

March 1, 2018

Re: 2018 Accountants' Memorandum

Greetings from Miller Kaplan Arase LLP!

This is our annual information brief that is primarily intended to address payroll tax matters and information reporting requirements. We also mention various tax laws and items that we believe will be of particular interest to our clients.

The December 2017 passage of the "Tax Cuts and Jobs Act" (TCJA), H.R. 1 creates tax changes for individuals and entities. While most individual changes are effective for tax years beginning after December 31, 2017 and expire after January 1, 2026, any of the entity changes are permanent. A detailed analysis of TCJA is beyond the scope of this Accountants' Memorandum. We have listed below some of the significant changes. There are substantial changes in the information return reporting rules as a result of TCJA and other laws, which are effective for 2018.

Below is a brief overview of some of the most significant changes, but if you have questions about your specific situation, please don't hesitate to contact us.

- **Pass-Through Income Deduction:** Owners of pass-through businesses will be allowed to deduct 20% of "qualified business income" – which is defined as non-wage income*. The "qualified business income" definition *excludes* income derived from health, law, accounting, actuarial science, performing arts, consulting, athletics, financial service, and brokerage services. The deduction will still be available for owners excluded from the definition of "qualified business income" whose taxable income is less than \$315,000 for married taxpayers filing jointly or \$157,500 for individuals. Higher earning owners of these business may lose the ability to take advantage of this deduction. (**This is calculated by a specific formula. There is an alternative deduction available based on W-2 wages paid by the business. Contact us for more details on this.*)
- **Corporate Tax Rate:** Will be reduced for many corporations to a 21% flat rate.
- **Entertainment Expenses Deduction:** Eliminated. Taxpayers should be cautious about converting entertainment expenses to marketing expenses without the underlying facts necessary to support a marketing expense deduction. This was a target issue for IRS enforcement before the new law. The new law makes it easier for the IRS to target these deductions. The taxpayer always has the burden to prove his expenses.

- **Net-Operating Losses (NOLs):** NOLs will not be able to be carried back, but will be allowed to be carried forward with a limit of 85% on their value.
- **Assets Used in Trade or Business – Section 179:** The limit on current-year expense treatment of assets placed in service in a trade or business will be increased to \$1M and the phase-out limit will be increased to \$2.5M.
- **Bonus Depreciation:** Effective date for tax years ending after September 27, 2017. Bonus depreciation will be increased to 100% (up from 50%) and will allow previously used assets to qualify. This provision has a phase out in 2024 and will be eliminated in 2027. There is, however, a substantial negative impact to retail and restaurant operations as a result of what commentators see as a mistake in the drafting of the bill.
- **Accounting Methods:** The gross receipts thresholds that trigger the required use of the accrual method of accounting will be increased to \$25M or less, generally. Qualified personal service businesses will be allowed to use the cash basis method of accounting without regard to the gross receipts test.
- **Unrelated Business Income (UBIT):** Will be taxed at a 21% flat rate for not-for-profit entities and its computations must be made on a line of business basis. There is no clear definition of the line of business requirements, so it is best at this point to keep adequate records to demonstrate UBIT tax liability on a line of business basis.
- **Nonprofit Salaries:** Nonprofit employers will be subjected to a 21% excise tax on salaries they pay-out above \$1 million.
- TCJA made no 2017 or 2018 change to the Health Care Act (also referred to as “Obamacare”). The change is effective in 2019. Starting in the 2019 tax year individuals will not be fined for failing to have health insurance. The other provisions and requirements of the Health Care Act are not changed.

During 2017, the California state legislature stripped the Board of Equalization of most of its powers, creating two new replacement agencies. Also note that going forward all state payments to and filings with the Employment Development Department (EDD) must be made electronically. This requirement affects all state businesses.

We need to emphasize that any business operating as an S-Corporation should pay shareholders a fair salary. Distributing profits in the absence of salaries and payroll taxes, could subject the company to penalties. Also, it may be beneficial for businesses to make an annual safe harbor election for amounts paid to acquire tangible property. This allows certain asset acquisitions to be expensed.

February 11, 2018

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As we note each year, please take steps to have your payroll and information filings completed on a timely basis. Employers must file wage statements and Forms 1099-MISC with the IRS, state agencies and recipients by January 31 to report salaries and non-employee compensation paid to independent contractors. If you are required to file or pay electronically please do so; otherwise penalties will result.

This memorandum is intended to provide general information. If you have questions or need more detail, please feel free to contact us.

We look forward to serving you in 2018.

Miller Kaplan Arase LLP

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I. EARNINGS REPORTS DUE IN 2018

A. Payroll Taxes1. IRS Form 941 - Employer's Quarterly Federal Tax Return

<u>FICA:</u>	<u>2018</u> Applicable During 2018	<u>2017</u> Applicable During 2017
<u>Social Security Wage Limit</u>	\$128,400	\$127,200
Withholding Tax Rate ("OASDI" Portion Only)	6.2%	6.2%
Maximum Withholding	\$7,960.80	\$7,886.40
Employer Tax Rate ("OASDI" Only)	6.2%	6.2%
Maximum Employer Portion	\$7,960.80	\$7,886.40
 <u>Medicare Wage Limit</u>	 Unlimited	 Unlimited
Tax Rate ("HI" Portion Only)	1.45% *	1.45% *
Maximum Withholding	Unlimited	Unlimited
Employer Matching Tax Rate ("HI" Only)	1.45%	1.45%
Maximum Employer Matching	Unlimited	Unlimited

There is an additional 0.9% Medicare surtax for single individuals with wages exceeding \$200,000 and married couples earning over \$250,000. The surtax does not apply to the employer's share.

