



# 2025 WICPA ACCOUNTING & AUDITING CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

## HIGHLIGHTED TOPICS:



### STAY AHEAD OF THE CURVE: FASB UPDATES THAT MATTER

Learn about the latest important FASB updates, what's coming next, and how these changes could impact your financial reporting



### WHY CPAS LOSE CLIENTS TO FINANCIAL ADVISORS & HOW TO PREVENT IT

Get actionable items to help you increase collaboration with other professionals, achieve better outcomes for clients, and improve retention and business development



### ECONOMIC & FINANCIAL MARKET OUTLOOK: TRENDS BENEATH CHAOS

Explore what the most reliable indicators point to about the economic and financial market, and what that means for us all in 2026 and beyond

THURSDAY, NOV. 20 | WICPA OFFICE & WICPA CPE LIVESTREAM

## MATERIALS AT A GLANCE

The following materials are from the afternoon sessions of the 2025 WICPA Accounting & Auditing Conference held on Thursday, Nov. 20, including:

- Why CPAs Lose Clients to Financial Advisors & How to Prevent It
- AI & Excel: Practical Tools & Insights for Accountants
- The Onboarding Experience: Making a Lasting Impression
- Hot Tax Practice & Procedure & Ethics Issues & Their Impact on the Practitioner

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ONLINE CPE OPPORTUNITIES AT [WICPA.ORG/CPECATALOG](https://www.wicpa.org/cpecatalog)**

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**Waukesha State Bank** 

Member FDIC



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EXPENSES TO  
EXPANDING  
YOUR FOOTPRINT**

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The CPE Tracker is an easy to use tool created to keep track of all your CPE in one convenient location.

- Automatically tracks WICPA formal learning activities
- Add any non-WICPA CPE courses
- Print reports for any reporting period

**To get started, visit  
[wicpa.org/cpetracker](http://wicpa.org/cpetracker)**



Top reasons CPAs lose clients to financial advisors, and how to stop it.



SILVERTREE

# Disclosures

Information provided is not intended as tax or legal advice and should not be relied on as such. You are encouraged to seek tax or legal advice from an independent professional.

Any examples used are for illustrative purposes only and do not take into account your particular investment objectives, financial situation or needs and may not be suitable for all investors. It is not intended to project the performance of any specific investment and is not a solicitation or recommendation of any investment strategy.

Investment advisory and financial planning services offered through Summit Financial, LLC., a SEC-Registered Investment Advisor, doing business as Silvertree, LLC. Insurance products may be offered through Summit Risk Management, LLC., an affiliate of Summit Financial, LLC

# Silvertree, LLC.

2715 Post Road

Stevens Point, WI 54481

Strategic partnerships:



- **Our commitments:**
  - Speak to an advisor within hours, not days or weeks, with lightning fast administrative support.
  - Provide access to in-house tax, legal, investment, and estate planning strategies and professionals who will work in collaboration with your existing counsel.
- **Silvertree, LLC** is a wealth management firm primarily working with individuals and families in manufacturing with 3 distinct divisions.



# SILVERTREE

## Retirement Planning

Services tailored for middle-class and mass affluent workers, often in manufacturing.

Services include:

- ▶ Investments
- ▶ Financial Planning
- ▶ 401k and work benefits management
- ▶ Tax Planning
- ▶ Estate Planning
- ▶ Retirement Income Planning
- ▶ Social Security Planning
- ▶ Pre and post age 65 Health Insurance Planning
- ▶ Budgeting and Debt Management
- ▶ Asset Protection



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## Business Advisory

Specialized services for business owners and executives in manufacturing.

Services include:

- ▶ Key Employee Retention
- ▶ Value Acceleration Methodology™
- ▶ Business Valuation
- ▶ Mergers & Acquisitions
- ▶ Exit Planning
- ▶ Strategic Planning
- ▶ Succession Planning
- ▶ Weaponized ERISA compliant plans
- ▶ Employee financial wellness
- ▶ Liquidity Event Planning
- ▶ Asset Protection
- ▶ Admin Efficiency



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# SILVERTREE

## Private Client Group

Bespoke, high touch, advanced services for those with investable assets of \$3 million or more, or net worth of \$5 million or more.

Services include:

- ▶ All Silvertree Retirement planning services
- ▶ Advanced sophisticated tax strategies
- ▶ In-house support from tax attorneys, CPAs, and MBAs with no additional cost
- ▶ Alternative Investment platforms
- ▶ Multi-custodial arrangements
- ▶ Private Banking
- ▶ Family Office Services
- ▶ Multi-Generational Estate Planning
- ▶ Personal Cyber Security

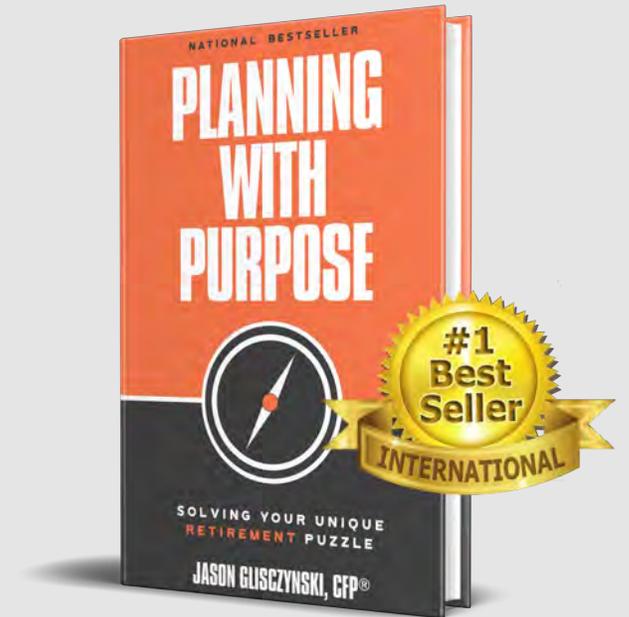


# Jason Glisczynski - CFP<sup>®</sup>, CPWA<sup>®</sup>, CEPA<sup>®</sup>

Managing Partner

Investment Advisor Representative

- Co-Founder and Managing Partner: Silvertree, LLC.
- CFP<sup>®</sup> - CERTIFIED FINANCIAL PLANNER™ practitioner
- CPWA<sup>®</sup> - Certified Private Wealth Advisor professional
- CEPA<sup>®</sup> - Certified Exit Planning Advisor
- International Best-Selling Author: *Planning with Purpose*
- Veteran USAF (United States Air Force)
- AICPA – American Institute of Certified Public Accountants: Candidate
- Avid supporter of the manufacturing industry and CPA profession
- Volunteerism:
  - CWSO Treasurer (Central Wisconsin Symphony Orchestra)
  - Finance Committee Celebrate Plover Foundation
  - Finance Committee Boys & Girls Club of Central Wisconsin
  - Instructor: National Council on Aging (NCOA)
  - Speaker for WICPA (Wisconsin Institute of Certified Public Accountants)





Please allow me to share **my personal story**, why I have the privilege of speaking with you, and why you can **believe what I have to say**.



# What were the primary causes for my situation?

- Lack of coordination between tax, legal, wealth advisory, and enterprise value advisory
- Misunderstood (and flat out incorrect) valuation
- Failure to proactively plan, leaving decisions to the last minute
- Breakdown of communication within the family unit



# Learning Objectives

- Identify the top reasons CPAs are losing business, and losing clients to financial advisors
- Practical solutions to counter the potential for client loss
- Bonus (if time permits): Two sophisticated tax savings strategies
- Double Bonus (if time permits): How to kill email



# How do CPAs view financial advisors?

CPAs' views on financial advisors depend largely on **prior experiences, trust, professionalism**, and whether both parties **genuinely collaborate** with the **client's best interests** **in mind.**



# How do CPAs view financial advisors?

- **Sales Focused:** Focused on commissions or products rather than client interests, causing trust issues and skepticism



I just so happen to have the perfect car for you on my lot right now.



*perfect for  
Everyone!*



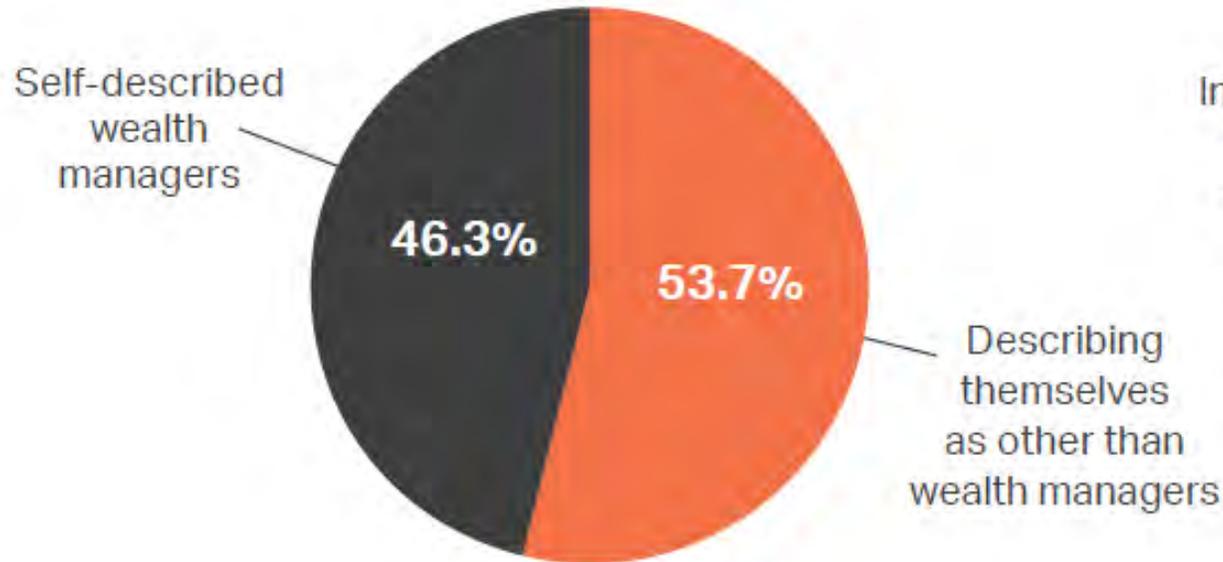
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- **Failure to consider taxes:** Many advisors do not fully consider current and future tax implications

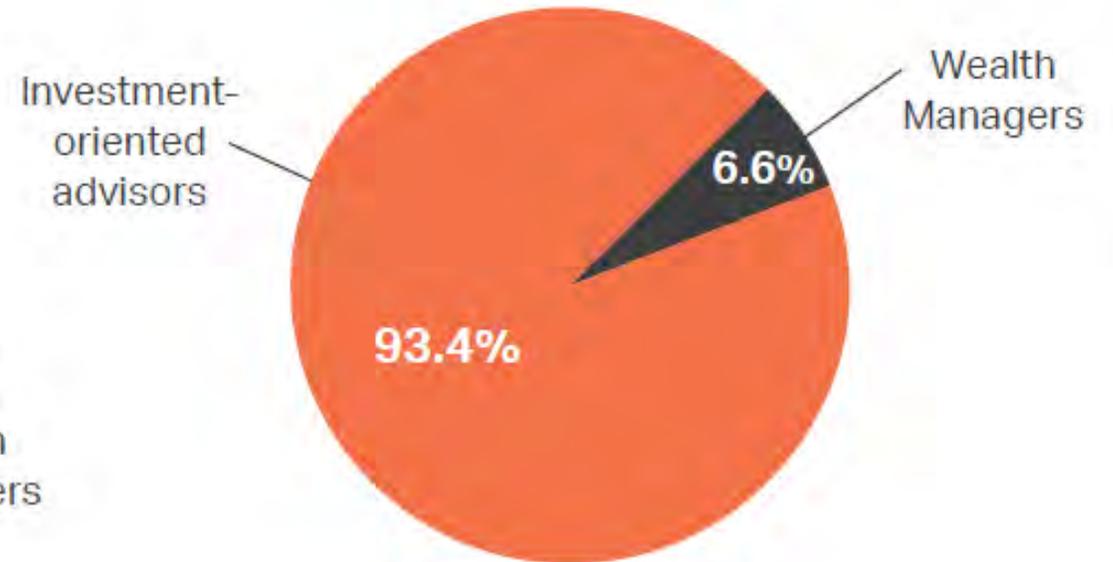


## The Business Models of Financial Advisors

Many Advisors Call Themselves  
Wealth Managers



Few Advisors Are Actually  
Wealth Managers



*N = 2,094 financial advisors. Source: CEG Worldwide, 2007.*

Less than 7% of financial professionals are knowledgeable AND able to execute strategies in the 4 key areas of advanced planning:



# How do CPAs view financial advisors?

- **Sales Focused:** Commissions or products rather than client interests come first, causing trust issues and skepticism
- **Failure to consider taxes:** Many advisors do not fully consider current and future tax implications
- **Referrals are risky:** An advisor giving poor advice reflects poorly on the CPA who referred them
- **Competitive pressure:** Financial advisors are seen as competitors, and roles are blurred



# How do financial advisors view CPAs?

Financial advisors mostly hold CPAs in high regard due to their **essential tax and financial expertise**, viewing them as **vital collaborators** for delivering **holistic client solutions**. Nonetheless, the relationship requires **good communication**, **mutual respect**, and **role clarity** to avoid tension or misunderstandings.



# How do financial advisors view CPAs?

- **Historical Focus:** CPAs can be overly conservative or focused on historical tax compliance and immediate tax relief rather than forward-looking strategies
- **Sales Friction:** Financial and tax strategies may involve the sale of a financial product, which CPAs may interpret as a “win” for the advisor only
- **Competing interests:** Some CPA firms may offer financial planning or wealth management services, blurring professional boundaries.
- **Misalignment on client priorities:** CPAs tend to be taxed focus only



# Analysis Matrix

Aspect	Why Clients Leave their CPA	Solutions

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## Tax Savings Analysis for 2025



### Opportunities Identified to Reduce Your Annual Tax

Retirement	\$115,288
Income Shifting	\$41,650
Personal - Other	\$5,178
Personal investment	\$30,370
Business - Other	\$140,134
Depreciation	\$41,650
Itemized Ded	\$0
Cap Gains	\$31
Business Sale	\$0
Pre-Tax Benefits	\$2,143

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Estimated Year 1 Tax Savings \$376,444

### Year 2 & Forward Savings

Retirement	\$115,288
Personal investment	\$30,370
Business - Other	\$140,134
Itemized Ded	\$0
Pre-Tax Benefits	\$2,143
Personal - Other	\$0

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Estimated Year 2 & Forward Tax Savings (per year) \$287,935

### Your investment in :

Reoccurring Fee	\$103,921
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Net Deductible Increase in Investment to us: \$103,921

After tax investment:	\$65,470
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After Tax Yearly Investment to us after Year 1: \$65,470

Projected Gain on Your Investment by End of Year 1:	\$310,974
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Return on investment:	475%
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Projected Net Tax Savings for Year 2 to 10: \$2,002,185

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Total Tax Savings Over the Next 10 Years \$2,313,159

Disclaimer of Professional Advice. The information provided through the Products is not and shall not be construed as tax, accounting, legal, regulatory or other professional advice or sufficient to satisfy any tax, accounting, legal, regulatory or other professional requirements. Customer and/or each User should consult tax, accounting, legal, regulatory or other professional advisor(s) for advice. None of the Products nor any related services or any portion thereof shall constitute or be construed as (a) a solicitation, offer, opinion or recommendation by TaxPlanIQ its affiliates or any supplier, for any transaction in any financial instrument, including but not limited to securities or (b) forming an attorney-client relationship.

