TAX
ALLIANCE
CONFERENCE
2026
TAX ALLIANCE CONFERENCE

Welcome to the 2026 Tax Alliance Conference!

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Responsibility for Retention of Records

This outline has been prepared from sources the authors believe to be accurate and reliable. However, the possibility of human and/or mechanical error does exist. The users of this outline are encouraged to secure additional information, as needed, to assist them in reaching a solution in any tax matter.

Credit Hours

EA's	18 Hours CPE in Taxes & 2 Hours Ethics
CPA's	20 Hours CPE in Taxes & No Ethics
Attorney's	20 Hours MCLE in Tax Law/16.75 MCLE with 1.75 Ethics
Program Level:	Intermediate
Prerequisite:	None

Participants, as well as seminar sponsors, must maintain a record of attendance at a CPE/CLU seminar. Circular 230 states that each individual should keep the following information for seven years: (four years forward after renewal)

- The name of the sponsoring organization;
- The location of the program;
- Program number,
- The title of the program and description of its contents;
- Written outlines, course syllabi, textbook, and/or electronic materials provided or required for the course;
- The dates attended;
- The credit hours claimed;
- The names(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and
- The completion and/or signed statement of the hours of attendance obtained from the sponsor.

The Tax Alliance Conference is an IRS approved continuing educator provider and is registered with the Texas Board of Accountancy as a sponsor of Continuing Professional Education, # 009389; and State Bar of Texas Course # 174324056. Ethics 2 hours: A9EFN-E-00049-26-O/A9EFN-E-00049-26-I. Conference 18 hours: A9EFN-T-00048-26-O/A9EFN-T-00048-26-I

TAX ALLIANCE CONFERENCE HISTORY

Written by Claire Edwards and Liz Melton

On September 30, 1993 an organizational Steering committee meeting was held in the Internal Revenue Service's Regional Commissioners Conference Room, 12th floor, 4050 Alpha Road, Dallas, Texas 75224. Catherine Harvey, Dallas Problems Resolution officer chaired the organizational meeting.

In attendance at the organizational meeting were:

- Catherine Harvey, IRS Problem Resolution Officer – Dallas District
- Sarah Phillips, EA Chairman of the Houston Tax Alliance Conference
- Alice Weir, IRS Problem Resolution Officer - Houston District
- Cyndi Hutchings, EA H & R Block
- Barbara Caldwell, University of Texas Dallas
- Tom Gillreath, ACAT Council
- William J. Sexton, EA TAFTS, Dallas
- Trisha Roberts, IRS Asst. Problem Resolution Officer - Dallas District
- Joe Melton, EA TEAS
- Liz Melton, EA TEAS
- Elaine Vandergriff, EA TAFTS Metroplex

Mission Statement:

The purpose of the Tax Alliance Conference is to create and promote equitable and efficiently tax administration for the benefit of the taxpayer through sponsorship of presentations, discussions, debates and other cooperative meetings between Tax Practitioners and the Tax Administrators (both state and federal).

- Bill Moore, Public Affairs IRS
- Jean Bennett, EA TXSEA
- Gary Booth, IRS District Director - Dallas District
- James E. Kelley, IRS Assistant District Director – Dallas District
- Beanna Whitlock, EA TXSEA
- Claire Edwards, CPA

Cont... Tax Alliance Conference History

At this meeting it was decided that the Dallas District would indeed host a Tax Alliance Conference and two tentative dates were selected, May 17 & 18 or May 19 & 20, of 1994. A chairman and co-chairman were selected. Claire Edwards was selected chairman and Joe Melton was selected co-chairman. A budget committee was selected with Joe Melton chairing this committee. Joe Melton was appointed to select a bank and open an account with himself and Jean Bennett as signators on the account.

Since no funds were available for seed money, it was decided that each organization would go to their respective boards and ask for a loan to be made to the TAC conference (approximately $2500 each) and that these loans would be repaid out of the first monies that were received in registrations. No organization will benefit monetarily from these conferences as any profits will be used to host the next conference.

by Claire Edwards, Acting Secretary of this meeting

The committee worked well together! Each member taking a responsibility to make the Tax Alliance Conference a success. Application for Sponsorship numbers was made to the Texas State Board of Public Accountancy, IRS Office of Professional Responsibility and the State Bar of Texas. Receiving the sponsorship, records of attendance are maintained annually.

The 2-day conference was held May 17 & 18 of 1994, at the University of Texas at Dallas. To accommodate growing attendance, the conference was moved to the Plano Centre.

Continuing to keep the conference price of attendance reasonable, a goal of the committee, is due to a cadre of knowledgeable speakers who present timely, relevant topics at no fee. The Tax Alliance Conference committee also receives no compensation for their hours of service to this event. The “seed money” of $2,500.00 which came from the Texas Enrolled Agents Society (TEAS) and $2,500.00 from the Texas Association of Financial & Tax Specialists (TAFTS) was oon repaid and the TAC has been self-sufficient ever since.

I have been privileged to have been on the TAC committee since that first meeting in September 1993. My husband, Joe Melton, and Claire Edwards served the first two years as Co- Chairman. Keith Thomas chaired the committee the third year. It was Joe’s dream to unify the professional tax organizations, including both Federal and State taxing authorities to work together. The Tax Alliance Conference is a realization of a dream and its continued success a tribute to the tax professional community it serves.

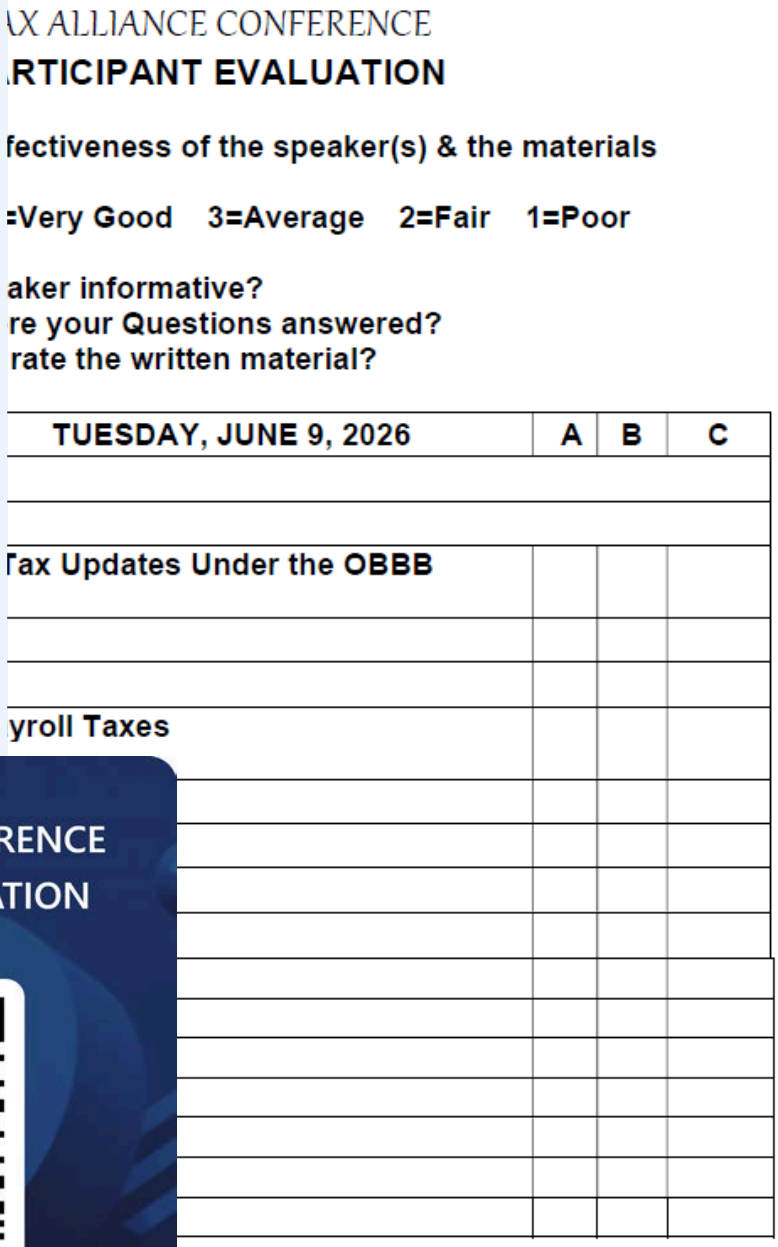
Ms. Melton is a former founding Board member who served for over twenty years.

by Liz Melton

Continuing Education

Formerly the yellow, green, and white papers handed out

We have replaced these forms with a modernized QR code. Please complete via link or QR code below:



AX ALLIANCE CONFERENCE
RTICIPANT EVALUATION

fectiveness of the speaker(s) & the materials

=Very Good 3=Average 2=Fair 1=Poor

aker informative?
re your Questions answered?
rate the written material?

TUESDAY, JUNE 9, 2026	A	B	C
Tax Updates Under the OBBB			
yroll Taxes			

https://forms.office.com/r/z0NFh1p8Fg

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Texas State Bar QR Code

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800-204-2222, ext. 1806 / 512-427-1806 / Fax: 512-427-4423
e-mail: mcle@texasbar.com

COURSE NO	174324056
COURSE TITLE	2026 Tax Alliance Conference

Scanning this code takes you directly to the State Bar of Texas MCLE reporting tool with information for this course automatically filled in.

For an attorney to report your attendance, simply scan the code, log in, certify that the requested credit is correct, and click submit.

Click on this link to create or download a QR barcode of different sizes, go to: https://www.texasbar.com/qr?crs=174324056

Tax Alliance Conference 2026

Our mission is to provide intermediate to advanced continuing education to tax professionals presented in the Dallas, Texas area at an affordable cost. We are a non-profit, volunteer organization.

TaxAlliance.org

Access handouts on our website

June 9 - 11, 2026

Plano Event Center

Collinwood Conference Rooms

https://taxalliance.org/conference-handbook

2026 Speaker & Conference Schedule:

Tuesday, June 9th, 2026

1:00 PM - 1:50 PM
Check-In & Welcome at 2:00 PM

2:10 PM - 3:50 PM
Speaker: Fernando Juarez Hernandez
Topic: Tax Updates Under the OBBB

Break 3:50 PM - 4:10 PM

4:10 PM - 5:50 PM
Speaker: Robert Nordlander
Topic: Unpaid Payroll Taxes

Wine & Cheese Reception sponsored by:

COLEMAN & JACKSON PC

At Coleman & Jackson, PC, we are experienced tax attorneys handling all matters related to tax controversy. Specifically, we represent individuals and corporations with respect to Federal tax matters.

Our practice includes representing clients in audits, defense of enforced collections, and IRS administrative hearings. We also represent clients in criminal tax defense, District Court, and United States Tax Court.

Additionally, we provide estate and corporate tax planning to assist our clients in implementing sensible strategies for their individual or corporate tax needs.

Wednesday, June 10th, 2026

8:15 AM - 9:05 AM
Speaker: Angie Toney
Topic: Advanced Tax Strategies That Survive Audit

9:05 AM - 9:55 AM
Speaker: Jasmine DeLucci
Topic: Tax Planning for Businesses

Break 9:55 AM - 10:15 AM

10:15 AM - 11:05 AM
Speaker: Tim Turner
Topic: Basis

11:05 AM - 11:55 AM
Speaker: Joel Crouch
Topic: Recent Tax Cases

Lunch 11:55 AM - 1:15 PM

1:15 PM - 2:05 PM
Speaker: Special Agent Christopher Altemus
Topic: Criminal Investigations

2:05 PM - 2:55 PM
Speaker: Antonio Glenn
Topic: Trust,Triggers, and Taxes

Break 2:55 PM - 3:15 PM

3:15 PM - 4:55 PM
Speaker: IRS Speaker Glenn Gizzi
Topic: Data Breaches & EFIN Scams

Thursday, June 11th, 2026

7:30 AM - 8:00 AM
Check-In

8:00 AM - 9:40 PM
Speaker: Bryan Camp
Topic: Tax Issues with Gaming & Gambling

Break 9:40 AM - 10:10 AM

10:10 AM - 11:00 AM
Speakers: Roslyn Banks, Tony Box, and Kyle Coleman
Topic: Hot Topic Roundtable

11:00 AM - 11:50 AM
Speaker: Lynnsee Starr
Topic: Asset Protection & Tax Planning with Legal Entities

Lunch 11:50 AM - 1:00 PM

11:00 PM - 1:50 PM
Speaker: Clint Davis
Topic: Qualified Nonrecourse Debt

1:50 PM - 2:40 PM
Speaker: IRS Speaker Derek Ganter
Topic: Stakeholder Communications & Liaison

Break 2:40 PM - 2:50 PM

2:50 PM - 4:30 PM
Speaker: IRS Speaker Kevin Carle
Topic: **Ethics** - Circular 230
(2 IRS CE Hours)

Our 2026 Sponsors and Vendors

At Coleman & Jackson, PC, we are experienced tax attorneys handling all matters related to tax controversy. Specifically, we represent individuals and corporations with respect to Federal tax matters. Our practice includes representing clients in audits, defense of enforced collections, and IRS administrative hearings. We also represent clients in criminal tax defense, District Court, and United States Tax Court. Additionally, we provide estate and corporate tax planning to assist our clients in implementing sensible strategies for their individual or corporate tax needs.

The members of the firm include Kyle Coleman and Robert B. Jackson. Each attorney of Coleman & Jackson, PC, has received a Master's Degree in Tax Law (LL.M). The lawyers may be reached by email or you may call us at (972) 810- 4380.

Contact Us:

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admin@coleman-jackson.com

Website: www.coleman-jackson.com
Phone: (972) 810-4380

The Generational Alliance Network

An M&A Network for Professional Advisors

Important Decisions Deserve the Right Team.

Business owners make better decisions when the right advisors align early.

The Generational Alliance Network (GAN) brings together a select group of professionals who serve business owners through growth, transition, and exit. Too often, transaction advisors work independently, which can create advisory gaps, slow momentum, and limit results.

GAN helps bring the right people to the table earlier so clients benefit from clearer guidance and a coordinated path forward. More than a network, it is a strategic alliance built on trust, collaboration, and a shared commitment to helping clients succeed.

Built for advisors who want to bring more value, GAN creates a more connected way to serve business owners by aligning experienced professionals around preparation, education, coordination, and long-term outcomes. Members collaborate through a defined process that strengthens the client-advisor relationship, enhances value, and advances opportunities.

The network includes CPAs, attorneys, wealth advisors, business consultants, regional banks, private investors, and private equity groups that share a commitment to serving closely held business owners with discretion, alignment, and long-term thinking.

Members benefit from expanded opportunities for collaboration, introductions, and transaction alignment while delivering added value to business owners at every stage of their journey. The network is designed to preserve and strengthen the primary client relationship through clear communication, mutual trust, and coordinated support.

As one of the nation's leading middle-market investment banking firms, Generational Group brings the experience, process, and transaction expertise needed to support meaningful outcomes. Members lead the client relationship while Generational adds M&A support at critical points in the process.

Start aligned. Stay in sync. Deliver better outcomes.

Amy Felknor
Managing Director, Strategic Alliances
Generational Group
afelknor@generational.com | 214.797.0946
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Michelle@IdziCPA.com
EgisTax.com

Our Speakers

(In Order of Presentation)

Fernando Juarez Hernandez

Fernando is a tax attorney with JH Law PLLC. He advises on complex U.S. and international tax planning. His tax practice focuses on crossborder transactions. Beyond planning, his experience includes voluntary disclosures, FBARs and international compliance. Fernando also assists taxpayers to comply with the requirements of the Corporate Transparency Act (CTA).

Fernando's expertise in tax planning extends to Fortune 500 companies, family offices, medium & small businesses, and individuals with foreign holdings. His primary areas of expertise include inbound structures for international investors, and outbound tax planning for U.S. based companies.

Fernando received his law degree from the Escuela Libre de Derecho in Mexico City and holds a Master's in Laws from Stanford Law School, where he served as the first Hispanic Chair of the Stanford Tax Club. Fernando is the current First-Vice President of the Texas Society of Enrolled Agents (TxSEA) and the Treasurer for the Dallas Hispanic Bar Association (DHBA).

Fernando's email is: **Fjuarez@Jhtaxlaw.com**

Robert Nordlander

For over 20 years, Robert Nordlander was a special agent with IRS Criminal Investigations where he chased tax evaders and money launderers around the world. He is currently the sole owner of Nordlander CPA, PLLC - a boutique forensic accounting and tax resolution firm in North Carolina. He is a four-time Amazon bestseller and speaks nationally on forensic accounting, ethics, and solving complex IRS problems. He is a CPA, CFE, and is frequently hired by attorneys to assist them in solving their clients' problems. He has presented at the NATP, AICPA, Woodard, Synergy, Tax Rep Network, ASTPS, state CPA organizations, and many more. National continuing education platforms and state CPA societies offer his forensic accounting and tax resolution content for continuing education.

Robert can be reached at: **Robert@Nordlandercpa.com**

Angie Toney

As the owner of Oasis Tax Advisory Services Inc., Angie Toney creates strategies for taxpayers who need to get the IRS off their backs and out of their pockets! She's had a successful career for over thirty (30) years in corporate internal audit. She developed strong investigatory and problem-solving skills in that profession. In addition, a commitment to ethics and compliance makes her a trustworthy practitioner in tax-representation cases.

Her ultimate goal is to close the IRS and/or State cases with the least amount of liability possible. To date, Ms. Toney has saved her clients over one million dollars in tax liability through fair Installment Agreements, currently non-collectable status, offers, and proper tax planning. As a bonus, she offers debt management and credit repair solutions to clients who need a fresh start.

Mrs. Toney also owns Angel Financial Services LLC - a platform created to train and coach other tax professionals who need to expand their technical knowledge, skills, and to serve clients with more complex tax and accounting situations. Through The Executive Touch program, professionals may take courses, participate in a forum with a community of other executives, and receive one-on-one guidance on their cases. Angel Financial Services LLC is an authorized CE provider and is also registered with the NASBA.

Before starting her own business, Ms. Toney was a director working with a local CPA firm providing audit and quality assurance services for local, State, and Federal government projects. Her credentials include a BS in Accounting and an MA in Global Management. She is a Certified Public Accountant / Personal Financial Specialist (CPA/PFS), Certified Tax Strategist (CTS), and a Certified Fraud Examiner (CFE).

Mrs. Toney is married with two children and lives in Northern Virginia. Outside of work, she enjoys various types of volunteer work such as mentoring youths and participating in adult literacy/training programs.

Angie's email is: **Angie@Myoasistax.com**

Jasmine DiLucci

Jasmine is a dedicated attorney, Enrolled Agent, and CPA with a passion for tax law. Licensed to represent taxpayers before the IRS while still in high school, she has since built a successful career and 35+ person team helping business owners and real estate investors protect their cash from the IRS.

With over a decade of experience running her Tax Law and CPA firms, she noticed a lack of accurate, practical tax education online and is now committed to making real tax education accessible and understandable for all.
Jasmine can reached at **Jasmine@Dilucci.com** or on her youtube channel:
https://www.youtube.com/@taxleverage

Tim Turner

Tim's primary passion is helping closely & privately held business owners formalize a plan for a successful exit and transition from their business...to the successors of their choice and on the most favorable financial terms (including understanding the complex tax aspects). Passion for planning was started during a 22-year career with the U.S. Marine Corps. Subsequently, he got involved in personal financial planning for individuals and families with business entities. Thereafter, he helped several major financial service firm conglomerates develop internal succession/exit processes for their representatives. He also helped start/standup/ merge, and wind-down several financial service businesses.

While on active duty, Tim obtained his BSBA in Business Management, Certified Exit Planner (CExPTM), and held the FINRA Series 4, 7, 24, 27, 53, 63 66 licenses as well as life/health licenses. Tim is also an enrolled agent (EA). Tim is also a Certified Quickbooks Online Pro Advisor (Advanced) and certified on Xero.

As a member of the National Association of Enrolled Agents, National Association of Tax Professionals, Financial Planning Association, Texas Association of Business Brokers, and active member of The BEI Network of Exit Planning ProfessionalsTM—the most widely respected and successful Exit Planning network in North America – Tim's firm uses The BEI Seven Step Exit Planning ProcessTM which is a systematic process that is universal in its practice but unique in its outcomes. The Process works because it centers on your goals, your situation, and your needs. BEI members have used this Process for businesses of various sizes, scopes, and industries across North America - allowing owners who implement the Process to exit their businesses on their terms.

Tim's email is: **Timturner@bizsteps.net**

Joel Crouch

Joel counsels and advises businesses, wealthy individuals, and families about their most demanding tax planning, estate planning, and IRS controversies. He often works with tax professionals and financial specialists to help develop solutions for their clients. Joel is a Partner in the firm and is Board Certified in Tax Law by the Texas Board of Legal Specialization.

Joel has been recognized as one of the best in his field by Texas Monthly and Law and Politics magazines by being named a Texas Super Lawyer from 2003 through 2025. He has also been named one of the Best Lawyers in Dallas by D Magazine for the years 2012-2025. Mr. Crouch has been recognized by Best Lawyers in America® in Litigation and Controversy-Tax and Tax Law for the years 2015-2026. Mr. Crouch was named the Best Lawyers 2022® Tax Law "Lawyer of the Year" in Dallas/Ft. Worth. Mr. Crouch was selected to the Top 100: 2024 Dallas/Fort Worth Texas Super Lawyers® list for the primary practice area of Tax Law.

Joel is a frequent speaker on procedural and substantive tax issues for legal and accounting professionals. Some of his topics include: Tax Shelter Defense, IRS Examinations, Appeals, Litigation & Collection Strategies, IRS Criminal Investigations, IRS Offshore Activities, IRS Focus on Tax Professionals, Employment Classification, IRS Penalties, and Litigation Partnership Tax Cases. He has also published various articles regarding the IRS and tax procedures.

Joel's email is:
JCrouch@Meadowscollier.com

Christopher Altemus, Jr.

Mr. Altemus was selected as the Special Agent in Charge ("SAC") for the Criminal Investigation Dallas Field Office in August of 2021. He is responsible for planning, directing, and evaluating activities of CI employees in the states of Arkansas, Oklahoma, and North Texas and reports directly to the Director, Field Operations for the Southern area.

Prior to his selection as the Dallas Field Office SAC, Christopher served as the Director of the National Criminal Investigation Training Academy (NCITA) for IRS Criminal Investigation.

Criminal Investigation's top law enforcement priorities are designed to promote tax compliance, address emerging areas of fraud, and meet the needs of the law enforcement community by supporting national crime initiatives. The Criminal Investigation Program Strategy is comprised of three interdependent programs: Legal Source Tax Crimes; Illegal Source Financial Crimes; and Narcotics Related Financial Crimes/Counterterrorism. These three areas are mutually supportive, and they encourage utilization of all statutes within CI's jurisdiction, the grand jury process, and enforcement techniques to combat tax, money laundering, and currency crime violations.

Christopher began his law enforcement career as a special agent assigned to the Philadelphia Field Office in July 2002. He has since served in numerous leadership positions, Including Supervisory Special Agent in the Raleigh Post of Duty, Senior Analyst Operations Policy & Support, Assistant Special Agent in Charge of the Charlotte Field Office, Acting Special Agent in Charge of the Nashville Field Office.

He holds a Bachelor of Science degree in Accounting from Saint Joseph's University.

Antonio Glenn

Antonio Glenn is an accomplished attorney and founder of AMG Counsel PLLC - a boutique law firm providing clear, strategic, and values-based legal guidance across Texas and Maryland. Known for his personal approach and unwavering dedication, Antonio has helped hundreds of clients navigate business, estate, and tax matters with confidence.

He holds a Juris Doctor from the University of Dayton School of Law, where he focused on Business Law and graduated in 2008. His commitment to service and advocacy began early through clerkships with respected law firms and the Maryland Office of the Public Defender. Antonio was admitted to the Maryland Bar in 2010, the Texas Bar in 2016, and is licensed to practice before both the United States Supreme Court (2017) and the United States Tax Court (2023).

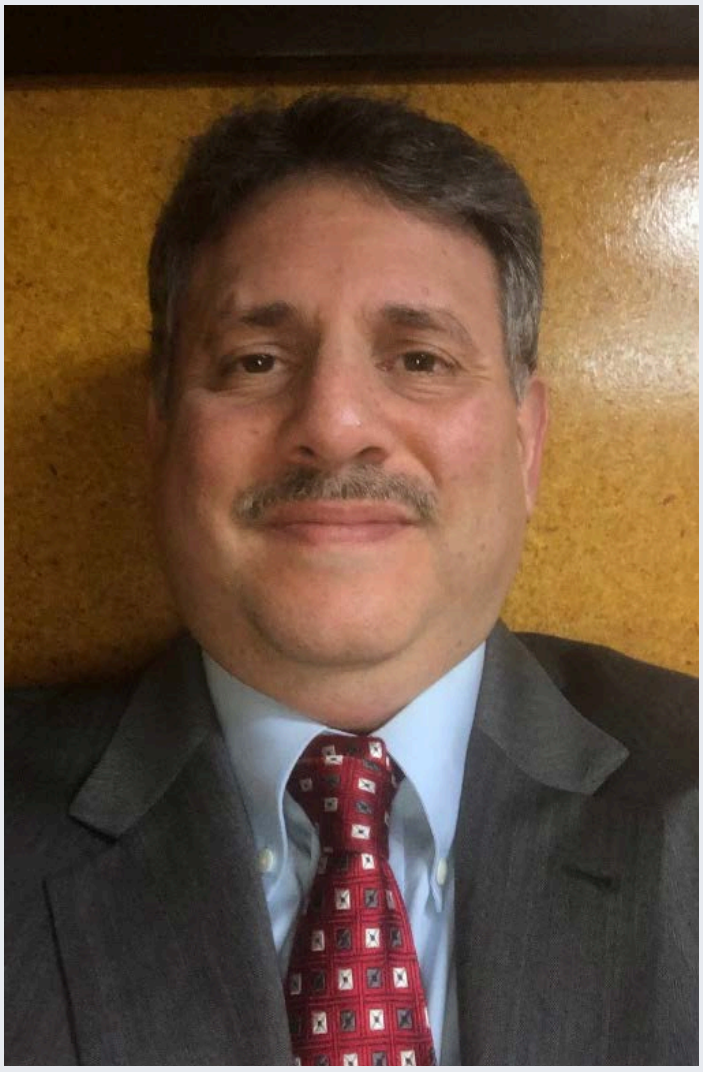
Prior to launching his own law firm, Antonio served as a business advisor during the 2008 housing market crisis - providing legal and strategic guidance to executives in the homebuilding industry. This experience laid the foundation for his practical, solutions-oriented approach to law.

In 2012, he launched AMG Counsel PLLC to offer services in business law, estate planning, tax controversy, Islamic wills, asset protection, nonprofit counsel, and trademark registration. His legal victories include numerous successful IRS Offer in Compromise ("OIC") approvals that have resolved six-figure tax liabilities, and trademark approvals before the USPTO that have helped clients secure and grow their brands.

Attorney Glenn is often called on to advise real estate investors, medical professionals, nonprofit founders, and small business owners across a wide range of legal issues. His holistic approach ensures that legal strategy is always aligned with client values, goals, and long-term success.

Antonio's email is:
Antonio@Amgcounsel.com

Glenn Gizzi



Glenn has worked for the Internal Revenue Service for thirty-six (36) years. He began in Taxpayer Service in 1989 as a Taxpayer Service Specialist answering account and tax law questions on the IRS's toll-free phone line until becoming a Revenue Agent in 1994. During his 11 years as an Agent, Glenn worked in the Examination Problem Resolution Unit as a caseworker, a cooperating Agent for Criminal Investigations, and was a Taxpayer Advocate at the model walk-in office in Edison. Glenn is also a certified instructor for the IRS and has spent four years training the new incoming Revenue Agents from 2001 to 2005.

Glenn worked in the former Taxpayer Education & Communication division during its stand-up in 2001 before it was eventually realigned into Communications & Liaison. His prior assignments include the Annual Federal State Tax Workshops, North & South Jersey Working Together, AARP, multilingual associations, school districts, and assisting the under-served community. Glenn is currently assigned to Data Breach & Tax Scams Division – working out of the Edison, NJ office at 100 Dey Place. He can be reached by phone at (732) 777-7269 or by email at **Glenn.J.Gizzi@irs.gov.**

Bryan Camp

Professor Camp earned his BA from Haverford College, his JD from the University of Virginia, his MA from the University of Virginia and his LLM from Columbia University. Then he got tired. He practiced law for 13 years - the last 8 as a senior docket attorney in the DC Office of IRS Chief Counsel. At the IRS, Professor Camp received numerous awards - the last one being the 2000 Attorney of the Year for the General Litigation Division. So he wasn't a slouch.

Professor Camp joined the faculty of Texas Tech University School of Law in 2001 where he teaches Tax, Civil Procedure, Legal History, and Statutory Interpretation. He has published over 71 articles that few have read. He has also written more than 335 substantive blog posts that are more widely read - including his "Lesson From The Tax Court" series on TaxProf blog. Professor Camp's scholarship on taxation of cyberspace transactions has taken him to London and Berlin to advise government agencies who thought he knew something.

Professor Camp has received recognition for his scholarship. In 2007 and 2010 he was named the Law School's Outstanding Researcher. In 2008, he was awarded the George H. Mahon professorship. In 2010, the Texas Bar Foundation recognized Professor Camp for Best Law Review Article published in Texas; it was about protecting trust assets from the federal tax lien.

Professor Camp is active in various professional organizations, such as the American Law Institute and the American Bar Association Section of Taxation. He has enjoyed giving some 70 CLE presentations since 2003 and is always both surprised and honored that anyone still wants to hear from him.

Bryan's email is:
Bryan.Camp@ttu.edu

Roslyn Banks

Roslyn Banks is a financial professional with more than 20 years of experience in financial analysis, tax strategy, and business advisory services across multiple industries. Raised on a family farm in Virginia's Northern Neck, she developed an entrepreneurial mindset early in life that continues to shape her practical, solutions-focused approach to working with businesses and individuals.

After earning her Finance degree from William & Mary, Roslyn began her career in an early talent leadership program with one of the nation's largest retail banks. She later earned her Master of Accountancy degree, where she developed a strong interest in tax research and strategic tax planning. While managing a successful retail tax office, she exceeded revenue and customer service goals and passed all three parts of the Enrolled Agent exam on her first attempt.

Roslyn's background in Financial Planning and Analysis allows her to provide clients with more than tax preparation alone. She offers strategic guidance to business owners, entrepreneurs, and tax-exempt organizations in areas including financial operations, business growth, cash flow, and long-term planning. Her ability to combine technical tax knowledge with practical business insight has made her a trusted advisor to a wide range of clients.

Her leadership and innovation within the accounting profession have earned her repeated recognition by CPA Practice Advisor as a "40 Under 40" leader in 2018, 2021, 2022, 2023, 2024, and 2025. In addition to her advisory work, Roslyn is also an author and speaker focused on financial literacy, entrepreneurship, and building sustainable generational wealth.

Roslyn's email is: **Roslyn@hayniebanks.com**

Anthony "Tony" Box

Tony represents businesses and high-net-worth individuals in all types of civil and criminal tax controversies, white-collar defense cases, regulatory investigations and enforcement actions, and compliance matters focused on preventing government inquiries and minimizing business disruptions. He protects U.S. and international clients spanning several industries, including healthcare, technology, energy, real estate, construction, manufacturing and many more.

Before joining Gray Reed, Tony developed a diverse skill set while serving in a number of public and private sector positions. Most recently, he served as a government trial lawyer and tax coordinator responsible for leading federal tax investigations and prosecutions in the Eastern District of Missouri, as well as other high-profile cases involving white-collar crime, identity theft, illegal guns, drugs and violent crimes.

In addition, Tony previously served as an investigator and prosecutor in the St. Louis Circuit Attorneys Office where he led the conviction integrity unit and handled many types of investigations involving violent crime, police misconduct and civil rights matters. Tony is also a licensed CPA and spent three years at a Big Four accounting firm overseeing multi-million-dollar financial audits and investigations in the U.S. and abroad.

Tony has an extensive background in federal law enforcement as well. He served as an FBI special agent for nearly a decade, initially as a financial crime investigator handling a broad range of white-collar criminal investigations, and later as a computer forensics examiner directing all FBI media examinations in the Eastern District of Missouri.

Tony's leadership skills and appreciation for collaboration were honed while serving on active duty in the Army as a tank commander and later as a JAG officer in Iraq. He also served as a senior civilian advisor in Afghanistan. Tony is a graduate of Army Airborne, Air Assault, Armor & JAG basic courses, as well as the JAG advanced course.

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Kyle Coleman

Kyle is a shareholder in Coleman & Jackson, P.C. in Dallas, Texas. Mr. Coleman's practice concentrates on federal tax related controversy matters, including litigation in Federal District Court, the United States Tax Court, and the Court of Federal Claims. Mr. Coleman also represents taxpayers in Internal Revenue Service audits, appeals, and collection actions. Mr. Coleman has been admitted to the United States Court of Appeals for the District of Columbia Circuit, Fifth Circuit Court of Appeals Bar, the Northern District of Texas, the Eastern District of Texas, the District of Colorado, and the United States Tax Court. In addition to tax controversy, Mr. Coleman also represents clients in estate and business planning as well as asset protection. His practice includes entity formation, asset transfers, and wills and trusts.

Kyle received a BA in Finance from the University of Central Oklahoma. He earned his J. D. from the Oklahoma city University School of Law and went on to receive his L. L. M. from the Dedman School of Law at Southern Methodist University.

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Lynnsee Starr

Lynnsee Starr's practice entails all aspects of commercial real estate - representing developers, property owners, investors, and businesses in sophisticated transactions. She provides comprehensive counsel on matters involving industrial, multi-family, self-storage, office, retail, mixed-use, and hospitality properties - guiding clients through each phase of the acquisition, disposition, financing, and entitlement processes.

She also represents landlords and tenants involved in retail, office, industrial, and mixed-use developments in the negotiation and drafting of complex commercial lease agreements.

Licensed in both Texas and Arizona, Ms. Starr is a member of the Dallas Association of Young Lawyers, the Dallas Women Lawyers Association, Ladies in Commercial Real Estate, and the Real Estate Council's Young Guns. Her work has earned recognition from Texas Super Lawyers Rising Stars and Best Lawyers: Ones to Watch in America.

A graduate of Southern Methodist University Dedman School of Law, she earned undergraduate degrees in finance and business sustainability from Arizona State University. Lynnsee's email is: **Lstarr@shackelford.law**

Clint Davis

Clint is with the law firm of Krage & Janvey, LLP in downtown Dallas. He graduated cum laude from the SMU Dedman School of Law in 1980. [Yes, that was before some of you were born.] He was first licensed in Florida as an attorney in 1980 and then in Texas in 1982.

He has been a licensed CPA in Texas since 1980. He has been Board Certified in Tax Law by the Texas Board of Legal Specialization since 1988, and he steadfastly refuses to take any more exams. He has been named as a Super Lawyer, a Top Attorney in Texas by Texas Monthly, one of the Best Lawyers in Dallas by D Magazine and a Top Rated Lawyer by the Dallas Morning News, all in the tax area.

Clint was an author and discussion leader for 8-hour CPE courses for the Texas Society of CPAs since 1991. [Some of his peers believe that the length of these courses make him certifiable as well as board certified.]

Clint also speaks before various bar associations and is a frequent presenter and moderator on the Accountants' Continuing Professional Education Network. Clint primarily represents high net worth individuals and closely held businesses with much of his time devoted to tax planning in mergers and acquisitions and charitable organizations.

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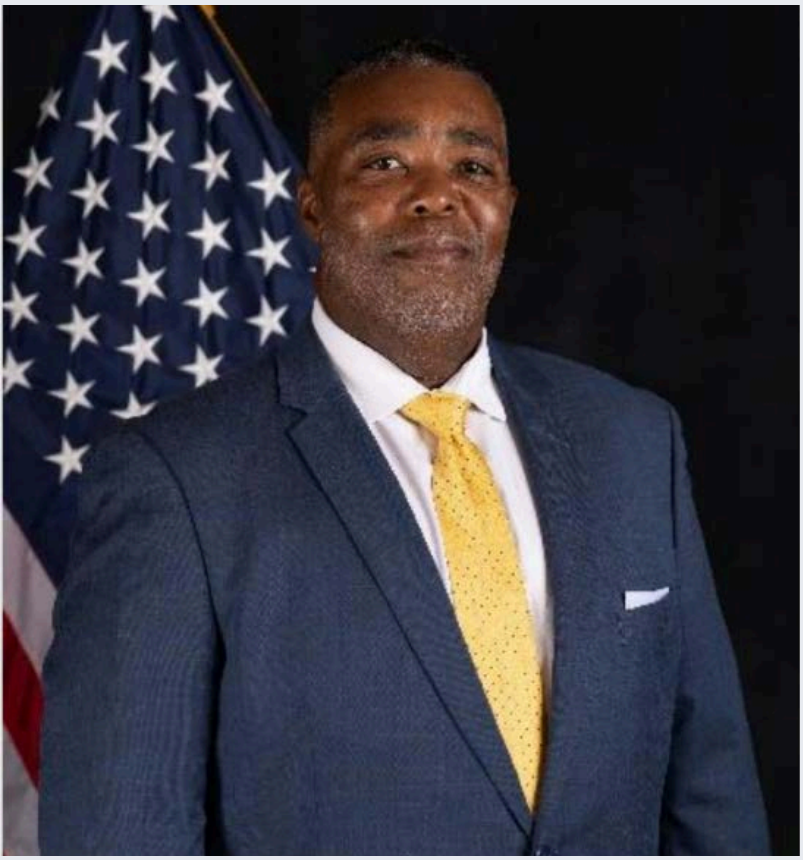

Derek Ganter

Mr. Ganter currently leads the outreach and education programs within the Communications & Liaison (C&L) division of the Internal Revenue Service. His oversight includes the National Public Liaison (NPL), Tax Outreach Partnership & Education (TOPE) and Stakeholder Liaison (SL) programs. In this role, he leads engagement with payroll professionals, tax practitioners, industry representatives, and other key stakeholders at the local, state, regional and national levels. His responsibilities include overseeing outreach and educational initiatives that communicate IRS policies, practices, and procedures—supporting voluntary compliance with tax laws and reinforcing enforcement efforts where necessary.

Prior to his current assignment, Derek held a variety of positions of increasing responsibility and scope primarily in the IRS. Recent assignments include:

- Serving as a Bank Secrecy Act/Title 31 Specialist in the designated High Intensity Financial Crimes Area of Miami, Florida.
- Holding various management and non-management compliance positions in the IRS's Examination function in the Small Business/Self-Employed (SBSE) and Large Business & International (LB&I) divisions.
- Working with the Federal Emergency Management Assistance agency to provide support to victims of disaster.
- Leading several task forces, special projects, and teams.

Derek has been recognized by former IRS Commissioners Rossotti and Rettig, the American Institute of CPAs (AICPA), the National Association of Enrolled Agents (NAEA), members of the U.S. Congress, and other distinguished institutions for his expertise in tax law, strong communication skills, and ability to resolve complex and sensitive issues.

A native of southern California, Derek attended the University of California, Santa Barbara and began his IRS career in 1989 after being recruited by the agency. Outside of his professional role, Derek serves on the leadership teams of several nonprofit organizations and enjoys mentoring student-athletes, fishing, and playing board games.

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Kevin Carle – Mr. Carle is an attorney-advisor with the IRS's Office of Professional Responsibility where his primary responsibilities involve investigating attorneys, certified public accountants, enrolled agents, appraisers, and other tax professionals in response to reports of suspected misconduct relating to practice.

He advises IRS personnel on matters relating to Circular No. 230, IRS Publication 216, IRS Publication 947, Form 2848, and Form 8821. He also drafts informal (non-binding) opinions for external stakeholders in response to general inquiries; press releases discussing noteworthy matters before the office; and guidance for IRS personnel with respect to OPR policy and procedure.

Kevin was admitted to the New York State Bar in 2008, and prior to joining the IRS, was in private practice handling civil litigation. He attended King's College (Pennsylvania) and Hofstra University School of Law.

Special Acknowledgment

Our conference would not be possible without the generosity, dedication, and expertise of our speakers. Each year, these professionals invest countless hours researching emerging topics, developing meaningful content, and preparing presentations designed to educate and inspire their fellow practitioners. Beyond the time spent creating their sessions, many travel significant distances and volunteer their expertise without compensation, all for the benefit of our profession and the success of this conference.

We are deeply grateful for their commitment to sharing knowledge, fostering professional growth, and strengthening our community. Their willingness to give so freely of their time and talents is what makes this conference such a valuable and enriching experience for every attendee. Please join us in extending our sincere appreciation to these remarkable individuals whose passion, generosity, and service help make this event truly exceptional.

Roslyn Banks

Tony Box

Kyle Coleman

Michelle Idzi

Grace Bates

Steve Carter

Teresa Dempsey

Louis Osbourne

Tax Updates Under the OBBB

Presented by:
Fernando Juarez Hernandez

THE ONE BIG BEAUTIFUL BILL BUSINESSES

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FERNANDO JUAREZ, LL.M., EA., ESQ. TAX ATTORNEY

He is a partner at the law firm **JH LAW PLLC**, with offices in Texas and D.C. Fernando has been named one of the **top tax lawyers in Dallas** and is also among the select tax advisors listed in the **Private Client Global Elite Directory 2024**.

He is a specialist in **international tax planning and cross-border transactions**, with extensive experience in international voluntary compliance programs and **tax dispute resolution**. Fernando has participated in tax transactions valued at over **$450 million**.

He earned a Master of Laws (LL.M.) from **Stanford Law School**, where he also served as the first Hispanic president of the Stanford Tax Association. Fernando is an active member of the **National Association of Enrolled Agents (NAEA)**, the **Dallas-Fort Worth Society of Enrolled Agents (DFW-SEA)**, the **Tax Section of the American Bar Association (ABA)**, the **Dallas Hispanic Bar Association (DHBA) (current President-Elect)**, and the **Taxpayer Rights Protection Observatory** based in the Netherlands (until 2023). He also actively participates in pro bono activities with the ABA.

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THE INFORMATION PROVIDED ON THIS PRESENTATION DOES NOT, AND IS NOT INTENDED TO, CONSTITUTE LEGAL ADVICE; INSTEAD, ALL INFORMATION, CONTENT AND MATERIALS INCLUDED IN THIS PRESENTATION ARE FOR GENERAL INFORMATIONAL PURPOSES ONLY.

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TAX REFORM IS HERE!

- Tax Structuring is more relevant than ever!
- Benefits for Capital expenditures are increased
- Interest Deduction is increased
- New deduction for Qualified Production Property
- Opportunity Zones are back
- Various tax benefits

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ENTITY STRUCTURE

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OPTIONS TO DO BUSINESS

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LEGAL GENERALITIES FOR BUSINESSES

	Partnership (General / LP)	LLC	Corporation (C Corp / S Corp)
Owner liability	**General partnership:** all partners can be personally liable for debts. **LP:** general partner has liability; limited partners usually limited to investment (unless they act like management).	Limited liability	Limited liability
Management	Usually partner-managed by default. LPs often centralized (general partner manages).	Flexible: can be **member-managed** or **manager-managed**.	Formal structure: **directors + officers**. Shareholders elect directors.
Legal status	Separate legal entity under most state law, but liability depends heavily on type (GP vs LP vs LLP).	Separate legal entity	Separate legal entity
Federal tax treatment (default)	Pass-through (Form 1065). Partners receive K-1s.	**Single-member:** disregarded (default). **Multi-member:** partnership (default). Can elect C or S corp.	**C corp:** entity-level tax (Form 1120). **S corp:** pass-through (Form 1120-S), subject to eligibility limits.
Flexibility of allocations	High flexibility: can specially allocate income, loss, credits, etc. (subject to §704(b)).	High flexibility if taxed as partnership.	Low flexibility: pro rata allocations. S corp must be **one class of stock** (economic).
Owners / eligibility limits	No limit on partners.	No limit on members.	**C corp:** no limits. **S corp:** max 100 shareholders; U.S. individuals only (with limited exceptions). No nonresident aliens.

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LEGAL GENERALITIES FOR BUSINESSES

	Partnership (General / LP)	LLC	Corporation (C Corp / S Corp)
Raising capital / investors	Can be harder for institutional investors; depends on structure.	Often preferred for private deals; flexible for investors.	Often preferred for VC/PE and scaling. C corp is standard for many investors.
Exit / sale of business	Sale of partnership interests or assets can be complex; hot assets (§751), basis issues.	Similar to partnership if taxed as partnership.	C corp exits can create double tax (asset sale + dividend), unless stock sale.
Compliance & formality	Medium. More than LLC in practice, less than corporation.	Generally simpler than corporations; formalities depend on state.	Most formal: annual meetings, minutes, bylaws, board actions, etc.
Best use cases (common)	Real estate, investment funds, joint ventures, operating businesses needing flexible allocations.	Most closely held businesses; holding companies; real estate; family structures; flexible planning.	C corp: scaling, VC, QSBS planning. S corp: operating businesses with payroll planning.

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TAX CONSIDERATIONS FOR BUSINESSES

	Sole Proprietorship	Partnership	S Corporation	C Corporation
Who is taxed on income?	Owner	Partners	Shareholders	Entity
Entity-level federal tax?	No	No	No (with limited exceptions)	Yes – 21% federal corporate tax rate
Double taxation risk	No	No	No	Yes
Loss utilization	Loss flows directly to owner	Pass-through to partners	Pass-through to shareholders	Loss remains at corporate level
Basis rules	No	Basis increased by income and share of liabilities; reduced by losses and distributions.	Basis increased by income and direct shareholder loans; reduced by losses and distributions. No basis for entity debt unless direct loan.	Shareholder basis generally limited to stock purchase and capital contributions; not increased by corporate earnings.
Treatment of distributions	Not applicable	Generally tax-free to extent of basis.	Generally tax-free to extent of basis.	Dividends taxable to shareholders (qualified dividend rates may apply).
Self-employment tax	Applicable	Applicable to GP	Applicable to Shareholder-employees	Only on wages paid to shareholder
Qualified Business Income (QBI §199A)	Potentially eligible (subject to limitations).	Potentially eligible (subject to limitations).	Potentially eligible (subject to limitations).	Not eligible at shareholder level.

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TAX CONSIDERATIONS FOR BUSINESSES

Tax Factor	Sole Proprietorship	Partnership	S Corporation	C Corporation
Flexibility of allocations	Not applicable.	High flexibility (special allocations allowed under §704(b)).	Limited – must allocate strictly pro rata (one class of stock rule).	Not applicable.
Built-in gains tax risk	Not applicable.	Not applicable.	Possible built-in gains tax if converted from C corp.	Not applicable.
Accumulated earnings concerns	Not applicable.	Not applicable.	Not applicable.	Subject to accumulated earnings tax and personal holding company tax in certain cases.
Exit – asset sale	Gain taxed once at owner level.	Generally single level of tax at partner level.	Generally single level of tax at shareholder level.	Asset sale can trigger corporate tax + shareholder tax on distribution (double layer).
Exit – equity sale	Not applicable (no separate equity).	Sale of partnership interest taxed at partner level (with possible §751 hot asset issues).	Sale of stock taxed at shareholder level.	Sale of stock taxed at shareholder level (often cleaner than asset sale).

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QUALIFIED SMALL BUSINESS STOCK EXCLUSION

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REQUIREMENTS FOR SHAREHOLDERS

Eligible Shareholder	The holder must be an individual, a trust, or an estate. If the shareholder is a partnership or an S corporation, the partners/shareholders must meet additional requirements.
Holding Period	The shares must be held for more than 5 years from their original issuance.
Original Issuance of Stock	The shares must have been acquired directly from the issuing corporation after August 10, 1993.

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WHICH ENTITIES QUALIFY?

Eligible Corporation	Must be a **C corporation**. Cannot be an S corporation, RIC, REIT, REMIC, cooperative, DISC, or IC-DISC. An LLC that elects to be taxed as a C corporation **does qualify**.
$50 Million Gross Assets Limitation	The corporation's **tax basis** in its assets must not exceed **$50 million** at the time the stock is issued (and on prior dates). The test is measured only at the time of the relevant stock issuance.
Qualified Trade or Business	The corporation must operate a qualified trade or business. Excluded industries include health, law, finance, consulting, and similar service businesses. Manufacturing, technology, and retail commonly qualify. Architecture and engineering is excluded.
Active Business Requirement	At least **80% of the value of the corporation's assets** must be used in the active conduct of the qualified trade or business during substantially all of the shareholder's holding period. There are limits on working capital and passive investments.

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CHANGES UNDER OBBB

- To qualify for exclusion holding period is reduced to 3 years.
- If the stock is **acquired after July 4, 2025**:
  - **3 years holding period → 50% exclusion**
  - **4 years holding period → 75% exclusion**
  - **5 years holding period → 100% exclusion**
- **Tack-in rule:** The acquisition period carries over, applying the rules under **IRC §1223**.

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Element	Current Law	OBBB
Holding period for exclusion	More than **5 years**	**≥3 years** (with phased-in benefits)
Exclusion percentages	Based on **acquisition date**: • 50% (pre-2/18/2009) • 75% (2/18/2009–9/27/2010) • 100% (post-9/27/2010)	Based on **holding period**: • 3 years → **50%** • 4 years → **75%** • ≥5 years → **100%**
Minimum holding period for any benefit	5+ years required for any exclusion	3 years required for partial exclusion (50%)
Interaction with §1045 rollover	Full **tack-in** (carryover) is allowed if the §1045 reinvestment requirements are met	Likely preserved, but now integrates with the **new phased-in exclusion regime**
Effective date	Applies based on stock's issuance date under current law	Applies **only to stock acquired after enactment**

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EXAMPLE – STOCK SALE

Scenario	Exclusion %	Taxable Gain	Federal Tax (23.8%)	Net After Tax	Federal Tax Savings vs. No QSBS
No QSBS	0%	$10,000,000	$2,380,000	$7,620,000	—
QSBS – 50% Exclusion	50%	$5,000,000	$1,190,000	$8,810,000	$1,190,000
QSBS – 75% Exclusion	75%	$2,500,000	$595,000	$9,405,000	$1,785,000
QSBS – 100% Exclusion	100%	$0	$0	$10,000,000	$2,380,000

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DEDUCTION OF BUSINESS INTEREST

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MODIFICATION OF THE LIMITATION ON BUSINESS INTEREST – SEC. 70303

- Current Rule (Pre-OBBB):
  - Under IRC §163(j), the limitation on business interest deductions is calculated using Adjusted Taxable Income (ATI), which historically has been determined based on EBITDA (earnings before interest, taxes, depreciation, and amortization).
- New Rule under OBBB:
  - Starting with tax years beginning after December 31, 2021, the calculation of ATI switches from **EBITDA to EBIT**.
  - This means depreciation and amortization are no longer added back when determining ATI.
  - As a result, ATI decreases, which reduces the maximum deductible business interest expense for many taxpayers.

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MODIFICATION OF THE LIMITATION ON BUSINESS INTEREST – SEC. 70303

- With the OBBB, EBITDA returns to the calculation, increasing the Adjusted Taxable Income (ATI).
  - Result: Taxpayers—particularly capital-intensive businesses—can deduct more business interest expense, even when claiming bonus depreciation or §179 expensing.
- Special Rule: Floor-Plan Financing Exclusion
  - For RV dealers and camper dealerships, the OBBB maintains the full exclusion from the §163(j) limitation for floor-plan financing interest.
  - This means these businesses continue to deduct 100% of floor-plan interest without being subject to ATI limitations.
- Effective Date:
  - Applies to tax years beginning after December 31, 2024 (**2025**)

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BUSINESS INTEREST- EXAMPLE

Gross income:	$2,000,000
Operating expenses (excluding depreciation & interest):	$800,000
Depreciation & amortization:	$200,000
Interest expense:	$400,000
Interest deduction limitation:	30%

Concept	TCJA (EBIT-Based)	OBBB (EBITDA-Based)
Gross income	$2,000,000	$2,000,000
Operating expenses	($800,000)	($800,000)
Depreciation / amortization	($200,000)	+$200,000 (added back)
Base for limitation	**$1,000,000**	**$1,400,000**
30% Limitation	$300,000	$420,000
Interest expense	$400,000	$400,000
Deductible interest	**$300,000**	**$400,000**
Excess non-deductible interest	**$100,000**	**$0**

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CAPITAL EXPENDITURES

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INCREASE OF DOLLAR LIMITS FOR DEDUCTION OF CERTAIN DEPRECIABLE BUSINESS ASSETS – SEC. 179

- The deduction under **Section 179** for qualified property is **increased**.
- **Key Changes**
  - The **maximum Section 179 deduction** limit is raised (new limits based on the OBBB).
  - Once total qualified property **exceeds $4,000,000**, the deduction begins to **phase out dollar-for-dollar**.
- **Planning with Bonus Depreciation**
  - **Section 179 deduction is applied first**.
  - Any remaining amount of the investment can then qualify for **bonus depreciation** under the new 100% or elective 40%/60% rules.
- **Effective Date:** Applies to **tax years beginning after December 31, 2024** (**starting in 2025**).

	Prior Law	O3B (per §70306)
179(b)(1) – Maximum Deduction Limit	$1,000,000	$2,500,000
179(b)(2) – Phase-Out Threshold	$2,500,000	$4,000,000

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BONUS DEPRECIATION

- **100% Immediate Deduction on Qualified Property** — Bonus depreciation under §70301(b).
- **Effective Date:** Applies starting **January 19, 2025** (practically, **January 20, 2025**).
- **Transition Rules:**
  - Any taxpayer with qualified property **placed in service** during the **first taxable year ending after January 19, 2025** is eligible.
  - **Example:** For a calendar-year taxpayer, this means the **2025 tax year**.

