

IRS/SJSU Small Business Tax Institute Mid-Year Tax Update

June 22, 2017

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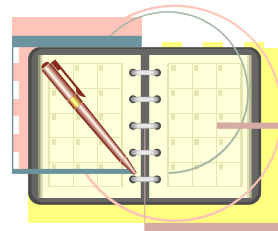
San José State University



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Agenda

- Individuals
- Businesses
- Health Care
- Property Transactions
- Practice & Procedure
- Miscellaneous
- California Updates



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Individuals

- VW Settlement
- CWA – Need It and More For Airplane Donation
- Need Proof of Cash Contributions

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VW Settlement

- For VW's diesel emission problems
- Various arrangements including car buyback
- Likely also receive “additional restitution payment.”
- Watch for details from VW, possible guidance from IRS and state
- Review nature of the transaction and reason for the payment
- Reconcile any 1099 rec'd to be sure what's taxable and what might not be



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CWA – Need It and More For Airplane Donation

- *Izen*, 148 TC No. 5 (3/1/17)
 - ❑ Court disallowed \$338K deduction for donation of interest in 40-year old airplane
 - ❑ §170(f)(12) not followed
 - CWA not attached to return
 - 1098-C not filed



<http://www.ustaxcourt.gov/UstclnOp/OpinionViewer.aspx?ID=11131>

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DONEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of contribution		OMB No. 1545-1959		Attachment Sequence No. 155A
		2a Odometer mileage		2017		
		2b Year	2c Make	2d Model		
DONEE'S federal identification number		DONOR'S identification number		Form 1098-C		
3 Vehicle or other identification number		DONOR'S name		4a <input type="checkbox"/> Donee certifies that vehicle was sold in arm's length transaction to unrelated party		Copy B For Donor In order to take a deduction of more than \$500 for this contribution, you must attach this copy to your federal tax return. Unless box 5a or 5b is checked, your deduction cannot exceed the amount in box 4c.
4b Date of sale		4c Gross proceeds from sale (see instructions)		\$		
5a <input type="checkbox"/> Donee certifies that vehicle will not be transferred for money, other property, or services before completion of material improvements or significant intervening use		5b <input type="checkbox"/> Donee certifies that vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of donee's charitable purpose		5c Donee certifies the following detailed description of material improvements or significant intervening use and duration of use		
6a Did you provide goods or services in exchange for the vehicle? ▶ Yes <input type="checkbox"/> No <input type="checkbox"/>		6b Value of goods and services provided in exchange for the vehicle		\$		
6c Describe the goods and services, if any, that were provided. If this box is checked, donee certifies that the goods and services consisted solely of intangible religious benefits ▶ <input type="checkbox"/>		7 Under the law, the donor may not claim a deduction of more than \$500 for this vehicle if this box is checked ▶ <input type="checkbox"/>				

https://www.irs.gov/uac/form-1098-c-contributions-of-motor-vehicles-boats-and-airplanes-1

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Need Proof of Cash Contributions

- *Wainwright*, TC Memo. 2017-70 (4/25/17)
 - 2010, IRS disallowed charitable contributions of \$9,450
 - Court agreed
 - Any cash donation
 - NEED documentation of some sort
 - If \$250 or more, need CWA
 - W produced none for the court



<http://www.ustaxcourt.gov/ustcinop/opinionviewer.aspx?ID=11190>

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Businesses

- Mileage Rates
- Research Credit / Payroll Credit Guidance
- PLLC Attorneys Subject to SE Tax

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Mileage Rates for 2017

Notice 2016-79 (12/13/16)

- **Business - 53.5¢/mile** [down from 54¢]
 - 25¢ represents depreciation
- **Medical and Moving - 17¢/mile**
[down from 19¢]
- **Charitable - 14 ¢/mile** [fixed by statute]

Must follow Rev Proc. 2010-51

<https://www.irs.gov/pub/irs-drop/n-16-79.pdf>

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Research Credit / Payroll Credit Guidance

- **Notice 2017-23**
 - Interim guidance
 - Basics, definitions, examples
 - Comments requested by 7/17/17
 - Special amended return option
 - If file return for tyba 2015 and don't elect to claim research credit as payroll credit, can amend that return by 12/31/17 to do so.
 - "FILED PURSUANT TO NOTICE 2017-33" at top of Form 6765

