

IRS/SJSU Small Business Tax Institute

"Tax Strategies for Small Business Success"

Wednesday, June 24, 2015

8:00 am – 4:30 pm

Biltmore Hotel, Santa Clara

<http://www.tax-institute.com>

Topics

- ❖ **Optimizing Business Deductions** Page 24
- ❖ **Retirement Plans for Small Business Owners and Employees** Page 49
- ❖ **Sales Tax – Avoiding California and Multistate Problems** Page 65
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Speakers See biographies starting at page 5

Joel Busch ~ Angie Dang (IRS) ~ Wesley A. Fachner ~ Karen Fihn ~ Claudia Hill ~ Roger Jung (EDD) ~ Monika Miles ~ Annette Nellen ~ Eric Petersen ~ Karen Reinhold ~ Randy Warshawsky ...**and special guest speaker Karen Hawkins joining us virtually from Washington, D.C.** This is her last presentation as Director of the IRS Office of Professional Responsibility (OPR).

Sponsors



SJSU MST Program

THE STATE BAR OF CALIFORNIA
The Taxation Section,
Young Tax Lawyers Committee



IRS-SJSU Small Business Tax Institute

June 24, 2015

**Biltmore Hotel
Santa Clara**

Tax Strategies for Small Business Success

Time	Topic	Presenters
8 – 8:20	Registration and continental breakfast	
8:20 – 8:30	Welcome	Annette Nellen Director, SJSU MST Program Vivienne Antal Senior Stakeholder Liaison IRS SB/SE Communications and Stakeholder Outreach
8:30 – 10:00	Optimizing Business Deductions Home office, M&E, lease v buy, depreciation and 179 and 1.263(a)-1(f), auto expenses and mileage, fringe benefits (including health care), others	Joel Busch, CPA, Esq. - Moderator San José State University Angie (Ngoc-Thanh) Dang, CPA Supervisory Revenue Agent IRS - San Jose, CA Wesley A. Fachner, CPA, EA, CMA, MST Fachner Accounting Group, Inc. Karen Fihn, EA Telesky Financial Services Past MSEA President Randy Warshawsky, EA The Tax Man Past MSEA President
10:00 – 10:10	Break	
10:10 – 11:10	Retirement plans for small business owners and employees	Eric Petersen Hicks Pension Services
11:10 – noon (50 – non- federal)	Sales Tax – Avoiding California and Multistate Problems	Monika Miles, CPA Miles Consulting
Noon – 1	Lunch	

Time	Topic	Presenters
1 – 1:50 (50 – ethics)	Due Diligence in Serving Small Business Clients C230 and other rules of conduct; avoiding penalties	Karen Hawkins, Director of the IRS Office of Professional Responsibility (virtual)
1:50 – 3:40 (includes 10 minute break)	Hiring Correctly To Avoid Tax and Other Legal Problems	Angie (Ngoc-Thanh) Dang, CPA, Supervisory Revenue Agent IRS - San Jose, CA Claudia Hill, EA, MBA TaxMam, Inc. Roger Jung Employment Tax Consultant Employment Development Dept (EDD) Karen Reinhold, Attorney Hopkins & Carley Moderator: Annette Nellen, CPA, CGMA, Esq. SJSU Graduate Tax Program
3:40 – 4:30 (50)	Accounting Method Requirements and Options for Small Businesses	Annette Nellen, CPA, CGMA, Esq. SJSU Graduate Tax Program Angie (Ngoc-Thanh) Dang, CPA, Supervisory Revenue Agent IRS - San Jose, CA

Continuing Education:

300 minutes Federal Tax

50 minutes Ethics

50 minutes Non-Federal Tax (does not count for credit with the IRS)

For credit with the IRS, you must have provided a correct name and PTIN at time of registration.

California attorneys = 6.5 MCLE hours

Joel Busch

College of Business

San Jose State University

Joel Busch is an assistant professor at San Jose State University. Prior to joining the faculty at SJSU, Joel spent over a decade at Granite Construction Incorporated where he was in charge of federal, state and local tax audits, appeals, research and planning. In addition, Joel was responsible for the creation, implementation and instruction of in-house tax education for the organization as well as representing the company in numerous tax legislation efforts and tax regulation reforms. Joel then spent the following seven years as a tax consultant, representing businesses and individuals on all facets of taxation – including income, sales/use, employment and property tax matters.

Joel has formerly served as Vice-Chair of the Tax Committee of the California Construction and Industrial Materials Association as well as an alternate board member of the California Taxpayers Association. He has been a guest speaker at various trade association tax seminars and has been an invited author in the area of privately-contracted tax consultants by governmental tax agencies based on his spearheading of successful legislative reforms in the area in California in partnership with the California Assessors' Association.

Joel is a proud alumnus of San Jose State University – having received both a BS in Accounting and a MS in Taxation from SJSU. In addition, he has a JD from the Monterey College of Law. He is licensed in California as both a CPA and an attorney.

Angie Dang

Internal Revenue Service

Angie has twelve years of experience with the Internal Revenue Service including the past four years as a Revenue Agent Group Manager. She has a BA in Mathematics and is a Certified Public Accountant. Previous careers include experience as a Franchise Tax Board Auditor and engineer.

Wesley A. Fachner

For over 20 years, Wesley A. Fachner, CPA, EA, CMA, MST, principal with Fachner Accounting Group, Inc., has provided tax and accounting services to individuals, small businesses, and fiduciaries of estates and trusts. He received his Master's of Taxation degree from San Jose State University and his undergraduate degree in business administration from the University of Montana.

Professionally, Wesley served nationally, regionally, and locally with the Institute of Management Accountants. As a member of the California Society of CPAs, the Santa Clara County Estate Planning Council, the Society of Trust and Estate Practitioners and the ElderCare Matters Alliance, he continues his education to stay current with today's changing laws. Wesley generally receives over one hundred continuing education hours annually. In addition to lecturing to various groups on tax-related topics, he teaches tax and accounting classes at UCSC-Extension in Silicon Valley and served as the program coordinator. He has also taught Payroll Accounting at Gavilan College.

Wesley actively volunteers service in his community as a Campbell Chamber of Commerce board member, Campbell Chamber Community Foundation board member, San Jose/Silicon Valley California Society of CPAs Co-chair of the Trust & Estate Committee, HOA board member (former), and PTA board member (former). He also volunteers his time as a musician (organ and clarinet) for his church. He is married and has one son.

Karen Fihn, EA

Karen Fihn has been an EA since 1994, and an NTPI Fellow since 1998. She is past president of Mission Society of Enrolled Agents and has also taught the SEE examination course and courses in starting a business, choice of entity, and payroll taxes. She has a BS in Accounting.

**Karen L. Hawkins**

Director Office of
Professional
Responsibility

Karen L. Hawkins is the Director of the IRS Office of Professional Responsibility. Prior to taking this position in April, 2009, Hawkins was in private practice at the Oakland, California law firm of Taggart & Hawkins where she specialized in civil and criminal tax controversy cases for nearly 30 years. She has been a frequent speaker and writer on a variety of diverse tax law topics including: Innocent Spouse Relief, Attorney's Fees Awards; Collection Due Process; Civil and Criminal Tax Penalties; Tax Court Litigation; International Tax issues and Ethics in Tax Practice. Hawkins has a number of reported precedent-setting tax cases to her credit in the US Tax Court and Ninth Circuit Court of Appeals.

Hawkins earned her J.D. and MBA - Taxation degrees at Golden Gate University in San Francisco. She also holds a M.Ed. from the University of California, Davis Among her many honors and awards are: V. Judson Kelin Award from the California Bar's Taxation Section and the National Pro Bono Award from the ABA's Taxation Section.

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Claudia Hill is an Enrolled Agent, nationally recognized tax professional and frequent lecturer on taxation of individuals and representation before IRS. She is Editor in Chief of the CCH, Inc. *Journal of Tax Practice & Procedure*, co-author of *CCH Expert Treatise Tax Practice & Procedure*, and a frequent presenter for both audio and in-person CPE seminars nationwide. Claudia coordinates a “dream team of tax controversy advisors” for the *IRS Watch* blog on Forbes.com (<http://blogs.forbes.com/irswatch/>). She was named a Top Ten Nominee by Tax Analysts as *2011 Person of the Year*.

Claudia is owner and principal of Tax Mam, Inc. and TMI Tax Services Group, Inc. in Cupertino, CA. TMI Tax Services Group offers tax return preparation, tax planning, and tax problem resolution and representation services, primarily to individual clients. She is often called upon by the news media as a resource person for commentary on tax topics. Her articles and observations have appeared in CCH publications as well as *Tax Analysts*, *Forbes.com* and industry professional journals. Her mission to reform or eliminate the individual AMT has been the focus of a number of articles. In March 2005, Claudia was invited to testify about the individual AMT at the President’s Tax Reform Panel. Visit her website, www.taxmam.com.

Claudia has testified before the Senate Finance Committee on Tax Law Simplification, before the House Government Relations Subcommittee hearing on IRS Administration and Filing Season Readiness, before House Ways & Means Oversight Committee on Taxpayers Who Fail to File Federal Income Tax Returns, before the House Small Business Subcommittee on Independent Contractors, and before the Treasury Department at regulations hearings on tax practice. She continues to work with National IRS and practitioner groups on IRS policy related issues. She annually writes & teaches courses for the IRS Nationwide Forums on behalf of the National Association of Enrolled Agents. She was both a panelist and moderator for “The New IRS Stands Up,” a key IRS-private sector conference held in January 2000. She has participated numerous times on *Tax Talk Today*, the internet TV “*Tax Show for the Tax Pro*”, most recently the May 2012 *Ethics Under Circular 230: Need-to-Know Standards for Tax Return Preparation* and November 2013 *Tax Planning and Reporting Issues for Savers and Investors*

Claudia is an associate member of the ABA Tax Section, a life member of the American Tax Policy Institute, a Fellow and former Dean of the NAEA-EF National Tax Practice Institute and National Practice Specialties Institute. After several years as “Chair,” Ms. Hill is now a special advisor to the Government Relations Committee for the National Association of Enrolled Agents. She served on the 1987 Commissioner’s Advisory Group to the National Office of the Internal Revenue Service. Ms. Hill holds a Masters degree in Business Administration, earned with honors in 1978.

January 2015

Roger Jung

Roger Jung, Employment Tax Consultant
Employment Development Department
745 Franklin Street, Suite 400, San Francisco, CA 94102
Roger.Jung@edd.ca.gov
(415) 929-5707

Roger Jung has been with the California Employment Development Department's Tax Branch for 11 years. Roger began his state service in Tax Branch as a tax auditor in San Francisco. He has been an employment tax consultant for the Taxpayer Education and Assistance Program since 2010. He assists taxpayers to resolve issues relating to their accounts and conducts employment tax seminars to educate taxpayers with regard to state payroll tax requirements and employment status in Northern California.



Monika Miles

Monika founded Miles Consulting Group (formerly Labhart Miles Consulting Group) in 2002. The firm focuses on multi-state tax consulting—helping their clients navigate state tax issues such as sales tax and income tax in interstate commerce, including e-commerce. For instance, Monika works with technology clients answering questions such as “What are the sales tax ramifications of selling our new widget into the following 15 states?” The firm also specializes in enterprise zone tax benefits for California companies and community banks.



Prior to forming the firm, Monika worked for over 11 years in Big 4 Public Accounting and 1 year in industry. Monika has provided such services as federal and state income/franchise tax compliance and consulting, sales/use tax consulting, audit support, and credits and incentives reviews. She has served clients in a variety of industries including manufacturing, technology, telecommunications, construction, utility, retail and financial institutions.

Monika graduated from the University of Texas at El Paso (UTEP) with a BBA in Accounting/Finance and has a Masters in Taxation from San Jose State University.

Her professional affiliations include the AICPA, Vistage, NAWBO-Silicon Valley, and the Accounting & Financial Women’s Alliance (formerly ASWA), where she has served in many capacities, including National President (2011/2012). She contributes regularly to the AFWA e-magazine “Accountability” and has been published in The Journal of Multistate Taxation and Incentives, and other professional publications. Monika has served as a speaker for various organizations such as the AFWA, Financial Women’s Association - San Francisco, San Jose State University, The University of Texas at El Paso, and Beta Alpha Psi (regional and national conferences), as well as providing customized training for CPA firms and technical webinars.

Monika is honored to be recognized nationally as one of the 25 Most Powerful Women in Accounting by CPA Practice Advisor in 2012, 2013, and 2014, and also as a 2014 Woman of Influence by the Silicon Valley Business Journal. Monika’s passion is participating annually in fundraising for the American Cancer Society’s “Making Strides Against Breast Cancer.” She has volunteered for the event for 15 years (since its inception in the Bay Area), raising over \$150,000 during that time. And she is currently authoring her first book, “Beyond the Staff Handbook,” a guide for young professionals to navigate their first few years of their accounting careers. Look for it in 2015!

<http://www.linkedin.com/in/monikamiles>

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ANNETTE NELLEN

Annette Nellen, CPA, CGMA, Esq., is a professor in and director of San José State University's graduate tax program (MST), teaching courses in tax research, accounting methods, property transactions, state taxation, employment tax, ethics, tax policy, tax reform, and high technology tax issues.

Annette serves on the AICPA Tax Executive Committee and the AICPA Tax Reform Task Force. She is a past chair of the AICPA Individual Taxation Technical Resource Panel. Annette is a monthly contributor to the AICPA Tax Insider e-newsletter. Annette was the lead author of the AICPA tax policy concept statement #1, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals* (2001), still in use today. Annette is the recipient of the 2013 Arthur J. Dixon Memorial Award given by the Tax Division of the AICPA, the highest award given by the accounting profession in the area of taxation. In fall 2013, Annette completed a three-year term on the Executive Committee of the Taxation Section of the California Bar. Annette is a former chair of the ABA Tax Section's Sales, Exchanges & Basis Committee.

Annette is the author of Bloomberg BNA Tax Portfolio #533, *Amortization of Intangibles*. She is also the author of Bloomberg BNA Internet Law Resource Center's portfolio, *Overview of Internet Taxation Issues*.

Annette has testified before the House Ways & Means Committee, Senate Finance Committee, California Assembly Revenue & Taxation Committee, and tax reform commissions and committees on various aspects of federal and state tax reform. In 2000, Annette served on the academic panel that advised the Joint Committee on Taxation staff for the tax law simplification study submitted to Congress in 2001. In July 2013, she accepted an invitation to participate in a tax reform roundtable held by the U.S. Senate Committee on Small Business and Entrepreneurship.

Annette maintains the 21st Century Taxation website and blog (www.21stcenturytaxation.com), as well as several websites on tax reform, state tax nexus, e-commerce taxation, and virtual currency taxation.

At SJSU, Annette is a recipient of the Outstanding Professor Award (2000/2001) and the Distinguished Service Award (2004/2005).

Annette is a graduate of CSU Northridge (BS Accounting), Pepperdine (MBA), and Loyola Law School (JD). Prior to joining SJSU in 1990, Annette was with Ernst & Young and the IRS (revenue agent and lead instructor).

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http://www.cob.sjsu.edu/nellen_a/

<http://www.21stcenturytaxation.com>

Twitter: @anellen

LinkedIn: <http://www.linkedin.com/pub/annette-nellen/4/882/744>

ERIC PETERSEN

Pension Consultant

HICKS PENSION SERVICES

Eric Petersen brings a qualified background to Hicks Pension Services. After receiving an M.B.A. from San Diego State University, Eric spent four years as a plan administrator. As an administrator Eric established himself as an expert in the intricacies of IRS tax code as it relates to qualified plans. He also has received accreditation from The National Institute for Pension Administrators.



Since coming to Hicks Pension Services as a consultant, Eric has been directly involved in the design and installation of more than 4,725 qualified plans. Eric has been with Hicks Pension Services for 22 years

Eric is a regular guest speaker around the Bay Area. He has given his "Circle Talk" presentation to organizations such as The Northern California Human Resources Council, The Financial Planning Association (FPA), The International Association for Financial Planning (IAFP), The Southern Alameda County Life Underwriters Association, The National Association of Insurance and Financial Advisors (NAIFA) and The International Association of Registered Financial Consultants (IARFC).

A long time Bay Area resident, Eric currently resides in Fremont. Outside of work Eric enjoys skiing, golfing, jogging and his activities with the Fremont Rotary Club.

