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*Read It Today, Use It Tomorrow*

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## President's Letter

To my friends at NCCPAP:

There are times we must use our united voice to right a wrong that was done. In this case there was a horrible injustice to the American small business when the IRS issued Notice 2021-49 in relation to the Employee Retention Credit. I am imploring each and every NCCPAP member to write their local Congressperson about this issue. The original rules governing the ERC did not allow for a credit for wages paid to family members, including the children and other long-time employee-relatives of small businesses. That alone was damaging to small businesses, as generational businesses and farms employ family members as part of their business model. In addition, during the pandemic, rather than leave their children at home while schools were closed, many small business owners brought their children into work to be gainfully employed until schools reopened.

*(continued pg4)*

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## President's Letter
(continued)

Not having an allowance for those long-time family member employees and children was already a difficult pill for a small business owner to swallow.

Unfortunately, Notice 2021-49 has made this situation worse. Under this guidance, the wages of the owner and their spouse no longer qualify for an ERC if the owner has ANY CLOSE LIVING RELATIVE, regardless of them being employed by the business. A close relative is defined as your child, sibling, parents, uncle, aunt, niece, nephew, or any in-law. It does not have to be a relative you employ; the existence of any living relative disqualifies a small business owner and their spouse from claiming an ERC on their earnings. You read that correctly! Furthermore, this notice is retroactive. Any tax returns filed by businesses claiming credits in contradiction to this notice are now made inaccurate and those affected tax returns must be amended and the credits repaid. Those affected businesses may also face severe penalties and interest charges.

During 2020, the IRS took a similar "letter of the law" approach in their interpretation of the CARES Act regarding deductibility of eligible Paycheck Protection Program (PPP) expenses rather than considering the intent of Congress. We in the accounting and small business community successfully implored our Congressional leaders to enact legislation to reverse that decision of the IRS. It appears that yet again, the recent IRS ERC guidance does NOT take the intent of the law into account.

It should be noted that the consequences of Notice 2021-49 to a small business, that employs the owner and their spouse, can cause a loss of up to $52,000 from combined credits for 2020 and 2021. These funds may make the difference between closing the doors or enabling those businesses to remain open and continue employing their staff for years to come. The loss of these funds could destroy an already struggling small business at a time when our economy is trying to mount a recovery.

It is critical that our representatives be made aware of the potentially 'unintended consequences' of the IRS interpretation of this portion of the stimulus bills. Again, this can only be remedied by Congressional action, so we must rally again, and fast, as the effects of this change are immediate and severe.

Thank You,

Mark A. Stewart Jr, CPA
*Mark A. Stewart Jr., CPA*

***NOTE:***
***As of the issuance of this journal, new legislation is about to be signed into law that will completely eliminate the employee retention credit for the 4Q of 2021. This will cause even further damage to small and family owned businesses. This is further reason to reach out to your Congressperson about the damage this will do to the small and family owned***

## The Latest from the Membership Committee

The committee met on August 5th, 2021 at 3:30 PM CDT. It was well attended.

We staffed a virtual exhibitor booth at the online Phi Sigma Pi national convention at the end of July. We got several visitors and are following up on contacts made.

We had a short discussion about what our relationship should be with potential affiliate organizations. The consensus was that each would be specific to the potential affiliate.

The New England chapter is putting on a seminar dealing with the new proposal draft from the AICPA regarding management of your practice. This is a hot topic. The seminar will be pushed out to membership and various state CPA societies.

There was a discussion about members who pass away. If the member's estate contacts NCCPAP for a refund they will be given the opportunity to request that a $50 contribution be made by NCCPAP to the scholarship fund in the name of the deceased.

## The Latest from the Scholarship Committee

In an effort to encourage college students to pursue accounting careers in their own Accounting firms, and to help students who may be experiencing pandemic-related difficulties in paying for school, NCCPAP is happy to announce the rollout of four $1,000 scholarships.

Our first $1,000 scholarship is available only to a lineal descendant of a current NCCPAP member who is studying to be an accountant. The Carol Markman, CPA Accounting Scholarship is in honor of our esteemed member and Past President, Carol Markman. Carol's dedication to her peers, her clients, NCCPAP and our honorable profession have made her a shining star in our organization.