<https://www.irs.gov/pub/irs-drop/n-17-23.pdf>

PLLC Attorneys Subject to SE Tax

- *Castigliola*, TC Memo 2017-62 (4/12/17)
 - 3 attorneys were member-managers of professional LLC in Mississippi
 - Per CPA advice, only paid SE tax on their GP which were in line with legal salaries in the area.
 - Did not pay SE tax on their distributions beyond GP.
 - Rationale of CPA – are “limited partners” per §1402(a)(13).
 - Court – NO!
 - Applied *Renkemeyer* (TC 2011)
-

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PLLC Owners ≠ Limited Partners

- §1402(a)(13) enacted in 1977
 - No definition of “limited partner” in Code or regs
 - So, use “ordinary meaning” in 1977
 - 1977 – few states allowed LLCs
 - Does person claiming exemption have position that is “functionally equivalent to that of a limited partner in a limited partnership” per state law?
 - Here, owners had full control of PLLC, made all decisions.
 - Under Mississippi law, would thus not be considered ltd partner.
-

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Castigliola - continued

- Negligence penalty waived by court
 - Reasonable reliance on CPA

- *Query*: Did the IRS assess a preparer penalty?

<http://www.ustaxcourt.gov/ustcinop/opinionviewer.aspx?ID=11178>

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Health Care

- Indexed Amounts
 - HRA Legislative Relief – QSEHRA
 - President Trump Exec Order on ACA
 - ACA Repeal/Replace Update
-

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Indexed Amounts for 2016 and 2017

Rev Proc 2016-24 (4/11/16)

	2014	2015	2016	2017
§36B and §4980H affordability safe harbor factors	9.5%	9.56%	9.66%	9.69%
§5000A factor for unaffordable exemption	8.0%	8.05%	8.13%	8.16%

Rev Proc 2016-24 also provides the §36B Applicable Percentage Table for 2017.

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§4980H Amounts

	2015	2016	2017
§4980H(a) penalty – did not offer coverage and at least one FT employee claimed PTC	\$2,080 per FT employee	\$2,160 per FT employee	\$2,260 per FT employee
§4980H(b) penalty – did offer coverage, but either was not minimum value or affordable	\$3,120 per FT employee who claimed PTC	\$3,240 per FT employee who claimed PTC	\$3,390 per FT employee who claimed PTC

**Above amounts are annual.
Penalty is prorated for months of violation.**

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Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

**P.L. 114-255
(12/13/16)**

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Small Employer HRA Refresher

- Notice 2013-54 – If employer provides reimbursements for employee health plans, then it is considered a plan and must meet “market reforms.”
 - These plans will fail.
 - Employer at risk of \$100/day/employee penalty.
 - IRC §4980D.

<https://www.irs.gov/pub/irs-drop/n-13-54.pdf>

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IRS Provided Limited Relief

- Notice 2015-17
 - No penalty assessed through June 30, 2015
 - And relief for 2-percent shareholder-employee of S corp until IRS issues guidance.
 - IRS has not issued such guidance.

https://www.irs.gov/irb/2015-14_IRB/ar07.html

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HRA Change - New §9831(d)!

P.L. 114-255 (12/13/16)

- Employers who are not an “applicable large employer” and do not offer group health plan.
 - No employee contributions to the funding (no salary reduction).
 - Amount of payments and reimbursements for any year do not exceed
 - \$4,950 for single
 - \$10,000 for family members of the employee
 - Adjust for inflation
 - Notice to employees (more later).
 - **Benefit** – no \$100/day/EE penalty + EE exclusion per Rev Rul 61-146.
-

May only exclude employees who ...