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Karen Reinhold specializes in representing employers, executives and occasionally employees, on employment-related matters. She is the Co-Chair of Hopkins & Carley's Employment Law department. Karen served for fifteen years as in-house employment and trial counsel for a large publicly traded corporation and also practiced law for many years with a large multinational law firm. In addition to providing advice and counsel on a broad range of employment-related legal issues, Karen has extensive experience as a trial lawyer, having successfully tried many employment or employment-related cases to jury verdict in state and federal court.

Karen's current practice involves advice and counsel, as well as litigation and trial, regarding the following matters:

- Employee mobility and restrictive covenants
- Trade-secrets
- Unfair Business practices
- Wage and hour practices
- Discrimination and wrongful termination
- Sexual harassment
- Employment contracts

Representative litigation matters

- Successfully represented a co-founder against the company that acquired his start-up; obtained a binding arbitration award in favor of the co-founder after the company that acquired his start-up refused to honor a restricted stock agreement signed during the acquisition.
- Successfully represented a group of game designers sued by their former employer for misappropriation of trade secrets, unfair competition, fraud, conversion and breach of contract when they left their employment to join a competing game company.
- Obtained a defense jury verdict in federal court against claims by a supervisor that he had been discriminated against based on age and national origin.
- Obtained a defense jury verdict in state court against claims by a contractor that the company had intentionally interfered with his relationship with his

Practice Areas

Employment Law

- Discrimination and Harassment
- Employment Contracts
- Employment Litigation
- Personnel Policies
- Unfair Competition, Employee Mobility and Trade Secrets
- Workplace Investigations
- Wrongful Termination Litigation

Litigation

Related Links

November 12, 2015

A Manager's Guide to Discrimination & Harassment

October 8, 2015

Pay Them Now, or Pay Them Later: A Review of Current Issues and Recent Developments in Wage and Hour Law

September 17, 2015

Performance Management, Discipline, & Termination

June 10, 2015

New Paid Sick Leave Law Becomes Fully Effective on July 1, 2015

May 28, 2015

Two Good Reasons to Keep Your Company's Job Descriptions Current and Accurate

May 21, 2015

A Manager's Guide to Discrimination & Harassment

May 14, 2015

As Summer Hiring Season Approaches, Employers Should Be Aware of Wage Payment Rules for Interns

May 7, 2015

Alphabet Soup of Leave Laws

April 23, 2015

"Make-Up" Time is Attractive to Employees and Employers, but

Karen Reinhold

Shareholder

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Bar Admissions

- State Bar of California (1982)

Education

- Juris Doctor (1982)
cum laude
Santa Clara University
- BA, Political Science
University of California,
Riverside

employer based on his alleged whistle-blowing against the company regarding federal contract issues.

- Obtained a defense jury verdict in state court against an employee with thirty years of service who claimed that he was retaliated against for filing an age discrimination charge and ultimately terminated because of his age and in retaliation for filing a discrimination charge.

Lectures and Publications

- *Time For California Employers To Check Hours Worked Policies*, Law360, January 2015
- *Employee Wellness Programs a Plus, But Have Hurdles*, Daily Journal, November 2014
- *Putting California Workplace Bullies in Their Place*, Law360, October 2014
- *EEOC Now Taking Aggressive Position on Severance Agreements*, Daily Journal, June 2014
- *To Sit, or Not to Sit? Question Answered*, Daily Journal, April 2014
- *Frontier: Litigating Restrictive Covenants in Employment*, Daily Journal, January 2014
- Restrictive Covenants: Enforcing Non-Solicitation, Non-Compete and No-Hire Clauses, NCHRA HR West Conference, 2014
- Why Employers With a Non-Union Workforce Should Worry About the NLRB, NCHRA HR West Conference, 2013
- Managing the Risks of Social Media in the Workplace, NCHRA Legal & Legislative Conference, 2013
- Key Topics in Wage & Hour Law, NCHRA Total Rewards Conference, 2012
- Overview of Employment-Related Legal Issues for Emerging Companies, California Program for Entrepreneurship (2010) (2011)
- All-Hands Meeting, Silicon Valley Association of General Counsel (2010) (2013)

is Easily Misused Creating Risk for the Employer

April 9, 2015

Lessons for Employers from the Pao Trial

April 9, 2015

The Dirty Dozen: Twelve Common HR Mistakes That Lead to Litigation...And How to Avoid Them

April 1, 2015

Get Ready for the New California Family Rights Act Regulations

March 18, 2015

"Comp Time" is Attractive to Many Employers, but Serves as a Trap for the Unwary

March 5, 2015

Developing Effective Employee Handbooks

March 4, 2015

Understanding Expense Reimbursement Rules Is Critical As Claims Are Likely to Rise

February 19, 2015

Reasonable Accommodation and the Interactive Process—an Employer Prevails

February 4, 2015

California's New Paid Sick Leave Law—Are You Ready?

January 22, 2015

Mendiola Decision Highlights a Key Issue - The Calculation of "Hours Worked"

January 13, 2015

Top Employment Risks - Protect Your Startup!

January 7, 2015

New Developments in Employment Law 2015

January 7, 2015

2015 Employment Law Update

December 18, 2014

Happy Holidays, with Our Thanks and a Question

Randy Warshawsky, EA - Partner

Awarded Enrolled Agent of the year June 2005 by Mission Society of Enrolled Agents.

Randy Warshawsky was born and raised in the Willow Glen area of San Jose, California, and he currently resides there with his wife. He is very active in the local community serving on the Board of Directors for Willow Glen Little League for three years and currently resides on the Board for Touched by Cancer, is treasurer for District 12 Little League and President for the Mission Society of Enrolled Agents for two consecutive terms, and current Immediate Past President for Network Today. .

<http://www.missioneas.org/awards.html>

Randy has three grown children and is the proud "Papa Randy" to Eddie, his first grandson who turns 8 in 2011.

Randy's entrepreneurial spirit led him into two businesses - first as the owner Big W Liquors in Santa Clara, and now as The Tax Man in Willow Glen.

Randy and his brother operated Big W Liquors for 6 years. The brothers built a substantial business, with a loyal customer base-customers who remain friends to this day. After Fair Trade was enacted, the brothers decided to pursue other interests. Randy laughs about his bookkeeping for the liquor store. "I did everything by hand in hard-bound ledger books with good old-fashioned pencils".

Tax and bookkeeping seemed a natural avenue to explore after leaving the liquor store. Randy started his tax business in 1986 while working for a local bank. He was also certified by the State of California to teach tax preparation courses. After referring to himself as "Randy, The Tax Man" in his phone conversations, the name seemed a natural for his business. Randy continued to build his business while working for a local attorney in the tax department. Eventually, his own business grew to the point where he worked full time for himself.

Those pencils and ledgers have been replaced. Randy uses a network of computers and sophisticated software in his business today. The Tax Man provides tax and bookkeeping services for Individuals, Estates, Trusts, Partnerships, and Corporations. He specializes in small to medium sized businesses. In addition to tax preparation and bookkeeping, Randy also does payroll, audits (all agencies), and business development for his clients.

Randy's hobbies include dancing, four-wheeling, poker, and a variety of family activities.

EMail: Randy@4taxman.com

Tax Strategies for Small Business Success – Online Resources

This list of selected online resources was prepared by SJSU MST student Shruti Raja and the topics covered tie to those presented at the June 15 conference. To make access to the links easier, this document will also be posted at <http://www.tax-institute.com> at a link that references the June 24, 2015 IRS-SJSU Small Business Tax Institute.

Optimizing Business Deductions

General

Starting a Business

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Starting-a-Business>

This link provides list of links to basic federal tax information for people who are starting a business, as well as information to assist in making basic business decisions.

Online Learning and Educational Products

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Online-Learning-and-Educational-Products>

The IRS link contains video and audio presentations on topics of interest to small businesses. This link also provides other educational information for the use of small business owners.

IRS: Small business expenses

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed>

This IRS webpage provides tax resources for small business and self-employed taxpayers who file Form 1040, Schedules C, E, F or Form 2106, as well as small businesses with assets under \$10 million. You can select topics using the A-Z index listing.

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Deducting-Business-Expenses>

If you have a small business, this IRS website provides list and limits of deductions allowed to a small business. You should check this website for list of deduction allowed to small business.

Small Business Forms and Publications

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Small-Business-Forms-and-Publications>

Small business owners can select and download multiple small business and self-employed forms and publications.

<http://www.irs.gov/pub/irs-pdf/p334.pdf>

This publication provides general information about federal tax laws that apply to small business owners. The publication has information on business income, expenses, and tax credits.

<https://business.ca.gov/>

This link offers a range of services to business owners including: attraction, retention and expansion services, site selection, permit streamlining, clearing of regulatory hurdles, small

business assistance, international trade development, assistance with state government, and much more.

Employee Benefits

Employee fringe benefits

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Employee-Benefits>

If your small business is providing free or discounted commercial flights, vacations, discounts on property or services or other such benefits to employees, these are to be included in an employee's gross income with some exceptions.

Accountable versus Non accountable

http://www.irsvideos.gov/TaxabilityCertainFringeBenefits/pdf/Accountable_v_Nonaccountable_Plans_Methods_of_Reimbursing_Employees_for_Expense.pdf

This link provides you information on Accountable v. Non Accountable Plans that are the methods of reimbursing your employees for Expenses.

IRS Publication 15-B

<http://www.irs.gov/uac/About-Publication-15B>

This publication provides detail information on fringe benefits.

Home Office Deduction

Requirements to claim home office deduction

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Home-Office-Deduction>

If you use part of your home for business, you as a small business owner may be able to deduct expenses for the business use of your home. The home office deduction is available for homeowners and renters, and applies to all types of homes. This link provides information on home office deduction. There is also a link to Form 8829, Expenses for business Use of Your Home.

Publication 587, Business Use of Your Home

A small business owner who is using his home as office, this publication provides information on figuring and claiming the deduction for business use of your home. This also provides meaning of the term home.

Standard Mileage Rates

Business use of car

<http://www.irs.gov/taxtopics/tc510.html>

If as a small business owner you use the car for both business and personal purposes, you may deduct only the cost of its business use. This link provides information on two methods:

the standard mileage rate method or the actual expense method. If you qualify to use both methods, you may want to figure your deduction both ways before choosing a method to see which one gives you a larger deduction.

Standard mileage table

<http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates>

The table on this webpage summarizes the optional standard mileage rates for small business or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes.

Retirement Plans for Small Business Owners and Employees

Retirement plans

<http://www.irs.gov/Retirement-Plans/Plan-Sponsor/Small-Business-Retirement-Plan-Resources>

This IRS resource helps you in choosing, operating and maintaining a retirement plan for both small business owners and employees. The webpage also lists list of various types of retirement plans available.

Choosing a retirement solution for your small business

<http://www.irs.gov/pub/irs-pdf/p3998.pdf>

There are a number of retirement programs that provide tax advantages to both employers and employees. This information choosing a Retirement Solution for Your Small Business is a joint project of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the Internal Revenue Service and provides with comparison charts among different plans.

IRS Publication 560: Retirement Plans for Small Business

<http://www.irs.gov/publications/p560/ch04.html>

This publication provides general information about all the retirements plans available to small business (SEP, SIMPLE, and Qualified Plans) and provides worksheets, tables for small business owners.

Sales Tax – Avoiding California Problems

State Tax Obligations

<https://www.sba.gov/content/learn-about-your-state-and-local-tax-obligations>

A small business in addition to Federal tax is required to pay some state and local taxes. Each state and locality has its own tax laws. This link provides access to key resources that will help you learn about your state tax obligations.

Avoiding Common Sales and Use Tax Problems

http://www.boe.ca.gov/info/pdf/v.2_sutd_pitfalls_1-5-10.pdf

This link provides information to help you avoid some of the most common sales and use tax mistakes.

Sales & Use Tax Publications

<http://www.boe.ca.gov/sutax/staxpubsn.htm>

This link contains a list of publications for different types of small business in California.

Certificates Used in Sales & Use Tax Regulations

<http://www.boe.ca.gov/sutax/certforms.htm>

Many regulations include examples of exemption certificates that a purchaser might issue to a seller. This page includes links to the sample exemption certificates that are included in regulations and to the regulations themselves. It is important to read the regulations to determine whether the sample exemption certificates apply to your transactions.

Small Business Fairs Schedule

<http://www.boe.ca.gov/sutax/sbf.htm>

If as small business information you are interested in attending small business fairs, this link provides schedule of small business fairs sponsored by the BOE to be held in California in upcoming months.

Due Diligence in Serving Small Business Clients

Circular 230 - <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

Hiring Correctly and Avoiding Payroll, Non-tax Legal, and Classification Problems

Businesses with Employees

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Businesses-with-Employees>

When as a small business owner you have employees, this link provides you all the record keeping and filing you are required to do for your employees.

Employer ID Numbers

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Employer-ID-Numbers-EINs>

An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number, and is used to identify a business entity. Generally, businesses need an EIN. You may

apply for an EIN in various ways. This link provides you all the information on EIN and how to apply for it.

Independent Contractor (Self-Employed) or Employee

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee>

Small business owners must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. They do not generally have to withhold or pay any taxes on payments to independent contractors. For this purpose it is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors. This link provides all information on difference between employee and contractor.

Professor Nellen's Worker Classification Website

http://www.21stcenturytaxation.com/Worker_Classification.html

Includes links to IRS and EDD and other government information on distinguishing employees from contractors and compliance considerations.

Accounting Methods Requirements and Options for Small Businesses:

Publication 538: Accounting Periods and Methods

<http://www.irs.gov/pub/irs-pdf/p538.pdf>

This IRS publication provides an overview to accounting periods and methods.

Special rule for small businesses adopting the final tangible property regulations – Rev. Proc. 2015-20

http://www.irs.gov/irb/2015-9_IRB/ar09.html

This new and modified Revenue Procedure permits a small business taxpayer to make certain tangible property changes in methods of accounting with an adjustment under § 481(a) that takes into account only amounts paid or incurred, and dispositions, in taxable years beginning on or after January 1, 2014.

OPTIMIZING BUSINESS DEDUCTIONS

Joel Busch, CPA, Esq. - Moderator
San José State University

Angie (Ngoc-Thanh) Dang, CPA
Supervisory Revenue Agent
IRS - San Jose, CA

Wesley A. Fachner, CPA, EA, CMA, MST
Fachner Accounting Group, Inc.

Karen Fihn, EA
Telesky Financial Services
Past MSEA President

Randy Warshawsky, EA
The Tax Man
Past MSEA President

IRS-SJSU Small Business Tax Institute - June 24, 2015
Tax Strategies for Small Business Success

IRS/SJSU SMALL BUSINESS TAX INSTITUTE

Tax Strategies for Small Business Success

June 24, 2015

Wesley A. Fachner, CPA, EA
Fachner Accounting Group, Inc.
65 W. Hamilton Avenue, Suite 5
Campbell, CA 95008
(408) 866-2001

- ▶ Prop. Reg. §1.280A-2
- ▶ Form 8829
- ▶ Schedule C (if elect Simplified Method)
- ▶ Publication 587

HOME OFFICE

3

- ▶ General requirements:
 - ▶ Exclusive Use
 - ▶ Regular Use
 - ▶ Trade or Business Use
 - ▶ Principal Place of Business

HOME OFFICE

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Types of Expenses:

- ▶ Direct
- ▶ Indirect
- ▶ Unrelated

HOME OFFICE

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Depreciation

- ▶ When placed in service (month and year)
- ▶ Adjusted basis or FMV (conversion rules)
- ▶ Cost of improvements

- ▶ May be subject to carryover based on income limitations
- ▶ May be subject to recapture upon sale of the home

HOME OFFICE

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Simplified Method

Revenue Procedure: 2013-13

Prescribed Rate: \$5 per Sq. Ft.

Limit of area: 300 Sq. Ft.

Maximum deduction: \$1,500

HOME OFFICE

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HOME OFFICE

Simplified Method

Advantages:

- Easy to calculate

- No depreciation

- Taxpayer can switch between Actual and Simplified each year and is not a change in method

Disadvantages:

- Very limited benefit to taxpayers

- Unallowed carryovers must be tracked when elected

- Election for year is irrevocable

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HOME OFFICE

▶ Common Issues:

- ▶ #1 Tax Preparer does not include the depreciation in the calculation.
- ▶ #2 When depreciation is used, 27.5 years (residential real estate) is used rather than 39 years (commercial).
- ▶ #3 Including the basis of the land in the depreciation calculation.
- ▶ #4 Is this the RED FLAG your clients think it is?