In addition, NCCPAP has partnered with Phi Sigma Pi National Honor Fraternity to offer three $1,000 scholarships to deserving Accounting major members of Phi Sigma Pi. Our scholarships are named in honor of three active beloved NCCPAP members who have passed away in the last few years.

The Mary Bonawitz, CPA Scholarship
The Susan Gallo, CPA Scholarship
The Stan Tepper, CPA Scholarship

The scholarship applications will be available on our website beginning 1/1/2022 and must be completed by 5/31/2022 for consideration. Winners will be announced at our August quarterly meeting.

Please help us by contributing to this worthwhile cause. No contribution is too large or too small. Please contact the NCCPAP office to contribute today at 516-333-8282 or email Alexandra Visone-DeNiro at execdir@nccpap.org. Thank you in advance for your kind consideration.

Payments to NCCPAP are not deductible as a charitable contribution but may be deductible as a business expense.

## Understanding the State-Sponsored Automatic Enrollment IRA Plans

***Rachel Raskin***
***New York City College of Technology, City University of New York***

CPA practitioners often face increasing complexity when attempting to give retirement plan advice to business-owner clients. The problem is exacerbated as the baby boomers age and access to retirement savings plans are uneven across states. As state reforms have begun to address this problem, this article helps CPA practitioners to understand the magnitude of the issue, details a State-by-State summary of State-Sponsored Automatic Enrollment IRA Plans, and offers considerations that may be useful to advise clients.

### The Retirement Savings Crisis

As retirement savings throughout the country dwindle, the alarming gap in retirement plan access and participation continues to widen. A stark 53 to 65% of workers do not have access to employer-sponsored retirement plans and most of these people are low-income workers and minorities (Ghilarducci, et al. 2021). There are 37 million older workers and spouses, of which 8.5 million will be poor or near poor in retirement. Further, 40% of older workers and their spouses will be downwardly mobile in retirement, meaning their household labor market earnings exceed 200% of the Federal Poverty Level (FPL), but their household is projected to have income below 200% of FPL in retirement (Ghilarducci, et al. 2018). According to Fidelity, the average 401(k) balance was $121,500 in Q4 2020 (El-Bawab 2021).

PriceWaterhouse Coopers (PwC) industry research has found that 25% of US adults have no retirement savings and only 36% feel their retirement planning is on track. Those who are saving have a median account balance of $120,000 by age 55 to 64, which PwC estimates will yield less than $1,000 per month over a 15-year retirement, not accounting for increasing life expectancy and healthcare costs (PwC 2021). The study further breaks down retirement savings by age, summarized in the tables below.

| Adults without retirement savings | |
|---|---|
| Age Group | |
| 18 to 29 | 42% |
| 30 to 44 | 26% |
| 45 to 59 | 17% |
| 60 + | 13% |

| Median Retirement Savings Account | |
|---|---|
| Age Group | |
| 55 to 65 | $120,000 |
| 45 to 55 | $82,600 |
| 35 to 44 | $37,000 |
| Under 35 | $12,300 |

Relying on social security is insufficient as the 2021 average Social Security retirement benefit is $1,543 a month (AARP 2021) while the average retiree (over age 65) household spending is $4,185 per month (U.S. Bureau of Labor Statistics 2020). A study conducted by Northwestern Mutual in 2018 highlights that 24% of Americans believe it is "not at all likely" and 51% believe that it is "somewhat likely" that Social Security will even be available when they retire. The study shows that 55% of Americans believe they will need to work past age 65 and 73% stated the reason for this is insufficient funds to comfortably retire (Northwestern Mutual 2018). The U.S. Bureau of Labor Statistics expects the labor force participation rate to increase fastest for people ages 65 to 74 and 75 and older through 2024. Between 2014 and 2024, the labor force is expected to grow 5% while the growth rate of the 65 to 74 year-old age group is expected to be about 55%, and the labor force growth rate of the 75 and older age group is expected to be about 86% (Toossi & Torpey 2017).