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BONUS DEPRECIATION

- Election for Partial Bonus Depreciation
  - Instead of claiming the full 100% bonus depreciation, the taxpayer may elect to claim 40% or 60%, depending on the type of asset.
- Effective Date:
  - Applies to taxable years ending January 19, 2025 (January 20, 2025 in practice).
- Acquisition Date
  - The acquisition date is the date when a binding contract has been signed.
- Important: A Letter of Intent (LOI), term sheet, or Memorandum of Understanding (MOU) does not qualify as a binding agreement.

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NEW DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY – SEC. 70307

- The OBBB introduces a **new special deduction** for certain qualified production property.
- **New Deduction:** Allows a **100% deduction** of the **adjusted basis** of qualified production property.
- Applies to assets specifically designated as **qualified production property** under the revised rules.
- **Effective Date:** Applies to **tax years beginning after December 31, 2024** (**starting in 2025**).

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SPECIAL DEPRECIATION DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY

Qualified Production Property

- **Definition:** Any **nonresidential property** used in qualified production activities.
- **Substantial Transformation Requirement:** The production activity must result in a **substantial transformation** of the goods or components that make up the final product.
- **Scope of Production Activities:** Includes **agricultural** and **chemical** production activities.
- **Qualified Product:** Any **tangible good** except for **food or beverages** prepared for **on-site consumption**.
- This definition determines eligibility for the **100% special depreciation deduction** under **Sec. 70307**.

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SPECIAL DEPRECIATION DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY

Qualified Production Property – Usage & Timing Requirements

- To qualify for the **100% special depreciation deduction** under **Sec. 70307**, the property must meet **all** of the following conditions:
  - **Integral Use in Qualified Production**
    - The property must be **used as an integral part** of qualified production activities.
  - **Location Requirement**
    - The property must be **located within the United States** or in **U.S. possessions**.
  - **Original Use Requirement**
    - The **original use** of the property must **begin with the taxpayer**.
  - **Construction Timing**
    - Construction must **begin after January 19, 2025** and **before January 1, 2029** *(effectively through 2028)*.
  - **Election Requirement**
    - The taxpayer must **make an election** to claim the special deduction for the property.
  - **Placed-in-Service Deadline**
    - The property must be **placed in service before January 1, 2031** *(effectively through 2030)*.

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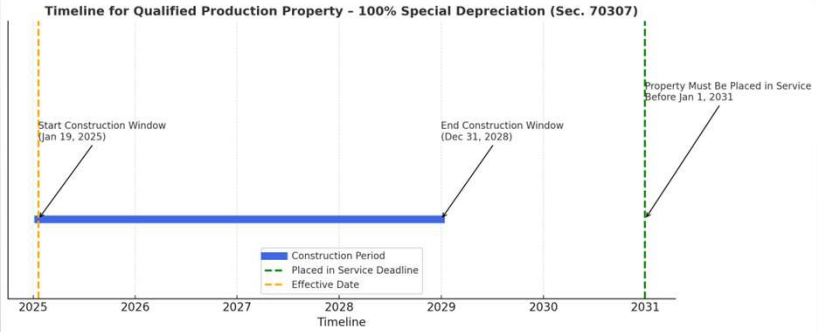
SPECIAL DEPRECIATION DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY



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SPECIAL DEPRECIATION DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY

- Does **not** include office space, administrative services, lodging, parking, sales activities, research activities, software development, engineering activities, or other functions **not related** to the manufacturing, production, or refining of tangible personal property.
- Also, it **does not include property subject to depreciation under the ADS** (Alternative Depreciation System).

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SPECIAL DEPRECIATION DEDUCTION FOR QUALIFIED PRODUCTION PROPERTY

- **Recapture:** If the property ceases to be used for qualified production activity **before 10 years**, recapture rules apply:
  - It is treated **as a sale** and the gain is reported as **ordinary income**.
  - The **basis of the property** is adjusted accordingly.
- **Election:** The election must **specify the property** and must be made **on the tax return** for the year in which the property is acquired.

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R & E

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30

IMMEDIATE DEDUCTION FOR DOMESTIC R&E

Section 70302 — New Deduction under IRC §174A

- Domestic research and experimental (R&E) expenditures are fully deductible in the taxable year in which they are incurred. This represents a significant shift, allowing taxpayers to expense qualifying R&E costs immediately rather than amortizing them over multiple years.

- Definition — "Domestic Research or Experimental Expenditures"
  - Under IRC §174A(b), these are expenses for research or experimentation paid or incurred by the taxpayer in connection with their trade or business, excluding any amounts attributable to foreign-based research.

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IMMEDIATE DEDUCTION FOR DOMESTIC R&E

R&E Credit:

- The deduction is reduced by the amount of credit received.

- Small Businesses:
  - The deduction can be claimed for tax years beginning after December 31, 2021 (i.e., starting in 2022).

- Definition of Small Business:
  - A taxpayer qualifies as a small business if they meet the gross receipts test:
  - The average annual gross receipts over the three preceding years are ≤ $25 million, indexed for inflation.

§448(c))

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IMMEDIATE DEDUCTION FOR DOMESTIC R&E

Expenses Incurred After December 31, 2024, and Before January 1, 2026 — Election for Deduction

- Immediate Deduction Option:
  - The taxpayer may deduct the entire amount in 2025.
- Alternative Deduction Option:
  - The taxpayer can elect to spread the deduction equally over the next two tax years (2025 and 2026).
- Change of Accounting Method:
  - Treated as a change in accounting method initiated by the taxpayer.
  - The election must be filed no later than the tax return due date (including extensions).
- Timing of Application:
  - Applies to expenses paid on or after January 1, 2025.
  - Relevant for tax years beginning after December 31, 2024.

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VARIOUS BUSINESS BENEFITS

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EXPANSION OF COMPLETED CONTRACT METHOD FOR CONSTRUCTION

- Completed contract method (CCM) vs Percentage of Completion Method (PCM).
  - Income/expenses deferred until contract completed vs recognition as project progresses.
- Tax law requires the use of PCM for long-term contracts. Contracts expected to be completed beyond 2 years.
- The following can use the CCM:
  - Small Contractors. Those with average of $31M in gross revenue.
  - Home construction contracts limited to buildings with four or fewer dwelling units.

OBBB change - CCM use is expanded to:

- Contracts expected to be completed within 3 years.
- **"Residential construction contracts" which include:**
  - **dwelling units,**
  - **apartments or**
  - **residential buildings with more than 1 unit.**
- **EFFECTIVE DATE: For contracts entered after July 4, 2025.**

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RESIDENTIAL CONSTRUCTION & INCOME DEFERRAL- EXAMPLE

Project: Residential construction
Duration: 30 months (2 years and 6 months)
Total contract: $1,200,000
Estimated project cost: $900,000
Start date: August 2025
Completion date: February 2028

Tax Year	Project Progress	Revenue Recognized Under PCM	Tax Paid (37%)	Revenue Recognized Under OBBB	Tax Paid (37%)	Tax Deferral
2025	20% completed	$240,000	$88,800	$0 (deferred)	$0	$88,800
2026	40% completed	$480,000	$177,600	$0 (deferred)	$0	$177,600
2027	30% completed	$360,000	$133,200	$0 (deferred)	$0	$133,200
2028	Project delivered	$120,000	$44,400	$1,200,000	$444,000	$364,000
Total	**100%**	**$1,200,000**	**$444,000**	**$1,200,000**	**$444,000**	**Total Deferral $399,600**

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EXTENSION AND IMPROVEMENT OF THE PAID FAMILY AND MEDICAL LEAVE CREDIT. SEC. 70304

- There is a credit for medical leave under Section 45S. The percentage ranges from **12.5% up to a maximum of 25%** (an additional **0.25%** for each **1%** increase in wage replacement).
  - Previously, the credit was only calculated based on the **percentage of wages paid** to employees who were on medical leave.
- Now, there is a **second method**: the percentage of **premiums paid** for a medical leave insurance policy.
  - Under this method, it **does not matter** whether any employees actually took medical leave during the tax year.
  - If a **state requires** the employer to pay for medical leave, the amount paid under the state mandate **is included** when calculating the federal credit.

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EXTENSION AND IMPROVEMENT OF THE PAID FAMILY AND MEDICAL LEAVE CREDIT. SEC. 70304

- Aggregation Rule: If you have multiple businesses, they are treated as **one single business**
- Exception: If the taxpayer has a **substantial and legitimate business reason** for **not having a written policy**, the aggregation may not apply.
- Factors to consider include:
  - Separate lines of business operations
  - Amount of wages paid to employees
  - Application of **state medical leave laws**
- **Effective date:** Applies to tax years **beginning after December 31, 2025** (**starting in 2026**).

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EXCEPTIONS TO BUSINESS MEAL DEDUCTION LIMITATIONS – SEC. 70305

- Section 274(o) eliminated the deduction for meals provided on the employer's premises for the convenience of the employer.
- The same limitation continues to apply, but the following exceptions remain allowed:
- Exceptions
  - Bona Fide Transactions – Meals or services provided by the taxpayer in a bona fide transaction for full payment in cash. *I.R.C. 274(e)(8))*
  - Meals on Certain Vessels – Expenses for meals provided on qualifying ships or vessels remain deductible. *I.R.C. 274(n)(2)(C))*
- Effective Date: Applies to tax years beginning after December 31, 2025 (starting in 2026).

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INCREASE IN THRESHOLD FOR 1099-NEC, BACKUP WITHHOLDING – SEC. 70433

- The reporting threshold for payments by a business for services performed by an independent contractor (or certain other payments) would be increased from $600 to $2,000.
  - Treshold is adjusted for inflation for taxable years beginning after December 31, 2024.
- Backup withholding: Payments under $2,000 would not be treated as reportable payments.
  - **EFFECTIVE DATE: PAYMENTS MADE AFTER DECEMBER 31, 2025 (JANUARY 1, 2026)**

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CAPITAL GAINS FROM THE SALE OF FARMLAND - SEC. 70437

- A taxpayer may elect to pay in **four equal annual installments** the tax on gains from the sale of qualified farmland in the United States to a qualified farmer.
- Qualified farmland is farmland that:
  - (i) has been used by the taxpayer as a farm for farming purposes (or been leased by the taxpayer to a qualified farmer for such purpose) during substantially all of the 10-year period ending on the date of the qualified sale; and
  - (ii)) which is subject to a covenant or other legally enforceable restriction which prohibits the use of such property other than as a farm for the 10-year period following the sale.
- **EFFECTIVE DATE: Sales after JULY 4, 2025.**

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DISASTER-RELATED PERSONAL CASUALTY LOSSES- SEC. 70438

- Taxpayers may currently claim an above-the-line deduction for disaster-related personal casualty losses for qualified disasters that ended no later than January 11, 2025, and were declared by the President no later than February 10, 2025.
- **O3B: Extends the personal casualty losses through thirty days after the date of enactment (JULY 4, 2025).**
- **EFFECTIVE DATE: Until August 3, 2025**

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EXTENSION OF LIMITATION ON EXCESS BUSINESS LOSSES - SEC. 70601

CURRENT LAW:

- In the case of a noncorporate taxpayer (individuals, trust, estates), no deduction is allowed for current year net business losses that are in excess of a specified amount (in 2025, these specified amounts are $626,000 for joint filers and $313,000 for all other taxpayers).
  - The specified amounts are adjusted for inflation each year.
  - This limitation was set to expire for taxable years beginning after December 31, 2028.
- Disallowed amounts become NOL carryforward.

O3B:

- Makes limitation permanent.
- An excess business loss would be treated as an NOL in the subsequent year and does not have to be retested if carried over to a subsequent year.

- **EFFECTIVE DATE: TAXABLE YEARS BEGINNING ON JANUARY 1, 2026**

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DISGUISED SALES OF PARTNERSHIP INTEREST- SEC. 70602

CURRENT LAW:

- Section 707(a)(2) provides that "**to the extent provided by the Secretary**" certain transactions shall be treated as a sale of a partnership interest rather than as a contribution and distribution under §721 and §731.
  - No current regulations.

- Typical Transaction :
  - Partner A contributes property or cash to a partnership.
  - Partner B receives a distribution of cash or other property from the partnership related to that contribution.
  - Economically, Partner A has sold an interest to Partner B, but on paper it looks like tax-deferred contributions and distributions.

O3B:

- Section 707(a)(2) is changed to read "except as provided" by the Secretary,
- This clarifies that transactions will be treated as disguised sales even in the absence of regulations.

- **EFFECTIVE DATE: apply to contributions/distributions after July 4, 2025**
  - Prior disguised sales: no inference is intended regarding payments made prior to such date.

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ENHANCEMENT OF OPPORTUNITY ZONES - SEC. 70421

O3B:
- Makes the OZ permanent.
- New Ozs will go into effect on January 1, 2027 for a 10-year period.
- Tax Benefits:
  - Tax on capital gains invested in qualified funds that invest in OZs is deferred for five years.
  - Investments in OZs can receive a basis step-up of up to 10 percent depending on the holding period.
  - investments in newly-created Rural OZs can receive up to a 30 percent basis step up.

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1% FLOOR CHARITABLE CONTRIBUTIONS FOR CORPS- SEC. 70426

CURRENT LAW:
- Total charitable contribution deduction for any taxable year shall not exceed 10% of the corporation's taxable income.

O3B:
- Sets a 1% floor.
- Retains 10% ceiling.
- Disallowed Charitable contributions will be carried forward for 5 years.

- **EFFECTIVE DATE: January 1, 2026**

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INTERNATIONAL

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FROM GILTI & FDII TO NTCI & FDDEI - SEC. 70323

CURRENT LAW:

- GILTI is a tax imposed at the U.S. shareholder level, for its pro-rata share of income earned by a foreign corporation.
  - Applies to a U.S. shareholder (10%+) of a controlled foreign corporation (CFC).
  - Tax rate: 10.5% (13.125% in 2026).
  - U.S. corporations are entitled to a 50% deduction (37.5% in 2026). I.R.C. 250.
- On the other side, U.S. shareholders have a deduction for income derived abroad. The relevant deduction is the Foreign Derived Intangible Income deduction (FDII).
  - FDII provides a 50% deduction of GILTI (for operations via CFCs). This only applies to corporate taxpayers.
  - Individuals may also take advantage of this option by making a 962-election.
  - FDII provides a 37.5% (21.875% in 2026) deduction on the foreign income received via U.S. operations.

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GILTI EXAMPLE FOR AN INDIVIDUAL

Example GILTI Computation	Individual
CFC Income	100,000
Interest Expense	-
CFC Net Income	100,000
Fixed Assets Adjusted Basis	120,000
Net Deemed Tangible Income Return	12,000
CFC Net Income	100,000
Net Deemed Tangible Income Return	12,000
Income Inclusion under §951A – GILTI	88,000
GILTI Deduction	-
Net GILTI Inclusion	88,000
Tax Due at Max Rates	32,560

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GILTI EXAMPLE FOR A CORPORATION

Example GILTI Computation	Corporation
CFC Income	100,000
Interest Expense	-
CFC Net Income	100,000
Fixed Assets Adjusted Basis	120,000
Net Deemed Tangible Income Return	12,000
CFC Net Income	100,000
Net Deemed Tangible Income Return	12,000
Income Inclusion under §951A – GILTI	88,000
GILTI Deduction	(44,000)
Net GILTI Inclusion	44,000
Tax Due at Max Rates	9,240

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FROM GILTI TO NCTI - SEC. 70323

- **O3B renames to Net CFC Tested Income (NCTI).**
- Deemed Intangible Income Return (DTIR) from the Qualified Business Asset Investment (QBAI) IS ELIMINATED.
  - QBAI was 10%.
- This has multiple implications:
  - NCTI's base is broadened to encompass foreign sourced income.
  - QBAI's reduced rate is repealed. Now, the assumed 10% return is also subject to the NCTI.
- 250 Deduction for NCTI - Sec. 70321
  - Reduces the 50% deduction (applicable to corporations) to 40%.
  - **Effective Tax Rate on NCTI: 12.6%**
- FTC haircut – Sec. 70322
  - Prior to the O3B, foreign taxes on NCTI were creditable up to 80%.
  - With 03B, rate is increased **to 90%**
- **EFFECTIVE DATE: For years beginning on January 1, 2026.**

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NCTI EXAMPLE FOR AN INDIVIDUAL

Example NCTI Computation	Individual
CFC Income	100,000
Interest Expense	-
CFC Net Income	100,000
Fixed Assets Adjusted Basis	Eliminated
Net Deemed Tangible Income Return	Eliminated
CFC Net Income	100,000
Net Deemed Tangible Income Return	Eliminated
Income Inclusion under §951A – GILTI	100,000
GILTI Deduction	-
Net GILTI Inclusion	100,000
Tax Due at Max Rates	37,000

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NCTI EXAMPLE FOR A CORPORATION

Example NCTI Computation	Corporation
CFC Income	100,000
Interest Expense	-
CFC Net Income	100,000
Fixed Assets Adjusted Basis	Eliminated
Net Deemed Tangible Income Return	Eliminated
CFC Net Income	100,000
Net Deemed Tangible Income Return	Eliminated
Income Inclusion under §951A – GILTI	100,000
GILTI Deduction	(40,000)
Net GILTI Inclusion	60,000
Tax Due at Max Rates	12,600

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NCTI & FTC HAIRCUT

	GILTI	O3B
§250 Deduction	50% of GILTI	40% of NCTI
Expense Allocation	Interest + R&E allocated to GILTI	Not allocated to NCTI
FTC Haircut	20% (only 80% of foreign tax creditable)	10% (90% creditable)
Result	Lower FTC limit + unusable excess credits	Higher FTC usability + stable 14% ETR

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NCTI & FTC HAIRCUT

- Facts:
  - NCTI (Net CFC Tested Income): $1,000
  - Foreign taxes paid on NCTI: $140 (14%)
  - Corporate U.S. tax rate: 21%
  - §250 deduction (40% of NCTI): $400

$$\text{FTC Limit} = \text{U.S. Tax}\left(\frac{\text{NCTI}}{\text{Worldwide taxable income}}\right)$$

  - **U.S. taxable income from NCTI after §250: $600**
  - **U.S. tax before FTC: $600 × 21% = $126**
  - **FTC allowed (90% of $140 foreign taxes): $126 (limited to U.S. tax)**

  - FTC allowed = $126 (limited by U.S. tax liability)
  - Residual U.S. tax = $0
  - Total tax paid = $140 foreign taxes
  - Effective Tax Rate = $140 / $1,000 = 14%

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FROM FDII TO FDDEI - SEC. 70323

- **O3B renames to Foreign-Derived Deduction Eligible Income (FDDEI).**
- Eliminates the Deemed Tangible Income Return (DTIR)
- BIG RESULT: FDDEI applies to any taxpayer with foreign sourced income.
- Deduction Sec. 70321:
  - Is reduced from 37.5% to 33.34%.
  - ETR: 14% (it was 13.125% before).
- Deduction Eligible Income (DEI) does not include income/gain from the sale/disposition – Sec. 70322:
  - Intangible property.
  - Property that is subject to depreciation, amortization or depletion.
  - This provision is **effective for dispositions occurring after June 16, 2025**
- **EFFECTIVE DATE: For years beginning on January 1, 2026.**

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FROM FDII TO FDDEI - SEC. 70323

Total DEI (Deduction Eligible Income)	$200,000
Foreign-Derived Deduction Eligible Income (FDDEI)	$160,000
Domestic Qualified Business Asset Investment (QBAI)	$100,000
C-corp tax rate	21%
No R&E, interest, or unrelated expenses for simplicity	
Deemed Intangible Income (DII)	**DEI-QBAI(10%)**
Foreign Derived Intangible Income (FDII)	**DII × (FDDEI ÷ DEI)**
Sec. 250 Deduction	**37.5% x FDII** **33.34% x FDDEI**

	FDII	FDDEI
Total Deduction Eligible Income	$200,000	$200,000
Foreign-Derived Deduction Eligible Income (FDDEI)	$160,000	$160,000
10% QBAI Reduction	$10,000	**Eliminated**
DII Used in Calculation	$190,000	$200,000
FDII or FDDEI	$152,000	$160,000
Section 250 Deduction Rate	37.5%	**33.34%**
Section 250 Deduction Amount	$57,000	$53,344
Taxable Amount (FDII/FDDEI –Sec. 250)	$95,000	$106,656
Tax Due at 21%	**$19,950**	**$22,398**
Effective Tax Rate	**13.1%**	**14%**

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RESTORE LIMITATION ON DOWNWARD ATTRIBUTION - SEC. 70353

- Prior 2017, U.S. tax law prohibited “downward attribution”—you could not treat a U.S. person as owning stock held by a related foreign person.
- “Downward Attribution”: the stock owned by the parent is attributed to the subsidiary (hence downward – because the attribution is “down” to the subsidiary).
- Constructive ownership allows this “downward” attribution.

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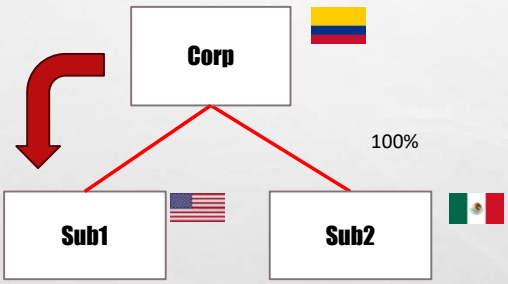
EXAMPLE OF DOWNWARD ATTRIBUTION -

- Prior to TCJA, section 958(b)(4) prevented downward attribution (If 50 percent or more in value of the stock in a corporation is owned directly or indirectly by or for any person, that corporation is considered as owning the stock owned by or for that person)

Stock owned by Corp
Would be attributed to sub1,
But 958(b)(4) prevented such result



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EXAMPLE OF DOWNWARD ATTRIBUTION – UNDER TCJA

- TCJA repealed 958(b)(4), which resulted in a lot of new CFCs, respective inclusions and tax reporting

Sub1 is treated as:
- U.S. shareholder of Sub2
- Subject to Subpart F/GILTI
- 5471 (category 4/5)

* Important to note relief provided by Treasury on Notice 2018-13, 2018-26 and Final Regulations issued in 2020

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RESTORE LIMITATION ON DOWNWARD ATTRIBUTION - SEC. 70353

- A new regime is created: "Foreign-Controlled U.S. Shareholders" – Section 951B
  - Foreign-Controlled U.S. Shareholders:
    - U.S. persons who, after applying downward attribution, own >50% of a non-CFC foreign corporation (now termed a "foreign-controlled foreign corporation" or FCFC).
    - These U.S. persons are now subject to CFC-like inclusions (GILTI and Subpart F).
  - Foreign-Controlled Foreign Corporation (FCFC)
    - A foreign corporation that is not a CFC under existing §957(a),
    - But would be a CFC if:
      - U.S. shareholders were replaced with foreign controlled U.S. shareholders, and
      - Downward attribution under §958(b) were allowed (i.e., ignoring the reinstated §958(b)(4))
- **EFFECTIVE DATE: JANUARY 1, 2026**

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EXAMPLE OF FCFC

Question: Is sub1 subject to Subpart F/NCTI inclusions?

Sub1 would be the FC U.S. Shareholder of Sub2 because it owns more tan 50% of the stock of Sub2

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FCFC IMPLICATIONS

- The Foreign-Controlled U.S. Shareholder will have to comply with the requirements of 5471, subject to further guidance of the IRS.
- However, it seems that it won't be subject to Subpart F/NCTI inclusions because those regimes require direct/indirect ownership:
  - 951(a)(1) – Subpart F requires 10% of a CFC
  - 951(A)(e)(2) – NCTI requires 10% of a CFC
  - Constructive does not create inclusions.

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CHANGE TO PRO RATA SHARE RULES

- Under the OBBBA, effective for CFC taxable years beginning after December 31, 2025, a US shareholder owning shares of a CFC at any time during the CFC's taxable year must include its pro rata share of the CFC's subpart F income and net CFC tested income (NCTI) for the year.
- Under pre-OBBBA law, only US shareholders owning shares on the **last day** of the CFC's taxable year are taxed on their pro rata share of subpart F income and GILTI inclusion amount.

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CHANGE TO PRO RATA SHARE RULES - OBBB

A U.S. shareholder that owns stock at **any time** during the CFC's taxable year must include:

- its pro rata share of Subpart F income, and
- its pro rata share of Net CFC Tested Income (NCTI).
- Ownership is no longer limited to the last day of the year.
- This change aligns Subpart F and NCTI with a "any-day ownership" rule, preventing planning around year-end ownership shifts.
- Transition rule: for certain dividends dividends paid or deemed paid by the CFC to the extent those dividends do not increase U.S. taxable income. Review **Notice 2025-75** which provides further guidance.

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SOURCING RULE FOR INVENTORY THROUGH FOREIGN BRANCHES- SEC. 70313

- **Before O3B, the sourcing of income for sales of inventory produced within the U.S. and sold outside the U.S. is sourced based on the location of production activities. I.R.C. 863(b).**
- O3B: **Up to 50% of taxable income** from the sale of inventory property produced in the US and sold for use outside the US is treated as **foreign source** income for foreign tax credit limitation.
- Requirements:
  i. the taxpayer maintains and office or fixed place of business in a foreign country and
  ii. the sale or exchange is attributable to such office or fixed place of business.
- **EFFECTIVE DATE: JANUARY 1, 2026**

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SOURCING RULE FOR INVENTORY THROUGH FOREIGN BRANCHES- SEC. 70313

- U.S. taxpayer manufactures widgets in Texas.
- Maintains a Colombian sales office.
- Sale generates $1,000,000 in taxable income.
- 50% of income ($500,000) qualifies as foreign-source under O3B.
- Colombian tax imposed: 15% on foreign-sourced portion = $75,000.
- U.S. corporate rate: 21%.

	Pre-O3B	Post-O3B
U.S. Taxable Income	$1,000,000	$1,000,000
Source of Income	100% U.S.-source under §863(b)	50% U.S.-source / 50% foreign-source
Colombian Tax (15%)	$150,000	$150,000
U.S. Tax (21%)	$210,000	$210,000
Foreign Tax Credit Allowed	$0 (all income is U.S.-source → FTC disallowed)	$75,000 (50% of tax on foreign-source portion)
Net U.S. Tax After FTC	$210,000	$135,000 ($210,000 – $75,000)
Total Tax Burden	**$360,000** ($210K U.S. + $150K Colombia)	**$285,000** ($135K U.S. + $150K Colombia)
Effective Global Tax Rate	36%	28.5%

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Unpaid Payroll Taxes

Presented by:
Robert Nordlander

Nordlander CPA, PLLC
WHEN YOU WANT ANSWERS

UNPAID PAYROLL TAXES

A TIME BOMB YOU CAN DEFUSE

1

WHO IS YOUR PRESENTER?

He is a retired special agent with the Internal Revenue Service, Criminal Investigation (IRS-CI). He has over 20 years of experience conducting federal criminal investigations to include tax evasion, money laundering, and other white-collar crimes.

After a successful law enforcement career, he started a boutique forensic accounting and tax resolution firm. He speaks nationally on topics regarding forensic accounting, criminal tax investigations, and solving IRS problems.

He is a CPA and CFE. He has a Bachelor's degree in Accounting and a Master's degree in Business Administration.

He is an author of three Amazon books.

Robert Nordlander, CPA, CFE

Principal shareholder of Nordlander CPA, PLLC, a forensic accounting and tax resolution firm

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LEARNING OBJECTIVES

- Recall the common statutes guiding the assessment and collection of payroll taxes
- Recognize when someone is a candidate for the Trust Fund Recovery Penalty
- Create a plan to defend a taxpayer against the TFRP
- Identify the criteria the IRS uses to evaluate collection potential
- Implement a strategy to resolve tax debts

3

3

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WHY IS THIS IMPORTANT

- It is a symptom of a problem
  - Lack of cash flow
  - Personnel problems
- It is not taught in colleges
- It is not tested on CPA exams
- Large part of the government's income
- The penalties are large against the business
- The penalties can be against others personally
- IRS has broad powers to collect
- The penalties can carry imprisonment

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UNPAID PAYROLL TAXES ARE A TIME BOMB

- Small business owner fails to report and pay the taxes
- Non-compliance is not caught for months and maybe years
- The penalties on failing to file and pay can be close to 50%
- The longer it is ignored, the larger the problem
- Once IRS discovers non-compliance, it can estimate tax loss

Lasting effects if not solved:

- Loss of business
- Loss of relationships
- Loss of assets
- Loss of income
- Loss of liberty

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5

BASIC CONCEPTS

1. Statutory code (IRC)
2. Case law
3. Code of Federal Regulations (CFR)
4. Internal Revenue Manual (IRM)
5. Statute of limitations (SOL)
6. Tolling

6

6

THE IRS IS SECRETIVE
01
IRC 6103
(Regulates Disclosure)
02
IRC 6103(c)
• Designee
03
IRC 6103(e)
• Taxpayer
• "Material Interest"
04
Role of transcripts
7

7

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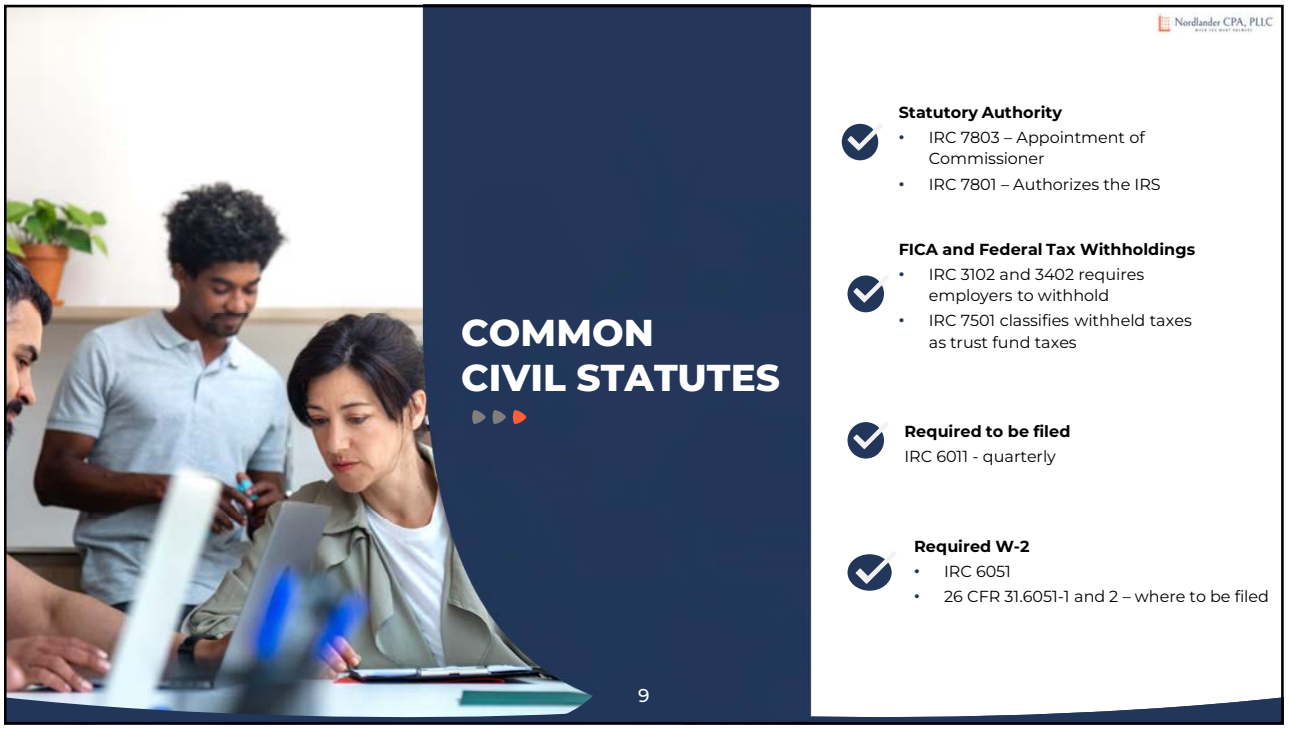
REPRESENTING CLIENTS
IRC 6103(c)
1
Qualifications
(attorney, CPA, EA)
2
Form 2848
(Power of Attorney)
3
Form 8821
(Receiving tax info)
4
CAF number
(Central
Authorization File)
8

8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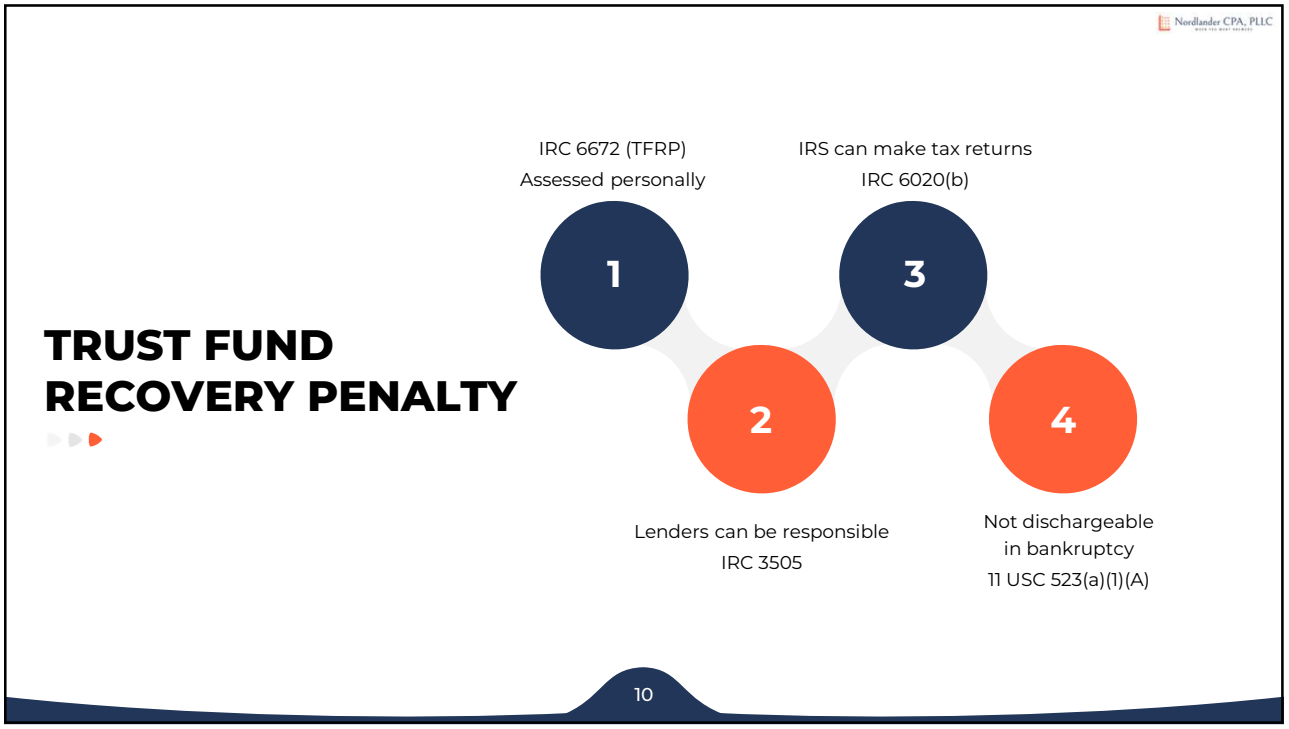
COMMON CIVIL STATUTES
Statutory Authority
IRC 7803 – Appointment of Commissioner
IRC 7801 – Authorizes the IRS
FICA and Federal Tax Withholdings
IRC 3102 and 3402 requires employers to withhold
IRC 7501 classifies withheld taxes as trust fund taxes
Required to be filed
IRC 6011 - quarterly
Required W-2
IRC 6051
26 CFR 31.6051-1 and 2 – where to be filed
9

9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TRUST FUND RECOVERY PENALTY
IRC 6672 (TFRP)
Assessed personally
1
IRS can make tax returns
IRC 6020(b)
3
2
Lenders can be responsible
IRC 3505
4
Not dischargeable in bankruptcy
11 USC 523(a)(1)(A)
10

10

STATUTE OF LIMITATIONS

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1 **IRC 6501**

ASED (Assessment Statute Enforcement Date)

- 3 years from tax return filed date
- Unlimited for fraud or non-file
- 6 years from 25% underreporting gross income

2 **IRC 6502**

CSED (Collection Statute Enforcement Date)

- 10 years from date of assessment

3 **IRC 6503**

- CSED can be extended
- Examples: outside country, bankruptcy filing, CDP, OIC

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RESPONSIBLE PARTY AND WILLFULNESS

- **TFRP assessment requires:**
  - **Responsible party**
    - Based on job function, not title
    - Officer, employee, another corporation, payroll service provider
    - Duty to perform, power to direct collecting trust fund taxes
    - Examples: signature authority, signing payroll documents, controlling/prioritizing expenditures
    - Can be more than one person
  - **Willfulness**
    - IRM 8.25.1.3.2 – attitude of responsible person, including knowledge, action on prior notices, actions to resolve problems, deception/fraud

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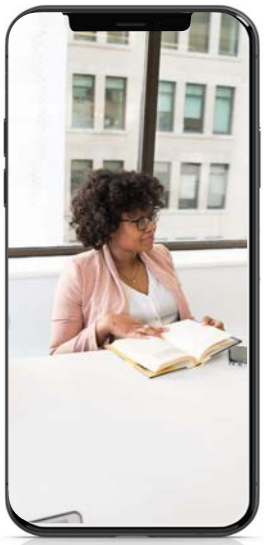
COMMON TFRP QUESTIONS



What if I only have enough to cover net payroll?

What if it is because of a lack of oversight?

What if I hired a third party? IRM 5.7.3.3.3

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TFRP CALCULATION

- IRM 8.25.1.1.2 – penalty against responsible person
- Trust Fund only
- No employer match
- Precision not required
- IRC 6020(b) is allowable
  - 20% federal withholding estimate

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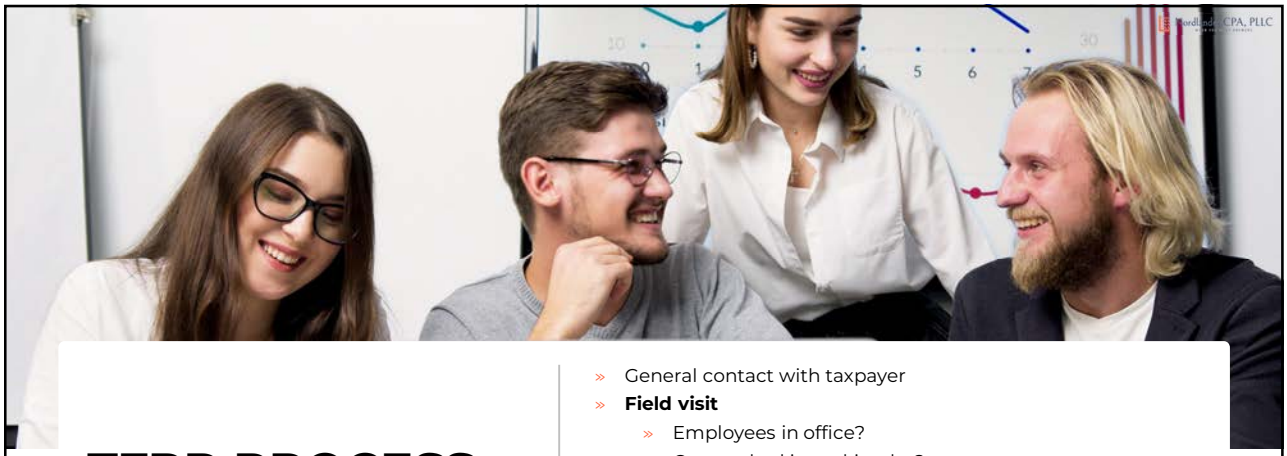

TFRP PROCESS

- General contact with taxpayer
- **Field visit**
  - Employees in office?
  - Cars parked in parking lot?
  - Going concern?
  - Office have multiple businesses?
  - Alter ego?
  - Who appears to be in charge?

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RESPONSIBLE PARTY INTERVIEW

- Form 4180
  - Determines financial policy?
  - Authorizes payments of bills and creditors?
  - Prepares, signs, or authorizes submission of tax returns?
  - Knowledge of taxes were not paid?
  - Authorizes payroll?
  - Authorizes to make federal tax deposits?
  - **Leading question – "Did you prepare, review, sign, or authorize transmission of payroll tax returns?**

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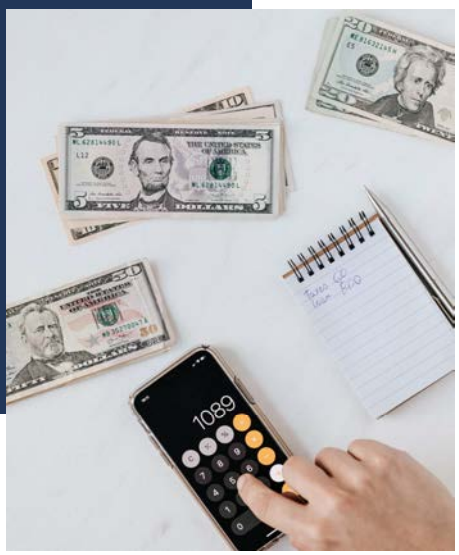

TFRP CALCULATION

- Revenue officer has latitude in assessing TFRP
  - IRM 5.7.5.1.1 – no present or future collection potential
- Requires supervisor's approval
- Notification of TFRP calculation
  - Form 2751 – don't sign, admits liability
  - Have 60 days to appeal penalty

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BEST PRACTICES TO REFUTE TFRP

- Show not responsible party
- Show no willfulness
- Look at calculation
- 3 ring binder
  - Evidence of checks, payroll forms, affidavits, job duties

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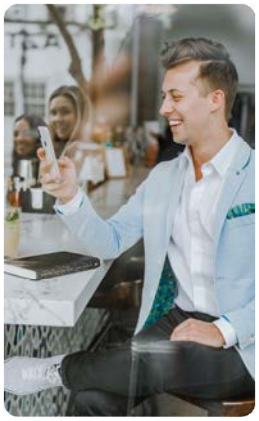
TFRP APPEALS

- Within 60 days (75 days if out of country)
  - If late, Form 843 (Abatement of penalty)
- Small Case Request (<$25,000 each period)
- Formal Written Request (IRM 8.25.2.3.3.2.2)
- Appeals will review package
- If TFRP is later reversed (IRM 8.25.2.3.2.4)
  - **Can file claim within two years (exception for medical impairment)**



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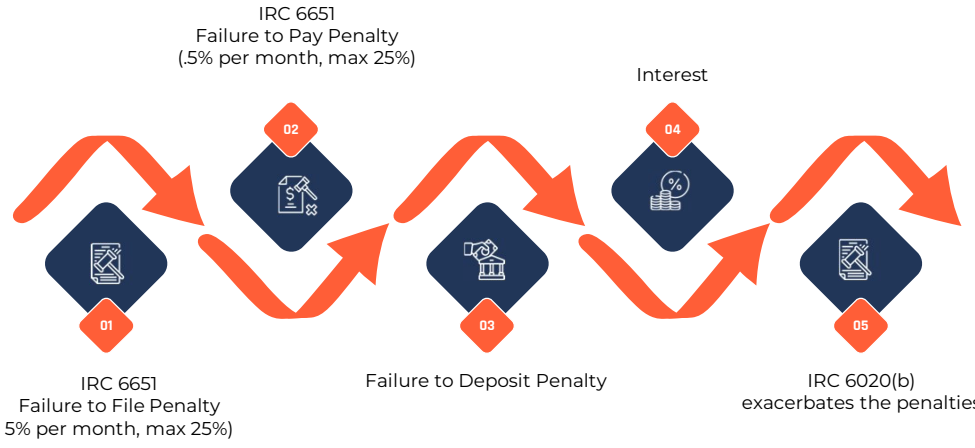
CIVIL PENALTIES



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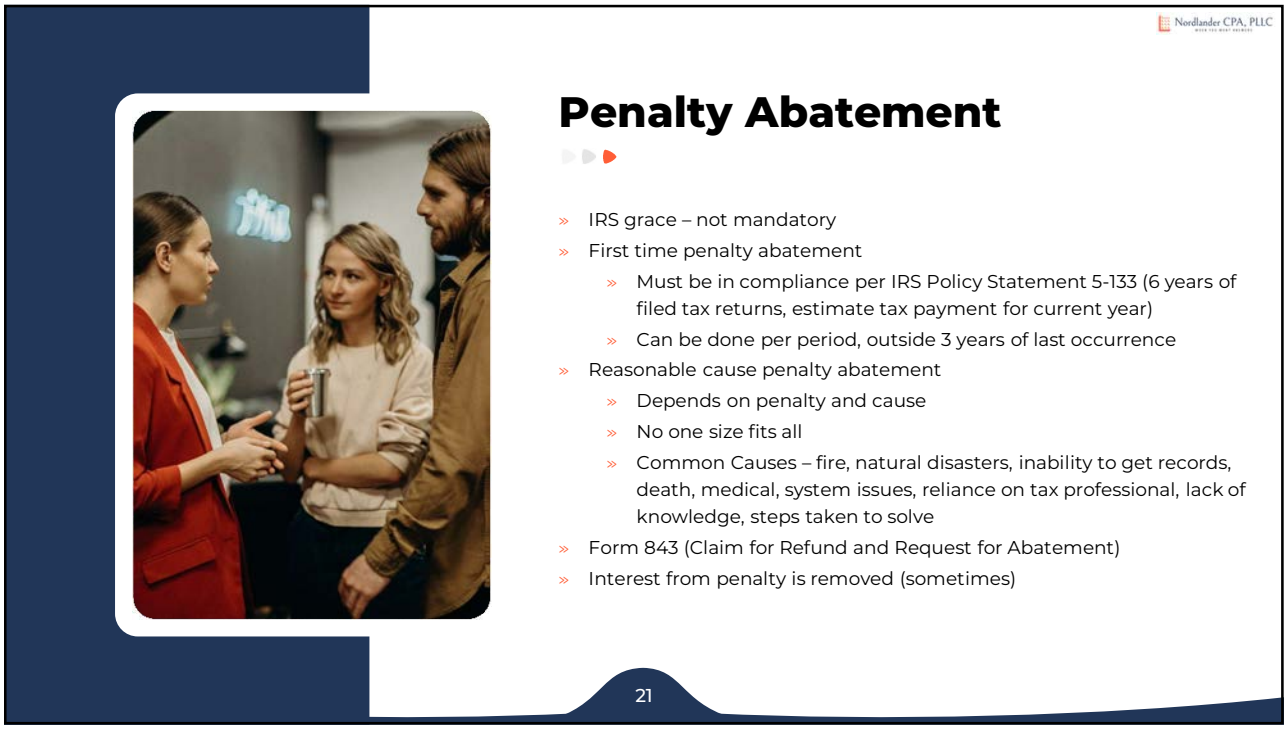
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Penalty Abatement
IRS grace – not mandatory
First time penalty abatement
Must be in compliance per IRS Policy Statement 5-133 (6 years of filed tax returns, estimate tax payment for current year)
Can be done per period, outside 3 years of last occurrence
Reasonable cause penalty abatement
Depends on penalty and cause
No one size fits all
Common Causes – fire, natural disasters, inability to get records, death, medical, system issues, reliance on tax professional, lack of knowledge, steps taken to solve
Form 843 (Claim for Refund and Request for Abatement)
Interest from penalty is removed (sometimes)
21

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IRS COLLECTION PRACTICES
Taking refunds
NFTL (Notice of Federal Tax Lien)
Levies
Wages/income
Bank accounts
01
02
03
04
05
Applying payments to government interest
Silent Lien (IRC 6321)
22

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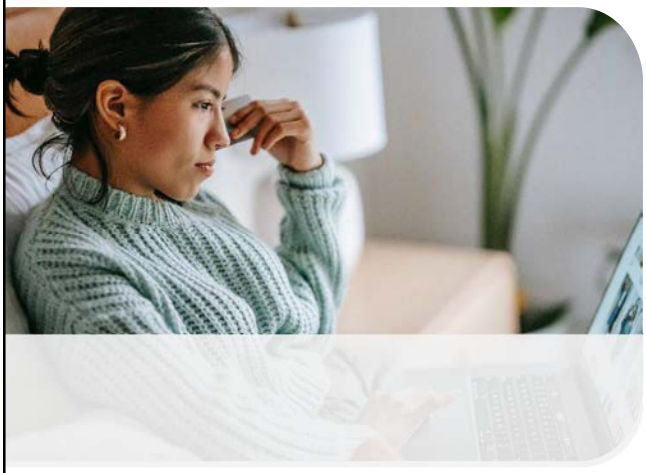
COMMON SCHEMES TO AVOID PAYING



- Moving assets
- Reclassifying employees as independent contractors
  - Behavioral control
  - Financial control
  - Relationship of parties
- Starting a new business
  - Business didn't stop underlying behavior
  - Assets not sold at FMV
  - Kept same employees and customers
  - Same business location

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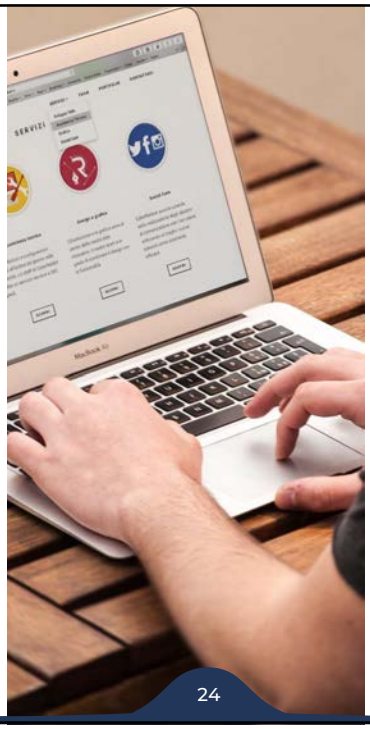
PROTECT YOUR FIRM



01

Don't sign if tax due

02

Verify payroll tax payments are made periodically

03

Don't have signature authority on bank accounts

04

Advise client to pay taxes

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PROTECT YOUR CLIENT

- Advise client to file and pay payroll taxes
- May need to reduce expenditures
- Get a bank loan
- Start complying with current forms and taxes
- Negotiate an Installment Plan with IRS
- Start thinking about protection against TFRP
- Does business need to close?