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<b>Client Relationship Management</b>	Neglect beyond tax season leads to attrition, leaving clients feeling "uncared for"	Ongoing engagement beyond compliance, continuously monitoring relationship fit

# 5 Action Steps

1. Review current service offerings, explore additional services or collaboration opportunities
2. Establish client communication standards and protocols
3. Demonstrate value through dollars and time saved
4. Implement joint communication standards with internal and external partners.
5. Regularly evaluate relationship fit of clients and internal/external partners.



# BONUS: Tax Mitigation Strategies

- Cash Balance Plans



## C A S E S T U D Y

- Small construction firm with 6 employees
- Two owners, ages 47 and 41
- Four remaining employees
- Goal is to maximize contributions in favor of the owners while providing benefits to the staff.
- Clients reviewed traditional defined benefit and cash balance options.

# BENEFIT-FOCUSED RETIREMENT PLAN

## Year one contribution comparison

PLAN TYPE	MAXIMUM CONTRIBUTION	TAX SAVINGS**
A traditional defined benefit plan design	<b>\$397,926</b>	<b>\$198,963</b>
Benefit-focused basic plan design	<b>\$663,293</b>	<b>\$331,647</b>
Benefit-focused standard plan design	<b>\$1,143,556</b>	<b>\$571,778</b>

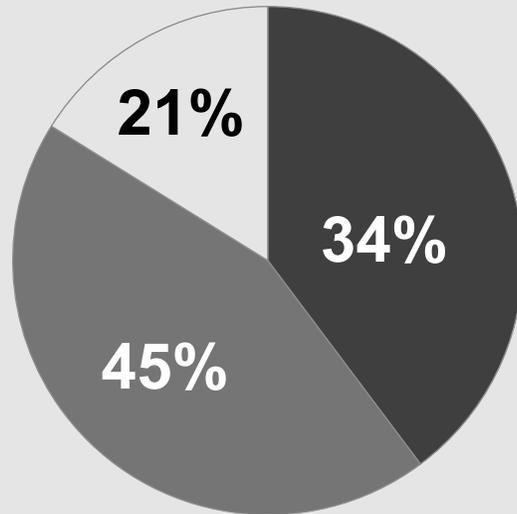
*\*The Internal Revenue Code established Revenue Rulings which allow options in designing life insurance benefits provided by the plan.*

*\*\*Based on an income tax rate of 50%.*

# CONTRIBUTION DISTRIBUTION BETWEEN PARTICIPANTS

## Traditional defined benefit plan

CONTRIBUTION PERCENTAGE

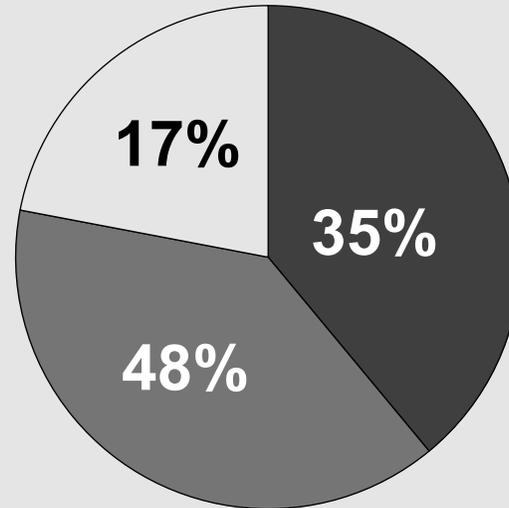


■ Owner 1 ■ Owner 2 □ Employees

Total contribution: \$397,926  
79% by owners

## Benefit-focused basic insurance defined benefit plan

CONTRIBUTION PERCENTAGE

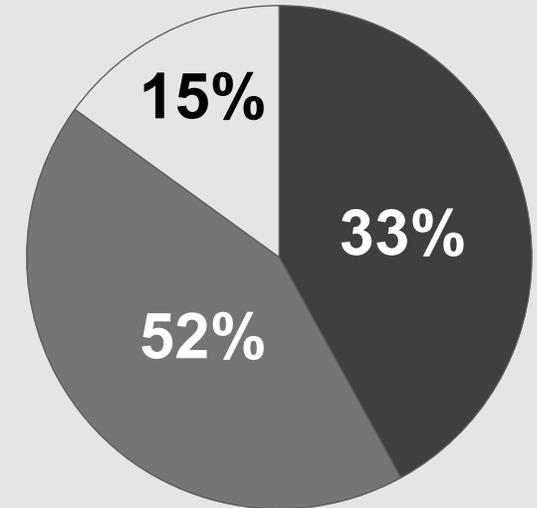


■ Owner 1 ■ Owner 2 □ Employees

Total contribution: \$663,293  
83% by owners

## Benefit-focused standard insurance defined benefit plan

CONTRIBUTION PERCENTAGE



■ Owner 1 ■ Owner 2 □ Employees

Total contribution: \$1,143,556  
85% by owners

# Key Takeaways

- Business owners looking for ways to reduce tax, and increase their personal wealth may benefit from a cash balance plan
- A cash balance plan must be actuarially compliant
- The business **MUST** have the ideal employee census for it to work
- Not all plans are created equal, only work with qualified counsel



# BONUS: Tax Mitigation Strategies

- Cash Balance Plans
- Tax Loss Harvesting – Section 1250 recapture management

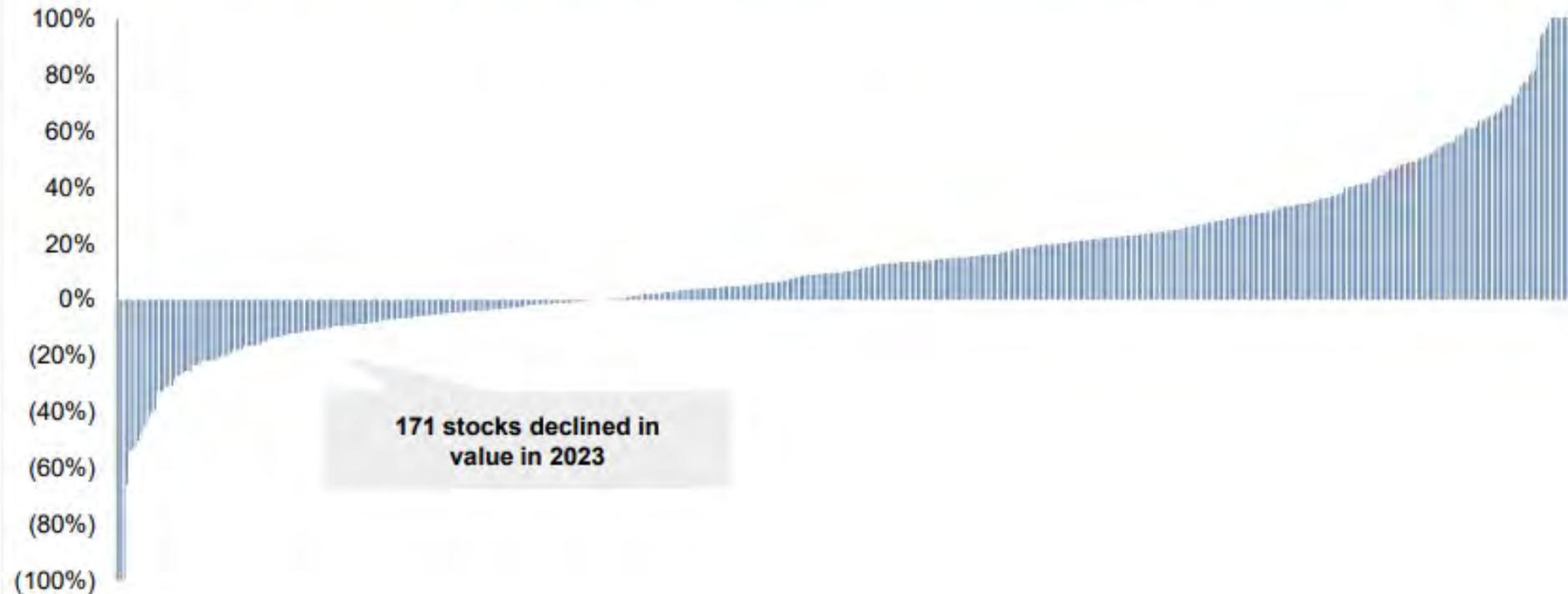


# When Markets Appreciate Significantly...

2023: S&P 500® return 26.29%

72% of the stocks in the S&P 500® had a maximum drawdown of more than 15% at some point during 2023.

Return (%)

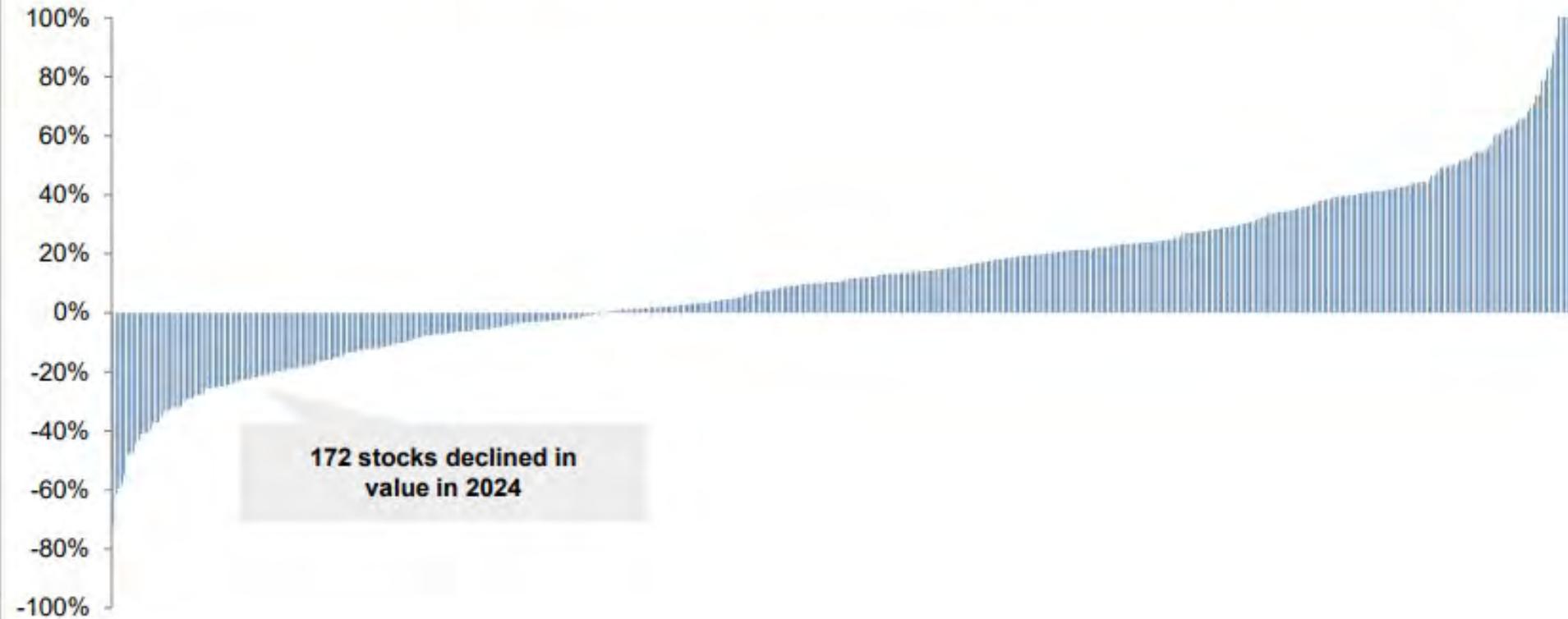


# Losses Aren't the Goal, yet Every Investor Experiences Them

2024: YTD S&P 500® return 25.02%

69% of the stocks in the S&P 500® had a maximum drawdown of more than 15% at some point during 2024.

Return (%)



172 stocks declined in value in 2024



Reference Return based on 70% Russell 3000 (IWV) / 30% MSCI ACWI ex-US (ACWX)

Trailing 12-Month Performance

Period	Net Return	Ref Return	Outperf	Tax Benefit	Value-Add	Ending Value	Realized ST GL	Realized LT GL	Net Losses
Oct-2024	-0.9%	-1.9%	1.0%	0.3%	1.3%	\$8,102,585	(\$67,970)	\$16,646	(\$51,324)
Nov-2024	4.6%	4.7%	-0.1%	0.6%	0.5%	\$8,469,979	(\$132,412)	\$24,823	(\$107,589)
Dec-2024	-3.1%	-3.0%	-0.1%	0.3%	0.2%	\$8,200,445	(\$67,677)	\$5,767	(\$61,910)
Jan-2025	3.9%	3.2%	0.7%	0.3%	1.0%	\$8,515,099	(\$56,591)	\$9,278	(\$47,313)
Feb-2025	-0.1%	-0.6%	0.5%	0.2%	0.7%	\$8,505,881	(\$43,430)	\$15,482	(\$27,948)
Mar-2025	-4.5%	-4.0%	-0.6%	0.2%	-0.4%	\$8,115,974	(\$38,443)	\$3,402	(\$35,041)
Apr-2025	0.2%	0.2%	0.0%	0.4%	0.5%	\$8,128,795	(\$84,792)	\$1,987	(\$82,805)
May-2025	5.7%	5.8%	-0.1%	0.2%	0.1%	\$8,589,976	(\$40,238)	\$4,703	(\$35,535)
Jun-2025	4.9%	4.7%	0.2%	0.3%	0.5%	\$9,007,145	(\$64,977)	\$1,976	(\$63,001)
Jul-2025	1.0%	1.3%	-0.3%	0.2%	-0.1%	\$9,090,698	(\$57,057)	\$15,656	(\$41,401)
Aug-2025	2.6%	2.9%	-0.2%	0.1%	-0.1%	\$9,323,528	(\$40,434)	\$14,011	(\$26,423)
Sep-2025	3.8%	3.5%	0.3%	0.2%	0.5%	\$9,669,766	(\$67,769)	\$21,991	(\$45,778)
<b>Year 2023</b>	<b>10.9%</b>	<b>10.4%</b>	<b>0.5%</b>	<b>2.3%</b>	<b>2.8%</b>	<b>\$6,899,134</b>	<b>(\$464,628)</b>	<b>\$181,483</b>	<b>(\$283,145)</b>
<b>Year 2024</b>	<b>19.6%</b>	<b>17.8%</b>	<b>1.8%</b>	<b>4.1%</b>	<b>5.9%</b>	<b>\$8,200,445</b>	<b>(\$825,517)</b>	<b>\$83,906</b>	<b>(\$741,611)</b>
<b>Year 2025</b>	<b>18.5%</b>	<b>17.9%</b>	<b>0.6%</b>	<b>2.1%</b>	<b>2.7%</b>	<b>\$9,669,766</b>	<b>(\$493,732)</b>	<b>\$88,485</b>	<b>(\$405,247)</b>
<b>Cumulative</b>	<b>57.2%</b>	<b>53.3%</b>	<b>3.9%</b>	<b>8.5%</b>	<b>12.3%</b>	<b>\$9,669,766</b>	<b>(\$1,783,877)</b>	<b>\$353,874</b>	<b>(\$1,430,003)</b>
<b>Ann. Return</b>	<b>21.4%</b>	<b>20.1%</b>	<b>1.3%</b>	<b>3.6%</b>	<b>4.9%</b>				
Ann. Rlzd Risk	11.5%	11.9%	1.6%	0.4%	1.6%				
Ann. Ret / Risk	1.9	1.7	0.8	10.3	3.1				