**Uneven Access to Retirement Savings Plans**

Small businesses may not offer traditional retirement programs such as 401(k) plans, Simple IRAs or SEP-IRAs as they may be under the impression that the fees associated can be steep, and the administrative and fiduciary responsibilities onerous. Consequently, millions of Americans are left without a vehicle for retirement savings. Though anyone can open an Individual Retirement Account (IRA), most people will usually not do so on their own. According to the American Association of Retired Persons (AARP), Americans are 15 times likelier to save if they can do so at work - and about 90% of workers save if they can do so through automatic payroll-deduction. Approximately 97% of privately owned establishments, employing 500 workers or more, offer retirement and health benefits but only around 50% of smaller establishments with less than 49 workers offer such plans (New York State Assembly 2015). In New York State, for example, more than half of the approximately 7 million private sector employees do not have access to an employer-sponsored retirement plan. Further, 60% of Hispanic and Asian American and more than 50% of African American New Yorkers working in the private sector are left without access to a workplace retirement plan (Hidalgo 2021). As of 2017, New York City recorded an overall 35% retirement coverage rate, below New York State at 42% and the national average rate of 40% (Ghilarducci & Papadopoulos 2018).

**State Reforms**

President Obama discussed the idea of auto enrollment in retirement plans that would be managed on a federal level (Liberto 2009). However, due to opposition this notion never materialized. Nevertheless, several states have been discussing retirement reforms in recent years, and 14 states have already enacted programs intended to help U.S. workers who would otherwise not have access to a retirement plan. The premise is that employers would either establish a retirement plan for employees or automatically enroll employees in a state-sponsored auto IRA.

These programs are structured as Roth IRAs where the contributions are after-tax and are not deductible. The plans and requirements vary between states, with some states mandating certain employers to provide access to the retirement plan while other states maintain a voluntary system. States establish boards to administer the plans and regulate the firms that are hired to invest contribute funds. The basic structure of the programs is uniform across participating states. The programs are of little to no cost to the employers as the employees are the sole contributors to the plan and pay all associated fees. Employees can choose their contribution rate up to the maximum annual IRA contribution limit, which is $6,000 for 2021 with an additional catch-up contribution of $1,000 for employees 50 and over (IRS 2020).

Employers do not have an option to contribute to the plan. There is no vesting period, loans are not allowed, and the portability of these plans allows employees to continue contributing or roll over their IRAs. Most states will require employers with a threshold number of employees to offer the automatic IRA in the absence of a qualified retirement plan. Eligible employees are typically part-time / seasonal and full-time workers 18 years old and over that are employed a certain number of days. Contracted workers paid on a 1099 are not considered employees of the business. The income cap for participation in the automatic IRA plans aligns with the IRS Roth IRA contribution limits – single tax filers earning over $140,000 and joint filers earning over $208,000 are ineligible (IRS 2020).

Employers must distribute relevant retirement plan materials to eligible employees and enroll those who do not opt-out, implementing the default payroll deduction in the given state unless the employee states otherwise. The employer is responsible for monitoring eligibility of all employees, adding eligible employees to the plan, establishing an open enrollment period and processing payroll contributions (or assigning this task to a payroll service provider).

Oregon was the first state to pioneer an automatic enrollment IRA plan, known as OregonSaves. Since its debut in 2017, Oregonians have saved over $100 million. The average savings rate is $135 per month and 70% of participants automatically enrolled elect to stay in the program (State of Oregon 2021).

The following table describes the various retirement programs created by states and local governments that have taken initiatives to address the gap in retirement plan access. Information on the contribution rates and requirements of the various programs are detailed. Among the states that mandate participation in the automatic IRA plans for organizations in business at least 2 years that have over a threshold number of employees without an established retirement plan are New York, New Jersey, California, Illinois, Connecticut, Oregon, Colorado, Maryland, Virginia and Maine. Six of these states issue fines for noncompliance. Participation is voluntary in Massachusetts, Vermont, Washington, and New Mexico.