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SEVEN ACTIONS TO SOLVE TAX PROBLEMS

01 Pay in full

02 Too poor to pay

03 Installment agreement

04 Partial pay installment agreement

05 Offer in compromise – Doubt to Collection

06 Offer in compromise – Doubt to Liability

07 Effective tax administration

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REASONABLE COLLECTION POTENTIAL (RCP)

- Basis is the Collection Information Statement (CIS)
  - Form 433A - personal
  - Form 433B - business
- Takes into consideration geography, dependents, income, and other circumstances
- IRS scrutinizes assets and liabilities, lifestyle
- Typically look at prior 6 months to estimate RCP

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REASONABLE COLLECTION POTENTIAL (RCP)

- Allowable Living Expenses
  - Food, clothing, and other items - national
  - Out of pocket health care expenses – national
  - Housing and utilities – local
  - Transportation - local
- Other necessary and other conditional expenses
  - Accounting and legal fees
  - Daycare expenses
  - Education
  - Court ordered payments
  - Dependent care
  - Credit card payments, school loan payments, term life insurance
  - Delinquent state tax payments
- One year rule (IRM 5.14.1.4.1) and six-year rule (IRM 5.14.1.4.1)
- Shared expenses with non-liable party

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RCP CHART

Expense	Actual or Allowable
Food, Clothing, & Other	National Standard
Housing & Utilities	Lessor of Actual or Local Standard
Automobile - Ownership	Lessor of Actual or National Standard
Automobile - Operating	Lessor of Actual or Local Standard
Public Transportation	National Standard
Health Insurance	Actual
Out of Pocket Health Care	Larger of Actual or National Standard
Court Ordered Payments	Actual
Child & Dependent Care	Actual (Must be necessary)
Life Insurance	Actual (Must be reasonable)
Current Year Taxes	Actual Fed/State (Withheld or Estimated)
Secured Debts	Actual
Delinquent State or Local Taxes	Actual (% analysis)
Other	Actual (Facts & Circumstances)

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OPTION #1 - PAY IN FULL

Pay in full online or with check

- Online is best
- Check can be lost in mail, or applied wrong
- If writing a short letter, explain the purpose
- Check should clearly state the SSN/EIN, type of tax, and period
- Separate checks for each period
- Keep record of when sent

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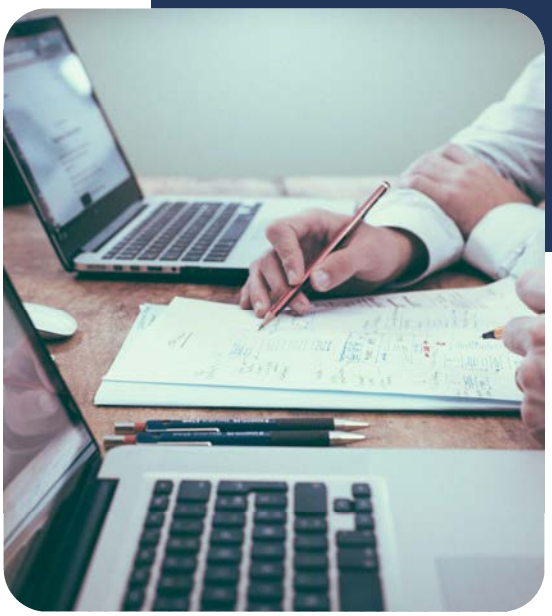
OPTION #2 - CURRENTLY NOT COLLECTIBLE (CNC)



- 2-year reprieve because RCP is too low
- Doesn't toll SOL
- RO has flexibility if obvious taxpayer can't pay
- Bankruptcy does have automatic stay
  - Reorg allows 60 months 11 USC 1129 (a)(9)(C)

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OPTION #3 - INSTALLMENT AGREEMENT (IA)

- **Guaranteed IA**
  - IRC 6159(c) – Less than $10,000 over 36 months
- **Streamlined IA**
  - Taxes, penalties, and interest (<$25,000) and within 72 months (individuals, businesses, and closed businesses)
  - Taxes, penalties, and interest (<$50,000) and within 72 months (individuals, closed businesses)
- **In-Business Trust Fund Express IA**
  - (<$25,000) 24 months, no TFRP is assessed
  - (>$25,000) doesn't qualify – must submit financial statements
- **Not allowed to designate payments on IA**
- **Calculate minimum payment over # of months, maximum payment per RCP, happy median**
- **One year rule and six-year rule (IRM 5.14.1.4.1)**

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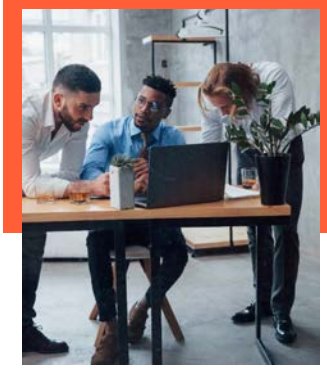
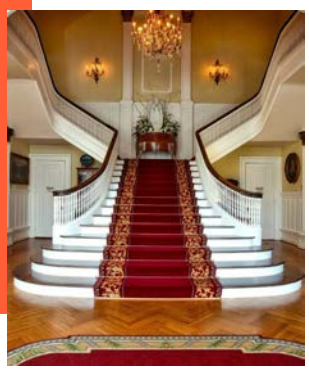
OPTION #4 - PARTIAL PAYMENT INSTALLMENT AGREEMENT (PPIA)





- IRC 6159 allows IRS to negotiate tax liability
- IRS not getting full payment within CSED
- Requires persuasion about reasonable expenses, assets not viable to sale
- Expect being asked more questions about income and assets

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OPTION #5 - OIC DOUBT TO COLLECTABILITY

- Seen on late night TV commercials
- Must be in compliance
- Complete a form to prove eligibility
- Takes into consideration the RCP and quick sale of some assets
- Quick sale is 80% of FMV of real estate, vehicles, etc.
- Lump sum - Total RCP per month for 12 months, plus total equity in assets, paid 20% down, balance within 5 months after approval
- Periodic Payment – same calculation but divided in 24 months
- Must be compliant for 5 years (file tax returns on time, no other taxes due)
- Future refunds will be kept

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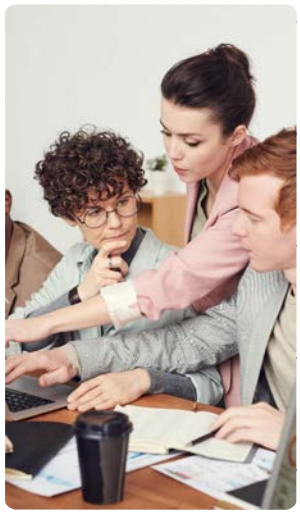
OPTION #6 - OIC DOUBT TO LIABILITY



IRM 5.19.24 gives guidance

Small down payment with application

Disputes the liability

IRS has 24 months to review (IRC 7122(f))

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OPTION #7 - EFFECTIVE TAX ADMINISTRATION

01 IRC 7122(d)(1) – allows this OIC

02 26 CFR 301.7122-1(b)(3) gives the regulations

03 IRM 5.8.11 gives guidance

04 Public policy, hardship, and equity considerations

05 Nursing home example

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STEPS WHEN YOU GET THE PHONE CALL

01
Get a copy of the transcripts, estimate CSED

02
Get POA and contact IRS

03
Get into compliance; protect from adverse collections if possible

04
Get information to IRS

05
Calculate RCP

06
Determine which of the seven actions apply

07
Implement plan

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LEARNING OBJECTIVES

- Recall the common statutes guiding the assessment and collection of payroll taxes
- Recognize when someone is a candidate for the Trust Fund Recovery Penalty
- Create a plan to defend a taxpayer against the TFRP
- Identify the criteria the IRS uses to evaluate collection potential
- Implement a strategy to resolve tax debts

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Advanced Tax Strategies That Survive Audit

Presented by:
Angie M Toney

TAX ALLIANCE CONFERENCE

June 9 – 11, 2026 · Plano Center, Plano, Texas

Advanced Tax Strategies *that Survive Audit*

What Actually Holds Up — and What Doesn't

A 50-Minute Technical Session · 1 CE / CPE Credit

Federal Tax Law

PRESENTED BY

Angie M. Toney

CPA / PFS, CTS

Oasis Tax Advisory Services Inc.

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About This Outline

This outline accompanies the 50-minute session of the same title presented at the 2026 Tax Alliance Conference. It is designed to function both as a real-time reference during the session and as a standalone desk reference once you return to your practice.

The structure mirrors the live session: five strategy domains (entity structuring, compensation planning, related-party transactions, real estate and § 199A, documentation that wins), each evaluated against controlling authority and what examiners look for first.

Scope and Limitations

- Federal tax law only. State conformity issues and state-level audit exposure are outside this outline's scope.
- Closely held businesses, S corporations, partnerships, and individual real estate investors are the working population. International, large public-company, and trust/estate-specific issues are addressed only where they intersect the core topics.
- All citations are to the Internal Revenue Code (Title 26 U.S.C.), Treasury Regulations (26 C.F.R.), and reported federal cases. Citations are current through the date of preparation; verify currency before relying on any specific authority.

Not Tax Advice

This outline is educational. Nothing in it is tax, legal, accounting, or investment advice for any specific person or transaction. Each fact pattern has its own answer, and the practitioner using this outline is responsible for confirming current authority and applying it to their client's facts.

Author

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Acknowledgements

Thanks to the Tax Alliance Conference and its volunteer board for the opportunity to present, and to fellow practitioners whose audit experiences — wins and losses — informed the failure-pattern discussion in Part Five.

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Learning Objectives

By the end of this 50-minute session, attendees should be able to:

1. Identify the most common audit failure points in entity structuring, compensation planning, and related-party transactions for closely held businesses.
2. Apply the controlling Internal Revenue Code, Treasury Regulation, and case law authority to evaluate whether a given strategy is defensible under examination.
3. Build contemporaneous documentation that satisfies substantiation requirements and the burden-shifting threshold of § 7491(a).
4. Recognize the preparer-level penalty exposure (§§ 6694, 6700, 6701, and Circular 230 § 10.34) attached to undocumented or aggressive tax positions.

Prerequisites and Program Level

This is an intermediate-to-advanced session intended for CPAs, EAs, and tax attorneys with current familiarity in pass-through taxation, individual income tax, and basic IRS examination procedure. No advance preparation is required.

Field of study: Federal tax law. **Delivery method:** Group live (in person and Zoom). **Recommended CPE:** 1.0 hour.

The Enforcement Landscape

Aggressive isn't the same as defensible. The strategy that books the largest deduction often is not the one that survives an exam — and as IRS exam capacity contracts while audit selection sharpens, the file you build at filing decides the outcome.

Four structural facts shape the planning environment as of this writing in mid-2026:

- **IRA funding has been substantially rescinded.** The Inflation Reduction Act of 2022 originally allocated $79.4 billion in supplemental funding to the IRS through fiscal year 2031. Through three rounds of rescissions — the Fiscal Responsibility Act of 2023 ($1.4B), the Further Consolidated Appropriations Act of 2024 ($20.2B), the Full-Year Continuing Appropriations and Extensions Act of 2025 ($20.2B), and the FY2026 appropriations package signed in February 2026 ($11.7B) — Congress has clawed back roughly $54 billion. Per TIGTA reporting, IRA funding remaining as of early 2026 is approximately $26 billion, concentrated in technology and operations support rather than enforcement. The original $45.6 billion enforcement allocation has been almost entirely eliminated, with reporting indicating only about $300 million remained as of mid-2025.
- **The workforce is materially smaller.** TIGTA reported that the IRS workforce was reduced by approximately 25% from February through May 2025. Whatever exam capacity existed at the

IRA peak is no longer there. Audits in process may run longer; new audits may take longer to open; and institutional knowledge in specialized areas has been eroded by departures.

- **Strategic targeting priorities remain stated focus areas.** Within the diminished capacity, the priorities established during the IRA buildout — high-income individuals, complex pass-throughs, large partnerships, and high-deduction Schedule Cs — remain published focus areas. The LB&I Pass-Through Field group, formed during the buildout to focus on partnership exams, continues to operate. The $400,000 audit-rate commitment for lower-income taxpayers remains stated policy. Targeting did not contract proportionally with capacity.
- **What this means for selection.** When capacity is constrained but priorities are unchanged, selection sharpens. Audit notices in this environment are far less likely to reflect random sampling and far more likely to reflect a return the IRS deliberately picked for a specific reason — a wage-to-distribution ratio, a Schedule E loss against active income, an aggregation election, a self-rental, a § 199A position. The defensibility argument therefore strengthens, not weakens. The audit you face is no longer hypothetical. It is the audit a person at the IRS chose to open.

> *Compliance "as filed" no longer ends the inquiry. When fewer audits are opened but each one is selected for cause, substantiation, valuation, and intent must be reconstructable on demand.*

Framework: The Four Pillars of an Audit-Defensible Strategy

Every strategy discussed in the rest of this outline is evaluated against the same four-pillar framework. A strategy that satisfies all four pillars rarely loses on the merits in an exam. A strategy that fails any one of them becomes a documentation fight at best, and a recharacterization or penalty case at worst.

Pillar 1 — Authority

A specific Code section, Treasury Regulation, ruling, or reported case supports the position. Not analogy. Not industry custom. Not "every other CPA in town does it this way." If the position cannot be tied back to controlling authority, it is not a defensible position; it is a guess that has not yet been audited.

Pillar 2 — Substance

Economic substance and business purpose are real and independently verifiable. The structure does something other than reduce tax. The transaction would have happened, on substantially the same terms, between unrelated parties. Substance cannot be papered after the fact; either it was there at the time, or it was not.

Pillar 3 — Substantiation

Contemporaneous documentation meets the form, content, and timing required by the controlling rule. § 274(d) demands one form of substantiation; Treas. Reg. § 1.469-5T(f)(4) demands another; Treas. Reg. § 1.62-2(c) a third. Each rule has its own requirements, and meeting one does not satisfy another.

Pillar 4 — Reasonableness

Numbers fall within the zone a knowledgeable third party would defend. Compensation, management fees, intercompany rents, allocations, valuations — each must be supportable to a person with no incentive to defend it. If the only justification for a number is the tax outcome it produces, the number is not reasonable.

Part One — Entity Structuring

This part addresses three of the most common entity-structuring strategies in closely held practice: under-compensation in an S corporation, multi-entity structures (operating company plus management LLC plus real estate LLC), and management-fee arrangements.

Each is a legitimate strategy that survives examination when properly executed and fails frequently when it is not.

1.1 The Under-Compensated S-Corporation Shareholder

The Strategy

The shareholder-employee of an S corporation takes a small W-2 wage and distributes the balance of the company's earnings as a K-1 distribution. Wages are subject to FICA and Medicare; distributions are not. The spread, multiplied across years, is meaningful.

The Authority

- **Rev. Rul. 74-44, 1974-1 C.B. 287.** The IRS may recharacterize purported S-corporation distributions as wages where they are, in substance, compensation for services.
- **Watson v. Commissioner, 668 F.3d 1008 (8th Cir. 2012).** Sole shareholder accounting professional took $24,000 W-2 and over $200,000 distributions; court accepted the IRS's recharacterization to roughly $93,000 in wages.
- **Glass Blocks Unlimited v. Commissioner, T.C. Memo 2013-180.** Distributions characterized as repayment of shareholder loans were recharacterized as wages where loan formalities were absent.
- **Treas. Reg. § 31.3121(a)-1(b).** Wages include all remuneration for employment, regardless of how characterized by the parties.

Why It Draws Attention

The IRS has been explicit, in published Practice Units and audit guidance, that S corporations with low or zero shareholder-employee wages and significant distributions are an enforcement priority. Form 1120-S compares wages to ordinary income on its face; a wide gap is visible without any document request.

What Survives Scrutiny

A written reasonable-compensation analysis on file annually for each shareholder-employee, addressing all nine factors discussed in Part Two, Section 2.1. The analysis should be:

- Prepared at or near the start of the year, not reconstructed at exam.
- Based on a defensible methodology (RCReports, Bureau of Labor Statistics OEWS, Economic Research Institute, industry compensation surveys, or comparable engagement letters).
- Re-run when facts change — the shareholder takes on more responsibility, the business grows materially, or the practice expands its service lines.

- Documented in a one- to two-page memo, signed and dated, with the supporting comparable data attached.

> *The reasonable-compensation case is not won on what wage the shareholder took. It is won on what process produced that number.*

1.2 C-Corporation Reasonable Compensation: The Inverse Problem

The Same Statute, Pulled in the Opposite Direction

§ 162(a)(1) and Treas. Reg. § 1.162-7(b) apply identically to C corporations and S corporations. The difference is which way the IRS pulls. In an S corporation, the IRS argues compensation is too low (recharacterizing distributions as wages). In a C corporation, the IRS argues compensation is too high (recharacterizing the excess as a non-deductible constructive dividend).

S Corporation	C Corporation
Owner takes low W-2; large K-1 distributions.	Owner takes high W-2; little or no dividend.
Tax goal: avoid FICA / Medicare on the spread.	Tax goal: avoid the second layer of tax (entity-level corporate tax plus shareholder-level dividend tax).
IRS argues comp is too low. Excess distributions recharacterized as wages.	IRS argues comp is too high. Excess compensation recharacterized as a non-deductible constructive dividend.
Adverse outcome: payroll tax, withholding, and accuracy-related penalty across open years.	Adverse outcome: the corporation loses the deduction on the excess (additional 21% corporate tax), and the shareholder reports the same dollars as a dividend taxed at ordinary or qualified rates.
Cases: Watson v. Commissioner; Glass Blocks Unlimited v. Commissioner.	Cases: Mayson Manufacturing Co.; Elliotts, Inc.; Menard, Inc.; Pediatric Surgical Associates.

Post-TCJA Arithmetic

Pre-2018, C-corporation owners had a strong incentive to zero out corporate income through high compensation, because the corporate rate stack reached 35% and dividends faced a second layer of tax. The Tax Cuts and Jobs Act dropped the C-corporation rate to a flat 21%, compressing — but not eliminating — that incentive. Today, the comparison is roughly:

- Compensation route: ordinary individual rates (up to 37%) plus the 1.45% Medicare tax on the employee side, plus matching FICA on the corporation. Deductible to the corporation.
- Dividend route: 21% corporate tax first, then 0%, 15%, or 20% qualified dividend rate plus the 3.8% net investment income tax. Combined effective rate on the distributed dollar is roughly 39% to 40% at the top brackets.

The math still favors compensation in many fact patterns, particularly at lower individual brackets. The aggressive position becomes a problem when the C corporation has a pattern of paying no dividends, zeroing out taxable income through year-end bonuses, or compensating an owner-employee at a level that bears no relationship to comparable third-party comp.

The Independent Investor Test (Elliotts)

In Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983), the Ninth Circuit articulated what is now the most consequential factor in C-corporation reasonable compensation cases. The question is whether a hypothetical independent investor would have been satisfied with the rate of return on equity after deducting the compensation paid to the shareholder-employee. If the post-compensation return on equity falls within a range that a third-party investor would accept (case law has accepted ranges in the 10% to 13% area, with variance by industry), the compensation is presumptively reasonable. If the post-compensation return is meaningfully below that range, the compensation is presumptively excessive.

The independent investor test has been adopted, in some form, by the Second, Seventh, and Ninth Circuits and is the analytical framework most modern courts use. Practitioners in C-corporation reasonable compensation work compute and document this test before the year ends, not after the IDR arrives.

The Pediatric Surgical Associates Trap

In Pediatric Surgical Associates v. Commissioner, T.C. Memo 2001-81, the Tax Court held that compensation paid to shareholder-physicians for services performed by non-shareholder physicians could not be deducted as compensation to the shareholders. The lesson reaches further than its facts: when a C corporation pays no dividends, has consistent income that approximates compensation paid out, and pays an owner-employee for work that is being performed by others, the structure looks like a tax shelter rather than a compensation arrangement. Examiners apply this framework to professional service C corporations frequently.

Defense Playbook for C Corporations

- Dividend history. Some history of dividend payments — even modest — defeats the presumption that all distributable income is being routed through compensation.
- Written compensation formula. Base salary plus performance-tied bonus, adopted by board resolution before the year begins, with the formula tied to operational metrics (revenue, gross margin, client retention) rather than to taxable income.
- Independent investor calculation. Three-year rolling return on equity after compensation, compared to industry benchmarks. Documented annually.
- Comparable third-party data. Same sources as for S corporations — BLS OEWS, ERI, RCReports, industry surveys, comparable employment agreements — sized for company revenue, geography, and industry.

- Avoid year-end "true-up" bonuses set after the books are closed. Bonuses determined by reference to the year's taxable income are the strongest evidence that compensation is functioning as a dividend substitute.

1.3 Multi-Entity Structures

The Strategy

A common pattern: a holding entity (LLC or partnership) sits above three operating entities — an S-corporation that conducts the active trade or business, a management-services LLC that charges fees upstream to the S-corp, and a real estate LLC that owns operating property and leases it to the S-corp. The structure is taught at every closely held business CPE seminar in the country.

Where It Falls Apart

The structure is not inherently abusive, and many versions of it are defensible. It fails in audit when one or more of the following are true:

- The structure has no business purpose beyond tax. Asset protection, liability segregation, and succession planning are real business purposes; “my CPA recommended it” is not. The substance-over-form doctrine, the step-transaction doctrine, and § 269 each provide the IRS with tools to disregard the structure where its principal purpose is tax avoidance.
- Management fees are inflated relative to services rendered. See § 1.4 below and Aries Communications, Inc. v. Commissioner, T.C. Memo 2013-97 (management fee was, in substance, a distribution).
- Related-party rents are below or above market in a way that materially shifts income. § 482 and § 267 each provide for reallocation; Treas. Reg. § 1.469-2(f)(6) recharacterizes self-rental income to defeat passive loss planning.
- Payroll between entities is treated casually. The common-paymaster rules under § 3121(s) and the related rules under § 3306(p) require specific procedures; most multi-entity structures do not follow them, which exposes years of FICA to recomputation.

What Survives Scrutiny

- A written purpose statement, dated at the time of formation, addressing the non-tax reasons for each entity.
- Separate books, separate bank accounts, separate vendor relationships. Commingling is the single fastest path to disregard.
- Intercompany agreements that an unrelated party would actually sign — pricing, term, scope, dispute resolution.
- Annual minutes or member consents documenting that the structure was reviewed and is operating as intended.

1.4 Management Fees and Intercompany Agreements

The Authority

- § 162(a) — ordinary and necessary business expenses must be reasonable in amount.
- § 482 — reallocation of income and deductions among commonly controlled entities.
- Aries Communications, Inc. v. Commissioner, T.C. Memo 2013-97.
- Wiley M. Elick DDS, Inc. v. Commissioner, T.C. Memo 2013-139.
- Treas. Reg. §§ 1.482-1 through 1.482-9 (best-method rule, comparable uncontrolled price, cost-plus, comparable profits).

The Five-Document File

Every management-fee arrangement between commonly controlled entities should have, on file, the following five categories of documentation. If any one is missing, the arrangement is exposed.

1. Written services agreement. Scope, deliverables, term, fee methodology, parties identified. Signed and dated.
2. Fee study or benchmark. Cost-plus calculation, comparable uncontrolled price analysis, hourly rate support, or industry survey citation.
3. Contemporaneous time records. Who performed what services, when, for which entity. Year-end reconstruction is not contemporaneous.
4. Board or member authorization. Minutes or consents approving the arrangement and any subsequent amendments. Material changes in fee level should be re-approved.
5. Invoices and intercompany flow. Invoices issued, payments received, intercompany account reconciliations. Year-end journal entries with no underlying invoice trail are a warning sign.

> *"The fee is whatever the agreement says it is" is not a defense. The fee is whatever the services, comparables, and contemporaneous records support.*

Part Two — Compensation Planning

This part addresses three compensation strategies that, properly executed, are highly defensible and, when undocumented, become some of the easiest exam adjustments the IRS makes: reasonable compensation analysis, accountable plans for employee expenses, and nonqualified deferred compensation under § 409A.

2.1 Reasonable Compensation: The Nine-Factor Analysis

The Authority

- § 162(a)(1) — deduction for a reasonable allowance for salaries or other compensation for personal services actually rendered.
- Treas. Reg. § 1.162-7(b) — "reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances."
- Mayson Manufacturing Co. v. Commissioner, 178 F.2d 115 (6th Cir. 1949) — origin of the multi-factor test.
- Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983) — independent investor test.
- Watson v. Commissioner (cited above).
- Menard, Inc. v. Commissioner, 560 F.3d 620 (7th Cir. 2009) — compensation upheld where independent investor test was satisfied.

The Nine Factors Examiners Actually Run

Drawn from Mayson, Elliotts, and the IRS Job Aid on Reasonable Compensation. No factor is dispositive on its own; the analysis is holistic. In practice, however, the case turns on Factors 7, 8, and 9 — comparables, written agreements, and the independent investor test.

Factor	Short Description	What to Document
1. Training and experience	Education, certifications, years in industry	Resumé or CV; license records; CE history
2. Duties and responsibilities	Decision authority, complexity, span of control	Position description; org chart; signing authority
3. Time devoted	Hours per week — peak and average	Calendar; project records; operational logs
4. Dividend history	Pattern of distributions vs. wage adjustments	Distribution history; minutes authorizing distributions
5. Compensation to non-shareholders	What employees in similar roles are paid	Internal pay bands; W-2 history of comparable positions
6. Compensation timing	Year-end bonuses tied to taxable income	Bonus formula adopted before year-end

Factor	Short Description	What to Document
7. Comparable businesses	What similar businesses pay	BLS OEWS, ERI Salary Assessor, RCReports, industry surveys
8. Compensation agreements	Written terms, board approvals, formulas	Employment agreement; board minutes; bonus plan
9. Independent investor test	Would a hypothetical investor accept this return on equity after compensation?	Three-year ROE calculation; comparable industry returns

The Comparable-Compensation Tools Practitioners Actually Use

Factor 7 is most often the difference between a defensible analysis and a losing one. The tools below are the sources examiners recognize and that the courts have credited.

- BLS OEWS — Bureau of Labor Statistics, Occupational Employment and Wage Statistics. Free, published annually at bls.gov/oes. Reports mean, median, and 10th/25th/75th/90th percentile wages for ~830 occupational codes, sliced by national, state, MSA, and industry (NAICS). The IRS Reasonable Compensation Job Aid cites it. Best used as the foundation comparable, supplemented by industry-specific data.
- ERI Salary Assessor — subscription product from Economic Research Institute (erieri.com). Larger underlying database than BLS, with simultaneous filtering by industry, geography, company size, experience, and responsibilities. Produces a one-page report examiners recognize. More granular than BLS; more expensive than RCReports.
- RCReports — subscription product purpose-built around the Watson/Mayson factor framework. The report it generates is structured the way the IRS analyzes the issue, which is the principal reason practitioners use it for closely held S-corp work.
- Industry-specific surveys — often more persuasive than general databases when available, because they reflect role-specific compensation in that field. For physicians: MGMA (Medical Group Management Association) and AMGA (American Medical Group Association). For dentists: ADA Health Policy Institute. For attorneys: NALP. For engineering and AEC firms: ZweigGroup. For nonprofits: Form 990, Schedule J.
- Salary.com and Payscale — broader-market sources. Examiners will accept them as corroborating data but not as a primary source for material positions.

The Independent Investor Test (Factor 9 in Practice)

Although it is listed as the ninth of nine factors, the independent investor test from Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983) is the factor on which most modern reasonable-compensation cases actually turn — particularly in C-corporation cases, but increasingly in S-corporation cases as well. The question: would a hypothetical independent investor be satisfied with the return on equity after the shareholder-employee's compensation?

Mechanically, the practitioner computes a three-year rolling return on equity after compensation, compares it to industry benchmarks (case law has accepted ranges in roughly the 10% to 13% area, with material variance by industry), and documents the calculation as part of the annual workpaper. A satisfactory post-compensation ROE creates a strong presumption that compensation is reasonable. An unsatisfactory ROE — especially a near-zero or negative return — is the single strongest piece of evidence the IRS uses to argue that compensation has absorbed what should have been investment return.

> *Modern reasonable-compensation cases are won on Factors 7 and 9. Documented comparables and a documented independent-investor calculation, both prepared annually, defeat most exam adjustments before they get traction.*

2.2 Accountable Plans Under Treas. Reg. § 1.62-2

The accountable plan is the single most-skipped, easiest-to-defend strategy in closely held practice. Implementing one takes a one-page written policy, a substantiation form, and a discipline to use both. The cost of not having one — particularly post-TCJA, with the § 67(a) miscellaneous-itemized-deduction suspension in effect through 2025 — is significant.

The Three-Prong Test

Treas. Reg. § 1.62-2(c) requires all three:

1. Business connection. The expense must be deductible and incurred in connection with the employee's services to the employer. § 162 deductibility is the threshold test.
2. Substantiation. The employee must substantiate the amount, time, place, and business purpose within a reasonable period. The 60-day safe harbor under Treas. Reg. § 1.62-2(g)(2)(i)(A) is the working benchmark for most practitioners.
3. Return of excess. Amounts paid in excess of substantiated expenses must be returned to the employer within a reasonable period. The 120-day safe harbor under Treas. Reg. § 1.62-2(g)(2)(i)(B) is the working benchmark.

The Tax Difference

Without an accountable plan	With an accountable plan
Reimbursements are wages — subject to income tax withholding, FICA, and Medicare on both sides.	Reimbursements are not wages — no income tax withholding, no FICA, no Medicare.
Through 2025, the employee receives no offsetting deduction. § 67(a) miscellaneous itemized deductions are suspended.	Deduction is taken at the employer level, where § 162 is available.
On a $10,000 reimbursement, employer-side FICA is $765 and employee-side FICA is another $765, plus income tax on the grossed-up wage at the employee's marginal rate, plus the loss of the §67(a) deduction (suspended through 2025).	No payroll-tax leakage; full deduction preserved at the employer level.

2.3 Deferred Compensation and the § 409A Trap

§ 409A applies far more broadly than most practitioners working outside large public-company plans realize. It can be triggered by an employment agreement that promises a payment after a specified date, a discounted stock option, a severance arrangement, or even a bonus plan with payment timing in the wrong year.

The Authority

- § 409A — penalty regime for nonqualified deferred compensation that fails to comply with timing, election, and distribution rules.
- Treas. Reg. §§ 1.409A-1 through 1.409A-6.
- Notice 2008-113 (corrections for operational failures); Notice 2010-6 (corrections for document failures).

Where § 409A Plans Most Often Fail

- Late deferral elections. The election to defer must be made before the year in which services are performed (Treas. Reg. § 1.409A-2(a)(3)) or, for performance-based compensation, no later than six months before the end of the performance period (Treas. Reg. § 1.409A-2(a)(8)).
- Impermissible payment events. Distributions are limited to the events in § 409A(a)(2): separation from service, disability, death, change in control, unforeseeable emergency, or a fixed schedule. Distributions on any other event — for example, "when the company has the cash" — fail.
- Acceleration and subsequent deferral. Acceleration is generally prohibited under § 409A(a)(3). Subsequent deferral elections must satisfy the five-year and twelve-month rules of Treas. Reg. § 1.409A-2(b).
- Non-arm's-length valuations. Stock options or stock appreciation rights priced below the underlying stock's fair market value are treated as deferred compensation. Treas. Reg. § 1.409A-1(b)(5) and the safe-harbor valuation methods in Treas. Reg. § 1.409A-1(b)(5)(iv).

Penalty

Failure under § 409A produces immediate income inclusion of all vested deferred amounts under the failed plan, plus an additional 20% tax under § 409A(a)(1)(B)(i)(II), plus § 409A premium-rate interest from the year of vesting. The penalty falls on the employee, not the drafter — but malpractice exposure does not.

Part Three — Related-Party Transactions

Three statutes do most of the work in related-party planning: § 267 (loss disallowance and matching), § 482 (reallocation among commonly controlled entities), and § 7872 (below-market loans). Each is well-developed; each is routinely applied incorrectly in closely held practice.

3.1 § 267 — Losses, Expenses, and the Matching Trap

§ 267(a)(1) — Loss Disallowance

No deduction is allowed for any loss on the sale or exchange of property, directly or indirectly, between related parties. The disallowed loss is suspended; on a later sale of the property by the related transferee to an unrelated party, the transferee's gain is reduced by the previously disallowed loss (§ 267(d)).

§ 267(a)(2) — Matching

If the payor uses the accrual method and the payee uses the cash method, the payor's deduction is deferred until the year the payee includes the payment in income. The trap: a fiscal-year accrual S corporation that accrues a year-end bonus to a calendar-year cash-basis owner-employee cannot deduct the bonus until the owner's subsequent calendar year if the payment is not actually made within 2½ months of the corporation's fiscal year-end.

§ 267(b) — "Related Party" Reach

The "related party" definition is broader than family relationships. It includes:

- Family members within the meaning of § 267(c)(4) — siblings, spouse, ancestors, lineal descendants.
- A corporation and any individual who owns, directly or through § 267(c) attribution, more than 50% of the value of the corporation's outstanding stock.
- Two corporations that are members of the same controlled group as defined in § 267(f).
- A partnership and any partner owning, directly or through attribution, more than 50% of capital or profits.
- A grantor and a fiduciary of any trust; a fiduciary of one trust and a fiduciary of another trust if the same person is grantor of both.

Audit-Defensible Playbook

- Map relatedness before each material transaction — at the level of the parties as constituted on the date of the transaction, not as remembered later.
- At year-end, reconcile method differences for accrued related-party expenses; if the payor is on the accrual method and the payee is on the cash method, confirm the payment was made (or accrue the deduction in the proper year).

- Track suspended losses on the entity's permanent file; they survive across years and are recovered on the eventual unrelated-party sale.
- Disclose constructive ownership chains under § 267(c) — attribution from family members, partnerships, estates, trusts, and corporations.
- Cross-check § 267 against §§ 707 (partnership-related transactions), 1239 (gain on related-party depreciable property), and 453(g) (installment sales between related parties).

3.2 Intercompany Loans: The Seven-Factor Test

If the loan does not look like a loan to a third party, it is not a loan. The seven-factor test below, drawn from Hardman v. United States, 827 F.2d 1409 (9th Cir. 1987), and Fin Hay Realty Co. v. United States, 398 F.2d 694 (3d Cir. 1968), is what examiners apply.

1. Written promissory note with a fixed maturity date. Oral or "promissory note to be drafted" arrangements fail at the threshold.
2. Stated interest rate at or above the applicable federal rate. § 1274 governs imputation on debt issued for property; § 7872 governs below-market loans between related parties. Either statute will reach a zero-interest intercompany advance.
3. Fixed schedule of payments. Interest-only-with-balloon arrangements are acceptable if documented; "pay when able" arrangements are not.
4. Source of repayment identified and reasonable. The borrower's expected cash flows must support repayment without further capital contribution from the lender.
5. Borrower's ability to repay independently demonstrated. Pro forma cash flow analysis or comparable lender underwriting analysis. A circular arrangement in which the lender is the only realistic source of the borrower's repayment fails.
6. Subordination to other creditors documented. If the loan is subordinate, the subordination should be in writing; if it is not subordinate, the lender should be treated like any other senior creditor at the time of any restructuring.
7. Treatment as debt on books of both parties. Both the lender and the borrower must consistently report the arrangement as debt on their books, tax returns, and financial statements.

3.3 § 482 Reallocations in Closely Held Groups

§ 482 is associated with cross-border transfer pricing, but it applies with full force to commonly controlled domestic entities. Treas. Reg. §§ 1.482-1 through 1.482-9 establish the best-method rule and the documentation requirements that, when satisfied, eliminate the penalty under § 6662(e).

What Triggers a § 482 Reallocation

- Profit shifts toward an entity in a lower-bracket structure (for example, a C corporation at the 21% rate absorbing income that would otherwise have been earned by an individual at marginal rates above 21%).
- Persistent losses in one related entity while another consistently earns above-market returns. The loss entity is performing some function for which it is not being compensated, or the gain entity is being overcompensated.
- Service fees, royalties, or rents that move materially year-over-year without a documented economic change. Unstable transfer pricing without a corresponding change in functions, assets, or risks is evidence of pricing for tax outcomes.
- Lack of any benchmarking. No comparable uncontrolled price, no cost-plus margin study, no comparable profits analysis, no industry survey on file.
- Ownership of intangibles separated from the entity that developed them, without an arm's-length buy-in. § 367(d) and § 482 each address this fact pattern.
- Functional analysis missing. No record of which entity bears risk, performs functions, or owns assets — the threshold inquiry under Treas. Reg. § 1.482-1(d)(3).

Part Four — Real Estate & § 199A

Real estate and the § 199A qualified business income deduction sit at the intersection of high planning value and high audit failure. The strategies in this part are legitimate and broadly used; they are also the source of more reported losses on substantiation grounds than almost any other planning area.

4.1 Real Estate Professional Status Under § 469(c)(7)

The Two-Prong Test

Under § 469(c)(7)(B), a taxpayer is a real estate professional in the year if both prongs are satisfied:

- **Prong 1 (majority test).** More than 50% of the personal services performed by the taxpayer in trades or businesses during the year are performed in real property trades or businesses in which the taxpayer materially participates.
- **Prong 2 (750-hour test).** The taxpayer performs more than 750 hours of services during the year in real property trades or businesses in which the taxpayer materially participates.

On a joint return, each prong must be satisfied separately by the same spouse — they cannot be combined or split between spouses (§ 469(c)(7)(B), flush language).

Why Taxpayers Lose: The Log

Treas. Reg. § 1.469-5T(f)(4) permits the taxpayer to establish hours by "any reasonable means." Reasonable means include "appointment books, calendars, or narrative summaries." The Tax Court has consistently rejected reconstructed logs prepared the night before the audit, calendar back-fills, and ballpark estimates. Recent representative cases:

- Moss v. Commissioner, T.C. Memo 2017-30 — log was "not credible."
- Hakkak v. Commissioner, T.C. Memo 2020-46 — reconstructed log rejected; estimates not allowed.
- Pourmirzaie v. Commissioner, T.C. Memo 2018-26 — log inconsistent with other evidence.
- Hassanipour v. Commissioner, T.C. Memo 2013-88 — "ballpark guesstimate" insufficient.
- Bailey v. Commissioner, T.C. Memo 2001-296, aff'd, 68 F. App'x 99 (9th Cir. 2003) — reinforces material participation standards and evidentiary expectations.

> *The log loses the case more often than the substantive test does. Contemporaneous matters.*

4.2 § 199A — Three Common Failure Modes

4.2.1 SSTB Classification Mistakes

Specified service trade or business (SSTB) status under § 199A(d)(2) and Treas. Reg. § 1.199A-5 is binary at the upper threshold: full deduction below the phase-in, full disallowance above the phaseout. Common mistakes include misapplying the de minimis rule of Treas. Reg. § 1.199A-5(c)(1) (gross receipts

threshold of 10% or 5% depending on total receipts), missing the consulting carve-outs, and treating ancillary services as principal services.

4.2.2 Self-Rental and Aggregation Errors

Self-rentals to commonly controlled trades or businesses can qualify for § 199A treatment under Treas. Reg. § 1.199A-1(b)(14), which incorporates the definition of a trade or business under § 162 principles. See also Treas. Reg. § 1.199A-1(d)(3) for trade or business determination.

The aggregation election under Treas. Reg. § 1.199A-4 must be made annually and disclosed on Form 8995-A, Schedule B. The election generally cannot be made on an amended return and, once made, is difficult to revoke. While limited relief may be available in certain circumstances, practitioners should assume the election decision is effectively binding and must be made correctly on the original timely filed return.

4.2.3 Rental Real Estate as a Trade or Business

Rev. Proc. 2019-38 provides a safe harbor: 250 hours of rental services performed annually with respect to the rental real estate enterprise, separate books and records maintained, and contemporaneous logs of services performed. Outside the safe harbor, the taxpayer falls back on a § 162 facts-and-circumstances analysis. Triple-net leases generally fail both the safe harbor and the § 162 test.

4.3 Cost Segregation: Strong Strategy, Fragile Execution

What the IRS Expects	What Gets Disallowed
Engineering-based study by qualified personnel with construction or appraisal credentials.	Rule-of-thumb allocations such as “15% to 5-year property.”
Site visit and photographic documentation of components reclassified.	Studies prepared without site visits or original cost detail.
Component-by-component cost reconciliation tied to invoices, draws, or AIA G-702 schedule of values.	Reclassification of structural building components — load-bearing walls, central HVAC plant, plumbing trunk lines.
Asset class assignments tied to controlling authority (Hospital Corp. of America, MACRS class lives, restaurant or retail revenue procedures).	§ 1245 reclassifications without considering bonus depreciation phase-down, § 280F luxury limits, or § 179 caps.
Form 3115 if changing accounting method on assets already in service, with § 481(a) adjustment computed.	Late-year studies with no Form 3115 — examiner treats the reclassification as a method change without consent.

Cost Segregation – Additional Authority

IRS Cost Segregation Audit Technique Guide (ATG) provides the framework examiners use to evaluate

engineering-based studies, including expectations around methodology, documentation, and reconciliation.

Part Five — Documentation That Wins

Every part of this outline up to here has emphasized contemporaneous documentation. This part addresses what that actually looks like — the substantiation hierarchy, the audit-ready file, and the failure patterns that recur.

5.1 The Substantiation Hierarchy and § 7491(a)

§ 7491(a) shifts the burden of proof to the IRS in a court proceeding when the taxpayer introduces credible evidence on a factual issue, has complied with substantiation requirements, has maintained required records, and has cooperated with reasonable IRS requests. Without contemporaneous records — the first two tiers below — the burden never moves.

Tier	What It Is	Examples
Tier 1	Contemporaneous primary records — created at or near the time of the event	Time logs, calendars, original invoices, signed agreements, board minutes, contracts
Tier 2	Contemporaneous secondary records	Bank and credit-card statements, mileage app exports, email confirmations, contracts and amendments, third-party reports
Tier 3	Reconstructions corroborated by independent evidence	Recreated logs supported by cell-tower data, project files, or third-party communications
Tier 4	Taxpayer testimony alone	Generally insufficient; Cohan rule limited; disallowed entirely for travel, meals, gifts, and listed property under § 274(d)

5.2 The Audit-Ready File

For each material position taken on a return, the file should contain six categories of documentation. Assemble at filing — not after the IDR arrives. The cost of building the file at filing is small; the cost of reconstructing it at exam is large.

1. Authority memo. A short written analysis citing the controlling Code section, regulation, and case or cases. One page per material position is sufficient.
2. Reasonableness benchmark. Compensation study, fee comparable, valuation, AFR check, comparable rent — dated and sourced.
3. Contemporaneous logs. Time, mileage, materially-participating activities — generated at the time of the activity, not at year-end.
4. Agreements and minutes. Service contracts, intercompany loan notes, board or member consents, amendments.
5. Money-trail reconciliation. Invoices issued, payments received, intercompany flows tied to bank statements.
6. Form and disclosure check. Form 8275 or 8275-R where applicable; aggregation elections; Form 3115; § 481(a) adjustments tracked.

5.3 Where Strategies Actually Fail

Drawn from recurring Tax Court Memorandum decisions and published IRS Practice Units, the categories below recur far more often than novel positions. Strategies don't fail because they were wrong on the law; they fail because the file couldn't carry the position the return took.

- No documentation, or documentation prepared after the IDR — the largest category by a wide margin.
- Unreasonable amount — compensation, fee, valuation, or allocation that no third party would defend.
- No business purpose — structure or transaction with no non-tax rationale.
- Wrong entity-level treatment — accrual–cash mismatch, related-party reach missed, attribution chain ignored.
- Election or form missed — aggregation election, Form 3115, Form 8275, late S election relief.
- Misapplied authority — citing a rule that does not control the facts presented.

Case Study

Facts

Closely held S corporation owned 100% by Dr. K, a single-shareholder physician practicing medicine. Three entities sit in the structure:

- Operating S corporation (the practice). Reports $700,000 of ordinary income before owner compensation. Owner takes a $90,000 W-2 wage and $610,000 in distributions.
- Real estate LLC, owned by Dr. K. Owns the building leased to the practice on a triple-net basis. Reports a $180,000 loss for the year, claimed against active income on the assumption Dr. K is a real estate professional.
- Management-services LLC, owned by Dr. K. Charges the practice a $480,000 management fee. There is no written agreement, no time records, no benchmark.

Issue 1 — Reasonable Compensation

$90,000 W-2 against $700,000 in earnings, with no contemporaneous compensation analysis on file. Under Watson and the nine-factor framework, this is exposed. The risk is recharacterization of distributions to wages, with FICA, withholding, and accuracy-related penalty consequences across all open years.

Defense to build at filing: Reasonable compensation study run before the year began, citing comparable physician compensation data from BLS OEWS, AMGA, or MGMA, addressing all nine factors, signed and dated. Re-run when the practice acquires another physician or expands service lines.

Issue 2 — Management Fee

$480,000 fee with no written agreement, no time records, no benchmarking. Under Aries Communications and the substance-over-form doctrine, this fee is exposed to recharacterization as a non-deductible distribution.

Defense to build at filing: Written services agreement specifying scope, fee methodology, and term. Cost-plus or comparable-rate study. Contemporaneous time records. Board or member authorization. Invoices issued by the management LLC and payments tracked through bank reconciliations.

Issue 3 — Self-Rental Loss

Even if Dr. K satisfies the § 469(c)(7) real estate professional test, the rental to the commonly controlled S corporation is a self-rental. Under Treas. Reg. § 1.469-2(f)(6), self-rental net income is recharacterized as nonpassive — and net loss generally remains passive. The $180,000 loss is suspended.

Defense to build at filing: Recognize the limitation. Consider whether grouping the rental and the operating activity under Treas. Reg. § 1.469-4 is available and beneficial, and disclose the grouping on a timely-filed return.

Penalty Exposure: Taxpayer and Preparer

Penalty exposure is not only the client's problem. The preparer-level provisions reach the practitioner directly, and the Office of Professional Responsibility refers separately for Circular 230 sanctions.

Taxpayer Penalties

- **§ 6662(a) — 20% accuracy-related penalty.** Substantial understatement, negligence, or substantial valuation misstatement. Disclosure under Form 8275 or 8275-R, plus reasonable basis, can prevent the substantial-understatement piece.
- **§ 6662(h) — 40% gross valuation misstatement.** Triggered at the 200% / 400% misstatement levels. The reasonable-cause defense under § 6664(c) is narrowed for valuation cases and is unavailable for gross overvaluation of charitable contribution property.
- **§ 6663 — 75% civil fraud penalty.** Requires clear and convincing evidence of intent to evade. Established by the badges of fraud — concealment, false records, consistent understatement, implausible explanations.

Preparer Penalties

- **§ 6694(a) — Unreasonable position.** Greater of $1,000 or 50% of the preparer's fee where there is no substantial authority and the position was not adequately disclosed. The reasonable-belief standard under § 6694(a)(2)(A) is the working defense.
- **§ 6694(b) — Willful or reckless conduct.** Greater of $5,000 or 75% of the preparer's fee. Reasonable-cause defense unavailable.
- **Circular 230 § 10.34 / OPR referral.** Suspension, disbarment, or monetary sanctions — separate from the civil penalty. OPR refers without regard to whether civil penalties were ultimately sustained.

Five Takeaways for Monday Morning

1. Build the file before you take the position. Authority memo, benchmark, agreement, log — at filing, not at exam. Reconstruction is always weaker than contemporaneous, and reconstruction in front of a Tax Court judge is weakest of all.
2. Run a written reasonable-compensation analysis annually for every S-corporation shareholder-employee. Re-run when facts change. The cost of the analysis is small; the cost of losing the recharacterization argument is multiples of payroll across all open years.
3. Treat related-party transactions as if a stranger were on the other side. Written terms, AFR, comparables, and a paper trail. If you would not sign the agreement with a stranger, do not sign it with a related party either.
4. Verify the substantiation form required by the controlling rule — § 274(d) for travel and meals, Treas. Reg. § 1.469-5T(f)(4) for material participation, Treas. Reg. § 1.62-2(c) for accountable plans — and meet it on its specific terms. Meeting one substantiation rule does not satisfy another.
5. Disclose where authority is uncertain. Form 8275 or 8275-R is cheap insurance against § 6662 (taxpayer) and § 6694 (preparer) exposure. The disclosure neither concedes the position nor draws a guaranteed audit; it shifts the analysis from accuracy-related penalty risk to substantive merits.

Appendix A — Authority Quick-Reference

Practitioner shorthand list. Verify currency and full citation before relying on any specific authority.

Statutory

Provision	Topic	Use
§ 162(a)	Trade or business expenses	Reasonable compensation; ordinary and necessary
§ 199A	Qualified business income deduction	Pass-through deduction; SSTB; aggregation
§ 267	Related-party loss disallowance and matching	Loss suspension; cash–accrual matching; attribution
§ 269	Acquisitions to evade or avoid tax	Disallow benefits where principal purpose is tax avoidance
§ 274(d)	Substantiation — travel, meals, gifts, listed property	Strict substantiation; Cohan rule disallowed
§ 409A	Nonqualified deferred compensation	Election timing; payment events; valuation
§ 469	Passive activity losses	Material participation; real estate professional; self-rental
§ 482	Allocation among controlled entities	Reallocation of income and deductions
§ 6662	Accuracy-related penalty	20% / 40%; reasonable-cause defense
§ 6664(c)	Reasonable cause and good faith	Reasonable cause defense
§ 6694	Preparer penalties	Unreasonable position; willful/reckless
§ 7491(a)	Burden of proof shift	Credible evidence + substantiation + records + cooperation
§ 7872	Below-market loans	Imputation between related parties

Cases — Compensation

- Mayson Manufacturing Co. v. Commissioner, 178 F.2d 115 (6th Cir. 1949). Multi-factor reasonableness test (C-corp).
- Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983). Independent-investor test (C-corp); the dispositive factor in modern cases.
- Menard, Inc. v. Commissioner, 560 F.3d 620 (7th Cir. 2009). Compensation upheld under independent-investor test (C-corp).
- Pediatric Surgical Associates v. Commissioner, T.C. Memo 2001-81. Excess compensation recharacterized as constructive dividend (C-corp); compensation paid for work performed by others is not deductible compensation to the recipient.

- Watson v. Commissioner, 668 F.3d 1008 (8th Cir. 2012). S-corp distribution recharacterized as wages.
- Glass Blocks Unlimited v. Commissioner, T.C. Memo 2013-180. Loan-repayment recast as wages where formalities absent (S-corp).

Cases — Related Party and Management Fees

- Aries Communications, Inc. v. Commissioner, T.C. Memo 2013-97. Management fee recharacterized as distribution.
- Wiley M. Elick DDS, Inc. v. Commissioner, T.C. Memo 2013-139. Comparable analysis.
- Hardman v. United States, 827 F.2d 1409 (9th Cir. 1987). Debt vs. equity factors.
- Fin Hay Realty Co. v. United States, 398 F.2d 694 (3d Cir. 1968). Debt-equity multi-factor analysis.

Cases — Real Estate Professional

- Moss v. Commissioner, T.C. Memo 2017-30.
- Hakkak v. Commissioner, T.C. Memo 2020-46.
- Pourmirzaie v. Commissioner, T.C. Memo 2018-26.
- Hassanipour v. Commissioner, T.C. Memo 2013-88.

Substantiation

- Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930). Approximation rule, since narrowed by § 274(d).
- Treas. Reg. § 1.469-5T(f)(4). Reasonable means of establishing material participation hours.
- Treas. Reg. § 1.62-2(c). Three-prong test for accountable plans.

Appendix B — Reasonable Compensation Workpaper

Reproduce on firm letterhead. Complete annually for each S-corporation shareholder-employee. Sign and date on completion. Retain in the entity's permanent file.

Identification	Information
Entity name (S corporation)	_____
Shareholder-employee name	_____
Tax year	_____
Date of analysis	_____
Preparer	_____

Factor Analysis

Address each of the nine factors. Attach supporting documentation as exhibits.

1. Training and experience. Education, certifications, years in industry. Documentation: _____
2. Duties and responsibilities. Decision authority, complexity, span of control. Documentation: _____
3. Time devoted. Hours per week — peak and average. Documentation: _____
4. Dividend history. Pattern of distributions vs. wage adjustments. Documentation: _____
5. Compensation to non-shareholder employees. What employees in similar roles are paid. Documentation: _____
6. Compensation timing. Year-end bonuses tied to taxable income. Documentation: _____
7. Comparable businesses. BLS OEWS (free, occupation-based), ERI Salary Assessor (subscription, multi-factor), RCReports (subscription, Watson/Mayson framework), industry surveys (MGMA, AMGA, ADA, NALP, ZweigGroup as applicable). Source(s): _____
8. Compensation agreements. Written terms, board approvals, formulas. Documentation: _____
9. Independent investor test. Three-year ROI vs. industry comparable. Calculation: _____

Conclusion

Item	Amount
Reasonable compensation range — low	$ _____
Reasonable compensation range — high	$ _____
Reasonable compensation — point estimate used	$ _____
W-2 wages actually paid this year	$ _____
Variance and explanation	_____

Sign-Off

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

Appendix C — Audit-Ready File Checklist

Build the file at filing, not after the IDR. Use this checklist for each material position taken on the return.

Position Identification

Position taken: _____

Return / Form / Line: _____

Tax year: _____ Materiality: $ _____

Pillar 1 — Authority

- [ ] Code section identified: _____
- [ ] Treasury Regulation identified: _____
- [ ] Controlling case(s) identified: _____
- [ ] Authority memo (one page) drafted, dated, and signed

Pillar 2 — Substance

- [ ] Business purpose articulated, in writing, dated at the time of the transaction
- [ ] Economic substance independently verifiable (cash flow, third-party transactions)
- [ ] Comparable transaction with an unrelated party would be on substantially the same terms

Pillar 3 — Substantiation

- [ ] Substantiation form required by the controlling rule identified (§ 274(d), Reg. § 1.469-5T(f)(4), Reg. § 1.62-2(c), Reg. § 1.170A-13, or other)
- [ ] Contemporaneous primary records on file (Tier 1)
- [ ] Contemporaneous secondary records on file (Tier 2)
- [ ] Records meet the timing requirement of the controlling rule

Pillar 4 — Reasonableness

- [ ] Benchmark or study on file (compensation, fee, valuation, AFR, comparable rent)
- [ ] Source of comparable data identified and dated
- [ ] Number used falls within the supported range; outliers explained

Disclosure and Form Check

- [ ] Form 8275 or 8275-R considered; filed if appropriate
- [ ] Aggregation election made and disclosed if applicable (Form 8995-A Schedule B; Treas. Reg. § 1.469-4)
- [ ] Form 3115 filed if accounting method change involved; § 481(a) adjustment computed

- [ ] Late-election relief considered (Rev. Proc. 2013-30 for S elections; other applicable revenue procedures)

Sign-Off

Position prepared by: _____ Date: _____

Position reviewed by: _____ Date: _____

End of outline.

