a large NOL or something. We've got some other minor issues on page 16, dealing with the used clean vehicle credit. For example, the taxpayers have to provide a VIN number on the tax return. That's already on the Form 8936. You have to put the VIN on there.

The vehicle's basis has to be reduced by the amount of the credit claimed, preventing a double benefit from turning around and trying to sell the vehicle, or if you are using it as a business vehicle in a sole proprietorship, let's say, so your depreciable basis of the vehicle. So a couple of other little minor issues there.

I want to move on to the qualified commercial clean vehicle credit now section 45W on page 16. This credit is claimed as a general business credit under Section 38. And the vehicle must be 100% used in a business. If you've got a vehicle where there is personal use to it, if the employee or the partner has to pick up taxable income, extra taxable income, let's say on a W-2 for their personal use of the vehicle, then the business is deemed to have used the vehicle 100% for business. So be careful there. Tell me if you love it when you get a lawyer, a client who buys a you know, a Mercedes G class in their business and says yeah, it's 100% business use. And you're like, yeah, right. I swear, I only use it for commuting and going to court once a week. Well, guess what? That's not business use. Commuting is not business use. And because they're a lawyer, they argue with you. Love those clients. If there's any personal use, like I said, report it as taxable compensation that will keep the car treated as 100% business use for your client.

The credit amount is a little odd. The credit calculation, it's the lesser of 15 % of the vehicle's basis or the excess of the purchase price over the cost of a comparable gas and diesel vehicle. And that's 15 % of the vehicle's basis, 30 % of the vehicle's basis if this vehicle is not powered by gas or diesel at all. Because technically a hybrid type car can qualify, which has some gas and diesel as a qualified commercial clean vehicle. So the credit is, again, the lesser of 15 % of the vehicle's basis or the excess of the vehicle's purchase price over the cost of a comparable vehicle, also known as the incremental cost.

The maximum credit is \$40,000 for the qualified commercial clean vehicle credit, limited to \$7,500 if the vehicle is less than 14,000 pounds. Unlike the other two credits, you cannot claim the qualified commercial clean vehicle credit at the dealership. There are no advanced credits for this credit.

The qualifications here. The qualified commercial clean vehicle credit does not have a battery, a material component requirements, or a North American assembly requirement. And so because of that requirement alone, you're going to have more vehicles qualified for the qualified commercial clean vehicle credit than will qualify for the clean vehicle credit. Your run of the mill vehicles that your clients are buying, those under 14,000 pound vehicles. And so when you go to fill out the Form 8936, and the Form 8936 is used for all three credits. You're going to sit there and you're going to have to decide which part of the form am I trying to claim this car's credit on. And if the car doesn't qualify for the clean vehicle credit, you better not be putting it on the section 30D section of the 8936. You have to put it under the section 45W section.

As I said earlier, the lessor is eligible to claim the credit, not the lessee. Lessee cannot claim the qualified commercial clean vehicle credit. Small exception here though, if your client is the lessee but the lease is treated as a capital lease, meaning for tax purposes your client is treating the vehicle as if they purchased it and they are depreciating the vehicle, then they are deemed to be the purchaser for tax purposes, and therefore, your client can claim the credit. This is only in this case of a capital lease though.

When it comes to used vehicles, technically, a used vehicle can qualify for the qualified commercial clean vehicle credit, but only if the credit has not been claimed for that car when it was new. Now, I don't know who's going to buy a vehicle that qualifies for the credit and is not going to claim the credit. And furthermore, if they did, how on earth would you even know? There isn't some reporting database out there that you have access to or your client has access to, to know if this vehicle they purchased used, that qualifies for the commercial clean vehicle credit if somebody's already claimed the credit for that car before. So it seems very unlikely, because I don't see this any way of knowing whether somebody had already claimed the credit for this vehicle, but technically a used vehicle could qualify. I know it's a weird hair-splitting thing, but that's the way the rules are written.

A few miscellaneous qualified commercial clean vehicle credit issues listed on page 20. Once again, taxpayers have to provide a VIN of the car that's required in the Form 8936. The vehicle's basis, once again, has to be reduced by the amount of the credit claimed. In this case, because it's a business use vehicle, you can be reducing it to the pre-sale basis because you are going to be trying to depreciate that vehicle. Tax -exempt entities that purchase a qualified vehicle can elect to have this seller treated as the taxpayer for purposes of the credit. So there is a way for tax-exempt entities to essentially transfer the credit to the dealer and get some money back from the dealer right then and there. So you can't claim technically an advanced credit for this credit, but tax exempt entities can transfer their credit to the dealership. Only one credit can be claimed per vehicle. Shocking. And so that's the key, the key other issues there.

Let's talk about business use. So business use for all three types of vehicles. Under section 30D (c), what the IRS regulations say, I think these were the proposed regulations they put out on this topic. If the business use of the vehicle is greater than 50%, then the entire credit must be claimed as a general business credit. How do we determine 50%? Look at the mileage in the year the car is put in service. So let's say you've got a client with a Schedule C business. They buy a new clean vehicle that they use for their business. If they use even 50% for business and 50% for personal, then all 100% of that credit must be claimed as a general business credit. Now, one thing to note is when you claim the advanced credit at the dealership, one of the buyer's disclosures says that you are going to use this vehicle for personal use. It will not be used for business use. I don't know at this point what's going to happen when your client claims that credit at the dealership and then tries to claim a part of the credit as business use of the vehicle on their return.

Is the IRS going to reject it? Do they have some kind of system for this to track that. I don't know the answer to that. But technically, technically, if you've got any business use, you should not be claiming the advanced credit at the dealership. If the business use of the vehicle is less than 50%, then what's going to happen, and you see this in the new Form 8936, is you're going to report the vehicle, and let's say the vehicle's 25 % business. Then 25% of your credit is going to run from the Form 8936 through to the Form 3800 as a general business credit. And 75%, right, the personal use percentage is going to then run directly up to schedule, or was it schedule three, as a credit and then on

to the 1040. So if the business use is less than 50%, then you have to split the credit between the general business credit for the business use portion, and then just the personal credit onto the 1040 for the personal use portion. And once again, you're going to look at your client's mileage in the year they put the vehicle in service to determine if the business use is less than 50% or equal to or greater than 50%.

If you have a flow through entity that purchases a clean vehicle credit and uses the section 30D credit, then what's going to happen there is the partnership or the S corporation is going to claim the credit, 8936 on the 1065 or the 1120S, and then each owner's share of that credit is going to show up on their K-1 as a credit. And then each owner, when they file their 1040, is going to have to apply the AGI limitation to that credit. So you could have, let's say you've got an S corporation, you buy 10 clean vehicles, and you claim the section 30D credit for all 10 vehicles. And one shareholder is high income. That shareholder is going to be really mad when they get to their personal K1 and realize that they aren't claiming any of those credits because their AGI is too high. But the other shareholders can claim their share of the credits. Interesting the way the IRS is making that happen on flow through entities. Example on page 23, if you're interested. And the solution there, by the way, is you don't claim the Section 30D credit in that situation. You'll use 45W. Again, you got to know which credit you're claiming and why.

So for business autos that are under 14,000 pounds, businesses often will have a choice. Because a lot of the same vehicles are qualified for either the Section 30D credit or the 45W qualified commercial clean vehicle credit. And really, your choice is going to be simple. Which credit is going to be the greatest benefit to your client? I've got a chart on page 24 that compares these two credits. I've already said it earlier that the big three, the qualified commercial clean vehicle credit, doesn't have a material component, a battery sourcing component, or North American assembly requirement component. And that alone will make the decision for you that you're going to go claim the 45W credit because that car you purchased might not even qualify under section 30D. But also there's no AGI limitation under section 45W. So that will show you that for the most part you're going to claim the 45W credit when you've got a business use vehicle. But because I can't leave it there and it can never be only a black or white answer, I have two examples on the top of page 25 for you that will show you a situation when you compare and contrast. It's possible the Section 30D credit can produce a larger credit because remember under Section 30D if the car qualifies the credit is quite simply \$7,500 right and then you've got to meet AGI limitations and all that.

But under section 45W, remember the credit is calculated as the lesser of 30% of the price to purchase the vehicle or the incremental cost. And in that situation, it's possible that if you've got a good deal on the car or the incremental cost is low, that you may end up with a greater credit by using section 30D. I think that's going to be the exception, not the rule.

Your rule should be for a business use vehicle purchased by a business entity, your default should be use section 45W, I think. That's what's going to produce the greater credit, the vast majority of the time, and for a greater number of cars that are eligible.

When it comes to the used clean vehicle credit, technically you can claim this credit for a business use vehicle, but business entities cannot claim this credit. It is only available for the 1040 only for individual taxpayers. So if you buy a qualified used vehicle, using it in your schedule C business, totally fine. You do not have to run this credit through the general business credit though. You've got a little sole proprietor florist, and you buy one of those little, you know, maybe you have it plug -in, I don't know, what do you call those transit vans? I don't know if they make plug -in transit vans, but let's assume they do. You buy a little plug -in transit van to deliver your flowers, 100% business use. You're still not going to claim used clean vehicle credit as a general business credit, because that's not even available under Section 25E. You're simply going to claim the credit as a personal credit even though the vehicle is used as a business vehicle. And I think I've said it a couple of times here, but all three credits are now are claimed on the Form 8936.

Here we are early 2024. It's possible that you are filing a 2022 return though, if you've got a fiscal year filer. If you've got a fiscal year filer where your year began in 2022, but you purchased a qualifying vehicle in the 2023 portion of that fiscal year filer's year, then you may have to use the form 8936A, which was a form that was developed only really for fiscal year filers who are claiming vehicles purchased in 2023 on the 2022 tax year returns. But for the most part, it's just the 8936.

SUPPLEMENTAL MATERIALS

CLEAN VEHICLE CREDITS

Prior to the Inflation Reduction Act of 2022, which was signed into law by President Biden on August 16, 2022, there was only one credit available for the purchase of clean vehicles: the New Qualified Plug-in Electric Drive Motor Vehicle credit under IRC §30D.

The Inflation Reduction Act renamed and significantly modified the credit available under IRC §30D as the Clean Vehicle Credit and added two additional credits for the purchase of clean vehicles:

- The Previously Owned Clean Vehicle Credit under IRC §25E; and
- The Qualified Commercial Clean Vehicle Credit under IRC §45W.

THE CLEAN VEHICLE CREDITS — IRC §30D

The Clean Vehicle Credit, as modified by the Inflation Reduction Act, generally applies to new four-wheel vehicles placed in service after December 31, 2022, and sunsets at the end of 2032. (IRA '22 §13401; IRC §30D) A new clean vehicle is generally deemed to be placed in service on the date the taxpayer takes possession of the vehicle.

The Clean Vehicle Credit can only be claimed once per vehicle, but taxpayers can claim a Clean Vehicle Credit for every eligible new vehicle they purchase, even if multiple vehicles are purchased in the same year. The IRS has, however, limited the amount of advanced credits taxpayers can claim at a dealership to two vehicles per year. (Rev. Proc. 2023-33) We will discuss the advanced credits available through dealers in more detail starting on page 6.

The credit is nonrefundable and cannot be carried forward if claimed for a personal-use vehicle.