**State-Sponsored Automatic Enrollment IRA Plans by State & Locality**

| State/City | Program | Description | Requirements | Contribution Rate | Fines for Noncompliance |
|---|---|---|---|---|---|
| New York | New York State Secure Choice | New York State Assembly Bill A8332F established the automatic enrollment payroll deduction IRA in 2018, allowing employers to participate on a voluntary basis. The introduction of Assembly Bill A03213 in 2021 was intended to increase access through mandated automatic enrollment in secure choice savings programs, requiring employees to opt-out at their discretion. | Employers in New York State who are in business for at least 2 years with at least 10 employees. | The default contribution rate is 3% of annual wages subject to the annual IRS IRA limit and employees can change this rate at any time. | $250 per each employee the first year and up to $500 per employee each subsequent year. |
| New York City | Savings Access New York Retirement Program | New York City council has voted in April 2021 to approve the program, giving the program's board up to 2 years for implementation. | Employers in New York State who are in business for at least 2 years with at least 10 employees. | The default contribution rate is 3% of annual wages subject to the annual IRS IRA limit and employees can change this rate at any time. | $250 per each employee the first year and up to $500 per employee each subsequent year. |
| New Jersey | New Jersey Secure Choice Savings Program | New Jersey Assembly Bill A4134, enacted in March 2019, introduces the auto enrollment IRA. | Employers in business at least 2 years with 25 or more employees. | The default contribution rate is 3% of wages subject to the annual IRS IRA limit and employees can change this rate at any time. | Failure to enroll an employee who was not opted out of the program will result in a warning the first year, a $100 fine the second year, a $250 fine the third and fourth years and a $500 fine for the 5th and subsequent years after the violation occurred. Further, failure to remit all or a portion of employee contributions to the plan will result in a $2500 fine the first time and $5000 for the second or subsequent offenses. |

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|---|---|---|---|---|---|
| California | CalSavers Retirement Savings Program | The CalSavers Retirement Savings Program was established by the California Secure Choice Retirement Savings Trust Act (California Government Code Title 21) in 2012. | Employers with 5 or more eligible employees, defined as employees receiving a W-2, at least 18 years of age and covered by California unemployment insurance. Employers who do not offer qualified retirement plans to enroll eligible employees in CalSavers within a period of 30 days unless they choose to opt-out. | The default contribution rate is 5% of wages subject to the annual IRS IRA limit. There is also an auto-escalation clause that increases contributions by 1% each year until an 8% rate, provided the employee participated at least 6 months. Employees always have the option to change the rate. | After 90 days of noncompliance employers receive notice of failure to comply and are assessed a penalty of $250 per employee if noncompliance extends 90 days or more after the notice is sent. An additional $500 per employee is assessed if noncompliance extends 180 days or more after the notice. |
| Illinois | Illinois Secure Choice Savings Program | The Illinois Secure Choice Savings Program was introduced by Illinois General Assembly SB2758 in 2015. | Employers operating in the state at least 2 years with 25 or more employees and must auto-enroll eligible employees within 30 days. | The default contribution rate is 5% of wages subject to the annual IRS IRA limit and employees can change this rate at any time. | The default contribution rate is 5% of wages subject to the annual IRS IRA limit and employees can change this rate at any time. |
| Connecticut | Connecticut Retirement Security Exchange | Connecticut Public Act 16-29 amended by Public Act 16-3 created the Connecticut Retirement Security Program. The state will begin implementing a pilot program in July 2021. | Employers with 5 or more employees that do not offer a qualified retirement plan must enroll employees aged 19 and over that are employed for at least 120 days and are eligible for Connecticut unemployment benefits. Employers will need to provide each employee informational material within 30 days of hire and employees will then have 60 days to opt out or be automatically enrolled | The default contribution rate is 3% of wages subject to the annual IRS IRA limit and employees can change this rate at any time. | A civil action may be taken by the Labor Commissioner or an employee who was not enrolled in the plan to enroll the covered employee. Associated costs and reasonable attorney's fees may be recovered. |
| Massachusetts | Massachusetts Defined Contribution CORE Plan | Massachusetts has not yet established an auto-enrollment IRA. In 2012, General Laws Ch. 29 §64 E established a voluntary 401(k) plan option for employers with 20 or less employees. | All employers with 20 or less employees can participate. | N/A | N/A |
| Oregon | OregonSaves | Oregon State Treasury 170-080 was enacted in 2015, establishing the Oregon Retirement Savings Plan for employers who do not offer qualified retirement plans to enroll eligible employees within 30 days of hire date. | All employers, regardless of size, must enroll employees over 18 years of age who are eligible for Oregon's unemployment benefits. It is important to note that employers who offer qualified retirement benefits must certify their exemption from OregonSaves. | The default contribution rate is 5% of wages subject to the annual IRS IRA limit. There is also an auto-escalation clause that increases contributions by 1% each year until a 10% rate. Employees always have the option to change the rate. | $100 per employee, up to a $5000 annual fine. |
| Vermont | Vermont Green Mountain Secure Retirement Plan | Vermont General Assembly Act 69, passed in 2017, established the Vermont Green Mountain Secure Retirement Plan. The plan is not yet in effect. | Participation is voluntary but it will be available to employers who do not offer a retirement plan and have 50 or less employees. | N/A | N/A |
| New Mexico | New Mexico Work and Save Act | The New Mexico Work and Save Act created a retirement plan marketplace and introduced an auto-enrollment IRA plan. | Participation is voluntary. | N/A | N/A |