Tax Planning for Businesses

Presented by:
Jasmine DiLucci

Tax Alliance Conference 2026

Tax Planning for Businesses

PRESENTATION

ACTUAL TAX LAW with Jasmine Blucci JD, CPA, EA

1

INTRODUCTION

18 yrs old studying for my EA license

Graduated 4th in my class

NYU LLM

Attended SMU Law

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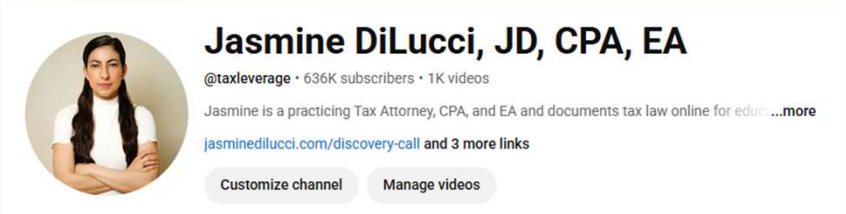
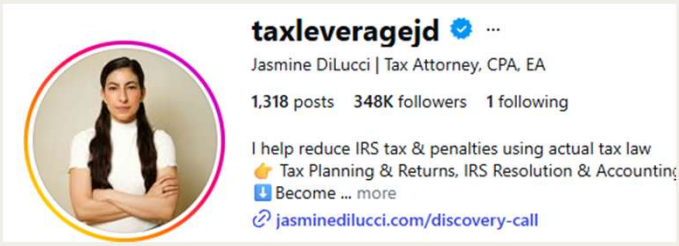
HOW IT'S GOING





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RESULT

Problem

- Posting things that are illegal or misleading
- Builds a lack of trust with their Accountant
- Seen as saying "no" even when it might be legal

Solution

- Be ready with tax law, so you can communicate why even if the answer is no
- People like to feel you're on their team - they like the answer "yes"

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AGENDA

Tax Strategy

- Business Deduction Framework
- Common Business Deductions
- S-Corporations
- Short Term Rentals
- Real Estate Professional Status
- Tax Fraud

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BUSINESS DEDUCTION FRAMEWORK

Ordinary and necessary business expense (IRC 162(a))

- Expense must be:
  - ordinary;
  - necessary;
  - paid or incurred during the taxable year;
  - for an ongoing trade or business

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BUSINESS DEDUCTION FRAMEWORK

1) Must have a business (primary purpose of earning a profit, or subject to 183 limits)
2) Business must be open (or subject to 195 limits)
3) Not an inherently personal item (262(a)) (usually applies to items that impact body or health)
4) Ordinary and necessary (appropriate and helpful)

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COMMON DEDUCTIONS

Cell Phone

Standard 162(a) ordinary and necessary, allocation

Home Office

IRC 280A(c)(1) - exclusive use, regular basis, principal place

Travel

Treasury Regulation §1.162-2(b)(2) tells us it should be primarily for business purposes

Court cases tell us we determine primary purpose by looking at amount of time spent on business v personal, the significance of the business activity, and the significance of the personal activity

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COMMON DEDUCTIONS

Augusta Rule

IRC §280A(g) allows rental income from a personal residence to be excluded if rented for 14 days or less during the year

Vehicles

IRC §162(a) allows deductions for ordinary and necessary business vehicle use

IRC §274(d) requires strict substantiation, including mileage, date, destination, and business purpose

IRC §280F limits depreciation deductions for passenger automobiles, including many cars, trucks, and vans

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WHEN TO SWITCH TO AN S-CORP

- **Self-employment tax savings**
  - Difference between reasonable compensation & profits
- **No double-tax or disallowed loss issues**
  - Third party debt and/or depreciable assets
- **No issues with restrictions**
  - Proportionate distributions among owners
  - Taxable event on distribution
  - No foreign ownership

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S-CORP SELF-EMPLOYMENT TAX SAVINGS

Scenario: $150,000 Net Business Income
Assumptions: Single owner, under age 50, no other income

Metrics	SMLLC	S-Corp
Salary	N/A	$60,000
SE/Payroll Tax	$21,195	$9,180
Est. Fed Taxable Income	$83,642	$113,328
Approx. Tax	$34,556	$28,524

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S-CORP DOUBLE TAX ISSUE

Double Tax Example

Situation

- $150k of net income
- $500k of debt
- = $650k of cash in the bank
- Distribute $450k of cash
- = $300k x 15% = $45,000

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S-CORP DOUBLE TAX ISSUE

Scenario: $150,000 Net Business Income
Assumptions: Single owner, under age 50, no other income

Metrics	SMLLC	S-Corp
Salary	N/A	$60,000
Se/Payroll Tax	$21,195	$9,180
Est. Fed Taxable Income	$83,642	$113,328
Approx. Tax	$34,556	$28,524
Double Tax on 300k	$0	$45,000
Total Tax	$34,556	$73,524

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REAL ESTATE BUSINESSES

- Long term rentals
  - Limited by passive loss limitations (blocked by Congress to prevent real estate as a tax shelter) (1986)
- Options left:
  - 1) Short Term Rental (Treasury Regulations)
  - 2) Real Estate Professional Status (1993)

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SHORT TERM RENTALS

Requirements

1) Average period of customer use is 7 days or less **OR** Average period of customer use is 30 days or less **AND** significant personal services are provided by or on behalf of the owner;

AND

2) You materially participate in the business by meeting one of the following (between two spouses):

- Substantially all participation, inc. employees/contractors time spent
- > 100 hours and not less than any other individual
- > 500 hours (exclude investor hours unless involved in day to day)

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REAL ESTATE PROFESSIONAL STATUS

- REPS Requirements
  - 1) 750-hour rule
  - 2) Greater than 50% of Personal Service Time Rule
  - 3) Material Participation in the Activity with the Loss

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REAL ESTATE PROFESSIONAL STATUS

Real Property Trades or Businesses	Time that Doesn't Count
• Development • Redevelopment • Construction • Reconstruction • Acquisition • Conversion • Rental • Operation • Management • Leasing • Brokerage IRC 469(c)(7)(C)	• Education • Investor time unless involved in day to day management (e.g. studying financials) • Searching for new properties before owning interest in property • Travel not integral to operations • Work done "primarily for the purpose of avoiding disallowance of losses" • Hours worked as employee or if own less than 5% of the business

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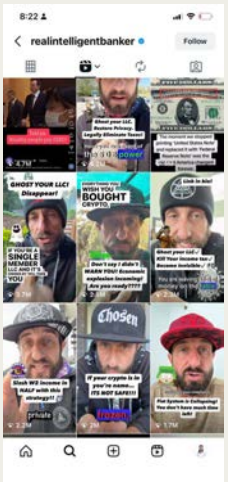
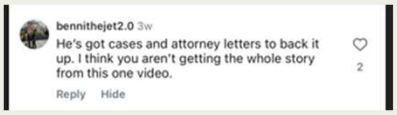
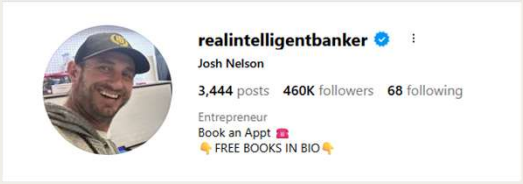
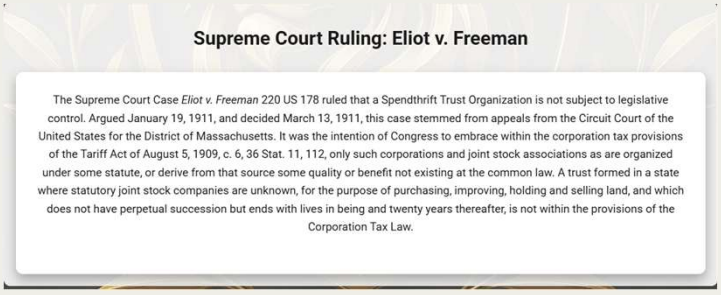
TAX FRAUD

"Non-grantor, irrevocable, complex, discretionary, spendthrift trust"









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Free Tax Community: ActualTaxLaw.com

What's Included:

- 24/7 Tax Q&A Community Board
- Monthly workshops (e.g. IRS Transcripts)
- Free IRS notice and audit reviews
- Bonus resources to help you leverage the tax laws legally

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Basis

Presented by:
Tim Turner

Basis

What is it…tracking…and…Why does it Matter?

Presented by Timothy P. Turner,
CExP™, EA

1

Important Information

This presentation is not intended to provide specific legal or tax advice on the formation, operation or sale of any business entity. This is not a recommendation to form and/or operate any specific business entity nor is it a recommendation to sell a business entity or its assets. This information cannot be used for purposes of avoiding penalties under the Code or promoting, marketing or recommending to another party any transaction or matter addressed within. The information was obtained from what are deemed to be reliable sources. Internal Revenue Code is subject to change and interpretation.

2

Objectives

- Overview/Define Basis
- Determining/Establishing Basis/Adjustments
- Personal Assets/Property
- Business Property

3

What is Basis

The dictionary defines basis as the foundational support, fundamental principle, or main ingredient upon which something is established, developed or calculated. It acts as the starting point.

4

IRS, in Publication 551 considers basis as…

IRS considers basis as the amount of the capital investment in property (aka asset) for tax purposes…and to determine gain of loss on the sale/disposition of the property.

The terms asset and property will be used interchangeably.

5

Establishing Basis

Basis can be established through purchase. It would include the amount paid for the asset in cash, debt obligation(s), plus such items as sales tax, freight, installation & testing, excise taxes, legal & accounting fees that must be capitalized, revenue stamps and recording fees.

Example: Fred purchases Asset P for $50,000 cash and a note for $150,000. He pays sales tax of $10,000, freight costs of $5,000, and installation costs of $3,000. Fred's original basis in Asset P is $218,000, which is its cost of $200,000 ($50,000 + $150,000) plus the amounts he paid for sales tax, shipping, and installation ($10,000 + $5,000 + $3,000).

[Note: sales tax income tax deduction and real estate taxes]

6

Establishing Basis con't

Basis can also be established through the performance of services…as compensation/income. The asset's basis is it's FMV at the time of receipt…the amount included/reported as income = basis.

Exceptions to this could be:

- Bargain Purchases
- Restricted Property

7

Establishing Basis con't

Basis is also established if property is received as a gift. Donee (recipient) receives property from donor.

Donee may take the donor's basis (or adjusted basis) in the property…aka "carryover basis."

Donee should know:

- the donor's adjusted basis in the property immediately prior to the gift
- the property's FMV at the time of the gift
- any gift tax paid on the gift

The donor's holding time of the asset is also carried over…aka "taked on" to the donee holding period.

[Note: gift taxes; business/depreciable assets; loss exception]

8

Establishing Basis con't

Basis is also established when assets are inherited/received from a decedent.

Generally, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent, if not sold, exchanged, or otherwise disposed of before the decedent's death by that person, is the FMV of the property at the date of the decedent's death.

This new basis for the beneficiary is commonly referred to as "stepped-up" basis.

This new basis must be consistent with values used with estate tax return…notwithstanding the requirement to file such return.

9

Establishing Basis con't

Basis can be established in businesses like corporations, partnerships (including LLCs).

It can be established the same as with personal assets/property…by purchase, performing services, by gift and through inheritance.

10

Personal Assets/Property

11

Investments

Examples are:

- Stocks
- Bonds
- Digital Assets

12

Investments con't

Basis of most investment property is generally the cost (aka purchase price) + costs (i.e. commissions, recording fees, etc).

Investments received as compensation for services (e.g. stock options), basis may be determined by the FMV of the investment(s) received and/or compensation reported as taxable income.

Investments received as a gift generally have the same basis a s the transferor/previous owner…with some exceptions.

Investments received from a decedent generally are valued (stepped-up) on the date of death…again with some exceptions.

Let's look at each of these.

13

Investments con't

Fred buys 100 shares of DEF stock @ $10 per share. Fred pays his advisor/broker $25 to place and execute his order. Fred's basis in his 100 shares of stock is $1,025 ($1,025 ÷ 100 = $10.25 per share)

Until Fred sells his 100 shares, what would change (adjust) Fred's basis in his stock other than increase in value or decrease in value?

Dividends? Splits? Rights/Warrants?

14

Investments con't

Fred receives taxable dividends of $2 per share. Is there a change?

-No. Fred reports the dividend income but it does not affect his original basis.

Fred receives nontaxable stock dividend of 10 shares of the same stock. Fred would adjust his basis on the original shares and new shares by dividing his basis in the original shares by the total of the original + new shares ($1,025 ÷ 110 = $9.32 per share).

If Fred's nontaxable dividend was paid with different stock (e.g. preferred, another class of common, etc), Fred's calculation would be a little more complicated….for example, Fred is paid 10 shares of preferred stock. On the date of distribution, the preferred stock had a FMV of $75 ($7.50 per share) and his original stock had a FMV of $1,925 ($19.25 per share).

15

Investments con't

Fred would calculate/adjust the basis in his original stock and the new preferred stock by dividing his original basis, $10.25 per share, between them.

His original stock is $7.38 per share ($19.25/$26.75 x $10.25). His new preferred stock is $ 2.87 per share ($7.50/$26.75 x $10.25).

If Fred receives nontaxable stock dividends on stock he bought at different times (referred as various lots), Fred's new/adjusted basis calculation would have to be allocated to each particular "lot" as well as the proportionate amount of stock dividend attributed to each lot. See Rev Ruling 71-350 for the calculations.

If Fred would be paid a taxable dividend. This new stock would have it's own basis based on the FMV on the date of distribution. Fred's original stock basis is not affected.

16

Investments con't

Stock splits are fairly straight forward. There are generally 2 types…forward splits (most common) and reverse splits.

A forward split increases the number of shares and adjusts the price per share downwards. A reverse split decreases the number of shares and adjusts the price per share upwards.

Remember Fred, his 100 shares of DEF at $10.25 per share ($1,025). DEF declares a stock split of 2 for 1. This means that Fred will now have 200 shares of DEF. Fred's original basis of $1,025 does not changed but his basis per share is adjusted downward to $5.125 per share.

DEF declares a reverse split of 4 – 1. This means the number of shares Fred has goes from 100 to 25. Again, his original basis of $1,025 has not changed. Fred's 25 shares now have an adjusted basis of $41 per share.

17

Investments con't

Rights and warrants are usually granted to existing shareholders. They give the shareholders a right (but not an obligation) to purchase additional shares at a particular price within a particular timeframe.

These can be granted as taxable or nontaxable.

Taxable rights/warrants are treated the same as a taxable stock dividend.

Nontaxable stock rights received and held to expiration, have no basis.

Generally, the key to look at is the FMV of the rights at the time of distribution. If the stock rights have a FMV of 15% or more of the FMV of the original stock, the shareholder *must* divide the adjusted basis of the original stock between the original stock and the rights. If the FMV of the rights is less than 15% of the FMV of the original stock, the rights basis is 0 (zero). However, the shareholder *may* elect to divide the basis of the original stock between the original stock & the stock rights. The shareholder must make an election to do this allocation and must attach a statement to their tax return for the year they received the rights.

See IRC 307(b) regarding the statement and IRC 1.307-1(a) for the calculations to allocate and adjust basis between the original stock and the rights. See also IRC 305(a) regarding warrants as well as Revenue Ruling 72-71 for additional calculations.

18

Investments con't

Bond (aka fixed income) basis is not a straight-forward as stocks.

Bonds are usually issued in denominations of $1,000 for taxable bonds and $5,000 for tax-exempt. This is also referred to as the bond's "face amount." Depending on the issuer…these face amount denominations could be different.

Taxable bonds and tax-exempt bonds (municipals) are handled differently, especially when it comes to bonds purchased/bought at a premium.

Bonds are purchased in relation to their face amount (also referred to as par). For this discussion, we will use $1,000 as par/face amount.

Bonds, unlike stocks, have a finite life span…meaning they have an end date…called maturity. [Note: some bonds, especially municipals, may have "call" features on the bond where the issuer can redeem the bond earlier than maturity]

Bonds also pay a stated ongoing amount (interest) to bondholders unlike stocks. This interest is usually a state percentage (%) of the face amount.

19

Investments con't

Fred purchases 1 taxable bond from LMN for $950 in the secondary market. The bond pay 5% interest annually and the bond matures in 5 years. Fred paid no commissions or other costs…so Fred's basis is $950. The stated interest paid each year is reported by Fred as income so it does not affect Fred's basis.

Fred has purchased LMN's bond at a market discount to it's face amount ($950 < $1,000).

Fred has a decision to make.

Fred can *elect* to "accrete" the market discount amount ($50) over the remaining years to maturity (e.g. 5) ratably or using the constant yield method. If using the ratable accrual, this means that Fred will report an additional $10 of interest income each year so when the bond matures and Fred receives the $1,000…this is not a reportable event.

The additional $10 of interest accretion increases Fred's basis.

If Fred makes this election, he must attach a statement indicating his election with his tax return for the year he purchased the bond. This election will apply to all years Fred holds this bond and any other bonds Fred would purchase at a market discount. [IRC 1278(b)][See Rev Proc 2018-31 to revoke]

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Investments con't

If Fred does not make this election to accrete the market discount annually and holds the bond until maturity, this $50 difference would be reportable as additional interest income in the year of bond maturity.

If Fred sells the bond prior to maturity, any gain between Fred's basis and the sale price is interest income up to the amount of the discount ($50). Example: Fred does not make accretion election. Fred sells bond 2 years after purchase for $1,010. Fred's basis is $950. Difference is $60. Fred reports $50 interest (original market discount amount) and $10 capital gain.

This market discount accretion (interest income) applies also to municipal bonds and is taxable.

There are de minimis thresholds also,

Investments in original issue discount (OID) bonds have different treatment related to basis and adjustments and will not be discussed. See IRC 1273

21

Investments con't

What if Fred purchased this $1,000 taxable LMN 5% bond maturing in 5 years for $1,500 in the secondary market? Again, no commissions or other costs.

Fred's basis would be $1,500 and he would have purchased this bond for a "premium." It is called a premium since Fred paid more ($500) than the face/par amount ($1,000) he will receive at maturity.

Fred again, has a decision to make regarding this premium amount. Does Fred make an election to "amortize" (gradually reduce) this premium over the life remaining on the bond or not? This election does not affect the stated interest.

This election is *voluntary* by Fred on taxable bonds but is *mandatory* for tax-exempt bonds (municipals). See IRC 171(a) and 1.171-1(c)(2) and (d)(1).

22

Investments con't

Fred make the election and files his statement to his tax return for the year he makes the election. Fred's amortized premium each year in our example is $10.

Fred reports this $10 to reduce his taxable interest income each year. This also reduces Fred's basis by $10.

Fred holds bond until maturity. Fred reports no gain/loss on receipt of the $1,000.

If this were a tax-exempt bond, Fred can not deduct this amortized premium as the interest income is exempt from taxes. Basis is still reduced. See IRC 171(a)(2), 1016(a)(5) and 1.171-1(c)(1).

If Fred did not make the election to amortize and held bond to maturity, then in the year Fred received the $1,000 face amount, he could report a $500 capital loss.

23

Investments con't

If Fred sold the bond prior to maturity, he would realize a gain or loss depending on the sale price in relation to Fred's basis and whether Fred made amortize election of not.

There are special rules related to inflation-indexed bonds and variable rate bonds that will not be discussed as well as bonds with call provisions prior to maturity.

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Investments con't

Digital Assets are considered property for tax purposes.
Basis is established by the amounts paid in cash or property (including digital assets) to effect the sale, disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions. See IRC 1-1001-7(b)(2)(i)

Generally, digital assets do not pay dividends, interest, split or issue rights or warrants.

You need to be familiar with terms such as:
- soft forks
- hard forks
- airdrops
- staking

See digital asset reference section for more information.

25

Investments con't

Digital Assets are considered property for tax purposes.
Basis is established by the amounts paid in cash or property (including digital assets) to effect the sale, disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions. See IRC 1-1001-7(b)(2)(i)

Generally, digital assets do not pay dividends, interest, split or issue rights or warrants.

You need to be familiar with terms such as:
- soft forks
- hard forks
- airdrops
- staking

See digital asset reference section for more information.

26

Compensation/Service

Basis of assets/property received for services is the FMV of the compensation received (income reported) if substantially vested and no substantial risk of forfeiture.

Generally referred as “non-cash” compensation.

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Compensation/Service con’t

Common items:

Incentive stock options (ISO)

Employee stock purchase plans (ESPP)

Non-qualified stock options (NSO)

Restricted stock (RS)

Restricted stock units (RSU)

28

Compensation/Service con't

Detailed basis discussion will not be discussed as this discussion is limited in time and the tax aspects of non-cash compensation is a whole topic itself.

A guide as to what documentation to have to determine basis and other tax aspects of non-cash compensation (e.g. ordinary/capital gain income, 83(b)/83(i) election, AMT, adjustments, FICA/FUTA, etc)

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Compensation/Service con't

Plan documents

W-2s and any supplemantal

Form 3921 (ISO)

Form 3922 (ESPP)

1099-B and any supplemental

Confirmations

Brokerage Statements

30

Personal Residence

Original basis in your personal residence that was purchased is the total paid amount paid (cash and debt) plus certain adjustments.

Always separate the basis of land from the home/structure

Examples of Adjustments (not all inclusive):

- Abstract fees (for title)
- Installing utilities
- Legal fees
- Recording fees
- Survey fees
- Owner's title insurance
- Certain amounts owed by seller, buyer agrees to pay

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Personal Residence con't

Adjustment made during ownership:

- Additions/improvements that add value to residence, prolong it's useful life or adapt to new uses (+)
- Deductible casualty losses (-)
- Amounts spent after casualty to restore damaged property (+)
- Insurance payments received or expected to be received fro casualty loss (-)
- Residential energy credits (-)
- Discharge of qualified principal residence indebtedness that was excluded from income (-)

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Assets/Property Received by Gift

Basis a person has in property received as a gift is generally the same as the person giving them the gift…see back on slide 8.

Why?

Any gift tax paid by donor would increase basis for recipient

Business property (incl rentals) could have prior depreciation that needs to be recaptured later when done disposes of property.

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Assets/Property Received by Gift

If the FMV of the property at the time of the gift is less than the donor's adjusted basis, the donee's basis depends on whether the donee has a gain or a loss when the donee subsequently disposes of the property.

If the FMV of the property is equal to or greater than the donor's adjusted basis, the donee's basis is the donor's adjusted basis at the time the donee received the gift. The donee increases the basis by all or part of any gift tax paid, depending on the date of the gift. Also, for figuring gain or loss from a sale or other disposition of the property, or for figuring depreciation, depletion, or amortization deductions on business property, the donee must increase or decrease basis by any required adjustments to basis while the donee held the property.

The donee's basis for figuring gain is the same as the donor's adjusted basis, plus or minus any required adjustment to basis while the donee held the property. The donee's basis for figuring loss is its FMV when the donee received the gift, plus or minus any required adjustment to basis while the donee held the property See Code Sec. 1015(a)

Ex: Fred makes a gift of 100 shares of stock in DEF to his son, Hank. Fred's adjusted basis in the stock is $500 and, at the time of the gift, the fair market value of the shares is $300. If Hank later sells the stock for $600, his basis for computing gain on the sale is $500 (Fred's adjusted basis). On the other hand, if Hank later sells the stock for $200, his basis for computing loss on the sale is $300 (the FMV of the stock on the date of the gift). If Hank uses Fred's adjusted basis for figuring a gain and gets a loss, and then uses the FMV for figuring a loss and has a gain, the Hank will have neither gain nor loss on the sale or disposition of the property.

If Hank holds the gift as business property, Hank's basis for figuring any depreciation, depletion, or amortization deduction is the same as the Fred's adjusted basis, plus or minus any required adjustments to basis while Hank holds the property. [Note: if Hank disposes of the gifted business property for a gain, he will have depreciation from both Fred's holding and his holding to recapture as ordinary income]

See Simonsen v Commissioner 150 TC No 8 March 14, 2018

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Assets/Property Received from Decedent

Some additional comments in addition to slide 9.

Assets/property held jointly by decedent and non-spouse may only receive a partial step-up.

Decedent and spouse property located in community property state.

Decedent and spouse property located in common-law state.

Asset/property tracing; who actually paid for asset/property

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Business Assets/Property

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Business Assets/Property

There are two types of basis with a business.

1. Shareholders have basis in the business itself through the purchase of stock in corporations or the purchase of partnership/membership interests in LLCs/partnerships.
2. The business itself will establish basis when it purchases assets and property to use in the business.

Sole proprietors operating a business own personally, any asset/property used in the business. However, the assets are considered business assets under IRC 1231 and not capital assets.

SMLLC's, if used, need to be strictly run separate from the personal owner if assets/property are to be viewed as being owned by the LLC. Separate bank account(s); assets/property purchased by business account and titled correctly.

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Business Assets/Property

Shareholders generally establish basis in their corporate stock through cash contribution or property contributions. [Note: Stock (equity) in a business can be established via service but majority/founding owners may be ineligible as well as IRC 351 treatment]

IRC 351 establishes rules for non-taxable contributions to corporations. Usually, initial basis is simple for cash contributions but can be complicated if tangible property, real property or intangible property are part of the contribution as well as any debt on the property. See also IRC 357.

Shareholders basis in stock (IRC 351) when property tangible/real property is contributed for stock in corporation:

Adjusted basis of property

+ any gain recognized
+ any cash paid
(-) any cash received
(-) FMV of property received
(-) liabilities transfered

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Business Assets/Property

Original basis in a C corporation generally will stay constant for the shareholder. Adjustments would be made only if additional capital was made by the shareholder or a non-dividend distribution. E & P of corporation does not affect shareholder basis.

Original basis in a S corporation is generally the same as discussed for C corporations. The major distinguishing difference is that this “outside” basis of the shareholder does change annually by the operation (profits, losses, income and deductions) of the S corporation.

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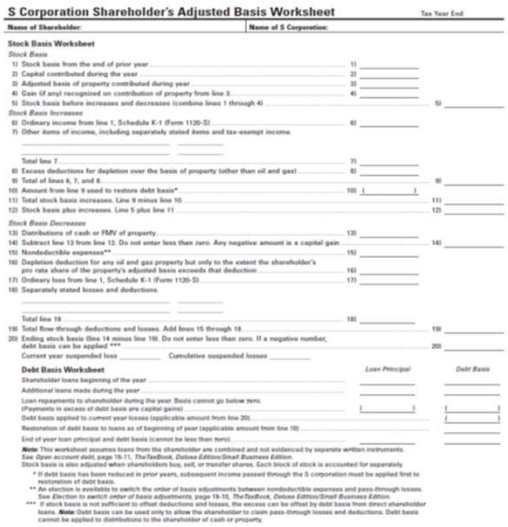
Business Assets/Property



S Corporation Shareholder's Adjusted Basis Worksheet Tax Year End

Name of Shareholder: | **Name of S Corporation:**

Stock Basis Worksheet

Stock Basis

1) Stock basis from the end of prior year ..... 1)
2) Capital contributed during the year ..... 2)
3) Adjusted basis of property contributed during year ..... 3)
4) Gain (if any) recognized on contribution of property from line 3 ..... 4)
5) Stock basis before increases and decreases (combine lines 1 through 4) ..... 5)

Stock Basis Increases

6) Ordinary income from line 1, Schedule K-1 (Form 1120-S) ..... 6)
7) Other items of income, including separately stated items and tax-exempt income.

Total line 7 ..... 7)
8) Excess deductions for depletion over the basis of property (other than oil and gas) ..... 8)
9) Total of lines 6, 7, and 8 ..... 9)
10) Amount from line 9 used to restore debt basis* ..... 10) ( )
11) Total stock basis increases. Line 9 minus line 10 ..... 11)
12) Stock basis plus increases. Line 5 plus line 11 ..... 12)

Stock Basis Decreases

13) Distributions of cash or FMV of property ..... 13)
14) Subtract line 13 from line 12. Do not enter less than zero. Any negative amount is a capital gain ..... 14)
15) Nondeductible expenses** ..... 15)
16) Depletion deduction for any oil and gas property but only to the extent the shareholder's pro rata share of the property's adjusted basis exceeds that deduction ..... 16)
17) Ordinary loss from line 1, Schedule K-1 (Form 1120-S) ..... 17)
18) Separately stated losses and deductions.

Total line 18 ..... 18)
19) Total flow-through deductions and losses. Add lines 15 through 18 ..... 19)
20) Ending stock basis (line 14 minus line 19). Do not enter less than zero. If a negative number, debt basis can be applied *** ..... 20)

Current year suspended loss _____ Cumulative suspended losses _____

Debt Basis Worksheet

	Loan Principal	*Debt Basis*
Shareholder loans beginning of the year		
Additional loans made during the year		
Loan repayments to shareholder during the year. Basis cannot go below zero.		
(Payments in excess of debt basis are capital gains)	( )	( )
Debt basis applied to current year losses (applicable amount from line 20)		( )
Restoration of debt basis to loans as of beginning of year (applicable amount from line 19)		
End of year loan principal and debt basis (cannot be less than zero)		

Note: This worksheet assumes loans from the shareholder are combined and not evidenced by separate written instruments. See *Open account debt*, page 19-11, *TheTaxBook, Deluxe Edition/Small Business Edition*.
Stock basis is also adjusted when shareholders buy, sell, or transfer shares. Each block of stock is accounted for separately.

* If debt basis has been reduced in prior years, subsequent income passed through the S corporation must be applied first to restoration of debt basis.

** An election is available to switch the order of basis adjustments between nondeductible expenses and pass-through losses. See *Election to switch order of basis adjustments*, page 19-10, *TheTaxBook, Deluxe Edition/Small Business Edition*.

*** If stock basis is not sufficient to offset deductions and losses, the excess can be offset by debt basis from direct shareholder loans. **Note:** Debt basis can be used only to allow the shareholder to claim pass-through losses and deductions. Debt basis cannot be applied to distributions to the shareholder of cash or property.

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Business Assets/Property

Shareholder's Basis in S Corporation for Tax Year _____

Taxpayer Name/ID:
Prepared By:
Date:

			Total to Stock or Loan Basis	Stock Basis	Loan Basis	Loan Face Amount
1	Beginning Balance					
2	Contributions to Capital and/or Stock Purchase	+			xxxxxxx	xxxxxxx
3	Loans to Corporation	+		xxxxxxx		
4	Subtotal (add lines 1 - 3)					
	**Complete *Net Increase/Decrease Worksheet on page 2* and use information to complete Part I, II, or III					
Part I	**Loan Basis Has Not Been Reduced by Post 1982 Losses**					
5	Subtotal Income and Gains	+			xxxxxxx	xxxxxxx
6	Nondividend distributions	-			xxxxxxx	xxxxxxx
7	Loan repayments (Principal portion only)	-		xxxxxxx		xxxxxxx
8	Nondeductible Expenses*	-				xxxxxxx
9	Subtotal Deductions and Losses	-				xxxxxxx
10	Nondeductible Expenses*	-				xxxxxxx
11	Ending Balance (line 4 + sum of lines 5 - 10)					
Part II	**Loan Basis Has Been Reduced by Post 1982 Losses and Net Increase****					
12	Net Increase**	+				xxxxxxx
13	Loan repayments (Nontaxable principal portion only)***	-		xxxxxxx		
14	Ending Balance (Line 4 + sum of lines 12 -13)					
Part III	**Loan Basis Has Been Reduced by Post 1982 Losses and Net Decrease****					
15	Subtotal Income and Gains	+			xxxxxxx	xxxxxxx
16	Nondividend distributions	-			xxxxxxx	xxxxxxx
17	Loan repayments (Nontaxable principal portion only)***	-		xxxxxxx		
18	Nondeductible Expenses*	-				xxxxxxx
19	Subtotal Deductions and Losses	-				xxxxxxx
20	Nondeductible Expenses*	-				xxxxxxx
21	Ending Balance (line 4 + sum of lines 15 - 20)					

* Nondeductible expenses decrease basis before deductible losses and deductions. However, the shareholder can make an election to decrease basis by deductible losses and deductions before nondeductible expenses. Therefore, nondeductible expenses are shown on two separate lines (before and after Subtotal Deductions and Losses). Use the first line if the taxpayer did not make the election. Use the second line if the taxpayer made the election. Do not use both lines!

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Business Assets/Property

	** Net Increase/Decrease Worksheet	Amount	Net Increase Decrease
1	Ordinary Business Income (Box 1, Sch. K-1)		
	Separately Stated Items of Income and Gain:		
2	Interest		
3	Dividends		
4	Royalties		
5	Capital Gains		
6	Rental Income		
7	Tax-exempt Income		
8	Other Income/Gain		
9	Excess depletion and business credit recapture		
10	Subtotal Income and Gains (add lines 1 - 9)		A
11	Nondividend distributions (from Box 16, Sch. K-1, code D)		B
12	Nondeductible Expenses		C
13	Ordinary Business Loss (Box 1, Sch. K-1)		
	Separately Stated Deductions and Losses:		
14	Charitable Contributions		
15	Section 179 Deduction		
16	Capital Loss		
17	Rental Loss		
18	Deductions Related to Tax-Exempt Income		
19	Other Deductions/Losses		
20	Subtotal Deductions and Losses (add lines 13 - 19)		D
	Net Increase/Decrease (A - B - C - D)		

	*** Loan repayments result in taxable income if loan basis is less than the loan face amount. The taxable amount is determined as follows:	
1	Loan basis immediately before the repayment	
2	Loan face amount immediately before the repayment	
3	Divide line 1 by line 2	
4	Enter repayment amount	
5	Multiply line 4 by line 3 (Enter on Loan repayment line in loan basis column)	
6	Subtract line 5 from line 4 (Taxable portion - enter on proper form as taxable income)	

Taxable income from reduced basis loans can be capital or ordinary depending on the nature of the debt. If there is evidence of a written note, the note is considered a capital asset.

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Business Assets/Property

Instructions

Loan Basis Has Not Been Reduced by Post 1982 Losses

1) Add contributions to capital to stock basis.
2) Add new loans shareholder made to corporation to loan basis and loan face amount.
3) Add Subtotal Income and Gains to stock basis.
4) Subtract nondividend distributions from stock basis (but not below zero). If distributions exceed stock basis, the excess is taxed as capital gain.
5) Subtract principal loan repayments from loan basis and loan face amount.

No election

6) Subtract nondeductible expenses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining expenses from loan basis (but not below zero).
   If nondeductible expenses exceed stock and loan basis, they are **not** suspended and carried forward.
7) Subtract Subtotal Deductions and Losses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining deduction/losses from loan basis (but not below zero).
   If deductions and losses exceed stock and loan basis, they are suspended and carried forward.

Election

6) Subtract Subtotal Deductions and Losses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining deduction/losses from loan basis (but not below zero).
   If deductions and losses exceed stock and loan basis, they are suspended and carried forward.
7) Subtract nondeductible expenses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining expenses from loan basis (but not below zero).
   If nondeductible expenses exceed stock and loan basis, they are suspended and carried forward.

Loan Basis Has Been Reduced by Post 1982 Losses

1) Add contributions to capital to stock basis.
2) Add new loans shareholder made to corporation to loan basis and loan face amount.
3) Compute net increase/decrease.

Net Increase

4) Restore loan basis first by adding net increase to loan basis (up to beginning balance of loan face amount).
5) Add any remaining net increase to stock basis.
6) Subtract nontaxable portion of principal loan repayment from loan basis, and subtract entire principal loan repayment from loan face amount.

Net Decrease (Loan basis is not increased by income and gains)

4) Increase stock basis by Subtotal Income and Gains and decrease stock basis by nondividend distributions (but not below zero).
5) Subtract nontaxable portion of principal loan repayment from loan basis, and subtract entire principal loan repayment from loan face amount.

No election

6) Subtract nondeductible expenses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining expenses from loan basis (but not below zero).
   If nondeductible expenses exceed stock and loan basis, they are **not** suspended and carried forward.

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Business Assets/Property

7) Subtract Subtotal Deductions and Losses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining deduction/losses from loan basis (but not below zero).
   If deductions and losses exceed stock and loan basis, they are suspended and carried forward.

Election

6) Subtract Subtotal Deductions and Losses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining deduction/losses from loan basis (but not below zero).
   If deductions and losses exceed stock and loan basis, they are suspended and carried forward.
7) Subtract nondeductible expenses from stock basis (but not below zero). If stock basis is reduced to zero, subtract remaining expenses from loan basis (but not below zero).
   If nondeductible expenses exceed stock and loan basis, they are suspended and carried forward.

NOTE: (to show software can have some of the same above line descriptions/instructions)

If there are reduced basis loans, repayments on those loans must be allocated between gain/income and basis. The portion which is prorated to income must be added to the appropriate category of income. If there is no written note to evidence the debt, the gain is ordinary income to the shareholder. If there is a written debt instrument, the gain is capital gain, long or short term depending on how long the shareholder held the note.

Note: If an amount is calculated as income portion of loan repayment, add this amount to income in the appropriate place on the shareholder's return.

The formula used to allocate the payment to income is as follows:

Step 1: Get the difference of the face amount of loan and the basis of loan.

Step 2: Multiply the difference in Step 1 by the loan repayment.

Step 3: Divide the product in Step 2 by the loan face value.

The resulting amount is the value allocated to income.

If there are multiple notes or an open account debt, and they make the calculation of the amount of repayment allocated to income inaccurate, override that number.

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Business Assets/Property

An S corporation shareholder can have “debt” basis in addition to it’s equity basis. This debt could be decreased by corporate losses…but can never increase above the debt amount by profits.

A shareholder’s basis in the S corporation can not go below 0.

Corporations will have basis in the business assets/property they acquire/purchase the same as individuals except that business assets/property are considered IRC 1231 assets and not capital assets. The biggest adjustment to the business and its assets is a decrease for “wear & tear” (aka depreciation).

The individual shareholders do not have basis in the assets/property owned by the corporation.

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Business Assets/Property

Members/partners establish basis in the membership interests of the LLC/partnership like that of the shareholder-corporation except that it’s under IRC 721 (Section 1.721-1) and IRC 722. [LLCs and partnerships will be hereafter referred to as partnerships]

Ex. Fred contributes property to partnership with an adjusted basis to Fred of $5,000 and debt/liability of $2,700. If the other partners assume the liability, Fred’s basis in the partnership is $2,300 ($5,000 - $2,700).

The unique aspects to partnerships is that this relief from debt could be viewed as a disguised sale as opposed to a contribution of capital. See IRC 707.

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Business Assets/Property

Whether the debt is recourse or non-recourse to the partners will affect outside basis.

Partnerships are easier to obtain an interest in through performance of service if accounted for correctly.

Partnerships have both a “capital” interest and a “profits” interests.

A partner’s capital interest and profit interest may be the same but not always…especially if partner’s have become partner’s through performance of service, receiving a profit interest but not a capital interest.

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Business Assets/Property

Partnerships establish their own basis in assets/property the partnership acquires whether purchased or contributed as capital.

Unlike a corporation, the partnership has a concept of inside basis and outside basis.

The operating agreement and its incorporation of IRC 704 are important, especially IRC 704(c) if there is contributed property and IRC 704(b).

Like an S corporation, a partners outside basis is adjusted positively or negatively by the allocation of income, gain, loss, deductions and credits of the partnership.

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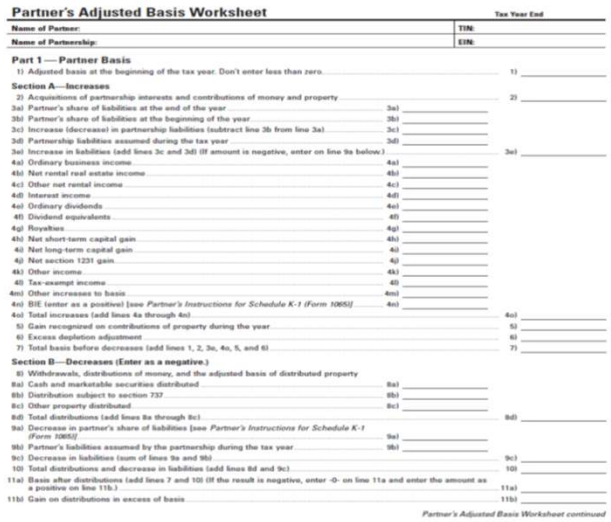
Business Assets/Property



Partner's Adjusted Basis Worksheet — Tax Year End

Name of Partner: | **TIN:**

Name of Partnership: | **EIN:**

Part I — Partner Basis

1) Adjusted basis at the beginning of the tax year. Don't enter less than zero — 1)

Section A—Increases

2) Acquisitions of partnership interests and contributions of money and property — 2)

3a) Partner's share of liabilities at the end of the year — 3a)

3b) Partner's share of liabilities at the beginning of the year — 3b)

3c) Increase (decrease) in partnership liabilities (subtract line 3b from line 3a) — 3c)

3d) Partnership liabilities assumed during the tax year — 3d)

3e) Increase in liabilities (add lines 3c and 3d) (If amount is negative, enter on line 9a below.) — 3e)

4a) Ordinary business income — 4a)

4b) Net rental real estate income — 4b)

4c) Other net rental income — 4c)

4d) Interest income — 4d)

4e) Ordinary dividends — 4e)

4f) Dividend equivalents — 4f)

4g) Royalties — 4g)

4h) Net short-term capital gain — 4h)

4i) Net long-term capital gain — 4i)

4j) Net section 1231 gain — 4j)

4k) Other income — 4k)

4l) Tax-exempt income — 4l)

4m) Other increases to basis — 4m)

4n) BIE (enter as a positive) [see *Partner's Instructions for Schedule K-1 (Form 1065)*] — 4n)

4o) Total increases (add lines 4a through 4n) — 4o)

5) Gain recognized on contributions of property during the year — 5)

6) Excess depletion adjustment — 6)

7) Total basis before decreases (add lines 1, 2, 3e, 4o, 5, and 6) — 7)

Section B—Decreases (Enter as a negative.)

8) Withdrawals, distributions of money, and the adjusted basis of distributed property

8a) Cash and marketable securities distributed — 8a)

8b) Distribution subject to section 737 — 8b)

8c) Other property distributed — 8c)

8d) Total distributions (add lines 8a through 8c) — 8d)

9a) Decrease in partner's share of liabilities [see *Partner's Instructions for Schedule K-1 (Form 1065)*] — 9a)

9b) Partner's liabilities assumed by the partnership during the tax year — 9b)

9c) Decrease in liabilities (sum of lines 9a and 9b) — 9c)

10) Total distributions and decrease in liabilities (add lines 8d and 9c) — 10)

11a) Basis after distributions (add lines 7 and 10) (If the result is negative, enter -0- on line 11a and enter the amount as a positive on line 11b.) — 11a)

11b) Gain on distributions in excess of basis — 11b)

Partner's Adjusted Basis Worksheet continued

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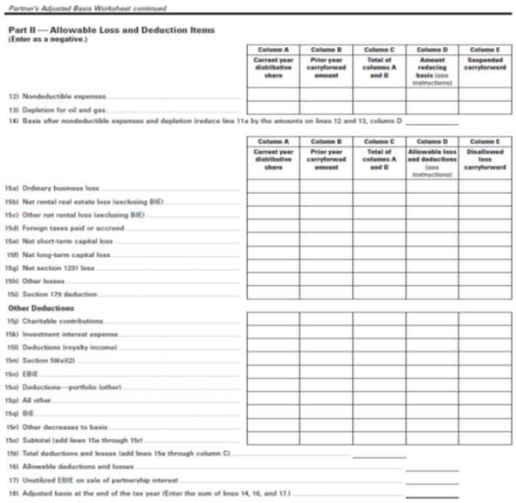
Business Assets/Property



Partner's Adjusted Basis Worksheet continued

Part II — Allowable Loss and Deduction Items
(Enter as a negative.)

	Column A Current year distributive share	Column B Prior year carryforward amount	Column C Total of columns A and B	Column D Amount reducing basis (see instructions)	Column E Suspended carryforward
12) Nondeductible expenses					
13) Depletion for oil and gas					

14) Basis after nondeductible expenses and depletion (reduce line 11a by the amounts on lines 12 and 13, column D) _____

	Column A Current year distributive share	Column B Prior year carryforward amount	Column C Total of columns A and B	Column D Allowable loss and deductions (see instructions)	Column E Disallowed loss carryforward
15a) Ordinary business loss					
15b) Net rental real estate loss (excluding BIE)					
15c) Other net rental loss (excluding BIE)					
15d) Foreign taxes paid or accrued					
15e) Net short-term capital loss					
15f) Net long-term capital loss					
15g) Net section 1231 loss					
15h) Other losses					
15i) Section 179 deduction					
Other Deductions					
15j) Charitable contributions					
15k) Investment interest expense					
15l) Deductions (royalty income)					
15m) Section 59(e)(2)					
15n) EBIE					
15o) Deductions—portfolio (other)					
15p) All other					
15q) BIE					
15r) Other decreases to basis					
15s) Subtotal (add lines 15a through 15r)					

15t) Total deductions and losses (add lines 15a through column C) _____

16) Allowable deductions and losses _____

17) Unutilized EBIE on sale of partnership interest _____

18) Adjusted basis at the end of the tax year (Enter the sum of lines 14, 16, and 17.) _____

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Business Assets/Property

While certain elections under IRC 754, 743 and 734 do not directly affect the partners outside basis, if the partnership is undergoing changes (partners selling, retiring, etc) they could have future tax benefits for the partners that would affect the outside basis.

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Converting Personal Property to Business

Basis when converting personal property to business use is the lower of the adjusted basis (original cost +/- adjustments) or the FMV on the conversion date.

This is also your basis for depreciation.

Ex. If this was your primary residence being converted to rental use, you would first separate out your original land cost to arrive at the home's original basis, then +/- improvements/decreases. Determine FMV of the home (excl of land). The lessor of the two would determine basis for depreciation.

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Converting Personal Property to Business

Determining basis upon sale:

The basis of the property depends on whether the taxpayer is figuring gain or loss. The basis for figuring a gain is the taxpayer's adjusted basis at the time of the sale. In figuring the basis for a loss, the taxpayer takes the smaller of his or her adjusted basis or the FMV of the property at the time of the change to business or rental use and then adjusts this amount for the period after the change in the property's use to arrive at a basis for loss.

[depreciation recapture applies]

If the sale price is between the lower FMV (for loss) and higher adjusted basis (for gain), there may be no taxable gain or deductible loss.

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Miscellaneous Basis Info

Self-built homes

Business built buildings and structures

Investment property and IRC 266

IRAs

Non-qualified annuities

Life insurance

NUA

Inheriting business

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"Never assume. Question everything. Always look beyond the obvious" C.J. Tudor

- When was asset/property acquired?
- How was it acquired? [Bought, gift, inherited, exchanged…]
- Is it a capital asset (personal) or business asset…or a mix while being held?
- Has there been improvements made ($$) since acquired?
- Damage/losses, wear & tear? (that's qualified)
- Is holder the sole owner?

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End of our overview

Comments, Questions?

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Reference Listing

Reference	Decription
IRC 1001	Determination of amount of and recognition of gain or loss
IRC 1011	Adjustied basis for determining gain or loss
IRC 1012	Basis of property-cost
IRC Section 1.1012-1	Basis of Property
Publication 551	Basis of Assets
Publication 523	Selling Your Home
Hoang v Commissioner	11th Circuit 2014 PTC 216 May 2, 2014
IRC 1015	Basis of property acquired by gifts and transfers in trust
IRC Section 1.1015-1	Basis of property acquired by gift after December 31, 1920
IRC Section 1.1015-4	Transfers in part a gift and in part a sale
IRC Section 1.1015-5	Increased basis for gift tax paid
IRS Ltr Ruling 200801009	Disposition of Certain Life Estates
IRC 83	Property transferred in conection with performance of services
IRS Rev Notice 2018-97	IRC 83(i) Election
IRC 1014	Basis of property acquired from a decedent
IRC Section 1.1014-1	Basis of property acquired from a decedent
IRC Section 1.1014-3	Other basis rules
IRC 2031	Alternate valuation
IRS Rev Ruling 2023-2	Irrevocable Trust Inherited Property
SEC Rule 10b-10	Confirmation of transaction
IRC 305	Distributions of stock and stock rights
IRC Section 1.305-1	Stock dividends
IRC Section 1.305-4	Distributions of common and preferred stock
IRC 306	Dispositions of certain stock
IRC 307	Basis od stock and stock rights acquired in distributions
IRS Rev Ruling 71-350	Basis of Stock Dividends
IRS Rev Ruling 72-71	Rights and Warrants
IRC 1276	Disposition gain representing accrued market discount treated as ordinary income
IRC 171	Amortizable bond premium
IRC 1271	Treatment of amounts received on retirement or sale of exchange of debt instruments
IRC 1091	Wash Sales
IRC 1223	Holding period of property
Simonsen v Commissioner	150 TC No 8 March 2018

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Reference Listing

Reference	Decription
IRC 351	Transfer to corporation controlled by tranferor
IRC 1221	Capital asset defined
IRC 1231	Property used in the trade or business and involuntary conversions
IRC 357	Assumption of liabilities
IRC Section 1.351-2	Receipt of preoperty
IRS Rev Ruling 76-123	IRC 351
IRC 358	Basis to distributees
IRC 362	Basis to corporations
IRC 301	Distribution of property
IRC 368	Definitions relating to corporate reorganizations
IRC 721	Nonrecognition of gain or loss on contribution
IRC 722	Basis of contributing partner's interest
IRC 752	Treatment of certain liabilities
IRS Rev Rung 1984-15	Basis of Contibuting Partner's Interest
IRC 704	Partner's distributive share
IRC 705	Determination of basis of partner's interest
IRC 742	Basis of transferee partner's interest (See IRC 1011)
IRC 734	Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction
IRC 743	Special rules where section 754 election or substantial built-in-loss
IRC 754	Manner of ellecting optional adjustment to basis of partnership property
IRC 707	Transaction between partner and partnership
IRC 731	Extent of recognition of gain or loss on distribution
IRC Section 1.266-1	Taxes and carrying charges chargable to capital account and treated as capital items
IRC Section 1.1060-1	Special allocation rules for certain assest acquisitions
IRC 338	Ceratin stock purchases treated as asset acquisitions

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Digital Assets Reference Listing

Reference	Description
IRC 1012	Basis of property-cost
TD 10000 July 9, 2024	Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions; Final Rule
IRS Rev Ruling 2019-24	Crypotcurrentcy; tax treatment of hard forks
IRS Rev Ruling 2023-14	Cryptocurrency; gross income implications of staking cryptocurrency native to a proof-of-stake blockchain.
IRS Notice 2014-21	Virtual currency; application of existing general tax principles
IRS Notice 2023-34	Virtual Currency; Modification of Notice 2014-21
IRS Notice 2025-7	Digital asset held by broker; alternative methods of identifyinh units sold, disposed or, or transferred
IRS Notice 2026-20	Digital assets; alternative methods for making an adequate identification of units held by a broker; temporary relief.
IRS Rev Proc 2024-28	Allocation of unused basis of digital assets to digital assets held within each wallet or account of the taxpayer as of January 1, 2025
IRS Rev Proc 2025-31	Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
CCM 202124008/Ltr Ruling 202124008	Applicability of Section 1031 to Exchanges of Bitcoin (BTC) for Ether (ETH), Bitcoin for Litecoin (LTC), and Ether for Litecoin
CCM 202114020/Ltr Ruling 202114020	Bitcoin (BTC)/Bitcoin Cash (BCH) Hard Fork
CCM 202316008/Ltr Ruling 202316008	Digital Assets-Change of Consesus Mechanism

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Recent Tax Cases

Presented by:
Joel Crouch

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CASES

- **Buller v. Commissioner**, 152 F.4th 84 (2d Cir. 2025), **Oquendo v. Commissioner**, 148 F. 4th 820 (6th Cir. 2025), and **Culp v. Commissioner**, 75 F.4th 196 (3d Cir. 2023). In Buller and Oquendo, the Second and Sixth Circuits reversed the Tax Court's dismissal of petitions that were filed more than 90 days after the IRS mailed the notice of deficiency. These circuits joined the Third Circuit (see Culp) in holding that the deadline in section 6213(a) is not jurisdictional and remanded the cases to the Tax Court to determine whether equitable tolling should apply.
- **North Wall Holdings, LLC v. Commissioner**, 165 T.C. No. 9 (2025). The Tax Court held that equitable tolling does not apply to hold open the prescribed periods set forth in section 6226(a) or (b) for filing a TEFRA petition.

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CASES

- **Cano v. Commissioner**, T.C. Memo 2025-65. The Tax Court dismissed an individual's deficiency case, not because the petition was untimely as asserted by the IRS but because the IRS failed to show that a valid notice of deficiency was issued, finding that the notice was mailed to an incorrect address and there was no evidence it was received in order for the individual to file a timely petition.
- **Moxon Corp. v. Commissioner**, 165 T.C. No. 2 (2025). The Tax Court, in a division opinion, held that tax penalties assessed against a corporation were not abated by the IRS's failure to send a notice of deficiency to the correct address because, although that failure abated the tax deficiency, deficiency procedures do not apply to the penalties and didn't result in abatement of the penalties.
- **United States v. Greenwald**, No 2:23-cv-04100 (S.D. Ohio 2025). A good reminder that making a qualified settlement offer to the IRS can result in the awarding of attorney's fees and, most importantly, sending letters to the IRS, especially qualified settlement offers, by certified mail is extremely important.

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CASES

- **JM Assets LP v. Commissioner**, 165 T.C. No. 1. The Tax Court, in a reviewed opinion, found that a notice of final partnership adjustment (FPA) was untimely, holding that to the extent reg. section 301.6235-1(b)(2)(A) extends the period of limitations longer than the time prescribed in section 6235(a)(2), it is contrary to the statute and invalid.
- **Stenson Tamaddon v. IRS**, No. 2:24-cv-01123 (D. Ariz. 2025). A U.S. district court granted a government motion for summary judgment, holding that Notice 2021-20, which provides IRS guidance on the employee retention credit, is not improper legislative rulemaking under the Administrative Procedure Act, noting that while the notice may have practical effects, it does not carry the force of law.
- **Lamstall Holdings, LLC v. Commissioner**, Nos. 12448-20 and 13268-20. On September 24, 2025, the Tax Court entered an order denying the IRS's request that the court admit the metadata associated with "the native format electronic documents contained within" a folder on a thumb drive the court had admitted.

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CASES

- **JPM Restaurant LLC v. United States**, No. 1:24-cv-357 (E.D. Tenn. 2025). A U.S. district court denied a motion for partial summary judgment filed by a company seeking a tax refund arising from employee retention credits, holding that after the IRS referred the case to the Department of Justice, the agency lost its power to compromise liabilities and concede claims, which voided the IRS's subsequent approval of some credits.
- **Huang v. United States**, No. 3:24-cv-062998-RS (N.D. Cal. 5/28/25). Court finds in favor of taxpayer on TurboTax Form 3520 penalty defense.
- **Mukhi v. Commissioner**, Tax Court Dkt. No. 4329-22L. The case involves undisclosed foreign entities and bank accounts in Liechtenstein. The IRS is requesting a subpoena be issued to Yahoo and Google for emails between the taxpayer and his foreign advisors.