- (i) have not completed 90 days of service;
- (ii) under age 25;
- (iii) part-time [Reg. 1.105-11(c)(2)(iii)(C)] or seasonal employees;
- (iv) are not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and
- (v) nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from employer which constitutes income from sources within the US (within meaning of section 861(a)(3)).
- [§105(h)(3)(B)]

Employer notice to employees

- “§9831(d)(4)(A) IN GENERAL.—An employer funding a **qualified small employer health reimbursement arrangement** for any year shall, **not later than 90 days before the beginning of such year (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible)**, provide a written notice to each eligible employee which includes the information described in subparagraph (B).
- “(B) CONTENTS OF NOTICE.—
 - “(i) A statement of amount which would be such eligible employee’s permitted benefit under the arrangement for the year.
 - “(ii) A statement that eligible employee should provide information described in clause (i) to any health insurance exchange to which employee applies for advance payment of the PTC.
 - “(iii) A statement that if employee is not covered under minimum essential coverage for any month the employee may be subject to tax under §5000A [individual mandate] for such month and reimbursements under the arrangement may be includible in gross income.”.
- Purpose – so employee and IRS know
 - Plan coordinates with Premium Tax Credit
- Penalty if not done - §6652(o)

Addition to §106 exclusion:

“(g) QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENT.—For purposes of this section and section 105, payments or reimbursements from a *qualified small employer health reimbursement arrangement* (§9831(d)) of an individual for medical care (§213(d)) shall **not** be treated as paid or reimbursed under employer-provided coverage for medical expenses under an accident or health plan **if** for the month in which such medical care is provided the individual does not have minimum essential coverage (within the meaning of §5000A(f)).”

SO, if employee doesn't have minimum essential coverage – employer reimbursement is taxable!

W-2 Reporting

New §6051(a)(15) “the total amount of permitted benefit (as defined in §9831(d)(3)(C)) for the year under QSBHRA (as defined in §9831(d)(2)) with respect to the employee.”

Effective Dates

- Generally – tyba 12/31/16
 - “TRANSITION RELIEF—relief under Treasury Notice 2015–17 shall be treated as applying to any plan year beginning on or before December 31, 2016.”
 - S corp relief continues
 - <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-35.pdf>
 - Employer who wishes to create a QSEHRA in 2017, has 90 days from 12/13/16 to comply with notice requirement (to avoid the penalty) .
-

QSEHRA – More Time to Get Notice to Employees for 2017

- Notice 2017-20 (2/27/17)
 - Extends time to get initial written notice to eligible employees from 3/13/17 to “at least 90 days after additional guidance regarding the contents of the QSEHRA notice is issued.”
-

Executive Orders

EO 13765 (1/20/17)
 – Minimizing the
 Economic Burden of
 the Patient
 Protection and
 Affordable Care Act
 Pending Repeal.



<https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and>

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Affordable Care Act Tax Provisions for Individuals and Families



[Español](#) | [中文](#) | [한국어](#) | [TiếngViệt](#) | [Русский](#)

ACA Executive Order and Current Tax Filing Season

The IRS is currently reviewing the Jan. 20, 2017, executive order to determine the implications. Taxpayers should continue to file their tax returns as they normally would.

The Affordable Care Act includes the [individual shared responsibility provision](#) and the [premium tax credit](#) that may affect your tax return.

2/15/17

<https://www.irs.gov/affordable-care-act/individuals-and-families>

IRS Response to EO (2/15/17)

- Will not reject 1040s w/o health coverage information.
- “However, legislative provisions of the ACA law are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe.”
- “Processing silent returns means that taxpayer returns are not systemically rejected by the IRS at the time of filing, allowing the returns to be processed and minimizing burden on taxpayers, including those expecting a refund. When the IRS has questions about a tax return, taxpayers may receive follow-up questions and correspondence at a future date, after the filing process is completed. This is similar to how we handled this in previous years, and this reflects the normal IRS post-filing compliance procedures that we follow. ”

<https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision>

ACA Repeal/Replace Update

- H.R. 1628
 - Passed in House 5/4/17 (217-213)
 - Waiting for Senate action
 - JCT analysis includes:

Provision	Revenue Effect FY 2017-2026 in millions (\$)
Repeal medical device excise tax of 2.3%	\$19,622
Repeal annual fee on branded drugs	\$38,469
Repeal additional Medicare tax of 0.9% for high income	\$58,553
Change medical expense deduction threshold from 10% AGI to 5.8% AGI for regular tax and AMT	\$125,733
Repeal tanning salon excise tax	\$144,727
Repeal 3.8% Net Investment Income Tax	\$177,202