| | | | | | |
|---|---|---|---|---|---|
| Washington | Washington Small Business Retirement Marketplace | Senate Bill 5826, Chapter 296 established the Washington Small Business Retirement Marketplace in 2015. This is a website that provides various retirement plan options for employers with less than 100 employees and those who are self-employed. These plans are endorsed by Washington and are relatively low cost. | Participation is voluntary. | N/A | N/A |
| Seattle | Seattle Retirement Savings Plan | Ordinance 125467 passed Seattle City Council in 2017, creating the Seattle Retirement Savings Plan. However, the program is not yet in effect. | Employers with employees at least 18 years old who work in the city of Seattle and do not offer a qualified retirement plan. | N/A | N/A |
| Colorado | Colorado Secure Savings Program | Colorado Senate Bill 19-173 introduced the Colorado Secure Savings Program in 2019 and revised it in 2020 Senate Bill 20-200. The program is not yet in effect. | Employers in the private sector who do not offer a retirement plan and are in business for at least 2 years having had at least 5 employees in the state in the previous year. Employers must offer the plan to employees aged 18 or older who have been earning wages in Colorado for at least 180 days. | The default contribution rate is 5% of wages subject to the annual IRS IRA limit. | $100 per employee, up to a $5000 annual fine. |
| Maryland | Maryland Small Business Retirement Savings Program | Maryland General Assembly introduced the Maryland Small Business Retirement Savings Program in HB1378, enacted in 2016. | Private sector employers of any size who do not offer a retirement plan and are in business for at least 2 years will need to offer the plan to employees aged 18 or older. | The default contribution rate is to be determined by the Maryland Small Business Retirement Savings Board. | N/A |
| Virginia | VirginiaSaves | VirginiaSaves was established in 2021 with the passage of the Code of Virginia chapter 556. | Private sector employers who do not offer a retirement plan and are in business for at least 2 years with at least 25 employees will need to offer the plan to employees aged 18 or older working 30 hours or more per week. | The default contribution rate is to be determined by the Board. | N/A |
| Maine | | On June 24, 2021, the bill establishing Maine's state-sponsored automatic IRA program was signed into law. The program will be phased in over a 12-month period beginning April 2023. | Covered employers who do not offer a retirement plan and are in business for at least 2 years with at least 5 employees will need to offer the plan to employees aged 18 or older earning compensation allocable to the state of Maine. | The default contribution rate will be 5%, with annual increases of no more than 1% up to a maximum of 8%. | N/A |

**Considerations**

Though the proliferation of automatic enrollment IRAs across states is a step forward in addressing the retirement savings crisis, it is important to evaluate whether it is a pragmatic solution. Given that states do not have uniform programs and there is no federal retirement savings plan, what will be required of employers who have employees in different states? How about employers who have employees working remotely across many states?

From a financial perspective, plans such as 401(k) plans not only have a much higher contribution limit ($19,000 plus $6,000 for employees aged 50 and over for tax year 2021) but they are also more flexible, customizable and allow for a wider array of investment options than the rigid auto enrollment IRAs. Employees may not be getting the most out of their retirement planning without guidance from financial advisors.