In the case of a clean vehicle purchased at least partially for business use and qualifying for either the Clean Vehicle Credit or the Qualified Commercial Clean Vehicle Credit, the credit is claimed as part of the General Business Credit under IRC §38, and these unused credits can be carried forward under the rules applicable to all General Business Credits.

☑Planning Pointer

Clients who purchase a vehicle qualifying for one of the three vehicle credits but do not receive an advanced credit through the dealership should consider adjusting estimated tax payments to accelerate the benefit of the credit instead of waiting until tax time.

200,000-UNIT LIMITATION NO LONGER APPLIES

The 200,000 per-vehicle manufacturer phaseout of the credit was repealed applicable to vehicles sold after December 31, 2022.

TRANSITION RELIEF

Taxpayers who purchased, or entered into a binding written agreement to purchase, a new qualified plug-in electric drive motor vehicle (as defined prior to the enactment of the Inflation Reduction Act) after 2021 and before August 17, 2022, and placed the vehicle in service on or after August 16, 2022, can apply the pre-Inflation Reduction Act rules. (IRA '22 §13401(1))

This means that the vehicle does not have to satisfy the "final assembly" requirement discussed below, even if the vehicle was not delivered prior to August 17, 2022.

To claim the credit under the pre-Inflation Reduction Act rules, the IRS requires taxpayers to claim the credit on their 2022 income tax return after they take delivery of the vehicle, even if they take delivery after the 2022 tax year. Taxpayers in this situation must amend their 2022 income tax returns to claim the credit. (www.irs.gov/credits-deductions/credits-for-new-electric-vehicles-purchased-in-2022-or-before)

Clean Vehicle Credit: Which Rules Apply When?			
Situation	Applicable rules		
Purchased vehicle and took possession before August 17, 2022	Pre-Inflation Reduction Act rules		
Entered into written purchase contract prior to August 17, 2022, and car placed in service any time after August 16, 2022 (even post-2022 years)	Pre-Inflation Reduction Act rules. Must be claimed on 2022 original, superseding, or amended return, even if delivered in 2023		
Purchased vehicle after August 16, 2022, and car placed in service in 2022	Pre-Inflation Reduction Act rules (including 200,000 manufacturer limitation), but only if vehicle assembled in North America (must run vehicle VIN number (see DOE website on page 4)). If vehicle not assembled in North America, taxpayer cannot claim the credit at all		
Purchased vehicle after August 16, 2022, and car placed in service after 2022	Inflation Reduction Act rules generally apply. 200,000-unit per-manufacturer phaseout applies to vehicles purchased in 2022, even if placed in service after 2022		
Qualified used vehicle purchased after 2022 (see immediately below)	Inflation Reduction Act rules apply		
Qualified vehicle purchased for use in trade or business after 2022 (see the discussion starting on page 13)	Inflation Reduction Act rules apply		

IRS FAQs regarding the new Clean Vehicle Credit are available at:

□ Website	
www.irs.gov/pub/taxpros/fs-2023-29.pdf	

LEASED VEHICLES

The Inflation Reduction Act states that a qualified vehicle is one whose original use commences with the taxpayer, which is "acquired for use or lease by the taxpayer and not for resale." (IRC §30D(d)(1)(A) and (B)) However, the IRS FAQ at Q&A 8 of Topic A states: "Where a vehicle is acquired for lease to another person, the lessor is the original user." (IRS Fact Sheet 2023-29) This means that a taxpayer who leases a new vehicle is unable to claim the Clean Vehicle Credit because the credit belongs to the lessor.

CREDIT AMOUNT

The maximum amount of the Clean Vehicle Credit is \$7,500 per qualified vehicle if the vehicle's critical materials and battery components are manufactured, processed, extracted, or produced in the U.S. or in countries with which the U.S. has entered a free trade agreement. (IRC §30D(b)) If the vehicle only meets one of the requirements, then the credit is limited to \$3,750.

Practice Pointer

The critical material and battery component limitations only apply to vehicles for which the taxpayer takes delivery after April 17, 2023. (IRS Fact Sheet 2023-29)

If a vehicle was purchased before April 18, 2023, but delivered to the taxpayer after April 17, 2023, then the critical materials requirement applies to the vehicle.

The transition relief discussed on page 2 for taxpayers who enter into a binding written agreement to purchase a qualifying vehicle before August 17, 2022, still applies to those taxpayers, meaning the critical material and battery component criteria do not apply to these taxpayers.

Comment

Tax professionals should not waste their time trying to understand the technical aspects of the critical material and battery components requirements. This task is best left to the manufacturers and the Department of the Treasury.

For our part, we only need to know that the federal government maintains a website with a list of all vehicles eligible for all three of the clean vehicle credits at:

☐ Website https://fueleconomy.gov/feg/taxcenter.shtml

FINAL ASSEMBLY POINT

Beginning with vehicles purchased after August 16, 2022, the final assembly of the vehicle must occur within North America to qualify for either the pre- or post-IRA '22 versions of the credit. (IRA '22 §13401(b)) "North America" is defined as the United States, Canada, and Mexico and includes any state or territory of those three countries, even if not strictly part of the continent of North America (i.e., Hawaii, Puerto Rico, or other similarly situated states or territories of the three countries). (Proposed Treas. Regs. §1.30D-2(d))

IRS Notice 2023-1 provides a technical definition of "final assembly," but generally provides that taxpayers may rely on the following information to determine a qualifying vehicle's final assembly point:

- The vehicle's plant of manufacture as reported in the vehicle identification number (VIN); or
- The final assembly point reported on the label affixed to the vehicle. (Proposed Treas. Regs. §1.30D-2(b))

6[™] Caution

Even though a particular make/model of a car may generally qualify for the credit, if the actual vehicle purchased does not satisfy the final assembly requirement, that credit cannot be claimed for that vehicle. This is why the VIN number is critical for purposes of determining eligibility for the credit.

Taxpayers can look up the VIN on the Department of Energy website to determine whether a particular vehicle's final assembly point is in North America. Go to:

venicle's final assembly point is in North America. Go to.
□ Website
https://afdc.energy.gov/laws/electric-vehicles-for-tax-credit

CPE Network® Tax Report Qualifying vehicles

QUALIFYING VEHICLES

IRC §30D contains technical requirements for qualifying vehicles. However, taxpayers and tax professionals do not need to know or understand these technical requirements. They only need to know whether a particular vehicle qualifies. The previous two website links provided above, as well as dealer reports provided to buyers of clean vehicles, provide all the information necessary to determine whether a particular vehicle qualifies for the Clean Vehicle Credit.

The remainder of these materials flesh out some of the details, such as when a vehicle is leased.

MODIFIED AGI LIMIT

Applicable to vehicles placed in service after December 31, 2022, taxpayers are eligible for the Clean Vehicle Credit if their modified AGI does not exceed the following amounts in either the year they purchased the vehicle or the prior tax year:

- \$300,000 for MFJ;
- \$225,000 for HOH; or
- \$150,000 for all other taxpayers.
 (IRA '22 §13401(f); IRC §30D(f)(10))

The AGI thresholds are not adjusted annually for inflation.

Comment

This means that if the taxpayer doesn't meet the AGI limits for the current year but did for the prior year, they are still eligible to claim the credit during the current year.

Modified AGI is the taxpayer's AGI, increased for any foreign income exclusion claimed under IRC §911, §931, or §933.

Planning Pointer

The modified AGI thresholds are a cliff. A married couple filing jointly whose modified AGI in either the current or prior year is \$300,000 will qualify for the full Clean Vehicle Credit. If the same couple's modified AGI is \$300,001, they will receive zero credit.

Modified AGI where filing status changes during two-year testing period

When a taxpayer's filing status changes during the two-year testing period (the taxable year prior to the year the vehicle is purchased and the year the vehicle is purchased), the taxpayer must apply the AGI limitation based on their filing status for each of those years. (Rev. Proc. 2023-33)

Example #1 of changed filing status

Ben was single in 2023 and had an AGI of \$165,000. In 2024, he married Trish, and their combined AGI was \$350,000. Ben purchased a qualifying clean vehicle in 2024, but he cannot claim the Clean Vehicle Credit because his AGI was over the \$150,000 limit for his single filing status in 2023, and his AGI was over the \$300,000 AGI limit in 2024 for married taxpayers filing jointly.

Ben cannot use the AGI threshold for joint filers for 2023 to determine whether he qualifies for the Clean Vehicle Credit in 2024.

Example #2 of changed filing status

The facts are the same as the previous example, but Ben's AGI in 2023 was only \$125,000. In this scenario, Ben qualifies for the Clean Vehicle Credit in 2024 because his AGI was below the single-filer AGI threshold in 2023, the year before he purchased the qualifying clean vehicle.

It does not matter than Ben and Trish filed jointly and their AGI was over the threshold in 2024.

Partnerships and S corporations that claim the Clean Vehicle Credit under IRC §30D will pass the credit to their owners, and then their owners will apply the AGI threshold on their individual income tax returns.

VEHICLE PRICE LIMITATION

Also applicable to vehicles placed in service after December 31, 2022, the credit cannot be claimed for vehicles whose manufacturer's suggested retail price (MSRP) exceeds:

- \$80,000 for vans, pickup trucks, or SUVs; and
- \$55,000 for all other vehicles. (IRC §30D(f)(11))

Comment

The Inflation Reduction Act does not contain a provision for inflation adjustments to either the vehicle price limitations or the taxpayer's AGI limitation. Each of these dollar amounts is fixed and cannot be changed unless this is changed in later legislation.

IRS Notice 2023-1 defines manufacturer's suggested retail price as:

- The retail price of the automobile suggested by the manufacturer; and
- The retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to such automobile at the time of its delivery to the dealer.

The MSRP will be on the vehicle information label attached to each vehicle on a dealer's premises. The IRS's FAQs provide that destination charges, optional items added to the vehicle by the dealer, taxes, and fees are not included in the vehicle's MSRP. Driving the point home, the IRS's FAQs clearly state that the actual price paid for the vehicle has no bearing on its MSRP.

Comment

Similar to the critical material and battery components requirements, tax professionals should not waste their time trying to determine whether their vehicle qualifies as an SUV. We merely have to look up the vehicle on the federal government's website, which will tell us whether the vehicle in question is subject to the \$80,000 MSRP limit or the \$55,000 MSRP limit:

□ Website

https://fueleconomy.gov/feg/taxcenter.shtml

As before, dealers are also required to provide a report to vehicle buyers providing all the information necessary to determine whether the purchased vehicle qualifies for the Clean Vehicle Credit.

Changed vehicle classification

The IRS addressed whether a taxpayer can claim the Clean Vehicle Credit if their vehicle's classification changed after the date of sale. For example, if a client purchased a qualifying vehicle for \$65,000, but the vehicle is later classified as an SUV, this shifts the vehicle from having a \$55,000 MSRP limitation to having an \$80,000 MSRP limitation. (IRS Fact Sheet 2023-29)

The IRS states that the updated vehicle classifications from Notice 2023-16 apply, even for vehicles that were purchased prior to the date the notice was issued.