Reminder of ACA Tax Provisions - 1

Provision	IRC Section
COD income exclusion for certain student loans (effective starting 2009)	108(f)(4)
10% excise tax on indoor tanning services (started July 1)	5000B
Small business health insurance credit [ACA includes later changes such as a requirement starting in 2014 to obtain coverage through the Small Business Health Options Program (SHOP) Marketplace, and that the credit is only available for two consecutive years.]	45R
Expanded dependent coverage exclusion for employer-provided health plans until age 27	105(b)
Codification of economic substance doctrine	6662 7701(o)
Increase in adoption credit and exclusion increased; refundable credit; temporary	23
Credit for Qualifying Therapeutic Discovery Projects (2009 and 2010 only)	48D
Disclosure allowed for certain information to Health and Human Services for the Premium Tax Credit and cost-sharing	6103

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Reminder of ACA Tax Provisions - 2

Effective 2011	
W-2 reporting of cost of employer-provided health insurance (postponed for all employers for 2011 and indefinitely for employers who issued less than 250 Forms W-2 in the prior year) [Notice 2010-69 , Notice 2012-9 , and IRS website]	6051(a)(14)
SIMPLE cafeteria plans allowed for small businesses	125(j)
Restricted definition of “medicine” for certain savings arrangements, such as for an Archer MSA	220, 223
Increased tax on distributions from HSA and Archer MSA	223
Annual fee on manufacturers and importers for certain prescription drug sales [Form 8947, Report of Branded Prescription Drug Information and Notice 2011-9]	Reg. §51.2(d)
Effective 2012	
Information reporting for payments of \$600 or more made to C corporations [repealed before effective, P.L. 112-9, 2/14/11]	6041
Fee on health plans to fund Patient-Centered Outcomes Research Trust Fund (\$1/year, increasing later)	4375
New requirements for §501(c)(3) hospitals	501(c)(3)

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Reminder of ACA Tax Provisions - 3

Effective 2013	
Increase in Hospital Insurance tax (additional 0.9%) for high income individuals	3101(b)
New tax of 3.8% on unearned income of high income individuals, estates and trusts (net investment income tax)	1411
Increase in medical expense deduction threshold to 10% of AGI unless age 65 or older	213
Salary reduction contributions to health FSA capped at \$2,500 (adjusted for inflation after 2013)	125(i)
Limit on deduction of certain excessive employee remuneration paid by certain health insurance providers	162(m)(6)
§139A, Federal subsidies for prescription drug plans, changed as follows: “Gross income shall not include any special subsidy payment received under section 1860D-22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.”	139A
2.3% excise tax on sales of certain medical devices [moratorium for 2016 and 2017 per P.L. 114-113 (12/18/15)]	4191

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Reminder of ACA Tax Provisions - 4

Effective 2014	
Small business health insurance credit must be offered through SHOP (exchange)	45R(g)(3)
Premium Tax Credit (PTC) available to individuals who obtain coverage on an exchange and meet other eligibility criteria. [Supreme Court holds that individuals in a state without an exchange are eligible for a PTC on the federal exchange. Effect is that individuals in states without an exchange and without coverage must factor in hypothetical PTC to determine if they meet the unaffordability exemption to the individual mandate (King v Burwell, No. 13-114 (6/25/15))]	36B
Individual mandate (penalty) applies if individual and shared responsibility family does not have coverage and does not meet an exemption [Supreme Court found this to be a permissible tax (National Federation of Independent Business, et al v. Sebelius (6/28/12))]	5000A
Employer mandate (penalty) applies if applicable large employer (ALE) does not offer coverage to full-time employees and their dependents up to age 26 (and other provisions). [IRS delays effective date to 2015 and for 2015 provides additional transitional relief. Notice 2013-49 and blog post of 7/2/13 of Assistant Treasury Secretary for Tax Policy Mark J. Mazur.]	4980H
Information reporting by exchanges, insurance providers and ALEs (Form 1095-A, 1095-B and 1095-C, respectively). [IRS make 1095-B and 1095-C reporting optional for 2014.]	36B(f)(3) 6055 6056
Certain types of health coverage reimbursement arrangements (HRA) will fail the “market reforms” exposing the employer to a penalty of \$100/day/employee. [Notice 2013-54 and IRS website] [In Notice 2015-17 , IRS provided relief through 6/30/15; Congress provided relief through 12/31/16 (P.L. 114-255 (12/13/16))]	4980D
Excise tax on certain health insurance providers	Reg. 57.1, et seq. (TD 9643 (11/29/13))
Increase in estimated tax payments for large corporations (assets of \$1 billion or more) due in July, August, or September 2014	6655