**Net Return:** Account Net Return

**Ref Return:** Reference Return

**Outperf:** Account Net Return - Reference Return

**Tax Benefit:** Tax Savings as % of starting period account value

**Quantinno Value-Add:** Outperformance from Quantinno + Tax Benefit

**Realized ST GL:** Realized Short Term Gains (Losses)

**Realized LT GL:** Realized Long Term Gains (Losses)

**Cumulative:** Cumulative, Since Inception

**Ann. Return:** Annualized Return, Since Inception

**Ann. Rlzd Risk:** Annualized Realized Risk, Since Inception

**Ann. Ret / Risk:** Annualized Return / Risk, Since Inception

Reference Return based on 70% Rus

Trailing 12-Month Performance

	Ending Value	Realized ST GL	Realized LT GL	Net Losses
	\$8,102,585	(\$67,970)	\$16,646	(\$51,324)
Period	\$8,469,979	(\$132,412)	\$24,823	(\$107,589)
Oct-2024	\$8,200,445	(\$67,677)	\$5,767	(\$61,910)
Nov-2024	\$8,515,099	(\$56,591)	\$9,278	(\$47,313)
Dec-2024	\$8,505,881	(\$43,430)	\$15,482	(\$27,948)
Jan-2025	\$8,115,974	(\$38,443)	\$3,402	(\$35,041)
Feb-2025	\$8,128,795	(\$84,792)	\$1,987	(\$82,805)
Mar-2025	\$8,589,976	(\$40,238)	\$4,703	(\$35,535)
Apr-2025	\$9,007,145	(\$64,977)	\$1,976	(\$63,001)
May-2025	\$9,090,698	(\$57,057)	\$15,656	(\$41,401)
Jun-2025	\$9,323,528	(\$40,434)	\$14,011	(\$26,423)
Jul-2025	\$9,669,766	(\$67,769)	\$21,991	(\$45,778)
Aug-2025	\$8,200,445	(\$825,517)	\$83,906	(\$741,611)
Year 2023	\$9,669,766	(\$493,732)	\$88,485	(\$405,247)
Year 2024	\$9,669,766	(\$1,783,877)	\$353,874	(\$1,430,003)
Year 2025				
Cumulative				
Ann. Return				
Ann. Rlzd Risk				
Ann. Ret / Risk				

Realized LT GL	Net Losses
\$16,646	(\$51,324)
\$24,823	(\$107,589)
\$5,767	(\$61,910)
\$9,278	(\$47,313)
\$15,482	(\$27,948)
\$3,402	(\$35,041)
\$1,987	(\$82,805)
\$4,703	(\$35,535)
\$1,976	(\$63,001)
\$15,656	(\$41,401)
\$14,011	(\$26,423)
\$21,991	(\$45,778)
\$181,483	(\$283,145)
\$83,906	(\$741,611)
\$88,485	(\$405,247)
\$353,874	(\$1,430,003)

**\$1,567,181 increase in wealth**



**(\$1,430,003)**

**Capital loss carryforward**



Net Return: Account Net Return  
 Ref Return: Reference Return  
 Outperf: Account Net Return - Reference Return  
 Tax Benefit: Tax Savings as % of starting value  
 Quantinno Value-Add: Outperformance  
 Realized ST GL: Realized Short Term Gains (Losses)  
 Realized LT GL: Realized Long Term Gains (Losses)

# BONUS: Tax Mitigation Strategies

- Cash Balance Plans
- Tax Loss Harvesting – Section 1250 recapture management

“When short-term capital loss and long-term capital loss (including carryover losses) exceed the combined 28% gain and unrecaptured section 1250 gain, no amount appears on Schedule D (1040), line 19. Thus, when Schedule D, lines 15 or 16 are losses, there is no net capital gain, and no ensuing need to consider what part of the gain is taxed at unrecaptured Section 1250 rates.” ~George Dimov, CPA



# DOUBLE BONUS: Kill Email

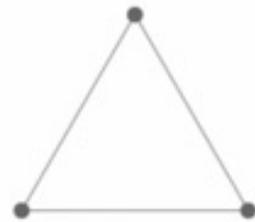
- In Box Zero and delegated access



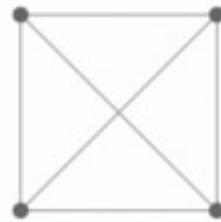
# Operational Efficiency



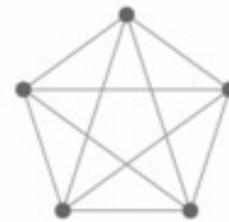
# Operational Efficiency



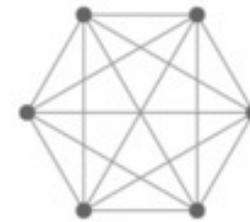
3 people, 3 lines



4 people, 6 lines



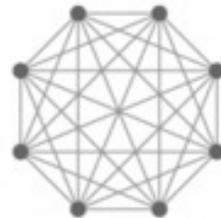
5 people, 10 lines



6 people, 15 lines



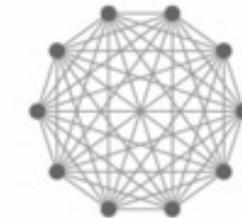
7 people, 21 lines



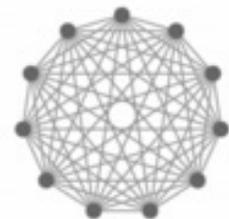
8 people, 28 lines



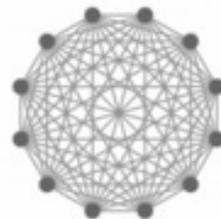
9 people, 36 lines



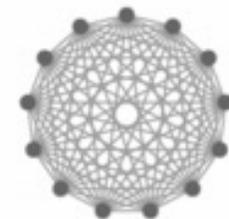
10 people, 45 lines



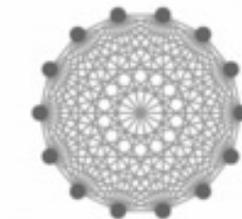
11 people, 55 lines



12 people, 66 lines



13 people, 78 lines



14 people, 91 lines

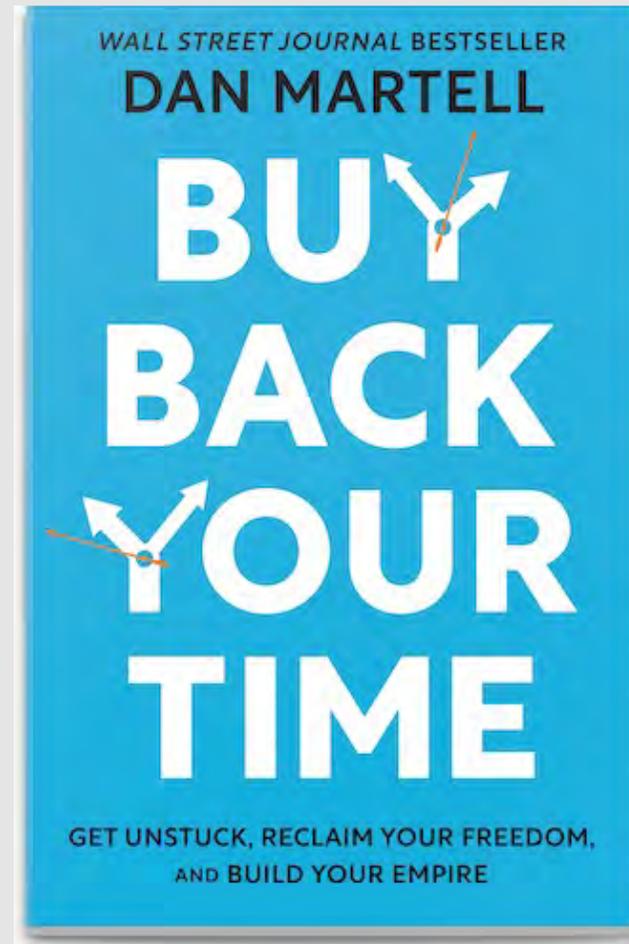
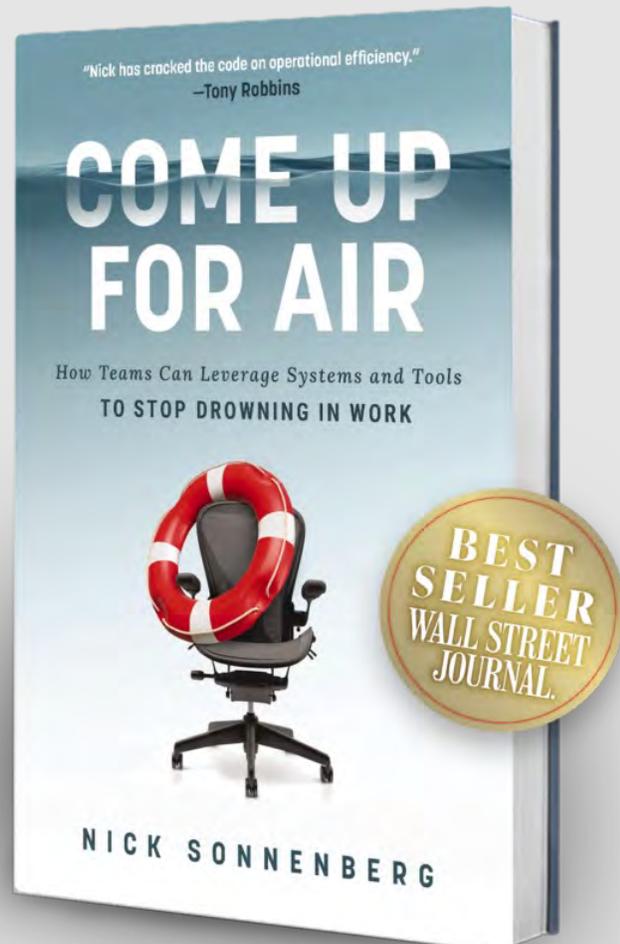


# Operational Efficiency

- 1. Implement a process for efficient communication**
- 2. Deploy the right tools to handle—**
  - a. Internal communication**
  - b. External communication**
  - c. Project management**
  - d. Information storage and recall**
- 3. Delegate and/or outsource non-core activities**
- 4. Utilize “time blocking”**



# Operational Efficiency



# Jason Glisczynski, CPWA<sup>®</sup>, CFP<sup>®</sup>

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Investment Advisor Representative

[www.silvertreeplan.com](http://www.silvertreeplan.com)

715-544-1610

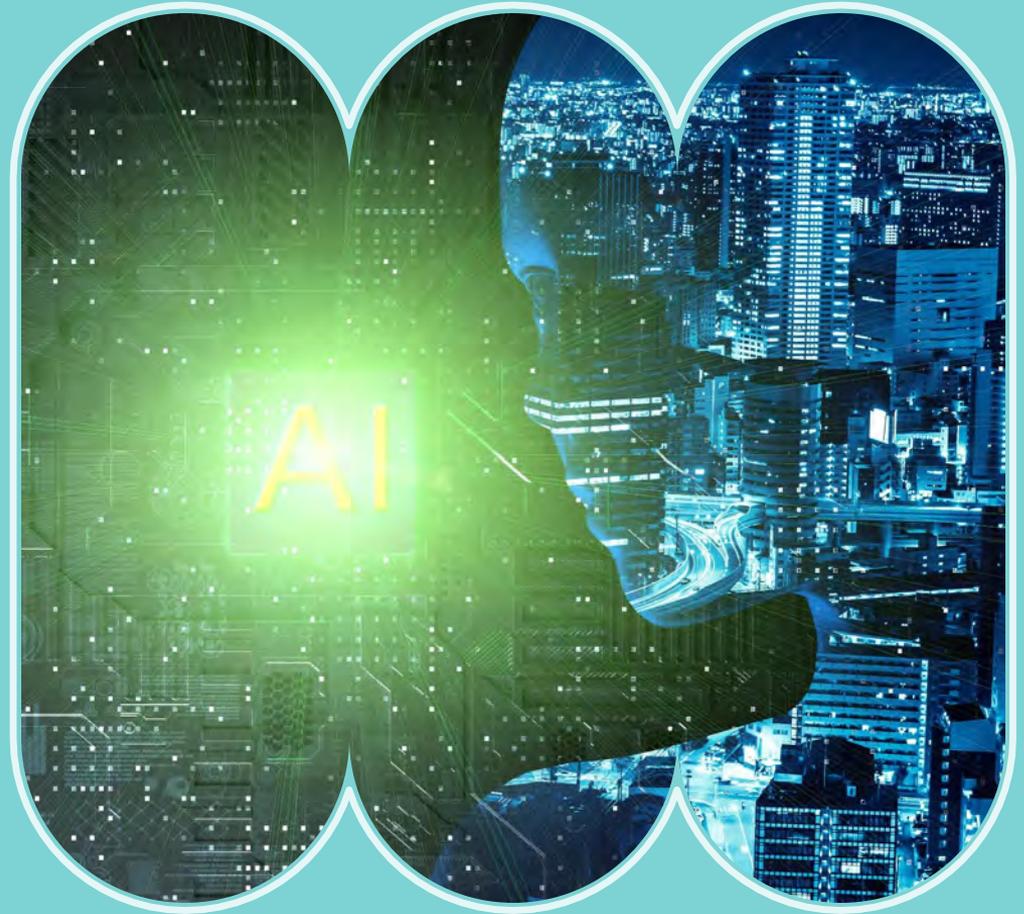
[jason@silvertreeplan.com](mailto:jason@silvertreeplan.com)

Schedule time with me



# AI AND EXCEL PRACTICAL TOOLS AND INSIGHTS FOR ACCOUNTANTS

November 20, 2025



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# Purpose and Learning Objectives



## **Understanding Industry Changes**

Explore technological and client expectation changes reshaping the accounting profession today.

## **Adapting to Rapid Change**

Learn effective strategies to adapt to rapid advancements in AI and Excel tools within accounting.

## **Practical AI and Excel Applications**

Examine real-world examples of AI and Excel applications that can be implemented immediately in accounting tasks.