ADVANCED CREDITS CLAIMED AT DEALERSHIP

For vehicles placed in service after 2023, taxpayers can transfer the Clean Vehicle Credit and the Previously Owned Clean Vehicle Credit to licensed dealers that have registered with the Secretary of the Treasury and that disclose specified information to the taxpayer at the time of purchase. The election to transfer the credit must be made no later than the time of sale. The seller may not reduce the amount of any other offered incentive, rebate, or discount as a result of this credit transfer. (IRC §30D(g))

Comment

Taxpayers can claim advanced clean vehicle credits at the dealership for credits claimed under IRC §§30D and 25E (but only if the taxpayer attests to the dealer that the vehicle will be used predominantly for personal use). (Rev. Proc. 2023-33, Sec. 5.02)

Additionally, taxpayers and auto dealers cannot transfer partial credits. Either the entire credit must be transferred to the dealer or none of it.

! Practice Pointer

As discussed in the section starting on page 16, many cars will qualify for both the Clean Vehicle Credit under IRC §30D and the Qualified Commercial Clean Vehicle Credit under IRC §45W. However, of the two, only the Clean Vehicle Credit under IRC §30D allows taxpayers to claim the credit at the dealership for purchases after 2023.

Does this mean that if a taxpayer claims a Clean Vehicle Credit under IRC §30D at the dealership, the client is locked into claiming that credit? Or can the taxpayer choose to claim the Qualified Commercial Clean Vehicle Credit under IRC §45W when they file their income tax return?

While the IRS has not specifically said so, it appears that once a taxpayer claims a vehicle credit at the dealership, they cannot later claim the Qualified Commercial Clean Vehicle Credit under IRC §45W. This is because, as a condition of claiming the advanced credit at the dealership, the vehicle's buyer must attest that the vehicle will be used predominantly for personal use. The full list of buyer disclosures and attestations is on page 9.

Two-vehicle limitation

The IRS has limited taxpayers to making no more than two clean vehicle credit transfer elections per taxable year, consisting of either two Clean Vehicle Credits or one Clean Vehicle Credit and one Previously Owned Clean Vehicle Credit. (Rev. Proc. 2023-33, Sec. 6.02; Prop. Treas. Regs. §§1.25E-3(i), 1.30D-5(h)) In the case of a joint income tax return, the two-vehicle limit applies separately for each spouse.

The two-vehicle limitation only means that taxpayers cannot claim more than two advanced credits through a dealership per year. Any additional credits must be claimed directly on the taxpayer's income tax return.

Comment

Taxpayers are unable to make two credit transfer elections in the same taxable year for the Previously Owned Clean Vehicle Credit because taxpayers are only eligible for one Previously Owned Clean Vehicle Credit every three years. (IRC §25E(c)(3)(D))

Tax treatment of advanced credits

Advanced credits received by the dealer from the IRS are not:

- Treated as a tax credit to the dealer and can exceed the dealer's regular tax liability; or
- Included in the gross income of the dealer.

(IRS Fact Sheet 2023-29)

Advanced credits paid by the dealer to the vehicle's buyer are not:

- Deductible by the dealer. They are treated as repaid by the buyer to the dealer as part of the purchase price of the vehicle, and therefore are treated as included in the total amount received by the dealer from the sales transaction; or
- Includible in the vehicle buyer's gross income. (IRS Fact Sheet 2023-29)

Dealers do not report the credits on their income tax returns. The dealer's exclusive method to claim the transferred credits is through the IRS's Energy Credits Online Portal.

Buyers on the other hand must file an income tax return for the year they claim the credit, even if they would not otherwise have a filing requirement. One of the requirements of claiming the advanced credit at the dealership is that the buyer must attest that they will file a timely income tax return for the year and report the credit (using Form 8936, Clean Vehicle Credits).

DEALER REGISTRATION

Dealers must register with the IRS through the IRS Energy Credits Online Portal. (Rev. Proc. 2023-33) Failure to register means that no vehicles sold by the dealer will be eligible for any of the three clean vehicle credits after December 31, 2023, and buyers cannot claim advanced vehicle credits from the dealer.

Dealers that have not yet registered can do so at:

☐ Website

www.irs.gov/credits-deductions/ register-your-dealership-to-enable-credits-for-clean-vehicle-buyers

REQUIRED DISCLOSURES

Both parties to a clean vehicle purchase, the dealer and the buyer, must make required disclosures to one another. The vehicle buyer's disclosures will help ensure that the IRS can properly match the vehicle's buyer to the income tax return for which the credits are claimed. The dealer's disclosures, which must be provided to the buyer, provide the buyer with assurances that the vehicle they are purchasing qualifies for the clean vehicle credits.

At the time of the purchase, the dealer can provide the IRS with an online seller's report, and the IRS will accept or reject the seller's report in real time, so that both the dealer and the purchaser will know at the time of the purchase whether the transaction qualifies for an advanced credit. (IRS Fact Sheet 2023-29)

6[%] Caution

Per the IRS FAQs, if the buyer transfers their credit to the dealership and then the advanced credit is rejected by the IRS, the taxpayer cannot claim the credit on their income tax return. For this reason, it is important that buyers who transfer their credit to the dealership receive the IRS's acceptance of the credit at the point of sale.

CPE Network® Tax Report

Dealer Registration

Buyer's disclosures and attestations

The buyer must provide the following information, which the dealer is required to upload into the IRS's Energy Credits Online Portal at the time of the sales transaction:

- The date of the taxpayer's election to transfer their vehicle credits to the dealership;
- The taxpayer's SSN or other TIN;
- A photocopy of the taxpayer's government-issued ID (driver's license, passport, military ID, etc.);
- An attestation that either:
 - o The taxpayer's prior-year AGI did not exceed the applicable AGI limitations for the vehicle credit being claimed; or
 - o To the extent of the taxpayer's knowledge and belief, the taxpayer's current-year modified AGI will not exceed the applicable AGI limitation for the vehicle credit being claimed;
- In the case of the Clean Vehicle Credit, an attestation that the vehicle will be used predominantly for personal use;
- In the case of the Previously Owned Clean Vehicle Credit, an attestation that the taxpayer is a qualified buyer as defined in IRC §25E(c)(3);
- An attestation that the taxpayer will file an income tax return for the taxable year in which the vehicle is placed
 in service on or before the due date of the return (including extensions), reporting the taxpayer's eligibility for
 the vehicle credit, including the vehicle's VIN and the taxpayer's election to transfer the credit to the dealer, and
 repaying any credit amounts subject to recapture, if applicable;
- An attestation that the taxpayer is making the election to transfer the credit to the dealer prior to placing the
 vehicle in service and that the taxpayer has made no more than two transfer elections (including the election for
 which the attestation is being made) during the current taxable year;
- An attestation that in the event the taxpayer's modified AGI exceeds the applicable modified AGI limitations, they will repay the amount received as an addition to tax for the tax year the vehicle was placed in service;
- An attestation that the taxpayer has voluntarily elected to transfer the credit; and
- Any other information the IRS may subsequently require. (Rev. Proc. 2023-33, Sec. 5.02)

Dealer's disclosures

The dealer must provide the buyer with the following information:

- For purposes of the Clean Vehicle Credit, the MSRP of the new clean vehicle, or, for purposes of the Previously Owned Clean Vehicle Credit, the sales price of the previously owned clean vehicle;
- The maximum amount of the credit allowable and any other incentives available for the purchase of the vehicle;
- The amount provided by the dealer to the buyer as a condition of the taxpayer making the credit transfer election (this amount must equal the amount of the credit potentially allowable as to the purchase of the vehicle, and such amount may be provided in the form of cash or a downpayment or partial down payment for the purchase of the vehicle);
- The modified AGI limitation applicable for the vehicle;

- In the case of the Previously Owned Clean Vehicle Credit, the dealer must provide the buyer with the following information:
 - o Certification that the model year of the vehicle is at least two years prior to the calendar year of sale; and
 - That the transfer is the first transfer of the vehicle since August 16, 2022, to a person other than the person with whom the original use of the vehicle commenced, including transfers to or between dealers. (Rev. Proc. 2023-33, Secs. 5.01, 4.02(e)(2), 4.02(3)(c))

VEHICLES WITH JOINT OWNERSHIP

Through FAQs, the IRS has stated that where multiple taxpayers purchase a qualifying clean vehicle and jointly hold title to the vehicle, only one of the taxpayers can claim the Clean Vehicle Credit. (IRS Fact Sheet 2023-29) The credit cannot be prorated between multiple taxpayers, even spouses who file MFS.

According to the IRS FAQs, the name and taxpayer identification number of the owner claiming the Clean Vehicle Credit must be the one listed on the dealer's report.

Practice Pointer

The IRS's requirement that only the purchaser listed on the dealer's report is entitled to claim the Clean Vehicle Credit makes it all that much more important that the tax professional obtain a copy of the report from the client, especially in situations where a family member may also be on title to help secure financing or where an unmarried couple jointly purchases the vehicle.

CREDIT RECAPTURE RULES

Some taxpayers who claim the advanced clean vehicle credits through a dealership will ultimately not qualify once they file their income tax returns. The most common scenario is when a taxpayer purchases the car but then does not qualify due to the AGI limitations.

The vehicle's buyer in this situation must recapture (i.e., repay) the advanced credits they received when they file their income tax returns. Dealers are not liable for credit recapture in this scenario. (Rev. Proc. 2023-33)

Example of credit recapture

Joan purchased a vehicle on January 10, 2024, that qualifies for a \$7,500 Clean Vehicle Credit. She elects to transfer her credit to the dealer that sold the car, and she uses the \$7,500 as her vehicle down payment.

When Joan files her 2024 income tax return, it turns out that her AGI for both 2023 and 2024 were over the AGI limitation. Joan must repay the \$7,500 credit when she files her 2024 income tax return because she is not eligible for the credit.

Credit recapture exception

The IRS has created an interesting exception to the recapture rules where a taxpayer elects to transfer their credit to the dealer but does not have sufficient taxable income to use their credit when they file their income tax return. In this scenario, the taxpayer is not subject to recapture of the credit. (Prop. Treas. Regs. §§1.25E-3(e)(1)(i), 1.30D-5(d)(1)(i))

Remember, the clean vehicle credits are not refundable, and unused credits do not carry forward. This recapture exception provides an additional incentive for taxpayers to elect to claim their clean vehicle credits at the dealership instead of waiting to file their income tax returns.

CPE Network® Tax Report

Short-Term Ownership

These recapture rules apply to both the Clean Vehicle Credit and the Previously Owned Clean Vehicle Credit.

Example of exception to credit recapture

Vic purchased a vehicle on January 11, 2024, that qualifies for a \$7,500 Clean Vehicle Credit. Vic's AGI is low enough to claim the credit, but his tax liability for the year is only \$3,500 before the credit.

If Vic does not elect to transfer the Clean Vehicle Credit to the dealership, then he can only claim a credit of \$3,500 when he files his income tax return because the credit is nonrefundable, and any unused portion of the credit does not carry over.

But, if Vic elects to transfer the credit to the dealership, he will claim the full \$7,500 at the time he purchases the vehicle, and pursuant to Prop. Treas. Regs. §1.30D-5(d)(1)(i), he will not be subject to recapture of any of the credit when he files his income tax return.