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Reminder of ACA Tax Provisions - 5

Effective 2017	
Increase in medical expense deduction threshold to 10% of AGI for individuals age 65 or older (applicable to other individuals starting in 2013)	213
Qualified Small Employer Health Reimbursement Arrangement allowed starting 1/1/17 [added by P.L. 114-255 (12/13/16)]]	9831(d) 6051(a)(15) 6652(o) 106(g) 36B(c)(4)
Effective 2018	
Nondeductible 40% excise tax on high cost employer-sponsored health coverage ("Cadillac" plans) [postponed to 2020 by P.L. 114-113 (12/18/15)]	4980l

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Questions to resolve...

- If made §469 regrouping when first subject to NIIT, can you (must you) go back to original grouping?
- Will it also include repeal of HRA change by PL 114-255 (12/13/16)?
- What kind of transitional relief?
 - For example, repeal of exclusion for employer coverage on non-dependent child ...
 - Effective 1/1/17 or when the coverage ends (assuming it ends)?

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Timing considerations

- To avoid ISRP and ESRP for 2017 – need to have coverage
 - Who knows when any repeal will be effective?
 - Some temp regs expire in 2017
 - Example – TD 9683 on PTC – 7/24/17
-

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Property Transactions

- §280F Limitations for 2017
 - Bitcoin Reporting Concerns of IRS
-

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§280F Limitations for 2017

Rev. Proc. 2017-29 (3/24/17)

Passenger cars	With bonus depreciation	Without bonus depr
1st tax year	\$11,160	\$3,160
2nd tax year	\$5,100	\$5,100
3rd tax year	\$3,050	\$3,050
Each succeeding year	\$1,875	\$1,875

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Bitcoin Reporting Concerns of IRS

11/16 – IRS files petition to get 2 years of records from Coinbase

- ND CA holds there is justification
- 3/17 – IRS files petition asking Coinbase to state why it should not comply
 - IRS notes underreporting concerns
 - Workers paid in bitcoin not reporting
 - 2013 – 2015 – each year, only 800–900 Forms 8949 said “bitcoin”
 - Based on other data, seems to be too low

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And, there is more than bitcoin

716 virtual currencies per

<http://coinmarketcap.com/all/views/all/>

- At 4/29/17

	Market Cap	Price
Bitcoin	\$21.5 billion	\$1,316
Ethereum	\$6.3 billion	\$69.37
Ripple	\$2 billion	\$0.05
Litecoin	\$816 million	\$16.05

<http://www.21stcenturytaxation.com/virtual-currency-and-tax.html>

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Reminder ...

- Question for organizer and annual planning meeting with clients ...

Do you own or use any virtual currency?

Practice and Procedure



- PTIN Fee Found Invalid
- User Fees and Pay.gov
- IRS Assistance – Make an Appointment
- LB&I Campaigns
- Private Debt Collection Launched
- IRS Dirty Dozen Scam List for 2017
- Is it the IRS at Your Door?

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PTIN Fee Found Invalid

- *Steele, et al.*, No. 14-cv-1523-RCL (DC DC, 6/1/17)
 - Class action launched 2016 challenging validity of PTIN fee in light of Loving.
 - Held –
 - IRS has authority to require PTIN
 - No authority to charge fee
 - Fee implies regulatory scheme and can't regulate individuals who only prepare returns.
 - No “service or thing of value” provided by IRS
 - Anyone today can get a PTIN – nothing special from IRS
 - No proof that necessary for SSN disclosure purposes.

https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv1523-78

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PTIN Fee – What’s Next

- IRS website at 6/2/17
 - PTIN reg and renewal suspended
 - IRS working with DOJ on how to proceed
 - Check back at <https://www.irs.gov/for-tax-pros>
<https://www.irs.gov/tax-professionals/ptin-system-down>
- Refunds?
 - IRS: 710,553 x \$33 = \$23.4 million!
 - 710,553 x \$50 = \$35.5 million!!