CASES

- **Silver Moss Properties LLC v. Commissioner**; No. 10646-21; 165 T.C. No. 3. The Tax Court, denying a partnership partial summary judgment in its challenge to the disallowance of a charitable deduction for a conservation easement donation, held that the Seventh Amendment does not bar the Tax Court from adjudicating section 6663(a) fraud penalties without providing a jury trial.
- **United States v. Sharnjeet K. Sagoo**; No. 4:24-cv-01159 (N.D. Tex. 2025). A U.S. district court dismissed the government's suit against an individual to reduce assessed FBAR penalties to judgment and collect the penalties, holding that the FBAR penalty assessment violates the Seventh Amendment because she was entitled to a jury trial before assessment.
- **HDH Group, Inc. v. United States**, WL 2711877 (W.D. Pa. 2025). In a refund suit, the U.S. district court rejected the taxpayer's argument that the Seventh Amendment requires a jury trial before imposition of promotor penalties under section 6700.

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CASES

- **Soroban Capital Partners LP v. Commissioner**, 161 T.C. 12, and **Soroban Capital Partners LP v. Commissioner**, T.C. Memo 2025-52. The Tax Court held that a limited partnership could not exclude the income of three limited partners under section 1402(a)(13), finding that the limited partners were effectively general partners because of their essential role in generating income for the partnership, their exercise of managerial control, and lack of capital contributions. These cases are currently pending on appeal in the Second Circuit.
- **Denham Capital Management LP v. Commissioner**, T.C. Memo 2024-114. Similar conclusion as *Soroban*. Currently pending on appeal in the First Circuit.
- **Sirius Solutions, LLLP v. Commissioner**, Docket No. 30118-21. In the Tax Court, Petitioners stipulated to a decision in the IRS's favor since it was a foregone conclusion. The case is currently pending in the Fifth Circuit, and oral arguments were presented earlier this year.

CASES

- **Potts v. Commissioner**, T.C. Memo. 2025-108. An Arizona couple failed to show that they incurred a $2 million theft loss under Turks and Caicos law stemming from their purchase of shares in a casino slot machine company.
- **Shleifer v. United States**, No. 9:24-cv-80713 (S.D. Fla. 2025). A U.S. district court denied a couple a $1.9 million tax refund, finding that they couldn't claim a depreciation deduction for an interest in a private jet owned by their limited liability company as a loss from a trade or business and the variance doctrine precluded the court from considering a claim for the deduction as an unreimbursed partnership expense.
- **Merriman v. United States**, No. 4:25-cv-00476 (E.D. Mo. 2025). District court held that a federal tax lien remained attached to a property after the previous owners, whose unpaid taxes triggered the lien, had sold the property and retained no ownership interest in it

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CASES

- **Estate of Rowland v. Commissioner**, T.C. Memo. 2025-76. The Tax Court, in a dispute over whether an estate could claim the deceased spousal unused exclusion, held that the decedent's wife's estate did not file a timely estate tax return, making it ineligible to claim the portability election under section 2010(c)(5)(A) and it did not qualify for the safe harbor in Rev. Proc. 2017-34.
- **Murrin v. Commissioner**, No. 24-2037 (3d. Cir. August 18, 2025). Third Circuit upholds Tax Court's ruling that the fraudulent intent of a preparer keeps the ASED open under section 6501(c)(1) even if there was no fraudulent intent by the taxpayer.
- **Estate of Barbara Galli, et. al. v. Commissioner**, No. 7003-20 and 7005-20. Tax Court grants summary judgment for an estate, finding that a transfer from a mother to her son prior to her death was not a gift.
- **United States v. Estate of Whittemore**, No. 1:24-cv-11670 (D. Mass 2025). District court determined that the wife of an individual who died intestate was the de facto executor and representative of his estate responsible for defending in a collection suit concerning his unpaid tax liability.

CASES

- **Veribest Vesta LLC v. Commissioner**, Dkt. No. 9158-23 (Tax Ct. 2025). The Tax Court, in a bench opinion, held that a partnership was entitled to a $111,000 charitable contribution deduction for a conservation easement donation on property that contained an old granite quarry instead of the $20.4 million the partnership claimed and, as a result, a gross valuation misstatement penalty applies.
- **Palmwood Holdings LLC v. Commissioner**, No. 17489-23. In an order granting the IRS partial motion for summary judgment, a Tax Court judge warned attorneys of a conservation easement partnership to think twice before accusing an IRS attorney of lying about when supervisor approval was obtained for asserting a fraud penalty.
- **Agate Holdings, LLC v. Commissioner**, Dkt. No.1464-24 (Tax Court 2026). The IRS agreed that a partnership was entitled to a $48.4 million conservation easement deduction after the partnership accused the agency of asserting a fraud penalty to fix a statute of limitations problems caused by a backdated form.
- **Olivian Holdings, LLC v. Commissioner**, Dkt. No. 17137-23. (Tax Court 2026). The IRS conceded that a partnership is entitled to a nearly $70 million conservation easement deduction and is not liable for a fraud penalty because the notice of final partnership adjustment was issued too late.

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CASES

- **Mammoth Cave Property LLC v. Commissioner**, 166 T.C. No. 4. An IRS notice of final partnership adjustment to a conservation easement partnership was still valid even though the proposed notice had been addressed to the wrong partnership representative.
- **Jones Bluff LLC v. Commissioner**, 166 T.C. No. 6. Partnerships subject to the centralized audit regime lack standing to argue that the regime violates their partners' Fifth Amendment due process rights.
- **McLaws Bay LLC v the National Wild Turkey Federation Inc**. No. 4:25-cv-00128 (S.D. Ga 2026). Denied tax deductions spur quest to undo conservation easement.

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CASES

- **Blomquist Holdings LLC v. Commissioner**, 165 T.C. No. 6 (2025). A group of syndicated conservation easement investors unhappy with an IRS settlement approved by the tax matters partner gave no compelling reason to grant their last-minute move to participate in the case.
- **Ozark Land Holdings LLC v. Commissioner**, No. 14602-23 (2025). A conservation easement donor does not have standing to challenge the partnership audit procedures of the BBA on behalf of the partners and did not demonstrate how its partners' due process rights have been violated by the act.
- **Rock Cliff Reserve LLC v Commissioner**, T.C. Memo 2025-73. Disqualified appraisals sink $62 million in easement deductions.
- **Riddle Aggregates LLC v. Commissioner**, Dkt. No. 31104-21. The IRS withdrew its appraisal expert's rebuttal reports during a conservation easement trial after opposing counsel asserted that the reports contained errors generated by artificial intelligence.

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CASES

- **Iglinski v. United States**, No. 2:25-cv-00895 (E.D. Wis. 2025). A district court held that the filing of an amended return, when an amended return reports additional tax, can effectively extend the time by which a taxpayer can file a refund claim.
- **United States v. Long**, No. 2:24-cv-00598 (D.Utah 2025). The power of the assessment lien, sometimes known as the secret lien, can upend the life of the spouse passing title to someone carrying around unpaid federal taxes.
- **United States v. Phelps**, No. 7:25-cv-00241 (E.D.N.C. 2025). Suit to reduce tax liability to judgment is dismissed based on insufficient pleadings.
- **Walker v. Commissioner**, T.C. Memo 2026-4. Tax Court invalidates assessment of advance premium tax credit.

CASES

- **Gottesman v. Commissioner**, T.C. Memo 2025-94. A doctor's fear that returning to the United States would lead to his arrest on a tax evasion charge did not justify his failure to participate in a related ax liability case.
- **Kwong v. United States**, 179 Fed. Cl. 382 ((Fed. Cl. 2025). A decision opens the door to potential refund cases.
- **Infinity Cycle, LLC v. Commissioner**, Dkt. No. 9369-24. A Tax Court petition filed by a partnership's attorney rather than its designated representative, who had suffered a disabling illness, did not deprive the court of jurisdiction.
- **Kolar v. Commissioner**, T.C. Memo 2026-15. A taxpayer developing a beef cattle herd on land that had been in his family for over 100 years was serious about ranching and so could fully deduct his related expenses.

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Joel counsels and advises businesses, wealthy individuals and families about their most demanding tax planning, estate planning and IRS controversies. He often works with tax professionals and financial specialists to help develop solutions for their clients. Joel is a Partner in the firm and is Board Certified in Tax Law by the Texas Board of Legal Specialization.

Joel has been recognized as one of the best in his field by *Texas Monthly and Law and Politics* magazines by being named a Texas Super Lawyer from 2003 through 2026. He has also been named one of the Best Lawyers in Dallas by *D Magazine* for the years 2012-2026. Mr. Crouch has been recognized by *Best Lawyers in America*® in Tax Law for the years 2015-2026. Mr. Crouch was named the *Best Lawyers* 2022® Tax Law "Lawyer of the Year" in Dallas/Ft. Worth.

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Criminal Investigations

Presented by:
Christopher Altemus

Christopher J. Altemus Jr.

Christopher J. Altemus Jr. was selected as the **Special Agent in Charge (SAC) for the Criminal Investigation (CI) Dallas Field Office** in August 2021. He is responsible for planning, directing, and evaluating activities of CI employees in the states of Arkansas, Oklahoma, and North Texas and reports directly to the Director, Field Operations for the Southern area.

Prior to his selection as the Dallas Field Office SAC, Christopher served as the Director of the National Criminal Investigation Training Academy (NCITA) for IRS Criminal Investigation.

Criminal Investigation's top law enforcement priorities are designed to promote tax compliance, address emerging areas of fraud, and meet the needs of the law enforcement community by supporting national crime initiatives. The Criminal Investigation Program Strategy is comprised of three interdependent programs: Legal Source Tax Crimes; Illegal Source Financial Crimes; and Narcotics Related Financial Crimes/Counterterrorism. These three areas are mutually supportive, and they encourage utilization of all statutes within CI's jurisdiction, the grand jury process, and enforcement techniques to combat tax, money laundering, and currency crime violations.

Christopher began his law enforcement career as a special agent assigned to the Philadelphia Field Office in July 2002. He has since served in numerous leadership positions, Including Supervisory Special Agent in the Raleigh Post of Duty, Senior Analyst Operations Policy & Support, Assistant Special Agent in Charge of the Charlotte Field Office, Acting Special Agent in Charge of the Nashville Field Office.

He holds a Bachelor of Science degree in Accounting from Saint Joseph's University.

Trusts, Triggers, and Taxes

Presented by:
Antonio Glenn

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AMG COUNSEL | TAX PROFESSIONALS SERIES | CLE PRESENTATION

Trusts, Triggers, and Taxes:

Where Administration Meets Audit

Presented by Antonio Glenn, Esq.

AMG Counsel | Texas · Maryland · U.S. Tax Court · U.S. Supreme Court

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Where Law Meets Strategy

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TODAY'S AGENDA — COMPREHENSIVE TRUST TAX SERIES

01	**Trust Fundamentals** *Revocable vs. irrevocable — what triggers matter*	08	**Portability Deep Dive** *Form 706 DSUE election — requirements & traps*
02	**Taxable Triggering Events** *Grantor death, modification, termination & distributions*	09	**K-1 Pitfalls for Beneficiaries** *The most mishandled document in trust practice*
03	**Trust Accounting vs. Taxable Income** *DNI, FAI, and why they diverge*	10	**IRS Audit Defense & Representation** *Before the Revenue Agent arrives*
04	**Form 1041 Key Lines & Common Errors** *Where returns go wrong*	11	**Foreign Trusts & FBAR/FATCA** *Reporting obligations & penalties*
05	**Transfer Tax Triggers** *Gift, estate & GST tax — when the clock starts ticking*	12	**Decanting & Modifications** *Tax consequences of trust surgery*
06	**Community Property & Trusts** *Texas-specific rules + trust interaction*	13	**Planning Strategies & Key Takeaways** *Proactive approaches*
07	**Estate Tax Returns (Form 706)** *Taxable estates, audit exposure & pitfalls*		

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01 | TRUST FUNDAMENTALS

REVOCABLE TRUSTS	IRREVOCABLE TRUSTS
Grantor retains full control & ownership	Grantor surrenders dominion and control
100% included in gross estate (§2038)	Potential removal from taxable estate
No completed gift — no gift tax on transfers	Completed gift → gift tax applies (§2511)
All income taxed to grantor (§676)	Tax depends on grantor trust status §671–679
Becomes irrevocable at grantor's death	Separate taxpayer — EIN at creation
New EIN required; §645 election available	Modifications can trigger new tax events
Avoids probate — does NOT avoid estate tax	Key: grantor trust vs. non-grantor trust

Key Principle: The type of trust determines who pays the tax, when, and at what rate — every administrative decision has a tax dimension.

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02 | TAXABLE TRIGGERING EVENTS

Grantor Death	Trust Modification	Trust Termination
Revocable → irrevocable; §1014 step-up in basis; full estate inclusion; new EIN; §645 election window (2 yrs); income in respect of decedent (IRD) items get no step-up	Material changes may create gift tax event, income realization, or alter grantor trust status under §675–677; reciprocal trust doctrine risk	DNI flows to beneficiaries in final year; excess deductions pass out on K-1 Box 11; NOL & capital loss carryovers pass to beneficiaries; final Form 1041

Distributions	Asset Sales Inside Trust	Power Lapses / Releases
Taxable to beneficiaries to extent of DNI (§662); throwback rules for accumulation distributions from foreign trusts (§665–668); character passes through	Grantor trust: gain on grantor's 1040, no recognition between trust and grantor (Rev. Rul. 85-13); non-grantor trust: 37% bracket at $15,200 of income	Crummey lapse: 5-or-5 rule (§2514(e)); lapse beyond 5-or-5 = taxable gift; general power release triggers estate/gift inclusion; Holman traps

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03 | TRUST ACCOUNTING INCOME vs. TAXABLE INCOME

One of the most misunderstood concepts in trust administration — and a frequent source of K-1 errors, fiduciary surcharge claims, and IRS adjustments.

FIDUCIARY ACCOUNTING INCOME (FAI)

- Defined by the trust document & state UPIA law
- Determines what income beneficiary is ENTITLED to receive
- Interest, dividends, rents → typically income
- Capital gains → typically principal (corpus)
- Trustee discretion can reallocate under UPIA §104
- Texas: Texas Trust Code §116 governs allocation
- FAI ≠ Taxable Income — critical distinction

DISTRIBUTABLE NET INCOME (DNI)

- Tax concept — caps trust deduction for distributions
- Limits amount taxable to beneficiaries (§643(a))
- = Taxable income + tax-exempt income + net cap gain allocated to income – §643(a) adjustments
- Character of income passes through proportionally
- DNI can include capital gains if allocated to income
- Separate DNI calculation for simple vs. complex trusts
- DNI governs K-1 reporting — not FAI

COMMON DIVERGENCE TRAPS

- Capital gains taxed to trust but not distributed → no DNI
- Tax-exempt income in DNI but not taxable income
- Depreciation: different allocation rules for tax vs. accounting
- Depletion: typically allocated to income under §611
- Trustee pays out FAI but DNI is lower → beneficiary over-reports
- Underpayment of estimated tax — DNI miscalculation
- Passive losses suspended at trust level ≠ accounting loss

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04 | FORM 1041 — KEY LINES & COMMON ERRORS

Form 1041 is the income tax return for estates and trusts. These are the lines where errors most frequently occur — and what the IRS looks for.

HIGH — **Line 1 — Interest Income**

Must include OID and market discount; grantor trust: report on grantor's 1040 instead, attach statement

HIGH — **Line 2b — Qualified Dividends**

Must be properly separated from ordinary dividends; pass-through character to beneficiaries via K-1 Box 2b

HIGH — **Line 4 — Net Capital Gain/Loss**

Capital gains typically taxed at trust level unless allocated to DNI by trust instrument or state law — major trap

MED — **Lines 10–15 — Deductions**

Post-TCJA: §67(g) suspends misc. itemized deductions 2018–2025. §642(b) exemption: $300 complex, $100 simple trust

HIGH — **Line 18 — Income Distribution Deduction**

Lesser of DNI or actual distributions. Overstatement shifts tax improperly to beneficiaries — IRS adjusts both return and K-1s

MED — **Line 23 — Tax (Schedule G)**

Apply compressed trust brackets. Check AMT (Form 4626). Net Investment Income Tax (§1411): 3.8% on undistributed NII

HIGH — **Schedule B — Income Distribution**

Tier 1 vs. Tier 2 distributions must be correctly ordered. Failure to properly tier distributions misallocates DNI among K-1s

HIGH — **Grantor Trust Attachment**

If grantor trust: file informational return OR attach grantor trust statement to grantor's 1040. No separate tax. Wrong approach = IRS notice

Risk: RED = frequent IRS adjustment AMBER = common preparer error BLUE = technical trap

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05 | TRANSFER TAX TRIGGERS — GIFT, ESTATE & GST

GIFT TAX

- Completed transfer to irrevocable trust (§2511)
- Crummey lapse beyond 5-or-5 (§2514(e))
- Release of general power of appointment
- Below-market loans to trust (§7872)
- Reciprocal trust doctrine — mirror trusts

Annual exclusion: $19,000/donee (2025) | Lifetime: $13.99M

ESTATE TAX

- Grantor death — retained interests §2036/2038
- QTIP election failure on surviving spouse death
- GRAT: premature death before annuity term ends
- Full inclusion of revocable trust assets (§2038)
- §2035 transfers within 3 years of death

2025 exemption: $13.99M | Portability: Form 706 required | 2026 sunset risk: ~$7M

GST TAX

- Direct skip to skip person (grandchild, etc.)
- Taxable distribution from non-exempt trust
- Taxable termination — no non-skip persons remain
- §2632 automatic allocation — opt out for GRATs
- ETIP — postpones GST until inclusion period ends

2025 exemption: $13.99M | Flat rate: 40% | Allocation errors are irrevocable

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06 | COMMUNITY PROPERTY & TRUSTS — TEXAS-SPECIFIC RULES

Texas is a community property state. This fundamentally changes basis, ownership, and tax treatment of trust assets — especially at death.

CP FUNDAMENTALS IN TEXAS

- All income earned during marriage = community property (50/50)
- Property owned before marriage = separate property
- Gifts & inheritances received during marriage = separate property
- Tex. Fam. Code §3.001–§3.003 governs classification
- Commingling separate with community = transmutation risk
- Burden of proof: claiming separate property requires clear/convincing evidence

§1014(b)(6): THE STEP-UP ADVANTAGE

- At death: BOTH halves of community property get §1014 step-up
- Separate property: only decedent's half gets stepped up
- Example: CP asset worth $2M, basis $200K → stepped to $2M (both halves)
- Surviving spouse gets full step-up on their 50% too — huge advantage
- Common error: treating CP asset as separate — beneficiary loses 50% step-up
- Texas CPWROS (§112.051 TPC) — step-up at first death for all CP

TRUST INTERACTION TRAPS

- Transferring CP into separate revocable trust — may sever community character
- Joint revocable trust: both spouses' CP stays CP inside the trust
- Irrevocable trust funded with CP — both spouses must consent (§3.301)
- SLAT with CP: gifting CP to SLAT requires both spouses' consent
- Partition agreement (§4.102): converts CP to SP before trust funding
- IRS Rev. Rul. 87-98: CP in irrevocable trust — both halves may be includible

MARITAL DEDUCTION & CP

- QTIP election on CP is more complex — only decedent's ½ qualifies
- Credit shelter trust (bypass): must fund only with decedent's SP or CP share
- Funding bypass with CP requires spousal consent and partition
- Community property agreement (§4.001): convert all CP to SP for planning
- Texas CPWROS vs. traditional JTWROS — different tax results at death
- Maryland: separate property state — none of these CP rules apply

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07 | ESTATE TAX RETURNS (FORM 706): ISSUES & AUDIT EXPOSURE

Even non-taxable estates may face filing obligations. Taxable estates carry serious audit risk — and missed elections are irrevocable.

WHO MUST FILE FORM 706?

- Gross estate + adj. taxable gifts > $13.99M (2025)
- Portability election — MUST file even if no tax owed
- §2010(c)(5): portability requires timely Form 706
- Rev. Proc. 2022-32: late portability allowed within 5 years
- Non-resident aliens: separate threshold & Form 706-NA

COMMON AUDIT TRIGGERS

- Undervalued closely held businesses or real estate
- FLP/LLC discounts — IRS attacks §2036(a)(1) bona fide sale
- Deathbed transfers — §2035 three-year clawback
- Retained interests in trusts (GRATs, QPRTs) §2036/2036(a)(2)
- Charitable deductions — §2055 documentation failures

TRUST-SPECIFIC 706 ISSUES

- QTIP election: must be specific, irrevocable, timely
- QTIP election failure = full inclusion, no marital deduction
- Credit shelter trust funding formula → disputes at audit
- ILITs: §2042 incidents of ownership = full inclusion
- Revocable trust: confirm all schedules, situs & assets listed

PENALTIES & DEADLINES

- Statute of limitations: 3 years from filing (25%+ omission → 6 yrs)
- §6662: 20% accuracy penalty; 40% gross valuation misstatement
- IRS can revalue closely held assets — get qualified appraisals
- Texas: no state estate tax | Maryland: $5M exemption
- Protective claim for refund if estate litigation pending

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08 | PORTABILITY DEEP DIVE — FORM 706 DSUE ELECTION

Portability allows a surviving spouse to use the deceased spouse's unused exemption (DSUE). It is one of the most powerful — and most mishandled — elections in estate planning.

Spouse 1 Dies
Determine DSUE amount = exemption – taxable estate

File Form 706
Required even if estate is below taxable threshold

Timely Election
Due date of estate return (9 months + extensions)

DSUE Locked In
Surviving spouse can use DSUE on their return

REQUIREMENTS & MECHANICS

- §2010(c)(5): election made on timely filed Form 706
- DSUE = deceased spouse's applicable exclusion – taxable estate
- Surviving spouse uses DSUE first before own exemption
- DSUE is added to survivor's applicable exclusion amount
- If survivor remarries: prior DSUE is lost if new spouse dies first
- Multiple predeceased spouses: only most recent DSUE available

CRITICAL TRAPS & PITFALLS

- Missed filing deadline = permanent loss of DSUE — no exceptions (pre-Rev. Proc. 2022-32)
- Rev. Proc. 2022-32: estates under filing threshold have 5 years to elect
- Do NOT assume small estate = no 706 needed if portability is desired
- DSUE is not inflation-adjusted — stays fixed at death value
- 2026 exemption sunset risk: DSUE may be worth more or less depending on timing
- DSUE lost if surviving spouse makes taxable gifts before using it

PORTABILITY vs. BYPASS TRUST

- Bypass trust (credit shelter): locks in GST exemption — portability cannot port GST
- Bypass trust: protects appreciation from survivor's estate — portability does not
- Portability: simpler, no trust administration cost, flexible for surviving spouse
- Bypass trust: more planning control, creditor protection, state estate tax planning
- Best practice: often use both — fund bypass trust AND elect portability
- Texas: no state estate tax — portability may be sufficient for many clients

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09 | K-1 PITFALLS FOR TRUST BENEFICIARIES

Schedule K-1 (Form 1041) passes trust income to beneficiaries — but it is one of the most mishandled documents in tax practice.

01 — K-1 Arrives Late or Not at All

Trustees often delay issuing K-1s. Beneficiaries may miss filing deadlines. Advisors must request K-1s early and calendar extension deadlines. Late K-1 requires extension for beneficiary's individual return.

02 — Income Character Misreported

Box 1 (interest), Box 2 (ordinary divs), Box 3 (qualified divs), Box 4A (net capital gain) — each taxed differently. Misclassifying qualified dividends as ordinary or capital gain as ordinary income is a common costly error.

03 — Post-TCJA: Deductions Now Non-Deductible

§67(g) (2018–2025) suspends miscellaneous itemized deductions at beneficiary level. Trust admin expenses that once flowed through on K-1 are now worthless to individual beneficiaries. Warn clients proactively.

04 — DNI Allocation Errors

Trustee must properly tier DNI: Tier 1 (mandatory) before Tier 2 (discretionary). Incorrect allocation shifts tax burden among beneficiaries and exposes trustee to surcharge claims and IRS adjustment on Form 1041 and K-1.

05 — Passive Activity & At-Risk Rules

K-1 items from trust may include passive income/loss from partnerships, S corps, or rental activity. Beneficiary must track §469 passive limits and §465 at-risk rules. Passive losses from the trust cannot offset active income.

06 — Final Year K-1 — Excess Deductions

In the trust's final year, excess deductions (Box 11) pass to beneficiaries as above-the-line deductions on Schedule 1 (Line 24k). Many advisors miss this. Also: NOL and capital loss carryovers pass out in the final year only.

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10 | IRS AUDIT DEFENSE & REPRESENTATION

Estate and trust audits are specialized, high-stakes proceedings. Knowing the IRS's playbook — and your client's rights — is the first line of defense.

WHAT TRIGGERS A TRUST/ESTATE AUDIT

- Large income distribution deduction relative to trust income
- Capital loss or NOL carryover from prior years
- Significant charitable deductions (§642(c)) — documentation required
- Related-party transactions — trustee is also a beneficiary
- Inconsistency between Form 1041 and beneficiary K-1 returns
- Valuation discounts on closely held assets (real estate, FLPs)
- High administrative expense deductions relative to trust size

YOUR RIGHTS IN AN AUDIT

- Taxpayer Bill of Rights (Pub. 1) — know and assert these
- Right to representation by attorney, CPA, or enrolled agent
- Right to record interview (§7521(a)) — always record
- IDR (Information Document Request) — respond timely, precisely
- Do NOT provide more than what is asked — scope creep is real
- 30-day letter: right to appeal to IRS Appeals before Tax Court
- U.S. Tax Court: de novo review — Antonio Glenn admitted

COMMON AUDIT ADJUSTMENTS

- Income distribution deduction (Line 18) overstated → tax shifted back to trust
- Capital gains included in DNI without document or state law authority
- Deduction for trustee fees disallowed — related party, not arm's-length
- Estate deduction for 706 values adjusted after IRS revaluation
- §6662 accuracy penalty: 20% of underpayment; waived with reasonable cause
- Fraudulent returns: §6663 civil fraud penalty — 75% of underpayment

BEST PRACTICES FOR ADVISORS

- Document every distribution decision with written trustee resolution
- Retain third-party appraisals for all closely held assets
- Reconcile Form 1041 to K-1s before filing — IRS matches automatically
- File protective claims for refund in contested estate litigations
- Advise clients to preserve all trust records for 7+ years
- Coordinate with estate attorney before responding to any IDR
- Know when to escalate to Tax Court vs. settle at Appeals

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11 | FOREIGN TRUSTS, FBAR & FATCA REPORTING

Foreign trust reporting is one of the highest-penalty areas of U.S. tax law. Non-compliance is common — and expensive.

IS IT A FOREIGN TRUST?

- §7701(a)(30)(E): U.S. trust = court test + control test
- Court test: U.S. court must be able to exercise primary supervision
- Control test: U.S. persons must control all substantial decisions
- Fail either test → foreign trust for U.S. tax purposes
- Common trap: offshore trustee or foreign protector = foreign trust
- Foreign trust classification triggers entire separate reporting regime

FORM 3520 & 3520-A

- Form 3520: U.S. person reporting transfers to/distributions from foreign trust
- Form 3520-A: Annual information return — filed by foreign trust with U.S. owner
- Penalty for failure: greater of $10,000 or 35% of gross value of trust assets
- Additional 5% penalty per month for continued non-compliance
- §6677 penalties are non-discretionary — no reasonable cause exception historically
- Throwback rules (§665–668): tax on accumulated income + interest charge

FBAR (FinCEN 114)

- Required if U.S. person has signature authority or financial interest in foreign account > $10,000
- Includes beneficial interest in foreign trust holding foreign accounts
- Due April 15 (auto-extension to Oct 15) — filed electronically with FinCEN
- Willful failure penalty: greater of $100,000 or 50% of account balance per violation
- Non-willful: up to $10,000 per violation (Bittner: $10K per report, not per account)
- Criminal penalties possible: up to 10 years imprisonment for willful violations

FATCA (§1471–1474 / Form 8938)

- Form 8938 required for U.S. persons with foreign financial assets above threshold
- Threshold: $50K single/$100K joint (higher thresholds for taxpayers abroad)
- Foreign trust is a 'foreign financial asset' — report entire value
- Failure to file: $10,000 penalty + additional $10,000/30-day up to $50,000
- FBAR and 8938 overlap but are NOT duplicative — both may be required
- §6501(e)(1)(A): unlimited SOL if >$5,000 of unreported income from foreign assets

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12 | DECANTING & TRUST MODIFICATIONS

Decanting = trustee exercises distribution power to pour assets from old trust into a new trust with better terms. All 50 states + DC now have statutes.

Gift Tax Risk

- Shift of beneficial interests may be a taxable gift
- Safe harbor: no material change in beneficial interests
- Adding new beneficiaries or extending term = completed gift
- Eliminating beneficiary's interest = gift from that beneficiary

Income Tax Consequences

- Generally not taxable if same grantor trust status preserved
- Grantor → non-grantor trust = income recognition event
- Rev. Rul. 2004-64: reimbursement clause considerations
- Basis carries over — no step-up on decanting

Estate Tax Issues

- Trustee powers may create §2036/2041 inclusion risk
- Careful drafting to avoid general power of appointment
- IRS Notice 2011-101: guidance still pending (13+ years)
- Document decanting with formal trustee resolution

GST Exemption

- Decanting can jeopardize GST-exempt trust status
- Reg. §26.2601-1(b)(4): pre-1985 trust modification rules
- Separate exempt from non-exempt shares — never commingle
- Texas Trust Code §112.071-.087 governs Texas decanting

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13 | PLANNING STRATEGIES — PROACTIVE APPROACHES

SLAT / IDGT

Remove assets from estate while grantor pays income tax — tax-free gift to beneficiaries. Act before 2026 exemption sunset (~$7M). Grantor trust status = no gain on sales between grantor and trust.

§645 Election

Treat revocable trust as part of estate for 2 years post-death. Single Form 1041, fiscal year available, deductible admin expenses. File Form 8855 by due date of estate's first return.

GRAT Strategy

Annuity trust returns principal to grantor, passes appreciation GST-free. Rolling short-term GRATs (2-year) minimize mortality risk. Opt OUT of automatic GST allocation (Form 709 statement required).

GST Allocation

Automatically allocate exemption to direct skips; opt out for GRATs. Segregate exempt/non-exempt shares. Use formula allocations to protect against IRS revaluation. Allocation is irrevocable — get it right.

Basis Planning at Death

Revocable trust assets get full §1014 step-up. Swap power in irrevocable trust (§675(4)(C)): pull in low-basis assets before death. Grantor trust required. Huge value for CP clients under §1014(b)(6).

Trust Protector + Decanting

Vest limited modification powers in trust protector to change situs, trustee, or administrative terms. Combine with Texas decanting statute for flexibility. Properly documented = no gift/estate/income tax event.

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| COMMON PITFALLS — ADVISOR CHECKLIST

A practical checklist for every trust administration engagement:

- ☐ Has a new EIN been obtained if the grantor trust status changed or grantor died?
- ☐ Has the §645 election window been evaluated and filed if applicable?
- ☐ Have all Crummey notices been issued, documented, and retained for each premium/contribution?
- ☐ Is the trustee properly distinguishing FAI from DNI on distributions?
- ☐ Are capital gains being allocated to income by trust document or state law before including in DNI?
- ☐ Have §67(g) changes been communicated to beneficiaries (no misc. itemized deduction passthrough)?
- ☐ Has a Form 706 filing requirement been evaluated even if estate is below taxable threshold (portability)?
- ☐ Are all closely held asset valuations supported by qualified appraisals dated within 60 days of death?
- ☐ Has QTIP election been made specifically, irrevocably, and timely on Schedule M?
- ☐ Has GST exemption allocation been reviewed — especially for GRATs (opt-out required)?
- ☐ Are foreign accounts or trusts triggering FBAR (FinCEN 114) or Form 3520/3520-A/8938 obligations?
- ☐ Has the trust been reviewed for possible grantor trust toggle issues (retirement of power, etc.)?
- ☐ In Texas: has community property character been properly traced and documented for §1014(b)(6) step-up?
- ☐ Has the K-1 been reconciled to Form 1041 before filing?

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KEY TAKEAWAYS

1. **Know the trigger before the event —**
   Every change in trust status has a tax consequence. Proactive review prevents surprises at death, termination, or modification.
2. **Portability is not automatic — file Form 706 —**
   Even small estates must file if the surviving spouse needs DSUE. Rev. Proc. 2022-32 gives a 5-year window but don't wait.
3. **Community property in Texas = double step-up —**
   Both halves of CP get §1014(b)(6) step-up at first death. Misclassifying CP as separate property costs beneficiaries dearly.
4. **GST allocation errors are irrevocable —**
   Automatic allocation protects most situations but GRATs, CLTs, and formula gifts require deliberate opt-out. Get it right the first time.
5. **Foreign trust reporting is non-negotiable —**
   Forms 3520, 3520-A, FBAR, and 8938 carry massive penalties. A foreign trustee or protector alone can change the trust's classification.
6. **Reconcile Form 1041 to K-1s before filing —**
   The IRS matches K-1 amounts automatically. Discrepancies trigger automatic notices and audit risk for both the trust and its beneficiaries.

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Where Law Meets Strategy

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THANK YOU | QUESTIONS & DISCUSSION

Antonio Glenn, Esq.

Founder & Managing Attorney | AMG Counsel

Bar Admissions & Court Admissions:

- State Bar of Texas
- State Bar of Maryland
- United States Tax Court
- United States Supreme Court

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Data Breaches & EFIN Scams

Presented by:
Glenn Gizzi

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DATA BREACHES & EFIN SCAMS

How To Tell
What To Do
How To Prepare

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Why are we Here and What do we have to Say?!?

- **MFA – Multi Factor Authentication**
  - Are you using it
  - Does it go to your phone or email
    - Not email because if you are hacked, they can get the code
    - Better for the phone because you'll be alerted at night if someone is trying to fraudulently e-file
- **IP PINS – Identity Protection Pins**
  - Why doesn't everyone of your clients have one
  - ID.me is not that hard unless using old technology or unable to use technology
- **E-Services – Monitoring your PTIN/EFIN Activity**
  - Does the number of returns filed with your software match the amount IRS has received
  - During the filing season it's best to check several times a week and after April 15 once a week

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By the end of this session, attendees will be able to:

- Identify **real-life threats** targeting tax professionals, including data breaches, phishing, ransomware, and insider threats
- Recognize **common entry points for attackers** and weak spots in tax practices such as EFIN scams and phishing emails
- Understand how the IRS and its various departments respond to tax-related cyber threats, scams and data breaches
- Apply practical steps to **prevent, detect, and respond** to security incidents
- Learn where to find the tools to build a **Written Information Security Plan** (**WISP**) in case of a data breach
- Know how to report incidents and access **IRS resources and support**

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How Criminals Get In: Phishing & Social Engineering

SCAMS REPORTED TO PHISHING@ IRS.GOV

NEW "CLIENT" & EFIN SCAMS

FRAUDSTERS POSING AS TAX PRO OR SOFTWARE COMPANIES

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"Transcript Viewer" malicious emails/EFIN SCAM

IRS Taxpayer Correspondence Unit
nicoli@hiskp.uni-bonn.de
Reply | Forward | Archive | Spam | Delete | More
To nicoli@hiskp.uni-bonn.de <nicoli@hiskp.uni-bonn.de>
10:22 AM
Inquiry Regarding Your 2025 Filings

IRS

Notice Regarding Returns Filed Under Your EFIN

Dear Tax Preparer,

We have identified certain activities associated with tax returns filed under your EFIN that require your review. Please refer to the attached list for details. Additional information is available through the IRS Transcript Viewer.

Click the link below to download the Transcript Viewer:

Access Transcript Viewer

We kindly request that you review the information at your earliest convenience.

IRS Support Team

If you have a specific concern about your client's tax situation, call the IRS Practitioner Priority Service 1-866-860-4259

ME = Montenegro

Also unofficially used and marketed as a domain hack

hxxps://l7g8mymy[.]r[.]us-east-1[.]awstrack[.]me/L0/https:%2F%2Ftax-filevault[.]com/1/0100019c7cce24f9-0ae773ac-e634-4cb5-8c42-8d00a7773bb2-000000/S6Z8BZ5zjvlzjY_6bqdxkGpKTKc=466

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"New Client" scam for 2026

From: Cast Crane <qmardan1@uni-bonn.de>

Sent: Tuesday, February 17, 2026 1:00 PM

To: [REMOVED]

Subject: Tax Filing Assistance Inquiry

Thank you for your email, and please accept my apologies for the delayed response. I have recently returned home following a successful thyroidectomy and am currently recovering.

Last year, I prepared my taxes independently but did not receive the maximum refund, which led me to seek professional assistance this year. I am seeking your support with our 2025 tax filing.

For security purposes, I will securely provide all required documents including the W2 and 1098 forms for both my wife and me only after our Zoom discussion has been completed.

Below is the Zoom private Datto RRM link. This allows you to place a video call or phone call to me directly at your convenience without the need to set up a meeting, calendar invitation, day, or date.

I look forward to your response.

Best regards,

Cast Crane **https://www.zoom.us/j/547389/private/meeting/dattormm**

Forestry Specialist **hxxps://zoommeetingdattormm[.]b-cdn[.]net/AgentSetup_ZoommeetingDattoRmm[.]exe**

Link looks real and real domain, Datto, but not when you look at where it brings you (in RED)

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Who and Where Gets Breached

So as of June 1, for the 2026 tax year:

Out of 905 tax professionals:

CPA - 364

EA's - 144

Other (non credentialed) - 397

Top 5 States with reported breaches:

CA – 69

FL – 35

TX – 32

NY – 26

IL – 20

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Real-Life Example

Phishing Email Breach at Small Tax Office

What Happened Next?

- Within hours, cybercriminals accessed the firm's tax software
- Over 40 client returns were altered and submitted with fraudulent refund information
- Refunds were directed to prepaid debit cards or fraudulent bank accounts
- Clients were locked out of their IRS accounts and began receiving 5071C verification letters

Outcome

- The firm reported the breach to the IRS and submitted all client TINs.
- Clients faced months of processing delays due to paper returns having to be filed.
- The firm had to replace their EFIN
- Over $180,000 in attempted refund fraud

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What To Do If You Experience A Breach

- Identify and Contain the Breach – Immediately isolate the affected systems to prevent further damage
- Contact the IRS by calling 202-317-4015 and choose option 1 for Data Breach or email us StakeholderLiaison@irs.gov
- Contact appropriate federal and state agencies which can be found at Data theft information for tax professionals | Internal Revenue Service
- Inform clients about the breach and provide guidance on protective measures
- Check for suspicious IRS Activity
- Review and update security policies and procedures to prevent future breaches
- Consider professional assistance from cybersecurity experts, insurance

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So, What Happens Next ???

One of our experienced analysts will contact the tax professional

Once we agree client data is at risk, we will ask the tax pro to send us a complete list of their clients

We will use this data to monitor incoming tax returns for fraudulent or identity theft activity

Once the tax pro has provided the necessary data, they will qualify for our practitioner relief programs.

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What can I tell my clients?

- Get an IPPIN (Identity Protection PIN); a 6 digit number that prevents a fraudster from filing their tax return.
- As of Jan 2021, any taxpayer that can verify their identity can obtain an IPPIN. IRS uses ID.ME for verification
- IPPIN is changed by IRS every January
- See www.irs.gov/IPPIN for more information

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What can I do for my practice?

- MFA (Multifactor Authentication). You need to use this each and every time you access your tax software.
- Keep your business and personal lives separate meaning don't use one computer for everything; it opens you up to the fraudsters.
- Make sure your anti virus/phishing/malware etc is always update.
- Use a Virtual Private Network (VPN)
- W I S P !!!

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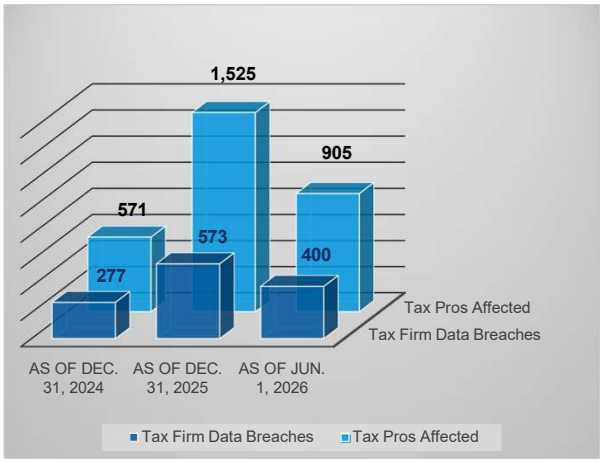
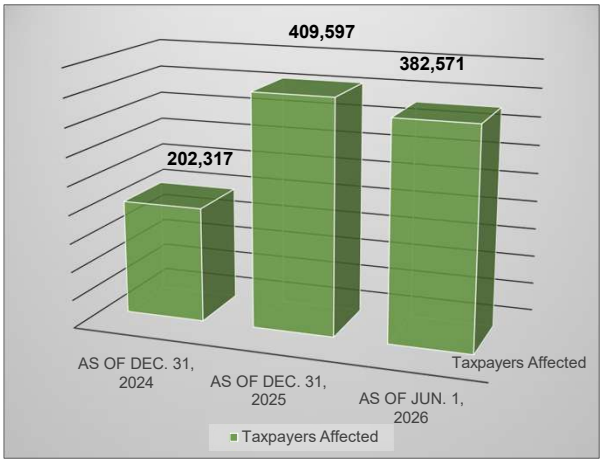
Data Breach Statistics

Data Breach 2024 versus 2025 versus 2026





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Resources – Data Breaches

- Tax pros: Know the potential signs of a data breach
- Stakeholder Liaison local contacts
- Identity theft information for tax professionals
- Data theft information for tax professionals
- Pub 5293 Data Security Resource Guide for Tax Professionals
- Pub 5708 Create a WISP
- Pub 5709 WISP
- Pub 4557: Safeguarding Taxpayer Data

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Tax Issues With Gaming and Gambling

Presented by:
Bryan Camp

Tax Alliance Conference 2026

Taxation Of Gaming

Presentation to the Tax Alliance

June 11, 2026

Professor Bryan T. Camp

Texas Tech University School of Law

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Objectives

1. Distinguish "gaming" from "gambling";
2. Distinguish "above the line" from "below the line";
3. Learn the awful truth about the Black Hole of §67(h);
4. Learn the Multiple Concepts of "Session"
5. Consider what evidence best helps your client before the IRS or in Court

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Structure of Deductions After OBBBA

1. Gross Income § 61

-mostly business-related deductions **§62**

2. Adjusted Gross Income (AGI):

- Choose b/t **§63(e)**

(a) Standard **§63(c) +** Privileged **§63(b)** or

(b) Itemized + Privileged

Two types of Itemized deductions **§67**

- Regular **§67(b)**
- Miscellaneous Subject to a 2% Floor **§67(h)**

3. Taxable Income

3

Proving Deductions – Two Requirements

1. receipts. proof of expenditure

2. nexus. must connect receipts to a legal basis for the deduction.

Cohan Rule:

4

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On Line Gaming: It's Not Gambling!

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Taxation of Gaming (Income Side)

Income: Report on Schedule 1, Line 8(j) "Activity not engaged in for profit income."

Key Idea: Income Gets Reported Separately from Deductions. Which creates a good news/bad news problem.

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Taxation of Gaming (Deduction Side)

Good News! §183 Allows Deductions of Hobby Expenses, ***as if*** Hobby was a Business

Bad News! §183 Deductions Are §67(a) Miscellaneous Itemized Deductions.

Zapped by §67(h)

Bottom Line: To get any deduction, must be a T/B!

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Taxation of Gambling (Income)

Same Key Ideas as for Gaming:

(1) ***gambling income is gross income under §61. Report on Schedule 1, Line 8(b) "Gambling."***

(2) Must Report Income Separately from Deductions. For Gambling Income, this creates a more complex good news/bad news problem.

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Taxation of Gambling (Deductions)

Good News! §165(d) allows deduction of "losses from wagering transactions"!

More Good News! It's a regular itemized deduction. Not zapped by §67(h). Report on ***Schedule A***. But TPs must choose itemizing or standard deduction. *E.g. Viso v. Commissioner*, T.C. Memo. 2017-154.

Bad News! OBBBA revised §165(d). It now permits TPs to deduct max of 90% of wagering losses and then only up to amount of wagering gains. Any unused deduction is lost forever.

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Taxation of Gambling (Deductions)

Even Worse News for Nonresidents! Nonresidents don't get the §165(d) deduction. Section 873 requires them to include U.S.-source gambling winnings as income, but they cannot deduct gambling losses against those winnings because §873(a) only permits deductions linked to ***"a trade or business within the United States."***

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Taxation of Gambling (Deductions)

More complex news....buried in the revised text!

165(d)(1) allows deduction for losses "equal to 90 percent of the amount of such **losses during such taxable year**." And allows a deduction of that amount "only to the extent of the **gains from such transactions during such taxable year.**"

Remember this highlighted text.

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Issues Common To Gaming & Gambling

1. Hobby v. Trade of Business (T/B)
2. What constitutes "income" for the income side?
3. Substantiating losses for the deduction side.

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Benefits of Being a T/B

1. Deductions go above the line, as part of determining gross income from the activity. Can potentially generate NOL (but watch out for the 3 in 5 rule in §183).

2. Other expenses *may* become deductible, per §162. :
   - ► Travel away from home (transportation, meals, lodging)
   - ► Education
   - ► Home Office

3. §873(a) *now* permits nonresidents §165(d) deductions.

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Restrictions on *Gambling* Professionals

► Before 2017 professional gamblers could deduct non-wagering business expenses to report NOLs. §165(d) restrictions did not apply to those expenses. *Mayo v. Comm'r*, 136 T.C. 81 (2011).

► In 2017 Congress amended 165(d), reversing *Mayo*. Non-wagering business expenses are now treated the same as losses and cannot generate an NOL from gambling. See CCA 202111012 .

► OBBBA made this change permanent. §165(d)(2).

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Distinguishing Hobby From T/B

Old Answer: Business meant providing goods or services to the public. Case law distinguished between a trade/business and activities *"entered into for profit but not connected with . . . business or trade." Whipple v. Commissioner*, 373 U.S. 193, 197 (1963).

Current Answer: if the activity is *"is pursued full time, in good faith, and with regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or business." Comm'r v. Groetzinger,* 480 U.S. 23, (1987):

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Distinguishing Hobby From Professional

Wobbly Table of Factors (WTF) Test: Treas. Reg. 1.183-2(b):

- Elements of personal pleasure. Too much fun?
- TP's financial status--e.g. other income?
- History of profit or losses from activity; 3-in-5 test.
- Manner in which TP carries on the activity; time; expertise; formalities.

See **Lesson From The Tax Court: *Yachts Are Pigs, TaxProf Blog (July 1, 2019)***

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Distinguishing Hobby From Professional

Examples:

- Compulsive gambler or professional?
  Myers v. Commissioner, T.C. Sum. Op. 2007-194.
- Expertise in in Feng Shui makes it professional?
  Le v. Commissioner, T.C. Sum. Op. 2010-94.

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What Constitutes Income?

►**Remember the highlighted text!** The **"losses during such taxable year**" are deductible "only to the extent of the **gains from such transactions during such taxable year.**" So....no "gain" no pain!

►Creates the Issue: What constitutes "gains from such transactions during such taxable year"? **That is, what can you net?**

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Constructive Receipt Confusion

Most TPs are cash method. They generally report income *actually* received during the year. Constructive receipt is a **timing** doctrine that tells cash method taxpayers they must report income in the tax year ***before*** the year actually receive it.

Treas. Reg. 1.451-2: "(a) General rule. Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time…."

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Constructive Receipt Confusion

You need some actual receipt in Year 2 in order to apply constructive receipt to Year 1: ***"The doctrine of constructive receipt was... conceived by the Treasury in order to prevent a taxpayer from choosing the year in which to return income merely by choosing the year in which to reduce it to possession."*** Hornug v. Commissioner, 47 T.C. 428 (1967)

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So What "Counts" As Gaming/Gambling Income?

1. Per Transaction Approach

2. Per Session Approach

3. Per Year Approach

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Per Transaction Approach

First IRS Answer: "Per Transaction". Rev. Proc. 77-29.

Dealing is "done" after each hand, each pull, each turn of the roulette wheel. Add all the winning transactions to get "wagering gains"; add up all the losing transactions to get "wagering losses."

Problems: (1) Misapplies constructive receipt. Taxes the churn. Cf. playing slots with tokens v. player cards; (2) Few TPs track or *can* track EVERY transaction!

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Per Session Approach

Second IRS Answer: Per Session. CCA 2008-11. Dealing is "done" when TP actually leaves casino. Walk in with $100, leave with $50. No "wagering gains" regardless of how many transactions during the session. Applied in *Shollenberger*, T.C. Memo. 2009-306. *LaPlante v. Commissioner*, T.C. Memo. 2009-226. Gives 'safe harbor' so TPs don'thave to track every transaction in a session.

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Per Session Approach

Problems with Per Session Approach:

(1) Still misapplies constructive receipt doctrine as to player accounts.

(2) Definition of "session" is arbitrary. (1) as applied to electronic accounts; (2) as applied to information reporting purposes. TPs must use calendar day but Casinos can use "gaming day." Treas. Reg. § 1.6041–10.

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Per Session Approach

A Closer Look: Notice 2015-21 applies to slot machine play. "Session" starts with the first wager on a particular type of game on a particular calendar day. Ends with last wager **on the same type of game** before the end of the same **calendar day**

But CCA 0153601F (2015) says that multiple buy-ins in a poker table are *not* to be aggregated. That was for purposes of withholding and reporting obligations. Not clear how that interacts with Notice 2015-21.

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Per Casino Approach

Bright v. Commissioner, Docket No. 10095-22 (May 4, 2023)
Judge Buch

►TP gambled primarily at 3 casinos. Mystic Lake; Treasure Island (MN, not NV); and Diamond Jo Worth. Kept few records.

►Tried the "professional" gambit: Reported $241k of gross receipts on Sch. C from his "business" and an equal amount of §165(d) deductions. IRS disallowed deductions under WTF test.

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Per Casino Approach

Bright v. Commissioner, Docket No. 10095-22 (May 4, 2023)

►TP's constant use of player cards at each Casino saved him. Card activity gave a basis for *Cohan* rule even though each Casino reported player card activity differently. Using *Cohan* Judge Buch allowed $191k of losses.

Upside: undermines IRS strict 24-hour "session" approach.

Downside: It's a bench opinion, not clear what legs it has.

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Per Year Approach

Dealing is "done" when you cash out the relevant account: chips, tokens, player card. All are merely different ways of accounting for interstitial wins and losses. Track *actual* withdrawals (basis-first). THEN apply constructive receipt at the end of each year so have a deemed withdrawal of any balance in the account. Reset account to start new year.

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Per Year Approach

Coleman v. Commissioner, T.C. Memo. 2020-146

Coleman spent over 193 days in 2014 playing slots at four casinos. He failed to file 2014 return. IRS received multiple W-2G's showing gambling income of over $350,000.

Judge Lauber framed the case this way: *"whether petitioner has substantiated gambling losses in excess of $350,241, the amount of his gambling winnings reported to the IRS."* Op. at 1.

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Per Year Approach

Coleman v. Commissioner, T.C. Memo. 2020-146

Coleman offered 3 proofs of losses in excess of gains:

1. Expert witness. Said that a gambler who spent the amount of time Coleman spent playing slots would have *"overall net gambling losses of at least $151,690 during 2014"* with a *"99% level of certainty."* Further the odds of Mr. Coleman having *"even $1 of net gambling profit,* ***for the entirety of 2014****, were at least 140 million to 1."*

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Per Year Approach

Coleman v. Commissioner, T.C. Memo. 2020-146

2. Overall financial picture **for the year**:
(a) bank accts has same small balances at start and end of year;
(b) credit cd balances were higher at the end of the year
(c) he took no vacations and made no major purchases in 2014;
(d) he had financial hardship during the year, including failure to pay property taxes;
(e) 210 draws on ATMs and Credit Cds during the year.

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Per Year Approach

Coleman v. Commissioner, T.C. Memo. 2020-146

3. The disappearance of the $150,000 settlement
In 2014 Coleman received a tort settlement of $150,000. It was gone by the end of the year. That fit well with expert testimony that Mr. Coleman's **net losses for the year** were likely just over $150,000.

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Per Year Approach

Revised 165(d)

Old 165(d): "Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions."

Revised 165(d): **Remember the highlighted text!** The **"losses during such taxable year**" are deductible "only to the extent of the **gains from such transactions during such taxable year.**"

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Substantiation

1. Gaming sites: §6041: Form 1099 for **yearly** payments in excess of $600.

2. Gambling sites: Treas. Reg. 1.6041-10: Form W-2G for "reportable gambling winnings." Generally $600, or 300 times the amount of the wager for most types of gambling, but $1,200 or more for a bingo game or slot machine; $1,500 for a keno game; $5,000 for a poker game.

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Substantiation: In Theory

Rev. Proc. 77-29, requires accurate diary or other similar records of all losses and winnings including: (1) date/type of specific wagers; (2) location of the gambling establishment; (3) names of other persons present at the gambling establishment (!!); and amounts won or lost on each wager (!!!)

No one does that.

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Substantiation In Practice

Most clients are net losers over the year and do not keep good records

The key to getting *Cohan* estimation is proving the proper nexus even if you cannot prove exact amounts.

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Substantiation In Practice

- Gaming site or Casino Records. Varies widely by casino and gaming site. Casinos put disclaimers on statements. TC not consistent in allowing that evidence. Better luck at IRS level.
- Related transactions. hotel bills, airline tickets, gasoline credit cards, canceled checks, credit records, bank deposits, and bank withdrawals. Remember *Coleman*.
- Testimony: witnesses, gambling officials, **experts!**

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Legislative Fix?