By electing to transfer the credit to the dealership, Vic received a benefit of \$4,000 that he otherwise would not have received.

SHORT-TERM OWNERSHIP

The IRS has created special rules for taxpayers who cancel a clean vehicle purchase before taking delivery or return the vehicle within 30 days of taking delivery. A similar rule applies to both the Clean Vehicle Credit and the Previously Owned Clean Vehicle Credit.

Cancellation

If a sale is cancelled before the taxpayer places the vehicle in service (i.e., before the taxpayer takes possession of the vehicle), then the taxpayer cannot claim the vehicle credit. (Prop. Treas. Regs. §§1.25E-2(c)(1)(i), 1.30D-4(d)(1)(i)) The vehicle will still be eligible for either the Clean Vehicle Credit or the Previously Owned Clean Vehicle Credit upon a subsequent qualifying sale to another taxpayer.

Returns

In the case of a vehicle that is returned within 30 days of taking delivery, the buyer cannot claim a clean vehicle credit with respect to the vehicle. (Prop. Treas. Regs. §§1.25E-2(c)(1)(ii), 1.30D-4(d)(1)(ii)) The vehicle, once returned, was already placed in service by a taxpayer, and a new clean vehicle credit is not available to a subsequent buyer.

If the taxpayer made an election to transfer the credit to the dealer, then the vehicle transfer election is nullified, and any advanced payment made to the taxpayer will be recaptured from the dealer as an excessive payment. Excessive payments are subject to a 20% penalty unless the dealer can show reasonable cause for making an excessive credit payment to a buyer. (Prop. Treas. Regs. §1.25E-3(g)(2)) For these purposes, the reasonable cause exception applies automatically if an excessive payment was made to a buyer who subsequently returned the vehicle within 30 days.

Resales

In the case of a resale by the buyer made within 30 days of placing the vehicle in service, the buyer is deemed to have acquired the vehicle with the intent to resell it and therefore cannot claim a clean vehicle credit with respect to the vehicle. (Prop. Treas. Regs. §§1.25E-2(c)(1)(iii), 1.30D-4(d)(1)(iii)) Because the vehicle was already placed in service by another taxpayer, a new clean vehicle credit is not available to a subsequent buyer.

If the buyer's resale occurs within 30 days of their original purchase of the vehicle, and the buyer made an election to transfer their credit to the dealer, then the vehicle transfer election remains in effect, and the value of any transferred credit will be recaptured from the taxpayer (not the dealer).

Supplemental Materials CPE Network® Tax Report

PREVIOUSLY OWNED CLEAN VEHICLE CREDIT—IRC §25E

The Previously Owned Clean Vehicle Credit under IRC §25E is available for the purchase of used clean vehicles by qualified buyers with modified AGI below specified levels. The credit is available for qualified vehicles purchased after December 31, 2022, and before 2033. (IRA '22 §13402; IRC §25E)

Only sales by a licensed dealer of vehicles sold for \$25,000 or less qualify for the credit. In addition, only the first resale of the vehicle qualifies. Sales by private sellers do not qualify for the credit.

CREDIT AMOUNT

The credit is equal to 30% of the vehicle's sales price, up to a \$4,000 maximum credit. (IRC §25E(a))

QUALIFIED VEHICLES

To qualify for this credit:

- The vehicle's sales price may not exceed \$25,000;
- The vehicle's model year must be at least two years earlier than the calendar year in which it was purchased;
- The original use of the vehicle may not have commenced with the taxpayer;
- The vehicle must meet requirements similar to the:
 - o "Qualified vehicle" requirements of the Clean Vehicle Credit (other than being required that the vehicle's final assembly be in North America); or
 - o "New qualified fuel cell motor vehicle" requirements under IRC §30B(b)(3) (other than being "new") and have a gross vehicle weight rating of less than 14,000 pounds; and
- The taxpayer's modified AGI (AGI increased for any foreign-earned income exclusion) for the current and preceding taxable year cannot exceed:
 - o \$150,000 for MFJ;
 - o \$112,500 for HOH; and
 - \$75,000 for all other taxpayers.

Comment

Used car dealers will be able to identify which vehicles qualify for the credit because they must provide credit information concerning the vehicle to the IRS.

OUALIFIED BUYERS

The credit can only be claimed by individuals who purchase the vehicle for use (personal or business) and not for resale.

The buyer cannot be claimed as a dependent by another taxpayer. Even if the buyer is not actually claimed as a dependent, they are ineligible to claim the credit if they could be claimed as a dependent.

Buyers can only claim the credit for purchases once every three years (see discussion below regarding purchases by spouses who file joint returns).

! Practice Pointer

The one-purchase-every-three-years rule is tied to the date of the sale of the vehicle, not the taxable year. (IRC $\S25E(c)(3)(D)$)

For example, a taxpayer who purchases a previously owned clean vehicle on January 27, 2023, and claims the credit under IRC §25E cannot claim the Previously Owned Clean Vehicle Credit on another car purchase before January 28, 2026.

Be sure to advise your clients that the precise date of purchase matters when claiming the Previously Owned Clean Vehicle Credit.

VEHICLE SALES PRICE

The Previously Owned Clean Vehicle Credit under IRC §25E is only available for vehicles whose sales price does not exceed \$25,000. This is different than the Clean Vehicle Credit available to new vehicles under IRC §30D that contains a credit limitation based on the vehicle manufacturer's suggested retail price (MSRP).

The sales price of a previously owned clean vehicle means the total sales price agreed upon by the buyer and seller in a written contract at the time of sale, including any delivery charges and after the application of any incentives, but excluding separately stated taxes and fees required by state or local law. (Prop. Treas. Regs. §1.25E-1(b)(9)) Additionally, the sales price of a previously owned clean vehicle is determined before the application of any trade-in value and does not include separate financing, extended warranties, or insurance.

OUALIFYING SALE

Vehicles are only eligible for the Previously Owned Clean Vehicle Credit for the first qualifying sale of the vehicle. A qualifying sale is defined as a sale by:

- A licensed dealer;
- For a sales price that does not exceed \$25,000; and
- Which is the first transfer since August 16, 2022, (the date of enactment of IRC §25E) to a "qualified buyer" (defined above) other than the original user of the vehicle.
 (IRC §25E(c)(2))

Comment

The IRS's FAQs from Fact Sheet 2023-29, at topic D, question 4 provide that a "qualifying buyer" is someone whose AGI is at or below the AGI thresholds listed on page 12. However, the statutory definition of qualifying buyer under IRC §25E(c)(3) does not include the AGI limitation.

The IRS's FAQs provide that unless all three requirements listed here are met, then the sale of the used vehicle is not a qualifying sale. When the Inflation Reduction Act was first passed, many commentators shortened this requirement to state that the Previously Owned Clean Vehicle Credit is only available for the first resale of the vehicle. However, the credit is only available for the first *qualifying* sale of the vehicle.

Comment

Sales and other transfers between dealers are disregarded for purposes of applying the first transfer rule. (Rev. Proc. 2023-33, Sec. 4.02; Prop. Treas. Regs. §1.25E-1(b)(8)(ii))

Remember, a purchase of a vehicle after August 16, 2022, but before January 1, 2023, can be a qualifying sale. Taxpayers would not be able to claim a credit for vehicles purchased in such a "qualifying sale" during this time period because the credit can only be claimed for a purchase after 2022. But because the pre-2023 sale was a "qualifying sale," a credit cannot be claimed when the vehicle is resold after 2022 because the resale was not the first qualifying sale. (FAQs IRS Fact Sheet 2023-29, Topic D, Q&A 1 and 7)

It's also important to note that a purchase of a vehicle may be a "qualifying sale" even if the purchaser is ineligible to claim the credit because the taxpayer's AGI was too high. In this situation, any subsequent qualifying sale would not be eligible for the credit because the subsequent sale would not be the first "qualifying sale."

Example of claiming the Previously Owned Clean Vehicle Credit

The following scenarios involve Jane and Joe. Unless otherwise stated, assume Jane and Joe are both under the AGI threshold, neither can be claimed as the dependent of another taxpayer, and neither one has claimed the Previously Owned Clean Vehicle Credit under IRC §25E before.

Scenario 1

A qualifying car was purchased new in 2020 and was sold as a used car for \$25,000 by a licensed dealer to Jane on August 15, 2022. The car was sold again by another licensed dealer in June 2023 for \$18,000 to Joe. In this scenario, Joe can claim the Previously Owned Clean Vehicle Credit because the sale to him was the first qualifying sale of the vehicle. The sale to Jane occurred prior to August 16, 2022, and is therefore not a qualifying sale.

Scenario 2

Assume the facts are the same as Scenario 1, except that Jane's purchase of the vehicle occurred on August 17, 2022. In this scenario, Jane cannot claim the Previously Owned Clean Vehicle Credit because the credit is only available for purchases after December 31, 2022.

Joe also cannot claim the credit because Jane's purchase of the car from a licensed dealer for \$25,000 on or after August 16, 2022, is deemed to be the first qualifying sale of the vehicle.

Scenario 3

Assume the facts are the same as Scenario 2, except that Jane purchased the car for \$26,000 on August 17, 2022. In this scenario, Joe can claim the credit for his purchase of the vehicle because Jane's purchase of the vehicle for a price that exceeds \$25,000 is not a qualifying sale. Therefore, Joe's sale is the first qualifying sale of the car.

Scenario 4

Assume the facts are the same as Scenario 3, except that Jane purchased the car for \$25,000 in January 2023, and Jane's AGI is over the threshold. In this scenario, the result is the same as Scenario 2, where neither Jane nor Joe can claim the credit.

Even though Jane cannot claim the credit because her AGI is too high, the sale of the car to her is the first qualifying sale of the car, so therefore Joe cannot claim the credit because his purchase was not the first qualifying sale.

Scenario 5

Assume the facts are the same as Scenario 4, except that Jane's income is below the AGI threshold, but she purchased the car in January 2023 directly from the original owner, who is not a licensed dealer. In this scenario, Jane cannot claim the credit because she did not purchase the car from a licensed dealer (and therefore her transaction was not a qualifying sale), but Joe can claim the credit because his purchase of the vehicle is the first qualifying sale.

CPE Network® Tax Report Credit Transfer

CREDIT TRANSFER

Beginning with vehicles acquired after 2023, purchasers may transfer the credit to the dealer (similar to the transfer allowed for the Clean Vehicle Credit discussed beginning on page 6).

🕏 Planning Pointer

Like the Clean Vehicle Credit, the modified AGI thresholds are a cliff. A taxpayer whose modified AGI is even \$1 over the amounts shown is ineligible for the Previously Owned Clean Vehicle Credit. Also, the AGI and sales price figures are not adjusted for inflation.

OTHER ISSUES

Like the Clean Vehicle Credit:

- Taxpayers must provide the vehicle identification number (VIN) on the tax return for the year the credit is claimed:
- The vehicle's basis must be reduced by the amount of the credit claimed;
- Any other deduction or credit allowed for the vehicle must be reduced by the amount of the credit for previously owned clean vehicles;
- The credit cannot be claimed for vehicles used predominantly outside the U.S.;
- The vehicle must meet applicable air quality and motor vehicle safety standards; and
- The credit is not refundable, and unused credit cannot be carried over.

