

May 13, 2024

Kaplan Financial Education

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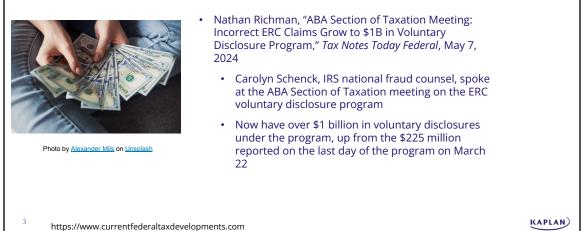
IRS gives update on final results for ERC voluntary compliance program and discusses the future

Taxpayer's contract did not make payment contingent on success of research

DOJ announces CPA firm barred from promoting CRAT/single premium annuity shelter

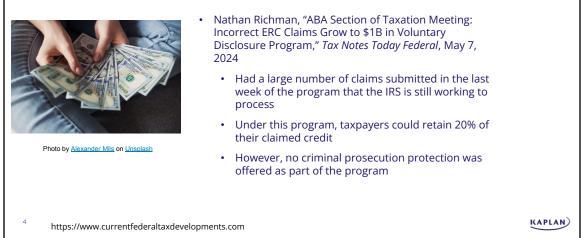
IRS provides information on CAF "under review status" and changes to requesting transcripts

# IRS Gives Update on ERC Voluntary Disclosure Program and Path Forward



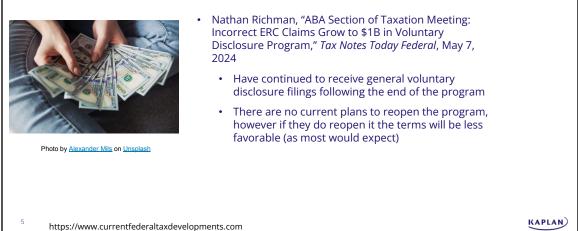
https://www.taxnotes.com/tax-notes-today-federal/penalties/detailed-foreign-trustgift-regs-address-reporting-and-penalties/2024/05/08/7jhh1 (subscription required)

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# Research Credit Denied As Taxpayer's Payment Was Not Contingent on the Success of the Research



- Meyer, Borgman & Johnson, Inc. v. Commissioner, CA8, Docket No. 23-1523, May 6, 2024
  - Tax Court had found the taxpayer's research was funded research under IRC §41(d)(4)(H) and not eligible for the credit
  - To be allowed a credit, the regulations require that payment for research is "contingent on the <u>success</u> of the research."

https://www.currentfederaltaxdevelopments.com

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https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-o rders/eighth-circuit-affirms-denial-firms-research-tax-credits/7jhfp

# Research Credit Denied As Taxpayer's Payment Was Not Contingent on the Success of the Research



- Meyer, Borgman & Johnson, Inc. v. Commissioner, CA8, Docket No. 23-1523, May 6, 2024
  - Contract required firm to create a design:
    - That included all of the items the owner required,
    - Complied with all of the pertinent codes and regulations,
    - Would result in a structurally sound building without being so over-engineered as to compromise the construction budget, and
    - Was sufficiently detailed that a contractor could follow it and successfully construct it.

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# Research Credit Denied As Taxpayer's Payment Was Not Contingent on the Success of the Research



• Meyer, Borgman & Johnson, Inc. v. Commissioner, CA8, Docket No. 23-1523, May 6, 2024

- Taxpayer argued that those requirements made the payment contingent on the success of the research
- Court of Appeals found that none of the conditions cited were specifically tied to the success of research, unlike the ones found in *Fairchild Industries, Inc. v. United States*, 71 F.3d 868, 874 (Fed. Cir. 1996) that the taxpayer cited
- Just "general economic risk of investing resources without a commitment to be paid" is still funded research

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# **CPA Barred by Court from Promoting CRAT/Annuity**



Photo by Nadine Shaabana on Unsplash

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- "Court Permanently Bars Missouri CPA from Promoting Charitable Remainder Annuity Trust Tax Scheme," Department of Justice Press Release, May 6, 2024
  - IRS had issued guidance criticizing a marketed structure
    - Create a CRAT
    - Donate appreciated property to CRAT
    - Sell asset buy annuity
    - Claimed only pay tax based on what gets reported on Form 1099R, never consider capital gain on sale