## **Enhancing Workflow and Service**

Gain actionable knowledge to improve workflows and better serve clients in a digital environment.





# AI Relevance in Accounting



Our people want better experiences at a faster pace

Our people shouldn't have to “pay their dues”

And they're going to use AI whether we want them to or not



## Reason #1: Our People



# Rick's First Year

I'm ready to make a positive impact on my clients



Young Rick began with pride and flair, bright-eyed, sharp-suited... and full of hair.



But stacks of returns began to rise, and 1099s blurred his eyes.

... I suppose my fast 10-key skills are a kind of positive impact...



As April loomed, tempers flared, frustration echoed—no one cared.

Yes, I thought they qualified for the credit, but that software isn't intuitive



No client calls, no thrilling pitch—Just spreadsheets, stress, and keyboard twitch.

At least the 4/15 party was kinda fun...

Our clients expect more... and expect it faster

Possibilities are rapidly evolving

And our competitors are going to use AI whether we want them to or not



## Reason #2: Our Clients

(external and internal clients)



## AI Is Coming for the Consultants. Inside McKinsey, ‘This Is Existential.’

If AI can analyze information, crunch data and deliver a slick PowerPoint deck within seconds, how does the biggest name in consulting stay relevant?

By [Chip Cutter](#) [Follow](#)

Aug. 2, 2025 11:00 am ET

## BUSINESS INSIDER

FINANCE

### PwC is training junior accountants to be like managers, because AI is going to be doing the entry-level work

By [Polly Thompson](#)

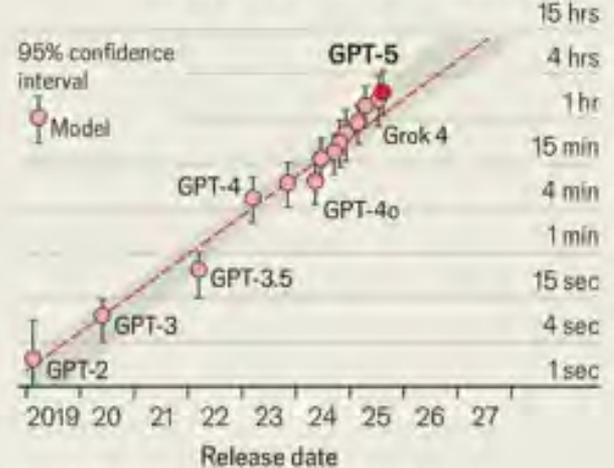


### Thrive-backed accounting firm Crete to spend \$500 million in AI roll-up

## Right on time

Software-engineering tasks where selected LLM achieves a 50% success rate

Average task duration for humans, log scale



Source: Model Evaluation & Threat Research

## BUSINESS INSIDER

AI

### Anthropic CEO says AI could wipe out half of all entry-level white-collar jobs

By [Ana Altechek](#) and [Sarah Perkel](#)



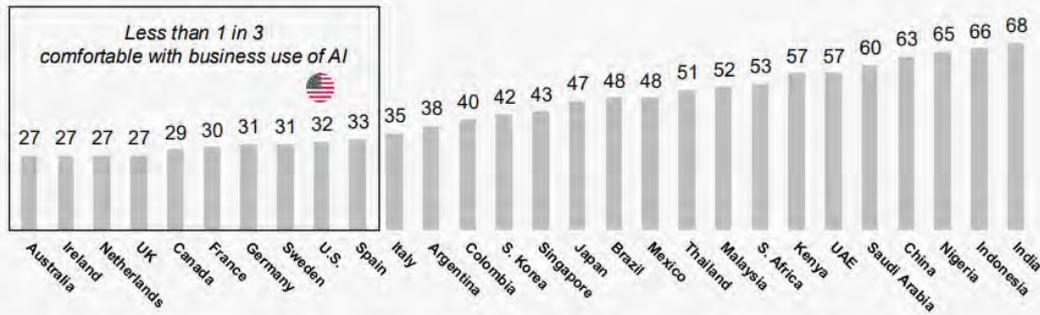
# Nearly 1 in 2 Skeptical of Business Use of Artificial Intelligence

Percent who say

GLOBAL 28

I am comfortable with business using AI

ONLY  
**44%**



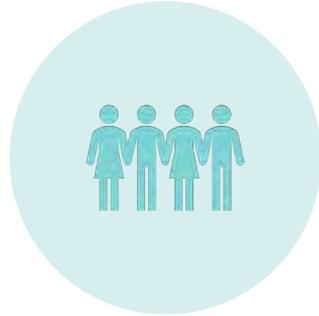
2025 Edelman Trust Barometer. AI (INT. KPI). For each of the following institutions, please indicate whether their general use of artificial intelligence such as machine learning, natural language processing, and generative AI is something you are comfortable with or something you are concerned about (5-pt scale; top 2 box, comfortable). Question asked of half the sample. General population, 28/mk avg.





# The What





EMBRACE THE  
CHANGE

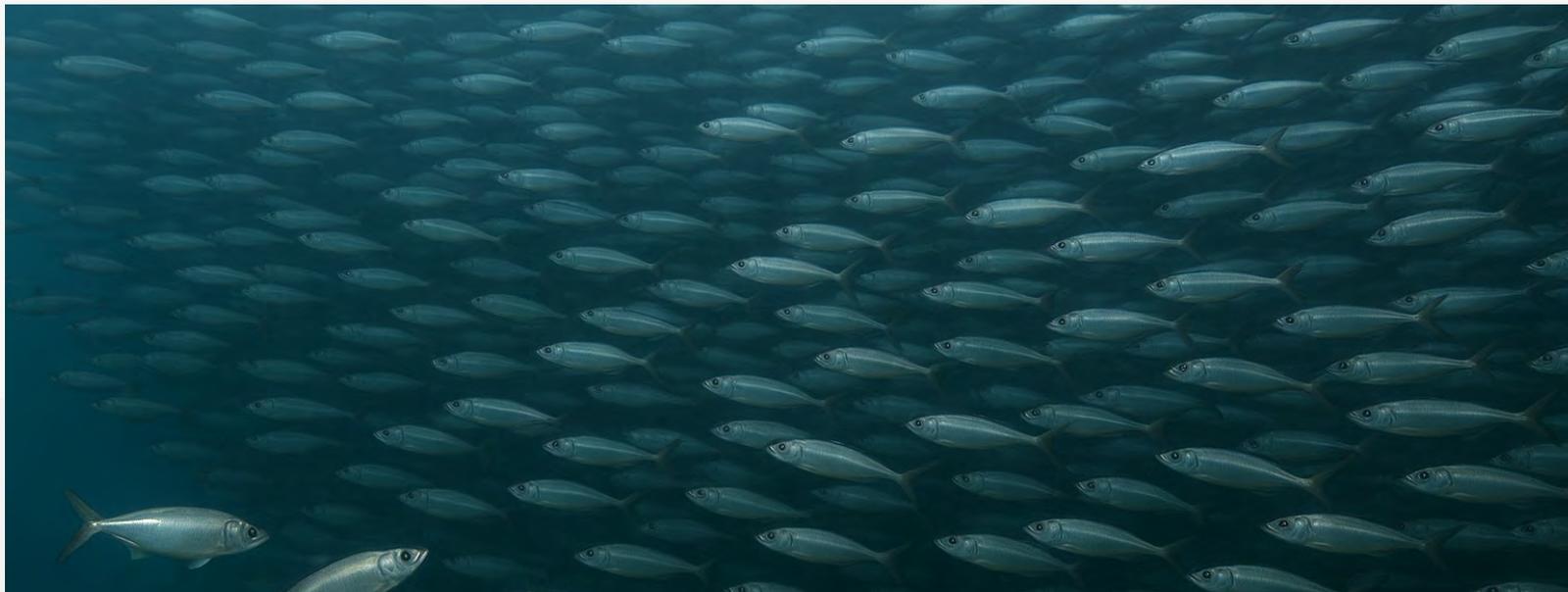


DEMOCRATIZE AI AND  
DIGITAL TECHNOLOGY



TRANSFORM OUR  
TALENT

# Committed Sardine





# The How



# Let's Choose a few Examples...

## **Working in Excel (AI Analysis)**

How can I better understand and analyze my data? (Copilot)

## **Document Extraction**

How can AI extract and summarize batches of documents? (Copilot)

## **Reporting and Analysis**

How can AI help review reports and identify insights? (LLMs)

## **Working in Excel (Transformations)**

How can I clean, combine, and summarize my data? (Power Query)

## **Agents**

How can I create an agent to guide teams through recurring tasks?





[Placeholder for Videos /  
Demos]



# Key Takeaways

## AI as Essential

AI is critical for competitiveness and meeting both internal and external business demands today.

## Available AI Tools

Tools like Excel, Copilot, Power Query, and AI agents are ready for immediate use to enhance workflows.

## Cultural Shift Required

Successful AI adoption needs a cultural change emphasizing democratized access and talent development.

## Accountants Leading Change

Accountants must lead AI adoption to increase their impact and market value through proactive adaptation.





# The Onboarding Experience — Making a Lasting Impression

**How to Engage and Support New  
Employees Effectively**

*November 20, 2025*





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# Onboarding Success Roadmap

- **Understanding the Goals of Onboarding**
- **Facilitator's Insights:** Decades of HR Experience
- **Best Practices and Key Stats** for Effective Onboarding
- **Interactive Exercise:** Mapping Your Onboarding Process
- **Takeaway Tools:** Customizing Your Onboarding Experience

# Understanding the Goals of Onboarding

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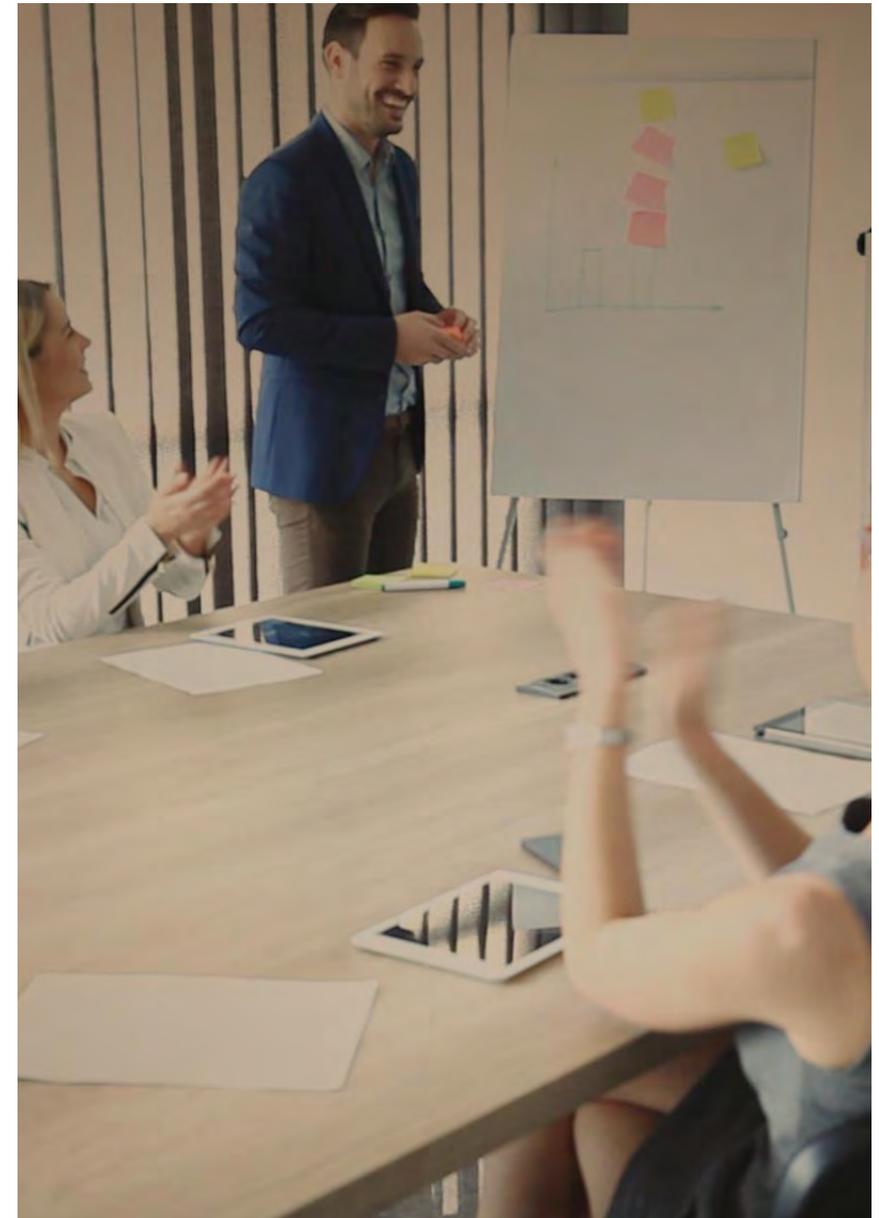
# Defining Onboarding and Its Importance

- **Onboarding Overview:** Onboarding helps new employees get into the company culture and daily workflows.
- **Impact on Retention and Productivity:** Good onboarding keeps employees around and boosts productivity.
- **Designing Effective Programs:** Knowing about onboarding helps create programs that get employees engaged and successful early on.



# Balancing New Hire Experience with Organizational Efficiency

- **Welcoming New Hires:** Creating a supportive environment helps new employees feel valued and engaged from day one.
- **Aligning with Operational Goals:** Onboarding strategies should fit with team goals to keep things running smoothly.
- **Balancing Support and Efficiency:** Good onboarding balances personal support with productivity to benefit both employees and teams.



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# Learning Objectives for the Workshop



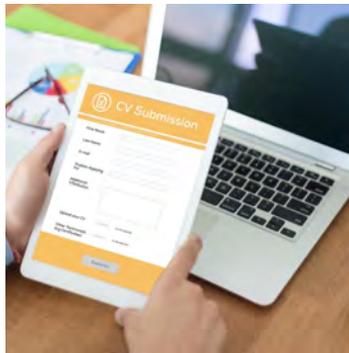
## Understanding Best Practices

Learn key onboarding best practices to help new employees succeed.



## Identifying Common Challenges

Find out about typical onboarding challenges you might face.



## Customizing Onboarding Tools

Get tools to tailor onboarding processes to your organization's needs.

# **Insights: Decades of HR Experience**

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# Overview of HR Background

## **HR Management Expertise**

Decades of experience managing HR functions across different industries and company sizes.

## **Employee Engagement**

Skilled in boosting employee motivation, satisfaction, and retention.

## **Talent Development**

Expert in creating programs to grow employee skills and careers.

# Lessons Learned From Working with Small to Mid-Sized Businesses

## Common Themes in SMBs

Small to mid-sized businesses share common challenges like limited resources and personalized culture.

## Unique Onboarding Needs

SMBs require onboarding processes tailored to their specific structures and cultural values.

## Maximizing Integration and Retention

Tailored approaches enhance new hire integration and improve employee retention outcomes.



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# Common Onboarding Challenges and Solutions



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## **Inconsistent Processes**

Onboarding often suffers from varying approaches causing confusion and inefficiency among new hires.