9

MEALS & ENTERTAINMENT (M&E)

Ordinary and Necessary

IRC §274(a)

Directly-Related
Associated With

IRC §274(k) Business Meals

(A) Not lavish or extravagant under the circumstances

(B) The taxpayer is present

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M&E

50%

IRC §274(n)

Includes:

- Cost of meal or entertainment
(face value of tickets)
- Taxes and tips
- Cover charges
- Rent for a room to hold the dinner or party
- Parking

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CLUB DUES

Not Deductible

- Capital Club
- Sharon Heights GCC (what about Tiger Woods?)

M&E

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Documentation:

WRITTEN RECORD

Name and location of the restaurant or facility

Number of people served

- ▶ You or your employee(s) must be present
- ▶ Names, occupations, titles of recipients

Date and amount of the expense

Business purpose

M&E

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Question:

How do I deduct my Tesla from my business?

Answer:

Use it 100% for business. . .

AUTOMOBILE AND CAR EXPENSES

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Ordinary and Necessary

- ▶ Getting from one workplace to another
- ▶ Visiting clients or customers
- ▶ Going to a business meeting away from your regular workplace
- ▶ Getting from your home to a temporary workplace (when you have one or more regular places of work)

AUTOMOBILE AND CAR EXPENSES

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- ▶ Going between residence and a temporary work location outside metropolitan area where you live
- ▶ Home office principal place of business and go to another work location in same trade or business

AUTOMOBILE AND CAR EXPENSES

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Methods:

- ▶ Standard Mileage Rate (57.5 cents 2015)
 - When can you not use it?

- ▶ Actual Car Expenses

AUTOMOBILE AND CAR EXPENSES

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Types of expenses allowed:

- Interest
- Personal Property Taxes
- Regular Operating costs
- Depreciation

Types of expenses not allowed:

- Fines (Oh, but I was pulling a permit at City Hall)
- Commuting

AUTOMOBILE AND CAR EXPENSES

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Semi-Myth

One you chose a method, you cannot change to another method.

This is true if you use the actual method when the auto is placed in service and other than straight line depreciation is elected.

Myth

I have my logo on my auto, so it is 100% business use.

(So when you dropped your kids off at school today. . .?)

AUTOMOBILE AND CAR EXPENSES

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UBER

- ▶ Drivers are independent contractors
- ▶ Either Standard Mileage Rate or Actual
- ▶ Uber tracks miles when rider onboard, is this enough documentation?
- ▶ Don't forget SE tax

AUTOMOBILE AND CAR EXPENSES

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Other considerations:

- ▶ Most complicated part of auto expenses is DEPRECIATION

More than 50% business use

VS

50% or less business use

IRC §280F

- ▶ Trade-in (IRC §1031)
- ▶ Disposition
- ▶ Lease inclusion

AUTOMOBILE AND CAR EXPENSES

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Fringe Benefits

Karen Fihn, EA
Telesky Financial Services

1940 The Alameda
San Jose, CA 95126
[\(408\) 551-6580](tel:(408)551-6580)

June 24, 2015

- ▶ Taxable benefits
- ▶ Any benefit that exceeds the allowable amount
- ▶ Any benefit not excluded by tax law.

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Cafeteria Plans - Overview

- ▶ Dependent care assistance
- ▶ Group-term life insurance
- ▶ Accident and health benefits -no MSA or long term insurance
- ▶ FSA - Flexible spending arrangement - medical
- ▶ HSA

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Other Employee Benefits

- ▶ May be non taxable, taxable or partly taxable.
- ▶ Adoption Assistance
- ▶ Dependent Care
- ▶ Education Assistance
- ▶ Group Term Life Insurance Coverage
- ▶ Employer Provided Cell Phones
- ▶ HSA - Health saving Accounts

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Focus of Benefits and Related Payments to Employees

- ▶ Achievement Awards
- ▶ Transportation
- ▶ Employee Discounts

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Achievement Awards

- ▶ Non-taxable achievement awards
- Types
- Requirements

27

Transportation

Company car
Parking
Bike
Transit pass

28

Employee Discounts

- ▶ Services offered to the public
- ▶ Merchandise sold to public

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Source References

- ▶ IRS publication 15-B: Employer's Tax Guide to Fringe Benefits
- ▶ IRS Publication 969: Health Savings Accounts and Other Tax-Favored Health Plans
- ▶ EDD DE231A Information Sheet Wages

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IRS/SJSU Small Business Tax Institute Tax Strategies for Small Business Success



San José State
UNIVERSITY

31

Randy Warshawsky, EA



THE TAX MAN

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Phone: (408) 445-1151

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What we will Cover

- ❖ Section 179
- ❖ Repair Regulations
- ❖ Form 3115

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Section 179

- * Limits by Year
 - 2015 = 25,000
 - 2014 = 500,000
 - 2013 = 500,000
 - 2012 = 500,000
 - 2011 = 500,000
 - 2010 = 500,000

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Section 179

Situations affecting dollar limit

- * Under certain circumstances, the general dollar limits on the section 179 deduction may be reduced or increased or there may be additional dollar limits. The general dollar limit is affected by any of the following situations.
 - * The cost of your section 179 property placed in service exceeds \$2,000,000.
 - * Your business is an enterprise zone business.
 - * You placed in service a sport utility or certain other vehicles.
 - * You are married filing a joint or separate return.

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Section 179

Costs exceeding \$2,000,000

- * If the cost of your qualifying section 179 property placed in service in a year is more than \$2,000,000, you generally must reduce the dollar limit (but not below zero) by the amount of cost over \$2,000,000. If the cost of your section 179 property placed in service during 2014 is \$2,500,000 or more, you cannot take a section 179 deduction.

Example:

In 2014, Jane Ash placed in service machinery costing \$2,100,000. This cost is \$100,000 more than \$2,000,000, so she must reduce her dollar limit to \$400,000 (\$500,000 – \$100,000).

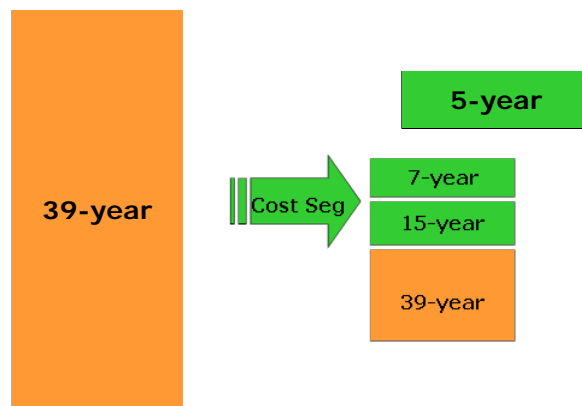
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Cost Segregation

- * If assets are segregated you may be able to expense something that would have been a 27.5 or a 39 years asset.

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Cost Segregation



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Summary of Major Changes

- * **De minimis Rule Change** – Up to \$500 per item unless you have audit financial statement.
- * **Routine Maintenance Safe Harbor rule** – As long as useful life is 10 years or less.
- * **Relief for Small Businesses** - small taxpayers can forgo improvement rules on eligible buildings.
- * **Changes to definitions of Betterment and Restorations**
- * **Dispositions** - Final Regulations (issued August, 2014) change rules for partial dispositions of assets. Require making timely elections.

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Do I need to file Form 3115?

Guidance on filing Form 3115, Application for Change in Accounting Method

- * Rev. Proc. 2014-16 – changes under the Final Repair Regulations
- * Rev. Proc. 2014-54 – changes related to dispositions of tangible depreciable property under the Final Regulations.
 - * Extends late partial disposition election through the 2014 tax year
- * These are now part of Rev. Proc. 2015-14 (which provides guidance for all method changes)

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Compliance Requirements – Small Businesses – Rev. Proc. 2015-20

- * “Small Businesses” (\leq \$10M in assets **or** \leq \$10M in average annual gross receipts) have the option to apply the Repair Regulations on a prospective basis under Rev. Proc. 2015-20 without filing Form 3115, *Change of Accounting Method* (CAM).
- * Election Statements (De Minimis, Small Taxpayer Safe Harbor) still required.
- * Small Businesses still may file Form 3115.

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Routine Maintenance Safe Harbor

- * Expense if you reasonably expect (at time placed in service) to perform more than once during class life (alternative depreciation system)
 - * **Safe harbor does not apply to Betterments, Adaptations** (see Reg. §1.263(a)-3(i)(3))
- * **FOR BUILDINGS:** must reasonably expect to perform more than once during the ten year period from when the building system was placed in service.
 - * Ex Expense – Every 5 years the escalator hand rails are replaced

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Safe Harbor for Small Taxpayers

- * Can elect to expense amounts < or = \$10,000 or 2 percent of unadjusted basis of the building, if
- * Small taxpayer: <\$10M in average annual receipts over last 3 years
- * Eligible building = unadjusted basis of \$1 million or less
- * If amount > \$10,000, safe harbor does not apply to any amounts (not even the first \$10,000). Includes expenses under *de minimis* and routine maintenance safe harbor
- * Elected annually on building-by-building basis.

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De minimis Rule Expensing Safe Harbor § 1.263(a)-1(f)

Taxpayer with Audited Financial Statements

- * \$5,000 expensing threshold per item or invoice for property
- * Must have written expensing policy stating such
- * Must treat amounts as expenses on the AFS as well

Taxpayer without Audited Financial Statement

- * \$500 expense threshold per item or invoice
- * Do not need written expensing policies
- * Cannot split costs among multiple invoices
- * If elected, must apply to all eligible materials and supplies except rotatable, temporary, and standby emergency and spare parts

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Adaptation

If you adapt something new to use it must be capitalized as an improvement.

What is a “Betterment”?

- * Corrects a material condition or defect
- * Is a material addition (enlargement, expansion, extension)
- * Is a material increase in capacity, productivity, efficiency, strength, quality, or output (Ex. Replace asphalt shingles with new solar shingles)
 - * Enhancement due to technological advancements not necessarily betterment. (ex. HVAC equipment is always going to be more efficient. Is it comparable?)
- * “Material” – IRS has not defined this and may be an area of controversy

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“Betterment” Examples

- * Asbestos removal = *not a betterment*
- * At time of purchasing an Assisted Living Facility, client knows it needs work. Right after purchase and for a period of 2 years, while operating facility, client pays for expensive repairs to bring the facility to higher quality condition.
- * Reconfiguring office space to add more cubicles and spend \$6k to add 10 more electrical outlets and V/D jacks *Is a Betterment.*
- * Not Betterment: Replace wooden shingles that are no longer available with comparable asphalt shingles that are stronger than wooden shingles (technological advancement).
- * Betterment: Replace same shingles with lightweight composite shingles that are maintenance-free, a 50 year warranty, and Class A fire rating

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File it now! Form 3115

- * 2014 tax year is the last year to use Form 3115 to go back and use these new repair regulations.
- * Go back and amend if necessary

Hicks Pension Services

Retirement Plans for Small Business Owners and Employees

- *Presented by*
- **Eric Petersen**
- *Pension Consultant*

Who can have a plan

- Any business entity
 - Non Profit
 - C-Corp
 - S-Corp
 - Sole Prop
 - LLC
 - Partnership

Types of Plans

Defined Contribution

ERISA 403 (b)

Non-ERISA 403 (b)

401-k Profit Sharing Plan

Old plans

Keough

Money Purchase Plan

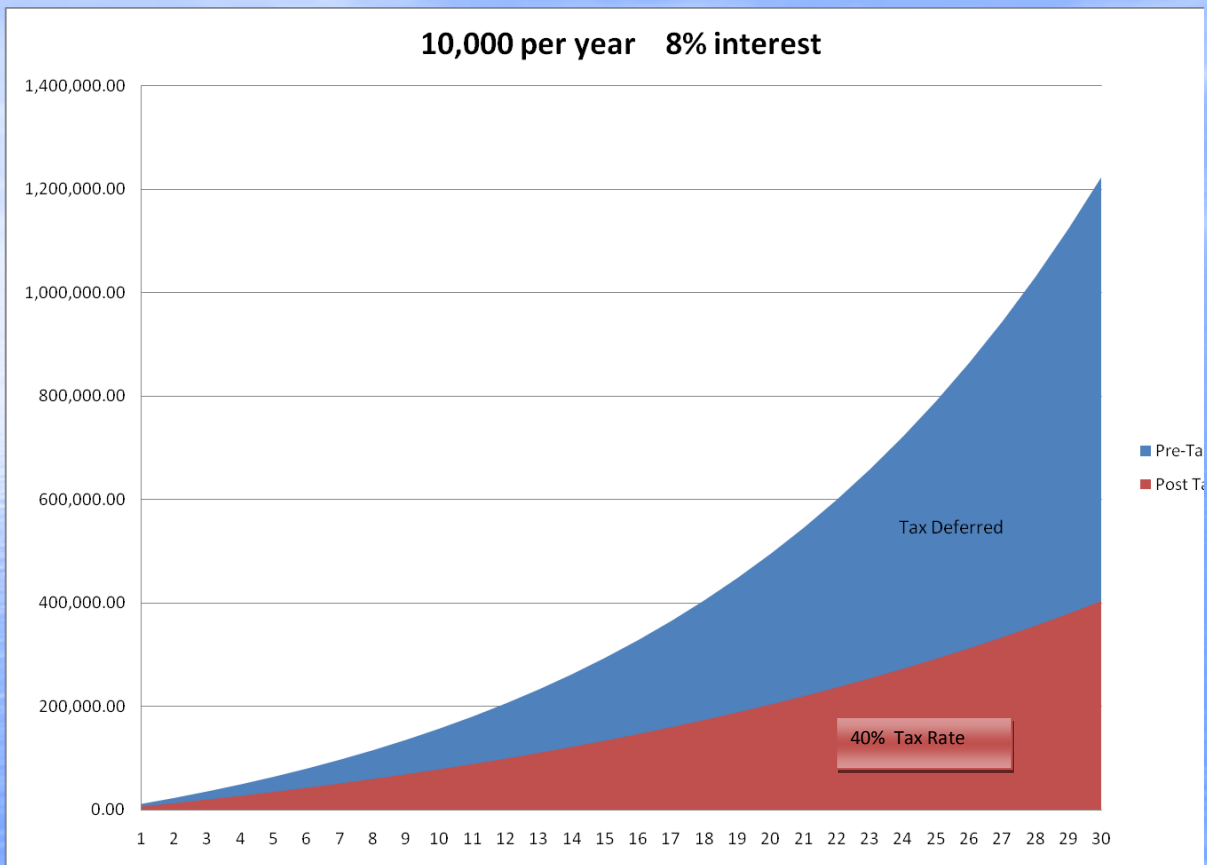
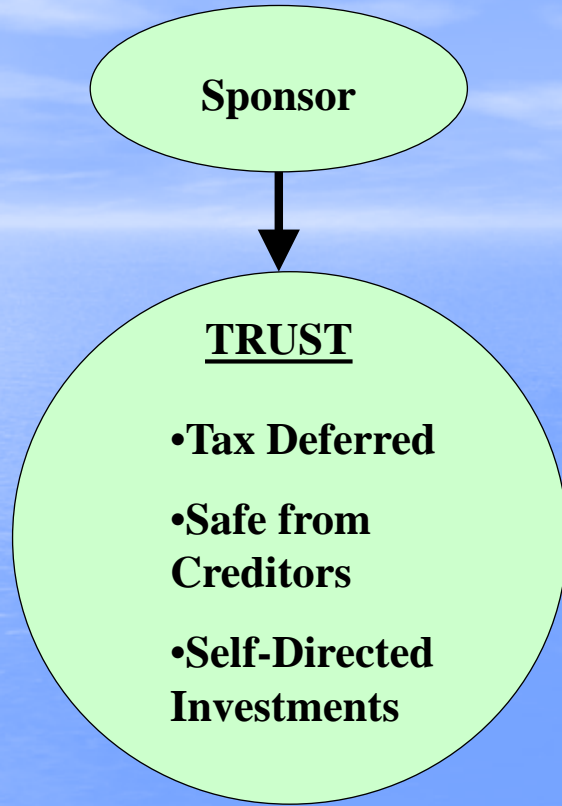
Defined Benefit