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User Fees and Pay.gov – Starts June 15

For Letter Rulings and Similar Requests:



Electronic Payment of User Fees Starts June 15; Replaces Paying by Check

IR-2017-102, June 1, 2017

WASHINGTON — Beginning June 15, taxpayers requesting letter rulings, closing agreements and certain other rulings from the Internal Revenue Service will need to make user fee payments electronically using the federal government’s Pay.gov system.

Pay.gov allows people to pay for a variety of government services online using a credit card, debit card or via direct debit or electronic funds withdrawal from a checking or savings account. In the past, ruling requesters could only make required user fee payments by check or money order. During a two-month transition period, June 15 to Aug. 15, requesters can choose to make user fee payments either through Pay.gov or by check or money order. After Aug. 15, 2017, Pay.gov will become the only permissible payment method.

Rulings described in Revenue Procedure 2017-1 and sent to the Docket, Records and User Fee

<https://www.irs.gov/uac/newsroom/for-letter-rulings-and-similar-requests-electronic-payment-of-user-fees-starts-june-15-replaces-paying-by-check>

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Need IRS Assistance? – Make an Appointment

IRS Special Edition Tax Tip 17-10

- ❑ In person assistance – you **MUST** make an appt.
- ❑ First though, check out self-service options, such as Pub 17, how to pay, how to check refund, etc.
- ❑ Also see Pub 5136, IRS Services Guide
 - Also has resource tips for preparers.

<https://www.irs.gov/uac/newsroom/irs-face-to-face-help-is-now-by-appointment>
<https://www.irs.gov/pub/irs-pdf/p5136.pdf>

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LB&I Campaigns

- Launched Jan. 2017
- “Address compliance and resource challenges.”
- 13 announced as of April 2017, including
 - ❑ Related party transactions
 - ❑ Land developer and completed contract method
 - ❑ S corp losses in excess of basis
 - ❑ Repatriation
 - ❑ 1120-F non-filer

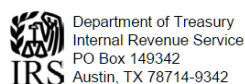
<https://www.irs.gov/businesses/large-business-and-international-compliance-campaigns>

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Private Debt Collection Launched

- PL 114-94 (12/4/15); IRC §6306; Pub 4518
- 4 agencies selected
- IRS will notify t/p first
- No enforcement action
- Payments go to IRS

<https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection>



ERIC D. JOHNSON
123 N HARRIS ST
HARVARD, TX 12345

Notice	CP40
Notice date	January 26, 2017
Taxpayer ID number	XXX-XX-NNNN
Tax form	
Tax year	
Taxpayer authentication number	
To contact us	Phone: nnn-xxx-xxxx
Page 1 of 2	

We assigned your overdue tax account to a private collection agency

Current law requires us to contract with qualified private collection agencies to assist in collecting

What happens next

The private collection agency will work with you to resolve your

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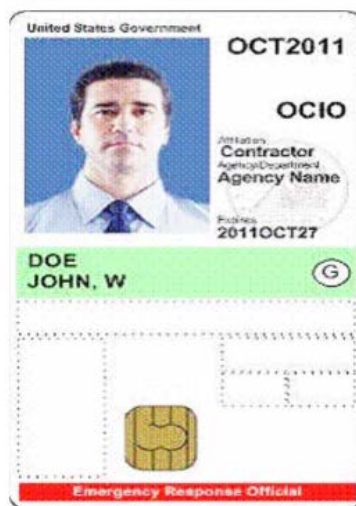
IRS Dirty Dozen Scam List for 2017

1. Offshore tax cheating
2. Frivolous tax arguments
3. Abusive tax shelters
4. Falsifying income
5. Falsely padding deductions
6. Excessive business credit claims
7. Falsely inflating refund claims
8. Fake charities
9. Return preparer fraud
10. Identity theft
11. Phone scams
12. Phishing schemes

Is it the IRS at Your Door?

- Audit – letter first + set appt
- Collections or CID – possibly unannounced
- IRS person will have 2 forms of ID
 - Pocket commission
 - HSPD-12 card

Figure 2: Typical PIV Card



Source: IRS Mandatory SmartID User Guide.