<u>Quarter Ending Date</u>	<u>Form 941 Due Dates</u>
December 31, 2017	January 31, 2018
March 31, 2018	April 30, 2018
June 30, 2018	July 31, 2018
September 30, 2018	October 31, 2018

2. IRS Form 940 - Employer's Annual Federal Unemployment Tax Return

	<u>2017</u>	<u>2016</u>
Federal Unemployment Tax - On Annual Wage Limit to Each Employee of	\$7,000.00	\$7,000.00
Federal Unemployment Tax Rate - Employer Only	6.0%	6.0%
Allowable California Credit	<u>3.3%</u> *	<u>3.6%</u> *
Net Federal Tax Rate	<u>2.7%</u>	<u>2.4%</u>

File the Form 940 for the year ended December 31, 2017 no later than January 31, 2018. Note: Deposits for 2017 were required for any quarter when the cumulative liability for the quarter was \$500.00 or more.

*** The credit may be as much as 5.4% of FUTA taxable wages. If you are entitled to the maximum 5.4% credit, the FUTA tax rate after credit is 0.6%. Some states, including California, are subject to a credit reduction until they repay all federal advances to cover unemployment benefits.**

I. EARNINGS REPORTS DUE IN 2018 (Continued)**A. Payroll Taxes (Continued)****2. IRS Form 940 - Employer's Annual Federal Unemployment Tax Return (Continued)**

In general, family members are exempt from federal unemployment insurance and those under age 18 are exempt from social security taxes. Federal income taxes are, however, required to be withheld. These special rules do not apply to family owned partnerships or corporations. For California purposes, family employees are generally exempt from Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance (SDI). However, they are subject to personal income tax withholding.

All employers conducting business in California are subject to the employment tax laws of the California Unemployment Insurance Code (CUIC). Once a business hires an employee, the business is considered an employer and must register with the Employment Development Department (EDD) within 15 days after paying wages in excess of \$100 in a quarter.

3. California Form DE 9

The following is from the California Employment Development Department:

New state law mandates electronic submission of tax returns, wage reports, and payroll tax deposits for all employers.

Effective January 1, 2017, employers with 10 or more employees were required to electronically submit employment tax returns, wage reports, and payroll tax deposits to the Employment Development Department (EDD). All remaining employers will be subject to this requirement beginning January 1, 2018. Any employer required under existing law to electronically submit wage reports and/or electronic funds transfer to the EDD will remain subject to those requirements.

Required Forms

The following forms must be submitted electronically under the e-file and e-pay mandate:

- *Quarterly Contribution Return and Report of Wages (DE 9).*
- *Quarterly Contribution Return and Report of Wages (Continuation) (DE 9C)*
- *Employer of Household Worker(s) Quarterly Report of Wages and Withholdings (DE 3BHW)*
- *Employer of Household Worker(s) Annual Payroll Tax Return (DE 3HW)*
- *Quarterly Contribution Return (DE 3D)*
- *Payroll Tax Deposit (DE 88)*

NOTE: The e-file and e-pay mandate does not apply to employment tax returns, wage reports, or payroll tax deposits submitted for periods prior to the effective date of the mandate.

Employers can use e-Services for Business to comply with the e-file and e-pay mandate. The e-Services for Business function is a fast, easy, and secure way to manage your employer payroll tax accounts online. With e-Services for Business, you can do the following:

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*

A. Payroll Taxes *(Continued)*

3. California Form DE 9 *(Continued)*

- Register for an employer payroll tax account number.
- File returns and reports.
- Make payroll tax deposits and pay other liabilities.
- View and update account information.

Employers may request a waiver from the mandate due to lack of automation, severe economic hardship, current exemption from the federal government, or other good cause. To obtain an E-file and E-pay Mandate Waiver Request (DE 1245W):

- Download the DE 1245W from the EDD website. Visit www.edd.ca.gov/EfileMandate for more information.
- Visit the nearest Employment Tax Office listed in the California Employer's Guide (DE 44) or on the EDD website at www.edd.ca.gov/Office_Locator/.
- Contact the Taxpayer Assistance Center at 888-745-3886.

A summary table is as follows:

	<u>2018</u> Applicable During 2018	<u>2017</u> Applicable During 2017
SUI Tax - Annual Wage Limit (Tax Rate Assigned to Employers Based on Experience)	\$7,000.00 *	\$7,000.00 *
ETT - Annual Wage Limit Tax Rate	\$7,000.00 0.1%	\$7,000.00 0.1%
SDI Tax - Annual Wage Limit Tax Rate	\$114,967.00 1.0%	\$110,902.00 0.9%
Maximum Amounts to be Withheld	\$1,149.67	\$998.12

- * See Form DE 2088, Notice of Contribution Rates and Statement of UI Reserve Account mailed to all employers in December. If you need rate information, call the EDD Contribution Rate Group at (916) 653-7795. Employers have 60 days from the date of notification to dispute their UI contribution rate. The General EDD Telephone Assistance Line is (888) 745-3886. To simplify matters, the state encourages use of their e-services for business function. Log onto www.edd.ca.gov for details.

4. Washington Requirements

Washington State requires businesses to register with that state's Department of Revenue (DOR) if you meet any of the following conditions:

- You are required to collect sales tax
- Your gross income is \$12,000 a year or more
- You are a buyer or processor of specialty wood products

I. EARNINGS REPORTS DUE IN 2018 (Continued)

A. Payroll Taxes (Continued)

4. Washington Requirements (Continued)

Washington State does not have an income tax, but does have a Business & Occupation tax based on gross receipts. The tax rate varies by which classification the business fits into. There are a few credits available. Contact www.bls.dor.wa.gov for more details.