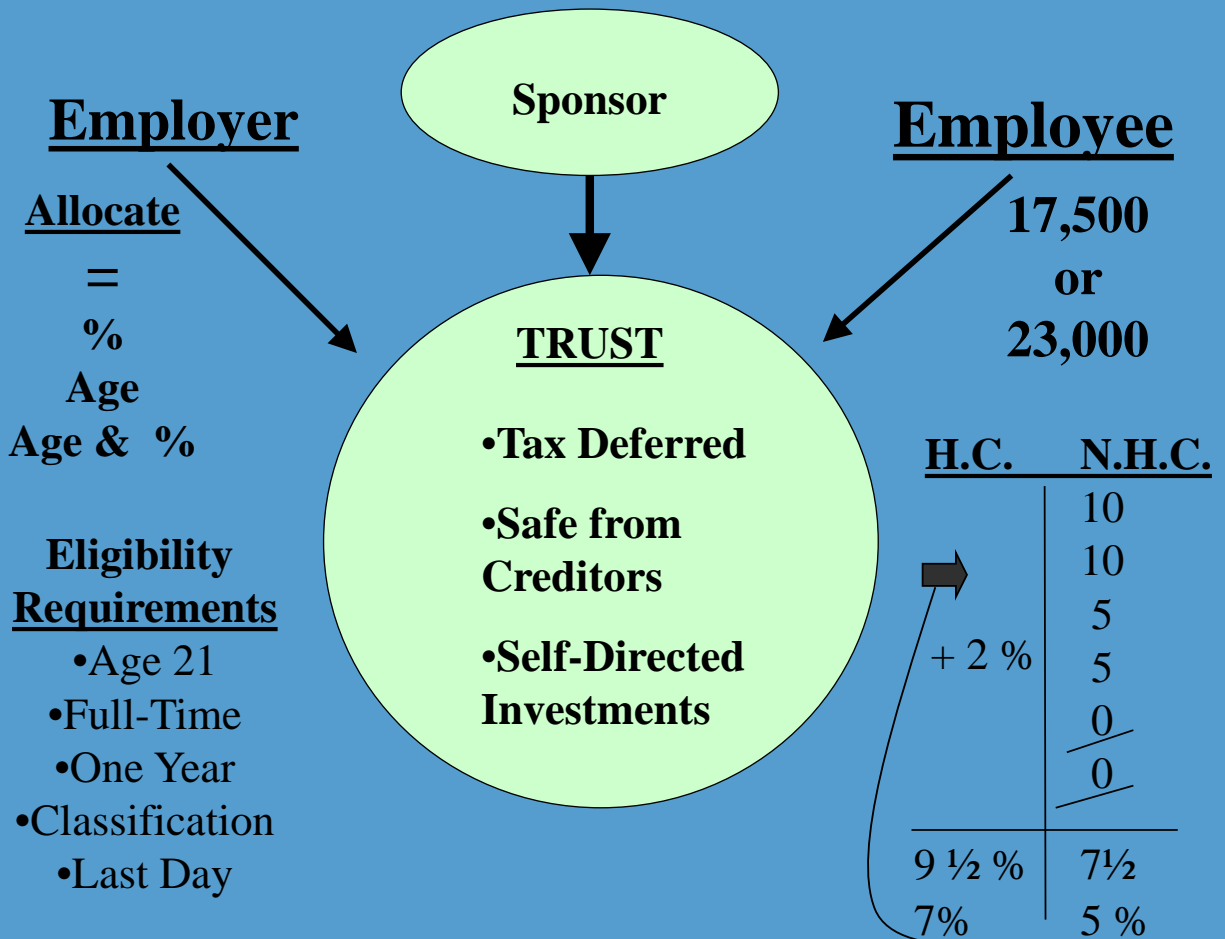
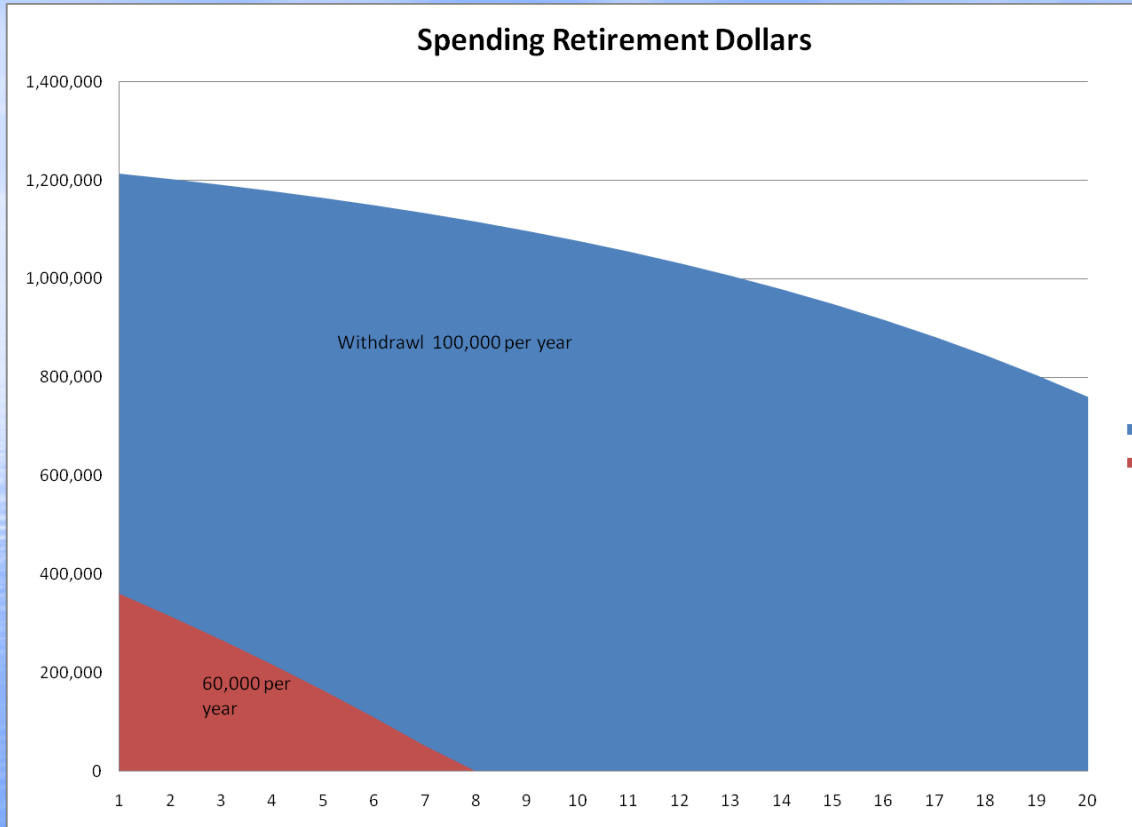
Defined Benefit

Cash Balance Plan

Types of Plans

- SEP
- SIMPLE





SEP:**Percentage of Pay**

<u>Name</u>	<u>Age</u>	<u>Compensation</u>	<u>Allocation</u>
Owner	50	\$ 120,000	\$ 30,000
Owner	55	120,000	30,000
Employee	25	50,000	12,500
Employee	35	50,000	12,500
Employee	45	50,000	12,500
Employee	35	50,000	12,500
TOTALS		\$ 440,000	\$ 110,000
TOTAL FOR OWNERS			60,000
TOTAL FOR EMPLOYEES			50,000

Profit Sharing Plan Allocation Method:**Integrated with Social Security**

<u>Name</u>	<u>Age</u>	<u>Compensation</u>	<u>Allocation</u>
Owner	50	\$ 120,000	\$ 30,000
Owner	55	120,000	30,000
Employee	25	50,000	10,000
Employee	35	50,000	10,000
Employee	45	50,000	10,000
Employee	35	50,000	10,000
TOTALS		\$ 440,000	\$ 100,000
TOTAL FOR OWNERS			60,000
TOTAL FOR EMPLOYEES			40,000
Savings vs. SE:		\$ 10,000	

Profit Sharing Plan Allocation Method:

Tiered or Cross Tested

<u>Name</u>	<u>Age</u>	<u>Compensation</u>	<u>Allocation</u>
Owner	50	\$ 120,000	\$ 30,000
Owner	55	120,000	30,000
Employee	25	50,000	2,500
Employee	35	50,000	2,500
Employee	45	50,000	2,500
Employee	35	50,000	2,500
TOTALS		\$ 440,000	\$ 70,000
TOTAL FOR OWNERS			60,000
TOTAL FOR EMPLOYEES			10,000
Savings vs. Percentage of pay method:			\$ 40,000

Profit Sharing Plan Allocation Method:

Tiered or Cross-Tested with **401-k**

<u>Name</u>	<u>Age</u>	<u>Compensation</u>	<u>Allocation</u>
Owner	50	\$ 120,000	\$ 30,000 + <u>22,000 401k</u>
Owner	55	120,000	30,000 + <u>22,000 401k</u>
Employee	25	50,000	2,500
Employee	35	50,000	2,500
Employee	45	50,000	2,500
Employee	35	50,000	2,500
TOTALS		\$ 440,000	\$ 114,000
TOTAL FOR OWNERS			104,000
TOTAL FOR EMPLOYEES			10,000
Savings vs. SEP			: \$ 40,000

Defined Benefit / Cash Balance :

Percentage of Pay

<u>Name</u>	<u>Age</u>	<u>Compensation</u>	<u>Allocation</u>
Owner	50	\$ 120,000	\$ 150,000
Owner	55	120,000	150,000
Employee	25	50,000	12,500
Employee	35	50,000	12,500
Employee	45	50,000	12,500
Employee	35	50,000	12,500
TOTALS		\$ 440,000	\$ 350,000
TOTAL FOR OWNERS			300,000
TOTAL FOR EMPLOYEES			50,000

PAYROLL INFORMATION

Name	Key	Sex	Date of	Date of	Annual
			Birth	Employment	Compensation
1					
2					
3					
4					
5					
6					

Vesting

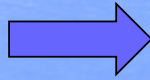
- 6 years 100 %
- 5 years 80
- 4 years 60
- 3 years 40
- 2 years 20
- 1 year 0

Safe Harbor

- 3% Profit Sharing Contribution to all Eligible participants
- Dollar for dollar match on the first 3% of pay. 50 cents on the dollar for the next 2% of pay
- Both methods will satisfy Top Heavy requirements.

Reactive vs. Proactive

Client calls you on
April 15th



Estate Planning
Entity Formation
Buy Sell Agreements
Accounting System
Payroll

**Retirement
Planning**

How we work together

Insert Assumptions

Contribution: Annual Amount	16,500
Interest Rate:	
Portfolio Average Return	0.08
Numbers of year to retirement	13
Current Retirement Savings	300,000
Total from Qualified Plan	\$354,672.39
Total Retirement Savings	\$1,170,559.51
Monthly Income	\$9,275.00 *
Annual Income	\$111,300.00 *

* Assumes annuity purchase

Questions to ask clients

- Have you been filing IRS form 5500?
 - Voluntary Delinquent Filer program
- Has your plan document been restated?
 - All plans must restate
- Does plan require an annual Audit?
 - Look up clients on FreeErisa.com
- Top Heavy Contributions



HICKS PENSION SERVICES
ACTUARIES AND EMPLOYEE BENEFIT SPECIALISTS

HICKS PENSION SERVICES

Retirement Plan Specialists



What is a Cross-Tested Plan?

Cross-tested plans, also known as tiered or non-comparability plans, allow different levels of employer contributions to be given to different classes of employees. For example, a doctor's office may have one class for doctors and one class for staff members, thus allowing different levels of contributions to be given to each group. It is also possible to have each employee be in their own class so that benefits can vary by person. Although the benefits may differ, these plans are designed to pass IRS non-discrimination testing.

Who Benefits From a Cross-Tested Plan and When To Consider One

- These plans are designed to benefit older, more highly compensated employees (usually **business owners**).
- Often provides a good solution for doctors, lawyers, engineers, architects, accountants, family-owned businesses just to name a few.
- Generally used when **business owners** want to maximize their benefit and reduce the cost of contributing to employees.
- Contributions are discretionary from year to year.
- Vesting Schedules can be used to further minimize the cost of covering employees.
- Total cost of employee contributions will often be less with a higher percentage of the contribution going to the **business owners**.



HICKS PENSION SERVICES
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Retirement Plan Specialists

The following chart illustrates a pro-rata allocation of an employer contribution:

Name	Age	Salary	Pro Rata %	Pro Rata \$
Owner	60	\$260,000	20%	\$52,000
Employee	20	\$25,000	20%	\$5,000
Employee	35	\$40,000	20%	\$8,000
Employee	55	\$60,000	20%	\$12,000
Total				\$77,000
% to Owner				67%

The following chart illustrates a cross-tested allocation of an employer contribution and a 401(k) contribution for the owner:

Name	Age	Salary	401 k Contribution	Cross-Tested % Employer Contribution	Cross-Tested \$
Owner	60	\$260,000	23,000	\$ 34,500	\$57,500
Employee	20	\$25,000		\$ 1,250	\$1,250
Employee	35	\$40,000		\$ 2,000	\$2,000
Employee	55	\$60,000		\$ 3,000	\$3,000
Total		\$385,000			\$63,750
% to Owner					90%

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Hicks Pension Services

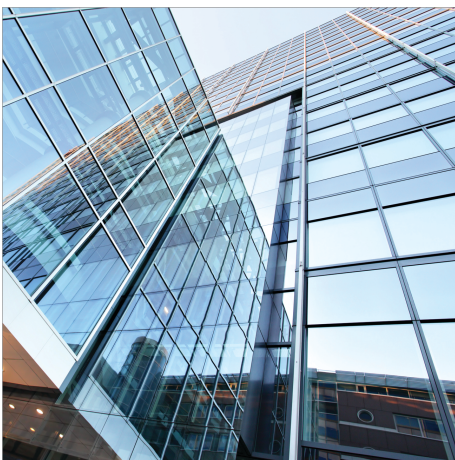
Total Retirement Plan Solutions



Our
expertise at
work
for you.



Flexible
solutions
to optimize
your
outcomes.



Eric Petersen, M.B.A.
Pension Consultant
(510) 790-1096

Total Retirement Plan Solutions

Retirement Plan Consulting

A one-size-fits-all retirement plan? Those days are long gone. Today, employers need a plan that will optimize benefits to employees while meeting the goals of the organization. Whether you are starting a new plan or reevaluating your current program, our expert team will consult with you to determine the plan type and platform that will work best for you. Since we are an independent Third Party Administrator, we are truly objective in our approach and will tailor a retirement plan solution for you.

Compliance and Testing Services

From plan installation through ongoing administration, we will work with you to keep your plan running smoothly and operating in compliance. Our professional staff can provide the following:

- Compliance testing: ADP/ACP, 415, top heavy, coverage
- Annual IRS tax filing preparation
- Contribution and vesting calculations
- Participant disclosures: safe harbor, auto-enrollment, etc.
- Plan reviews

Plan Design

Optimal plan design can make a good plan even better. We keep current with legislation and industry trends, and will discuss new opportunities as they arise. We consult with you, going beyond simply explaining plan design elements. We will show you how alternative features can affect your plan, contribution levels, expenses and potential outcomes. We will support your plan in all areas of design including:

- Safe harbor guidance
- Automatic enrollment
- Employer contribution options



GOAL
IDEAS
VISION
SUCCESS

Plan Administration

Plan Administration means more than just setting up and operating your plan. We perform the contribution calculations, testing and monitoring needed to help maintain your plan's compliance with Department of Labor and IRS regulations. Our plan administrators work hand in hand with you to ensure the plan runs smoothly. In addition to our experienced staff, we have the advanced technology and expertise to efficiently process plan data in an accurate and timely manner.

Communication

Communication can be a key element for retirement plan sponsors.

- If employees understand their plan, they will appreciate it along the way and have positive outcomes when it is time to retire. We make sure all of our communication with your employees is clear, easy to understand and relevant.
- Our communication with you, the plan sponsor, is critical to the success of your plan. We pride ourselves on our proactive communication, accessibility to our clients and our quick responses when questions arise.



Specialists you can rely on...Expertise you can trust.

We are a third party retirement plan administration company with over forty years of experience in the qualified plan field. We have a complete professional staff of pension consultants and administrators. We administer thousands of plans throughout the United States and have among our clients: Law Firms, Accounting Firms, Medical Corporations, Banks, Trade Associations, Agricultural Corporations and all kinds of small businesses. We offer administrative services for tax deferred plans such as 401(k) Plans, Defined Benefit Pension Plans, 403(b) Plans, Profit Sharing Plans, Cash Balance Pension Plans, and 125 Cafeteria Plans. We provide independent professional assistance to you, your accountant, attorney and investment advisor. Each plan is custom designed based on the desires and objectives of your company.



HICKS PENSION SERVICES
ACTUARIES AND EMPLOYEE BENEFIT SPECIALISTS

Hicks Pension Services

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Email: Got401k@comcast.net



Eric Petersen brings a qualified background to Hicks Pension Services. After receiving an M.B.A. from San Diego State University, Eric spent four years as a plan administrator. As an administrator Eric established himself as an expert in the intricacies of IRS tax code as it relates to qualified plans. He also has received accreditation from The National Institute for Pension Administrators.