1. Add new income item in §61: "Income from Wagering Gains"
2. Define the term Wagering Gains in §7701 as *"the excess of gains from all wagering transactions during the taxable year over the losses from all wagering transactions during such period."* That codifies yearly method.
3. Modify §165(d) to still deny losses from wagering transactions in excess of Wagering Gains. Keeps the purpose of preventing hobby losses to offset other income.

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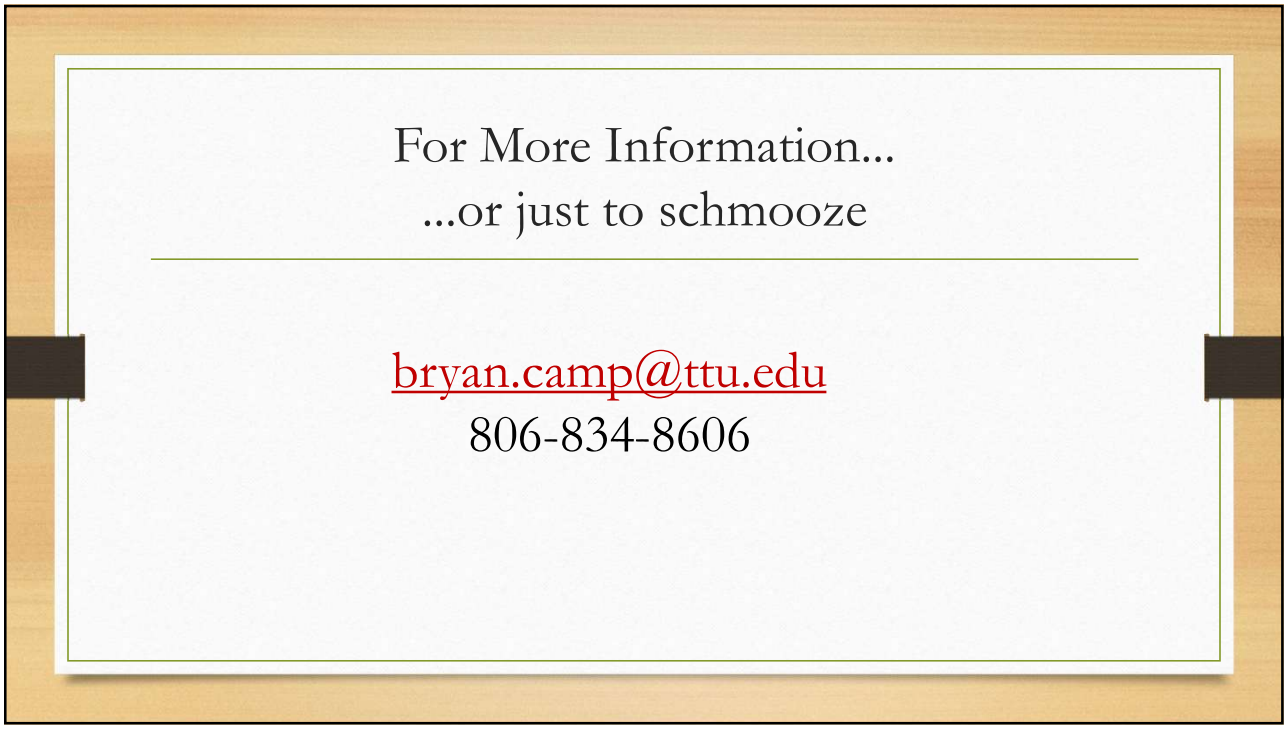

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Hot Topics Round Table

Presented by:
Roslyn Banks, Anthony Box, and Kyle Coleman

Tax Alliance Conference

June 9 – 11, 2026 ~ Plano, Texas ~ All information as of: May 28, 2026

Board Member Panel Discussion

"2026 Hot Topics: The Shifting Tax Landscape"

Topic: Trump Accounts

Key Terms and Definitions

- **"Trump Account"** (TA) – a tax-advantaged investment account for eligible children under age 18.
- **"Growth Period"** – time until the year the eligible child reaches age 18; only five types of contributions can be made to a Trump account during this period.
- **"Pilot Program"** – for eligible children born between 2025 and 2028, a $1,000 contribution is paid by the Secretary of the Treasury to their Trump Account, if account is established.
- **"Seed"** – initial $1,000 government deposit for eligible children during the Pilot Program.

Overview of Current Laws and Regulations

- The Working Families Tax Cuts (WFTC) provides for establishing a Trump Account on behalf of every eligible child for whom an election is made, generally by a parent or guardian, and who has not turned age 18 before the end of the calendar year in which the election is made.
- Contributions to Trump Accounts **cannot** be made before July 4, 2026.
- IRS Notice 2025-68 provides an overview of how Trump Accounts work and addresses certain initial questions. Link: https://www.irs.gov/pub/irs-drop/n-25-68.pdf
- Trump Accounts are designed to give children a tax-advantaged investment account to save for life's major expenses, including college, a first home, and retirement.
- Trump Account funds are invested according to regulatory guidelines and are subject to distribution restrictions until December 31st of the year the child turns 17 (referred to as the "growth period").
- According to trumpaccounts.gov, funds will be invested in a diversified investment vehicle designed to maximize long-term growth while minimizing risk and additional investment options will be added.
- Depending on the eligible child's birth date, age, and zip code, their Trump Account may start with a $1,000 government deposit ("seed" money); a "qualified general contribution" from a charitable organization, state or other approved entity; or no deposit at all.
- Employers can make a pre-tax contribution up to $2,500 each year, which may be excluded from the employee's taxable income. All contributions count toward the $5,000 annual limit.
- The funds in Trump Accounts must be invested in certain mutual funds or exchange-traded funds that track the S&P 500 or another index of primarily American equities.

- Trump Account funds must be invested in a limited lineup of low-fee mutual funds or ETFs tracking large US equity indexes. The account grows on a tax-deferred (but not tax-exempt) basis; withdrawals are generally **subject to ordinary income tax**.
- Distributions are taxed according to the account's composition, specifically the proportion of distributions attributable to after-tax contributions (versus pre-tax contributions) and the earnings associated with each are treated and taxed as ordinary income.
- The tax basis created by after-tax contributions is not taxed upon withdrawal. However, pre-tax contributions and all earnings are subject to the beneficiary's ordinary income tax rate (not capital gain tax rates).

Who Qualifies

- **All U.S. children under age 18 with a valid Social Security Number** are eligible to establish a Trump Account starting **July 4th, 2026.**
- Parents, legal guardians, or other authorized individuals can open, manage, and contribute to Trump Accounts on behalf of the eligible minor.
- Taxpayers must proactively open a Trump Account for their child to receive the seed money.
- Taxpayers must **"opt-in"** to create an account – there are currently no automatic enrollments for those who qualify for the incentives.
- Children who are eligible for a Trump Account (regardless of initial deposit) can receive additional contributions subject to annual limits until the end of the growth period.

Tax Planning for Newborns 2025-2028

- U.S. citizens born between **January 1, 2025**, and **December 31, 2028**, can receive a $1,000 government deposit to their Trump Account. This is commonly referred to as "seed" money or "seed" deposit for those in the Pilot Program.
- Upon an election under the pilot program, $1,000 is paid by the Secretary of the Treasury to the Trump account of an eligible child.
- The $1,000 deposited into the Trump account under the pilot program is excepted from reduction or offset and is subject to a special rule regarding interest under IRC section 6611(a).
- Individuals making improper elections under the pilot program are subject to penalties under IRC section 6659. If such election was made due to negligence or disregard of the rules or regulations, there shall be imposed a penalty of $500. The penalty increases to $1,000 if the election was made due to fraud.

Tax Planning for Older Children

- Any child under age 18 with a Social Security number may be eligible for a Trump Account.
- Should taxpayers open a Trump Account for a child born before 2025? Should employers contribute to accounts as a benefit for their employees? These are questions I anticipate we will be asked by our clients. I hope this handout and the included resources helps guide those client conversations!
- Up to 25 million children age 10 or younger who live in qualifying ZIP codes may receive a $250 charitable gift deposit to their Trump Account from the Michael & Susan Dell Foundation. These children must have been born **before** January 1, 2025, and are therefore **ineligible** for the $1,000 government Pilot Program "seed" deposit. Zip code information is not available as of 5/28/26, stay tuned to the official government websites for more details.

Contributions

- During the growth period, there are five types of contributions that can be made to a Trump account:
    1) a pilot program contribution from the Secretary of $1,000 for an eligible child,
    2) qualified general contributions (funded by states (or political subdivisions thereof), the United States, the District of Columbia, Indian tribal governments, or section 501(c)(3) tax-exempt organizations) for members of a qualified class of account beneficiaries,
    3) employer contributions that are not includible in the gross income of the employee under section 128 (section 128 employer contributions),
    4) qualified rollover contributions, and
    5) contributions from other sources (such as the account beneficiary, parents, or any other person).
- Contributions to a Trump Account during the growth period are **not includible in income** by the account beneficiary when made.
- Starting July 4, 2026, parents, legal guardians, or other authorized individuals can contribute **up to $5,000** annually to a Trump Account on behalf of each eligible minor.
- Beneficiaries do not need earned income to receive after-tax contributions. Contributions are not tax-deductible.
- Employers can contribute **up to $2,500** annually to a Trump Account on behalf of each eligible minor.
- Annual contribution limits are **indexed to inflation** and adjust starting after 2027.
- Pilot program contributions, qualified general contributions, and section 128 employer contributions do not create basis in a Trump account.
- Qualified rollover contributions are transfers from a prior Trump account and carry over any basis attributable to the funds being transferred.
- Contributions from other sources during the growth period create basis in the Trump account.

Use of Funds and Withdrawals

- Generally, with few exceptions, money **cannot** be withdrawn until January 1st of the calendar year in which the beneficiary turns 18, when the "growth phase" ends.
- Account funds are treated like a traditional IRA with similar tax rules after the "growth period" ends.
- According to the IRS Newsroom, Trump Accounts follow rules similar to traditional IRAs: only funds used for qualifying exceptions, like higher education, can be withdrawn before age 59 ½ without incurring a 10% early-withdrawal penalty on top of the ordinary income tax owed at the time of distribution (IRS Newsroom, 2025).

Next Steps (Looking Forward)

- **Key Date: July 4th, 2026**
- The purpose of IRS Form 4547 is to make the election to establish an initial Trump account for the exclusive benefit of a child who is eligible.
- IRS Form 4547 is also used to make an election for a $1,000 pilot program contribution from the U.S. Treasury to a child's Trump account if they are eligible for the contribution.
- Use the official portal at www.TrumpAccounts.gov or check with your employer to see if you qualify for either a ZIP-code-based charitable grant or an employer matching program.
- For more information visit www.trumpaccounts.gov – See FAQ section
- Additional information available at www.IRS.gov and https://www.irs.gov/trumpaccounts
- One, Big, Beautiful Bill Act Updates: https://www.irs.gov/newsroom/one-big-beautiful-bill-provisions

Compare and Contrast: Trump Accounts vs. 529 Plans

- Trump Accounts grow tax-deferred, with earnings and pre-tax contributions taxed as **ordinary income** upon withdrawal.
- 529 plans grow tax-free and allow tax-free withdrawals for qualified education expenses.
- Contribution limits: Trump Accounts limit parent contributions at $5,000 per year. 529 plans can accept hundreds of thousands of dollars in total contributions.
- Investment option differences: Trump Accounts allow only U.S. large-cap equity index funds until age 18. 529 plans typically offer diversified portfolios and age-based options that adjust risk over time.
- Use of funds: Trump Accounts do not allow withdrawals until age 18 and follow traditional IRA-style withdrawal restrictions. While 529 plans can also be used for qualified K–12 expenses and many professional certifications.
- Tax planning tip: Trump Accounts should not replace 529 plans as the primary savings account for educational expenses for minors.

New Tax Forms:

1) IRS Form 4547 Trump Account Election(s)
2) IRS Form 8879-TA is the IRS e-file Signature Authorization for Form 4547
    - Form 8879-TA is the declaration document and signature authorization for each e-filed Form 4547, Trump Account Election(s), filed by an electronic return originator (ERO) at the same time as the parent, guardian, or other authorized individual's income tax return.
    - Complete Form 8879-TA when: the Practitioner PIN method is used, or the individual identified on Part I of Form 4547 authorizes the ERO to enter or generate the individual's personal identification number (PIN) on his or her e-filed Form 4547.

Additional Resources and References:

- IRS Newsroom IR-2025-117, Dec. 2, 2025 https://www.irs.gov/newsroom/treasury-irs-issue-guidance-on-trump-accounts-established-under-the-working-families-tax-cuts-notice-announces-upcoming-regulations.

- "Trump Accounts: Overview and Policy Considerations." Congress.gov, Library of Congress, 28 May 2026, https://www.congress.gov/crs-product/R48910.

Appendix & Exhibit Attachments:

A. IRS Form 4547 Trump Account Election(s)

B. IRS Form 8879-TA is the IRS e-file Signature Authorization for Form 4547

C. IRS Newswire Issue Number: IR-2026-68 dated May 28, 2026

D. Screenshot – IRS Website of OBBBA Provisions

Participant handouts prepared by:
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Exhibit A - IRS Form 4547

Form **4547**
(December 2025)
Department of the Treasury
Internal Revenue Service

Trump Account Election(s)

Go to *www.irs.gov/Form4547* for instructions and the latest information.

OMB No. 1545-2336

If you have a child that is eligible for a Trump account, and you want to open a Trump account for that child, complete Form 4547.

- For each child that is eligible and for whom you want to open a Trump account, complete Parts I, II, and IV.
- For each child that is eligible to receive a $1,000 Pilot Program Contribution, check the box in Part III, line 7, in order to receive the contribution.

Part I Parent/Guardian or Other Authorized Individual Information

Note: The parent/guardian or other authorized individual listed in Part I will be the responsible party for the Trump account.

First name	Middle name	Last name	Social security number

Home address (number and street). If you have a P.O. box, see instructions.	Apartment number	Date of birth

City, town, or post office. If you have a foreign address, also complete spaces below.	County	State	ZIP code	Phone no.

Foreign country name	Foreign province/state/county	Foreign postal code	Email address

Part II Child's Information

If more than two children, see instructions.

		(i) Child 1	(ii) Child 2
1a	First name		
b	Middle name		
c	Last name		
2	Social security number		
3	Date of birth		
4	Relationship		
5	**Home Address** Check here if address is same as Part I. Otherwise, complete lines 5a through 5f. If you have a foreign address, complete lines 5g, 5h, and 5i.	☐	☐
a	Number and street		
b	Apartment number		
c	City, town, or post office		
d	County		
e	State		
f	ZIP code		
g	Foreign country name		
h	Foreign province/state/county		
i	Foreign postal code		
6	Check box if you are authorized to open the Trump account for the child. See instructions.	☐	☐

Part III Pilot Program Contribution Election

For a child to qualify to receive the $1,000 Pilot Program Contribution to their Trump account, the child must have been born in 2025–2028, must be a qualifying child of the individual opening the Trump account, must be a U.S. citizen, and must have a valid social security number. See instructions.

		(i) Child 1	(ii) Child 2
7	Check box if child qualifies for, and you want the child to receive, a Pilot Program Contribution	☐	☐

Part IV Consent to Disclose Information

By completing this form, you authorize the IRS, Treasury, and their agent(s) to create and maintain a Trump account with respect to the eligible child(ren) listed on this form. You also authorize the IRS, Treasury, and their agent(s) to disclose the fact that a Trump account has been established for the eligible child(ren) listed above to any parent, guardian, or authorized individual of the eligible child who is permitted to make an election to request creation of the Trump account.

Sign Here

Under penalties of perjury, I declare that I have examined this form, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name	Firm's EIN
Firm's address	Phone no.

TREASURY/IRS AND OMB USE ONLY DRAFT

Exhibit B - IRS Form 8879-TA

Form **8879-TA**

(December 2025)

Department of the Treasury
Internal Revenue Service

IRS *e-file* Signature Authorization for Form 4547, Trump Account Election(s)

ERO must obtain and retain completed Form 8879-TA.
Go to *www.irs.gov/Form8879TA* for the latest information.

OMB No. 1545-2336

Submission Identification Number (SID) _____

Parent, guardian, or other authorized individual's name | **Social security number**

Part I Form 4547 Information — Transmitted with Tax Return for Tax Year Ending December 31,

1	First name of Child 1 from Form 4547, line 1(a)(i)	1	
2	First name of Child 2 from Form 4547, line 1(a)(ii)	2	
3	Date of birth of Child 1 from Form 4547, line 3(i)	3	
4	Date of birth of Child 2 from Form 4547, line 3(ii)	4	
5	Pilot Program Contribution Election for Child 1 from Form 4547, line 7(i)	5	☐
6	Pilot Program Contribution Election for Child 2 from Form 4547, line 7(ii)	6	☐

Part II Parent, Guardian, or Other Authorized Individual's Declaration and Signature Authorization (Be sure you get and keep a copy of your Form 4547)

Under penalties of perjury, I declare that I have examined a copy of the Form 4547 I am now authorizing, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the information in Part I above is from the Form 4547 with which it is being transmitted to the IRS. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my Form 4547 to the IRS and to receive from the IRS **(a)** an acknowledgment of receipt or reason for rejection of the transmission, and **(b)** the reason for any delay in processing the Form 4547. I further acknowledge that the personal identification number (PIN) below is my signature for the Form 4547.

Parent, Guardian, or Other Authorized Individual's PIN: check one box only

☐ I authorize _____ to enter or generate my PIN ☐☐☐☐☐ as my
ERO firm name **Enter five digits, but don't enter all zeros**

signature on the Form 4547 I am now authorizing.

☐ I will enter my PIN as my signature on the Form 4547 I am now authorizing. Check this box **only** if you are entering your own PIN **and** your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature _____ Date _____

Practitioner PIN Method Returns Only—continue below

Part III Certification and Authentication — Practitioner PIN Method Only

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN. ☐☐☐☐☐☐☐☐☐☐☐
Don't enter all zeros

I certify that the above numeric entry is my PIN, which is my signature for the electronic Form 4547 I am now authorized to file by the individual indicated above. I confirm that I am submitting this Form 4547 in accordance with the requirements of the Practitioner PIN method and, as applicable, **Pub. 1345**, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns.

ERO's signature _____ Date _____

ERO Must Retain This Form — See Instructions
Don't Submit This Form to the IRS Unless Requested To Do So

DRAFT — DO NOT FILE
DRAFT — DO NOT FILE

TREASURY/IRS AND OMB USE ONLY DRAFT

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form 8879-TA and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form8879TA*.

Purpose of Form

Form 8879-TA is the declaration document and signature authorization for each e-filed Form 4547 filed by an electronic return originator (ERO) at the same time as the parent, guardian, or other authorized individual's income tax return. Complete Form 8879-TA when the Practitioner PIN method is used or when the individual identified on Part I of Form 4547 authorizes the ERO to enter or generate the individual's personal identification number (PIN) on his or her Form 4547.

CAUTION

Don't send this form to the IRS. The ERO must retain Form 8879-TA.

When and How To Complete

Use this chart to determine when and how to complete Form 8879-TA.

IF the ERO is...	THEN...
not using the Practitioner PIN method and the individual identified on Part I of Form 4547 enters his or her own PIN	don't complete Form 8879-TA.
not using the Practitioner PIN method and is authorized to enter or generate the PIN of the individual identified on Part I of Form 4547	complete Form 8879-TA, Parts I and II.
using the Practitioner PIN method and is authorized to enter or generate the PIN of the individual identified on Part I of Form 4547	complete Form 8879-TA, Parts I, II, and III.
using the Practitioner PIN method and the individual identified on Part I of Form 4547 enters his or her own PIN	complete Form 8879-TA, Parts I, II, and III.

ERO Responsibilities

The ERO must:

1. Enter the name and social security number of the individual identified on Part I of Form 4547 at the top of the form;

2. Complete Part I using the information (boxes may remain unchecked when appropriate) from the individual's Form 4547;

3. Enter or generate, if authorized by the individual, the individual's PIN and enter it in the boxes provided in Part II;

4. Enter on the authorization line in Part II the ERO firm name (not the name of the individual preparing the return) if the ERO is authorized to enter the individual's PIN;

5. Provide the Form 8879-TA to the individual identified on Part I of Form 4547 by hand delivery, U.S. mail, private delivery service, email, internet website, or fax; and

6. Enter the 20-digit Submission Identification Number (SID) assigned to the tax return with which Form 4547 was e-filed, or to the Form 9325, Acknowledgement and General Information for Taxpayers Who File Returns Electronically, associated with Form 8879-TA after filing. If Form 9325 is used to provide the SID, it isn't required to be physically attached to Form 8879-TA. However, it must be kept in accordance with the retention requirements described later. See Pub. 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters, for more details.

CAUTION

You must receive the completed and signed Form 8879-TA from the individual identified on Part I of Form 4547 before the electronic return being filed at the same time as Form 4547 is transmitted (or released for transmission).

For additional information, see Pub. 1345.

Parent, Guardian, or Other Authorized Individual Responsibilities

Parent, guardian, or other authorized individual must:

1. Verify the accuracy of the prepared Form 4547;

2. Check the appropriate box in Part II to authorize the ERO to enter or generate your PIN or to do it yourself;

3. Indicate or verify your PIN when authorizing the ERO to enter or generate it (the PIN must be five digits other than all zeros);

4. Sign and date Form 8879-TA. The parent, guardian, or other authorized individual must sign Form 8879-TA by handwritten signature, or electronic signature if supported by computer software; and

5. Return the completed Form 8879-TA to the ERO by hand delivery, U.S. mail, private delivery service, email, internet website, or fax.

Your Form 4547 won't be transmitted to the IRS until the ERO receives your signed Form 8879-TA.

Important Notes for EROs

• Don't send Form 8879-TA to the IRS unless requested to do so. Retain the completed Form 8879-TA for 3 years from the return due date or IRS received date, whichever is later. Form 8879-TA may be retained electronically in accordance with the recordkeeping guidelines in Revenue Procedure 97-22, which is on page 9 of Internal Revenue Bulletin 1997-13 at *www.irs.gov/pub/irs-irbs/irb97-13.pdf*.

• Confirm the identity of the individual identified in Part I of Form 4547 and that they are the taxpayer listed on the return with which the Form 4547 is being transmitted.

• Complete Part III only if you are filing Form 4547 using the Practitioner PIN method. You aren't required to enter the individual identified on Part I of Form 4547's date of birth, prior year adjusted gross income, or PIN in the Authentication Record of the electronically filed return with which Form 4547 is being transmitted.

• If you aren't using the Practitioner PIN method, enter the individual identified on Part I of Form 4547's date of birth and either the adjusted gross income or the PIN, or both, from the individual's prior year originally filed return in the Authentication Record of the individual's electronically filed return with which Form 4547 is being transmitted. **Don't** use an amount from an amended return or a math error correction made by the IRS.

• Enter the individual identified on Part I of Form 4547's PIN on the input screen only if the individual has authorized you to do so.

• The individual identified on Part I of Form 4547 must use a PIN to sign their e-filed Form 4547 transmitted with a tax return by an ERO.

• Provide the individual identified on Part I of Form 4547 with a copy of the signed Form 8879-TA for his or her records upon request.

• Provide the individual identified on Part I of Form 4547 with a corrected copy of Form 8879-TA if changes are made to the return (for example, based on taxpayer review).

• Go to *www.irs.gov/Efile* for the latest information.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid OMB control number for this information collection is 1545-2336. The estimated burden associated with this collection of information is 15 minutes per response. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

Comments. You can send us comments through *www.irs.gov/FormComments*. You can also send your comments to Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, keep it for your records.

DRAFT — DO NOT FILE

DRAFT — DO NOT FILE

Here's how you know

Exhibit C - IRS Newswire

IRS

Taxpayers can now view and submit Trump Account elections in their IRS Individual Account

IR-2026-68, May 28, 2026

WASHINGTON — The Internal Revenue Service today announced new features in IRS Individual Accounts that allow taxpayers to view and submit Trump Account elections, making it easier to invest in these tax-advantaged accounts.

Through IRS Individual Account, taxpayers can securely access their tax information and complete common tasks online, including:

- View the latest submission status of their Form 4547, Trump Account Election(s) PDF, including next steps.
- Submit Form 4547, Trump Account Election(s), electronically.

“These new features reflect our continued focus on transforming the IRS into a digital-first agency that delivers a faster, more seamless experience for taxpayers and provides a new tax-advantaged investment account for children to save for college, retirement, and building generational wealth,” said IRS Chief Executive Officer Frank J. Bisignano. “By expanding the IRS Individual Account to include this new status, we are providing taxpayers with this tool in addition to features for managing their tax accounts, tracking important transactions, and completing key actions quickly and securely.”

Taxpayers benefit from greater transparency through real-time visibility into the Trump Account election process. Electronic submissions also improve accuracy, speed up processing times, and reduce delays associated with paper forms.

Trump Account election

Through the One, Big, Beautiful Bill, enacted on July 4, 2025, Trump Accounts allow parents, guardians, and other authorized individuals to establish a new type of individual retirement account for their children.

An account can be established for a child who has not reached age 18 by the end of the calendar year in which the election is made and who has a valid Social Security number.

A one-time $1,000 pilot program contribution from the Department of the Treasury is available for eligible children born between Jan. 1, 2025, and Dec. 31, 2028, who are U.S. citizens with a valid Social Security number.

The IRS continues to provide updates and additional information about the tax benefits under the One, Big, Beautiful Bill. For details, see One, Big, Beautiful Bill Provisions on IRS.gov.

For more information about Trump Accounts, visit trumpaccounts.gov.

News items may not be updated after their release. Please verify the date before relying on the language.

Here's how you know

IRS

Exhibit D - IRS Website
OBBBA Provisions

One, Big, Beautiful Bill provisions

The One, Big, Beautiful Bill Act significantly affects federal taxes, credits and deductions. It was signed into law on July 4, 2025, as Public Law 119-21.

On this page

- Individuals and workers
- Families and dependents
- Healthcare
- Businesses
- Clean energy
- Investment and community development
- Tax-exempt entities and charitable giving
- Other taxes
- Resources and guidance

Individuals and workers

View tax provisions affecting individuals and workers in the One, Big, Beautiful Bill.

Families and dependents

Trump Accounts under the Working Families Tax Cuts (Section 70204)

Overview of Trump Accounts

- Parents, guardians, or others can establish a Trump Account for an eligible child
- Trump Accounts cannot be funded before July 4, 2026
- The federal government will make a one-time $1,000 contribution for each eligible child's account
- Authorized contributions from individuals and employers are allowed up to $5,000 per year
- Employers can contribute up to $2,500 per year toward an employee's or dependent's Trump Account without it counting as taxable income for the employee
- Funds must be invested in certain mutual funds or exchange-traded funds that track a U.S. stock index such as the S&P 500

Withdrawal and use

- Generally, money cannot be withdrawn before the year the child turns 18
- After that point, the account is treated like a traditional IRA with similar tax rules

Related resources

- Taxpayers can now view and submit Trump Account elections in their IRS Individual Account (IR-2026-68)
- 4 million children have been signed up for Trump Accounts with 1 million claiming the $1,000 pilot program contribution (IR-2026-42)
- Proposed regulations on how to open initial Trump Accounts (IR-2026-33)
- Proposed regulations for Trump Accounts contribution pilot program, Treasury Department to deposit $1,000 into the account of each eligible child (IR-2026-31)
- Trump Accounts established under the Working Families Tax Cuts (IR-2025-117)
- IRS.gov/trumpaccounts
- trumpaccounts.gov

Tax Alliance Conference

June 9 – 11, 2026 ~ Plano, Texas ~ All information as of: May 28, 2026

Board Member Panel Discussion

"2026 Hot Topics: The Shifting Tax Landscape"

Topic: 529 Plans

Key Terms and Definitions

- **"529 Plan" –** a tax-advantaged education savings account (authorized under IRC §529) that provides for tax-free investment growth for withdrawals use for qualified education expenses.
- **"Account Owner"** – the individual who establishes and controls a 529 plan account. The owner determines investment options, controls distributions, and may change beneficiaries.
- **"Beneficiary"** – the student or designated individual to receive the benefits of a 529 plan.
- **"College Savings Plan"** – contributions are invested and earnings grow tax-free when used for qualified education expenses. The most common type of 529 plan.
- **"Coverdell Education Savings Account (ESA)" –** allows tax-free growth for qualified educational expenses but has annual contribution limits and income restrictions.
- **"Custodial 529 Plan"** - a 529 account funded with assets originally belonging to a minor under UTMA or UGMA rules.
- **"Five-Year Election"** – an election allowing a contributor to make up to five years' worth of annual exclusion gifts at one time and spread the gift over five years for gift tax purposes. Also referred to as "Superfunding".
- **"Prepaid Tuition Plans"** – allows families to prepay future tuition costs. These plans are typically limited to certain schools or state systems and are less common than "College Savings Plans".
- **"Qualified Education Expenses"** – eligible expenses for tax-free treatment under Section 529. Examples include: tuition, mandatory fees, books, supplies, computers, certain room and board expenses, certain apprenticeship costs, and student loan repayments (subject to limits).

Overview of Current Laws and Regulations

- 529 Plans are state-sponsored, tax-advantaged savings account authorized under IRC section 529 that helps families save for education expenses with tax-free investment growth and qualified withdrawals.
- There are two types of 529 plans:
    1. **College Savings Plans** – investment accounts that grow based on market performance. These are the most common.
    2. **Prepaid Tuition Plans** – programs that allow future tuition costs to be prepaid at current rates.
- Recent changes to the tax laws now allow qualified distributions that cover much more than traditional college tuition.

Who Qualifies

- Almost any individual can be the designated beneficiary of a 529 plan.
- Almost any person can open and fund a 529 plan for a designated beneficiary or child.
- The IRC does not impose income limits, relationship requirements, or age limits for either the beneficiary or the person opening the account.
- The plan must maintain separate accounting for each designated beneficiary, and contributions cannot exceed amounts necessary to provide for the beneficiary's qualified education expenses.
- A change in designated beneficiary is not treated as a taxable distribution if the new beneficiary is a member of the family of the old beneficiary.

Contributions

- Contributions are not deductible for federal income tax purposes, earnings generally grow tax free, and distributions are excluded from gross income to the extent used for qualified education expenses.
- Contributions to a 529 plan are treated as completed gifts to the designated beneficiary for gift tax purposes.
- The beneficiary does not have to be related to the person opening the account.

Use of Funds and Withdrawals

- A 529 plan allows the account owner to withdraw funds tax-free when the money is used for qualified education expenses. If funds are used for nonqualified expenses, the earnings portion of the withdrawal may be subject to income tax and a 10% penalty.
- This 10% penalty is waived in specific circumstances, such as the death or disability of the beneficiary or the receipt of certain tax-free scholarships.
- Current laws permit limited use of 529 funds for K-12 expenses, registered apprenticeship expenses, certain student loan repayments, certain postsecondary credentialing expenses, ABLE rollovers, and limited Roth IRA rollovers, subject to detailed statutory conditions and coordination rules.

Next Steps (Looking Forward)

- Changes to the tax laws made 529 plans more flexible than ever before. Understanding what expenses qualify, and how withdrawals are reported, is critical for taxpayers and tax professionals. Practitioners also need to consider state income tax implications and laws.
- Clients of all ages may be interested in comparing 529 plans versus Trump Accounts and other investment options and clients will continue to rely on tax practitioners for strategic tax planning and guidance.
- Section 529 plans are a cornerstone of education tax planning because they offer substantial tax-free growth and flexibility. Tax professionals and taxpayers must remain mindful of the specific "qualified expense" definitions and coordination rules with other education credits to maximize the tax benefits.
- Additional information is available at www.IRS.gov

Compare and Contrast: Trump Accounts vs. 529 Plans

- Trump Accounts grow tax-deferred, with earnings and pre-tax contributions taxed as **ordinary income** upon withdrawal.
- 529 plans grow tax-free and allow tax-free withdrawals for qualified education expenses.
- Contribution limits: Trump Accounts limit parent contributions at $5,000 per year. 529 plans can accept hundreds of thousands of dollars in total contributions.
- Investment option differences: Trump Accounts allow only U.S. large-cap equity index funds until age 18. 529 plans typically offer diversified portfolios and age-based options that adjust risk over time.
- Use of funds: Trump Accounts do not allow withdrawals until age 18 and follow traditional IRA-style withdrawal restrictions. While 529 plans can also be used for qualified K–12 expenses and many professional certifications.
- Tax planning tip: Trump Accounts should not replace 529 plans as the primary savings account for educational expenses for minors.

Additional Resources and References:

- IRS Publication 970, Tax Benefits for Education
- Internal Revenue Service. "529 Plans: Questions and Answers." IRS, www.irs.gov/newsroom/529-plans-questions-and-answers. Accessed 28 May 2026.
- Internal Revenue Service. "Tax Benefits for Education: Information Center." *IRS*, 23 Aug. 2025, www.irs.gov/newsroom/tax-benefits-for-education-information-center. Accessed 28 May 2026.

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Board Member Panel Discussion
"2026 Hot Topics: The Shifting Tax Landscape"

Topic: Name, Image, and Likeness (NIL) Income

Key Terms and Definitions

- **"NIL Collective"** – an entity, usually separate from the school, that raises funds and facilitates NIL opportunities for student-athletes. Collectives should issue 1099 Forms when paying athletes for services or benefits.
- **"NIL income"** – includes compensation, whether cash or non-cash, received by a student-athlete from the commercial use of the athlete's name, image, or likeness. This includes endorsement payments, autograph fees, appearance fees, sponsorship income, social media compensation, gifts, gift cards, merchandise, and similar benefits. Non-cash items are generally taxable as well.
- **"Non-cash compensation"** – property or benefits received instead of cash, such as apparel, trading cards, vehicles, housing, meals, gift cards, or other perks. These items are generally included in gross income at fair market value (FMV).
- **"Royalty income"** – income paid for the right to use intangible rights, such as a person's name, image, or likeness in merchandising or licensing arrangements. Should be reported on Form 1099-MISC rather than as nonemployee compensation.

Overview of Current Laws and Regulations

- Effective July 1, 2021, the National College Athletics Association (NCAA) adopted the Interim NIL Policy, which lets NCAA student-athletes benefit from their NIL.
- Student-athletes can receive compensation for use of their name, image and likeness (NIL). All three NCAA divisions support opportunities for student-athletes to pursue NIL consistent with rules that protect fair competition.
- Athletes may be paid in cash, products, services, gift cards, equity, tokens, NFTs, cryptocurrency, or platform-based digital compensation. NIL income is generally taxable, including non-cash compensation and digital assets as payment for services.
- Taxpayers should keep detailed records of the locations where NIL contract services were performed and may owe state income taxes from NIL activities.

Tax Planning

- Student-athletes should understand if they will be treated as an employee or an independent contractor prior to receiving NIL income.
- Tax professionals may need to review the client's contracts to see what is being asked of the athlete and what type of compensation they are receiving.

- Estimated tax payments are essential to minimizing penalties and interest, smoothing cash-flows, and avoiding surprise tax bills for student athletes and their families.
- An underpayment penalty may apply if a taxpayer does not pay enough tax during the year through withholding or estimated tax payments.

Types of Income Received

- Types of compensated activities received by a student-athlete can vary and practitioners may need to review contracts to determine income tax implications.
- Compensation can be provided for endorsements, autograph fees, appearances, sponsorship income, social media compensation, promotions, licensing, camps, exhibitions, merchandise sales, and similar activities.
- IRS Publication 525 confirms that non-cash compensation is generally taxable at fair market value, and it defines fair market value.
- Tax professionals should understand what types of income are eligible for the Qualified Business Income (QBI) deduction.
- NIL recipients may owe tax in states where they perform services or earn income, not just in their home state.

Use of Funds and Deductible Expenses

- IRS Publication 334 explains that deductible business expenses must be ordinary and necessary. For NIL recipients reporting on Form 1040, Schedule C, this is the governing standard for expense deductions.
- Expenses directly connected to NIL business activity may reduce net earnings from self-employment if they satisfy IRC section 162 standards. Common deductible expenses include agent fees, legal fees, tax preparation fees, travel to NIL events, and certain training or nutrition costs if paid by the athlete and appropriately connected to the business.
- Some types of royalty payments may not have associated expenses and may not be considered self-employment income.

Next Steps (Looking Forward)

- Collegiate athletics is a multibillion-dollar business industry and steady growing!
- Higher-income NIL earners may want to consider an S corporation election for tax purposes. Reasonable compensation and payroll compliance should be tax planning conversations in the early stage of the client engagement and onboarding process.
- Student-athletes often rely on their parents for assistance when working with tax and investment professionals. Tax practitioners should understand the role parents have in the financial decision-making process.
- Practitioners also need to understand and explain tax laws about if the students are still eligible to be claimed as a dependent on the parent's tax return. The standard deduction rules may differ from those for non-dependent student athletes. Consider taking advantage of the SALT tax expansion for itemized deductions in states with income taxes.

Additional Resources and References:

- Internal Revenue Service. "Name, Image and Likeness (NIL) Income." *IRS*, www.irs.gov/businesses/small-businesses-self-employed/name-image-and-likeness-income. Accessed 28 May 2026.
- National Collegiate Athletic Association. "NIL (Name, Image, Likeness)." *NCAA*, www.ncaa.org/sports/2021/7/9/name-image-likeness.aspx. Accessed 21 May 2026.
- Taxpayer Advocate Service. "March Madness, NIL, and (Tax) Brackets." *Taxpayer Advocate Service*, 25 Mar. 2026, www.taxpayeradvocate.irs.gov/news/nta-blog/march-madness-nil-and-tax-brackets/2026/03/. Accessed 21 May 2026.
- Taxpayer Advocate Service. "Name, Image, and Likeness." *Taxpayer Advocate Service*, 7 Mar. 2023, www.taxpayeradvocate.irs.gov/get-help/general/nil/. Accessed 28 May 2026.

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Protect Your Potential COVID-19 Disaster Relief Refunds By Filing Formal or Protective Claims for Refund (Part III)

Pressed for time? Listen to a summary of this blog

At a Glance

- Tens of millions of taxpayers may be entitled to refunds or abatements of COVID-19 period penalties and interest.
- Relief is not automatic – most taxpayers must file refund claims on or before July 10, 2026, to protect their rights.
- Filing a protective claim can preserve refund rights when the law is unsettled.

As I discussed in Part I of this series, recent legal developments, including the U.S. Court of Federal Claims decision in *Kwong v. United States*, suggest that some penalties and interest assessed during the nearly 3.5-year COVID-19 federal disaster period may have been improper. Under the reasoning of *Kwong*, tens of millions of taxpayers may be entitled to refunds or abatements of those amounts. However, this relief will not happen automatically. To protect their rights, most taxpayers must file a claim for refund – generally on or before **July 10, 2026**.

Missing the deadline means taxpayers risk losing potential refunds – undermining their fundamental taxpayer rights, including the *rights to pay no more than the correct amount of tax* and *to a fair and just tax system*.

In Part II of this series, I explained how reviewing tax account transcripts can serve as a practical starting point to determine whether taxpayers may need to take action. In this post, I will explain:

- Refund rules and time frames;
- The difference between formal claims for refund or abatement and protective claims for refund or abatement;
- How to request refunds or abatements; and
- Common mistakes taxpayers should avoid.

Understanding Refund Deadlines: Why July 10, 2026, Matters

The law authorizes the IRS to issue a credit or refund when you have overpaid your taxes, including penalty and interest. However, your time to file a claim is limited. If you miss the deadline, you could permanently lose your refund. Generally, you must file a claim for credit or refund before the *later* of the following dates:

- **Three years** from the date you filed your tax return (including extensions); or
- **Two years** from the date you paid the tax.

Under the reasoning of *Kwong*, certain filing and payment deadlines may have been postponed during the COVID-19 federal disaster period – from January 20, 2020, through May 11, 2023 – plus an additional 60 days. Under that reasoning, returns and payments due anytime during that window would not have been late until after July 10, 2023. This period covers the standard filing and payment deadlines for many individual income tax returns for tax years 2019 through 2022.

One point that can be confusing is how the three-year rule works when a taxpayer filed a return before the return's due date. Basically, if the taxpayer filed a tax return before the return's due date, the early filing date generally does not start the three-year refund period early. Instead, the return is generally treated as filed on the due date. Under the reasoning of *Kwong,* that due date would be July 10, 2023. For most affected taxpayers, the three-year deadline for a refund claim or protective claim during this federal disaster period for their 2019 – 2022 tax year returns would be postponed until **July 10, 2026** (*i.e.*, three years from July 10, 2023). However, if you paid your penalties or interest later, then the two-year period would apply, possibly giving you more time to file a credit or refund claim.

Here are two examples of the refund deadlines under *Kwong*:

Three-year deadline: A taxpayer files their 2021 income tax return on August 30, 2022, (without an extension) and pays the tax in full upon filing. The IRS assesses failure to file and failure to pay penalties and interest on the amount of tax not paid by April 18, 2022, because it determines the return was late. The taxpayer pays the penalties and interest on October 1, 2022. Based upon the reasoning in *Kwong*, the 2021 income tax return was not due until July 10, 2023,

so the IRS should not have assessed penalties and interest. The taxpayer would have until **July 10, 2026,** (three years after the July 10, 2023, disaster relief due date of the return) to file a refund claim. This is later than October 1, 2023, which is two years from the date of payment.

Two-year deadline: Assume the same facts as above except the taxpayer does not pay the penalties and interest until July 1, 2025. Under *Kwong*, the return was timely filed, and no penalties and interest were therefore due. The taxpayer would have until **July 1, 2027,** (*i.e.*, two years from the date of payment) to file a refund claim, as it is later than July 10, 2026.

Refund Claims, Protective Refund Claims, and Abatement Requests

Taxpayers should understand the difference between a refund claim, a protective refund claim, and an abatement request. A refund claim asks the IRS to return money the taxpayer has already paid.

A protective refund claim asks the IRS to preserve the taxpayer's right to a refund when the taxpayer cannot yet determine the final amount or entitlement to the refund because the issue depends on a future event. That future event may be the final outcome of litigation, new IRS guidance, or another legal development. An abatement request asks the IRS to remove or reduce an amount the IRS has assessed but the taxpayer has not yet paid.

The distinction matters because refund claims and abatement requests are subject to different rules. The refund deadline under IRC § 6511 generally applies when the taxpayer is asking the IRS to return money already paid. If the taxpayer has not paid the penalties or interest and is asking the IRS to remove or reduce the unpaid amount, the taxpayer is requesting abatement, not a refund.

Choosing Between a Formal Refund Claim and a Protective Refund Claim

The law allows taxpayers to file formal claims for refund or abatement and protective claims for refund or abatement. The guiding consideration is whether you can determine your claim at the time of filing. A formal refund claim is appropriate when you can reasonably calculate the amount you are seeking to recover. In contrast, a protective claim is generally filed when you are unsure of the exact amount of the refund because it depends on how courts ultimately resolve a pending legal issue – in this case, the *Kwong* issue. In either case, a timely claim is more important than a perfect one. Claims may be supplemented with additional details, but a missed deadline cannot be corrected.

Filing a formal refund claim does more than preserve your right to recover money, it also provides an important procedural advantage: It establishes a defined path for judicial review if the IRS does not act. If the IRS does not allow or disallow your claim within six months, taxpayers generally have the right to file a lawsuit in federal court, including the United States Court of Federal Claims. This prevents a claim from remaining indefinitely within the IRS administrative process without resolution. However, if the IRS disallows a formal refund claim, you have two years from the date the IRS mails the notice of claim disallowance to file a suit for

a refund. Once the two-year period expires, the IRS is barred from paying the refund – even if the refund is otherwise allowable – and you may no longer file a lawsuit to litigate the merits.

By contrast, protective claims are typically held in suspense. The IRS generally does not act on them until the underlying issue is resolved, which in some cases may take years. Because the *Kwong* issue remains pending in the courts and will take time to ultimately resolve, taxpayers will miss the deadline for filing a claim if they wait for final legal clarity. A protective refund claim can be used to preserve refund rights while litigation continues.

In practical terms, a formal refund claim creates a timeline and preserves the option for court review, while a protective refund claim preserves rights but may remain pending until the law is settled.

How to File Refund Claims and Protective Claims for *Kwong*-Related Issues

Refund claims are traditionally filed using Form 1040 if you have not yet filed your return. If you have already filed your individual income tax return and you need to change things like filing status, income, deductions, credits, dependents, or tax liability, use Form 1040-X, Amended U.S. Individual Income Tax Return. These forms would be used to adjust your underlying tax liability. While this blog is focused on individuals, some businesses are potentially affected and the same logic applies for related business tax returns.

If you are claiming *Kwong*-related refunds for interest and penalties – and are not revising your underlying tax liability – you should generally File a Form 843, Claim for Refund and Request for Abatement. You should complete the line items and include the tax years and amount of the requested refund. A technical but important distinction:

Important: If you have already paid the amounts at issue, you are requesting a "refund." If the IRS has assessed tax (including penalties and interest) but you haven't paid it yet, you are requesting an "abatement."

Unlike a formal claim, a protective claim does *not* require a taxpayer to calculate the exact amount of the requested refund or request an immediate refund. But there are minimum requirements for a valid protective claim. The relevant IRS's Internal Revenue Manual (IRM) procedures, IRM 25.6.1.10.3.2.5(2), and IRM 21.5.3.4.7.3 require a valid protective claim to:

1. Be in writing and signed;
2. Include your name, address, Social Security number, Individual Tax Identification Number or Employer Identification Number, and contact information;
3. Identify and describe the legal issue affecting the claim (*i.e., Kwong*);
4. Clearly alert the IRS to the basis of the claim; and
5. Identify the specific tax year or years involved.

Taxpayers will generally need to file a Form 843, write "Protective Refund Claim Pursuant to Kwong Case" or similar language across the top, and fill in as much detail as possible. In most cases, taxpayers must file a separate Form 843 for each tax period and each type of tax. They

should not combine multiple years or unrelated issues on one form unless the Form 843 instructions clearly allow it. They should mail it to **the IRS service center where the taxpayer would file a current-year return for the tax involved**. For an individual income-tax-related matter, that generally means the service center for the taxpayer's Form 1040 filing address. As discussed above, many taxpayers who have already paid the penalties or interest will need to file the form on or before July 10, 2026. The claim should clearly state that your claim is based on the COVID-19 disaster relief period and the legal reasoning reflected in *Kwong*. It should also identify the specific penalties and interest, tax period, and dates at issue. Taxpayers can also file protective claims for abatement of interest and penalties assessed but not yet paid.

Caution: A general statement that merely says, "I reserve my right to ask for a refund later," is usually not enough. The IRS must be able to tell what issue is in dispute, why the amount cannot be fixed yet, and which year is affected.

The IRS generally delays action on protective claims until the legal issue is resolved and then asks for whatever additional information it needs to allow, adjust, or disallow the claim.

Request for an Abatement

Taxpayers may also use Form 843 to ask the IRS to abate, or remove, penalties and interest that have been assessed but not yet paid. This is different from asking for a refund. A refund claim asks the IRS to return money the taxpayer has already paid. An abatement request asks the IRS to remove or reduce an unpaid amount the IRS says the taxpayer owes. The refund deadline under IRC § 6511 generally applies when the taxpayer is asking for money back. It does not apply in the same way when the taxpayer is asking the IRS to abate unpaid penalties or interest. The IRM explains that a claim to abate interest paid must be filed within the IRC § 6511 period, but a claim to abate unpaid interest is not subject to IRC § 6511. The IRS's general authority to abate unpaid assessments comes from IRC § 6404(a). Taxpayers should still act promptly, even for abatement requests involving unpaid amounts. Collection activity may continue unless the IRS agrees to suspend or resolve the matter.

Strengthening *Kwong* Claims

Taxpayers should consider including supporting information where available.

For Refund Claims, include:

- A copy of your transcript (with relevant entries identified);
- An explanation connecting the penalties to the COVID-19 disaster relief period;
- Penalty and interest amounts; and
- Copies of IRS notices or correspondence, if applicable.

For Protective Claims:

- Focus on clearly describing the legal issue;
- Identify the specific penalties and dates at issue;

- Identify the affected years; and
- Identify the amount if known.

Common Mistakes to Avoid

Here are some common mistakes that cause taxpayers to lose refunds or delay relief:

- **Missing the deadline.** Taxpayers may lose refunds under the three-year/two-year rule if they do not file a timely claim.
- **Filing a vague protective claim.** The claim must identify the legal issue, the affected tax year, and the reason the claim is being filed.
- **Not having proof of mailing.** Consider sending claims via certified mail with return receipt and keep a complete copy of everything submitted.
- **Sending to the wrong address.** Ensure you use the correct IRS filing address.
- **Combining too many issues on one Form 843.** In most cases, taxpayers should file a separate Form 843 for each tax period and type of tax.

An Important Note

This is a complex and evolving legal issue. This blog is intended to raise awareness – **not to provide legal advice**. Taxpayers should review their individual circumstances and consider seeking professional guidance where appropriate.

A word of caution: Taxpayers should be cautious when choosing a tax professional. They should work with a reputable accountant or return preparer who has appropriate credentials and a track record of ethical conduct. Be cautious about sharing sensitive personal and financial information, and do not assume that all preparers are equally qualified. Taxpayers should also be wary of anyone who charges excessive fees, bases fees on the size of your refund, or pressures you to take positions you do not understand. Taking a little extra time to verify who you are working with can help protect both your information and your finances.

As *Kwong v. United States* continues to generate interest, taxpayers should remain alert to a persistent and growing risk: scams and aggressive marketing schemes that promise quick refunds or guaranteed eligibility. The complexity of the case, combined with evolving legal interpretations, has created fertile ground for bad actors looking to exploit confusion and urgency. These schemes can lead taxpayers to file improper claims, exposing them to audits, repayment obligations, penalties, and interest.

Taxpayers should approach any unsolicited tax-related advice with caution. I urge you to be wary of professionals or promoters promising a guaranteed refund, charging excessive fees, pressuring you to act quickly, or failing to explain the legal basis for the claim. Before filing a protective claim, taxpayers should consult a trusted tax professional, review IRS guidance, and retain documentation supporting your position. Importantly, remember that legitimate relief provisions are grounded in law, not in slick marketing claims.

Conclusion

Filing a refund or protective claim now can preserve rights while the law continues to develop. Waiting for certainty may mean losing the opportunity altogether.

For taxpayers affected by COVID-19 disaster relief postponements, the opportunity to recover penalties and interest may be significant – but it is not guaranteed. The **July 10, 2026,** deadline is critical, and impacted taxpayers should not wait to evaluate whether they need to file a claim.

Published: April 30, 2026 | Last Updated: May 28, 2026

Tens of Millions of Taxpayers May Be Eligible for Significant Tax Refunds – If They Act on or before July 10 (Part I)

Pressed for time? Listen to a summary of this blog

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NATIONAL TAXPAYEF

At a Glance

- Tens of millions of taxpayers may be entitled to refunds or abatements of COVID-19 period penalties and interest.
- Relief will not be automatic – most taxpayers must file refund claims on or before **July 10, 2026**.
- Complex legal developments and a lack of information create a risk that many taxpayers will miss out entirely.
- Without IRS or congressional action, outcomes may unfairly favor the "well advised" over the "unaware."

A Major Refund Opportunity – But Taxpayers Must Act to Protect Their Rights

Tens of millions of taxpayers may be entitled to refunds or abatements of penalties and interest that the IRS assessed during the nearly 3.5-year COVID-19 federal disaster period. However, this relief will not happen automatically. To protect their rights, most taxpayers must file a claim for refund – generally **on or before July 10, 2026**.

This situation highlights a core concern I have raised repeatedly: When relief exists but is difficult to access, taxpayers – especially those without representation – are at risk of losing benefits.

That outcome undermines fundamental taxpayer rights, including the *rights to be informed, pay no more than the correct amount of tax*, and *to a fair and just tax system*.

Understanding the *Kwong* Decision and Its Implications

This issue arises from recent court decisions, most notably *Kwong v. United States*, 179 Fed. Cl. 382 (Nov. 2025), interpreting a tax code provision that governs disaster-related filing and payment deadline postponements. IRC § 7508A(d), as it existed when the COVID-19 federal disaster was declared, provides for the automatic postponement of filing and payment deadlines during the period a federal disaster declaration is in effect, plus 60 days.

For COVID-19, a federal disaster declaration was in effect from January 20, 2020, through May 11, 2023. Sixty additional days extended the period to July 10, 2023, for tax purposes. Based on the court's reasoning in *Kwong*, filing and payment deadlines were postponed during that entire period, and as a result, tax returns and payments due anytime within that window were not late until after July 10, 2023. By the court's logic, the IRS should not have assessed penalties for late filing or payment during that 3.5-year period, nor charged interest on those amounts.

The government's pleadings interpreted the postponement statute more narrowly and disagreed that the statute suspended filing and payment obligations for 3.5 years. I anticipate the Department of Justice will appeal the decision.

But the *Kwong* opinion is explicit in saying: "The plain meaning of that statute is that the automatic extension runs from the beginning of the disaster declaration, through the end of the declared disaster period, and until 60 days after the end of the declared disaster period." It may take several years until the issue is finally resolved by the courts.

What This Means for You

Under the reasoning of the *Kwong* decision, you may be entitled to a refund or abatement of certain amounts assessed during the COVID period, including:

- Penalties assessed for failure to timely file returns, failure to pay taxes, or failure to make estimated tax payments;
- Interest that began accruing earlier than it should have, or not at all; and
- Overpayment interest for the 2020–2023 disaster period.