## **Communication Gaps**

Lack of clear communication leads to misunderstandings and delays in onboarding progress.

## **Resource Constraints**

Limited availability of tools and personnel hinders smooth onboarding experiences.

## **Effective Solutions**

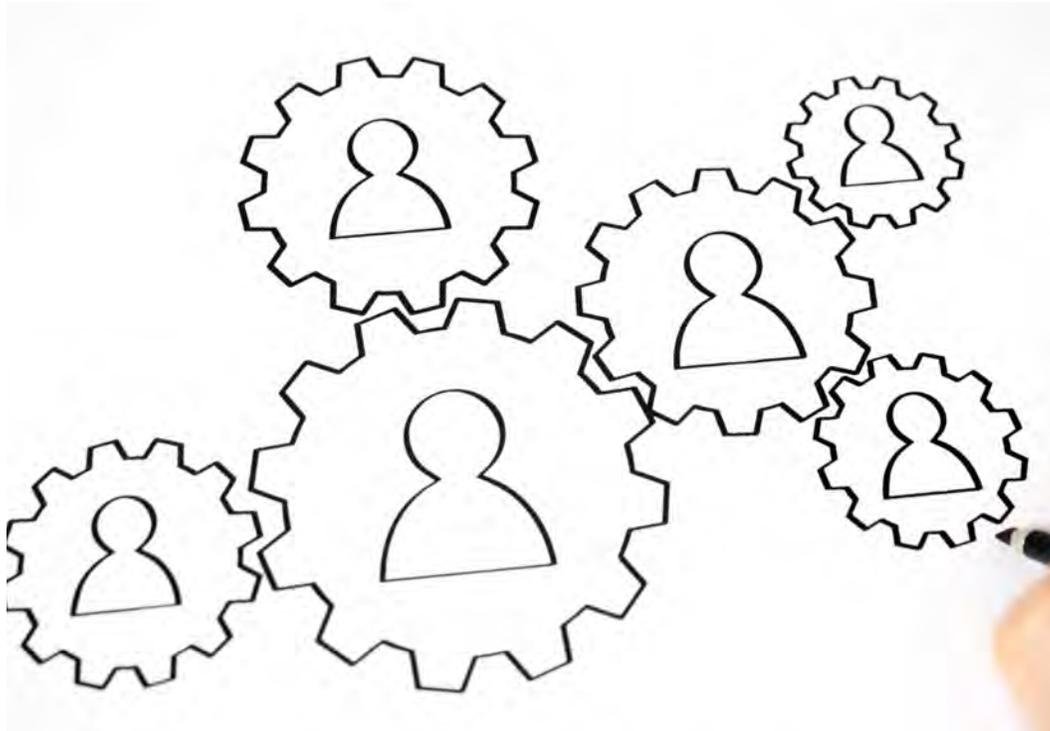
Standardizing processes and enhancing communication help overcome onboarding challenges successfully.

# **Best Practices and Key Statistics for Effective Onboarding**

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# Essential Components of a Positive Onboarding Experience



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## Clear Communication

Effective onboarding relies on clear communication to set expectations and provide essential information to new hires.

## Structured Training

Providing structured training ensures new employees gain the necessary skills and knowledge efficiently.

## Cultural Immersion

Immersing new hires in the company culture helps them feel connected and engaged from the start.

## Ongoing Support

Continuous support after onboarding helps new employees feel valued and confident in their roles.

# Relevant Onboarding Statistics and Industry Benchmarks

## Retention Rates

Effective onboarding significantly improves employee retention by helping new hires integrate smoothly and feel valued.

## Employee Performance

Structured onboarding boosts employee performance by providing clear expectations and necessary resources early on.

## Employee Satisfaction

New hires report higher job satisfaction when onboarding programs address their needs and offer continuous support.



“Employees with a great onboarding experience are **2.6 times more likely** to be extremely satisfied at work” workday.com

“Employees who go through a standardized onboarding process are **50% more productive**”  
Shrm.org

“An effective onboarding process boosts retentions of new hires by **82%**” –  
Glassdoor

The first **44 days** are critical to leave a positive impact on new hires.

For new hires **30%** decide whether to leave or stay in the first week and **70%** decide in the first month whether to leave or stay.

“About 40% of Gen Y choose travel destinations based on how instagrammable the pictures will turn out”  
passport-photo.online

---

# Strategies to Ensure Efficiency for Teams and Managers

## **Streamlined Processes**

Efficient onboarding helps streamline workflows, making processes smoother for teams and managers.

## **Reduced Adjustment Period**

Onboarding minimizes adjustment time, allowing new members to integrate quickly and effectively.

## **Promoting Collaboration**

Effective onboarding fosters teamwork and collaboration, enhancing overall productivity.



# **Interactive Exercise: Evaluating Your Onboarding Process**

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# Onboarding Experience Design Worksheet

## **Customizable Document Use**

Participants utilize a fillable document tailored to their onboarding needs and goals.

## **Capturing Goals and Strategies**

The document helps capture key onboarding goals and strategies efficiently for future reference.

## **Action Plan Implementation**

Participants outline actionable steps to implement their onboarding process after the workshop.



# Hands-On Activity Using Handout

## Practical Application

The activity promotes hands-on learning through guided exercises for real-world onboarding improvements.

## Evaluating Current Onboarding Process (1. & 2.)

Participants review the onboarding process to understand current state, including how core values are connected.

## Identifying Gaps and Opportunities (3.)

The worksheet helps pinpoint strengths and areas needing improvement in the onboarding journey.



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# Incorporating Organizational Core Values Into the Onboarding Process

## **Strengthen Cultural Alignment**

Embedding core values during onboarding ensures new hires align with the corporate culture early on.

## **Clarify Organizational Mission**

Onboarding introduces new employees to the organization's mission to promote understanding and commitment.

## **Encourage Value Embodiment**

Early exposure to core values helps new hires embody and practice these principles in daily work.



# **Takeaway Tools: Customizing Your Onboarding Experience**

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# Collaborative Sharing of Onboarding Ideas and Approaches

## Peer Learning Exchange (4.)

Participants share insights and experiences to facilitate collective learning and growth.

## Sharing Best Practices

Exchanging proven onboarding approaches inspires improvements and innovation.

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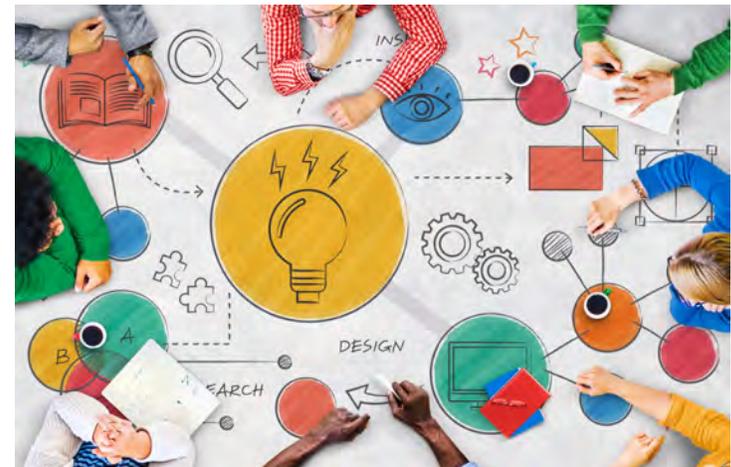
# Let's share!

- What interesting ideas did you hear that you may want to incorporate into your onboarding experience?



# Some more ideas

- Prior to Day 1
  - Send a box full of your company swag & a welcome card from the team/department
  - Have the CEO/President/Owner call the new hire welcoming them
  - Share a creative announcement with fun facts about the new hire, encouraging all to stop by & say hi
- Day 1
  - Have new hire's favorite snack on desk encouraging all employees to visit during the first week
  - Lunch at new hire's favorite restaurant or order in so the entire team can attend
- Friday of first week
  - Manager check in
- Day 30
  - Coffee chat with HR to check in on onboarding experience, training, all good?



---

# Integrating Best Practices and Personal Insights



## Reflection on Concepts

The tool promotes thoughtful reflection on onboarding concepts to enhance learning and retention.



## Adaptation to Context

Adapting best practices to fit the unique organizational culture ensures onboarding effectiveness.



## Effective Onboarding Experience

Combining reflection and adaptation creates a tailored and successful onboarding journey.



---

# Creating Action Steps for Implementation

## Importance of Clear Steps (5.)

Clear action steps turn ideas into practical tasks that can be executed effectively.

## Measurable Goals

Measurable steps allow for tracking progress and evaluating onboarding improvements accurately.

## Ensuring Implementation (6.)

Defined action steps ensure onboarding improvements are properly implemented and their success monitored.

# Conclusion: Crafting a Memorable Onboarding Journey

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## **Importance of Effective Onboarding**

Effective onboarding creates a positive first impression and supports new hires' successful integration.

## **Understanding Goals**

Clear onboarding goals ensure alignment between new hires and organizational expectations.

## **Leveraging Experience and Best Practices**

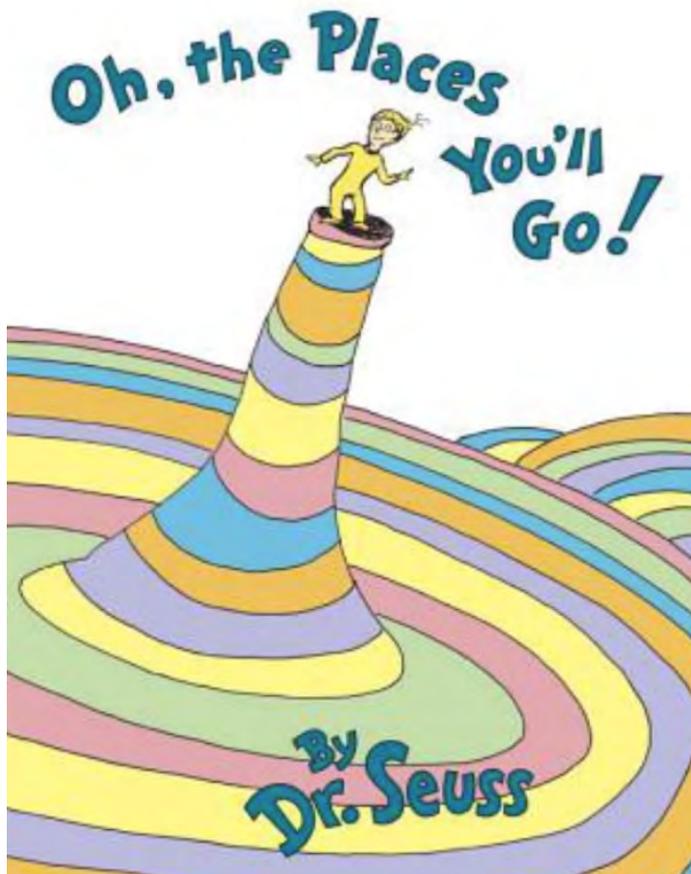
Using proven strategies and past experience enhances the onboarding process effectiveness.

## **Customizing Onboarding Processes**

Tailoring onboarding to individual needs results in a smoother, more impactful journey.

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# Thank you!



Connect with me!

#aHRrow



# Onboarding Experience Design Worksheet

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

## 1. Current State Snapshot

Reflect on your current onboarding process.

A. How long does your onboarding process last?

1 day  1 week  30 days  60-90 days  Other: \_\_\_\_\_

B. What elements are included in your onboarding? (Check all that apply)

- Welcome email/packet
- First-day agenda
- Equipment & workspace setup
- Orientation sessions
- Role-specific training
- Culture/values presentation
- Assigned buddy/mentor
- Regular check-ins
- Feedback collection

C. How would you describe your current onboarding experience?

From the new hire's perspective:

\_\_\_\_\_

From the company's internal workflow/efficiency perspective:

\_\_\_\_\_

## 2. Core Values Connection

Your organization's top 3 core values:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

How are these values currently reflected in your onboarding?

\_\_\_\_\_

Ideas for embedding your values more deeply into onboarding:

\_\_\_\_\_

\_\_\_\_\_



# Onboarding Experience Design Worksheet

## 3. Identify Gaps & Opportunities

What's missing or underdeveloped in your current onboarding?

(Think about consistency, engagement, compliance, clarity, connection.)

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## 4. Learning from Others

What onboarding best practices have you seen or heard about that you'd like to adopt?

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## 5. Action Planning

Choose one improvement you'd like to focus on in the next 30 days:

Improvement Area: \_\_\_\_\_

Steps to take:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Who will be involved or consulted? \_\_\_\_\_

When will you start? \_\_\_\_\_

## 6. Takeaway Commitment

One thing I learned today that I will apply:

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# HOT TAX PRACTICE, PROCEDURE AND ETHICS ISSUES 2025

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Michael Goller leverages his more than three decades of experience, accounting degree and strong relationships within the IRS to be an especially effective tax lawyer. He assists clients with federal and state tax controversy, tax litigation and tax planning. He is a shareholder in Reinhart's Tax and Corporate Law practices.

His clients vary from large public corporations to mid-sized, private businesses. He's a self-described "tax geek who litigates," pairing his outgoing personality with extensive, detailed knowledge and a dedicated work ethic. He represents clients involved in complex disputes with the IRS, the U.S. Department of Justice and various other authorities and has an impressive track record of favorable settlements.

Michael enjoys sharing his expertise through writing and speaking engagements on a variety of tax controversy, litigation and planning topics. He is a longtime faculty member at the University of Wisconsin-Milwaukee's Lubar School of Business and teaches Tax Practice and Procedure in the Graduate Tax Program. Michael is the founder of the Hastings Society for Economic Development, a group dedicated to the discussion of economic principles and how they can further the common good.

Outside the office, he enjoys cooking haute cuisine, having taken cooking classes in both Italy and France. In fact, over the years, Michael has raised significant funds for a variety of charities by auctioning his services as a chef. He spends time with his wife and daughter, plays golf and loves to travel.

#### Education

- ♦ J.D., cum laude, Marquette University Law School
- ♦ B.S., Marquette University (Accounting)

#### Bar Admissions

Wisconsin

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# IRS Update

## Hiring

- Significant hiring had occurred, however, audits have not picked up a lot yet
- FY 9/30/25 – Was expected to see big increase in audits
- FY 9/30/26 - ??
- But
  - D. of G. E. - DOGE
  - Shut Down – Fall 2025
- Still some very “Hot Issues”

# What is Ethics?

- Practical
- Literal/Technical

# Loper Bright – How important is an IRS (o any) regulation?

- Loper Bright Enterprises et al. v. Raimondo et al. and Relentless, Inc. v. Dept. of Commerce, 603 U.S. 369, 144 S.Ct. 2244 (2024) and companion case

Corner Post v. Board of Governors of the Federal Reserve System, 603 U.S. 799, 144 S.Ct. 2440 (2024)

# Loper

- The Court, not the Agent determines the “best reading of the statute”.
- Loper overruled Chevron U.S.A. v. NAT. Resources Defense Counsel, Inc. 467 U.S. 837 (1984)
- Administrative Procedures Act
  - Section 706 – Courts will decide “all relevant questions of law.”
  - Section 553 – Contains a detailed notice and comment period for government regulations
  - Section 533(b) – APA Section 553 procedures apply to “legislative” regulations. Do not apply to “interpretive” regulations

## Loper (cont.)

Why all the concern with the IRS?