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Miscellaneous

- Regulations Issued in 2017
- Estate Tax Closing Letter

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Regulations list for 2017

- <http://www.sjsu.edu/people/annette.nellen/website/2017regs.html>

- Past list links (2011 – 2016)
 - <http://www.sjsu.edu/people/annette.nellen/website/2016regs.html>



FEDERAL REGISTER

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Estate Tax Closing Letter

- Notice 2017-12 (1/6/17)
 - Explains methods available to confirm closing of estate tax return exam.
 - Account transcript with a transaction code of “421” and explanation “Closed examination of tax return” can serve as the functional equivalent of an estate tax closing letter in confirming the closing of an examination.”
 - Not currently available online.

<https://www.irs.gov/pub/irs-drop/n-17-12.pdf>

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California Updates



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New Due Dates for TY 2016+

As a result of the Federal changes in due dates for many types of income tax returns, California has mostly (but not fully) conformed to the Federal law due date changes that went into effect starting for the 2016 tax year.



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California Due Dates: Non-Indiv.

Entity	Original due date	Extended due date
C corp	15th of 4 th month	15 th of 10 th month
S Corp	15 th of 3 rd month (no change)	15 th of 9 th month
Exempt Corp	15 th of 5 th month (no change)	15 th of 11 th month
Partnerships	15 th of 3 rd month	15 th of 9 th month
LLC taxed as corp	15 th of 4 th month	15 th of 10 th month
LLC taxed as partnership	15 th of 3 rd month	15 th of 9 th month
SMLLC owned by passthrough	15 th of 3 rd month	15 th of 9 th month
All other SMLLCs	15 th of 4 th month	15 th of 10 th month

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EDD – Mandatory eFiling and ePayments: 2017 & 2018

Beginning 1/1/17, employers with 10+ employees must eFile employment tax returns and wage reports AND must make all payments electronically.

Full eFile and ePay mandate for ALL employers starting on 1/1/18.

EDD – Mandatory eFiling and Payments: 2017 & 2018 (Cont.)

Current penalties for non-compliance with eFile and ePay mandates:

Penalties for Not Electronically Filing or Paying		
Type	Forms	Penalty
Tax Returns	<ul style="list-style-type: none"> • DE 9 – Quarterly Contribution Return and Report of Wages • DE 3HW – Employer of Household Worker(s) Annual Payroll Tax Return • DE 3D – Quarterly Contribution Return 	\$50 per return
Wage Reports	<ul style="list-style-type: none"> • DE 9C – Quarterly Contribution Return and Report of Wages (Continuation) • DE 3BHW – Employer of Household Worker(s) Quarterly Report of Wages and Withholdings 	\$20 per wage item
Payments	<ul style="list-style-type: none"> • DE 88 – Payroll Tax Deposit 	15% of amount due



EDD – Mandatory eFiling and ePayments: 2017 & 2018 (Cont.)

Potential Waiver from eFiling and ePay

In unique situations the EDD *may* grant a waiver from the eFile and ePay mandates.

If granted, waiver only for one year.

Form DE 1245W Required to Request Waiver

See Rev. & Tax. §§1088(h)(3) and 1110(g)(3)



EDD – Mandatory eFiling and ePayments: 2017 & 2018 (Cont.)

Potential Waiver from eFiling and ePay



E-FILE AND E-PAY MANDATE WAIVER REQUEST

PURPOSE: This form is used to request an exemption from the e-file and e-pay mandate which requires employers to file their employment tax returns, wage reports, and payroll tax deposits electronically.

An approved waiver will be valid for one year beginning with the quarter of the request date. Upon the expiration of the approval period, an employer must start to electronically file and pay, or submit a new waiver request to avoid a non-compliance penalty. For additional information or questions regarding the e-file and e-pay mandate, please visit our website at www.edd.ca.gov/FileMandate or contact the Taxpayer Assistance Center at 888-745-3886.

This waiver request can be faxed to 916-255-1181 or mailed to:

Employment Development Department
Document and Information Management Center
PO Box 989779
West Sacramento, CA 95798-9779

Important: This form may not be processed if any information is missing.

A. EMPLOYER INFORMATION (Complete all items in this section.)	Employer Payroll Tax Account Number
	Business Name
	Legal Name
B. REASON (Select the reason for filing this e-file and e-pay mandate waiver request.)	<input type="checkbox"/> Lack of automation.
	<input type="checkbox"/> Severe economic hardship.
	<input type="checkbox"/> Current federal exemption from filing electronically.
	<input type="checkbox"/> Other good cause. Please explain below.