If programs like the Secure Choice Savings Plan gain widespread popularity, will employers start taking the cheap and easy way out and stop offering 401(k) plans / matching employee contributions? This could potentially be a disservice to low-income workers who would not be able to save a significant sum from their wages alone. Perhaps states should broaden the discussion and educate employers about simple and low-cost retirement plans that could be considered along with state-sponsored automatic IRAs. Or perhaps the notion of mandatory participation in a state-run plan will urge employers to set up alternative retirement savings options such as 401(k) plans.

Conclusion

As baby boomers are set to reach peak retirement age in the next 10 years, the nation would be remiss not to actively undertake reforms to augment retirement savings. Most retirees fall short of the recommended $1 million in retirement savings and will therefore live off Social Security benefits (Haass 2019). Consequently, the state and federal governments could face a massive crisis. Greater participation in more aggressive reforms addressing retirement savings is critical.

As states continue to pass legislation in support of automatic enrollment retirement plan programs, practitioners must be able to advise clients who do not offer retirement plans and may thus be impacted. To ensure their clients are compliant with state and local regulations surrounding automatic enrollment IRA plans, practitioners need to be abreast of the mechanics of the applicable retirement programs.

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# A Deeper Dive – What You May Not Know About Cryptocurrency Reporting and Transaction Discoverability

***Tiffany J. Cossey, CPA, JDD, LLM***
***Drury University***

By now everyone has heard of Bitcoin and most CPAs are even aware that the terms “Bitcoin” and “cryptocurrency” are not interchangeable. Dozens of cryptocurrencies exist, many of which are traded on apps like Coinbase that act as public exchanges. Trading in cryptocurrency is becoming more prevalent and use of this asset in place of government-backed currency is beginning to evolve in everyday purchases. Many retailers such as Starbucks, Whole Foods, and Tesla are beginning to accept the currencies either directly or through third-party services. What the average person does not realize is that each cryptocurrency transaction creates a reportable event for tax purposes. This combined with the peeling away of transaction anonymity by the US government will soon result in increased audits by the US government unless tax preparers are at the forefront of helping clients be tax tax-compliant.

The first hurdle in helping clients is making them understand that even though the asset is called “cryptocurrency” it is not government-backed currency and is not treated as cash. Instead, cryptocurrency is treated as an asset, and a taxable event is reported each time it is sold for cash or spent. Users can easily be confused, because “currency” is in the name “cryptocurrency” and the asset is often denominated in “coins.” Also, the ability to use an app to spend the cryptocurrency is similar to other apps such as Google Pay or Apple Pay that spend real cash by debiting a bank account or charging a credit card. To users it seems surreal that the act of buying groceries could create a taxable event, because all of the nuances of the transaction are not readily apparent.

Spending cryptocurrency actually results in a barter event each time it is spent. Since cryptocurrency is treated as property and not US currency, the taxpayer is giving property in exchange for receiving goods or services and must pay tax on the difference between the fair market value of what was received and the adjusted basis of what was given, if the fair market value is higher. This then becomes a record-keeping and tax nightmare. Imagine generating a small taxable transaction with every cup of coffee purchased. The amount of one transaction may be de minimis, but cumulatively the transactions may add up. Big purchases such as buying a Tesla automobile using Bitcoin may create a significant tax liability.

Rules for determining a taxpayer’s basis in cryptocurrency are the same as the rules for all other assets when acquired by purchase, barter, gift, or inheritance. However, there is a dissimilar treatment when the coin is created. A taxpayer has the ability to “mine,” or create, a coin via work performed by the taxpayer’s computer. The computer works to solve a complex mathematical equation, and when it does, a new coin is created. Unlike the creation of intangibles, such as patents or copyrights, where no taxable event occurs until the items are sold, a taxable event occurs the moment the coin is mined. Per IRS Notice 2014-21, the fair market value on the date the coin was mined is taxable. The IRS is treating the coin as payment for performing a service, rather than treating coins as created objects. A taxpayer has no adjusted basis in services provided other than expenses incurred to perform the service. Therefore, a “miner” has no basis coins created, other than out-of-pocket costs incurred to generate the coins.