B. Wage and Tax Statement - 2017 Form W-2 (Give to Employees before February 1, 2018)

22222		a Employee's social security number		OMB No. 1545-0008					
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld				
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld				
			5 Medicare wages and tips		6 Medicare tax withheld				
			7 Social security tips		8 Allocated tips				
d Control number			9 Verification code		10 Dependent care benefits				
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans		12a	
f Employee's address and ZIP code		13 Statutory employee		Retirement plan		Third-party sick pay		12b	
		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		12c	
		14 Other						12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement
 Copy 1 - For State, City, or Local Tax Department

2017

Department of the Treasury - Internal Revenue Service

Notes Per Form Instructions:

- Military Differential Pay** - Payments made after 2009 to former employees while they are on active duty for more than 30 days in the Armed Forces or other uniformed services are now treated as wages. Report these payments in box 1 of Form W-2.
- Nonqualified Deferred Compensation Plans** - Section 409A, added by the American Jobs Creation Act of 2004, provides that all amounts deferred under a nonqualified deferred compensation (NQDC) plan for all taxable years are includible in gross income unless certain requirements are satisfied.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**B. Wage and Tax Statement - 2017 Form W-2 (Give to Employees before February 1, 2018) (Continued)****Notes Per Form Instructions: (Continued)****Additional Note:**

S Corporation Fringe Benefits – An S corporation treats taxable fringe benefits paid on behalf of its 2% shareholder-employees as additional compensation to them. The corporation deducts the additional compensation on page 1, line 7 (“Compensation of officers”) or line 8 (“Salaries and wages”) of its Form 1120S. The corporation reports the additional compensation to the shareholder-employees on Forms W-2. The additional compensation is subject to federal tax withholding and is generally subject to employment taxes (FICA and FUTA). However, payments made pursuant to a plan providing accident and health coverage are only subject to income tax withholding; they are not subject to any other employment taxes.

- 3. Qualified Transportation Fringe Benefits** – In 2017, employees may exclude from income \$255 per month in transit benefits and \$255 per month in parking benefits – up to a maximum combined total of \$510 per month. Employees may receive benefits for commuter transportation and transit passes and benefits for parking during the same month; they are not mutually exclusive. There is also a \$20 per month qualified bicycle commuting exclusion.

These qualified transportation fringe benefits are excluded from an employee’s gross income for income tax purposes and from an employee’s wages for payroll tax purposes.

- 4. Employer Provided Educational Assistance** – There is an annual personal income tax exclusion of up to \$5,250 for employees’ educational assistance programs.
- 5. Deceased Employee’s Wages** – The IRS has special instructions for reporting wages if an employee dies during the year. Consult the instructions to 2017 Form W-2.
- 6. Group-Term Life Insurance** – You must include in your employees’ wages subject to social security and Medicare taxes, the cost of group-term life insurance that is greater than the cost of \$50,000 of coverage, reduced by the amount the employee paid toward the insurance. Report this as wages in boxes 1, 3, and 5 of the employee’s 2017 Form W-2. Also, include it in box 12 with code C.

Figure the monthly cost of the insurance includible in the employee’s wages by multiplying the number of thousands of dollars of insurance coverage over \$50,000 (figured to the nearest 10th) by the cost shown in the following table. Use the employee’s age on the last day of the tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*B. Wage and Tax Statement - 2017 Form W-2 (Give to Employees before February 1, 2018) *(Continued)*Notes Per Form Instructions: *(Continued)*

COST PER \$1,000 OF PROTECTION FOR ONE MONTH	
Age	Cost
Under 25.....	\$.05
25 through 29.....	.06
30 through 34.....	.08
35 through 39.....	.09
40 through 44.....	.10
45 through 49.....	.15
50 through 54.....	.23
55 through 59.....	.43
60 through 64.....	.66
65 through 69.....	1.27
70 and older.....	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of full months coverage at that cost. For example, for a 50-year old employee with \$500,000 of group-term coverage, the total cost to include is \$1,242, as follows:

\$450 (insurance coverage over \$50,000 in thousands of dollars) x .23 (cost per table) x 12 months = \$1,242

7. Selected notes for particular boxes follow:

Box b – Provide the Federal employer identification number (FEIN) assigned by the IRS. Do not use a prior FEIN once a FEIN is changed.

Box d – Control Number: This is optional. Employers may use this box to identify Forms W-2.

Box 3 – Social Security Wages: Cannot exceed \$127,200 for 2017.

Box 4 – Social Security Tax Withheld: Cannot exceed \$7,886.40 for 2017.

Box 5 – Medicare wages and tips: Unlimited for 2017.

Box 6 – Medicare tax withheld: Unlimited for 2017.

Box 11 – Show total distributions to the employee from a non-qualified deferred compensation plan or a Sec. 457 plan during 2017, here and in Box 1 (but not if reported in Boxes 3 or 5). Also include in Box 11 amounts under a nonqualified plan or a Sec. 457 plan that became taxable during the year for social security and Medicare tax purposes, but were for services performed in a prior year. Payments to beneficiaries of deceased employees are reportable on Form 1099-R.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**B. Wage and Tax Statement - 2017 Form W-2 (Give to Employees before February 1, 2018) (Continued)****Notes Per Form Instructions: (Continued)**

Box 12 – Enter a code (A through EE) for items such as cost of group term life insurance over \$50,000 (Code C), elective deferrals to a section 401(k) arrangement (Code D), etc. Do not enter more than four items in box 12. If more than four items are needed, use a separate W-2.