QUALIFIED COMMERICAL CLEAN VEHICLE CREDIT— IRC §45W

The Qualified Commercial Clean Vehicle Credit is available for qualified vehicles purchased after December 31, 2022, and before 2033. (IRA '22 §13403; IRC §45W) The credit is part of the IRC §38 General Business Credit. To qualify, the taxpayer must use the vehicle 100% for a business purpose. (IRS Fact Sheet 2023-29)

If business use is less than 100%, then business taxpayers can include any personal use of the vehicle in the employee's taxable compensation. Doing so allows the business to treat the vehicle as if it is used 100% for business.

CREDIT AMOUNT

The credit is equal to the lesser of:

- 15% of the vehicle's basis (30% if the vehicle is not powered by a gasoline or diesel internal combustion engine); or
- The excess of the vehicle's purchase price over the cost of a comparable vehicle in terms of size and use, which is powered solely by a gasoline or diesel internal combustion engine. This is referred to as the vehicle's "incremental cost."
 (IRC §45W(b))

The credit is capped at \$40,000 (\$7,500 for vehicles with a gross vehicle weight rating of less than 14,000 pounds).

Comment

Unlike the Clean Vehicle Credit, the Qualified Commercial Clean Vehicle Credit cannot be transferred to the dealer at the time of purchase. However, tax-exempt entities can treat the seller as the purchaser. (IRC §6417)

Incremental costs

In Notices 2023-9 and 2024-5, the IRS has stated that it will accept a taxpayer's use of \$7,500 as the incremental cost for all street vehicles (other than compact car plug-in hybrid electric vehicles (PHEVs)) with a gross vehicle weight rating of less than 14,000 pounds when calculating the IRC §45W credit for 2023 and 2024.

For PHEVs and vehicles with a gross weight of 14,000 pounds or more placed in service in 2023, the IRS will allow taxpayers to use the figures contained in the Department of Energy's (DOE's) incremental cost analysis as a safe harbor. (Notice 2023-9) The DOE's analysis is available at:

☐ **Website**www.energy.gov/eere/vehicles/articles/

2022-incremental-purchase-cost-methodology-and-results-clean-vehicles

For PHEVs placed in service in 2024, the incremental cost of compact PHEVs under 14,000 pounds is \$7,000. (Notice 2024-5)

QUALIFIED COMMERICAL CLEAN VEHICLE

A qualified commercial clean vehicle is a vehicle that:

- Is made by a qualified manufacturer (one that registers with the Secretary of the Treasury and discloses specified information to the IRS, including the vehicle's VIN);
- Is acquired for use or lease by the taxpayer and not for resale;
- Either is:
 - o A motor vehicle under Title II of the Clean Air Act; or
 - A mobile machinery under IRC §4053(8);
- Either is:
 - o Propelled to a significant extent by an electric motor that draws electricity from a battery with a minimum capacity of 15 kilowatt hours (seven kilowatt hours for vehicles that weigh less than 14,000 pounds) and is capable of being recharged from an external source of electricity; or
 - o A fuel cell vehicle as defined under IRC §30B; and
- Is subject to depreciation.

More vehicles qualify than under the Clean Vehicle Credit

For a vehicle to qualify for the Clean Vehicle Credit under IRC §30D, the vehicle must have its critical material and battery components sourced from the United States or a country in which the United States has a free trade agreement in affect. In addition, the vehicle's final assembly point must be in North America.

The Qualified Commercial Clean Vehicle Credit does not contain the critical material or battery component sourcing rules.

Further, because the Qualified Commercial Clean Vehicle Credit can be claimed for vehicles used in a trade or business with a gross vehicle weight of less than 14,000 pounds, many vehicles that would qualify for the Clean Vehicle Credit except for the fact that either their critical components are not sourced in the U.S. or a qualifying country or the vehicle's final assembly point is not in North America can qualify for the Qualified Commercial Clean Vehicle Credit.

In addition, taxpayers do not have to meet the AGI limits to qualify to claim the credit.

See the discussion on page 20 dealing with vehicles that can qualify for a credit under both IRC $\S\S30D$ and 45W.

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Comment

The credit is subject to recapture if the vehicle is no longer qualified (e.g., does not continue to be used in a trade or business). (IRC $\S\S30D(f)(5)$, 45W(d)(1))

The Inflation Reduction Act provision requiring recapture leaves the details of this provision up to the Department of the Treasury to issue regulations. As of publication, no such regulations have been issued.

LEASED VEHICLES

Like the Clean Vehicle Credit, a qualifying vehicle must be "acquired for use or lease by the taxpayer and not for resale." This is the same exact language used under both IRC §§30D and 45W.

In its FAQs dealing with the Qualified Commercial Clean Vehicle Credit under IRC §45W, the IRS says: "Whether a taxpayer can claim the credit in its business depends on who is the owner of the vehicle for federal income tax purposes. The owner of the vehicle is determined based on whether the lease is respected as a lease or recharacterized as a sale for federal income tax purposes." (IRS Fact Sheet 2023-29)

The FAQs continue by stating that longstanding tax principles determine whether a transaction is a "lease" for tax purposes and is a question of fact. Features of a vehicle lease agreement that would make it more likely to be recharacterized as a sale of the vehicle for tax purposes include, but are not limited to:

- A lease term that covers more than 80% to 90% of the economic useful life of the vehicle;
- A bargain purchase option at the end of the lease term (that is, the ability to purchase the vehicle at less than its fair
 market value at the end of the term) or other terms/provisions in the lease that economically compel the lessee to
 acquire the vehicle at the end of the lease term; and
- Terms that result in the lessor transferring ownership risk to the lessee; for example, a terminal rental adjustment
 clause provision that requires the lessee to pay the difference between the actual and the expected value of the
 vehicle at the end of the lease.

(IRS Fact Sheet 2023-29)

In accounting language, this is the difference between an operating lease (a true lease) and a capital lease (a lease treated as an asset sale).

To further drive home the point that it is the owner of the vehicle, not the lessee, who is eligible to claim the credit, the IRS's FAQs provide that in the event a lease is recharacterized as a sale (i.e., an operating lease is reclassified as a capital lease), then at that point, the lessee would need to determine if they are eligible to claim "either a clean vehicle credit or a qualified clean vehicle credit," and the lessor is no longer eligible to claim the credit because the lessor would effectively be treated as a reseller of the vehicle. (IRS Fact Sheet 2023-29)

Comment

There are a couple of observations that are important here. First, in the IRS's FAQs related to the Qualified Commercial Clean Vehicle Credit, they saw fit to bundle both the Clean Vehicle Credit under IRC §30D and the Qualified Commercial Clean Vehicle Credit under IRC §45W when discussing the reclassification of an operating lease as a capital lease.

Second, the FAQs indicate that the phrase used in both IRC §§30D and 45W that a qualifying vehicle that is "acquired for use or lease by the taxpayer and not for resale" does not refer to a taxpayer who has leased a vehicle as a lessee, but instead refers to a taxpayer who has purchased a vehicle for the purpose of leasing it to someone else. If it's the latter, then it is only the lessor who can claim the credit.

Third, when determining whether a lease may be a capital lease (and would therefore allow the lessee to claim the Qualified Commercial Clean Vehicle Credit), the lessor and lessee must communicate clearly with one another regarding the character of the lease so that only one of them claims the credit. Remember, the vehicle's VIN must be reported on the income tax return when claiming the credit.

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USED VEHICLES

Technically, a taxpayer can claim the Qualified Commercial Clean Vehicle Credit under IRC §45W for used vehicles, but only if neither the Clean Vehicle Credit under IRC §30D nor the Qualified Commercial Clean Vehicle Credit under IRC §45W has already been claimed for the vehicle.

Comment

It seems unlikely that a taxpayer will actually be able to claim the Qualified Commercial Clean Vehicle Credit for a used vehicle. First, it's very unlikely that the taxpayer who purchased the vehicle new would forego claiming the credit, which is required in order to claim the credit for a used vehicle. Second, there isn't a mechanism in place for taxpayers to look up the used vehicle VIN number to determine whether a previous credit has been claimed for the vehicle.

OTHER ISSUES

Also, like the Clean Vehicle Credit, when claiming the Qualified Commercial Clean Vehicle Credit:

- Taxpayers must provide the vehicle identification number (VIN) on the tax return for the year the credit is claimed;
- The vehicle's basis must be reduced by the amount of the credit claimed;
- Tax-exempt entities that purchase a qualified vehicle may elect to have the seller treated as the taxpayer for purposes of the credit (see IRC §6417);
- The credit cannot be claimed for vehicles used predominantly outside the U.S.;
- Only one credit may be claimed per vehicle; and
- The vehicle must meet applicable air quality and motor vehicle safety standards.

NO DOUBLE BENEFIT

The Qualified Commercial Clean Vehicle Credit cannot be claimed for a vehicle for which the taxpayer claimed the Clean Vehicle Credit under IRC §30D.

Any other deduction or credit allowed for the vehicle must be reduced by the amount of the Qualified Commercial Clean Vehicle Credit.

INTERSECTION OF IRC §§30D, 45W, AND 25E FOR BUSINESS AUTOS

The introduction of the Qualified Commercial Clean Vehicle Credit under IRC §45W by the Inflation Reduction Act creates a scenario where many new cars are eligible for both credits, and taxpayers must choose which credit to claim.

The decision will come down to understanding the limitations applicable to each credit to help your clients avoid the limitation maze.

BUSINESS VEHICLES UNDER IRC §30D

Prior to the Inflation Reduction Act, the Qualified Plug-in Electric Drive Motor Vehicle Credit could be claimed for either a personal use vehicle or a vehicle subject to an allowance for depreciation (i.e., a business use vehicle). (IRC §30D(c)(1)) However, if the credit was claimed for a business vehicle, then the credit was claimed as part of the General Business Credit under IRC §38 and not part of the regular plug-in vehicle credit under IRC §30D(a). IRC §30D(c)(1) was left unchanged by the Inflation Reduction Act and remains in effect.

If, in the year a vehicle is placed in service, it has a combination of business and personal use, then the business and personal use must be split based on the personal versus business use percentages (usually using mileage in the year

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the vehicle is placed in service). Business use is reported on Form 8936, Clean Vehicle Credits, Part II, and the business portion of the credit is treated as part of the General Business Credit and carries to Form 3800. The personal use portion of the vehicle credit is reported on Form 8936, Part III and carries to Form 1040, Schedule 3.

General Business Credit

The General Business Credit, in a nutshell, is a credit that is made up of over 30 different business credits that are calculated and reported on their own separate IRS forms. The credits are then combined on Form 3800, General Business Credit, and are subject to limitations on the aggregate credit. Unused business credits can be carried forward for up to 20 years.

Because IRC §30D(c) was left unchanged by the Inflation Reduction Act, taxpayers who purchase qualifying vehicles that are placed in service and are subject to an allowance for depreciation can still claim the Clean Vehicle Credit. This is significant because many cars are now eligible for both the Clean Vehicle Credit under IRC §30D and the new Qualified Commercial Clean Vehicle Credit under IRC §45W. Taxpayers cannot claim both credits for the same vehicle — they must choose wisely.