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https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-ch aritable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%203%2C%20the% 20U.S.,remainder%20annuity%20trusts%20(CRATs)

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- "Court Permanently Bars Missouri CPA from Promoting Charitable Remainder Annuity Trust Tax Scheme," Department of Justice Press Release, May 6, 2024
  - IRS has also issued proposed regulations to make this a listed transaction
  - But the government is already moving against this program, general sold via tax advisers who were approached by parties pushing the structure
  - Government sued this firm and five other defendants

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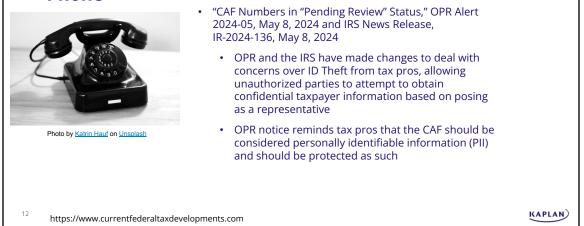
- "Court Permanently Bars Missouri CPA from Promoting Charitable Remainder Annuity Trust Tax Scheme," Department of Justice Press Release, May 6, 2024
  - The other five agreed to the entry of permanent injunctions by the court, but one firm went to trial
  - Firm lost and Court imposed the following:
    - Barred from organizing, promoting, selling or marketing tax schemes involving the use of charitable remainder annuity trusts (CRATs) and
    - Disgorge income from the scheme of \$400,000

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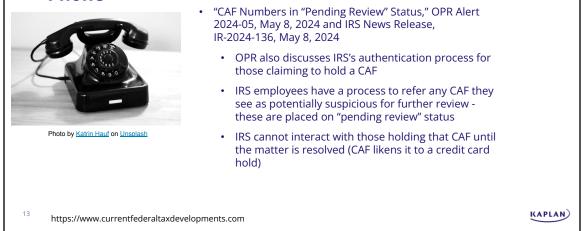
## IRS is Suspending Some CAFs "Pending Review" and Restrictions Imposed on Requesting Transcripts by Phone



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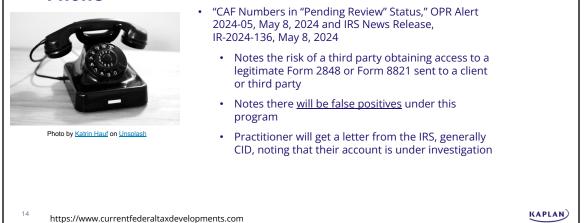
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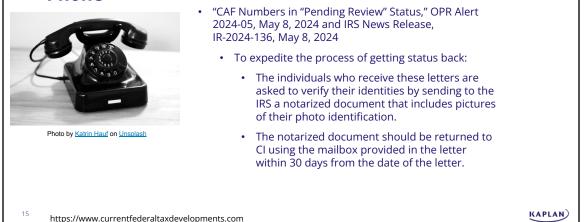
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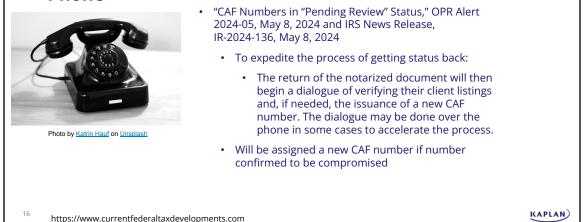
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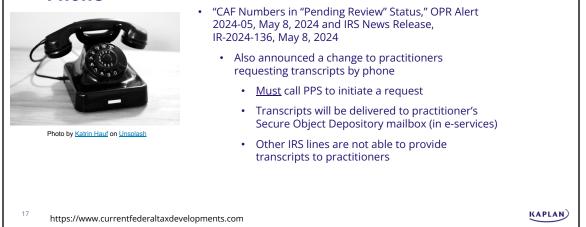
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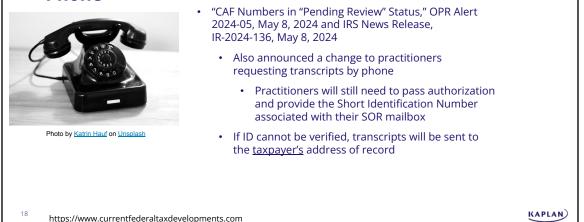
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