The Affordable Care Act requires employers with 250 or more employees to disclose on Forms W-2 the value of the employee's health insurance coverage. As it stands for now this is merely a reporting requirement and does not impact taxable income. Starting in 2020 a 40% excise tax (dubbed the "Cadillac tax") is scheduled to kick in on the cost of health plans in excess of \$10,200 for self-only coverage and \$27,450 for families.

Box 13 – Mark all checkboxes that apply.

Statutory Employees. Mark this checkbox for statutory employees whose earnings are subject to social security and Medicare taxes but not subject to Federal income tax withholding. There are workers who are independent contractors under the common-law rules but are treated by statute as employees. They are called statutory employees.

Box 14 – Other. The lease value of a vehicle provided to your employee and reported in box 1 must be reported here or in a separate statement to your employee. You may also use this box for any other information you want to give your employee.

Boxes 15 through 20 – For State information. Enter in Box 19 the amount of SDI actually withheld, and in Box 20 the letters "CASDI". The 2017 SDI maximum was \$998.12.

In a new regulation issued in an effort to combat identity theft, the IRS will be eliminating the automatic 30-day extension that has been available with the filing of Form 8809. Thus, beginning in 2017 extensions will only be granted due to extraordinary circumstances.

C. Transmittal Form Addresses**The Following Form is Due by January 31, 2018:****1. 2017 Form W-3 (Federal)**

The IRS no longer mails paper tax packages. If you file 250 or more Forms W-2, then you must file them electronically. The IRS encourages you to file electronically even if you are filing fewer than 250 Forms W-2. Electronic filing of Forms W-2 and W-3 is free at socialsecurity.gov/bsowelcome.htm.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**C. Transmittal Form Addresses (Continued)****The Following Form is Due by January 31, 2018: (Continued)****1. 2017 Form W-3 (Federal) (Continued)**

File Copy A of Form W-2 with the entire first page of Form W-3 at the following address:

If Using United States Postal Service:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001
**(For certified mail use Zip
Code 18769-0002)**

For Other IRS Approved Private Delivery Services:

Social Security Administration
Data Operations Center
Attn: W-2 Process
1150 E. Mountain Dr.
Wilkes-Barre, PA 18702-7997

2. 2017 Form DE 9 (California)

The Quarterly Return and Report of Wages must be e-filed to the EDD. Visit www.edd.ca.gov/payroll_taxes/e-services_for_business.htm.

D. Information Forms**1. Taxpayer Identification Number Solicitation. Forms W-8 and W-9 series.**

- a. All US payers of reportable payments are required to solicit taxpayer identification numbers on a Form W-9 or a substitute W-9; or in the case of non-resident aliens (NRAs) one of the W-8 series Forms. Solicitation is the only safe harbor method of collection authorized by the IRS Regulations.
- b. TIN Matching. IRS has established an on-line TIN matching program that allows payors of reportable payments and their agents to verify the payee TINs required to be reported on information returns and payee statements. IRS maintains a name/TIN data base specifically for the matching program. Before a program participant files an information return, it may check the TIN furnished by the payee against the name/TIN combination in the data base. IRS will inform the payor whether there is a match. A name/TIN match may serve as reasonable cause that will avoid a penalty for failure to file correct information returns or furnish correct payee statements. IRS will waive the penalty if the payor documents the match as set forth in IRS Pub No. 2108-A, On-Line Taxpayer Identification Number (TIN) Matching Program.
- c. **New Forms W-9 and W-8 series.**
 - i. The IRS issued a revised version of Form W-9 in November 2017. <https://www.irs.gov/pub/irs-pdf/fw9.pdf>. Though reliance on the old form is permitted in some circumstances for grandfathered or pre-existing obligations, *all new solicitations should be made with the new form*. The new W-9 conforms to current FATCA regulations and includes the option for the taxpayer to certify that the taxpayer is exempt from FATCA reporting.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**D. Information Forms (Continued)****c. New Forms W-9 and W-8 series. (Continued)**

- ii. Forms W-8 are used to certify foreign status. The IRS also issued revised W-8 forms in 2017, splitting the single W-8 into W-8BEN for individuals and W-8BEN-E for entities. The revised W-8 BEN is dated July 2017. <https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>. The Instructions for the Form W-8 series forms were revised in July 2017.

The forms have been revised to conform to the new FATCA rules, and all new solicitations should be made using these new forms.

2. Foreign Account Tax Compliance Act Requirements

The Foreign Account Tax Compliance Act (FATCA) requires U.S. withholding agents paying FATCA withholdable income to withhold 30% on certain U.S. source payments made to foreign entities, if the agent is unable to document the entities for purposes of FATCA. Current FATCA regulations, and the regulations that coordinate FATCA withholding (Chapter 4 withholding) with the regulations addressing withholding on nonresident aliens (Chapter 3 withholding), require the withholding agent to presume that certain payees (apart from certain pre-existing obligations) are foreign, unless there is documentation establishing the entity to be a U.S. person.

3. Eyeball Test

"Eyeball test" no longer available. The fact that an entity name includes "Incorporated," "Inc.," "Corporation," or "Corp." (the "eyeball test") is no longer sufficient to establish U.S. exempt status. Form W-9 is the only documentation that will suffice to prove U.S. status and to avoid applicable Chapter 3 or Chapter 4 withholding and penalties.