Since coming to Hicks Pension Services as a consultant, Eric has been directly involved in the design and installation of more than 4,600 qualified plans. Eric has been with Hicks Pension Services for 22 years.

Eric is a regular guest speaker around the Bay Area. He has given his "Circle Talk" presentation to organizations such as The Northern California Human Resources Council, The Financial Planning Association (FPA), The International Association for Financial Planning (IAFP), The Southern Alameda County Life Underwriters Association, The National Association of Insurance and Financial Advisors (NAIFA) and The International Association of Registered Financial Consultants (IARFC).

A long time Bay Area resident, Eric currently resides in Fremont. Outside of work Eric enjoys skiing, golfing, jogging and his activities with the Fremont Rotary Club.

Sales Tax- Avoiding CA and Multi-State Problems

Presented to:

IRS/ **SJSU** SAN JOSÉ STATE UNIVERSITY

Small Business Tax Institute

June 24, 2015

Monika Miles

Miles Consulting Group, Inc.



Presenting Today - Monika Miles

Founder - Miles Consulting Group

Website: MilesConsultingGroup.com

Email: Monika@milesconsultinggroup.com

Professional Affiliations:

AICPA, Texas Society of CPAs, Vistage International, NAWBO - Silicon Valley, AFWA (Past National President)



Honored To Be Recognized As:

- "25 Most Powerful Women in Accounting" by CPA Practice Advisor (2012, 2013 and 2014)
- "Women of Influence" by San Jose Silicon Valley Business Journal (2014)



Topics for Today:

- General Multistate Issues:
 - Sales Tax Concepts/Nexus
 - Use Tax/Internet sales
 - Common Issues
- Federal: Marketplace Fairness Act
- California specific issues
- Q & A



Sales Tax Concepts

Sales tax is one of the most common taxes encountered everyday by businesses and consumers alike.

The concept of sales tax is prevalent in daily conversations because:

- States Need Revenue
- Increased **On-line Transactions**
- Smaller companies are able to expand their sales footprints quickly because of increased technology.

- Sales tax and complementary use tax are imposed by state and local jurisdictions on retailers for the privilege of selling “tangible personal property” in the jurisdiction.

- 45 states and DC impose a sales tax.



Tangible Personal Property

- The term “tangible personal property” or “TPP” refers to property which can be seen, weighed, measured, felt or touched, or perceived by the senses.
- In general, unless otherwise exempt, sales of TPP are subject to sales tax.



Services

- Generally non-taxable unless specifically enumerated
- States are expanding taxable services
- Some examples (vary by state)
 - Data Processing
 - Information services
 - Certain repairs



“Nexus”

- “The sufficient connection that an entity must have in order for a state to impose a tax”
- Generally physical contact between a taxpayer and state must occur
- Defined by U.S. Constitutional principles and U.S. Supreme Court cases



Nexus – OK! Now What?

- Once nexus is established, seller is obligated to collect sales tax.
- Unless there is a specific exemption.



Sales Tax Exemptions

- Due to the nature of the seller
- Due to the nature of the buyer
- Nature of the property/service transferred/performed
- Intended use by the purchaser
- Nature of the transaction



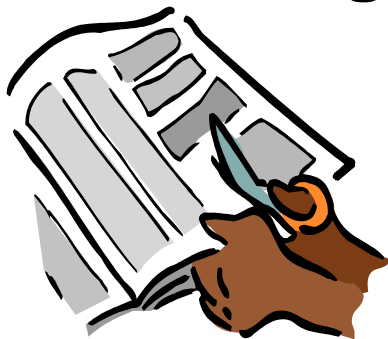
U. S. Constitutional Basis for Sales Tax

Our current system stems from various state statutes and regulations:

- From the U.S. Constitution:
 - *Due Process Clause*
 - *Commerce Clause*
- From U.S. Supreme Court Decisions in multi-jurisdictional cases:
 - *Quill Corp v. North Dakota 504 U.S. 298 (1992)*



Catalog vs. the Internet



VS



- Internet: Non-existent when *Quill* decided
- No tax collection obligation on seller without a physical presence in a state (same!).

Nexus - Why is it Important?

- Sales tax is a gross tax. Net operating losses will not reduce a sales/use tax liability.
- Taxes based on capital stock may also apply
- An aggressive state may assert that tax is due when in fact nexus has not been established

UseTax

The Use Tax

- Complimentary to Sales Tax
- Paid by the Purchaser Directly
- Protects In-State Companies



Example

- Susie, who resides in Texas, received a catalog from SunGlassesGalore and has selected a pair to order.
- She reviews the order form and notes in the fine print that “customers in CA, FL, and IL, must add sales tax.”
- Susie happily sends in her order form and feels like she has saved the sales tax.



Uncollected Use Tax

Top Five States In Revenue Loss	Est. 2012 Uncollected Sales Tax (in Billions)
California	\$4,159
Texas	\$1,777
New York	\$1,767
Florida	\$1,483
Illinois	\$1,058

Common Issues

“Sales tax is a pass through tax. The thing that concerns most companies is the burden and cost of collection and remittance of the taxes”

Collecting & Remitting = Compliance

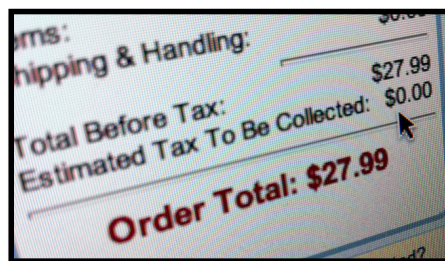
Compliance 101

- Nexus?
- Rate?
- Exemptions?
- Registration
- Forms - Electronic vs. Paper
- Due Dates (vary)



A Few “OOPS”!

- Oops #1: Not filing where we need to
- Oops #2: Unclear on possible exemptions
- Oops #3: Improper documentation
- Oops #4: Collected sales tax and not remitted



Remedies

- Perform a Nexus Review
- Determine Taxability of Products/Services
- Quantify Risk and Exposure
 - “XYZ” letters
 - Validity of Exemption Certificates
- Implement a Plan to Correct Deficiencies
 - VDA
 - Amnesty

Thinking about Acquisition?

Due diligence

- Sales tax is often an exposure area
- Could hamper a deal



M & A Considerations

- Due diligence – review sales and use on either side of the deal
- Nexus/taxability review
- Remedy the situation before the deal
- Ideally review within 1 year of acquisition



Stretch Break?



Federal Activity



Federal Activity

Marketplace Fairness Act of 2015

History:

- Since 2010, several bills have been introduced
- The MFA of 2013 passed by the US Senate (May 2013)
- Stalled in US House of Reps. and never passed.
- Essentially reintroduced as MFA 2015



Federal Activity

Marketplace Fairness Act of 2015

Requirements:

- Simplification
- Software
- Small Seller Exception
- Effective Date?



Federal Activity

Marketplace Fairness Act of 2015

- Is it “Fair”?
- Is it Simple?
- Can it pass?
- Why should you care?



California



California Specific

Sales tax issues – Problem areas

- Removing items from inventory
- Keeping proper documentation
- Cash based businesses
 - Restaurants
 - Liquor stores
 - Auto repair



California Specific

Sales tax issues

- Internet economy
- Broaden the tax base?



California: Life In the Cloud?



- The Eroding Tax Base
- We've Gone Digital
(Music, Software, Gaming, SaaS)

California Specific



- Manufacturers' Partial Sales Tax Exemption
- California Competes Tax Credit
- New Hiring Credit

California Specific: Manufacturers' Exemption

- What is it?
 - Partial exemption (4.1875%) of CA sales tax for placing into service qualified machinery & equipment
- Who Qualifies?
 - Companies in NAICS codes 3111-3399 and 541711-541712



California Specific: California Competes Tax Credit

- What is it?
 - Income tax credit for companies moving to or expanding within CA
- How does it Work?
 - Competitive application process for limited funds
 - Periodic application periods



Some Final Thoughts...



How Can Miles Consulting Help?

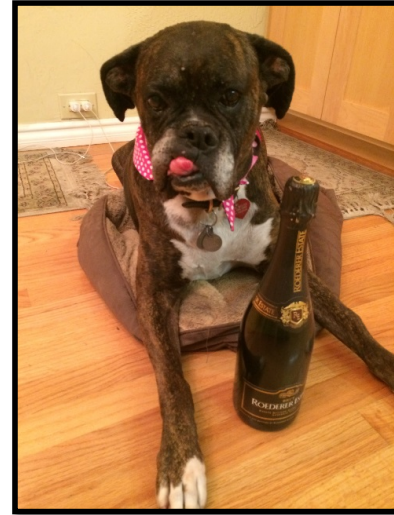
- Perform Nexus Reviews
- Perform Taxability Studies
- Determine Appropriate Exemptions
- Recommend Compliance Model/Software



In Summary

It's a crazy, Interesting Time

- States are aggressively pursuing revenue
- Congress is getting involved
- Technology companies have interesting issues (and usually need help)
- Hire a professional



Thank You!

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DUE DILIGENCE IN SERVING SMALL BUSINESS CLIENTS

Office of Professional Responsibility- IRS
Karen L Hawkins, Director

Section 10.33. Best Practices for Tax Advisors

§ 10.33 Best practices for tax advisors.

- (a) Best practices. Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:
- (1) Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.
 - (2) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

10.33 (cont)

- (3) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.
- (4) Acting fairly and with integrity in practice before the Internal Revenue Service.
- (b) Procedures to ensure best practices for tax advisors. Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

[3]

Advising on ACA

- Client Communication is Key
- Know the Facts –Ask more Questions than you think you Should
- Know the Law
- <http://www.irs.gov/ACA>
- Pub 5209 Individuals)
- Pubs 5200, 5196, 5208, 5215, 5165 (employers)

[4]

ACA (cont)

- Know the Process
 - Marketplace vs. IRS info
 - Premium Tax Credit and Advance Payments Reconciliation – Form 8962
 - Delays in implementation- watch IRS ACA resource page

[5]

Advising on T&E

- Know the law (IRC sec. 274) – including special rules for dues, gifts, partnerships and H&W, travel (foreign and educational), substantiation, payments/reimbursements to employees, conventions, business meals, entertainment tickets – especially the 50%/80% rules (IRC 274(n))
- AND the Regulations

[6]

Advising on Compensation

- What is “reasonable compensation”?
- Avoiding FICA/FUTA withholding?
- Family members as employees?
- Personal expense payments in lieu of?

[7]

Employment Tax Advising

- Responsible Officer/Trust Fund Liability
- DoJ Tax Division initiative
- OPR Expedited Suspension Exposure for Practitioners (5/7 quarters of non-payment)

[8]

APPENDICES

[9]

Diligence as to Accuracy §10.22

- Must exercise Due Diligence in:
 - Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
 - Determining correctness of oral/written representations made to the client or to Treasury personnel.
- Reliance on Another's Work Product? Only With Reasonable Care.

[10]

Due Diligence for Tax Returns

§10.34(a)

- May not sign a tax return or advise a position on a tax return, if:
 - Lacks reasonable basis
 - Unreasonable position (6694(a)(2))
 - Willful attempt to understate liability (6694(b)(2)(A))
 - Reckless, intentional disregard of rules and regulations (6694(b)(2)(B))
- Patterns matter

[11]

Disclosure re: Unreasonable Positions §10.34(c)

- Advised position?
- Prepared or signed return?
- Submitting docs/other papers to IRS?
- Then-
 - Must Advise Client of Potential Penalties and their Avoidance through Disclosure

[12]

Reliance on Client §10.34(d)

- Reliance on Client Information in good faith, without verification, is OK, but...
 - Cannot ignore implications of other information furnished
 - Cannot ignore actual knowledge
 - Must make reasonable inquiries for incorrect, inconsistent or incomplete information
- No Willful Blindness

(13)

Competence §10.35

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
- You must know when you are NOT competent

(14)

Due Diligence for Written Advice

§10.37

- Reasonable factual and legal assumptions
- Reasonably consider all relevant facts
- Reasonable efforts to identify and ascertain the relevant facts
- No unreasonable reliance on representations, statements, findings, or agreements = know or should know based on incorrect, incomplete, inconsistent representation/assumption

(15)

§10.37 (Cont)

- Apply applicable law to relevant facts
- No audit lottery positions or advice
- Reliance on advice of another? OK, if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances
 - Reliance = unreasonable, if other
 - Is not reliable
 - Is incompetent
 - Has a conflict (10.29)
- Applies to All federal tax matters

(16)

RESOURCES

- Treasury Department Circular No. 230 (Rev. 6-2014) - Regulations Governing Practice before the Internal Revenue Service:
http://www.irs.gov/pub/irs-utl/Revised_Circular_230_6_-_2014.pdf
- Subscribe to News and Updates from the Office of Professional Responsibility:
<http://www.irs.gov/Tax-Professionals/Subscribe-to-News-and-Updates-from-the-Office-of-Professional-Responsibility-OPR>
- Latest News and Updates from the Office of Professional Responsibility:
<http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Latest-News-from-Office-of-Professional-Responsibility>
- Guidance to Practitioners Regarding Professional Obligations Under Treasury Circular No. 230:
http://www.irs.gov/pub/irs-utl/Guidance_Regarding_Professional_Obligations_Under_Circular_230.pdf
- Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases:
<http://www.irs.gov/pub/irs-utl/rightsandresponsibilitiesofpractitioners.pdf>
- Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service:
http://www.irs.gov/pub/irs-utl/Guidance_on_Restrictions_During_Suspension_or_Disbarment.pdf

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Jan. 1, 2015 – Mar. 31, 2015 Case Disposition Results

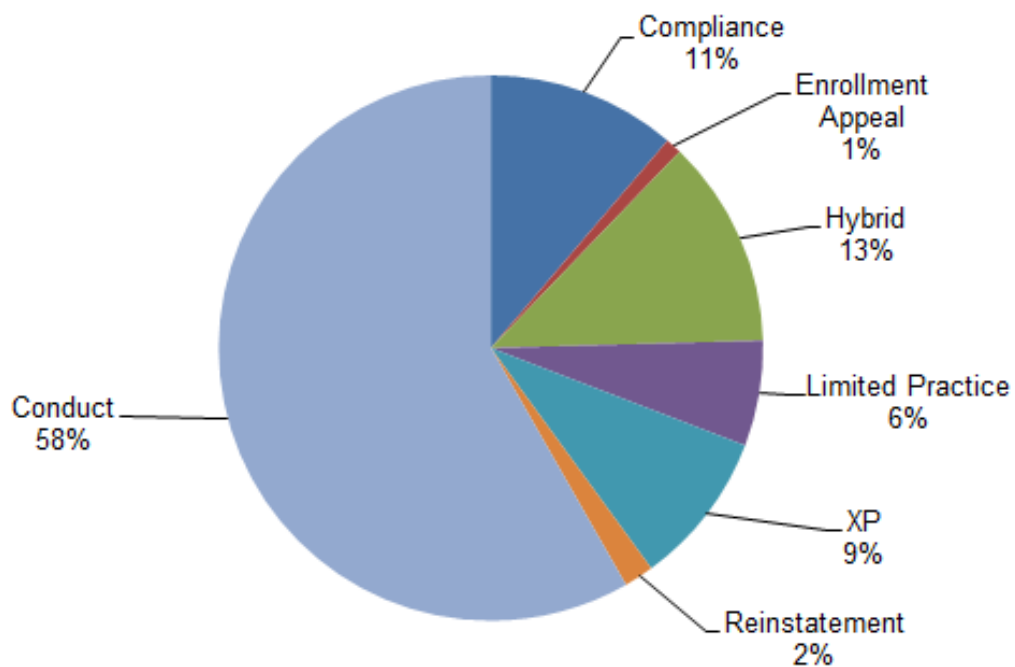
<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
Total Receipts					305
• Disbarments (FAD/Consent)	-	1	-	-	1
• Suspensions (FAD/Consent)	1	-	-	-	1
• Expedited Suspensions	11	8	1	1	21
• DDA	-	-	2	-	2
• Censure	-	-	-	-	0
• Monetary Sanction	-	-	-	-	0
• Reprimand/Soft Letter					41
• Cease & Desist					13
• CWOS, LOJ, NCOA, CWOA					137
• Reinstatement Requests					9
• Appeals					4
Total Dispositions	12	9	3	1	229