- I.R.C. §§ 7805(a) “. . . the Secretary shall prescribe all needful rules and regulations for enforcement of this title [26 of the U.S.C.], . . .”
- Mayo Foundation for Medical Education and Research v. U.S., 562 U.S. 44 (2011) FICA Reg. upheld under Section 7805(a)

## Loper (cont.)

- The Administrative Procedures Act (5 U.S.C. §§ 551 et seq.) **requires courts to exercise independent judgment when deciding whether an Agency has acted within its statutory authority; courts may not defer to the Agency interpretation of the law simply because the statute is ambiguous**
- Corner Post
- Statute of limitations to challenge regulations starts when there is a harm suffered by virtue of the Reg.

# Background

## Relevant Cases

- Skidmore v. Swift Co., 323 U.S. 134 (1944) Skidmore Deference - courts will defer to an agency depending on the thoroughness of its consideration, validity of its reasoning, consistency with other pronouncements and all those factors which give it a power to persuade
- The doctrine survives after Loper. Loper holds that courts may defer to the agency if the agency's interpretation has the "power to persuade." The "**best read of a statute is that the agency may well be authorized to exercise a degree of discretion.**"  
Loper, Slip. Op. at 17

## Background (cont.)

- Chevron USA Inc. v. National Reserve Defense Counsel, 467 U.S. 837 (1984) – two famous factors used to make a Reg. legally binding
  - Regulation must be consistent with the plain meaning of the statute
  - Regulation is not an unreasonable interpretation of the statute

## Post Loper

- Varian Medical Systems v. Comm’r, 163 T.C. No. 4 (Aug. 26, 2024)
  - Section 254A v. Section 78 effective dates
  - Treas. Reg. 1.78-1 clarifies dates. Reg. was issued under Sections 245A and 7805. The court noted a “change in unambiguous provisions of the statute” is not allowed. *Id.*
- There is a basic difference between filling a gap left by Congress and rewriting rules Congress enacted. *Id.* (Citing Loper at 2263)
- When, however, Congress has delegated authority to an agency, the court’s role is to fix the boundaries of that delegated authority. *Id.*

## Post Loper (cont.)

- Schwarz et al. v. Comm’r, Dkt. No. 12347-20 (Tax Court Order (November 5, 2024)). Case was decided Schwarz v. Comm’r, T.C. Memo 2024-55. Granted Rule 161 Motion to Reconsider. Farming and ecotourism business. The issue is deference to IRS resolutions under Section 183. Parties are briefing the issue.
- 3M Company et al. v. Comm’r, [No. 23-3772] \_ F.3d\_ (8<sup>th</sup> Cir. 10.1.25)
- Citing Loper, the Court, when making the required “best reading of the statute” found that some parts of the Section 482 regulations went beyond Section 482

## Case To Watch

- Tribune Media Co. v. Comm'r, T.C. Memo. 2021-122 Appeal Pending Dkts. 23-1135, 23-1136, 23, 1243 (7th Cir.)
- Section 1374 built-in gain on contribution of controlling interest in Chicago Cubs to a partnership.
  - At issue is the partnership anti abuse rule under §1.701-2(a)(1).
  - Is this a Reg. authorized under 7805(a) a mere summary of anti abuse law traceable to Gregory v. Helvering or, should the Reg. be afforded nothing more than Skidmore deference

# SALT Ramifications – Examples

- WI – Tetra Tech EC, Inc. v. W. WDOR, 382 Wis.2d 496 (2018)
  - Not bound by agency but will give “due weight” to the agencies experience, technical competence, and specialized knowledge under Section 227.57(10), Wis. Stats.
  - Very disjointed opinion
- IL – Hartney Fuel Oil v. Hamer, 998 N.E. 2d 1227 (Ill. 2013)
  - Illinois Department of Revenue regulations are entitled to substantial weight and deference. Regulations enjoy a presumption of validity
- FL – Amendment 6 to Florida’s Constitution now requires courts to interpret statues de novo. FLA. CONT. art. V §21(11/6/2018)

# Ethical Issues When Challenging a Regulation

## Ethical Issues When Challenging a Regulation

- Form 8275 v. Form 8275-R
- Disclosure Issues
- Circular 230, AICPA Rules, State Bar Rules
- Practical Realities

# IRS Appeals Office Issues – Challenging a Regulation

## IRS Appeals Office

### How does appeals work

- Section 7803(e) – Codified the Internal Revenue Service Independent Office of Appeals §7803(e)(1). Purpose is to resolve cases, without litigation on a basis which is “fair and impartial.” §7803(e)(3)(A)
- Final Regulations (effective 1.15.2025) – Clarifies when Appeals is not available to a Taxpayer - §301.7803-2.

# Getting to Appeals

- 30 day letter
- Protest – Skinny or fat – pros and cons
- Do an FOIA request
- Exam's "T-letter"

# Settling the Case at Appeals

- Hazards of litigation
- Does the IRS have uniform settlement guidelines?
- What to do if you hit a “brick wall”?

# IRS Appeals Office Issues – Challenging a Regulation (cont.)

- There are 24 specific exemptions to Appeals jurisdiction. See §301.7803-2(c). Examples:
  - Exemption (12) – cannot appeal a notice under 7345 of Revocation of Passport for a Delinquent Tax Debt
  - Exemption (19) – Appeals cannot consider whether a regulation is invalid unless there is an unreviewable decision from a federal court invalidating the part of the regulation at issue
  - Exemption (20) – Same as 19 only for an IRS Notice or Rev. Proc.

Comment: A Loper type challenge will likely not be considered by Appeals.

# Should an Accuracy Related Penalty Still Apply (*for those who ponder deep tax thoughts*)

- Section 6662(a) & (b)(1)
  - Statute that imposes a 20% penalty for disregard of the rules and regulations
  - Now that a regulation is entitled to for less deference, what does this do to the statute? Especially with a Section 6664 Reasonable Cause Defense. Should Congress change the Statute (LOL)

Note: You can avoid this trigger with disclosure if there is good faith and adequate books and records are maintained. Reg. § 1.6662-3(c)(i)

# Disregard of Rules or Regulations

- Is defined as any "careless, reckless, or intentional disregard"
  - Section 6662(c)



# Cost Segregation Cases - Hot



# Cost Segregation

What is it and what is the planning goal?

- Engineering based analysis that breaks down real property components into different asset classes.
  - Rather than depreciating a building over 27.5 years (residential) or 39 years (commercial), identify property that typically has a 5, 7, or 15 year class life. These items generally qualify for bonus depreciation.

## Cost Segregation (cont.)

- Hotter issue after OBBB reinstated 100% bonus depreciation for qualified property (e.g., MACRS – 20 years or less placed in service on or after 1/19/25).
  - Immediately expense shorter life assets

## Cost Segregation (cont.)

- New Section 168 (n) - 100% depreciation for Qualified Production Property
- For a mixed use facility the Taxpayer will need to allocate to production and non-production components
  - ❖ Comment: What do “manufacturing” and “production” mean? Not defined.

# This is Real Money, Not Just a Timing Issue

A cost segregation analysis can help with more than just timing.

1. Partial Asset Disposition – If segregated assets are disposed of during their holding period, the remaining basis is written off.
2. When selling assets, allocate less value to shorter life assets to limit depreciation recapture (*i.e.*, less OI more 1231 gain).
3. Basis step up on death. So buy → 1031 → *die (morbid, but good tax planning)*

# IRS Attack on Cost Segregation Studies

- Publication 5653 (Rev. 6-2022) “Cost Segregation and Audit Technique Guide”
- Revisions were not large but whenever the IRS revises an audit manual, there will be audits

## IRS Attack on Cost Segregation Studies (cont.)

- IRS cites AmeriSouth v. Comm’r TC Memo 2012-67 (2012)
- IRS Pub. 5653, Cost Segregation Audit Technique Guide
- **Trap – Cost segregation study right after a 1031.**

# Ethical Concerns

Watch the numbers on audit.

- IRS cannot disallow the depreciation and disallow the same expense as passive
  - Recalculate and check any revised gain
- Need a good cost segregation study
- How to correctly retain an expert
- May need credible testimony about holding property until death
- Diligence – Cir. 230 § 10.22
- Reliance on written advice – Cir. 230 § 10.22, 10.37(b)
- Document any purchase price allocation
- Penalty issues
  - Educate client about risks

# Ethical Obligation to Talk About Penalty Avoidance

- Under IRS Circular 230, practitioners must advise the client of any penalties that are reasonably likely to apply and the practitioner must discuss the possibility of penalty avoidance via disclosure. §10.34(c)

# Cost Seg. and the Change in Accounting Method Trap

- This can be big.
- Need to educate the client
- Section 6501(a) and a Section 481 adjustment
- § 446(a) – “Taxable income is computed under the method of accounting on the basis of which the taxpayer regularly computes his income . . .”
- § 446(c) – Lists permissible methods - cash, accrual, any other method permitted by Chapter 1 of the Code and “any combination of the foregoing methods permitted under regulations prescribed by the Secretary.”
- A change in accounting method occurs when, under the lifetime income test, income changes. Does the change result in more or less income over the taxpayer’s lifetime? If so, it is not a CIAM. *Hyatt Hotels Corp & Subsidiaries*, 2023-122 (2023) (citing *Peoples Band & Tire Co. v. Comm’r*, 412 F.2d. 1341, 1344 (7th Cir. 1969))

# Cost Seg. and the Change in Accounting Method Trap (cont.)

- Treas. Reg. 1.446-1(e)(ii)(d)(2)(i) – A change in the “depreciation or amortization period of recovery, or convention of a depreciable or amortizable asset” is a CIAM. (Reg. was issued under 7805)
- IRS view is that the statute and this reg. cover a change from depreciable to non depreciable classification (*i.e.*, depreciable property to land)
- The argument will be that an allocation to land increases basis. Basis reduces gain and thus Gross Income and (after deductions) Taxable Income. Depreciation does not reduce Gross Income but is deducted from Gross Income to arrive at Taxable Income. So, assuming the property is sold, life time Taxable Income is the same.
  - Comment: What about 1031 exchanges and step-up-at-death? Or, what if land is sold and the increased basis will reduce the Section 1231 gain, and possibly reduce future 199A deductions, which is a new deduction for years 2018, forward. Some of the properties at issue were depreciated pre 2018. So the change results in less life than Taxable Income than if no change occurred??

# Employment Tax Issues

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- Employer v. Independent Contractor
- ERC

# Section 530 of the Revenue Act of 1978

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- Generally allows taxpayer to treat worker as not being an employee for employment tax, but not income tax or other purposes
- Must have reasonable basis and meet certain requirements

## Section 530 of the Revenue Act of 1978 (cont.)

- *Reasonable basis* for treating a worker as an independent contractor exists if the taxpayer reasonably relied on
  1. Past IRS audit practice with respect to the taxpayer, or
  2. Published rulings or judicial precedent, or
  3. Long-standing recognized practice in the industry of which the taxpayer is a member, or
  4. If the taxpayer has any "other reasonable basis" for treating a worker as an independent contractor.

# Section 530 of the Revenue Act of 1978

- Additional requirements
  1. The taxpayer must not have treated the worker as an employee for any period
  2. All federal tax returns, including information returns, must have been filed on a basis consistent with treating such worker as an independent contractor
  3. The taxpayer (or a predecessor) must treat all workers holding substantially similar positions consistently for purposes of employment taxes
    - The "similar worker consistency requirement"

# Statute of Limitations in Employment Tax Cases

Section 6513 governs when a return is deemed to be filed for purposes of Section 6511 (i.e., for purposes of whether a claim for refund is timely filed). Subsection (c) pertains to Social Security Taxes and Income Tax Withholding (i.e., the taxes reported on a Form 941). Section 6513(c) provides that:

If a **return** for any period ending with or within a calendar year **is filed before April 15** of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year. § 6513(c)(1). (Emphasis added.)

**Thus, when a Form 941 for a period is filed before April 15 of the following period, the tax return is considered filed on April 15 of that following year.**

# Interest-Free Adjustments

- Generally, for employment tax (*i.e.*, Form 941 obligations), if the adjustment to the Form 941 (*i.e.*, the tax deficiency) is
  - paid on or before the due date of the 941 for the period in which the error is “ascertained”,
  - the amount of the underpayment shall be paid without interest being charged.
- An error is ascertained when resolved at examination or with appeals.

## Interest-Free Adjustments (cont.)

- IRC Section 6205(a); Treas. Reg. 31.6205-1 Rev. Rul. 2009-39 and I.R.M. 4.23.8.3 (5-17-2018)
- Generally, for employment tax (*i.e.*, Form 941 obligations), if the adjustment to the Form 941 (*i.e.*, the tax deficiency) is
  - Paid on or before the due date of the 941 for the period in which the error is "ascertained,"
  - The amount of the underpayment shall be paid without interest being charged
- An error is ascertained when resolved at examination or with appeals

## Interest-Free Adjustments (cont.)

- If, however, the case is not resolved at Appeals and the taxpayer receives a notice and demand for payment from the IRS, the adjustment will not be interest free
- In addition, the taxpayer will not be allowed an interest free adjustment where a prior audit found that additional tax was due with respect to the same issue

# ERC Ethics Issues

- Merits of the credit
- 6063 – Civil fraud
- 6662 – Accuracy related penalty
- 6651 – Failure to pay .5% per month to 25%
- Probably Section 6676 does not apply (Statute refers to income tax)

# Appraisal/Valuation Report Challenges – “Hot” IRS Issue

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# Valuation Checklist

What does the client want:

- High value
- Low value
- The Cover Letter – Summary
- Who is the retaining party and other intended users?
- Use the Correct Definition of Fair Market Value ("FMV"), FMV for a gift, Treas. Reg. Section 25.2512-1 defines fair market value as
  - [T]he price at which property would change hands between a willing buyer and a willing seller, Neither being under any compulsion to buy or sell and both having reasonable knowledge of the Relevant facts

# Valuation Checklist (cont.)

- The "as of" or date
- Purpose of the valuation and intended use (e.g. estate and gift tax purposes)
- Type of asset and interest being valued (*i.e.* a minority interest . . .)
- Control Rights - in any
- Access to Liquidity
- The Scope of Work
- Information Considered
- Methodologies Utilized
- Fair Market Value Conclusion

# Valuation Checklist (cont.)

- The Report- Body
- Standard of value – Define FMV again
- Purpose of the valuation
- What is being valued?
- Prior transactions if any
- Rights, preferences, and privileges of interest being valued
- Economic overview / market conditions
- Company specific information
- Methodologies used to determine FMV (Holding Company v. Active Business)

## Valuation Checklist (cont.)

- Discounts. Do not rely only on case law. Berg Estate v. Comm’r, T.C. Memo 1991-279
- Explain the weight given to each methodology used. Otherwise if one methodology is rejected, the whole report may fail. True Estate v. Comm’r T.C. Memo 2001-167 aff’d., 390 F.3d 1210 (10th Cir 2004)
- Tax Affecting Earnings if an S Corp. or Partnership. Calculation both ways. Recent Cases, Kress, Estate of Jones. If do not tax affect, can the marketability discount be increased
- 2703 – Watch it
- Do I need a “good” Form 8283?
- Do I need a “good” receipt/acknowledgement

## Valuation Checklist (cont.)

- Justify the discount rate being used in the calculation
- Statement of qualifications that meets Tax Court Rule 143
- Exhibits showing calculations
- What is the FMV of the interest being valued?
- Signed certification

# Traps for the Unwary When Obtaining Valuation/ Appraisal Reports

- *Exelon v. Comm'r*, 906 F.3d 513 (7th Cir. 2018)
  - SILO tax shelter
  - Appraisal of power plant found to lack credibility because the attorney interfered with the integrity and independence of the appraiser by providing wording and conclusions the lawyer expected to see so that the lawyer could issue a tax opinion
  - Loss on (1) valuation issue; and (2) reasonable cause defense to a penalty
- Need an appraiser who understands the process
- Be careful about "educating" an appraiser
- Assume whatever is sent to the expert will be made available to the IRS – What can I ethically say valuation expert.