4. IRS Form 1099 Series - U.S. Information Returns

Generally, file Form 1099 for any individual, partnership, or trust (non-corporate entity) to whom you paid rents, dividends, interest, commissions, fees, payments for services (not wages), etc. See the instructions to determine what type and amount of payments must be reported in the boxes and the correct type of Form 1099 to use. Note: Businesses paying limited liability companies have to issue 1099 forms if annual payments total \$600 or more. There is an exception if the LLC has filed Form 8832 with the IRS to elect to be taxed as a corporation. (Most LLCs choose to be taxed as partnerships or sole proprietorships.) The only safe harbor method for determining this election is a Form W-9 or a substitute W-9.

Prepare in triplicate (no photocopies allowed); Copy A to be transmitted to IRS with Form 1096, a copy for the recipient, and a copy for the employer's files. Give recipient their copy no later than February 1, 2018. Forms 1099 should be typed or machine printed, although for 2017 most Forms 1099 may now be furnished electronically to taxpayers with their consent. Please remember to include a telephone number below the address in the payer's section. A toll-free number has been implemented for IRS's Information Reporting Call Site. In response to requests from many employers, the toll-free number is 866-455-7438.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**D. Information Forms (Continued)****5. IRS Form 1096 - Annual Summary and Transmittal U.S. Information Returns**

Fill in name and address of payer. Indicate the number and type of Forms 1099 attached. Sign and mail to **Internal Revenue Service, Kansas City, Missouri 64999** (if company is located in California) before March 1, 2018. If not filed by the due date, significant penalties apply. If you file electronically, the due date is now March 31.

IMPORTANT NOTE: See new due date information for federal copy of Form 1099-MISC in tax changes section.

Filers and transmitters of information returns can obtain an extension of time to file by submitting a signed paper Form 8809, Request for Extension of Time to File Information Returns. The extensions are most often for a period of 30 days. Filers and transmitters may thereafter request an additional 30-day extension. The extensions apply only to filing with the government. The filer or transmitter must still provide statements to the recipients by the required due date.

If you are filing 250 or more returns of the same type, see IRS Publication 1220, Specifications for Filing Information Returns Electronically. The law requires such returns to be filed electronically.

Payees who file paper returns with the IRS need not send a paper copy to the California FTB; the IRS forwards the information to the FTB.

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*D. Information Forms (Continued)6. Guide to More Common Information Returns

Guide to Information Returns (If any date shown falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.)

Form	Title	What To Report	Amounts To Report	Due Date	
				To IRS	To Recipient (unless indicated otherwise)
1042-S	Foreign Person's U.S. Source Income Subject to Withholding	Income such as interest, dividends, royalties, pensions and annuities, etc., and amounts withheld under Chapter 3. Also, distributions of effectively connected income by publicly traded partnerships or nominees.	See form instructions	March 15	March 15
1097-BTC	Bond Tax Credit	Tax credit bond credits to shareholders.	All amounts	February 28*	On or before the 15th day of the 2nd calendar month after the close of the calendar month in which the credit is allowed
1098	Mortgage Interest Statement	Mortgage interest (including points) and certain mortgage insurance premiums you received in the course of your trade or business from individuals and reimbursements of overpaid interest.	\$600 or more	February 28*	(To Payer/Borrower) January 31
1098-C	Contributions of Motor Vehicles, Boats, and Airplanes	Information regarding a donated motor vehicle, boat, or airplane.	Gross proceeds of more than \$500	February 28*	(To Donor) 30 days from date of sale or contribution
1098-E	Student Loan Interest Statement	Student loan interest received in the course of your trade or business.	\$600 or more	February 28*	January 31
1098-MA	Mortgage Assistance Payments	Assistance payments paid to homeowners from funds allocated from the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HFA Hardest Hit Fund) or the Emergency Homeowners' Loan Program.	All amounts	February 28	January 31
1098-Q	Qualifying Longevity Annuity Contract Information	Status of a contract that is intended to be a qualifying longevity annuity contract (QLAC), defined in section A-17 of 1.401(a)(9)-6, that is purchased or held under any plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 (other than a Roth IRA) or eligible governmental plan under section 457(b).	All amounts	February 28	January 31
1098-T	Tuition Statement	Qualified tuition and related expenses, reimbursements or refunds, and scholarships or grants (optional).	See instructions	February 28*	January 31
1099-A	Acquisition or Abandonment of Secured Property	Information about the acquisition or abandonment of property that is security for a debt for which you are the lender.	All amounts	February 28*	(To Borrower) January 31
1099-B	Proceeds From Broker and Barter Exchange Transactions	Sales or redemptions of securities, futures transactions, commodities, and barter exchange transactions (including payments reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)).	All amounts	February 28*	February 15**
1099-C	Cancellation of Debt	Cancellation of a debt owed to a financial institution, the Federal Government, a credit union, RTC, FDIC, NCUA, a military department, the U.S. Postal Service, the Postal Rate Commission, or any organization having a significant trade or business of lending money.	\$600 or more	February 28*	January 31
1099-CAP	Changes in Corporate Control and Capital Structure	Information about cash, stock, or other property from an acquisition of control or the substantial change in capital structure of a corporation.	Over \$1,000	February 28*	(To Shareholders) January 31, (To Clearing Organization) January 5
1099-DIV	Dividends and Distributions	Distributions, such as dividends, capital gain distributions, or nontaxable distributions, that were paid on stock and liquidation distributions (including distributions reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)).	\$10 or more, except \$600 or more for liquidations	February 28*	January 31**
1099-G	Certain Government Payments	Unemployment compensation, state and local income tax refunds, agricultural payments, and taxable grants.	\$10 or more for refunds and unemployment	February 28*	January 31
1099-INT	Interest Income	Interest income (including payments reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)); market discount subject to an election under section 1278(b).	\$10 or more (\$600 or more in some cases)	February 28*	January 31**
1099-K	Payment Card and Third Party Network Transactions	Payment card transactions.	All amounts	February 28*	January 31
		Third party network transactions.	\$20,000 or more and 200 or more transactions		

*The due date is March 31 if filed electronically.