Appointments Now Accepted at FTB Field Offices for Revivor Applications

- For those who have a business client that has been suspended or forfeited that needs to be revived with the FTB, appointments are now available at FTB field offices.
- Will take 16 appointments per day.
- Must call applicable FTB office to schedule an appointment:

Los Angeles 213.897.5196
Oakland 510.622.4693
Sacramento 916.227.6822
San Diego 619.688.3109
Santa Ana 714.558.4505



California Secretary of State – Updated Website: Additional Business Documents Available Online



Alex Padilla
California Secretary of State

Business Entities (BE) **Business Search - Entity Detail**

The California Business Search is updated daily and reflects work processed through Sunday, June 4, 2017. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C0321897 SPARTAN SHOPS, INC.

Registration Date: 06/06/1956
Jurisdiction: CALIFORNIA
Entity Type: DOMESTIC NONPROFIT
Status: ACTIVE
Agent for Service of Process: LISA THOMAS
 ONE WASHINGTON SQ
 SAN JOSE CA 95192-0153

Entity Address: ONE WASHINGTON SQ
 SAN JOSE CA 95192-0153
Entity Mailing Address: ONE WASHINGTON SQ
 SAN JOSE CA 95192-0153

A Statement of Information is due EVERY EVEN-NUMBERED year beginning five months before and through the end of June.

Document Type	File Date	PDF
SI-COMplete	04/18/2016	
SI-COMplete	04/29/2014	

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Swart Enterprises, Inc. 1/12/17

- FTB loses again. On 2/22/17, FTB announces they will not appeal.
- Iowa Corporation with no physical presence or sales in California, owns a 0.2% interest in a manager-managed LLC in California.

The court found:

1. Swart was merely a passive investor in the LLC.
2. Swart had no right to act for the LLC and was not allowed to participate in management and control.
3. When an LLC “checks the box” to be taxed as a partnership that does not make passive investors such as Swart a general partner. Instead, state law determines legal rights of owners. Also, such election might make the LLC a limited partnership.
4. Swart’s interest was comparable to a limited partner interest.
5. An owner’s right to relinquish control over to a manager group is not necessarily evidence of exercising control over the entity. Here, Swart was not an original investor. It never relinquished control. The court also found this issue irrelevant.

Other Recent California Updates:

C Corp. Estimated Tax Penalty Calculation

- On 4/17/17, FTB acknowledged that the estimate penalty ending calculation date under Rev. & Tax. §19145 for C corps. remained at March 15 (did not change when return due date was changed to April 15). FTB may have miscalculated some penalties.
- Contact FTB if you believe the estimated tax penalty was miscalculated (FTB will calculate the penalty to March 15 manually).

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Other Recent California Updates:

Revised Due Date on California Withholding Notification to Non-U.S. Partner / Member

- Beginning on or after 1/1/2016, the California Tax Withholding Statement (Form 592-B (or equivalent)) for non-U.S. partners / members is now normally due the 15th day of the third month following the tax year (March 15 for CY). Previously it was the 15th of the fourth month (April 15).
- Other non-California (but *within* the U.S.) partners / members must still be sent their 592-B by January 31.

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Other Recent California Updates:

Appeal of Lowe/Berkoff (BOE Hearing – Case 571973)

- Actor Rob Lowe and wife Sheryl Berkoff sell home in Santa Barbara for approx. \$25M in 2005.
 - TPs reported approx. \$10M taxable gain on sale.
 - After examination, FTB held that taxable gain was approx. \$19M because most of the detailed documentation re: basis was lost due to crash by TPs former accountants back in 2002.
 - On 9/27/16 BOE held taxable gain at approx. \$13M – allowed evidence of detailed summaries by former accountant. Published in Jan. 2017.
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Disclaimer

- This information is provided for educational purposes. Many of the topics covered could easily be individual lessons on their own. This update serves as awareness of key developments and the basics of each. It is not intended to answer specific tax questions or provide details of the underlying law noted in each update. Application of any item requires the user to consult the primary authority referenced and related rules, and consider the particular facts at hand.
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