# Low Valuation Issues (e.g., Charitable Donations)

## Three Concerns

- Form 8283
- Qualified Appraisal
- The Receipt/Acknowledgement from the Donee
- Section 170(f)(11)(A)(i) provides that no charitable contribution deduction is allowed unless the taxpayer meets certain requirements
- (B) requires the taxpayer to “include with the return . . . a description of such property and such other information as the Secretary may require . . .”
- (D) requires that for donations over \$500,000 the taxpayer must “attached to the return a qualified appraisal of [the donated] . . . property.”
- (H) – IRS can issue regulations

# Qualified Appraisal and Form 8283 Issues

## Appraisal Issues for In Kind Donation

- Reg. 1.170A-13(c)(2)(A) must attach a qualified appraisal to the return; and (2)(B) must attach the appraisal summary (*i.e.*, Form 8283)
- Reg. 1.170A-13(f)(2) and (3) – Donee must provide a contemporaneous written acknowledgement as to whether the
- Donor received any goods or services from the Donee. Must be received by the earlier of the filing or extended due date of the tax return.
- Reg. 1.170A-13(c)(4)(iv)(H) – Reasonable Cause for Failing to Attach Appraisal Summary (may help with appraisal and receipt)

# Qualified Appraisal and Form 8283 Issues

## Appraisal Issues for In Kind Donations (cont.)

- Arguments

### Qualified Appraisal

- Taxpayer must provide sufficient information to permit the IRS to evaluate the reported contributions, as intended by Congress. See Mohamed v. Comm'r T.C. Memo 2012-152, quoting the Estate of Clause v. Comm'r 122 T.C. 115, 122 (2009). The qualified appraisal and Form 8283 that was attached to the 1040 meet this test

### Form 8283

- Note: RERI Holding I, LLC et al v. Comm'r, 149 T.C. No. 1 No. 17-1266 (5/24/19) Aff'd USCA DC (2019) case disallowed a \$33 Million charitable contribution deduction because basis was missing on the Form 8283. Does not indicate if the taxpayer attempted to “fix” the Form 8283

# Bad Form 8283 – Solutions

- Further, Treasury Regulation Section 1.170A-13(c)(4) and (c)(4)(iv)(H) note that a taxpayer is allowed to explain if he or she has reasonable cause for an inadequate Form 8283. The same regulation allows the IRS to request that a taxpayer provide a correct Form 8283 within 90 days. If this request is complied with the charitable deduction will not be disallowed as long as the taxpayer's error was in good faith. See Treas. Reg. § 170A-13(c)(4)(iv)(H).
- In the instant case the Service has not requested that the alleged defects noted in the Revised Lead Sheets on the Form 8283 be corrected."

# Inadequate Form 8283 - Solutions

- Strategy
- “While the Service has never requested that the defects on the Form 8283 alleged in the Revised Lead Sheets at issue be corrected, a new Form 8283 is being faxed to you. The Taxpayer is providing the IRS with a new Form 8283 that is signed by the appraiser and donee. Also, the basis of the donation at issue is included on this form.
- As noted in the instructions to Form 8283, failure to attach a correct Form 8283 to a tax return will not result in a contribution deduction being disallowed if the failure is due to reasonable cause and not willful neglect. See instructions to Form 8283 at 8 (Rev. December 2021).

# WT Apt Partnership LP v. Comm'r, T.C. Memo 2025-030 (4.9.2025)

- Reasonable cause exemption does exist.
  - May help with an inadequate qualified appraisal or receipt/acknowledgement

## Get a Good Appraisal – Section 2703 Trap

- 2703(a) – When valuing property for Gift, estate or GST purposes, cannot consider any option agreement or right to acquire or use the property at a price below fair market value.
- 2703(b) – Exception to (a) if the restriction is
  1. A bona fide business arrangement;
  2. Not a device to transfer property to Members of the transfer's family for less than fair market value; and
  3. Terms similar to arms-length transactions. See Est. of Amlie v. Comm'r, T.C. Memo 2006-76

# Valuation Traps

1. Assumption Letter and/or in the Report – avoid this assumption:

“This valuation assumes there are no Internal Revenue Code Chapter 14 or other federal or state laws or regulations that will have a material impact on the value of the property being appraised. Specifically, we assume the LLC meets the legal requirements of IRC Sections 2703 and 2704 of Chapter 14 if the Internal Revenue Code as they apply to the specific facts and the LLC Agreement. In addition, we have assumed that the terms and conditions of the \_\_\_\_ Agreement are not more restrictive than applicable state law.”

Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

**“The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code.”**

# Valuation Traps

2. Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

**“The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code.”**

## Traps and Models (cont.)

3. Watch Local Law - Wisconsin LLC law – Pre and Post 12/31/2022. Common trap if states that adopted the Uniform Limited Liability Company Law (WULLCL) (e.g., Missouri LLC formed before 8.28.2022 could so elect)

Pre 1.1.2023 (caution if the LLC predates 2023, it may have elected to stay under this law – Check the State Department of Financial Institutions for a “Statement of Nonapplicability”) Wisconsin example

**183.0604. Distribution upon dissociation.** Except as otherwise provided in this subchapter, upon an event of dissociation under s. 183.0802 that does not cause dissolution of the limited liability company, a dissociating member is entitled to receive any distribution to which the member is entitled under an operating agreement and, if not otherwise provided in an operating agreement, **within a reasonable time after dissociation, the dissociating member is entitled to receive a distribution in complete redemption of the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company.**

# Traps and Models (cont.)

Post 12.31.2022

## **183.0404 Sharing of and right to distributions before dissolution.**

**(1)** Except to the extent necessary to comply with any transfer effective under s. [183.0502](#) or charging order in effect under s. [183.0503](#), any distributions made by a limited liability company before its dissolution and winding up must be made proportionally among members and dissociated members on the basis of the value of the contributions made by each such member, as stated in the records required to be kept under s. 183.0402(2) or, in the case of a company treated as a partnership for tax purposes, the partnership capital account of each such member as computed for tax reporting purposes.

**(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.**

# Ethical Concerns

- Need a good appraisal
- How to correctly retain an expert
- Watch the details and requirements
- Hot audit issue
- Diligence
- Reliance on written advice
- Valuation penalties under 6662(h), 20% and 40% Substantial (65% or less of "correct" amount) and Gross (40% or less of the "correct" amount)

# Valuation Penalties

- Four Penalties - two in the gift tax context and two in the income tax context. These "triggers" are mathematical:
  - Substantial Valuation Misstatement (income tax)<sup>1</sup>
  - Substantial Estate or Gift Tax Valuation Understatement<sup>2</sup>
  - Gross Valuation Misstatement (income tax)<sup>3</sup>
  - Gross Estate or Gift Tax Valuation Understatement<sup>4</sup>

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1. Return value is 150% or more of the correct value - 20% penalty.
2. Return value is 65% or less of the correct value - 20% penalty.
3. Return value is 200% or more of the correct value - 40% penalty.
4. Return value is 40% or less of the correct value - 40% penalty.

# Valuation Penalties (cont.)

- Estate and Gift Tax Understatement of Value
  - Substantial Valuation Misstatement
  - There is a 20% penalty of the portion of the underpayment of tax attributed to undervaluation if the value on the estate or gift tax return is 65% or less of the amount determined to be correct
    - Section 6662(a), (b)(5), (g)
- Gross Valuation Misstatement
  - There is 40% of the tax attributable to the undervaluation if the amount reported on the estate or gift tax return is 40% less of the value determined to be correct
    - Section 6662(h)(1), (2)(C)
  - There is no penalty if the underpayment of tax is \$5,000 or less
    - Section 6662(g)(2)

# Income Tax Overstatement of Value *e.g.*, a Charitable Contribution

- Substantial Valuation Misstatement
  - There is a 20% penalty applicable to any underpayment attributable to a Substantial Valuation Misstatement
    - Section 6662(b)(3)
  - A substantial valuation misstatement occurs if the value (or adjusted basis) of any property claimed on a return claimed income is 150% or more of the correct amount
    - Section 6662(e)
  - The penalty is not imposed unless the misstatement results in an underpayment of greater than \$5,000 (\$10,000 for a C-corporation)
    - Section 6662(b)(2)

# Gross Valuation Misstatement

- There is a 40% penalty in the case of a Gross Valuation Misstatement.
- A Gross Valuation Misstatement occurs if the value of the property is 200% or more of the correct value section.
- The standard is automatically met if the correct value is zero.
  - Treas. Reg. Section 1.6662-5(g).
- Example
  - Donor claims a deduction under Section 170 for the donation of property to a qualified charity

# Reasonable Cause and the Income Tax Valuation Penalties

- A reasonable cause exception under Section 6664 can apply when the underpayment is attributable to a substantial (but not a Gross) understatement with regard to a charitable contribution if the following occurs:
  - The claimed value of the property is based upon a qualified appraisal by a qualified appraiser;
  - The taxpayer also made a good faith investigation of the value of the contributed property; and
  - The taxpayer acted with reasonable cause and in good faith
    - Section 6664(c)(3)

Comment

Review the definitions of a qualified appraiser and appraisal in Treas. Reg. Section 1.170A-13(c)(3) and (5)

# Reasonable Cause

- A showing of reasonable cause and good faith avoids the estate and gift tax penalties except does not apply to a gross valuation misstatement on a Charitable Contribution Section 6664(c)(2)
  - Section 6664(c)(1)

# Reliance - General Rule

## Reasonable Cause – IRS Regulation

- In order to establish reasonable cause and good faith the taxpayer must show the following:
  - The advice received was based on all pertinent facts and circumstances and the laws that relate to those facts and circumstances.
  - The advice was not based on unreasonable assumptions and did not unreasonably rely on the taxpayer's or someone else's statement findings, etc.
  - The advice was not based on the invalidity of a regulation unless certain disclosure requirements are met.
    - See Treas. Reg. Section 1.6664-4(c)

# Reasonable Cause

- Defined as Ordinary Business Care and Prudence
- Section 6662 Penalty can be avoided by showing reasonable cause (in most-cases)
- Proof of Reasonable Cause, when arguing reliance on a professional – 3 part test
  - Advisor was competent and had significant expertise to justify reliance
  - Taxpayer gave advisor adequate and necessary information
  - Taxpayer relied in good faith upon the advisor

# Privilege Issues

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# Privileges In a Tax Setting

- Federal Rules of Evidence – Rule 501- Privileges in General
  - Rule 501 provides that common law governs a claim of privilege unless provided otherwise by the Constitution, a federal statute, or rules prescribed by the Supreme Court. In a civil case, state law governs
- There are a Number of Relevant Privileges
  - Attorney-Client
  - Accountant-client or practitioner privilege
  - Work Product Doctrine
    - Each can be waived
    - There are exceptions to this privilege
  - Spousal Privilege

# Attorney-Client Privilege (cont.)

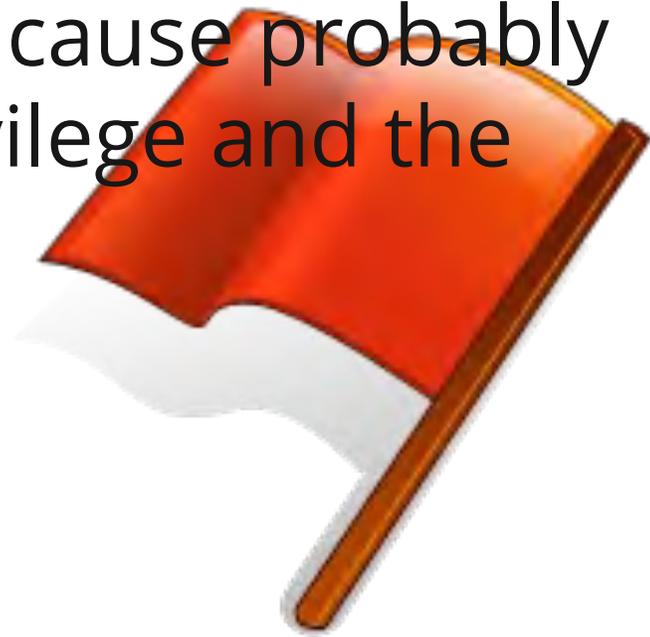
- The Kovel Letter
- The Privilege Can Extend Communications with the Attorney's Agents
- So long as a client's communication is made to an agent of an attorney (*i.e.*, a CPA that has been retained by the attorney) in confidence, for the purpose of obtaining Legal Advice from the lawyer, it is privileged. United States v. Schwimmer, 892 F.2d 237, 243 (2d Cir. 1989)
- What is a Kovel Letter?
- This rule, generally known as the Kovel rule. The application of the Kovel rule can be difficult in situations where non-legal services, such as preparing a tax return, are provided with legal services because it is difficult to distinguish between communications made for the preparation of a tax return and those made for the provision of legal services. Because the Kovel rule rests on the attorney-client privilege, the protection of the Kovel rule is lost anytime the attorney-client privilege is lost.
- When to use a Kovel Letter
- Comment: The key is the facilitation of communication between the lawyer and client

# Section 7525 Privilege

- With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federal authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. Section 7525(a)
- Keep the privileged, privileged

# Raising Reasonable Cause Can Waive a Privilege

- CAUTION:
- Raising the assertion of reliance on professional advice constitutes reasonable cause probably waives the attorney/client privilege and the Section 7525 privilege



## Raising Reasonable Cause Can Waive a Privilege (cont.)

- IRM 20.1.5.6.4 (January 24, 2013)  
(If the taxpayer claims a tax memorandum or advice is privileged, the IRS will not abate the penalty)
- Comment: Would the IRS assert a penalty to force a privilege waiver?