18

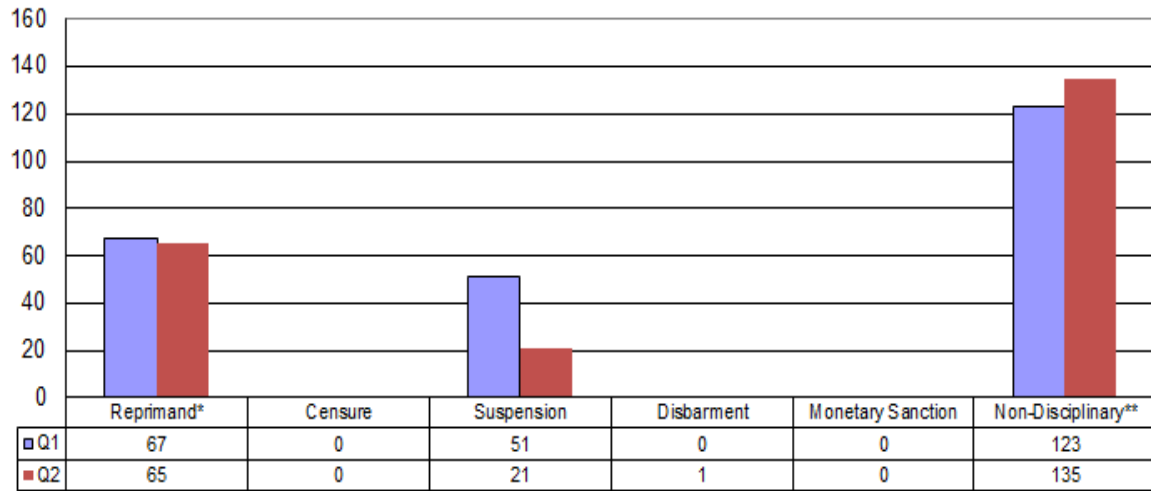
Calendar Year 2014 Case Disposition Results

<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
Total Receipts					864
• Disbarments (FAD/Consent)	1	0	2	2	5
• Suspensions (FAD/Consent)	9	16	7	1	33
• Expedited Suspensions	38	29	7	0	74
• DDA	2	3	1	5	11
• Censure	-	5	1	1	7
• Monetary Sanction	-	-	-	1	1
• Reprimand/Soft Letter					195
• Cease & Desist					32
• CWOS, LOJ, NCOA, CWOA					556
• Reinstatement Requests					33
• Appeals					7
Total Dispositions	50	53	18	10	954

Fiscal Year 2015 Case Mix



Fiscal Year 2015 Case Closures by Type

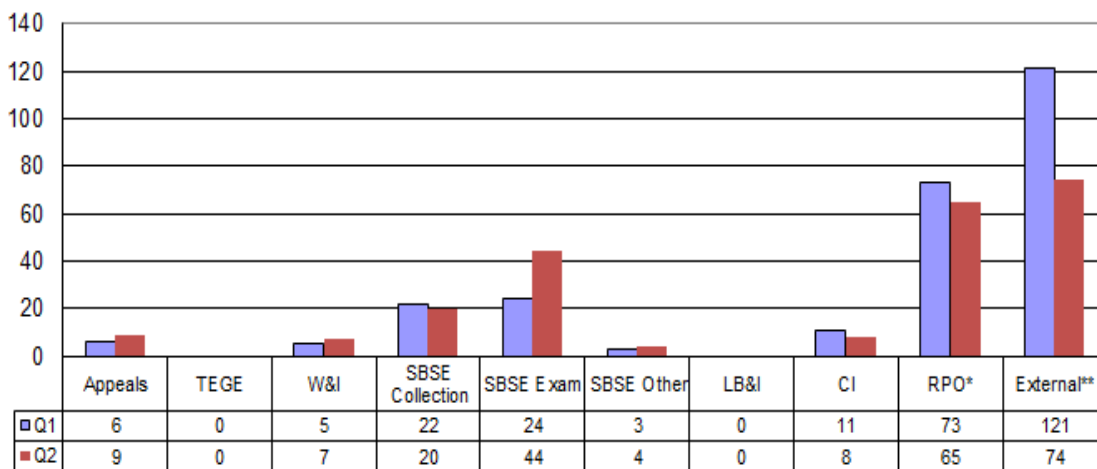


*Reprimand includes 60 Day Compliance Letter, CAF Notification, Cease & Desist Letter, Reprimand, Soft Letter, and DDA closures.

**Non Disciplinary includes Lack of Jurisdiction, Referred Out, No 230 Violation, Closed w/o Sanction, and Closed w/o Action closures.

(21)

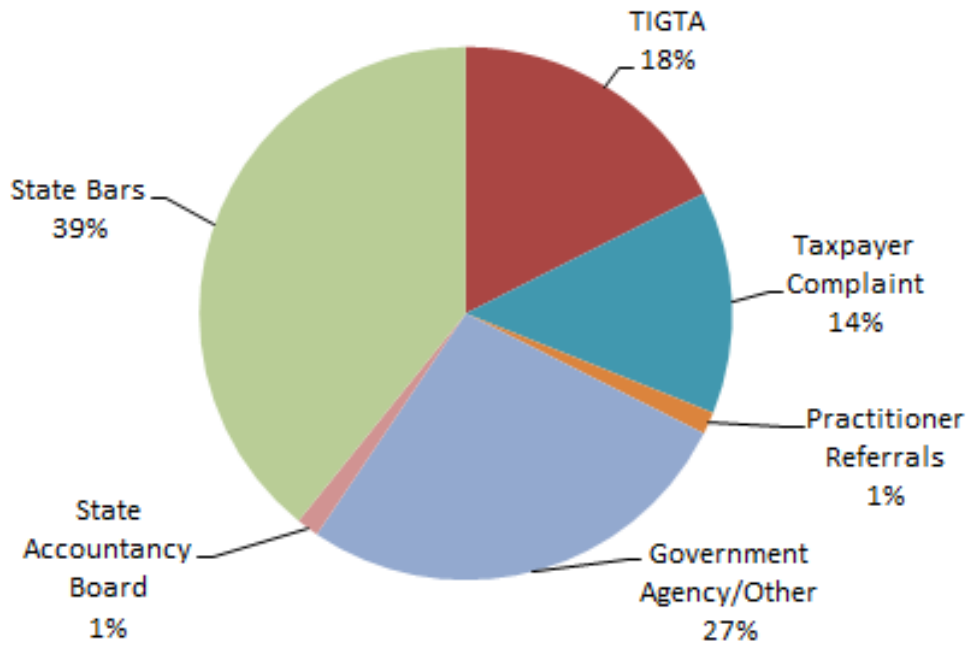
Fiscal Year 2015 Referrals by Source



** A breakdown of external referrals is illustrated on the next page.

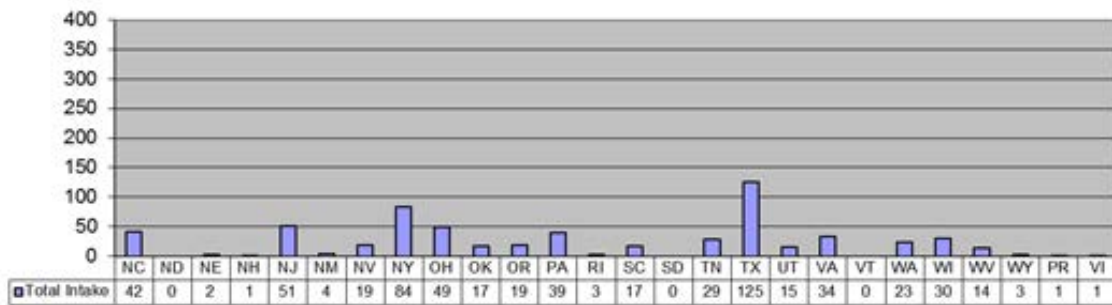
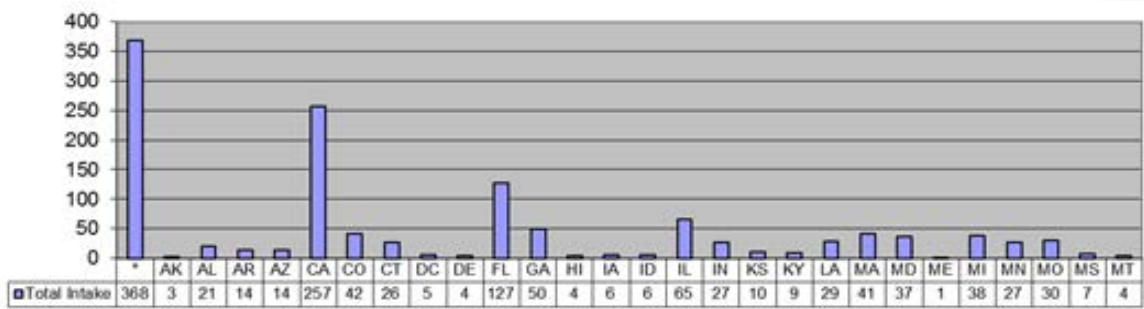
(22)

Fiscal Year 2015 External Referrals by Source



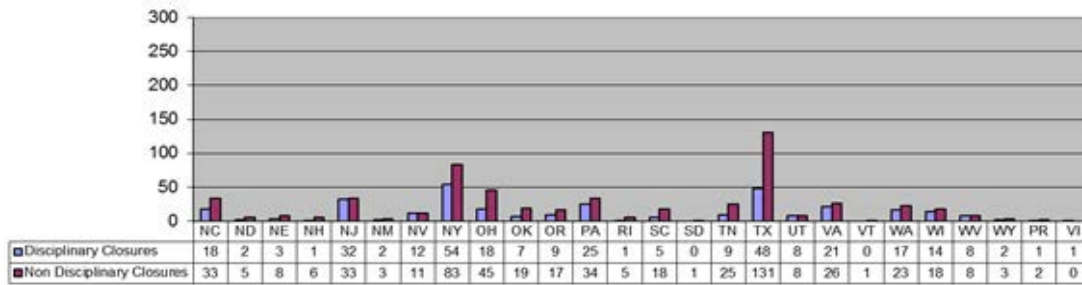
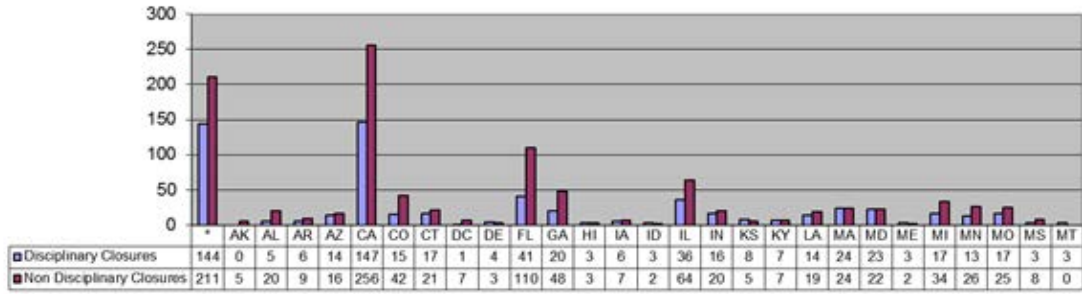
23

Charts below are based on 1,894 Cases Opened Between 01/01/2012 and 12/31/2014, regardless of current status. Case types included: Conduct, Compliance, Hybrid, XP, Enrollment & PTIN Appeals, Reinstatement Requests, and Limited Practice (Rev). *



24

Charts below are based on a total of 2,510 cases closed between 01/01/2012 and 12/31/2014, regardless of date opened. Case types: Conduct, Compliance, Hybrid, Expedited Processing, Enrollment Appeals, PTIN Appeals, and Reinstatement Request. Non Disciplinary: CWOA, CWOS, No 230 Violation, Referred Out, LOJ, Appeal and Reinstatement Decisions, Withdrawn. * = No State in CCMS



(25)

OPR Discipline 1998 - 2014

CY	CENSURE				SUSPENSION				DISBARMENT				REPRIMAND/SOFT LETTER			
	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other
1998	0	0	0	0	44	115	6	0	0	4	1	0				
1999	0	0	0	0	12	14	2	0	0	2	1	0				
2000	0	0	0	0	15	41	4	0	0	2	0	0				
2001	0	0	0	0	1	11	3	0	0	1	0	0				
2002	0	0	0	0	22	42	7	0	8	12	2	0				
2003	0	4	0	0	110	34	13	0	1	2	3	0				
2004	1	8	8	0	65	33	47	0	0	4	0	0				
2005	4	5	1	0	113	64	10	0	0	1	0	0				
2006	5	5	3	0	239	103	13	0	2	4	0	0				
2007	3	5	2	0	133	97	17	0	1	4	2	0				
2008	2	7	5	0	242	106	14	0	0	5	0	0				
2009	1	0	1	0	182	68	12	0	5	2	2	0	17	64	44	0
2010	0	0	1	0	95	36	9	0	0	3	1	0	24	97	121	0
2011	0	0	1	0	106	43	6	0	2	3	1	0	17	70	45	0
2012	1	0	1	0	33	21	7	0	0	1	0	0	52	60	63	23
2013	0	2	0	2	17	26	5	6	1	4	4	2	72	84	44	41
2014	0	5	1	1	47	45	14	1	1	0	2	2	47	84	43	64
TOTAL	17	41	24	3	1476	899	189	7	21	54	19	4	229	459	360	128

(26)

Hiring Correctly

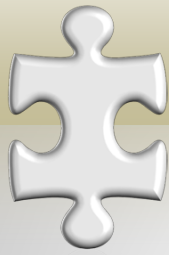


To avoid tax and other
legal problems.

IRS-SJSU Small Business Tax Institute - June 24, 2015
Tax Strategies for Small Business Success

Agenda and presenters

- Introduction –
Annette Nellen, SJSU MST Program
- New Hire Checklist –
Karen Reinhold, Esq., Hopkins and Carley
- EDD Worker Classification Basics –
Roger Jung, EDD
- IRS Worker Classification Rules and Issues –
Claudia Hill, EA, Tax Mam, Inc.
- Q&A + Examples
 - Above speakers +
 - Angie Dang, CPA, Supervisory Revenue Agent, IRS, San Jose



Observation 1

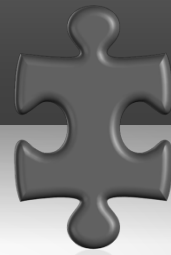
Can be big dollar issues (tax, penalties, additional compensation, etc.)



Observation 2

Classification relevant for many different laws.

Classification not always the same.



Observation 3

Changing workforce – some workers and payers today don't neatly fit employee, contractor or employer role.



Observation 4

Goal – avoid problems by doing it correct from the start!

Worker classification relevant for many different laws

- Payroll taxes – federal withholding, FICA/HI, FUTA
- Income tax rules – benefits, worker treatment of expenses, worker eligibility for retirement plans
- ERISA – pension and welfare benefit plans
- Workers' compensation
- Family and Medical Leave Act
- Social Security Act
- Health Insurance Portability Act
- Affordable Care Act – may be required to provide coverage to employees
- Fair Labor Standards Act – minimum wage, overtime
- Occupational Safety and Health Act
- Civil Rights Acts
- Age Discrimination in Employment Act
- Americans with Disabilities Act (ADA)
- National Labor Relations Act – organizing and bargaining
- Copyright & Patent laws – who owns IP created by a worker?
- Possibly some state and local laws as well

Modern workforce

- Will we have more contractors than employees?
 - Easier to get own health insurance today.
 - Tech and desires of younger workers?
 - Ease of finding work via web platforms (Uber, TaskRabbit, Amazon Mechanical Tursk, many others)
- Per IRS stats for 2011
 - Schedule C
 - With income = 17.4 million returns
 - With loss = 5.6 million returns
 - About 16% of 1040s filed had Schedule C
 - Contrast for 1997: 13.8% had Schedule C

5

Freelancing workforce

- Terminology for the sharing economy:
 - On demand workers
 - Freelancers
 - 1099 workers
 - Gig workers
- *WSJ*, 9/4/14
 - “One in Three U.S. Workers Is a Freelancer”
 - <http://blogs.wsj.com/atwork/2014/09/04/one-in-three-u-s-workers-is-a-freelancer/>
- Active Uber drivers in U.S. increased from 0 to over 160,000 from mid-2012 to January 2015
 - https://s3.amazonaws.com/uber-static/comms/PDF/Uber_Driver-Partners_Hall_Kreuger_2015.pdf

6

In the courts

- Litigation in freelance world, including
 - *Cotter, et al. v Lyft, Inc.*, No. 13-cv-04065-VC (ND CA 3/11/15) and *O'Connor, et al v Uber Technologies, Inc.*, No. C-13-3826-EMC (ND CA 3/11/15).
 - *Lyft case*: “the jury in this case will be handed a square peg and asked to choose between two round holes. The test the California courts have developed over the 20th Century for classifying workers isn't very helpful in addressing this 21st Century problem. Some factors point in one direction, some point in the other, and some are ambiguous. Perhaps Lyft drivers who work more than a certain number of hours should be employees while the others should be independent contractors. Or perhaps Lyft drivers should be considered a new category of worker altogether, requiring a different set of protections. But absent legislative intervention, California's outmoded test for classifying workers will apply in cases like this. And because the test provides nothing remotely close to a clear answer, it will often be for juries to decide. That is certainly true here.”
- Almost 3,000 FedEx drivers found to be employees
 - 6/8/15 Form 8-K – settled with workers for \$228 million

Non-tax issues above, but tax issues likely raised by IRS and states

Hiring Correctly to Avoid Legal Issues

IRS/SJSU Small Business Tax Institute

June 24, 2015

Karen Reinhold, Esq.