PROPOSED REGULATIONS: MIXED BUSINESS AND PERSONAL USE FOR IRC §30D

The IRS issued proposed regulations on March 31, 2023, that provide some guidance for taxpayers claiming the Clean Vehicle Credit under IRC §30D for business vehicles. The proposed regulations require that the entire credit be claimed as an IRC §38 General Business Credit if a vehicle is used 50% or more for business in the year it is placed in service. (Prop. Treas. Regs. §1.30D-1(b)(1)(i)) A Clean Vehicle Credit under IRC §30D(a) cannot be claimed by an individual taxpayer in this situation.

Example of clean vehicle with 50% or more business use

Lonna has a side hustle working as an Uber driver. She reports her income and expenses from Uber on Schedule C. Lonna purchased a new qualifying clean vehicle in 2023, and all requirements for claiming the Clean Vehicle Credit have been met (such as the vehicle MSRP, her AGI, etc.).

Using a mileage log, Lonna determines that she used her new car 50% for business and 50% for nonbusiness in 2023.

When Lonna files her 2023 income tax return, she must report the vehicle on Form 8936, and then the entire credit will be reported on Form 3800 as a General Business Credit and is subject to all limitations applicable to the General Business Credit.

If the vehicle is used less than 50% for business, then, just as before the Inflation Reduction Act, the credit must be split based on the business and personal use: The credit for the business use portion of the vehicle must be claimed as a General Business Credit under IRC §38, and the credit for the personal use portion of the vehicle is claimed as a Clean Vehicle Credit under IRC §30D(a). (Prop. Treas. Regs. §1.30D-1(b)(2))

Example of clean vehicle with less than 50% business use

Assume the facts are the same as the prior example, except that Lonna uses her new clean vehicle 49% for her Uber side hustle and 51% for nonbusiness purposes (once again, based on her mileage log).

When Lonna files her 2023 income tax return, she must report the vehicle on Form 8936, but 51% of the credit will flow directly to Form 1040, Schedule 3, and 49% of the credit must flow through the General Business Credit on Form 3800 and through the limitation maze run General Business before credit the Credit the ultimately ends on Lonna's Form 1040, Schedule 3.

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Comment

The proposed regulations, as illustrated in the examples above, contain a somewhat strange rule that if a Clean Vehicle Credit is used 50% or more for business, then the entire Clean Vehicle Credit must be claimed as a General Business Credit.

This special rule in the regulations only applies to the Clean Vehicle Credit under IRC §30D. The regulations do not allow a taxpayer to treat a qualifying clean vehicle that is used only 50% for business as if it was a 100% business-use vehicle when it comes to deducting business mileage, depreciation issues, etc.

PROPOSED REGULATIONS: PARTNERSHIPS, S CORPORATIONS, AND THE CLEAN VEHICLE CREDIT UNDER IRC §30D

The proposed regulations provide that the AGI limitation under IRC §30D(f)(1) generally does not apply to C corporations or other taxpayers that do not calculate an adjusted gross income under IRC §62. (Prop. Treas. Regs. §1.30D-4(b)(5)(i))

However, in the case of partnerships and S corporations where the Clean Vehicle Credit is claimed by individuals who are direct or indirect partners or shareholders, the modified AGI limits do apply to those partners and shareholders when the credit passes through to them. (Prop. Treas. Regs. §1.30D-4(b)(5)(ii))

Example of reporting Clean Vehicle Credit purchased by a partnership

The MP Partnership is owned by Mary (60%) and Peter (40%), who both file their personal tax returns as single individuals. MP purchased a qualifying clean vehicle in 2023 and will claim the credit under IRC §30D. The vehicle qualifies for the maximum \$7,500 credit.

Mary's AGI for 2023 is \$180,000, and Peter's AGI is \$130,000.

The partnership must first report the purchase of the vehicle on Form 8936, Clean Vehicle Credits, in Part II and will carry the \$7,500 credit to Schedule K, line 15P (Other Credits). For an S corporation, this will be Schedule K, line 13P.

Mary's Schedule K-1, line 15P will report \$4,500 of the credit ($\$7,500 \times 60\%$ ownership) and Peter's Schedule K-1, line 15P will report the remaining \$3,000.

On their personal income tax returns, Mary and Peter each must determine whether they qualify to claim the credit based on their own AGI. Mary cannot claim any portion of the \$4,500 credit allocated to her because her AGI is over \$150,000. See page 4 for a discussion of the AGI limitation for the Clean Vehicle Credit.

Peter's AGI is less than the \$150,000 limit for 2023, so he will report the credit on Form 3800, General Business Credit, at Part III, line 1y. Assuming his General Business Credits are not limited, then the \$3,000 credit will flow from Form 3800 to Schedule 3, line 6a.

THE BUSINESS CHOICE

For purposes of qualified commercial clean vehicles under the 14,000-pound gross vehicle weight rating (GVWR), a qualified commercial vehicle means any vehicle that meets the vehicle requirements of IRC §30D(d)(1)(C). That subsection defines an eligible vehicle, but it does not include the following limitations:

- Critical mineral and battery component sourcing;
- MSRP limitations;
- AGI limitations; and
- Final assembly point limitations.

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What this means is that taxpayers who purchase a new clean vehicle with a GVWR of under 14,000 pounds for their business can choose between the credit available under IRC §30D or IRC §45W. Both credits will be claimed as part of the General Business Credit under IRC §38, but the limitations discussed here will affect the tax professional's strategic decision to determine under which code section (and on which IRS form) to claim the credit.

(Comparison of IRC §30D and IRC §45W Credit	s
Point of consideration	IRC §30D	IRC §45W
Calculation of credit	Credit is either \$3,750 or \$7,500 based on battery capacity and sourcing of material and battery components — use Department of Energy website to determine available credit based on make and model (https://fueleconomy.gov/feg/tax2023.shtml)	Lesser of: 15% of vehicle basis (30% if not powered at all by gas or diesel engine); or Excess of vehicle's purchase price over cost of comparable gas or diesel vehicle (see IRS Notices 2023-9 and 2024-5)
Apportionment of credit for mixed personal/business credit	Credit apportioned between personal and business credit if business use less than 50% Treated as 100% business credit if business use is 50% or more	No apportionment required but must be a business-use vehicle
Critical material and battery component sourcing limitation	Subject to limitation for vehicles delivered after April 17, 2023	Not subject to limitation
Final assembly point	Must be in North America	Not subject to limitation
Vehicle MSRP limitation	Subject to limitation	Not subject to limitation
Taxpayer modified AGI limitation	 C corporations (and other taxpayers that do not calculate an AGI) are not subject to limitation; Partners and S corporation shareholders are subject to limitation when credit passes through to them; and Individual taxpayers are subject to limitation 	Not subject to limitation
Credit claimed at point of sale/transferred to the dealer	Yes, starting in 2024	No
Recapture of credit claimed for business vehicle if vehicle sold or no longer used for business	Yes (but regulations containing details of recapture have not yet been issued)	Yes (but regulations containing details of recapture have not yet been issued)
IRS form to claim the credit	Form 8936	Form 8936 (use Form 8936-A for fiscal years beginning in 2022)

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As should be obvious from the chart, because the Qualified Commercial Clean Vehicle Credit under IRC §45W contains fewer limitations, it will generally be preferrable over the Clean Vehicle Credit under IRC §30D. However, tax professionals must evaluate the calculation of each credit to determine which provides a greater benefit. Consider the following examples.

Example of IRC §30D providing a greater credit

Joe's Pool Cleaning, a Schedule C business, purchased a new plug-in hybrid vehicle for its business in 2023 at a cost of \$35,000. According to the Department of Energy website, the credit under IRC §30D for the vehicle is \$7,500. Joe's modified AGI is under the threshold, and he is eligible to claim the IRC §30D credit.

Under IRC §45W, the credit is only \$5,250 (15% of the vehicle's basis because the car is powered by a hybrid gas-electric engine). In this scenario, it is more advantageous for Joe to claim the Clean Vehicle Credit under IRC §30D (using Form 8936).

Example of IRC §45W providing a greater credit

Assume the facts are the same as the previous example, except that Joe's AGI is too high to claim the Clean Vehicle Credit under IRC §30D. In this scenario, Joe should claim the \$5,250 Qualified Commercial Clean Vehicle Credit under IRC §45W (using Form 8936-A).

PREVIOUSLY OWNED CLEAN VEHICLE CREDIT (IRC §25E) FOR VEHICLES USED IN A SCHEDULE C BUSINESS

As discussed on page 13, a Previously Owned Clean Vehicle Credit can be claimed by individual taxpayers but may not be claimed by business entity taxpayers. (IRC §25E(c)(3)(A); IRS Fact Sheet 2023-29)

However, there are no provisions within IRC §25E that prevent individual taxpayers from claiming the Previously Owned Clean Vehicle Credit if they use the vehicle in their business, such as a sole proprietorship business.

Further, the Previously Owned Clean Vehicle Credit under IRC §25E does not require that the credit be claimed as a General Business Credit when the vehicle contains business use, the way the Clean Vehicle Credit under IRC §30D does.

Example of business use of used clean vehicle

Holly is a florist and operates her business as a sole proprietorship. In 2023, she purchased a vehicle that is used in her business and that satisfies all the requirements for the Previously Owned Clean Vehicle Credit under IRC §25E. Holly's income is below the AGI limitation, and she claims the maximum personal credit of \$4,000.

Holly will be able to claim the Previously Owned Clean Vehicle credit on her personal return without having to run the credit through the General Business Credit under IRC §38 first.

If Holly had purchased a new vehicle for her business, then she would have to claim either the Clean Vehicle Credit under IRC §30D or the Qualified Commercial Clean Vehicle Credit under IRC §45W and treat the credit as a General Business Credit.

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CLAIMING THE CLEAN VEHICAL CREDITS

Starting with the 2023 tax year, Form 8936, Clean Vehicle Credits, has been modified and expanded to include reporting for all three types of clean vehicle credits:

- The Clean Vehicle Credit under IRC §30D;
- The Previously Owned Clean Vehicle Credit under IRC §25E; and
- The Qualified Commercial Clean Vehicle Credit under IRC §45W.

BUSINESS AND PERSONAL USE OF THE CLEAN VEHICLE CREDIT

The Clean Vehicle Credit under IRC §30D can be split between the personal use portion of the vehicle (claimed as a personal credit) and the business use portion of the vehicle (claimed as a General Business Credit).

When splitting the Clean Vehicle Credit between business and personal use, the credit is first reported on Form 8936, then the personal use portion of the credit carries directly to Schedule 3 (Form 1040), and the business use portion of the credit carries to Form 3800, General Business Credit.

SPECIAL FORM FOR 2022 TAXABLE YEARS

The IRS created Form 8936-A for taxpayers to claim the Qualified Commercial Clean Vehicle Credit for the 2022 taxable year. The new form was created for the 2022 taxable year even though the credit is only available for qualifying vehicles purchased after December 31, 2022. This is because fiscal-year taxpayers whose taxable year begins in 2022 must file 2022 tax forms.