## Other “Hot Issues”

- Partnership Audits (BBA)
- High Net Worth Audits
- Real Estate Professional Status
- Airplane Cases
- Family Office Planning
- The Research Credit – IRS and State cases
- Refund claim Traps
  - Ethics and ERC Audits

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- IRS Announces New Pass-Through Unit to Scrutinize Wealthy
- By David van den Berg
- Law360 (September 20, 2023, 6:33 PM EDT) – The Internal Revenue Service will launch a new group focused on scrutinizing pass-through organizations as part of its broader plan for beefing up enforcement work against the wealthy, according to an agency statement. . . [A] new unit scrutinizing pass-through organizations is part of a previously announced plan. . . to ramp up enforcement work against high-income earners, corporations and partnerships.
- The agency said the initiative will drill down on large or complex pass-throughs. . . to ramp up enforcement work against high-income earners, corporations and partnerships. . .
- The pass-through group will be housed in the IRS' Large Business & International Division, according to the agency. The pass-through entity's workforce will eventually also include current employees in both Large Business & International and the Small-Business & Self-Employed divisions, the agency said. The IRS' statement also said the pass-through group will include the more than 3,700 revenue agents it plans to hire for expanded enforcement work geared toward large corporations and complex partnerships. . .

# IRS Announces New Pass-Through Unit to Scrutinize Wealthy (cont.)

- The IRS' strategic plan for the funding increase provided by the Inflation Reduction Act called for expanded enforcement work against large partnerships and said the agency would hire specialized compliance workers and train others to help ensure pass-through entities comply with the law. . .
- Greater resources are needed to evaluate the compliance of pass-through entities, especially large and complex ones, and pass-through audit rates dropped because of funding cuts, the agency said. . . [its] the strategic plan. The agency audited 4.4% of pass-throughs in 2010, and the rate dropped to 0.1% in 2017, the most recent year with nearly all audits closed, according to the plan, which was released in April.
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# High Net Worth Issues

- Responding to Information Document Requests can be very burdensome, with a number of practical and ethical concerns
- IRS Counsel is often involved through the audit
- Often if information is not produced by the IDR deadline the IRS will issue a pre-summons letter and then an IRS summons

# High Net Worth Issues

- Some examples of the broad scope of high net worth audits include
  - Estate and Gift Tax Issues
  - **Valuation Issues**
  - Executive Compensation
  - C corporation and S corporation Issues
  - **Noncash Charitable Contributions**
  - **Partnership and LLC Issues**
  - Passive Activity Loss
  - Foreign Trusts
  - Foreign Bank Account Reporting
  - Basis and At-Risk Issues
  - Transfer Pricing Issues
  - **Private Airplane Issues**
  - **Business v. Personal Use of Assets – Section 183 & 162**

# Private Airplanes Cases - Hot



# What is the Tax Planning Technique?

- Sutherland Lumber – Southwest Inc. v. Comm’r, 255 F.3d 495 (8<sup>th</sup> Cir. 2001)
- SIFL planning

# Airplane Cases

- Need 51% business use to take accelerated depreciation. The first 25% of business use cannot be a rental to a related party or personal use treated as a fringe benefit.
- Depreciation and the Section 280F trap
- Entertainment Facility trap
  - No deduction is allowed for an entertainment facility. §274(a)(1)(B). Exception Transportation entertainment facilities are deductible if the facility is used in pursuit of a trade or business. §1.274-2(b)(1)(iii)(1); TAM9608004. (Planning – Document business need for the plane)
  - Take the time to do good flight logs
  - Watch the 280F depreciation recapture
  - FAA rules require a dry lease. Make sure you do not violate Section 280F

# Airplane Cases

- IRS Activity
  - IRS Notice – IR – 2024-46 (2/21/24) – IRS Notice of more audits
  - LB&I “Campaign” Issue
  - Checklist
    - Flight Logs
    - Business Purposes – Document (162 + 183)
    - 280F
    - PE v. PNE Flights – Document
    - Entity – Partnership or Corporation
    - Dry Lease
    - FAA – Part 91 or 135
    - State Tax Issues – Fly Away States

## Airplane Cases (cont.)

- Use a Partnership or Corporate structure
- SIFL or §274-10(e)
- Personal Entertainment v. Non-Personal Entertainment
- SIFL is much more favorable than §274-10(e)
- Avoid Schedule C Structure – CCA 202117012 (4/30/21)
  - IRS: Can not pay a fringe benefit to a sole proprietor so income is not SIFL income. Simply disallow all personal expenses. Unclear how to measure expenses.

## Airplane Cases (cont.)

- Section 280F
  - Leasing and Fringe Benefit Traps
  - Here's a new one – a single member LLC is not a single member LLC
  - New IRS training materials issued November, 2024

# Airplane Cases (cont.)

- Section 183 – Hobby Loss
  - Business Plan
  - Factors §1.183-2(b) – See Schwarz v. Comm’r, Tax Court Dkt. 12347-20 (case pending)

# Family Office Planning

- Lender Mgmt LLC V. Comm'r,  
T.C. Memo 2017-25
- Family office takes a profits interests in investments and is treated as a trade or business
- Has to be a real trade or business – 162 and 183 issues
- Pending issues
  - Planes
  - Cost Seg
  - Real Estate Professional
  - Not For Profit
  - Professional Gambler

# Family Office Planning

- Section 183 concerns
  - Section 183(a) – Disallows expenses of not-for-profit activities
  - Section 183 on its face applies to “an individual on an S- corporation . . . .” Section 183(a) applies to partnership and trusts as well.  
Note Section 183 creates presumptions
  - Section 183 does not apply to C-corporations. However 162 still applies to a C-corporation and IRS regulations state that “no inference can be drawn from Section 183 and the regulations thereunder that any activity of a [C] corporation. . . is or is not a business or engaged in for profit.” Treas. Reg. 1.183-7(a)
  - Sorry – Slapping a hobby into a C-corporation does not work (at least not well)

# Responding to Information Requests – Ethical Issues

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# Due Diligence – Ethical Issues

- Due Care – AICPA Code of Professional Conduct, Section 50 Article V.
- Model Rule of Prof. Res. 1.3
- Wis. SCR 20:1.3
- Missouri Supreme Court Rule (4-1.3)

# Circular 230 - Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- If the IRS makes proper request for records or information, a practitioner must promptly respond to the request unless the practitioner reasonably has the good-faith belief that the information is privileged
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS



# Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23 (cont.)

- The practitioner must make a reasonable inquiry of the practitioner's client as to who has possession or control of the requested information
  - However, a practitioner need not make inquiry of any other persons or verify information provided by the client

Comment: Consider these rules when responding to a "wealth squad" IDR, a detailed LB&I IDR or a very broad discovery request.

# Prompt Disposition of Matters and Responses to Requests for Information §§10.20 and 10.23 (cont.)

- Where the documents or information requested by the IRS are not in the possession of the practitioner or client, the practitioner must promptly provide the IRS employee seeking the information with any information the practitioner has about who has possession or control of the requested information

## Comment

This rule certainly seems to raise Section 7525 and attorney-client concerns

# Acknowledgement of IDR after 1.1.26



# IRS Acknowledgement IDR-- Happens at the end of the audit

- In recent years IRS issued to most LB&I taxpayers an IDR that attempts to box the taxpayer into certain facts
- How to respond to the IDR?
- Why noncompliance is not an option:
  - Burden of proof issues
  - Rule of evidence issues (must make info available to opponent)
  - Penalty issues--arguing reasonable cause
  - IRS appeals uses a nonresponse as a basis for not appealing
  - Qualified offer issues

# Acknowledgement IDR

- Use the acknowledgement IDR to support your claim
- See this in most cases
- IRS is no longer issuing these after 1.1.2026

# Burden of Proof

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# Switching the Burden of Proof to the IRS

- Burden of proof can be important in valuation cases
- This is especially so if the IRS does not obtain a good valuation report

# Make Sure During the Audit That the Burden of Proof Will Switch at Trial

- Burden to IRS
  - In most civil controversies, a rebuttable presumption existed that the IRS's determination of tax liability is correct
    - *i.e.*, the taxpayer has the burden of proving the IRS is wrong
  - Section 7491 switched the burden to the government in any non-criminal court proceedings, regarding a factual issue, if the taxpayer introduces credible evidence, which is relevant to determination of its liability

# Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Qualification
  - Code section 7491, which switches the burden of proof to the IRS, applies only to litigation in the courts between the taxpayer and the IRS
  - In order to obtain a shift in the burden of proof, the taxpayer must first comply with all requirements of the code section

# Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Comply with substantiation requirements contained in the Code and Regulations;
- Cooperate fully with the IRS;
- Exhaust all administrative remedies available to the taxpayer, such as going to the IRS Appeals office; and
- Produce credible evidence at trial.

# Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

The requirement to prove credible evidence means that the burden technically starts out on the taxpayer, but shifts to the government unless the taxpayer produces evidence that would enable the court to find in favor of the taxpayer, absent any contrary evidence being produced by the IRS and ignoring the judicial presumption of IRS correctness

# Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

Finally, the shift in the burden of proof applies to all income, gift, estate, generation-skipping, taxes and all penalties in addition to tax

- However, it does not apply to corporations, partnerships or trusts with the net worth exceeding \$7 million (book value)
- **Is some planning possible**

# Deadline Traps - Refunds

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# DO NOT BLOW CRITICAL DEADLINES

- The Three Principal Claim for Refund forms are as follows:
- Form 1040X is used to claim a refund of individual income taxes
- Form 1120X is used to claim a refund of an overpayment of corporate income tax
- Form 843 is used to claim a refund of any tax other than income tax as well as penalties and interest
- Informal claims are possible - but not recommended

# DO NOT BLOW CRITICAL DEADLINES

- If a return is filed or the tax is paid prior to the due date, for statute of limitations purposes, the return is treated as filed and the tax is treated as paid on "the last possible day" the return could have been filed without being delinquent
- The early payment of the tax rule occurs when a taxpayer's wages are subject to withholding or estimated tax payments are made
- The amount of the claim is limited by whether the taxpayer has fallen under the three-year statute of limitations or two-year statute of limitations

# DO NOT BLOW CRITICAL DEADLINES

- Code Section 6511 provides that a claim for refund must be filed within three years of the date the underlying return was filed or within two years of the date the tax was paid, whichever is later

## Amended Returns and Mail Box Rule of Section 7502

- An amended return showing tax due - no mail box rule (not “required” to be filed)
- Return claiming a refund of tax – mail box rule applies (return is “required” to be filed) CCA 20152003 - but be smart. Avoid the fight

# The Protective Refund Claims

- Use the correct form
- Can you just send a letter?
- Comment: Big problem if this is missed

# Hot Issue, Refund Claim Traps For The Unwary

- Trap for the Unwary
  - The claim is formally denied on IRS Letter 105C. This starts a two-year clock from filing a complaint in Court. The IRS is now routinely issuing Letter 105C.
- Comment: Trap for the unwary—a Form 907, which extends the two-year clock, requires a special power of attorney. The form also requires high level authority to sign.

# Contents of Refund Claim

- Make your claim as broad as possible
- Watch out for the "variance doctrine"
- Courts will only allow a taxpayer to bring suit on a claim for refund on the grounds raised in the claim for refund. Thus, care should be taken to assure that all grounds have been stated in the claim for refund

# Do Not Wait to File a Refund Claim

- NOL Example
- Audit Example
- IRS Letter 105C Example

# Passive Loss Cases



# Passive Losses and the Real Estate Professional

- Section 469
- Rental Real Estate
- Real Estate Professional
- Proving Material Participation
- Make a Grouping Election – watch limited partnership trap

# Passive Loss Rules

- Limit a taxpayer from deducting losses and excess credits from a passive activity against income from nonpassive activities. I.R.C. § 469(a)
- A passive activity is one that:
  - Involves the conduct of a trade or business in which the taxpayer does not materially participate. I.R.C. § 469(c)(1)
  - Is a rental activity. I.R.C. § 469(c)(2)

# Passive Loss Rules (cont.)

- Establishing Material Participation
  - A taxpayer materially participates in an activity if, and only if, the taxpayer meets one of the following seven tests:
    - Work done in a taxpayer's capacity as an investor does not count toward the 500 Hour test, unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2)(ii)
    - Investor activities include studying and reviewing financial statements or reports on an activity, preparing studies or analyses of the activity's finances or operations for the taxpayer's own use, and monitoring the activity's finances or operations in a nonmanagerial capacity

## Passive Loss Rules (cont.)

- Facts and circumstances. Treas. Reg. § 1.469-5T(a)(7)
  - Taxpayer can establish material participation by regular, continuous and substantial involvement in an activity based on all the facts and circumstances
  - Must participate in activity for more than 100 hours. Treas. Reg. § 1.469-5T(b)(2)(iii)
  - Caution! Services performed in the management of an activity are disregarded unless:
    - No other individual is compensated for performing management services in connection with such activity; and
    - No other individual performs management services that exceed the hours spent by the taxpayer. Treas. Reg. § 1.469-5T(b)(2)(ii)

# Passive Loss Rules (cont.)

- A taxpayer must establish hours of participation under the seven tests
  - Any reasonable means of proof is sufficient to establish hours of participation. Treas. Reg. § 1.469-5T(f)(4)
  - Courts and the IRS are skeptical when a taxpayer makes extravagant claims on the number of hours of participation
  - Courts generally do not accept "post-event ballpark guesstimate" of hours unless supported by credible testimony and other objective evidence
  - Taxpayers are recommended to keep careful records of participation
  - Practice Tip
    - Use an affidavit
    - A client interview
    - Keep good logs

## Passive Loss Rules (cont.)

- Special Rules for Real Estate Rental Activities
  - Taxpayers who qualify as "real estate professionals" may treat their real estate rental activities as nonpassive upon a showing of material participation.  
I.R.C. § 469(c)(7)
  - To qualify as a "real estate professionals"

# Passive Loss Rules (cont.)

- For individuals:
  - The taxpayer must satisfy the two following requirements:
    - More than one half of all personal services performed in trades or businesses must be performed in the real property trades or businesses; and
    - More than 750 hours of services must be performed in real property trades or businesses in which the taxpayer materially participates.  
I.R.C. § 469(c)(7)(B)
  - Personal services include any work performed by the individual in the connection with a trade or business, except for:
    - Worked performed by an individual in the individual's capacity as an investor. Treas. Reg. § 1.469-9(d)(4)

## Passive Loss Rules (cont.)

- Services performed as an employee, unless the employee is a 5% owner of the employer. I.R.C. § 469(c)(7)(D)(ii)
  - Practice Tip: When looking to purchase Real Estate (*e.g.*, Apartment Buildings), document that the activity is not investment activity
- Services of the taxpayer's spouse cannot be combined to satisfy either of the two requirements. Treas. Reg. § 1.469-9(c)(4)
- Caution! Rental activities held through a passthrough entity constitute a single interest if the entity grouped its real estate as a single activity. Treas. Reg. § 1.469-9(h). However, if a taxpayer owns directly or indirectly a 50% or greater interest in the passthrough entity, each interest in rental real estate is treated as a separate interest unless the taxpayer makes his or her own election to treat all interests in real estate as a single activity.

# Questions?

**THANK YOU!**

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