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9

New Hire Checklist

1. Wage Theft Protection Act Notice
2. I-9 Requirements
3. CA new Paid Sick Leave law
4. Employee vs. Independent Contractor
5. Exempt vs. Non-exempt
6. Commission and Bonus plans
7. Confidential Information
8. Four basic policies

10

1. Wage Theft Protection Act Notice

- The Wage Theft Protection Act requires that all employers provide each employee with a written notice containing
 - Rate of pay
 - Regular payday
 - Workers compensation coverage info
 - Paid sick leave information

11

2. I-9 Requirements as Part of Hiring Process

- The Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify that all newly hired employees present "facially valid" documentation verifying the employee's identity and legal authorization to accept employment in the United States

12

The I-9 Process

- Every employee hired after November 6, 1986 must complete an I-9 form at the time of hire
- The employer must complete Section 2 within three days of starting work--the employer is responsible for ensuring that the forms are completed properly, and in a timely manner

13

3. New State Law Mandates Paid Sick Leave for Most Employees

- Covered employers- all employers, including government entities
- Eligible employees- all who work 30 or more days in California within a year of commencing employment, excluding only-
 - employees covered by a union contract that includes paid sick leave
 - providers of home health care services

14

New State Law Mandates Paid Sick Leave for Most Employees

- Two methods of granting sick leave authorized by law-
 - Accrual method- one hour of paid sick leave accrues for every 30 hours worked
 - Lump sum grant- Three days of paid sick leave granted at the start of each year
- Employees may use accrued sick leave after completing 90 days of employment

15

New State Law Mandates Paid Sick Leave for Most Employees

- Sick leave may be used in increments-employer may not require more than two hours
- Permitted uses of sick leave- diagnosis, care or treatment of an existing health condition of, or preventative care for, the employee or a family member
- Notice and posting rules
- Unused sick leave not payable at termination

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4. Employee vs. Independent Contractor

- Important to get this right—the written agreement between the parties does not control
- Is the company controlling the “manner and means” by which the individual performs services?

More details from next two presenters.

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5. Exempt vs. Non-Exempt

- Two tests
 - Salary basis test
 - Insert definition
 - Duties test
 - Executive, Administrative or Professional
 - Computer exemption

18

6. Commission and Bonus Plans

- Commission plan-must be in writing and signed by employee on yearly basis
 - Common problems
- Bonus Plan
 - Common problems

19

7. Protect Confidential Information

- Are documents and a process in place for onboarding?
- Designate point person for tracking/collection
- Do you have any other process/policy in place regarding use of or handling of confidential information during employment
- Exit process

20

8. Four Written Policies a Must

- Anti-harassment policy
- Equal employment opportunity and non-discrimination policy
- Meal period and rest break policy
 - If you have any non-exempt employees
- Computer, PDA and social media policy



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Employee or Independent Contractor

Roger Jung, EDD



Common Misconceptions

When is an individual an employee?

There are several common misconceptions which often lead to misclassifying workers as independent contractors.

Independent Contractor Misconceptions
[DE 573M](#)

Reasons to Properly Classify Workers

- Avoid reclassification audits due to:
 - Worker Claims
 - Worker Informants
 - Competitor Informants
- Prevent additional taxes, penalties, and interest.
- Avert possible revocation of state or local licenses.

Misclassification Example

One worker, earning \$20,000 for one year	Employer misclassifies worker as independent contractor.	Employer correctly classifies worker as employee.
UI (3.4 percent)* *New employer rate	\$238	\$238
ETT (0.1 percent)	\$7	\$7
SDI (0.9 percent)	\$180	
PIT (6.0 percent)	\$1,200	
Total due for one year	\$1625** **Plus penalty and interest	\$245

Types of Workers

- Employees
 - Common Law
 - Statutory
- Independent Contractors

Common Law Guidelines

Common Law Employee:

An individual who performs services for you and is subject to your control regarding what will be done **and** how it will be done.

Independent Contractor:

An individual who performs services for you **but** you control only the result of the work.

Common Law Primary Factor

The right of the principal to control the manner and means of accomplishing a desired result.

The right to discharge a worker at will and without cause is strong evidence of right to control.

Examining the Factors



Distinct trade or occupation	Method of payment
Supervision	Regular part of the business
Skill level	Belief of the parties
Tools and place of work	Extent of actual control
Length of time	Services benefit the principal
Ability to earn a profit or incur a loss	

Employment (DE 231)
Employment Determination Guide (DE 38)

Weighing the Factors

The importance or weight given each factor will vary, depending on the specific work situation, industry, and occupation.



Statutory Employees

Employee by law under a specific statute.

Examples include, but not limited to:

- Corporate officers
- Unlicensed contractors
- Certain Limited Liability Company members

Statutory Employees Resources

For more information:

- *Statutory Employees* (DE 231SE)
- *Payments to Corporate Officers* (DE 231PC)
- *Limited Liability Entities* (DE 231LLC)

Additional Resources

- *California Employer's Guide* (DE 44)
- *Determination of Employment Work Status* (DE 1870)
- California Unemployment Insurance Appeals Board website www.cuiab.ca.gov/index.asp
- Online Employee or Independent Contractor Course www.edd.ca.gov/Payroll_Taxes/Web_Based_Seminars.htm

Employee vs. Independent Contractor

Independent Contractor (Self-Employed)
or Employee?

Biography – Claudia Hill, EA, MBA

- ▶ Named a 2011 Top 10 Person of the Year by *Tax Analysts*, Claudia Hill, EA, MBA, is a nationally recognized tax professional and sought-after lecturer on individual taxation and IRS representation.
- ▶ She is Editor in Chief of the CCH, Inc. *Journal of Tax Practice & Procedure*, co-author of CCH Expert Treatise *Tax Practice & Procedure*, coordinates the Forbes.com IRS Watch blog and Principal of Tax Mam, Inc. in Cupertino, CA.



Employee vs. Independent Contractor

- ▶ In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.
- ▶ The old “twenty factors” have morphed into eleven main tests, organized into three main groups:
 - behavioral control,
 - financial control, and
 - the type of relationship of the parties

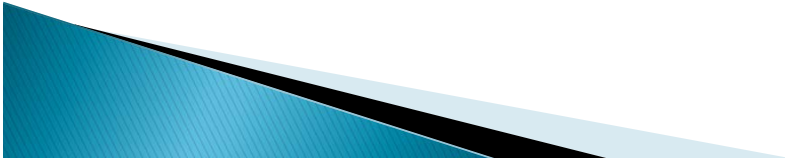
Behavioral Control

Does the business have a right to direct and control how the worker does the work?

1. Instructions the business gives the worker
2. Training the business gives the worker



Financial Control

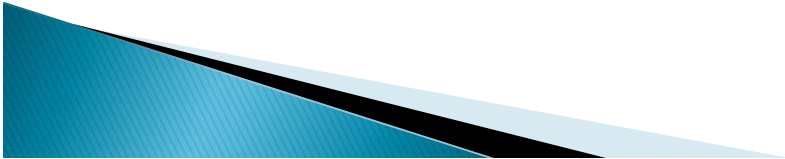
3. The extent to which the worker has unreimbursed business expenses
 4. The extent of the worker's investment
 5. The extent to which the worker makes services available to the relevant market
 6. How the business pays the worker
 7. The extent to which the worker can realize a profit or loss
- 

Type of Relationship

8. Written contracts describing the relationship the parties intended to create
9. Whether the business provides the worker with employee benefits
10. The permanency of the relationship
11. The extent to which services performed by the worker are a key aspect of the regular business of the company



Do not underestimate the difficulty of applying these standards...

- ▶ Weight all of the factors; assess the positives and negatives
 - ▶ No one factor stands alone; no minimum number of factors necessarily is persuasive
 - ▶ The keys are to look at the entire relationship
 - ▶ Document the process of reaching your determination
- 

The Safe Harbor Exception



You must meet all three:

- ▶ Reasonable Basis
- ▶ Substantive Consistency
- ▶ Reporting Consistency

Workers may not be prepared for the consequences of misclassification

- ▶ Lack of withholding
- ▶ Expectation they would be responsible for "both sides" of FICA & MI
- ▶ No employee benefits
- ▶ Unreimbursed expenses
- ▶ No qualification for unemployment insurance
- ▶ Workers who believe they have been improperly classified by an employer can use Form 8919, Uncollected Social Security and Medicare Tax on Wages to figure and report the employee's share of such taxes
- ▶ Drawbacks?

What is driving this issue now?

- ▶ According to one estimate, if only one percent of all employees were misclassified nationally, the loss in overall unemployment insurance revenue due to underreporting would be nearly \$200 million dollars annually
- ▶ The GAO estimates that unpaid taxes total more than \$2.7 billion dollars per year in unpaid Social Security, unemployment insurance, and income tax due to misclassification

What is driving this issue now?

- ▶ Misclassifying employees as independent contractors, employers can circumvent fair labor standards, health and safety protections, and unemployment and workers' compensation benefits



New York Business Owner Sentenced to Prison for Failure to Pay Employment Taxes (6/5/2015)

- ▶ *“Business owners that use ‘off the books’ payrolls cheat the U.S. Treasury and take unfair advantage of honest competitors who follow the law and pay their taxes,”* said Acting Assistant Attorney General Ciraolo. *“Today’s sentence sends a clear message that the Justice Department is aggressively pursuing and holding accountable those who willfully fail to collect and pay employee withholdings, social security and other required federal employment taxes.”*

Agencies join forces; changes coming?

- ▶ Department of Labor
- ▶ Internal Revenue Service
- ▶ State Agencies

- ▶ IRS conducted the 2009 Employment Tax NRP–
 - *to measure employment tax reporting compliance, better target limited IRS resources, and improve taxpayer education efforts*
- ▶ Legislative and/or administrative changes?

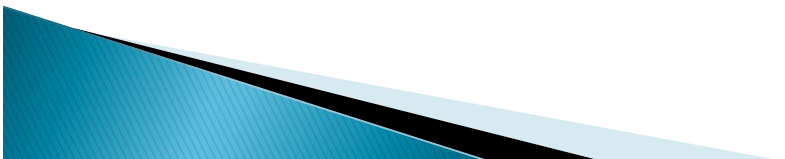
IRS Offers a Settlement Program...

- ▶ The Voluntary Classification Settlement Program provides partial relief from federal payroll taxes for eligible employers who are treating their workers or a class or group of workers as independent contractors or other nonemployees and now want to treat them as employees
- ▶ Under the revamped program, employers under IRS audit, other than an employment tax audit, can qualify for the VCSP



Voluntary Classification Settlement Program (IR-2013-23, Feb. 27, 2013)

To be eligible for the VCSP, a taxpayer must:

1. Want to voluntarily reclassify certain workers as employees for federal income tax withholding, FICA, and FUTA taxes (collectively, federal employment taxes) for future tax periods;
 2. Be presently treating the workers as non-employees;
- 


Voluntary Classification Settlement Program

To be eligible for the VCSP, a taxpayer must:

3. Have filed all required Forms 1099 for each of the workers to be reclassified for the 3 preceding calendar years ending before the date Form 8952 is filed. (Exception to this rule prior to 6/30/2013)
4. Have consistently treated the workers as non-employees;



More eligibility requirements...

5. Have no current dispute with the IRS as to whether the workers are non-employees or employees for federal employment tax purposes;
 6. Not be under employment tax examination by the IRS;
 7. Not be under examination by the Department of Labor or any state agency; and
 8. Not have been examined previously by the IRS or the DoL; or if previously examined, the taxpayer must have complied with the results of the prior examination.
- 

The Application

Form 8952 (Rev. November 2013) Department of the Treasury Internal Revenue Service	Application for Voluntary Classification Settlement Program (VCSP) ▶ Do not send payment with Form 8952. ▶ Information about Form 8952 and its separate instructions is at www.irs.gov/form8952 .	OMB No. 1545-2215
Caution. Taxpayer must make certain representations in order to be eligible to participate in the VCSP. These representations can be found in Part V on page 2.		
Part I Taxpayer Information		
1 Taxpayer's name		2 Employer identification number (EIN)
3 Number and street (or P.O. box number if mail is not delivered to a street address)		Room/Suite
4 City, town or post office, state, and ZIP code		
5 Telephone number		6 Website address (optional)
7 Fax number (optional)		8 Email address (optional)
9 Type of entity. Check the applicable box:		
<input type="checkbox"/> Sole proprietorship		
<input type="checkbox"/> Joint venture		
<input type="checkbox"/> Partnership		
<input type="checkbox"/> C corporation		
<input type="checkbox"/> S corporation		
<input type="checkbox"/> Cooperative organization described in section 1381 of the Internal Revenue Code		
<input type="checkbox"/> Tax-exempt organization		
<input type="checkbox"/> State or local government (for worker class or position not covered under a section 218 agreement)		
<input type="checkbox"/> Other (specify here) _____		
10 Are you a member of an affiliated group?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," complete the common parent information on lines 11-14.		
If "No," skip to Part II.		

Observations on the VCSP

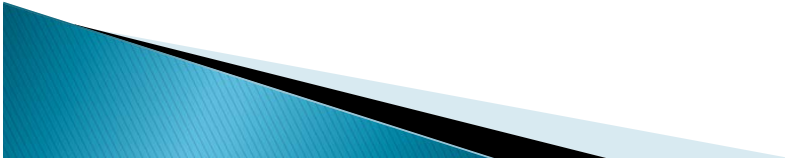
- ▶ The forgiveness offered by the IRS does not extend to the other state and federal agencies
- ▶ IRS information sharing through QETP and the new MOU would seem to increase employer liability risk
- ▶ The VCSP does not provide amnesty for violations of any law except those within the purview of IRS

Observations on the VCSP

- ▶ By choosing to participate in the VCSP, a company must assume the employee expenses it had previously avoided
- ▶ It is unclear what happens if the IRS does not accept an employer's VCSP application



Some Tips to Keep in Mind to Avoid Worker Classification Issues

- ▶ Try to understand the distinction between classes of workers
 - ▶ Avoid relying on independent contractors for services integral to your core business
 - ▶ When using independent contractors, select those with a documented history of performing services in that capacity for multiple and execute contracts with them for each engagement.
- 

Some Tips to Keep in Mind to Avoid Worker Classification Issues

- ▶ Have a clear and well-defined business protocol for worker classification. Maintain files to support classification decisions in event of an audit.

Examples + Q&A



1 – Employee or contractor?

Fast Accountancy Firm is an S corporation with one owner and two employees. Sometimes during tax season, Fast hires two or three CPAs or Enrolled Agents to assist with some of the prep, review and processing work. These folks mostly set their own hours as some of the work can be done off of the premises. Returns are all signed by the owner or Fast employee.

2 – Employee or contractor?

Sam's Engineering Services, Inc. provides design work and consulting for various high tech companies. Business slowed down this year and Sam's let two employees go. Soon thereafter, a client wanted assistance with an earlier project that one of the dismissed employees, Chris, handled. Sam's hired Chris back to assist this client over the next 12 months regarding an expansion of the earlier project.

3 – Employee or contractor?

Sarah works full time for Big Co. (about 40 – 50 hours per week). Sarah desires to make more money so signs up to be a driver for both Uber and Lyft. She usually drives about 8 – 10 hours per week but is not obligated to drive any particular day or for any set number of hours per week.

QUESTIONS

QUESTIONS



Accounting Method Requirements and Options for Small Businesses

Professor Annette Nellen, CPA, CGMA, Esq.
San José State University

www.cob.sjsu.edu/nellen_a/

IRS-SJSU Small Business Tax Institute - June 24, 2015
Tax Strategies for Small Business Success

1

Agenda

- Quick review of methods
 - Requirements
 - Overall
 - Long-term contracts
 - Interest capitalization
 - Repairs
 - Options
 - Advance payments
 - Inventory
 - R&D
 - Avoiding problems
-

2

Methods Review

Quick!