**The due date is March 15 for reporting by trustees and middlemen of WHFITs.

I. EARNINGS REPORTS DUE IN 2018 (Continued)

D. Information Forms (Continued)

6. Guide to More Common Information Returns (Continued)

Guide to Information Returns (Continued)

Form	Title	What To Report	Amounts To Report	Due Date		
				To IRS	To Recipient (unless indicated otherwise)	
1099-LTC	Long-Term Care and Accelerated Death Benefits	Payments under a long-term care insurance contract and accelerated death benefits paid under a life insurance contract or by a viatical settlement provider.	All amounts	February 28*	January 31	
1099-MISC	Miscellaneous Income (Also, use to report direct sales of \$5,000 or more of consumer goods for resale.)	Rent or royalty payments; prizes and awards that are not for services, such as winnings on TV or radio shows (including payments reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)).	\$600 or more, except \$10 or more for royalties	February 28* Note: If any payments for nonemployee compensation are reported in box 7, the due date is January 31 for both paper and electronic returns.	January 31**	
		Payments to crew members by owners or operators of fishing boats including payments of proceeds from sale of catch.	All amounts			
		Section 409A income from nonqualified deferred compensation plans (NQDCs).	All amounts			
		Payments to a physician, physicians' corporation, or other supplier of health and medical services. Issued mainly by medical assistance programs or health and accident insurance plans.	\$600 or more			
		Payments for services performed for a trade or business by people not treated as its employees (including payments reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)). Examples: fees to subcontractors or directors and golden parachute payments.	\$600 or more			
		Fish purchases paid in cash for resale.	\$600 or more			
		Crop insurance proceeds.	\$600 or more			
		Substitute dividends and tax-exempt interest payments reportable by brokers.	\$10 or more			February 15**
		Gross proceeds paid to attorneys.	\$600 or more			February 15**
		A U.S. account for chapter 4 purposes to which you made no payments during the year that are reportable on any applicable Form 1099 (or a U.S. account to which you made payments during the year that do not reach the applicable reporting threshold for any applicable Form 1099) reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A).	All amounts (including \$0)		January 31**	
1099-OID	Original Issue Discount	Original issue discount (including amounts reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)); market discount subject to an election under section 1278 (b).	\$10 or more	February 28*	January 31**	
1099-PATR	Taxable Distributions Received From Cooperatives	Distributions from cooperatives passed through to their patrons including any domestic production activities deduction and certain pass-through credits.	\$10 or more	February 28*	January 31	
1099-Q	Payments From Qualified Education Programs (Under Sections 529 and 530)	Earnings from qualified tuition programs and Coverdell ESAs.	All amounts	February 28*	January 31	
1099-QA	Distributions from ABLE Accounts	Distributions from ABLE accounts.	All amounts	February 28	January 31	
1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	Distributions from retirement or profit-sharing plans, any IRA, insurance contracts, and IRA recharacterizations (including payments reported pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(B) or reported as described in Regulations section 1.1471-4(d)(2)(iii)(A)).	\$10 or more	February 28*	January 31	
1099-S	Proceeds From Real Estate Transactions	Gross proceeds from the sale or exchange of real estate and certain royalty payments.	Generally, \$600 or more	February 28*	February 15	
1099-SA	Distributions From an HSA, Archer MSA, or Medicare Advantage MSA	Distributions from an HSA, Archer MSA, or Medicare Advantage MSA.	All amounts	February 28*	January 31	

*The due date is March 31 if filed electronically.

**The due date is March 15 for reporting by trustees and middlemen of WHFITs.

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*

D. Information Forms (Continued)

6. Guide to More Common Information Returns (Continued)

Guide to Information Returns (Continued)

Form	Title	What To Report	Amounts To Report	Due Date	
				To IRS	To Recipient (unless indicated otherwise)
3921	Exercise of an Incentive Stock Option Under Section 422(b)	Transfer of stock pursuant to the exercise of an incentive stock option under section 422(b).	All amounts	February 28*	January 31
3922	Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)	Transfer of stock acquired through an employee stock purchase plan under section 423(c).	All amounts	February 28*	January 31
5498	IRA Contribution Information	Contributions (including rollover contributions) to any individual retirement arrangement (IRA), including a SEP, SIMPLE, and Roth IRA; Roth conversions; IRA recharacterizations; and the fair market value (FMV) of the account.	All amounts	May 31	(To Participant) For FMV/RMD, Jan 31; For contributions, May 31
5498-ESA	Coverdell ESA Contribution Information	Contributions (including rollover contributions) to a Coverdell ESA.	All amounts	May 31	April 30
5498-QA	ABLE Account Contributions Information	Contributions (including rollover contributions) to an ABLE account	All amounts	May 31	March 15
5498-SA	HSA, Archer MSA, or Medicare Advantage MSA Information	Contributions to an HSA (including transfers and rollovers) or Archer MSA and the FMV of an HSA, Archer MSA, or Medicare Advantage MSA.	All amounts	May 31	(To Participant) May 31
W-2G	Certain Gambling Winnings	Gambling winnings from horse racing, dog racing, jai alai, lotteries, keno, bingo, slot machines, sweepstakes, wagering pools, poker tournaments, etc.	Generally, \$600 or more; \$1,200 or more from bingo or slot machines; \$1,500 or more from keno	February 28*	January 31

*The due date is March 31 if filed electronically.