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GROUP STUDY MATERIALS

A. Discussion Questions

- 1. How does the Inflation Reduction Act of 2022 change the landscape of clean vehicle credits?
- 2. Discuss the basic guidance in claiming the Clean Vehicle Credit under IRC §30D.
- 3. Discuss what occurs to the Clean Vehicle Credit if a vehicle only meets one of the criteria related to the material and battery components.
- 4. A qualifying car was purchased new in 2020 and was sold as a used car for \$25,000 by a licensed dealer to Jane on August 15, 2022. The car was sold again by another licensed dealer in June 2023 for \$18,000 to Joe. Assume Jane and Joe are both under the AGI threshold, neither can be claimed as the dependent of another taxpayer, and neither one has claimed the Previously Owned Clean Vehicle Credit under IRC \$25E before. What are the key requirements for claiming the Previously Owned Clean Vehicle Credit under IRC \$25E?
- 5. Discuss the factors of a qualified commercial clean vehicle.
- 6. What are the implications of leasing a vehicle in terms of claiming clean vehicle credits?

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B. Suggested Answers to Discussion Questions

- 1. The Act renamed and modified the New Qualified Plug-in Electric Drive Motor Vehicle credit to the Clean Vehicle Credit (IRC §30D). Two new credits included: The Previously Owned Clean Vehicle Credit (IRC §25E), and the new Qualified Commercial Clean Vehicle Credit (IRC §45W).
- 2. The Clean Vehicle Credit generally applies to new four-wheel vehicles placed in service after December 31, 2022, and sunsets at the end of 2032. A new clean vehicle is generally deemed to be placed in service on the date the taxpayer takes possession. The credit can only be claimed once per vehicle, however taxpayers can claim a credit for every eligible new vehicle they purchase, even if multiple vehicles are purchased in the same year. Advanced credits available through dealers are limited to two vehicles per year. The credit is nonrefundable and cannot be carried forward if claimed for a personal-use vehicle. If a clean vehicle is purchased at least partially for business use and qualifies for either the Clean Vehicle Credit or the Qualified Commercial Clean Vehicle Credit, the credit is claimed as part of the General Business Credit under IRC §38, and these unused credits can be carried forward under the rules applicable to all General Business Credits.
- 3. The maximum amount of the Clean Vehicle Credit is \$7,500 per qualified vehicle if the vehicle's critical materials and battery components are manufactured, processed, extracted, or produced in the U.S. or in countries with which the U.S. has entered a free trade agreement. (IRC §30D(b)) If the vehicle only meets one of the requirements, then the credit is limited to \$3,750.
- 4. The vehicle must be at least two model years old, purchased from a licensed dealer for \$25,000 or less, and be the first qualifying sale/transfer since August 16, 2022 to a qualified buyer other than the original user of the vehicle. In this scenario, Joe can claim the Previously Owned Clean Vehicle Credit because the sale to him was the first qualifying sale of the vehicle. The sale to Jane occurred prior to August 16, 2022, and is therefore not a qualifying sale.
- 5. A qualified commercial clean vehicle is a vehicle that: Is made by a qualified manufacturer (one that registers with the Secretary of the Treasury and discloses specified information to the IRS, including the vehicle's VIN); is acquired for use or lease by the taxpayer and not for resale; either is a motor vehicle under Title II of the Clean Air Act; or a mobile machinery under IRC §4053(8); either is propelled to a significant extent by an electric motor that draws electricity from a battery with a minimum capacity of 15 kilowatt hours (seven kilowatt hours for vehicles that weigh less than 14,000 pounds) and is capable of being recharged from an external source of electricity; or a fuel cell vehicle as defined under IRC §30B; and is subject to depreciation.
- 6. Generally, the lessor (not the lessee) is considered the owner for tax purposes and is eligible to claim the credit. However, if the lease is recharacterized as a sale for tax purposes, the lessee might be eligible to claim the credit instead. Features of a vehicle lease agreement that would make it more likely to be recharacterized as a sale of the vehicle for tax purposes include, but are not limited to: A lease term that covers more than 80% to 90% of the economic useful life of the vehicle; a bargain purchase option at the end of the lease term or other terms/provisions in the lease the compel the lessee to acquire the vehicle at the end of the lease term; and terms that result in the lessor transferring ownership risk to the lessee.

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GLOSSARY OF KEY TERMS

BOI—Beneficial Ownership Information

Charitable Contribution—contributions of cash and property to qualified charitable organizations

Clean Vehicle—battery electric vehicles, plug-in hybrid vehicles, and fuel cell electric vehicles

Commercial Clean Vehicle—A qualified commercial clean vehicle is a vehicle that: is made by a qualified manufacturer (one that registers with the Secretary of the Treasury and discloses specified information to the IRS, including the vehicle's VIN); is acquired for use or lease by the taxpayer and not for resale; either is: a motor vehicle under Title II of the Clean Air Act; or a mobile machinery under IRC §4053(8); either is: propelled to a significant extent by an electric motor that draws electricity from a battery with a minimum capacity of 15 kilowatt hours (seven kilowatt hours for vehicles that weigh less than 14,000 pounds) and is capable of being recharged from an external source of electricity; or a fuel cell vehicle as defined under IRC §30B; and is subject to depreciation.

CTA—Corporate Transparency Act

FinCEN—Financial Crimes Enforcement Network

Personally Identifiable Information—information: (a) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or (b) by which an agency intends to identify specific individuals in conjunction with other data elements

Silviculture—the growing and cultivation of trees

Sustainable Aviation Fuel (SAF) —an alternative fuel made from non-petroleum feedstocks that reduces emissions from air transportation

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CPE Network® Tax Report

Quizzer

CPE Network®

Tax Report

Volume 37, Issue 6 July 2024

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

- 1. According to Ian Redpath, in *Excelsior Aggregates, LLC*, what was the primary issue addressed by the Tax Court?
 - A. Depreciation of mining equipment
 - B. Valuation methodologies for charitable contributions related to conservation easements
 - C. Employment tax issues for mining companies
 - D. Foreign tax credits for international mining operations
- 2. According to Ian Redpath, under IR 2024-153, what is a critical requirement for taxpayers to be eligible for the clean fuel production credit?
 - A. They must have a minimum of 1,000 employees.
 - B. They must be a publicly traded entity.
 - C. They must first be a registered producer of clean fuel under §4101 at the time of production.
 - D. They must have been in business for at least 10 years.
- 3. According to Ian Redpath, in the *Connelly v. United States* case, what did the Supreme Court decide regarding the life insurance proceeds used to fund a buy-sell agreement?
 - A. The proceeds were not taxable.
 - B. The proceeds were taxable but could be offset by the redemption obligation.
 - C. The proceeds increased the value of the estate subject to tax and could not be offset by the redemption obligation.
 - D. The proceeds were only partially taxable.
- 4. According to Ian Redpath, what was the primary allegation in the Smith et al. v. Google, LLC case?
 - A. Google was illegally selling user data.
 - B. Google was using invisible tracking tools to collect financial information from tax software users.
 - C. Google was manipulating search results for tax-related queries.
 - D. Google was providing inaccurate tax advice through its search engine.
- 5. According to Ian Redpath, what is the name and version of the new Offer in Compromise booklet released by the IRS?
 - A. Form 656-A, March 2024 version
 - B. Form 656-B, April 2024 version
 - C. Form 656-C, May 2024 version
 - D. Form 656-D, June 2024 version

Continued on next page

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6. According to Mike Giangrande, which of the following is *not* one of the three Clean Vehicle Credits available starting in 2023?

- A. Clean Vehicle Credit under Section 30D
- B. Previously Owned Clean Vehicle Credit under Section 25E
- C. Qualified Commercial Clean Vehicle Credit under Section 45W
- D. Alternative Fuel Vehicle Credit
- 7. According to Mike Giangrande, what is the maximum credit amount available for the Clean Vehicle Credit under Section 30D?
 - A. \$4,000
 - B. \$7,500
 - C. \$25,000
 - D. \$40,000
- 8. According to Mike Giangrande, what is the AGI limit for married couples filing jointly to be eligible for the full Clean Vehicle Credit under Section 30D?
 - A. \$150,000
 - B. \$225,000
 - C. \$300,000
 - D. \$400,000
- 9. According to Mike Giangrande, how many times can a taxpayer claim the advanced credit at the dealership for the Clean Vehicle Credit per year?
 - A. Once
 - B. Twice
 - C. Three times
 - D. Unlimited
- 10. According to Mike Giangrande, what is the maximum credit amount for the Previously Owned Clean Vehicle Credit under Section 25E?
 - A. \$2,500
 - B. \$4,000
 - C. \$7,500
 - D. \$10,000
- 11. According to Mike Giangrande, how often can a taxpayer claim the Previously Owned Clean Vehicle Credit?
 - A. Once per year
 - B. Once every two years
 - C. Once every three years
 - D. There is no limit.

Continued on next page

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CPE Network® Tax Report Quizzer

12. According to Mike Giangrande, what is the maximum credit amount for the Qualified Commercial Clean Vehicle Credit under Section 45W for vehicles under 14,000 pounds?

- A. \$4,000
- B. \$7,500
- C. \$25,000
- D. \$40,000
- 13. According to Mike Giangrande, which of the following is *not* a requirement for the Qualified Commercial Clean Vehicle Credit under Section 45W?
 - A. The vehicle must be used 100% for business
 - B. The vehicle must have its final assembly in North America
 - C. The credit is claimed as part of the General Business Credit
 - D. The credit cannot be claimed as an advanced credit at the dealership
- 14. According to Mike Giangrande, how is the Clean Vehicle Credit treated if a vehicle is used exactly 50% for business purposes?
 - A. The credit is split evenly between personal and business use.
 - B. The credit can only be claimed for personal use.
 - C. The entire credit must be claimed as a General Business Credit.
 - D. The credit is disallowed entirely.
- 15. According to Mike Giangrande, what happens if a taxpayer returns a vehicle within 30 days of taking delivery after claiming the Clean Vehicle Credit?
 - A. The buyer does not qualify for the credit, and the vehicle is not eligible for a new credit.
 - B. The buyer keeps the credit with no consequences.
 - C. The credit can be transferred to a new vehicle purchase.
 - D. The buyer must repay half of the credit amount.

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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 July 2024 **CPE Network**® **Tax Report**? Rate each topic on a scale of 1–5 (5=highest):

	Topic	Topic Content/	Topic	Video	Audio	Written
Experts' Forum	Relevance	Coverage	Timeliness	Quality	Quality	Material
Overview of Clean Vehicle Credits				 		
Which segments of the July 2024 issue of CPE Network® T	ax Report did	you like th	e most, and	why?		
Which segments of the July 2024 issue of CPE Network® T	ax Report did	you like th	e least, and v	why?		
		- 0 -				
What would you like to see included or changed in future issue	ues of CPE Ne	twork® Ta	x Report?			
Are there any other ways in which we can improve CPE Net	work® Tax Re	port?				