3

What is a method of accounting?

- Involves timing
 - Treatment doesn't affect lifetime income.
 - “when” questions, not “whether” questions
 - Example – when is an item included in income
 - Consistent application (“method”)
 - Is not a change in facts or correction of an error.
 - If want to or need to change – Form 3115, rather than amended return.
 - Rev. Rul. 90-38
-

4

Examples

Methods

- Cash method
- Expensing R&D
- Net invoice method for cash discounts
- FIFO
- Lower-of-cost-or-market

Not methods

- How to calculate research credit
- Changing terms of sales contracts
- Improperly deducting a penalty

5

Key rule - §446

Excerpts:

- (b) “If no method of accounting has been regularly used by the taxpayer, or if the method used does not **clearly reflect income**, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income.”
- (e) – Need consent of IRS to change your method.

6

Required Methods

Overall

Long-term contracts

Interest capitalization

Final tangible property regulations

7

Overall

§446(c) – Permissible methods:

- ❑ (i) cash
 - ❑ (ii) accrual
 - ❑ (iii) “any other method permitted by this chapter;”
or
 - ❑ (iv) hybrid – “any combination of the foregoing
methods permitted under regulations prescribed
by the Secretary”
-

8

How to know if permissible?

1. Is taxpayer subject to §448?
 - If yes, must use accrual.
2. Does taxpayer have inventory?
 - If yes, likely has to use accrual, at least for purchases and sales of inventory.
 - §1.446-1(b)(2)(i) – “In any case in which it is necessary to use an inventory the accrual method of accounting must be used with regard to purchases and sales ...”

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§448

(a) **General rule** Except as otherwise provided in this section, in the case of a—

- (1) C corporation,
- (2) Partnership which has a C corporation as a partner, or
- (3) Tax shelter,

taxable income shall not be computed under the cash receipts and disbursements method of accounting.

So, must use accrual method ... but exceptions exist.

§448(b) Exceptions

For C corp and partnership with C corp partner, not required to use accrual if

- 1. Farming business**
 - 2. Qualified personal service corporations**
 - 3. Entities with gross receipts of not more than \$5,000,000** - if, for all prior taxable years beginning after December 31, 1985, such entity (or any predecessor) met the \$5,000,000 gross receipts test.
-

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Does taxpayer have inventory?

- Must account for it as inventory and use accrual in any case where production, purchase, or sale of merchandise is an income-producing factor (§471 and §1.471-1)
 - Unless an exception exists:
 - De minimis
 - That is, it is not an “income-producing factor.”
 - Rev. Proc. 2001-10 (small business)
 - Rev. Proc. 2002-28 (certain small businesses)
-

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Inventory (“Merchandise”)

- Something held for sale
 - Caskets of an undertaker (*Wilkinson-Beane*)
- Taxpayer is a “merchandiser” / peddles products
 - Macy’s
 - But not a health clinic where drugs must be administered by doctor; not generally held for sale
- Not supplies
 - Items consumed in business of providing services

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“De minimis” inventory

- Is taxpayer’s “income-producing factor” below some unspecified number?
- Per *Wilkinson-Beane*:

$$\frac{\text{cost of the merchandise}}{\text{gross receipts}}$$
 - *Wilkinson-Beane* fraction was 15% and court concluded merchandise was an income-producing factor
 - TAM 9808003, fractions of 3%, 3% and 6% in three consecutive years led IRS to conclude merchandise was *not* an income-producing factor
 - No % has ever been specified as minimum to make merchandise an income-producing factor.

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“Small Taxpayer”?

(relevant if t/p has mdse that is an income-producing factor)

Does Rev Proc 2001-10 apply to taxpayer?

- YES – may treat mdse as non-incidentals and use cash method
 - So no need to apply §471 and §263A rules to the inventory because it is treated as non-incidentals.
- NO – does Rev Proc 2002-28 apply?
 - YES – may treat as supplies and use cash method
 - NO – use accrual method

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Rev. Proc. 2001-10

- For t/p with average annual GR in prior 3-year period of \$1 million or less.
- Excepted from requirement to use accrual and inventory methods. Instead may...
 - Use cash method
 - Treat mdse as non-incidentals (§1.162-3)
 - Treat mdse as consumed and used in year in which t/p sells the merchandise or finished goods (or in year t/p actually pays for the mdse, if later).
 - Producers may use any reasonable method of estimating amount of raw materials in their year-end work-in-process and finished goods inventory to determine amount of raw materials used to produce finished goods sold during the tax year, provided that method is used consistently.

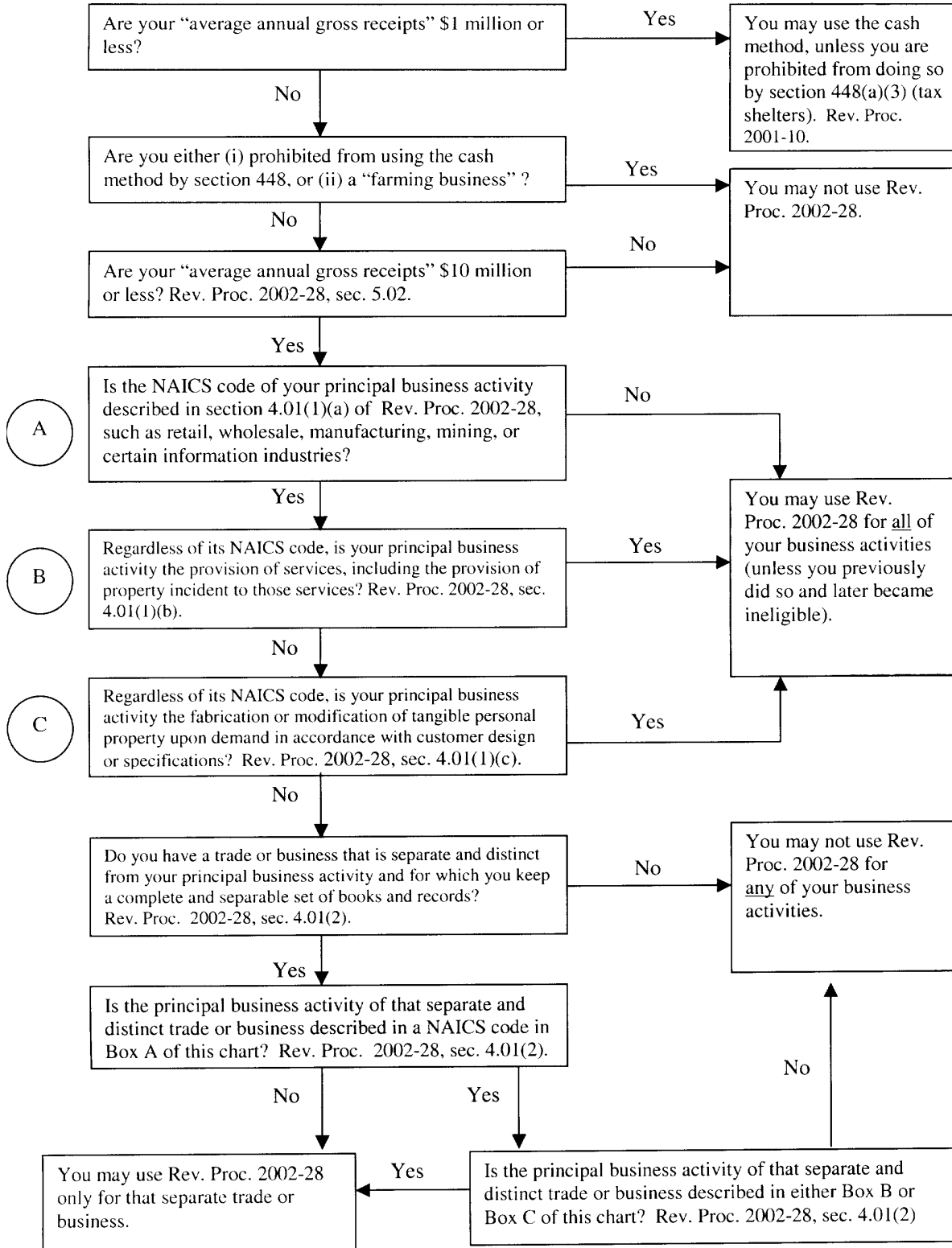
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DRAFTING INFORMATION

The principal author of this revenue procedure is W. Thomas McElroy, Jr., of

the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. McElroy at (202) 622-4970 (not a toll-free call).

APPENDIX
APPLICATION OF REV. PROC. 2002-28



Rev. Proc. 2002-28

- Avg annual GR in prior 3 year period > \$1 million but \leq \$10 million.
- Not prohibited from using cash method under §448.
- NAICS code relevant
 - Retailers and manufacturers have ineligible NAICS code
- See flowchart and examples in Rev Proc.

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Interest capitalization Long-term contract basics



Key – know when these rules apply

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Interest capitalization - §263A(f)

A taxpayer must capitalize interest if it has:

1) property:

- ❑ - subject to §263A
- ❑ - self-produced real or tangible personal property with either, a long useful life (real property or personal property with class life \geq 20 years), or estimated production period $>$ 2 years, or estimated production period $>$ 1 year & cost $>$ \$1,000,000
- ❑ [referred to as "designated property" in final regulations at §1.263A-8(b); note limited exceptions to the definition]

and

2) interest paid or incurred during the production period on "eligible debt"

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Long-term contracts - §460

- If transaction meets definition of long-term contract
 - Likely need to account for using percentage of completion method
 - ❑ But some exceptions at §460(e) for certain construction contracts.
 - ❑ At end of contract, apply look-back method, unless an exception applies.
 - §460(b)(5) – 10% election
 - ❑ Need not report income from the LT contract until have incurred 10% of the estimated costs
-

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Long-term contract - §460(f)

- “any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into.”
- Manufacturing contract – “involves the manufacture of—
 - (A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or
 - (B) any item which normally requires more than 12 calendar months to complete (without regard to the period of the contract).”

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Final TPR - TD 9636 (9/19/13)

Preamble (page 57700)

- “**except as otherwise stated, a change to comply with final regs is a change in method of accounting to which the provisions of sections 446 and 481 and accompanying regulations apply.** A taxpayer seeking to change to a method of accounting permitted in final regs **must secure consent of Commissioner** in accordance with § 1.446–1(e) and follow administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining Commissioner’s consent to change its accounting method. In general, a taxpayer seeking a change in method of accounting to comply with these regs must take into account a full adjustment under section 481(a).”

<http://www.gpo.gov/fdsys/pkg/FR-2013-09-19/pdf/2013-21756.pdf>

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TPR Relief – Rev Proc 2015-20

- Issued 2/13/15
- Allows small taxpayers to adopt TPR on cut-off approach rather than §481(a) adj approach
- Small = GR of \$10 million or less
- Must do for all of TPR including retroactive one-time method change for dispositions.
- Also seeking comments on whether \$500 at §1.263(a)-1(f)(1)(ii)(D) should be increased

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RP 2015-20 considerations

	Rev. Proc. 2015-20 Simplified Approach (No 3115 or 481(a) adj.)	Rev. Proc. 2015-14 Method Changes and Forms 3115
Audit protection for prior years	No	Yes
Possibility of reducing 2014 taxable income for any negative §481(a) adjustment (after using the netting process of Rev. Proc. 2015-14).	No	Yes (note that if the 481(a) adjustment relates to a passive activity, it is a passive activity deduction only usable against passive activity income).
Ability to make the optional late partial disposition election that is only available for 2014 (producing a negative §81(a) adjustment).	No	Yes

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	Rev. Proc. 2015-20 Simplified Approach (No 3115 or 481(a) adj.)	Rev. Proc. 2015-14 Method Changes and Forms 3115
Time commitment	To consider whether to go the simplified route (no 3115 or §481(a) adjustment) or do the full method adoption.	Time is needed to review depreciation schedule and inquire about past repairs. Need to review supplies treatment in light of TPR. Creation of documents to support required §481(a) adjustments. Spend time with Rev. Proc. 2015-14 on how to make the method changes.
Taxpayer's tax records	<ul style="list-style-type: none"> • 2014 and later follow TPR • Tax years prior to 2014 follow the taxpayer's method used prior to the TPR. 	All of taxpayer's tax records follow the TPR (due to the §481(a) adjustments made).

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Optional Methods

Advance payments

Inventory

R&D

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Advance payments from customers

- Generally, no deferral unless special rule applies and properly adopted and followed
 - Must use accrual method
 - Possibilities
 - Reg. 1.451-5 – goods only
 - Generally, must report by end of second tax year following year in which substantial advance payment received. No greater deferral for tax than taken on books.
 - Rev. Proc. 2004-34
 - Be sure meets definition of “advance payment” eligible for Rev Proc 2004-34 treatment.
-

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Rev. Proc. 2004-34

- Is a method, must properly adopt and use.
 - If receive “advance payment” then, generally,
 - Year received – report same as for books.
 - Year 2 – report balance
-

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Inventory methods

- Tracking
 - FIFO
 - LIFO
 - Specific identification

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Inventory methods

- Valuation/cost
 - Lower-of-cost-or-market versus cost
 - Unsalable goods (Reg. 1.471-2(b))
 - Whether use LCM or cost
 - Application of §263A
 - Unless are:
 - Small producer (indirect costs of \$200,000 or less *and* adopt simplified production method)
 - Reg. §1.263A-1(b)(12) and §1.263-2(b)(3)(iv)
 - Small retailer (avg annual gross receipts in prior 3 years of \$10 million or less)
 - Exception also exists for de minimis production activities of small retailer that are incident to its resale activities (§1.263A-3(a)(2)).

30

“Cost” and Discounts

- Cash discounts - §1.471-3 – “may be deducted or not at the option of the taxpayer, provided a consistent course is followed”
 - May account for them using:
 - Net invoice method
 - Gross invoice method
 - Are methods of accounting (automatic change possible under Rev Proc 2015-14) [Rev. Rul. 73-65]
 - Trade discounts must be considered in inventory cost
-

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§263A Basics

- Applies to
 - Real or tangible personal property produced by t/p
 - Real or personal property (§1221(a)(1)) acquired by t/p for resale
 - Provides guidance on what costs are to be included in inventory (if the property is inventory) or capitalized to basis (for non-inventory)
 - DM, DL and indirect costs and perhaps interest expense
 - Note: §263A is not only for inventory
-

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R&D - 1

- General rule of §174(a) – expense
 - Alternatives:
 - Elect to capitalize per §174(b) and amortize over no less than 60 months once first realize benefits of the R&D
 - Capitalize w/o election to amortize (not a good idea)
 - §174(a) and make §59(e) election in years when helpful
 - Stretch out R&D deductions
 - Make for all or part of current year R&D.
-

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R&D - 2

- Software development
 - Generally treat using §174 method
 - See Rev. Proc. 2000-50
 - Be sure to properly identify your R&E
 - Reg. 1.174-2 definition
 - Recordkeeping for proving it is R&E and for showing §174 expenses
 - Also consider if §41 research tax credit applies
 - Only wages, supplies and contract research expenses for “qualified research”
-

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Avoiding Problems

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Avoiding problems

- New clients
 - Be sure using proper methods
 - New taxpayers
 - Consider carefully what methods you are adopting because using them on first tax return = adoption.
 - All taxpayers
 - If have books/financial statements, watch for method changes on books that can create new book-tax adjustments (Sch M-1).
 - If miss, may inadvertently change your tax accounting method.
 - If need to change – get Form 3115 to IRS National Office ASAP for audit protection (assuming it is available for the particular change and current method is impermissible)
-

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Recent example of not avoiding problems

- *Hawse*, TC Memo 2015-99
 - LIFO, attempted method change and not following all of the procedures.
 - <http://www.ustaxcourt.gov/InOpHistoric/HawseMemo.Wherry.TCM.WPD.pdf>

<u>[*3]</u> <u>Year</u>	<u>Deficiency</u>	<u>Penalty</u> <u>sec. 6662(a)</u>
2002	\$2,892,317	\$578,463.40
2003	1,604,752	320,950.40

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Resources

- IRC §446 – §481 and regulations
- Change in method – Rev Proc. 2015-13 and 2015-14
 - Form 3115 and instructions (note that instructions may be out of date).
- IRS Pub 538, Accounting Periods and Methods
- Cases and rulings (there are lots of them!)

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