E. Rules on 2017 Withholding from Supplemental Wage Payments

1. General Requirements

The following discussion provides guidance on the proper way to withhold federal income tax from supplemental wage payments made in addition to regular wages:

Supplemental wages are compensation paid to an employee in addition to regular wages. Supplemental wage payments include bonuses, commissions, overtime pay, accumulated sick leave, severance pay, awards, prizes, back pay, retroactive wage increases for current employees, and payments for nondeductible moving expenses.

The payments may be made at a different time from regular wage payments, or may be based on a different wage rate or a different payroll period from regular wages, or on no particular payroll period at all. The federal supplemental withholding rate is generally 25%. However, payments over \$1 million are subject to withholding at the highest federal tax rate, currently 39.6%.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**E. Rules on 2017 Withholding from Supplemental Wage Payments (Continued)****1. General Requirements (Continued)**

You must decide whether to treat supplemental wage payments as regular wages or to separate them from regular wages before you withhold. The IRS provides computation rules that explain when supplemental wages must be included with regular wage payments and when they must be reported separately. The rules apply to supplemental payments made in the same calendar year that regular wages are paid.

The State of California classifies supplemental and bonus payments into three categories for tax purposes as follows:

1. Regular Pay – All wages in the regular pay category are taxed based on the employee's W-4 in effect at the time the payment is made.
2. Supplemental Wages (such as overtime, severance pay and housing allowance) – The supplemental flat tax rate will be used if the payments are not paid with the employee's regular wages. If the payment is made with regular pay, the payment is taxed based on the employee's W-4; otherwise, the payment is taxed at the supplemental flat tax rate in effect at the time the payment is made, now 6.6%.
3. Bonus Wages – The bonus flat tax rate will be used if the payments are not paid with the employee's regular wages. If the payment is made with regular pay, the payment is taxed based on the employee's W-4; otherwise the payment is taxed at the bonus flat rate in effect at the time the payment is made, currently 10.23%.

A payer is required to withhold on reportable payments, such as interest and dividends, under the following circumstances:

- a. The payee fails to furnish his TIN to the payor in the manner required;
- b. The IRS notifies the payor that the TIN furnished by the payee was incorrect;
- c. The IRS notifies the payor that backup withholding is required because the payee failed to properly report interest or dividends; or
- d. The payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding when such certification is required.

2. IRS Form 945 - Annual Return of Withheld Federal Income Tax

Use this Form to report nonpayroll income tax withholding. These nonpayroll items include backup withholding and withholding on pensions, annuities, IRAs, and gambling winnings. Semi-weekly depositors are required to file Form 945-A, a summary of the tax liability, with their Forms 945.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**E. Rules on 2017 Withholding from Supplemental Wage Payments (Continued)****2. IRS Form 945 - Annual Return of Withheld Federal Income Tax (Continued)**

Federal tax deposits must be made by electronic funds transfer. Generally, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). However, if a taxpayer's total taxes for the year are less than \$2,500, the taxpayer is not required to make deposits, and can pay the taxes with the Form 945.

3. California Form 592 - Return for Tax Withheld at Source

Withholding agents must remit payments of tax withheld at source to the Franchise Tax Board by the required due dates in order to avoid interest assessments. Additionally, if Form 594, "Notice to Withhold Tax at Source" is issued by the California Franchise Tax Board, it must be completed as indicated in the instructions to that form. Starting in 2010, the state added a new voucher that must be included with all payments.

F. Affordable Care Act Reporting

The following IRS instructions for Forms 1094-C and 1095-C apply:

Employers with 50 or more full-time employees (including full-time equivalent employees) in the previous year use Forms 1094-C and 1095-C to report the information required under sections 6055 and 6056 about offers of health coverage and enrollment in health coverage for their employees. Form 1094-C must be used to report to the IRS summary information for each ALE Member and to transmit Forms 1095-C to the IRS. Form 1095-C is used to report information about each employee to the IRS and to the employee. Forms 1094-C and 1095-C are used in determining whether an ALE Member owes a payment under the employer shared responsibility provisions under section 4980H. Form 1095-C is also used in determining the eligibility of employees for the premium tax credit.

ALE Members that offer employer-sponsored self-insured coverage also use Form 1095-C to report information to the IRS and to employees about individuals who have minimum essential coverage under the employer plan and therefore are not liable for the individual shared responsibility payment for the months that they are covered under the plan.

An ALE Member must file one or more Forms 1094-C (including a Form 1094-C designated as the Authoritative Transmittal, whether or not filing multiple Forms 1094-C), and must file a Form 1095-C for each employee who was a full-time employee of the ALE Member for any month of the calendar year. Generally, the ALE Member is required to furnish a copy of the Form 1095-C (or a substitute form) to the employee.

An ALE Member is, generally, a single person or entity that is an Applicable Large Employer, or if applicable, each person or entity that is a member of an Aggregated ALE Group. An Applicable Large Employer, generally, is an employer with 50 or more full-time employees (including full-time equivalent employees) in the previous year.

I. EARNINGS REPORTS DUE IN 2018 (Continued)

F. Affordable Care Act Reporting (Continued)

Generally, you must file Forms 1094-C and 1095-C by February 28 if filing on paper (or March 31 if filing electronically) of the year following the calendar year to which the return relates. For calendar year 2017, Forms 1094-C and 1095-C are required to be filed by February 28, 2018, or March 31, 2018, if filing electronically.