Some practitioners believe that even where the underlying liability arose before the disaster period began, you may not have had to pay interest or penalties during that period. Again, the IRS disagrees. Example 4 in Treas. Reg. § 301.7508A-1(f), states a taxpayer already delinquent before January 20, 2020, does not receive a windfall elimination of pre-disaster penalties and interest. But the regulation will not control the outcome if a court determines the statutory language provided for suspension of all timing penalties and interest accruals, and the *Kwong* opinion did not address pre-disaster delinquencies.

The bottom line: You may be entitled to a refund or reduction of assessed penalties and interest. For taxpayers dealing with financial pressures, these amounts can make a real difference. But most taxpayers must act on or before **July 10, 2026,** to request their potential refunds.

Who Could Be Affected

This issue is widespread and not limited to a small or specialized group of taxpayers. As noted, tens of millions of taxpayers have been assessed penalties or interest for late filings or payments during these years.

If the court's decision in *Kwong* ultimately holds up, these taxpayers should be entitled to refunds of penalties or interest paid and to abatements of penalties or interest not yet paid. In addition, for cases currently in litigation, the IRS could not assess penalties or interest for the relevant years.

Impacted taxpayers represent a broad cross-section of the public, including individuals, small businesses, large corporations, estates, and trusts. The issue reaches taxpayers with obligations related to income, employment, estate, gift, and excise taxes. **It may also affect taxpayers who filed late international information returns, which can result in significant penalties even when no tax is due.**

Many taxpayers affected by this issue have low and moderate incomes. These taxpayers are less likely to have professional representation and to learn about complex legal developments like this one. As a result, they face a greater risk of missing the opportunity to claim refunds to which they may be entitled.

What You May Need to Do

In most cases, the IRS does not issue refunds or abate tax assessed but not yet paid unless a taxpayer files a claim. The taxpayer must generally file their claim within three years from the date they filed their tax return or two years from the date they paid their tax. Most taxpayers will need to file claims on or before July 10, 2026, using Form 843, Claim for Refund and Request for Abatement. Because the law in this area is still being litigated, taxpayers should also consider filing protective claims to preserve their rights (see below).

Taxpayers with ongoing examinations, Appeals proceedings, or litigation may have open statutes for the applicable years that provide additional time to claim a refund. They should assess the impact of the *Kwong* issue on any settlement discussions or on their litigation approach.

What Is a Protective Claim?

A protective claim allows you to preserve your right to a refund while the law is still uncertain. You do not need to calculate the exact amount of your requested refund. In the IRS's Internal Revenue Manual (IRM) procedures, IRM 25.6.1.10.3.2.5(2) says: "A valid protective claim need not state a particular dollar amount or demand an immediate refund; however, the claim must identify and describe the contingencies affecting the claim; must be sufficiently clear and definite to alert the IRS as to the essential nature of the claim; and must identify a specific year or years for which a refund is sought."

As directed by this IRM provision, taxpayers would need to file a Form 843, write "Protective Refund Claim Pursuant to Kwong Case" or something similar across the top, and fill in as much detail as possible. Generally, taxpayers will need to file the form on or before July 10, 2026. Protective claims are essential to preserve a taxpayer's right to a refund when the final legal determination occurs after the standard period of limitations for filing a refund claim has expired. Taxpayers can also file protective claims for abatement of interest and penalties assessed but not yet paid.

Typically, the IRS holds protective claims for refunds in suspense until the underlying issue is resolved by the courts, and the claim can be perfected by providing the final numbers based upon the court's decision. Protective claims prevent the period of limitations from expiring while waiting for a final resolution. Unfortunately, the resolution may take years.

A Practical Challenge: Paper Is Still the IRS's Kryptonite

Even for taxpayers who learn about this issue, protecting their rights is not simple. Taxpayers cannot file Form 843 electronically, it must be submitted on paper. This creates real challenges.

For taxpayers, paper filing is slower, less accessible, and more difficult to track. The IRS does not provide immediate confirmation it has received the claim. As a result, taxpayers are well advised to send their refund claims by certified mail so they can prove they timely submitted them in the event they are lost or misplaced. For the IRS, paper claims are labor-intensive to process and difficult to track and manage at scale. If millions of taxpayers file claims, the IRS could face significant administrative strain, leading to delays and the potential for inconsistent treatment.

The IRS should quickly develop a means to allow taxpayers to file their claims electronically and implement it immediately. The IRS and taxpayers do not need paper Forms 843 clogging up the system.

Avoiding Disparate Results for Similarly Situated Taxpayers

The right answer from a policy and fairness standpoint is clear: If the courts rule that filing and payment deadlines were postponed for the 3.5-year COVID-19 disaster period, all taxpayers assessed penalties and interest during that period should receive refunds or abatements. If the courts rule in favor the IRS's position, no taxpayers should receive relief. But consistent

treatment of taxpayers is unlikely because the law generally requires taxpayers to file claims to receive refunds or abatements.

Thus, without action, this situation may well produce dramatically different outcomes for the "well advised" versus the "unaware." Taxpayers with advisors are more likely to learn about the issue, file timely claims, and potentially receive refunds. Taxpayers ***without representation***, particularly lower-income taxpayers, may never hear about it and may lose their rights to refunds.

I encourage the IRS and the Treasury Department to do everything they can to avoid that result, including asking Congress to authorize retroactive relief if they determine they lack the administrative authority to ensure equal treatment under current law.

What Should the IRS Do?

The IRS's top priority should be to comply with the Taxpayer Bill of Rights. These rights include the *rights to be informed, pay no more than the correct amount of tax, challenge the IRS's position and be heard,* and *to a fair and just tax system.*

The IRS should act now to protect taxpayer rights. I recommend the IRS take four steps:

1. ***Publicize this issue to provide taxpayers with the information they need to understand it and to file refund claims, protective refund claims, or requests for abatement of interest and penalties.*** Even if the IRS disagrees with the *Kwong* decision, I believe it has an obligation to inform taxpayers about their rights, so taxpayers don't miss the claims deadline if the ultimate resolution of this issue supports their right to the refund or abatement of interest and penalties.
2. ***Provide taxpayers with an additional six-month extension to file refund claims***. IRC § 6081 allows the Secretary of the Treasury to grant a reasonable extension of time to file any return, declaration, statement, or other required document under the tax code or regulations. The IRS should consider providing this extension in the case of refunds or protective claims. That would give taxpayers more time to learn about the issue, reduce the risk of unintentionally losing their rights, and promote fair and consistent treatment. It is a straightforward and appropriate step.
3. ***Consider providing relief systemically to all eligible taxpayers so that taxpayers do not have to file refund claims, protective refund claims, or requests for abatements.*** To me, this is a fundamental taxpayer rights issue. It would be unfair in the extreme to end up with different results for the "well advised" and the "unaware." This result should be avoided. The IRS should explore every plausible legal means to ensure equitable treatment. Similarly situated taxpayers should get similar results.
4. ***Create an electronic portal or mailbox to which taxpayers may submit Kwong-related refund claims and receive acknowledgements that their claims have been received.*** As noted above, Forms 843 currently must be submitted on paper. That imposes considerable burden on taxpayers, who are advised to obtain proof of mailing and generally must travel to the Post Office to do so. If the IRS makes it possible for taxpayers to e-file

Kwong-related refund claims (and eventually all refund claims) and receive immediate electronic acknowledgements of receipt, that burden would be alleviated.

What Should Practitioners, Members of Congress, and the Press Do?

We Need to Get the Word Out.

Taxpayers should not lose their rights simply because they were unaware of a complex legal development – or because the process to protect those rights is too burdensome.

I encourage:

- **Members of Congress** to highlight this issue in their constituent communications;
- **Members of the media** to report about it for their subscribers; and
- **Tax professionals** to make sure their clients are informed.

Awareness, access, and fairness are essential to effective tax administration.

An Important Note

This is a complex and evolving legal issue. This blog is intended to raise awareness – **not to provide legal advice**. Taxpayers should review their individual circumstances and consider seeking professional guidance where appropriate.

Conclusion

Congress enacted the mandatory postponement rules to provide relief during extraordinary events. At the time the rules were enacted, it's unlikely many observers anticipated a disaster lasting as long as the COVID-19 federal disaster period. But there is little doubt COVID-19 was a once-in-a-century type of event that did, in fact, disrupt our lives for an extended period. Under the court's interpretation in *Kwong*, the mandatory postponement period is based on the length of the disaster, and the COVID-19 disaster period continued for 3.5 years.

Because of the infrequency of a disaster lasting this long, most taxpayers, even most tax professionals, did not foresee that filing deadlines and payment deadlines would be postponed for this long and that return filings and payments during the federal disaster period would not be considered late and therefore not subject to penalties and interest. But that is the logical extension of what the court ruled.

Unless the IRS or Congress acts to ensure all affected taxpayers will receive refunds if the *Kwong* decision is upheld, taxpayers seeking refunds for penalties and interest they paid relating to that period will, in most cases, need to file claims on or before July 10, 2026. At the risk of repetition, my overriding goal is to get the word out to as many taxpayers as possible and to avoid disparate results between the "well advised" and the "unaware."

This is a moment for the Treasury Department, the IRS, and Congress to act – to provide time, clarity, and fairness – and to ensure that all taxpayers have a meaningful opportunity to receive the relief Congress provided.

Stay tuned for Part II of this blog series, which will explain how to find relevant information on your transcript, Part III, which will provide guidance on filing claims for refund and protective claims and Part IV, which discusses whether taxpayers who overpaid tax for tax years 2019 through 2022 may still have time to file refund claims.

the budget lab

A Weakened IRS Has Substantial Consequences

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Key Takeaways

1 Over a decade, the size of the tax gap (the amount of taxes legally owed that are not paid in a timely way) approaches $7 trillion.

2 Spending on the IRS is unlike many other forms of government spending in that it generally has a very high rate of return in the form of increased revenue.

3 The IRS reductions from funding and layoffs have likely resulted in about $861 billion in decreased revenue. The layoffs from actions like DOGE alone have likely resulted in $597.8 billion in decreased revenue over the 2026-2035, and the clawback in IRS funding of $20 billion has likely resulted in $262.8 billion in decreased revenue over the same period.

4 Other issues like increased complexity in the tax code and data sharing with DHS may further reduce revenue.

Background

When Congress passed the Inflation Reduction Act (IRA) in August 2022, it included a $79.4 billion supplemental appropriation for the IRS spread over a decade. The investment was premised on a straightforward and empirically grounded argument that the IRS had been systematically underfunded for decades and as a result, a substantial share of legally owed taxes was going uncollected.

The Congressional Budget Office estimated the almost $80 billion in spending would yield roughly $204 billion in additional revenue over ten years, a net fiscal gain of approximately $124 billion. Those estimates, while debated, reflected a well-established literature showing that IRS enforcement spending generates high returns, especially if that spending is aimed at supporting audits of high-income filers and complex business returns. Academic researchers have found similar directional results[1].

The “tax gap”—the amount of taxes legally owed that are not paid in a timely way—currently totals about $700 billion annually as of the most recent IRS data available. Cumulatively over a decade, the gross tax gap approaches $7 trillion. Even modest improvements in efficiency of the IRS, applied to that base, generate meaningful revenue.

The IRS funding legislated in the IRA has not lasted. The Fiscal Responsibility Act of 2023 rescinded $1.4 billion and subsequent appropriations in 2024 and 2025 legislation rescinded $40.4 billion. IRS funding was reduced by an additional $11.7 billion in the most recent budget deal. Ultimately, just over 2/3 of the funding initially allocated in the IRA has been rescinded.

The cumulative effect is a reduced IRS. The agency had begun hiring enforcement personnel and investing in technology modernization, but those efforts have not lasted. Hiring pipelines were opened and are now being partially closed. Institutional knowledge built through training is being lost to attrition and reductions in workforce.

The appropriations rescissions may prove secondary in long-run consequence to the workforce reductions that began in earnest in early 2025. Beginning in February 2025, approximately 7,300 probationary employees were terminated, followed by roughly 4,700 who accepted the administration’s deferred resignation program. By the end of 2025, the total reduction in staffing amounted to 27,636 employees[2]. Administration officials have indicated a goal of reducing the IRS to roughly 50,000 employees, a reduction of approximately 50 percent that would return the agency to a staffing level not seen since the 1960s, when total IRS employment ranged from 47,000 to 52,000. At that reduced staffing level, IRS would need to process about 2.4 times as many returns: returns filed grew from roughly 110 million in 1969 to 267 million in 2024[3]. These numbers understate the burden, given that the tax code has grown considerably more complex in the intervening decades. However, there has been some modernization at the IRS (e.g., electronic processing of returns) that makes this burden potentially manageable.

The composition of the workforce reductions is at least as important as the scale. By mid-2025, the IRS had lost more than 3,600 revenue agents, representing roughly 31 percent of the agency’s entire auditing staff. Revenue agents are the employees responsible for conducting complex, face-to-face examinations of high-income individual returns, partnership filings, and large corporate returns, audit categories with the high yield per staff hour and the most significant deterrence effects on non-compliance[4].

Viewed in one light, workforce reductions are a cost-saving measure consistent with broader government efficiency objectives. However, the IRS is not an ordinary expenditure center: it is the mechanism through which the federal government collects 96 percent of its revenues[5]. Salary savings from eliminating IRS employees are real but modest. Revenue losses from reduced enforcement capacity are likely to be substantially larger, and they compound over time through deteriorating voluntary compliance.

Table 1. Estimated Budget Effects of Changes in IRS Funding

	2026	2027	2028	2029	2030	2031	2032	2033
Cost Savings from 28k Layoffs	3.9	3.9	4.1	4.3	4.4	4.6	4.8	5.0
Gross Deficit Increase from 28k	27.5	28.1	32.3	42.0	54.5	70.7	91.7	95.2
Net Deficit Increase 28k	23.6	24.2	28.2	37.7	50.0	66.1	86.9	90.2
Cost Savings from $20B Reduction	1.7	1.7	1.8	1.9	1.9	2.0	2.1	2.2
Gross Deficit Increase from $20B Reduction	12.1	12.4	14.2	18.5	24.0	31.1	40.3	41.9
Net Deficit Increase $20B Reduction	10.4	10.6	12.4	16.6	22.0	29.1	38.2	39.7
Combined Cost Saving	**5.6**	**5.6**	**5.9**	**6.2**	**6.3**	**6.6**	**6.9**	**7.2**
Combined Gross Deficit Increase	**39.6**	**40.5**	**46.5**	**60.5**	**78.5**	**101.8**	**132.0**	**137.1**
Combined Net Deficit Increase	**34.0**	**34.8**	**40.6**	**54.3**	**72.0**	**95.2**	**125.1**	**129.9**

Table: The Budget Lab • Created with Datawrapper

Revenue Effects

Table 1 presents the results of two experiments[6]. The first highlights the almost 28,000 reduction in the IRS workforce in 2025. The National Taxpayer Advocate breaks the workforce reduction into operating functions. We then put those functions into 4 categories that the IRS reports as part of their budget activity[7]. This parsing of the data allows us to apply a rate of return to those budget activities and project a change in revenue. Staffing reductions in 2025 are projected to reduce IRS revenues by almost $600 billion over the 2026-2035 budget window.

The second experiment is a simple IRS budget reduction of $20 billion over the 2026-2035 window[8]. This experiment mirrors the reduction in funding that has occurred since the passage of the IRA. To forecast the change in revenue, we assume that the reduction occurs in proportion to current spending levels on the budget activity: 21 percent on taxpayer services, 43% on enforcement, 33% on operations support, and the remainder on business systems modernization. We find that this reduction would reduce IRS revenue by $263 billion over the 2026-2035 window.

Together these reductions total just over $860 billion over the 2026-2035 budget window.

IRS Return on Investment

Estimates of how revenues respond to IRS enforcement depend on several empirical foundations worth reviewing carefully.

The most direct evidence comes from audit yield data. Data from the IRS Statistics of Income division, showed that an extra hour spent auditing a taxpayer earning over $5 million generated roughly $4,900 in recommended additional tax—compared to $650 for audits of taxpayers earning around $200,000. A subsequent 2020 paper argued that CBO's revenue estimates systematically understated the potential revenue gain from enforcement activities by ignoring deterrence effects, information-reporting improvements, and longer-run gains.

The audit-rate collapse for high-income filers over the preceding decade provides essential context. A 2022 GAO report found that audit rates for taxpayers with incomes above $200,000 fell more sharply than for any other income group between 2010 and 2019, a decline the IRS attributed primarily to reduced staffing from years of appropriations cuts. Taxpayers earning over $5 million saw their audit rate fall from roughly 16 percent in 2010 to just over 2 percent by 2019. The IRS staffing data underlying these patterns are published annually in the IRS Data Book; by fiscal year 2021, the number of full-time revenue agents and tax examiners had fallen 28 percent from 2011 levels.

The deterrence effect of enforcement is harder to measure but likely significant. Tax compliance is partly a function of perceived detection probability. When audit rates fall to levels that make non-compliance feel low-risk, some share of filers adjusts behavior accordingly (Boning, Guyton, Hodge, and Slemrod 2020; Boning, Hendren, Sprung-Keyser, and Stuart 2024). Based on the empirical literature, the Budget Lab conservatively estimated the return to deterrence to be 2.5 times each dollar recovered directly through audits.

Income for which there is third-party information reporting provides a useful point of comparison. Wages, for which employers file W-2s, exhibit compliance rates above 99 percent. Business income reported only on Schedule C has net misreporting rates estimated at 57 percent for sole proprietors that have little or no information reporting and 12 percent for partnership and S corporation income that have some information reporting, per the IRS's own tax gap estimates for Tax Years 2014–2016. The compliance gap is overwhelmingly concentrated in income streams that the IRS cannot verify automatically—exactly the income streams that require enforcement capacity to address.

Further Issues

In April 2025, the IRS and DHS formalized a Memorandum of Understanding (MOU) allowing Immigration and Customs Enforcement (ICE) to request taxpayer information from the IRS for individuals under final orders of removal or subject to federal criminal investigation. Under the agreement, ICE provides the IRS with names and addresses of taxpayers, which the IRS then cross-references with its own records and returns to ICE. In August 2025, the IRS disclosed tens of thousands of taxpayer records to ICE, including personally identifying information and home addresses, after ICE had requested more than one million records. A federal court subsequently blocked further sharing in November 2025, finding the arrangement likely unlawful.

This sharing of taxpayer data with ICE may reduce how much federal tax the IRS collects to the extent that undocumented immigrants currently filing taxes are hesitant to file taxes for fear of deportation. Undocumented immigrants pay about $66 billion in federal income and payroll taxes each year. As a result of the MOU, and

depending on assumptions about taxpayer and employer responses, the federal government may lose between $147 billion and $479 billion over the next ten years, according to previous Budget Lab estimates.

Another challenge for the IRS is presented by changing (and in some cases, more complex) tax provisions of the One Big Beautiful Bill Act (OBBBA). Changes in the tax code complicate filing of taxes and put stress on IRS in terms of processing and creating new forms. The specific provisions of the OBBBA that induce new burden are the overtime, auto loan, and senior deductions as well as the revised State and Local Deduction (SALT) cap. In addition, OBBBA's mix of permanent and temporary provisions as well as the fact they apply retroactively to the 2025 tax year adds obstacles for the IRS. For all of these reasons, we believe the estimates presented in Table 1 potentially understate the revenue effect of a reduced IRS.

Conclusion

Prior Budget Lab research indicates that more than $700 billion in annual taxes are owed but not paid in a timely way. This tax gap is highly responsive to the resources IRS is given for enforcement. A landmark 2022 investment of almost $80 billion in IRS capacity aimed to reduce the tax gap, but most of that investment has since been cancelled, and a significant portion of the IRS workforce has been terminated. These reductions in IRS enforcement resources have substantial fiscal consequences that are difficult to understand with prior models.

A new Budget Lab analysis provides a richer framework for understanding effects of reductions in both IRS funding and staffing. We find that a 10-year reduction of $20 billion in the IRS budget increases the deficit (net of the IRS cost savings) by about $263 billion. Similarly, reduction of almost 28,000 in staffing—mirroring cuts that occurred in 2025—increases the deficit by almost $600 billion. Together, these cuts increase the deficit by about $861 billion.

Footnotes

1 See for example: https://www.irs.gov/pub/irs-soi/25rpindeterfilingpaycomp.pdf, Boning, William C., John Guyton, Ronald Hodge, and Joel Slemrod. "Heard it through the grapevine: The direct and network effects of a tax enforcement field experiment on firms." Journal of Public Economics vol. 190, issue C (2019), and William C. Boning, Nathaniel Hendren, Ben Sprung-Keyser, and Ellen Stuart, "A Welfare Analysis of Tax Audits Across the Income Distribution," NBER Working Paper 31376 (2023), https://doi.org/10.3386/w31376.

2 https://www.irs.gov/newsroom/national-taxpayer-advocate-delivers-annual-report-to-congress-finds-taxpayer-service-was-strong-in-2025-but-foresees-challenges-for-taxpayers-who-encounter-problems-in-2026

3 https://www.irs.gov/pub/irs-soi/70dbfullar.pdf and https://www.irs.gov/pub/irs-soi/16-05intax.pdf.

4 Government Accountability Office 9GAO) reports audits of Earned Income Tax Credit (EITC) recipients have the highest yield because these audits require little time to complete. https://www.gao.gov/products/gao-22-104960

5 This calculation predates the 2025 increases in tariff revenue.

6 Previously, the Budget Lab has presented revenue estimates of IRS funding decisions. We estimated that the full $80 billion IRA appropriation would have yielded a net revenue increase of $637 billion over the ten-year budget window, roughly three times the CBO estimate, reflecting our incorporation of deterrence effects and the full range of return-on-investment evidence in the economics literature. When the Trump administration began implementing large-scale reductions in force beginning in early 2025, we extended that framework to analyze the fiscal consequences of staffing cuts, estimating that a 50 percent reduction in the IRS workforce would produce $350 billion in deficit increases over a decade under conservative deterrence assumptions, and possibly as much as $2.4 trillion if tax compliance deteriorates more substantially. Because of the variety of proposals and declarations made by the Trump administration, we

updated our methodology for estimating the returns to IRS funding. We rebuilt our framework to allow for changes in workforce and its composition. That framework begins with activity-specific return-on-investment estimates drawn from the economics literature, distinguishing among audit activity, enforcement more broadly, and infrastructure and IT investment. Because the policy environment has shifted from questions about funding increases to questions about funding cuts and workforce reductions, we extended the model to analyze reductions in force directly. This extension required moving beyond the marginal deterrence estimates that anchor most of the existing literature and developing a model that allows for behavioral response under conditions of large and historically unprecedented staffing reductions, for which no direct empirical analog exists. The result is a more flexible model capable of scoring proposals that increase or decrease enforcement within a consistent framework, while acknowledging the uncertainty around extrapolation from available empirical evidence.

7 he reductions break out 10% for operations support, 47% for enforcement, 35% for taxpayer services, and the remainder for business systems modernization.

8 The cost reduction is assumed to continue beyond 2035, continuing to grow at the same rate as nominal GDP. We assume reduced spending in the same percentages as IRS currently spends on budget activities: 21% for taxpayer services, 43% for enforcement, 33% for operations support, and 3.6% for business systems modernization

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INDIVIDUAL TAXES

IRS Staffing Cuts Will Reduce Revenues, Driving Deficits Higher

Over the past year, the Internal Revenue Service (IRS) experienced the most significant personnel contraction in its history. That reduction means that the agency is unable to perform the same level of enforcement activities, which will reduce federal revenues. The deficit impacts are huge, with one recent analysis showing that cuts to IRS personnel could mean hundreds of billions of dollars in foregone revenue and, therefore, higher debt.

What Does the IRS Do?

The IRS is tasked by Congress to serve American taxpayers and to enforce federal law, all for the purpose of collecting tax revenues for the federal government. IRS personnel play a central role in ensuring that federal revenues are collected by answering taxpayer questions about filing, executing changes to the tax code, and enforcing tax law through audits and investigations. In 2025, **the IRS received more than 100 million phone calls, processed 165 million individual income tax returns, and delivered 104 million tax refunds (https://www.taxpayeradvocate.irs.gov/reports/2025-annual-report-to-congress/full-report/)**, according to the National Taxpayer Advocate. That same year, the agency facilitated the collection of $5.0 trillion in taxes.

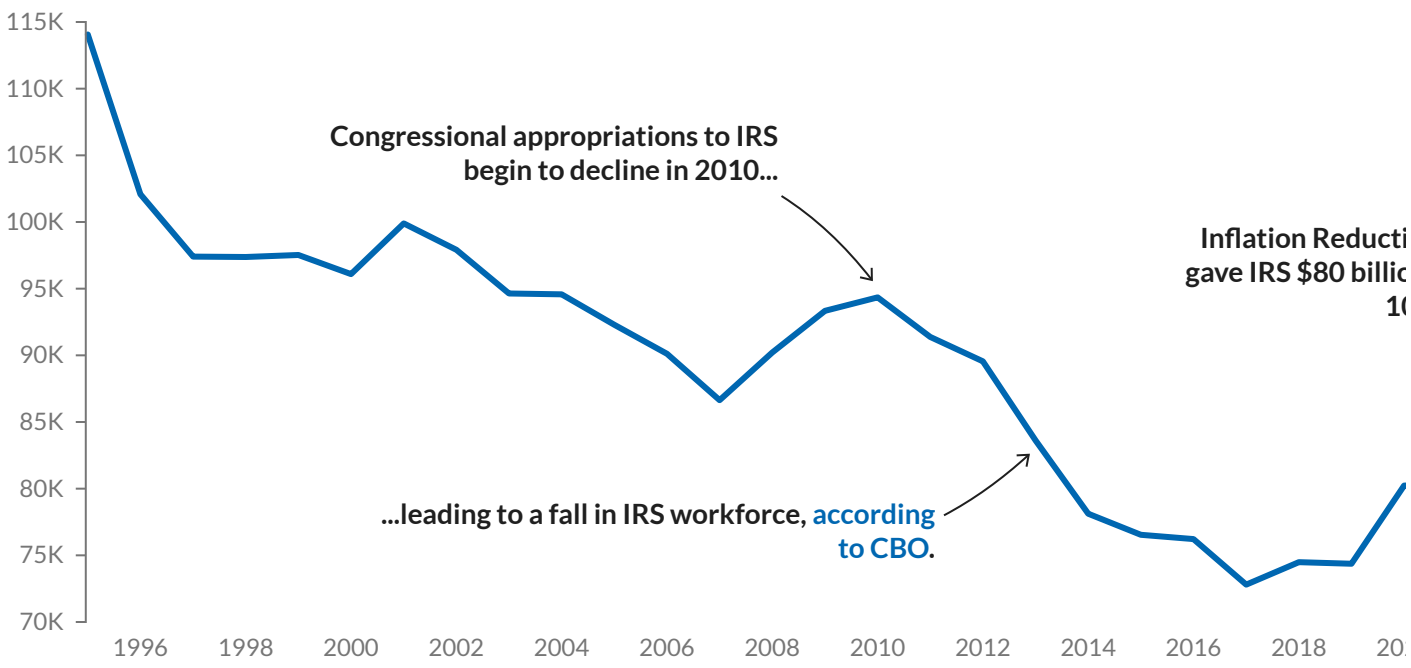
How Much Has the IRS Workforce Declined?

The number of IRS personnel remained relatively stable from 1998 through 2011, but the workforce began to decline in the 2010s as Congress appropriated fewer funds to the agency. According to the Congressional Budget Office, **the decline in IRS funding and staff led to a decline in IRS law enforcement activities (https://www.cbo.gov/publication/56422)**. The amount of additional tax required after audits **fell from $63 billion in 2010 to $32 billion in 2018 (https://www.pgpf.org/article/the-united-states-forgoes-hundreds-of-billions-of-dollars-each-year-due-to-unpaid-taxes/)** (adjusted for inflation to 2023 dollars). In 2017, the IRS workforce fell to 73,000, its lowest level since at least 1995.

In 2019, the Government Accountability Office found that **the IRS faced several workforce-related challenges that "pose risks to meeting its mission" (https://www.gao.gov/products/gao-19-176)** and result in "billions of dollars in taxes [going] unpaid every year." To address the structural challenges facing the agency, **lawmakers provided $80 billion to the IRS over ten years through the 2022 (https://www.pgpf.org/article/would-increased-funding-for-the-irs-narrow-the-tax-gap/)** Inflation Reduction Act (IRA). With the new funds, the IRS was able to begin to rebuild its workforce.

However, since the IRA, a series of **funding rescissions (https://www.pgpf.org/article/budget-basics-what-are-rescissions/)** and executive-wide workforce reductions led to a significant drop in IRS personnel in recent months.

The IRS workforce has declined significantly over the past year



Source: Internal Revenue Service and Office of Personnel Management • Embed • Download image

Note: Data are for end of each fiscal year except for 2026, which is for March.

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The NTA warns that the **2025 staff reductions may impact the ability of the IRS to properly administer the 2026 filing season (https://www.taxpayeradvocate.irs.gov/reports/2025-annual-report-to-congress/full-report/)**. This year, in addition to its regular activities of responding to taxpayers' questions and processing filings, the IRS must also update systems to reflect recent changes in the tax law. **The One Big Beautiful Bill Act made more than 100 changes to the tax code (https://www.pgpf.org/article/how-did-the-one-big-beautiful-bill-act-change-tax-policy/)**, many of which are complex, according to the NTA. Overall, the agency lost 28,312 employees from January 2025 through March 2026, including significant losses in the number of internal revenue agents and officers as well as contact representatives.

IRS lost 28 percent of its workforce since the start of 2025

IRS Employment by Occupation	Staffing as of January, 2025	Staffing as of March, 2026	Change Over Period Number of Positions	Change Over Period Percent
Internal Revenue Agent	11,321	7,792	−3,529	−31%
Internal Revenue Officer	3,416	2,233	−1,183	−35%
Tax Examining	15,152	10,710	−4,442	−29%
Contact Representative	25,041	19,453	−5,588	−22%
Financial Administration	8,170	5,674	−2,496	−31%
Legal	4,265	3,181	−1,084	−25%
Inspection, Investigation, Enforcement, and Compliance	2,917	2,480	−437	−15%
Information Technology	7,969	5,811	−2,158	−27%
Office Administration	17,283	11,996	−5,287	−31%
Other	23,575	16,180	−7,395	−31%
Total	**101,826**	**73,514**	**−28,312**	**−28%**

Source: Office of Personnel Management

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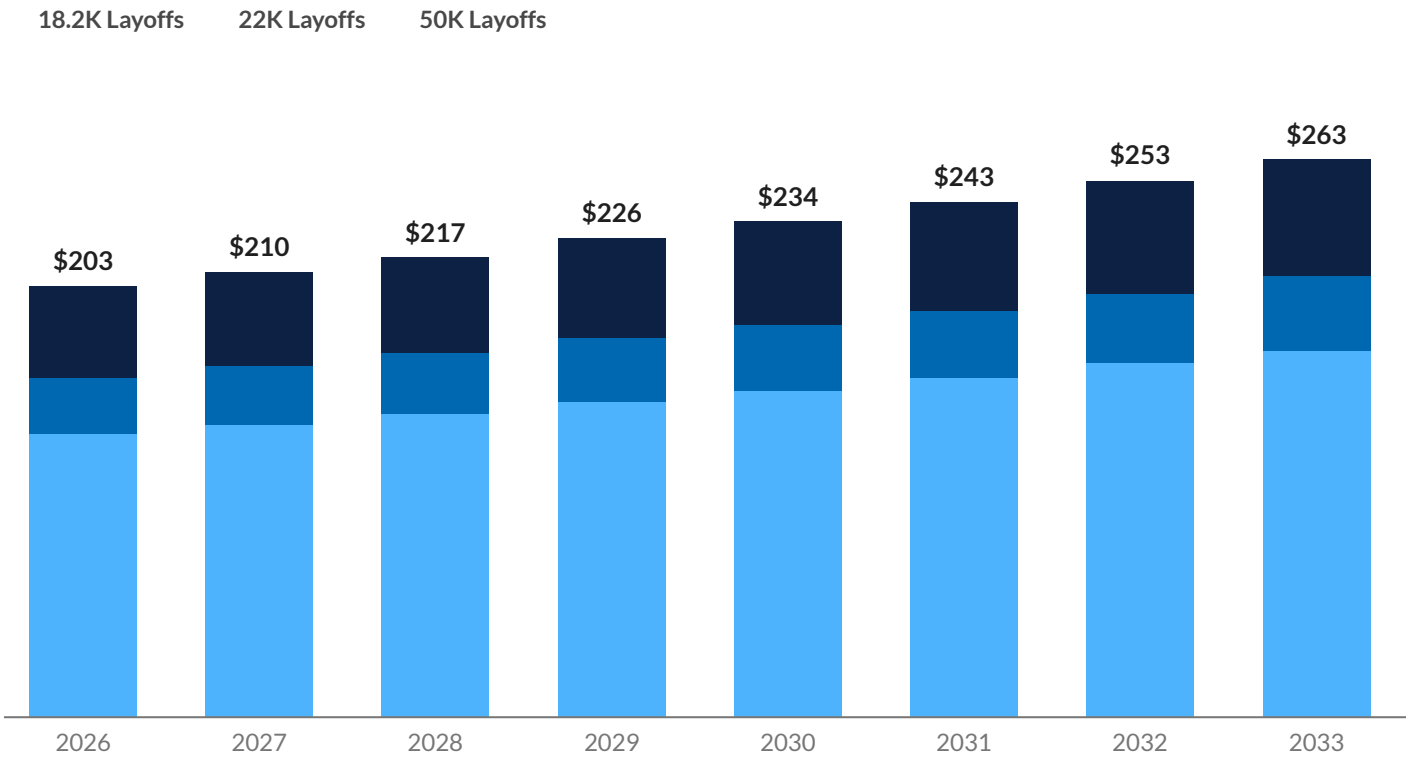
IRS Personnel Loss is Projected to Decrease Revenues, Adding to the Deficit

At the start of the reduction-in-force (RIF) in early 2025, the Budget Lab at Yale estimated the revenue effect of reducing the IRS workforce. The Budget Lab found that a 22,000 RIF at the agency would reduce federal revenues on net by $198 billion from 2026 through

2035. A 43,000 RIF would shrink revenues by $286 billion over the same period. However, the Budget Lab also estimated the effect that a sizeable RIF could have on taxpayer behavior, as less law enforcement activity by the IRS could reduce voluntary taxpayer compliance. The Budget Lab estimates **reduced taxpayer compliance due to a 22,000 RIF could decrease revenues by $1.9 trillion over ten years (https://budgetlab.yale.edu/research/revenue-and-distributional-effects-irs-funding)**.

IRS personnel losses could shrink revenues by at least $1.9 trillion

Impact of Lower Taxpayer Compliance Due to IRS Personnel Losses on Tax Revenues (Billions of $)



Source: The Budget Lab at Yale • Embed • Download image

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Increasing IRS funding to provide for additional enforcement activity either through more staff or improved technology would increase revenue collections, thereby reducing deficits. A recent study found that for every additional $1 spent auditing taxpayers above the 90th percentile, revenues increase by more than $12. For audits below the median income, revenues increase by $5. That means that providing more funding for the IRS to perform its audit function more than pays for itself. Additionally, IRS taxpayer engagement increases taxpayer compliance and revenue collection.

Conclusion

Reductions in IRS personnel decrease federal revenues, increase deficits, and significantly exacerbate the gap between taxes that are owed and taxes that are actually paid. Increasing IRS funding and personnel would help to shrink the tax gap, promote fairness in the economy, and be a step toward addressing **America's structural mismatch between spending and revenues (https://www.pgpf.org/our-national-debt/)**.

Photo by Brandon Bell/Getty Images

LAST UPDATED MAY 26, 2026

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Further Reading

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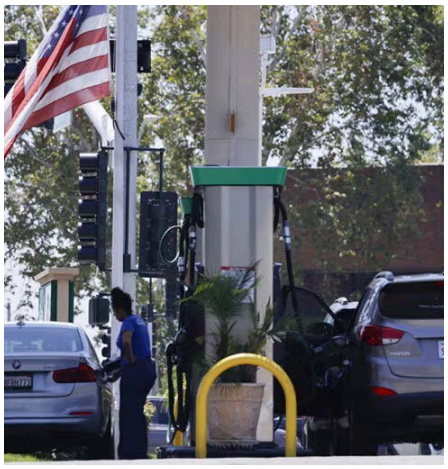
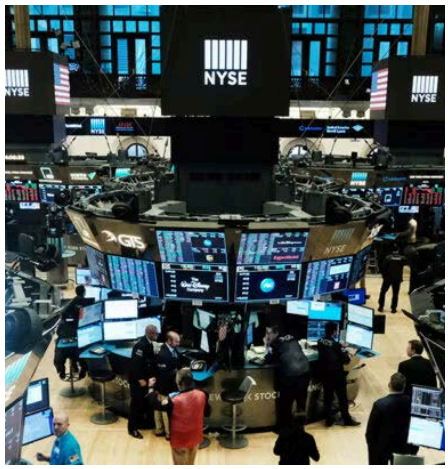
(https://www.pgpf.org/resources/)



(https://www.pgpf.org/article/a-gas-tax-holiday-costs-billions-but-consumers-see-only-marginal-savings/)

(https://www.pgpf.org/article/what-is-the-earned-income-tax-credit/)

Budget Basics: What Is the Earned Income Tax Credit? (https://www.pgpf.



(https://www.pgpf.org/article/what-is-the-stepped-up-basis-and-how-does-it-affect-the-federal-budget/)

What Is Stepped-Up Basis on Capital Gains and How

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Asset Protection & Tax Planning With Legal Entities

Presented by:
Lynnsee Starr

Tax Alliance Conference 2026

Asset Protection & Tax Planning with Legal Entities

Lynnsee Starr, JD

Licensed in Texas and Arizona

1

CPE Learning Objectives

Upon completion of this course, participants will be able to:

- Identify the key differences between entity types and their asset-protection characteristics
- Explain common failures in entity formation and maintenance that expose owners to personal liability
- Describe the components required in a valid Company Agreement
- Recognize tax implications of entity choice, including S-Corp language requirements
- Apply best practices to avoid common mistakes in legal entity management

2

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Why This Matters

Protect from Creditors

Shield personal assets from business liabilities and judgment creditors.

Protect from the IRS

Structure your entity to minimize exposure to tax penalties, audits, and reallocation.

Protect Your Business

Ensure your entity provides the liability protection it was designed to offer.

Reduce Tax Liability

Choose and maintain the right entity type to optimize your tax position.

3

Protecting Your Business

Key benefits of legal entity formation

- **Protected from personal liability**
  - Only entity assets are at risk in a lawsuit — personal assets remain shielded
- **Charging Order Protection (available in certain states)**
  - Judgment creditor does not obtain ownership rights in the entity
  - Creditor can only attach to distributions — not force liquidation or management decisions

4

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Protecting Your Business — Failure to Properly Form

Corporate Veil & Piercing

- Courts may disregard the entity if owners fail to observe required formalities
- Personal liability attaches when the corporate veil is pierced
- Proper formation is the first — and foundational — line of defense

5

> *Individuals who wish to enjoy limited personal liability for business activities under a corporate umbrella should be expected to adhere to the relatively simple formalities of creating and maintaining a corporate entity. In a sense, faithfulness to these formalities is the price paid for the corporate fiction — a relatively small price to pay for limited liability.*

Laya v. Erin Homes, Inc., 352 S.E.2d (W.V. 1986)

Field of Study: Law | Formalities are required to preserve limited liability protection

6

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Protecting Your Business — Failure to Properly Form

Required documentation to establish a valid legal entity

01 — Company Agreement

Foundational governance document setting out member rights, manager powers, and operating rules

02 — Consents

Written consents from members authorizing key actions and decisions

03 — Resolutions

Formal resolutions documenting significant business decisions made by the entity

04 — Adequate Funding

Entity must be properly capitalized to demonstrate it operates as a genuine separate business

7

Protecting Your Business — Failure to Properly Maintain

Ongoing maintenance is required to preserve entity protections. Two critical maintenance steps:

STEP 1

File a Certificate of Amendment

Any changes to your entity — members, name, purpose — must be filed with the Texas Secretary of State to maintain good standing.

STEP 2

Execute an Amendment to the Company Agreement

The internal Company Agreement must be updated to reflect any changes in membership, management, or operating rules — not just the SOS filing.

Failure to complete both steps may expose owners to personal liability.

8

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Company Agreement Requirements

Core provisions every Company Agreement must address

MEMBERS

Names, roles, and permitted actions of all members

MANAGERS

Designation of managers and scope of their authority

ALLOCATION

Pro rata or non-pro rata distribution and profit-sharing provisions

TAX LANGUAGE

Entity classification and tax treatment elections

LIABILITY

Members' responsibility (or lack thereof) for entity debts

GOVERNING LAW

Which state's laws govern the agreement and entity operations

9

Members

What must be documented about each member

Member documentation must capture:

- Name and address of each member
- Initial capital contribution amount
- Membership interest / percentage
- Voting rights and permitted actions
- Transfer restrictions and buy-sell provisions

10

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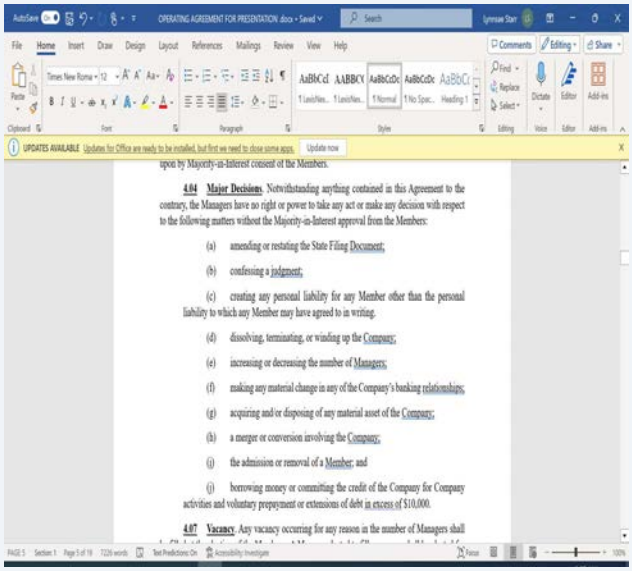
Manager Powers

Scope of authority granted to managers in the Company Agreement

- Day-to-day business operations and decisions
- Entering contracts on behalf of the company
- Hiring, compensating, and terminating employees
- Managing company banking relationships
- Authority to pledge company assets as collateral
- Limitations requiring full member approval



upon by Majority-in-Interest consent of the Members.

4.04 Major Decisions. Notwithstanding anything contained in this Agreement to the contrary, the Managers have no right or power to take any act or make any decision with respect to the following matters without the Majority-in-Interest approval from the Members:

(a) amending or restating the State Filing Document;

(b) confessing a judgment;

(c) creating any personal liability for any Member other than the personal liability to which any Member may have agreed to in writing.

(d) dissolving, terminating, or winding up the Company;

(e) increasing or decreasing the number of Managers;

(f) making any material change in any of the Company's banking relationships;

(g) acquiring and/or disposing of any material asset of the Company;

(h) a merger or conversion involving the Company;

(i) the admission or removal of a Member; and

(j) borrowing money or committing the credit of the Company for Company activities and voluntary prepayment or extensions of debt in excess of $10,000.

4.07 Vacancy. Any vacancy occurring for any reason in the number of Managers shall

11

Consents

Documenting member authorization for manager actions

- **Unanimous Consent on File**
  - Allows managers to perform all acts necessary in the best interest of the company without seeking individual member votes each time
- **Transaction-Specific Consents**
  - Lenders and title companies typically require separate consents when purchasing or selling real property
- **Best Practice**
  - Keep consents current, signed, and stored with company records

12

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Common Mistakes

Errors that undermine entity protection

- **Not avoiding probate**
  - Failure to transfer assets into the entity can cause missed business opportunities and delays
- **Signing in individual capacity after entity is formed**
  - Always sign as manager or authorized representative of the entity — never in your personal name

13

Tax Implications

Common drafting errors with significant tax consequences

TOP MISTAKES

Using partnership (capital account) language in an S-Corp or disregarded entity agreement

Including limited partners without a Qualified Income Offset (QIO) provision

PROBLEMS THESE CREATE

- Gives the IRS grounds to terminate your S-Corp election
- Allows the IRS to reallocate income and expenses among members
- Can result in unexpected taxes, penalties, and back-interest

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S-Corp Distribution Language

Required provision to protect S-Corp status

SAMPLE AGREEMENT LANGUAGE — S-Corporation Distributions

(vi) S-Corporation Distributions. Under no circumstances shall the Members take such action which could be construed as the creation of a second class of stock unless agreed to by the Members in writing. In the event any withdrawn funds are not apportioned in accordance with the Member's Percentage Interest ("Excess Funds"), any Excess Funds to a Member will be treated as a loan made by the Company to such Member, payable to the Company in accordance with Section 6.04 herein.

Why this matters: Without this language, distributions outside the member's percentage interest may create a 2nd class of stock, instantly terminating S-Corp status.

15

Legal & Tax Planning by Entity Type

Comparison of common business structures

Sch C / Sole Prop	Partnership	S-Corp	C-Corp
Default entity	Default entity	Form 2553 election	Form 8832 election
PROS: Administrative simplicity	PROS: Structure flexibility	PROS: Minimizes SE tax	PROS: 21% flat tax rate; Admin simplicity; §1202 gain exclusion
CONS: Personal & business on same return	CONS: SE tax if active member	CONS: Strict requirements; Asset distributions taxable; Possible double taxation	CONS: Distributions taxable; Double taxation; No loss passthrough
COMMON USES: → Start-ups; → <$100k net income	COMMON USES: → Real estate; → Financed assets; → Unrelated owners; → Passive investments; → LP owners	COMMON USES: → Sole or family ownership; → Little/no financed assets; → GP / operational entity	COMMON USES: → Reinvestment of profits; → Current/future investors; → Foreign ownership

16

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Business Health Checklist

Ongoing compliance essentials for legal entity owners

01 **Corporate Documents**

Executed Company Agreement, consents, resolutions, and amendments on file

02 **Reconciled Monthly Bookkeeping**

Keep entity finances separate from personal — never comingle funds

03 **IRS Transcripts**

Review annually to confirm entity tax elections and filings are as expected

04 **Efficient Legal & Tax Set-Up**

Confirm your entity structure is optimized for both liability protection and tax efficiency

17

CPE Review Questions

Answer these questions to complete your CPE credit

1. Which document establishes the internal governance of an LLC, including member rights and manager powers?
2. What is the primary risk of failing to maintain entity formalities after formation?
3. What does a Charging Order do, and which states provide this protection?
4. Why might S-Corp language be required in an LLC Company Agreement?
5. Name two items that belong on a Business Health Checklist.

Participants must answer at least 3 of 5 questions correctly to qualify for CPE credit.

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Thank You

Questions & Discussion

Lynnsee Starr, JD

Licensed in Texas and Arizona

Shackelford, McKinley & Norton LLP

The information in this presentation is for educational purposes only and does not constitute legal or tax advice.

19

Why Qualified Nonrecourse Debt is Important

Presented by:
Clint Davis

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WHY IS QUALIFIED NONRECOURSE DEBT IMPORTANT?

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1

"SO, CAN I DEDUCT IT?" THE LIMITATIONS IN ORDER OF APPLICATION

- DEDUCTIBLE OR DISALLOWED OR CAPITALIZED?
- PROPERLY ALLOCATED—704/706?
- BASIS?
- ***AT RISK—§ 465?***
- PAL LIMITS
- EXCESS BUSINESS LOSS LIMITATION
- NOL LIMITS

2

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BASIS AND AT-RISK

HAVE DIFFERENT RULES

DON'T TRICK YOURSELF BY USING THE TERM

"AT-RISK BASIS"

3

BASIS IS USED TO DETERMINE TAXABILITY OF DISTRIBUTIONS, DETERMINE GAIN ON SALE AND LIMIT DEDUCTION OF LOSSES.

"AT-RISK" IS ONLY A LOSS LIMITATION DEVICE SEPARATE FROM BASIS.

4

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YES, THERE ARE SIMILARITIES

- THE INCREASE BY PROFITS AND CONTRIBUTIONS;
- THE DECREASE BY LOSSES AND DISTRIBUTIONS;
- THE DE MINIMIS 10% TEST FOR PARTNER NONRECOURSE DEBT UNDER THE BASIS RULES REQUIRING QUALIFIED NONRECOURSE FINANCING

5

BUT YOU NEED BOTH BASIS AND AT-RISK TO BE ABLE TO TAKE THE DEDUCTION CURRENTLY.

6

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RECOGNIZE THIS?

K1 Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	$	$
Qualified nonrecourse financing	$	$
Recourse	$	$

K2 Check this box if item K1 includes liability amounts from lower-tier partnerships ☐

K3 Check if any of the above liability is subject to guarantees or other payment obligations by the partner. See instructions . . . . ☐

7

ONLY 2 OF THE BOXES ARE OUTSIDE PARTNERSHIP BASIS TERMS;

THE OTHER IS AN AT-RISK ISSUE

CAREFUL: BASIS AND AT-RISK HAVE DIFFERENT RULES

DON'T TRICK YOURSELF BY USING THE TERM "AT-RISK BASIS"

8

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WHERE IS PARTNER NONRECOURSE DEBT SHOWN?

K1 Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	$	$
Qualified nonrecourse financing	$	$
Recourse	$	$

K2 Check this box if item K1 includes liability amounts from lower-tier partnerships ☐

K3 Check if any of the above liability is subject to guarantees or other payment obligations by the partner. See instructions . . . . ☐

CONFUSING ISN'T IT? IT IS ALMOST NEVER QUALIFIED NONRECOURSE DEBT BECAUSE WITH A LOAN BY A PARTNER OR RELATED PERSON, THE RISK OF LOSS IS WITH THE LENDER PARTNER.

9

De minimis Exception for Certain Partner Nonrecourse Debt

- Under a de minimis rule, a partner is not deemed to bear the economic risk of loss for a nonrecourse partnership loan from that partner (or that partner's affiliate) if the partner's interest in each and every item of income, gain, loss, deduction, or credit is 10% or less over the partnership's life, and if the loan constitutes qualified nonrecourse financing under the at-risk rules.

10

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De minimis Exception for Certain Partner Nonrecourse Debt

- Where the exception applies, the appropriate box is the one for qualified nonrecourse financing.
- Ask yourself—how likely is it that the partner's interest in each and every item of income, gain, loss, deduction, or credit is 10% or less over the partnership's life.

11

If the box in item K3 is checked, see the instructions for k-1, box 20, code X, for additional information.

- Code X. Payment obligations including guarantees and deficit obligations (DROs). If a partnership has checked the box in item K3, this indicates that you or a person related to you has a payment obligation with respect to the partnership's liabilities. The attached statement for box 20, code X, reflects the ending balance of each payment obligation that was included in the aggregate amount reported in box 20 under code X. For purposes of box 20, code X, a payment obligation is defined as an obligation under Regulations section 1.752-2(b)(1) that is recognized under Regulations sections 1.752-2(b)(3)(i)(A) and (B) (such as a recognized guarantee or an obligation to restore a deficit capital account upon liquidation) and a related person is defined as a related person as defined in Regulations section 1.752-4(b).

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BACK TO THIS:

K1 Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	$	$
Qualified nonrecourse financing	$	$
Recourse	$	$

K2 Check this box if item K1 includes liability amounts from lower-tier partnerships ☐

K3 Check if any of the above liability is subject to guarantees or other payment obligations by the partner. See instructions . . . . ☐

13

QUALIFIED NONRECOURSE FINANCING

- **NONRECOURSE DEBT THAT IS NOT QUALIFIED NONRECOURSE FINANCING PRODUCES BASIS BUT NO AT-RISK AMOUNT.**
- **NONRECOURSE DEBT THAT IS QUALIFIED NONRECOURSE FINANCING PRODUCES BASIS AND AN AT-RISK AMOUNT UNDER AN EXCEPTION IN THE AT-RISK RULES.**

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MAKING THINGS MORE CONFUSING:
Different Types of Nonrecourse Debt Now Exist:

- Security Limited to Specific Property
- Recourse to the Entity but Nonrecourse to the Owners (called "Exculpatory Liabilities"), e.g., an unsecured loan to:
  - An LLC
  - An LLP
  - A Limited Partnership where the GP is not liable
  - A Limited Partnership where the GP has no profit or capital interest

15

"Exculpatory Liabilities"
[Entity Generally Liable and Members Not]

LLC/Entity liable?	Any Guaranty by a Member or Related Party?	Loan from Member or Related Party?	Result
YES	NO	NO	Nonrecourse Liability *
YES	NO	YES	Member (Partner) Nonrecourse Liability [RECOURSE]
YES	YES	NO	Recourse Liability

* Note: just because the LLC has nonrecourse debt does not mean that all deductions are nonrecourse deductions. ALWAYS analyze who bears the economic risk of loss for a deduction if all assets are immediately sold at no gain or loss.

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QUALIFIED NONRECOURSE FINANCING

- NONRECOURSE DEBT
- NOT CONVERTIBLE TO EQUITY
- ACTIVITY OF HOLDING REAL PROPERTY
- SECURITY LIMITED TO REAL ESTATE + INCIDENTAL PROPERTY +10% LIMIT ON OTHER SECURITY
  - PROBLEM FOR EXCULPATORY LIABILITY ON LOAN TO LLC EVEN W/O GUARANTEES
- GOVERNMENT OR QUALIFIED LENDER
  - NOT SELLER OR BROKER + IF RELATED, COMMERCIALLY REASONABLE

17

QUALIFIED NONRECOURSE FINANCING

Of interest for an exculpatory liability, Reg. Section 1.465-27(b)(4) states that the personal liability of any partnership for repayment of a financing is disregarded and the financing is treated as qualified nonrecourse financing secured by real property if (i) the only persons personally liable to repay the financing are partnerships; (ii) each partnership with personal liability holds only property described in§ 1.465-27(b)(2)(i); and (iii) in exercising its remedies to collect on the financing in a default or default-like situation, the lender may proceed only against property that is described in§ 1.465-27(b)(2)(i) and that is held by the partnership or partnerships.