When disposing of a coin, the calculation of gain or loss is theoretically straight-forward. The adjusted basis of the item is subtracted from the fair market value received along with any costs of disposition, and the difference is the gain or loss. However, when a taxpayer holds more than one coin and the coins were not acquired at the same time, it can be difficult to know what adjusted basis to use. No specific guidance has yet been given by the IRS on this point. Most practitioners follow the default rule for stock transactions, using the first-in, first-out (FIFO) method of accounting pursuant to Treasury Regulation § 1.1012-1(c)(1). However, this can lead to larger gains being reported earlier if older coins are sold first, because cryptocurrency tends to increase in value over time. Some aggressive tax practitioners use the specific identification method found in Reg. § 1.1012-1(c)(1), which is allowed for stock sales in some cases to minimize gain. The inherent risk in this position is that cryptocurrency is not the same as stock and has never been equated to stock by the IRS. The specific identification method in a stock sale is allowed when a share, or group of shares, of stock can be specifically identified at the time of sale. It may be difficult to do this with cryptocurrency, which, while specifically traced in and out of a wallet by a ledger, may not allow the owner the option of trading a specific unit. The position becomes even riskier if the taxpayer is spending or selling only a fractional share of a coin. Also, some highly aggressive practitioners may even argue that since the ultimate goal of the miners is to acquire the asset of cryptocurrency and dispose of it at a later date, that the cryptocurrency is inventory and that the last-in-first-out (LIFO) method under Internal Revenue Code §472 is allowable. Until more guidance is issued by the IRS or more court cases are decided, this will remain a grey area. Whatever the decision on the part of the tax preparer, it will be in a client’s best interest to create a ledger and list each coin, acquired, its basis, and when the coins or any part thereof is disposed of and for what value.

Taxpayers may also be unaware that sale or disposal of cryptocurrency can be taxable, even if the owner was subject to tax on the asset when it was acquired. The proposition may seem like double taxation if the owner is taxed when the coin as acquired and again when it is traded or sold, but more than one taxable event could arise with respect to the same coin for the same taxpayer. For example, if a coin was mined when the value of the cryptocurrency was $1,000 per coin, tax would be paid on the $1,000 value in the year it was mined and the taxpayer would take an adjusted basis of $1,000 in the coin. If the coin was disposed of later when the value of the coin had appreciated to $1,800, the taxpayer would recognize tax on an additional $800 ($1,800 sales price - $1,000 adjusted basis). It is also important to make clients aware that mandatory tax reporting by cryptocurrency exchanges may be on the horizon. The US Government has a tax and national security interest in tracking these transactions and it is only a matter of time before the government passes legislation to require financial institutions to report cryptocurrency transactions. It is possible that legislation will eventually be proposed to require banks, brokerages, and exchanges to report each transaction, as is the current requirement with stock, to ensure optimum compliance.

In December of 2020, the US government took a step toward regulation and reporting of cryptocurrency. The Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Department of the Treasury, issued a press release with proposed requirements for mandating reporting movement of cryptocurrency and similar assets. Under the legislation banks and money services businesses (“MSBs”) would be required to “submit reports, keep records, and verify the identity of customers in relation to transactions” above $10,000 involving “wallets not hosted by a financial institution (also known as ‘unhosted wallets’) or [such] wallets hosted by a financial institution in certain jurisdictions identified by FinCEN.” .” Additionally, the entities subject to the rule would be required to keep records for any transaction over $3,000 to or from the given wallet types and provide that information to law enforcement upon request.

This rule is consistent with existing Bank Security Act requirements applicable to banks and MSBs for other financial transactions. This legislation would cover apps like Coinbase, which is considered to be an MSB.

At present, transactions of specific users by cryptocurrency exchanges can only be obtained via subpoena. A US District Court has recognized the government's right to acquire records of taxpayers engaging in large transactions. In Coinbase, Inc., 120 AFTR 2d 2017-6671(N.D. Cal. Nov. 28, 2017), the IRS subpoenaed all records from Coinbase for a period of two years. Coinbase refused to comply, and the court balked at such a broad application for information, but when the IRS narrowed its request to records for any individual who had the equivalent of at least $20,000 in any one transaction type (buy, sell, send, or receive) within the given period, the district court ordered records to be provided. This decision opens the door for issuance of subpoenas for information on crypto-currency transactions. However, this type of action will be unnecessary if the proposed banking regulation is adopted.
The emergence of cryptocurrency as a factor in reporting is becoming undeniable and it is an issue that will land squarely on the doorstep of most tax practitioners within the next few years. Being aware of the rules surrounding it and pitfalls related to it will be key to assisting clients efficiently and ethically.