How would you rate the effectiveness of the speak 1–5 (5=highest):	ters in the	e July 202	24 CPE I	Network® Ta	Report? Rate each speaker on a sc	ale of
	Overall		wledge of Topic	Presentation Skills		
Ian Redpath						
Mike Giangrande						
Which of the following would you use for viewing	g CPE No	etwork®	Tax Rep	ort? DVD □	Streaming □ Both □	
Are you using CPE Network® Tax Report for:	CPE Cre	dit □	Informat	ion 🗆 Bot	h 🗆	
Were the stated learning objectives met? $$ Yes $$	No	_				
If applicable, were prerequisite requirements appro	opriate?	Yes 🗆	No 🗆			
Were program materials accurate? Yes \square	No \square					
Were program materials relevant and contribute to	the achi	evement	of the lea	rning objectiv	es? Yes \square No \square	
Were the time allocations for the program appropr	riate?	Yes □	No \square			
Were the supplemental reading materials satisfactor	ory?	Yes □	No \square			
Were the discussion questions and answers satisfa	ctory?	Yes □	No \square			
Were the audio and visual materials effective?		Yes □	No \square			
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:					Date:
Name	<u>Email</u>	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.	wed and were participants in	the group	discussion with this issue/segmen	t of the CPE Netw	ork $^{\scriptscriptstyle{ ext{@}}}$ newsletter, and earned
Instructor Name:			Date:		
E-mail address:					
License State and Number:			ĺ		

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.

			Fire	st CPE H	lour	C	PE Houi	2	C	PE Houi	· 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?
							1					

CHECKPOINT LEARNING NETWORK

CPE NETWORK® USER GUIDE

REVISED December 31, 2023

Welcome to CPE Network!

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

This User Guide has the following sections:

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

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

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

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

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

Copyrighted Materials

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

"Group Live" Format

CPE Credit

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

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

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

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

Advertising / Promotional Page

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

Monitoring Attendance

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

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

Real Time Instructor During Program Presentation

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

Elements of Engagement

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

Make-Up Sessions

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

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

Awarding CPE Certificates

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

Subscriber Survey Evaluation Forms

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

Retention of Records

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

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

Finding the Transcript

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

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

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

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

Requesting Participant CPE Certificates

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

Email: CPLgrading@cerifi.com

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

Form Name	Included?	Notes
Advertising /		Complete this form and circulate to your audience
Promotional Page		before the training event.
Attendance Sheet		Use this form to track attendance during your training
		session.
Subscriber Survey		Circulate the evaluation form at the end of your
Evaluation Form		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.
- 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 /		Complete this form and circulate to your audience
Promotional Page		before the training event.
Webinar Delivery		Use this form to track the attendance (i.e., polling
Tracking Report		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

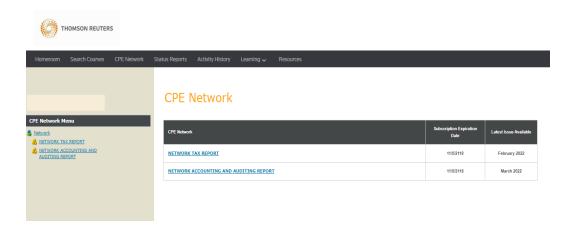
Self-Study-Online

Follow these simple steps to use the online program:

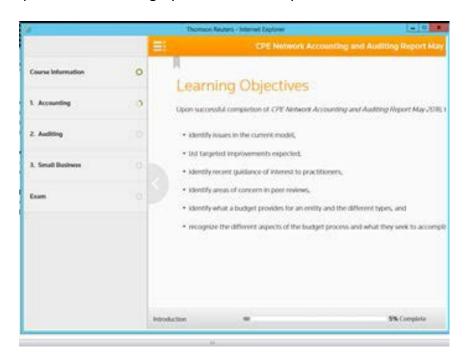
- Go to www.checkpointlearning.thomsonreuters.com.
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login or Register").



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

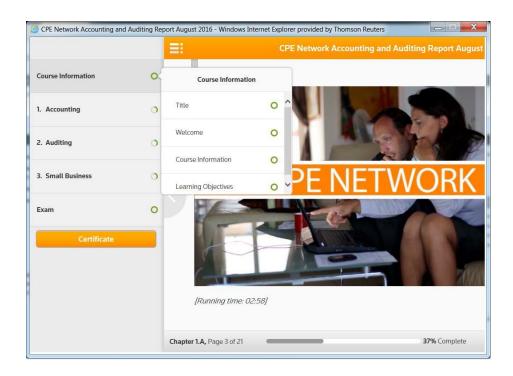


The Chapter Menu is in the gray bar at the left of your screen:



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

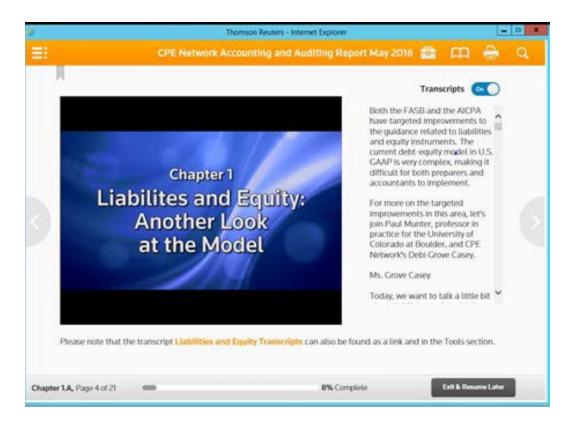
• **Course Information** is the course Overview, including information about the authors and the program learning objectives



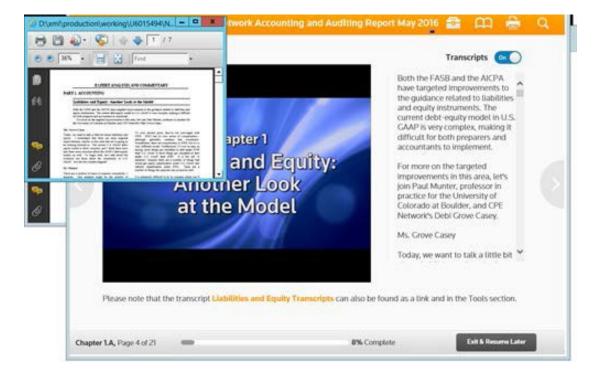
• Each Chapter is self-contained. Each chapter contains the executive summary and learning objectives for that segment, followed by the interview, the related supplemental materials, and then the discussion questions. This streamlined approach allows administrators and users to more easily access the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



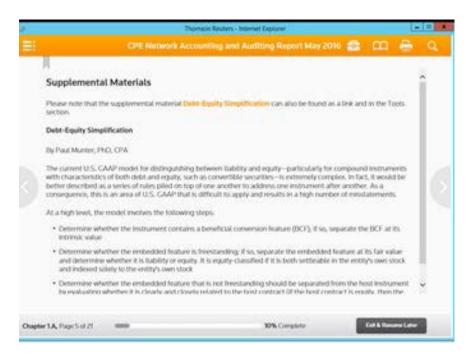
Video segments may be downloaded from the CPL player by clicking on the download button. Tip: you may need to scroll down to see the download button.

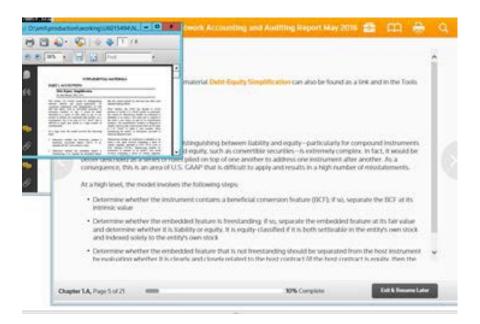


Transcripts for the interview segments can be viewed at the right side of the screen via a toggle button at the top labeled **Transcripts** or via the link to the pdf below the video (also available in the toolbox in the resources section). The pdf will appear in a separate pop-up window.



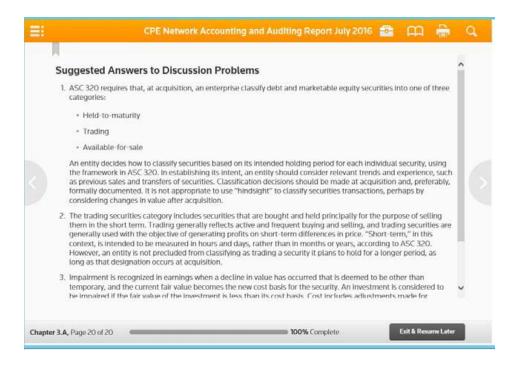
Click the arrow at the bottom of the video to play it, or click the arrow to the right side of the screen to advance to the supplemental material. As with the transcripts, the supplemental materials are also available via the toolbox and the link will pop up the pdf version in a separate window.





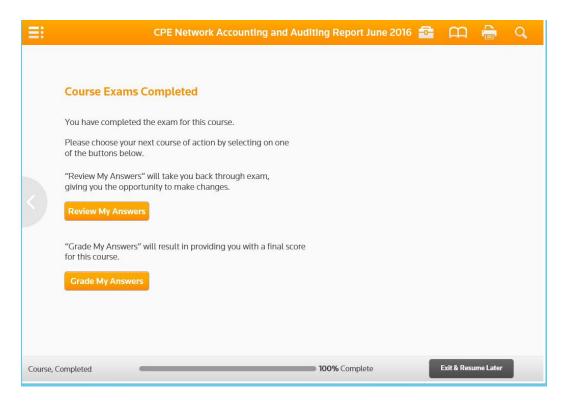
Continuing to click the arrow to the right side of the screen will bring the user to the Discussion p roblems related to the segment.

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



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**.

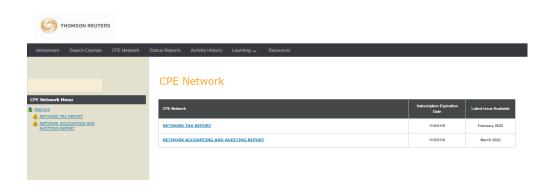
Transitioning From DVDs

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

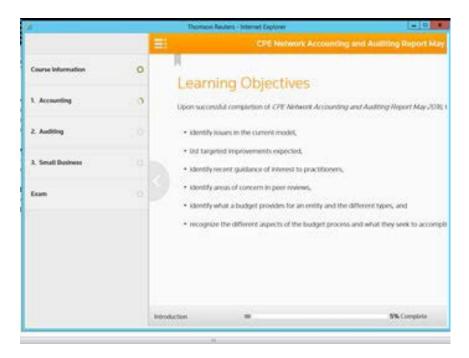
- Go to <u>www.checkpointlearning.thomsonreuters.com</u>.
- Log in using your username and password assigned by your firm's administrator in the upper right-hand margin ("Login").



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

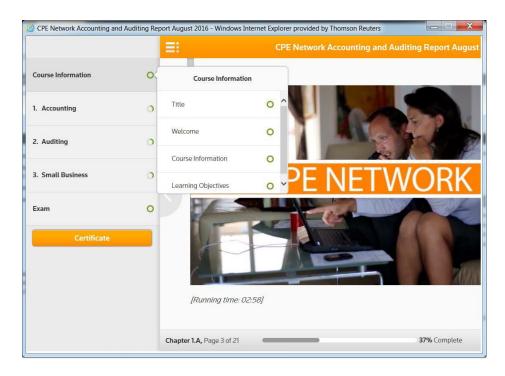


The Chapter Menu is in the gray bar at the left of your screen:



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