So, the entity's liability is NOT a problem.

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QUALIFIED NONRECOURSE FINANCING

- What if you own real property for use in a trade or business?
- CONSIDER:

BANK LENDER

OPERATING LINE OF CREDIT

LEASE

REAL ESTATE LOAN

PARTNERSHIP

S CORP

REAL ESTATE

OPERATING BUSINESS

21

But did you see the bonus depreciation issue?

BANK LENDER

OPERATING LINE OF CREDIT

LEASE

REAL ESTATE LOAN

PARTNERSHIP

S CORP

REAL ESTATE

OPERATING BUSINESS

22

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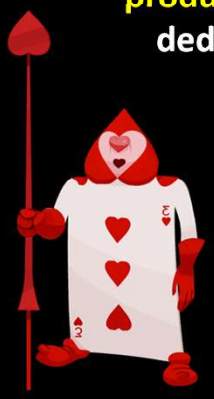
Need to pay attention to **100% bonus depreciation on qualified production property. Code § 168(n)** allows taxpayers to elect to deduct 100% of the cost of "qualified production property" (QPP).



- Leases generally block this deduction.
- Look at Notice 2026-16, 2026-11 I.R.B. 685 (2/20/26) (item a, page 4): Provides definitions (§ 3)
  - Provides guidance (§ 4) on leased property (exceptions for intercompany leases among consolidated corporate groups and "commonly controlled pass-through entities"):

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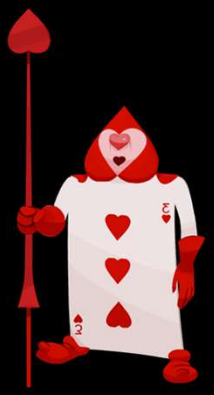
Notice 2026-16 (2/20/2026)



- If a member of a consolidated group owns and leases property to another member of the same group (an intercompany lease), the lessor is not treated as a lessor for these purposes
  - Instead, the group is treated as a single taxpayer, and the property's eligibility is determined by the lessee's trade or business activities conducted within that property
- If a partnership, S corporation, or individual leases property to a commonly controlled person, the lessor is not treated as a lessor.
  - The lessor pass-through entity or lessor individual determines whether the property meets the integral part requirement by reference to the commonly controlled person's trade or business activities conducted in, or taking place within, the leased property.

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STATUTE ON AGGREGATION 465(c)(3)(B) (i) AND (ii)

(B)Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i)the taxpayer actively participates in the management of such trade or business, or

(ii)such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

25

QUALIFIED NONRECOURSE FINANCING

WHAT IS AN ACTIVITY?

TAM 9035005 concluded that aggregation of the activities of two partnerships was not permitted because they were not in the same trade or business. In the TAM, the taxpayer was a 50% partner in two separate partnerships, one operating an oil and gas operation and one operating a restaurant business. The taxpayer and the other 50% partner actively participated in the management of both partnerships.

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QUALIFIED NONRECOURSE FINANCING

In Chief Counsel Advice (CCA) 201805013, a partnership and three S corporations each had a similar line of business and operated in the same industry but operated their respective businesses at different locations. The four businesses also shared some expenses, such as advertising, information technology, and accounting services. However, the operations of each business were otherwise largely independent of the others.

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QUALIFIED NONRECOURSE FINANCING

The IRS concluded that an "activity," before any potential aggregation, is the smallest indivisible piece or parcel of property, business asset, or integrated business unit in which the taxpayer possesses an ownership interest.

At most, the business activity of each entity comprises a separate activity for purposes of Sec. 465(c)(3)(A) (prior to the application of any aggregation rules contained or referred to in Sec. 465(c)(3)(B)).

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QUALIFIED NONRECOURSE FINANCING

The IRS noted that while Sec. 465(c)(3)(B) may allow component activities that constitute a trade or business to be aggregated, the aggregation provisions allow aggregation only within a single trade or business.

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QUALIFIED NONRECOURSE FINANCING

In Chief Counsel Advice (CCA) 201805013, the IRS took a narrow view of the concept of "activity" for purposes of the at-risk rules and concluded that business activities conducted through a partnership and three separate S corporations could not be aggregated and treated as a single activity for purposes of Section 465.

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QUALIFIED NONRECOURSE FINANCING

- For Sec. 465(c)(3)(B)(ii) aggregation, the IRS also expressed doubt that the taxpayer could demonstrate that 65% of the relevant losses flowed through to active participants in the management of the businesses, given the presence of a passive majority owner from whom the taxpayer had purchased his interests.

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QUALIFIED NONRECOURSE FINANCING

- Sec. 465(c)(3)(B)(i) aggregation: The IRS concluded that the Sec. 465(c)(3)(B)(i) aggregation rule only applies to activities that are conducted ***directly by a taxpayer*** (see Staff of the Joint Comm. on Taxation, General Explanation of the Tax Reform Act of 1978, H.R. 13511, 95th Cong., 29, 131 (Jt. Comm. Print 1979)).
- In the IRS's view, activities conducted through a partnership or S corporation have the possibility of being aggregated under only Sec. 465(c)(3)(B)(ii) and not under Sec. 465(c)(3)(B)(i).

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REVIEW: STATUTE ON AGGREGATION 465(c)(3)(B) (i) AND (ii)

(B)Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i)the taxpayer actively participates in the management of such trade or business, or

(ii)such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

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SECURITY FOR LOAN LIMITED

- LOAN TO AN LLC AS BORROWER WHERE LENDER CAN REACH ALL OF THE ASSETS MAY BE PROBLEMATIC.
- REMEMBER THE REQUIREMENT THAT IT BE SECURED SOLELY BY REAL PROPERTY + INCIDNTAL PROPERTY (INCIDENTAL TO OWNING THE REAL PROPERTY) + A MAXIMUM OF 10 % OTHER.
- WHAT DOES YOUR COST SEGREGATION STUDY DO TO THE FOREGOING FORMULA? YOUR PURCHASE PRICE ALLOCATION SCHEDULE UNDER CODE SECTION 1060?
- *CONGRATULATIONS* = HAVE YOU MOVED MORE ASSETS TO PERSONAL PROPERTY FOR BONUS DEPRECIATION BY TRANSFORMING YOUR QUALIFIED NONRECOURSE FINANCING INTO NORMAL NONRECOURSE FINANCING THAT GIVES YOU NO AT RISK AMOUNT?

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"Exculpatory Liabilities" [Entity Generally Liable and Members Not]

COMPARE THE FOLLOWING EXAMPLES

HOW CLOSE TO THE EDGE ARE YOU?

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ASSETS		LIABILITIES AND CAPITAL	
CASH	$3,000,000	NONRECOURSE DEBT (EXCULPATORY LIABILITY TO BANK) (COMPANY LIABLE; NO MEMBER LIABLE; NO GUARANTEES)	$14,000,000
BUILDING	$11,000,000		
LAND	$1,000,000	CAPITAL:	
		A MEMBERS	$1,000,000
		B MEMBERS	-0-
TOTAL ASSETS	$15,000,000	TOTAL L&C	$15,000,000

RESULT UNDER 465?

- ACTIVITY OF HOLDING REAL PROPERTY ?
- SECURED ONLY BY REAL ESTATE? (RE + INCIDENTAL + 10% OTHER)?

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ASSETS		LIABILITIES AND CAPITAL	
CASH	$3,000,000	NONRECOURSE DEBT (EXCULPATORY LIABILITY TO BANK) (COMPANY LIABLE; NO MEMBER LIABLE; NO GUARANTEES)	$14,000,000
INTERIOR FIXTURES AND FINISHES (5-YEAR PROPERTY)	$2,000,000		
INTERIOR FIXTURES (7-YEAR)	$4,000,000	CAPITAL:	
BUILDING	$5,000,000	A MEMBERS	$1,000,000
LAND	$1,000,000	B MEMBERS	-0-
TOTAL ASSETS	$15,000,000	TOTAL L&C	$15,000,000

RESULT UNDER 465?

- ACTIVITY OF HOLDING REAL PROPERTY ?
- SECURED ONLY BY REAL ESTATE? (RE + INCIDENTAL + 10% OTHER)?
  - ARE THESE FIXTURES REALLY FIXTURES?

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ASSETS		LIABILITIES AND CAPITAL	
CASH	$1,000,000	NONRECOURSE DEBT	$14,000,000
VEHICLES	$2,000,000		
INTERIOR FIXTURES AND FINISHES (5-YEAR PROPERTY)	$2,000,000		
INTERIOR FIXTURES (7-YEAR)	$4,000,000	CAPITAL:	
BUILDING	$5,000,000	A MEMBERS	$1,000,000
LAND	$1,000,000	B MEMBERS	-0-
TOTAL ASSETS	$15,000,000	TOTAL L&C	$15,000,000

RESULT UNDER 465?

- ACTIVITY OF HOLDING REAL PROPERTY ?
- SECURED ONLY BY REAL ESTATE? (RE + INCIDENTAL + 10% OTHER)?

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ASSETS		LIABILITIES AND CAPITAL	
CASH	$1,000,000	EXCULPATORY LIABILITY TO BANK	$14,000,000
KITCHEN EQUIPMENT	$2,000,000		
DELIVERY VEHICLES	$2,000,000		
INTERIOR FIXTURES AND FINISHES (5-YEAR PROPERTY)	$1,000,000		
INTERIOR FIXTURES (7-YEAR PROPERTY)	$1,000,000	CAPITAL:	
BUILDING	$5,000,000	A MEMBERS	$1,000,000
LAND	$1,000,000	B MEMBERS	-0-
PURCHASED GOODWILL OF RESTAURANT BUSINESS	$2,000,000		
TOTAL ASSETS	$15,000,000	TOTAL L&C	$15,000,000

RESULT UNDER 465?

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IRS AUDIT ISSUES

- At-risk computation.
- Relief of liability resulting in the at-risk amount falling below zero.
- Qualified non-recourse financing qualifications.
- Related party loans.
- Computation and character of suspended loss carryforwards.

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IRS AUDIT ISSUES

- Inappropriate aggregation of activities to allow recourse debt from another activity to increase at-risk in all other activities.
- Inclusion of non-recourse debt in the partner's at-risk amount.
- Issues involving limited partner or LLC member guarantees of nonrecourse debt.
- Stop loss devices.

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RECAPTURE

- **If a loss exceeds the at-risk amount, the loss will be suspended until the at-risk amount is increased.**
- **Losses that are suspended because they are greater than the at-risk investment are treated as a deduction for the activity in the following year (assuming there is an adequate at-risk amount at the end of that year).**

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Suspended losses can be lost permanently!

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RECAPTURE

- **If losses from an at-risk activity are allowed, they are subject to recapture in later years if the amount at risk is reduced below zero.**
- **Some examples of situations where it is possible for the at-risk amount to drop below zero include the withdrawal of funds from the activity and the conversion of recourse debt to nonrecourse debt.**

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- **Under § 465(e), when a taxpayer's at-risk amount goes below zero the "negative" at-risk amount must be included in gross income.**
- **The recapture amount included in income is allocated to the activity in which the original at-risk amount was invested and may be deducted in subsequent years if and when the at-risk amount is restored to that activity.**

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So happy we could clear all that up!

THANK YOU FOR INVITING ME!

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IRS Stakeholder Communications & Liason

Presented by:
Derek Ganter

Biography for Derek Ganter

Derek Ganter currently leads the outreach and education programs within the Communications & Liaison (C&L) division of the Internal Revenue Service. His oversight includes the National Public Liaison (NPL), Tax Outreach Partnership & Education (TOPE) and Stakeholder Liaison (SL) programs. In this role, he leads engagement with payroll professionals, tax practitioners, industry representatives, and other key stakeholders at the local, state, regional and national levels. His responsibilities include overseeing outreach and educational initiatives that communicate IRS policies, practices, and procedures—supporting voluntary compliance with tax laws and reinforcing enforcement efforts where necessary.

Prior to his current assignment, Derek held a variety of positions of increasing responsibility and scope primarily in the IRS. Recent assignments include:

- serving as a Bank Secrecy Act/Title 31 Specialist in the designated High Intensity Financial Crimes Area of Miami, Florida,
- holding various management and non-management compliance positions in the IRS's Examination function in the Small Business/Self-Employed (SBSE) and Large Business & International (LB&I) divisions,
- working with the Federal Emergency Management Assistance agency to provide support to victims of disasters, as well as
- leading several task forces, special projects and teams

Derek has been recognized by former IRS Commissioners Rossotti and Rettig, the American Institute of CPAs (AICPA), the National Association of Enrolled Agents (NAEA), members of the U.S. Congress, and other distinguished institutions for his expertise in tax law, strong communication skills, and ability to resolve complex and sensitive issues.

A native of southern California, Derek attended the University of California, Santa Barbara and began his IRS career in 1989 after being recruited by the agency. Outside of his professional role, Derek serves on the leadership teams of several nonprofit organizations and enjoys mentoring student-athletes, fishing, and playing board games.

Circular 230 Though The Client Engagement Cycle

Presented by:
Kevin Carle

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Circular 230 Through the Client Engagement Cycle

For: 2026 Tax Alliance Conference

Presenter:
Nellie Allen, Legal Specialist

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Introduction

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Learning Objectives

- By the end of this seminar, you will be able to:
  - Recognize and apply key Circular 230 provisions throughout the client engagement lifecycle to build a sustainable tax practice while maintaining professional standards and ethical compliance;
  - Implement practical risk management strategies that protect both the practitioner and client while strengthening professional relationships and ensuring high-quality service delivery;
  - Create and maintain systematic procedures for client engagement, from initial contact through completion, that integrate professional responsibility requirements with best practices for modern tax practice; and
  - Identify and address common ethical challenges at each stage of client engagement using established frameworks that promote both compliance and practice development.

3

3

Learning Objectives (cont'd)

- By the end of this seminar, you will be able to:
  - Identify both your role as a regulated practitioner and your professional and ethical obligations to your clients and the IRS,
  - Recognize and understand key provisions of Circular 230, and
  - Will have learned best practices to develop and maintain as a tax practitioner.
  - Define Disreputable Conduct
  - Understand the OPR's discipline process

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Professional Standards: A Practice's Foundation

5

Ethics and Professional Standards in Tax Administration

- Ethics in taxation serves multiple critical functions
  - Builds essential trust and credibility among stakeholders (i.e., taxpayers, IRS, and third parties)
  - Protects both taxpayers and tax professionals from legal consequences
  - Ensures confidentiality of sensitive taxpayer information
  - Maintains the integrity of the tax system

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The Business Case for Ethics in Tax Practice

Ethics and professional standards create the foundation for business success through:

Client Relationship
- Builds long-term trust and loyalty
- Protects sensitive financial information
- Attracts quality clients seeking reliable service

Risk Management
- Minimizes exposure to legal sanctions and penalties
- Reduces the likelihood of malpractice claims
- Helps identify and manage conflicts of interest

Professional Value
- Strengthens market reputation and credibility
- Ensures accurate, high-quality work products
- Differentiates practice in a competitive market

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The Business Case for Ethics in Tax Practice

The commitment to ethical practice creates a self-reinforcing cycle:

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Professional Standards Framework

- Regulatory and other governing bodies establish comprehensive standards that:
  - Define expected professional conduct
  - Provide clear ethical guidelines
  - Create accountability measures
  - Support the tax profession's trustworthiness

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Statutory Authority

31 USC §330 is the core authority over those who practice before the Treasury

- Enacted in 1884, modernized for today's tax practice
- Authorizes Treasury to regulate who may practice and how
- Empowers determinations of "fitness to practice“
- Provides for disciplinary actions and sanctions, including monetary penalties
- Authorizes establishing standards for written tax advice

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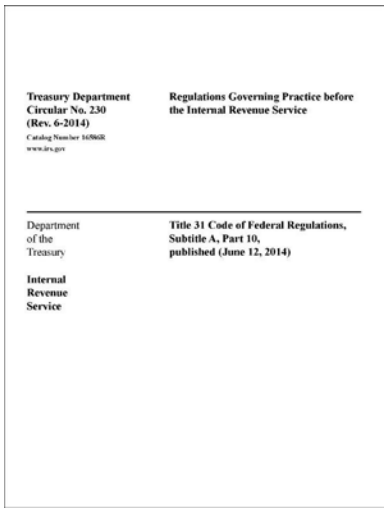
Statutory Authority: Circular 230



Treasury Department
Circular No. 230
(Rev. 6-2014)
Catalog Number 16868R
www.irs.gov

Regulations Governing Practice before the Internal Revenue Service

Department of the Treasury

Internal Revenue Service

Title 31 Code of Federal Regulations, Subtitle A, Part 10, published (June 12, 2014)

- Circular 230 contains the regulations detailing a tax professional's duties and obligations while practicing before the IRS.
- It authorizes specific sanctions for violations of the duties and obligations
- It describes the procedures that apply to administrative proceedings for discipline

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Fitness to Practice

Fitness to Practice Requirements under Section 330:

Good character – demonstrating honesty and integrity

Good reputation – maintaining professional standing

Necessary qualifications – possessing required expertise

Competency – ability to effectively serve clients

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Office of Professional Responsibility (OPR)

Mission and Role

- Administers and enforces the regulations in Circular 230
- Ensures fair, equitable application of professional standards
- Investigates tax practitioner misconduct allegations
- Imposes disciplinary sanctions when warranted
- Supports tax system integrity through tax practitioner oversight

Approach to Enforcement

- Looks to tax practitioners holistically
- Attention given to patterns of misconduct, not isolated mistakes
- Coordinates with other licensing authorities

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Who Falls Under OPR's Jurisdiction?

- Credentialed Tax Practitioners
  - Attorneys
  - Certified Public Accountants (CPAs)
  - Enrolled Agents (EAs)
  - Enrolled Retirement Plan Agents (ERPA)
  - Enrolled Actuaries
- Other Regulated Tax-Related Professionals
  - Annual Filing Season Program (AFSP) Record of Completion Holders
  - Appraisers who submit appraisals supporting tax positions

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What Constitutes "Practice" Before the IRS?

- Client Representation Activities
  - Representing clients in audits, collections, investigations, and appeals
  - Appearing at conferences, hearings, and meetings
  - Corresponding with IRS regarding taxpayer matters
- Advisory Services
  - Preparing and filing documents
  - Providing written tax opinions
  - Advising on tax positions and transactions
- Important Distinction
  - Mere tax return preparation, without more, is not "practice"

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Additional Professional Obligations

Other sources of professional standards	Interrelated enforcement
• Internal Revenue Code requirements, restrictions, and penalties • State licensing authority regulations • Professional association ethics rules • Specific formalized industry standards	• State licensing authority and judicial discipline may trigger reciprocal OPR action • Violations of other authorities' laws, rules, or regulations may constitute disreputable conduct

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Building on One's Foundation

- Why These Standards Matter for Your Practice
  - Creates a framework for client trust and confidence
  - Provides clear boundaries for professional conduct
  - Helps manage risk through ethical compliance
  - Supports long-term practice sustainability
  - Protects both tax practitioners and their clients alike
- Connection to Practice Success
  - Strong principled foundation supports client relationships
  - Professional standards guide decision-making
  - Compliance reduces practice risks
  - Reputation builds business growth

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Best Practices for Tax Advisors – §10.33

Section 10.33 encourages practitioners to adhere to "best practices" in:

Advising on Federal tax issues	Preparing or assisting in preparing a submission to the IRS	Providing clients with the highest quality representation

While section 10.33 is *aspirational* in effect, tax professionals are expected to observe best practices to preserve public confidence in the tax system.

Implementing "best practices" can assist a practitioner in building and maintaining a sustainable practice.

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Building Strong Foundations: Pre-Engagement Phase

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Solicitation of Business (1 of 2)

- There are a myriad of new ways for tax practitioners to solicit clients. Be sure to adhere to section 10.30 when soliciting.
  - Tax practitioners are prohibited from using any form of public communication or private solicitation containing a false, fraudulent, misleading, or deceptive statement or claim.
  - Tax practitioners making an uninvited written or oral solicitation related to a federal tax matter must clearly identify the solicitation as such and identify the source of the information used in choosing the recipient(s).

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Solicitation of Business (2 of 2)

- Tax practitioners may publish a fee schedule and disseminate this information to the public. The fee schedule can include:
  - Hourly rates or fixed fees for specific services
  - A range of fees for certain services
  - Fees charged for an initial consultation
- If costs are to be charged to a client (e.g., for phone calls, copies, filing fees, etc.), the fee information must include a statement disclosing whether the client will be responsible for these costs.
- Practitioners can charge no more than the published rates for at least 30 days after the last publication of the fee schedule.

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Solicitation – Best Practices

- Best practices for solicitation
  - Avoid offering specific tax advice or endorsing products or services without the appropriate qualifications and disclosures.
  - Ensure that your online activities adhere to the ethical and legal standards established by your professional organizations and regulatory authorities.
  - As part of its procedures to ensure compliance, firms should develop and implement clear social media policies and educate all employees on these policies, the potential risks associated with social media, and the importance of discretion.
  - Avoid sharing personal financial information, client details, or sensitive tax-related information (e.g., testimonials without client permission, examples based on real clients, etc.) to ensure the security and protection of all parties involved.

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Assessing Competence (1 of 4)

- When considering taking on a new client, tax practitioners must ensure they are competent to handle the client's tax matters.
  - Must understand competence requirements of section 10.35
    - Knowledge, skill, thoroughness commensurate with the subject matter under representation
    - Current competence assessment
    - Areas requiring development
    - When to decline representation

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Assessing Competence (2 of 4)

- Section 10.35 requires that a tax practitioner have the knowledge, skill, thoroughness, and preparation — and the time — necessary for the federal tax matter for which they have been engaged by the client.
  - This section requires the tax practitioner to assess their current competency when retained to handle a matter.

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Assessing Competence (3 of 4)

- Section 10.35 provides that a tax practitioner can develop their competency for the matter for which they have been retained by:
  - Researching and educating themselves on an issue
  - Consulting with another tax professional who has established competence in the field in question
  - Retaining/bringing in another tax professional who is competent in the matter's issue(s) and work with them.
- However, a tax practitioner unable to attain the necessary competence may have to decline (or withdraw from) representing the client.

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Assessing Competence (4 of 4)

- Common competency challenges
  - Complex transactions outside of the tax practitioner's expertise
  - New tax law implementation (i.e., the difficulty or failure to stay updated)
  - Technology requirements
  - Industry-specific issues

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Assessing Competence – Best Practices

- Best Practices for Maintaining Competence
  - Regular assessment of skills
  - Professional development planning
  - Resource identification
  - Referral network development

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Initial Client Screening

- Preliminary Client Assessment
  - Red flags to watch for:
    - Complex situations requiring expertise
    - Unrealistic client expectations
    - Previous tax issues, including issues with prior tax return preparers

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Initial Client Screening – Best Practices

Best practices for screening new clients

- Establish:
  - Initial consultation procedures
  - Information-gathering protocols
  - Risk assessment methods

Best practices for conflict management

- Systematic screening procedures to check for conflicts
- Regular conflict reviews and, if a conflict arises, procedures on:
  - Promptly informing the clients
  - Using guidelines for informed consent, including taking client confidentiality and privileges into consideration
  - Obtaining written conflict waivers
- Clear documentation protocols
  - Written conflict waivers must be retained for 36 months after representation ceases and made available to the IRS upon request

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Building Strong Foundations: Client Acceptance and Onboarding Phases

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Engagement Terms

- Engagement Scope
  - Be precise in identifying who is the client
  - Define services and other material aspects clearly
    - Included and excluded services
    - Client responsibilities and those of the tax practitioner
    - Putting client on notice
      - Sending client information outside of the US
      - Use of intermediary service providers
      - Use of artificial intelligence (AI)

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Engagement Terms – Fees (1 of 3)

- Fees and costs are an integral part of an engagement agreement. When setting their fee arrangements, tax practitioners need to understand the requirements under section 10.27:
  - Unconscionable fee prohibition
  - Contingent fee limitations
  - Fee communication requirements

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Engagement Terms –Fees (2 of 3)

- Fees (§10.27):
  - A tax practitioner may not charge an unconscionable fee in connection with any matter before the IRS
    - Unreasonably excessive; grossly unfair
    - Generally, section 10.27 violations involve charging high fees for inadequate advice (e.g., raising numerous trivial or frivolous arguments long-rejected by the IRS and case law)
  - Limitations on contingency fees

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Engagement Terms – Fees (3 of 3)

- A contingent fee is:
  - Based in whole or in part on whether the IRS sustains the position taken by the taxpayer
  - Any fee arrangement requiring a tax practitioner to reimburse the client for all or a portion of a fee if a position is challenged by the IRS or not ultimately sustained in an IRS exam
- Contingent fees can be charged in limited situations
  - In connection with an IRS examination or challenge to an original return, amended return, or refund claim
  - For services rendered in connection with the determination of statutory interest or penalties assessed by the IRS
  - For services in connection with any judicial proceeding arising under the Code

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Engagement Terms – Best Practices

Best practices for engagement letters or agreements:

- Clear articulation and definitions of scope
- Service limitations
- Communication protocols
- Disclosure of client information
- Conflicts of interest
- Termination of services

Best practices for fee structures:

- Clear fee schedules
- Payment terms
- Expense responsibilities
- Costs for handling additional services

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§ 10.29 Conflicting Interests

- Circular 230 prohibits conflicts of interest.
- A conflict of interest exists if:
  - One client's interest is directly adverse to another
  - There is a significant risk of material limitation of responsibilities to —
    - Another client or former client,
    - A third-person, OR
    - Personal interests of the practitioner

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§ 10.29 Conflicting Interests (Cont.)

- A practitioner may represent if:
  - The practitioner has a reasonable belief in their ability to provide competent, diligent representation to each affected client;
  - The representation is not legally prohibited; and
  - Each affected client waives conflict by giving *informed consent* in writing *at the time* the conflict is known (i.e., within 30 days).
    - The practitioner must retain the written waivers for 36 months after representation ceases and provide them to the IRS upon request.

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Conflicting Interest– Best Practices

Best practices for management of conflicts of interest

- Systematic screening procedures to check for conflicts
- Regular conflict reviews and, if a conflict arises, procedures on:
  - ➢Promptly informing the clients
  - ➢Using guidelines for informed consent, including taking client confidentiality and privileges into consideration
  - ➢Obtaining written conflict waivers
- Clear documentation protocols
  - ➢Written conflict waivers must be retained for 36 months after representation ceases and made available to the IRS upon request

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Types of Authorizations

- Form 2848, *Power of Attorney and Declaration of Representative*
  - Authorizes a recognized representative to engage in activities as specified in 26 CFR 601.501(b)(10) and (13), meaning practice before the IRS, which is defined in section 10.2(a)(4) of Circular 230, *Regulations Governing Practice before the Internal Revenue Service*.
  - Permits the holder of the power or authorization to inspect and receive returns (copies) and return information related to the authorized representation. See IRM 11.3.3.4(3).
- Form 8821, *Tax Information Authorization*
  - The taxpayer authorizes any individual, corporation, firm, organization, or partnership designated by the taxpayer to receive and inspect confidential tax information in a specified matter.
- Online Power of Attorney (POA) and Tax Information Authorization (TIA) through the IRS Tax Pro Account
- Others (e.g., Forms 706, 709, etc.)

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Who Can Be Authorized on a Form 2848 or 8821?

- Form 2848 (“Representative”)
  - The Representative must be a person eligible to practice before the IRS:
    - Attorney
    - Certified Public Accountant
    - Enrolled Agent
    - Annual Filing Season Record of Completion Holders (limited practice rights)
    - Individuals with a special relationship to the taxpayer – e.g., immediate family member, fulltime employee, officer of a business or tax-exempt organization (limited practice rights)
    - Qualifying Students or Law Graduates in an LITC or STCP
- Form 8821 (“Designee”)
  - Individuals (e.g., tax professional, family member, friend, etc.)
  - Entity (e.g., corporation, partnership, trust, or organization)
    - Excludes any Federal, state or local government entity

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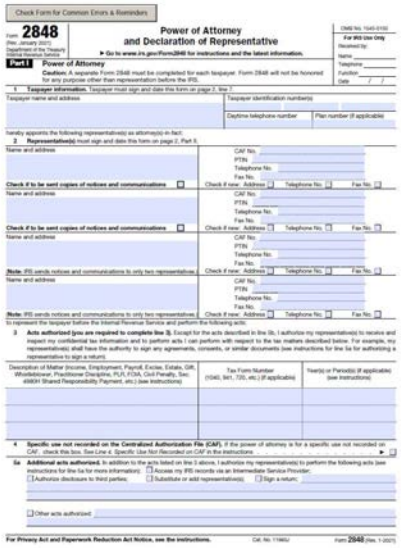
Form 2848

- A Form 2848 consists of two parts:
  - Part I, *Power of Attorney*, specifies the acts the designated representatives can and cannot perform for the taxpayer.
  - Part II, *Declaration of Representative*, requires representatives to affirm their credentials (e.g., attorney, CPA, enrolled agent, Annual Filing Season Program (AFSP) participant, etc.) and acknowledge they are subject to Circular 230.



Check Form for Common Errors & Reminders

2848 Power of Attorney and Declaration of Representative

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address | Taxpayer identification number(s) | Daytime telephone number | Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address | CAF No. / PTIN / Telephone No. / Fax No. | Check if to be sent copies of notices and communications | Check if new: Address / Telephone No. / Fax No.

Name and address | CAF No. / PTIN / Telephone No. / Fax No. | Check if to be sent copies of notices and communications | Check if new: Address / Telephone No. / Fax No.

Name and address | CAF No. / PTIN / Telephone No. / Fax No. | Note: IRS sends notices and communications to only two representatives. | Check if new: Address / Telephone No. / Fax No.

Name and address | CAF No. / PTIN / Telephone No. / Fax No. | Note: IRS sends notices and communications to only two representatives. | Check if new: Address / Telephone No. / Fax No.

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete line 3). Except for the acts described in line 5b, I authorize my representative(s) to receive and respect my confidential tax information and to perform acts I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)

4 Specific use not recorded on the Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4. Specific Use Not Recorded on CAF in the instructions. ▶ ☐

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): ☐ Access my IRS records via an Intermediate Service Provider; ☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return:

☐ Other acts authorized:

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form 2848 (Rev. 1-2021)

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Part II: Declaration of Representative

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:

a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.

b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.

c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.

d Officer—a bona fide officer of the taxpayer organization.

e Full-Time Employee—a full-time employee of the taxpayer.

f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).

g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).

h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). ***See* Special Rules and Requirements for Unenrolled Return Preparers *in the instructions for additional information.***

k Qualifying Student or Law Graduate—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student, or law graduate working in a LITC or STCP. See instructions for Part II for additional information and requirements.

r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation—Insert above letter **(a–r).**	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date

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Form 2848, *Power of Attorney and Declaration of Representative*

- A Form 2848 allows the representative to prepare, sign and file documents, correspond, and communicate with the IRS on behalf of a taxpayer; represent a taxpayer at conferences, hearings, and meetings; and advocate on behalf of the taxpayer.
  - Representation of taxpayers at conferences, hearings, and meetings, and advocating on behalf of taxpayers are all considered "practice" before the IRS regulated under Circular 230 (Title 31 Code of Federal Regulations, Subtitle A, Part 10).
- A Form 2848 also allows the representative to receive and inspect taxpayer confidential tax information.

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Form 2848 vs. *Durable Power of Attorney (POA)*

- A durable power of attorney is a taxpayer's written authorization for a designated individual or individuals to perform certain specified acts on the taxpayer's behalf. Many taxpayers create durable powers of attorney for estate planning or other matters.
  - The IRS will accept a durable POA not on Form 2848 if it includes all of the elements specified in IRS procedural regulations at 26 CFR Sections (§§) 601.501 – 601.509 (reprinted as IRS Publication 216, Conference and Practice Requirements), and specifically all of the elements of § 601.503.
  - A valid durable POA that includes the necessary elements will only be recorded on the IRS's Centralized Authorization File (CAF) if a Form 2848 is also submitted with Part II of the form, *Declaration of Representative*, completed by the appointed representative(s).

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Centralized Authorization File (CAF) Number (1 of 3)

- The CAF is a computer file system containing information regarding the authority of persons appointed under a Form 2848 or 8821. IRS employees will check the CAF to validate the representative's or designee's authorization.
  - A practitioner is assigned a unique nine-digit identification number (CAF number).
  - CAF numbers are critical to ensure IRS employees, consistent with IRC 6103 and the rules of practice, are dealing only with someone with authority to act on behalf of a taxpayer and access their tax information.
- CAF numbers are different from a tax identification number, an EIN and a PTIN.
- CAF numbers may be assigned to an individual or a business entity.

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Centralized Authorization File (CAF) Number (2 of 3)

- Obtaining a CAF number
  - Typically assigned the first time a third-party authorization form (e.g., a Form 2848 or Form 8821) is filed with the IRS.
    - A letter (Notice CP547) is sent informing the individual or entity of the assigned CAF number.
- Use the assigned CAF number on all future third-party authorizations
  - Practitioners may be assigned additional CAF numbers if they fail to include their CAF number on subsequent authorizations filed with the CAF.
- Updating your CAF address
  - Sign and date a written notification of address change. Mail or fax it to the CAF Unit in the 'Where to file chart' of the form's instructions.
  - Submit an authorization form with the new address, phone or fax number and check the box "Check if new:"
  - Address information can't be updated in Tax Pro Account at this time.

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Centralized Authorization File (CAF) Number (3 of 3)

- Best practices
  - A CAF number is personally identifiable information (PII) and should, as much as possible, be kept secure.
    - Fraudsters can use a compromised CAF number to obtain transcripts and other sensitive taxpayer PII to commit fraud and other crimes.
      - The IRS has a process in which suspected compromised CAF numbers are placed into a suspended status pending further review.
      - After placed in a suspended status, IRS Criminal Investigation will contact the CAF number owner to confirm if the CAF number has been compromised.
      - If a compromise is confirmed, the IRS will take the appropriate actions to address the compromised CAF number.
      - For more information, see OPR Alert Issue No. 2024-05, *CAF Numbers in "Pending Review" Status* (5/8/24)
  - Routinely check the CAF—through the Tax Pro Account after linking your CAF or with a CAF77 request —for authorizations filed with your CAF number.

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Break 10 minutes

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Building Strong Foundations: Active Engagement Management Phase

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§ 10.22 Diligence as to Accuracy (1 of 3)

- A practitioner must exercise due diligence in –
  - Preparing and assisting in the preparation of and approving and filing tax returns, documents, affidavits, and other papers relating to IRS matters;
  - Determining the correctness of oral and written representations made by the practitioner to the Department of the Treasury (including the IRS); and
  - Exercising good faith in ascertaining the correctness of oral or written representations made to the practitioner by clients regarding any matter administered by the IRS.

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§ 10.22 Diligence as to Accuracy (2 of 3)

- In relying on information furnished by clients (§ 10.34(d)), a practitioner generally:
  - May rely in good faith without verification upon information furnished by the client.
  - Cannot ignore the implications of information furnished to or actually known by the practitioner.
  - Must make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions.

Willful blindness violates a practitioner's due diligence responsibilities under Circular 230

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§ 10.22 Diligence as to Accuracy (3 of 3)

- Reliance on another professional's work (§10.34(d)):
  - Practitioners may rely on the work of other professionals unless there is reason to question it.
    - **No willful blindness!**
  - Under the safe harbor provision in §10.22, practitioners are deemed to have exercised reasonable due diligence if they used reasonable care in selecting, engaging, supervising, training, overseeing, and evaluating the individual's work they are relying on.
    - **Reasonable care is based on facts and circumstances of the situation.**

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§ 10.34(a) Standards for Signing and Advising on Tax Returns

- Practitioners may not (1) willfully, recklessly, or through gross incompetence sign a tax return or refund claim or (2) advise on a position on a tax return or refund claim, that:
  - Lacks a reasonable basis;
  - Is an unreasonable position;
  - Is a willful attempt to understate a tax liability; or
  - Is reckless or an intentional disregard of rules and regulations.

Think "substantial authority" or "reasonable basis" with disclosure (Form 8275, *Disclosure Statement*)

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§ 10.34(b) Standards for Submitting Documents and Other Papers

- Practitioners may not advise clients to:
  - Take a position on a document or other paper filed with the IRS unless the position is not frivolous
    - Conversely, a practitioner must not interfere with any lawful IRS attempt to obtain information unless, in *good faith*, the practitioner reasonably believes the information is privileged. (§10.20)
  - Submit a document or other paper to the IRS:
    - The purpose of which is to delay or impede the administration of federal tax laws;
    - That is frivolous; or
    - That contains or omits information in a manner that demonstrates an intentional disregard of rules/regulations, unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule/regulation.

Patterns matter!

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§ 10.34(c) Standards and Advising Clients on Penalties

- Practitioners must advise clients of potential penalty exposure regarding:
  - A position taken on the return if the practitioner advised the client regarding the position OR the practitioner prepared or signed the return
  - Any document, affidavit, or other paper submitted to the IRS

Must also advise client of penalty *avoidance* through disclosure

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§ 10.34(d) Safe Harbor Provision

- Section 10.34(d) provides a safe harbor regarding reliance on information furnished to the tax practitioner
  - This provision states that, generally, a tax practitioner may rely on information furnished by a client and on other professionals' work product with reasonable care
    - Cannot ignore the implications of information furnished to or known by the tax practitioner
    - Must make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions
- Willful blindness by a tax practitioner violates the due diligence responsibilities under Circular 230

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Standards (1 of 2)

Reasonable Basis (25%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a 25% likelihood a position would be upheld on its merits. MUST be paired with disclosure.

Realistic Possibility of Success (33%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least an approximately one-in-three likelihood a position would be upheld on its merits.

Tax Return Position

Substantial Authority

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a greater than 40% but less than 50% likelihood a position would be upheld on its merits.

More Likely Than Not (>51%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a greater than 50% likelihood a position would be upheld on its merits.

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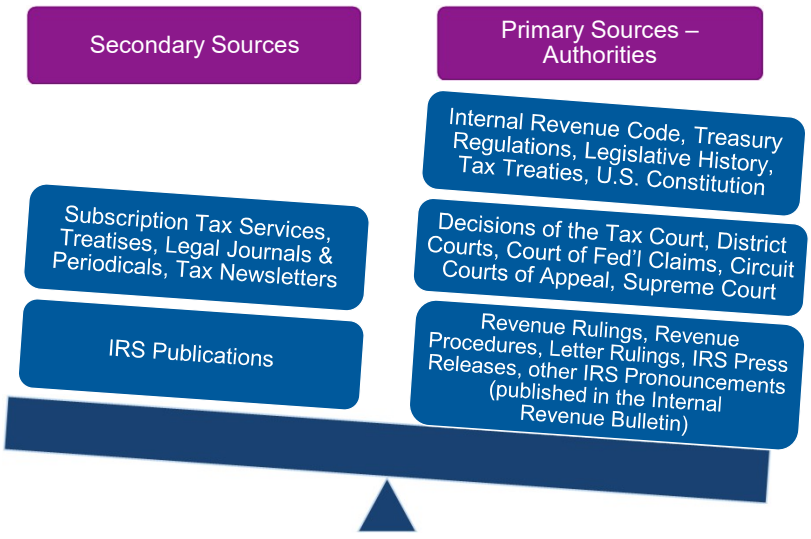
Standards (2 of 2)

- Primary and secondary legal materials that can be used to determine if a standard is met:



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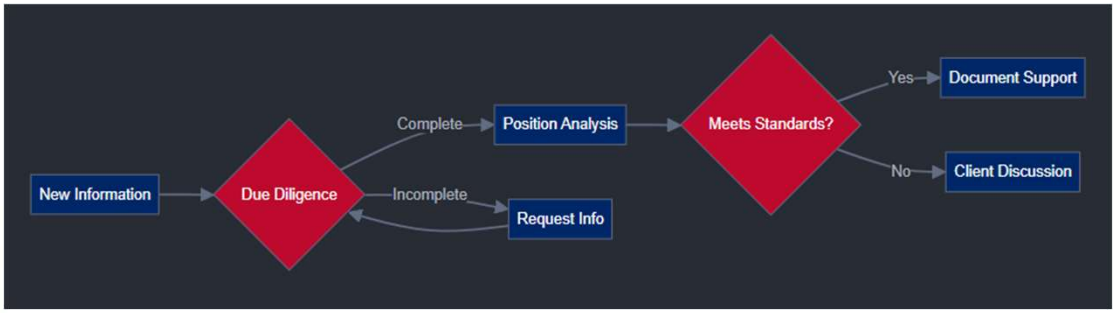
Due Diligence and Standards

Section 10.22's due diligence obligations and section 10.34's standards for tax positions work together to guide practitioners through collecting, evaluating, and using client information



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Standards – Best Practices

Best practices to ensure you are meeting the requisite standards

- Research procedures and policies
- Documentation requirements
- Review protocols
- Consider disclosures

Best practices for quality control to ensure technical accuracy, documentation completeness, and position support

- Systematic review procedures
- Documentation standards
- Error-correction protocols
- Final review processes

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Client Communication – Error or Omission

- If a tax practitioner knows a client has not complied with U.S. revenue laws or made an error in, or omission from, any return, affidavit, or other document the client submitted or executed under the revenue laws, section 10.21 requires the practitioner to:
  - Promptly inform the client of the noncompliance, error, or omission, and
  - Advise the client regarding the consequences of that noncompliance, error, or omission under the Code and regulations

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Client Communication – Written Advice (1 of 2)

- Section 10.37 provides that a tax practitioner must exercise due diligence when providing written advice, requiring the practitioner to:
  - Identify and ascertain the relevant facts and reasonably consider those facts and circumstances;
  - Reasonably rely on representations, statements, findings, or agreements;
  - Relate applicable law to the facts;
  - Make reasonable factual and legal assumptions; and
  - Not consider the likelihood of an audit in reaching a determination
- Applies to all "federal tax matters"

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Client Communication – Written Advice (2 of 2)

- In applying section 10.37, the "reasonable-practitioner" standard applies
  - It is unreasonable if you know or should know the information provided by the client or a third party is based on incorrect, incomplete, or inconsistent representation or assumptions
    - Facts and circumstances
  - Reliance on the advice of others is acceptable if the advice is reasonable, and the reliance is in good faith

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Client Communication – Best Practices

Best practices for error or omission handling:	Best practices for maintenance:
• *Written* communication procedures • Advise the client on how to correct the error or omission	• Regular contact schedules • Procedures for providing updates • Issue monitoring • Relationship building

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Building Strong Foundations: Completion of Engagement Phase

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Completion of Engagement

- Whether a tax practitioner has been engaged for a single matter or long-term services, the engagement will end at some point
  - When an engagement ends, proper procedures will protect the client
    - Return of records and records retention
    - Access protocols

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Engagement Completion – Client Records (1 of 2)

- Under section 10.28, at the request of the client, a tax practitioner must promptly return all records of the client that are necessary for the client to comply with any federal tax obligations
  - The tax practitioner may retain copies of the records returned to the client
  - The existence of a fee dispute doesn't relieve the tax practitioner of their obligation

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Engagement Completion – Client Records (2 of 2)

- Client's records include:
  - Documents or records obtained by the tax practitioner from a client or another source that preexisted the representation of the client;
  - Materials prepared by a client or third party at any time and provided to tax practitioner relating to the subject matter of the representation; and
  - Any tax return, claim for refund, schedule, affidavit, appraisal, or any other document prepared by the tax practitioner (or their employee or agent) that was presented to the client in a prior engagement, if necessary for the client to comply with current federal tax obligations

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Engagement Completion – Best Practices

- Best practices for client record retention:
  - Procedures and/or schedules for retention
  - Include in the engagement letter or agreement your policy on record retention
  - Withdraw still-active authorizations recorded on the CAF
    - Follow directions on the Forms 2848 or 8821 instructions for withdrawing
    - Use your Tax Pro Account to withdraw Powers of Attorney (POA) or Tax Information Authorizations (TIA)
      - Must "link" your CAF number in Tax Pro Account to see all authorizations on file

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Continuous Duty of Confidentiality (1 of 2)

- Practitioners have a legal obligation to maintain client confidentiality
  - Section 10.51(a)(15) prohibits the willful disclosure or use of a tax return or tax return information in a manner not authorized by the Code or contrary to an order from a court or administrative law judge in an OPR proceeding
  - Obligations outside of Circular 230: state law; bar rules of professional conduct and ethics opinions; board of accountancy rules or regulations; etc.

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Continuous Duty of Confidentiality (2 of 2)

- Although the following Internal Revenue Code sections are not enforced by OPR, the Code imposes penalties for the unauthorized use or disclosure of taxpayer information:
  - IRC § 6713(a) prohibits tax return preparers from knowingly or recklessly disclosing or using a taxpayer's information for purposes other than tax return preparation, and it imposes penalties for violations
  - IRC § 7216(a) criminalizes the unauthorized disclosure or use of tax return information
    - Exception for disclosures made "under any order of a court of record or a subpoena issued by a grand jury or a United States attorney"

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Duty of Confidentiality – Best Practices

- Best practices for keeping client confidentiality after the engagement ceases:
  - Don't collect more personally identifying information (PII) than is necessary for business
  - Restrict access to PII to only those individuals who have a business need to access such information
  - Don't retain PII longer than necessary or as legally required for business purposes
  - Dispose of PII appropriately

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Key Practices to Ensure Compliance with Cir. 230

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§ 10.36 Procedures to Ensure Compliance

- Under §10.36, *Procedures to Ensure Compliance*, a firm with a Circular 230 practice must have in place "adequate procedures" for compliance by its members, associates, or employees with Circular 230.

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§ 10.36 Procedures to Ensure Compliance (Cont.)

- A "responsible practitioner(s)" at a firm is subject to discipline if, through willfulness, recklessness, or gross incompetence, they:
  - Fail to take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place and properly followed; or
  - Individuals who are firm members, associates, or employees are or were engaged in a pattern or practice of failing to comply with Circular 230.
- Even if the responsible practitioner takes reasonable steps, they may be liable for violations if they:
  - Know or should know that one or more members, associates, or employees are or were engaged in a pattern or practice of not complying with Circular 230; and
  - Fail to take prompt action to correct the noncompliance.

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§ 10.20 Duty to Provide Information

- Upon a proper and lawful request for records or information from the IRS, the duty to promptly submit requested information unless, in good faith, you reasonably believe the information sought is privileged.
- If the requested information is not in your or your client's possession, you must promptly inform the IRS and provide any information regarding who has possession of the requested information.

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Disreputable Conduct

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§ 10.51(a) Disreputable Conduct

Disreputable conduct includes:

- Giving false or misleading information to the IRS - § 10.51(a)(4)
- Willful non-compliance by the practitioner - § 10.51(a)(6)
- Willfully assisting, counseling, or encouraging a client to evade taxes or the payment thereof - § 10.51(a)(7)
- Attempting to influence IRS personnel by the use of threats or false accusations - § 10.51(a)(9)
- Disbarment or suspension from practice as an attorney or a CPA – § 10.51(a)(10)
- Contemptuous conduct - § 10.51(a)(12)
- Giving false opinions - § 10.51(a)(13)
- Willful Internal Revenue Code violations regarding client's returns - § 10.51(a)(14)-(15)

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§10.51(a) Disreputable Conduct (cont'd)

- Disreputable conduct includes:
  - Conviction of any criminal offense under federal tax laws (§ 10.51(a)(1)).
  - Conviction of any criminal offense involving dishonesty or breach of trust (§ 10.51(a)(2)).
  - Conviction of any felony under federal or state law for which the conduct involved renders the practitioner unfit to practice (§ 10.51(a)(3)).
  - Conviction of any crime under U.S. Code Title 26, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice (§ 10.82(b)(2)).

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§ 10.51(a)(6) Practitioner Willful Tax Noncompliance

- Practitioners cannot willfully fail to file a federal tax return in violation of federal tax laws, or willfully evade, attempt to evade, or participate in any way in evading or attempting to evade any assessment or payment of any federal tax.

When a referral is made to OPR, the practitioner's tax compliance is checked.

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§ 10.82 Expedited Suspension

Under section 10.82, the OPR can also seek indefinite suspensions on an expedited basis if a practitioner has had any of the following:

- A suspension or revocation of law license or CPA certificate for cause by a licensing authority (i.e., state bar or board of accountancy);
- A conviction of any crime under Title 26, any crime involving dishonesty or breach of trust, or any felony where the conduct involved renders the practitioner unfit to practice;
- A violation of any conditions imposed as part of a prior OPR sanction;
- Certain court sanctions; or
- Significant tax noncompliance (e.g., failing to file annual Federal tax returns during of 4 of the 5 last five tax years).

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§ 10.51(a)(4) Giving False or Misleading Information

- Practitioners cannot participate in any way in the giving of false or misleading information to the Department of Treasury (including the IRS) or any officer or employee thereof, including:
  - Testimony
  - Tax returns
  - Financial statements
  - Applications
  - Affidavits, declarations, and any other document or statement (written or oral)

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§ 10.51(a)(7) Willful Assistance with Violation of Federal Tax Laws

- Practitioners cannot:
  - Willfully assist, counsel, or encourage a client/prospective client in violating, or suggest to a client/prospective client to violate any federal tax law; or
  - Knowingly suggest to a client/prospective client an illegal plan to evade federal taxes or payment thereof

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OPR's Investigative & Disciplinary Process

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Most Common Cir. 230 Concerns

1. When practitioner is advising taxpayers on filing positions or transactions
2. During taxpayer representation before IRS
3. On practitioner's own tax filing or tax payment responsibilities
4. Practitioner's external misconduct (moral turpitude)

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Referrals to OPR

- OPR is the designated recipient for referrals that allege violations of Circular 230 from IRS personnel, external stakeholders, and all other government agencies, including TIGTA (U.S. Treasury Inspector General for Tax Administration).
- Most of our referral originate within the IRS -- employees are directed to report, among other things:
  - Uncooperative, obstructive, abusive, or threatening behavior;
  - Submission of false or misleading documents;
  - Unauthorized practice, or attempts to engage in unauthorized practice; and
  - Any conduct that appears to be a violation of Subparts B or C of Circular 230.

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OPR Disciplinary Process

- OPR will determine whether it has jurisdiction –
  - Individual is a "practitioner" as defined in Circular 230
  - Individual has "practiced" before the IRS
  - Act under investigation occurred within certain amount of time from when referral received
- Conduct an independent investigation of any potential Circular 230 violation
- Accord practitioners due process rights during the process
  - The opportunity to review the allegations, obtain representation, submit evidence, and engage in pre-trial discovery, negotiations, and a settlement conference
- Settlement or Administrative Hearing

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OPR Considerations (1 of 2)

- Willfulness
  - Voluntary, intentional violation of a known legal duty
    - OPR must prove the practitioner had a duty under Circular 230, the practitioner knew of the duty, and the practitioner voluntarily and intentionally violated that duty
  - Applies to nearly all duties and obligations in Circular 230 (Subpart B)
- Burden of Proof
  - OPR must have "clear and convincing" proof to impose monetary penalty, disbarment, or suspension of six months or longer

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OPR Considerations (2 of 2)

- Evidence of a Pattern
  - OPR documents “patterns” affecting multiple years, multiple clients, conduct with multiple IRS employees
  - Depending on the severity of the misconduct, OPR may decide not to act on a first offense, but will maintain a record of the referral and of the OPR investigation regarding the practitioner
- Extraordinary Measures Taken by IRS
  - Summons Enforcement
  - Bypass Letter

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Contact Information and Resources

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Contact & Referrals to OPR

- Internal Revenue Service
  Office of Professional Responsibility
  IR Room 7238
  1111 Constitution Avenue NW
  Washington, DC 20224
  eFax: 855-814-1722

- Visit https://www.irs.gov/oprcirc230

- Referrals
  - To make a referral regarding a return preparer, use Form 14157, *Return Preparer Complaint*.
  - For practitioners covered under Circular 230, you can send a fax to OPR's eFax (see above).

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Resources and Guidance

- Treasury Department Circular No. 230 (Rev. 6-2014)
- Form 2848, *Power of Attorney and Declaration of Representative*
- Form 8275, *Disclosure Statement*
- Form 8867, *Paid Preparer's Due Diligence Checklist*
- Publication 947, *Practice Before the IRS and Power of Attorney*
- Publication 5293, *Protect Your Clients; Protect Yourself — Data Security Resource Guide for Tax Professionals*
- Publication 5708, *Creating a Written Information Security Plan for your Tax & Accounting Practice*
- Publication 5709, *How to Create a Written Information Security Plan for Data Safety*
- Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*

- OPR's Website
- Guidance and Resources
- Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases
- Publication 6033, *Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service*

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Resources Available in Spanish

- Circular 230 del Departamento del Tesoro (Rev. 6-2014), *Reglamentos que rigen el ejercicio ante el Servicio de Impuestos Internos*
- Formulario 2848, *Poder Legal y Declaracion del Representante y Instrucciones para el Formulario* 2848(SP)
- Publicación 947, *Como Ejercer ante el Servicio de Impuestos Internos (IRS) y el Poder Legal*
- Formulario 8821, *Autorización para recibir Información Tributaria y Instrucciones para el Formulario 8821*

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Questions?

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