Citations
26 USC §472
Coinbase, Inc., 120 AFTR 2d 2017-6671(N.D. Cal. Nov. 28, 2017).
I.R.S. Notice 2014-21
Treas. Reg. § 1.1012-1(c)(1)
United States Department of the Treasury. (2020, December 18). The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions. https://home.treasury.gov/news/press-releases/sm1216

## Data Safety Prep and the 2021 Tax Filing Season

***Stephen F. Mankowski, CPA, CGMA***

Like last year when COVID-19 struck, CPAs are again facing a tax filing season with a very strong likelihood of continued teleworking. We had to adapt quickly in March 2020, and more than a few practitioners were hacked.
Because our practices deal with personal identifying information (PII), we are required to have a written data security plan. We can use IRS Publication 4557, Safeguarding Taxpayer Data: A Guide for Your Business, as a starting point. Publication 4557 provides a framework for creating a data security plan as well as the minimum required under National Institute of Standards and Technology standards. In addition, if you have not already done so, you should strongly consider a cybersecurity insurance policy. Cybersecurity was an issue in 2020 and will continue to be an issue in 2021.
Be proactive on cybersecurity within your firm. The Tax Professional Work Group of the IRS Security Summit issued a Taxes-Security-Together Checklist. Here are a few key security features for your consideration.

Deploy the "Security Six" Measures
- Activate antivirus software.
- Use a firewall.
- Opt for two-factor authentication when it is offered.
- Use backup software/services.
- Use drive encryption.
- Create and secure virtual private networks.

Create a Data Security Plan
- Federal law requires all "professional tax preparers" to create and maintain an information security plan for client data.
- The security plan requirement is flexible enough to fit any size of tax preparation firm, from small to large.
- Tax professionals are asked to focus on key risk areas, including employee management and training, information systems, and detecting and managing system failures.

Educate Yourself and Be Alert to Email Scams
- Learn about spear phishing emails.
- Be on the lookout for ransomware threats within emails.

Recognize the Signs of Client's Data Theft
- Do not dismiss IRS letters sent to clients about suspicious tax returns in their name.
- Be mindful of more tax returns filed with your practitioner Electronic Filing Identification Number than you submitted.
- Watch for clients receiving tax transcripts they did not request.

Create a Data Theft Recovery Plan

- Contact the local IRS stakeholder liaison immediately.
- Assist the IRS in protecting your clients' accounts.
- Contract with a cybersecurity expert to help prevent and stop thefts.

In closing, I urge you to maintain some basic cyberhygiene as good security habits. For instance, never continue to use default password, especially on your routers, virtual private networks, etc. These simple codes are often an easy pathway for hackers to enter your system. Also, set up guest networks in your offices and homes. Guest networks allow access to Wi-Fi while providing an additional firewall to prevent access to your data. Companywide and at home, make sure all software is running the latest versions. These patches often fix bugs that could allow unwanted access to your systems. Finally – and I know I alluded to it above in the email scams section – be very careful when opening emails with attachments. This is especially important on mobile phones where the sender email address is often masked.

*Note:*
*Reproduction of this article was approved by PICPA*

# UPCOMING EVENTS

**Nassau/ Suffolk Chapter**

*12/9/2021* NYS Mandated Annual Sexual Harassment Prevention Training
Delivery Type: Zoom Webinar

**New York City Chapter**

*12/14/2021* Cyber Harassment: Tips and Tricks All CPAs Should Know to Stop It
Delivery Type: Zoom Webinar

**Westchester/Rockland Chapter**

*12/1/2021* Private Company Accounting and Auditing 2021 Update
Delivery Type: Zoom Webinar

*12/8/2021* 2021 AES Tax Update
Delivery Type: In-Person Seminar
Location: Westchester Manor

*12/16/2021* 2021 Tri-State Update
Delivery Type: In-Person Seminar
Location: Westchester Manor

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