Form 1095-C
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage
Do not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID
 CORRECTED

OMB No. 1545-2251
2017

Part I Employee				Applicable Large Employer Member (Employer)									
1 Name of employee		2 Social security number (SSN)		7 Name of employer					8 Employer identification number (EIN)				
3 Street address (including apartment no.)				9 Street address (including room or suite no.)					10 Contact telephone number				
4 City or town		5 State or province		6 Country and ZIP or foreign postal code			11 City or town		12 State or province		13 Country and ZIP or foreign postal code		

Part II Employee Offer of Coverage	Plan Start Month (Enter 2-digit number):												
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													

Part III Covered Individuals															
If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee. <input type="checkbox"/>															
(a) Name of covered individual(s)	(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form 1095-C (2017)

G. Household Employee Taxes

If you pay a household employee cash wages of more than the amount specified by law in a tax year, \$2,000 in 2017 and \$2,100 in 2018, you must withhold social security and Medicare taxes from all cash wages you pay to that employee. Unless you prefer to pay your employee's share of social security and Medicare taxes from your own funds, you should withhold a certain percentage set by law from each payment of cash wages. The specified dollar amount and percentages can be found under the topic "Do You Need To Pay Employment Taxes?" in IRS Publication 926. Instead of paying this amount to your employee, pay it to the IRS with a matching amount for your share of the taxes. If you pay your employee's share of social security and Medicare taxes from your own funds, these amounts must be included in the employee's wage for income tax purposes. However, they are not counted as social security and Medicare wages or as Federal unemployment wages.

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*

G. Household Employee Taxes *(Continued)*

You are not required to withhold federal income tax from wages you pay to a household employee. However, if your employee asks you to withhold federal income tax and you agree, you will need Form W-4, Employee's Withholding Allowance Certificate, and IRS Publication 15, (Circular E), Employer's Tax Guide, which has tax withholding tables.

If you withhold or pay social security and Medicare taxes, or withhold federal income tax, you will need to file Form W-2, Wage and Tax Statement after the end of the year. You will also need a Form W-3, Transmittal of Wage and Tax Statement. To complete Form W-2 you will need both an employer identification number and your employee's social security number. If you do not already have an employer identification number (EIN), one can be requested by submitting Form SS-4 Application for Employer Identification Number.

If you paid cash wages to household employees totaling more than the specified dollar amount in any calendar quarter of the prior two years, you generally must pay federal unemployment tax on a portion of the specified amount of cash wages you pay to each of your household employees in the current and following taxable years. For specific amounts look under the heading "Do You Need To Pay Employment Taxes?" in IRS Publication 926.

If you must file Form W-2 or pay federal unemployment tax, you will also need to file a Form 1040, Schedule H, Household Employment Taxes, after the end of the year with your individual income tax return.

In California, a household employer must report when he/she employs one or more individuals to perform work and pays cash wages of \$750 or more in a calendar quarter. You must register with the Employment Development Department (EDD) by submitting an Employers of Household Workers Registration and Update Form (DE1 HW) within 15 days after you pay \$750 in total cash wages. Register online using e-Services for Business.

For more information on withholding, call FTB's Withhold at Source Unit at (916) 845-4900.

H. Penalties

Withheld federal income taxes, social security and Medicare taxes along with certain excise taxes are called trust fund taxes. If trust fund taxes are willfully not collected, not truthfully accounted for, and not paid, the IRS may charge a trust fund recovery penalty. The penalty is equal to 100% of the trust fund taxes evaded and may apply to a person or persons the IRS decides is responsible. Information return penalties (filing of Forms W-2, 1099, etc.) fall into three categories, as follows:

1. Failure to File Correct Information Returns by Due Date:

The penalty applies to the failure to file timely returns, failure to include all information required to be shown on a return, and including incorrect information on a return (including taxpayer identification numbers). The penalty also applies for filing on paper when required to file on magnetic media, or failing to file paper forms that are machine readable.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**H. Penalties (Continued)****2. Failure to Furnish Correct Payee Statements:**

P. L. 114-27, section 806, increased penalties for failure to file correct information returns and provide correct payee statements for information returns required to be filed after December 31, 2015.

Penalties are discussed in Section O in the IRS General Instructions for Certain Information Returns. The penalties in the bulleted list under "Failure To File Correct Information Returns by the Due Date (Section 6721)" are revised as follows:

- \$50 per information return if you correctly file within 30 days (by March 30 if the due date is February 28); maximum penalty \$547,000 per year (\$191,000 for small businesses).
- \$100 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$1,641,000 per year (\$547,000 for small businesses).
- \$250 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$3,282,500 per year (\$1,094,000 for small businesses).

Also, in the "Caution" that comes after the bulleted list, the penalty is increased to \$270 per information return.

Under "Failure To Furnish Correct Payee Statements (Section 6722)" the penalty due to intentional disregard of the requirements to furnish a correct payee statement is increased. The revised penalty is at least \$540 per payee statement with no maximum penalty.

Generally, no information return is required to be filed with the FTB unless the California amounts are different from the federal.

California has its own unique provision that provides that the FTB may disallow a deduction to a taxpayer for amounts paid as remuneration for personal services if that business fails to report the payments on a W-2 or 1099.

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*H. Penalties *(Continued)*2. Failure to Furnish Correct Payee Statements: (Continued)

IRC 6721 & IRC 6722 Penalty for Large Businesses with Gross Receipts Over \$5 Million

Time of Filing	Penalty Rate	Returns Due Between 01-01-2011 Through 12-31-2015	Returns Due on or After 01-01-2016 (Base Rates, indexed for annual inflation)*	Inflationary Adjusted Amounts for Tax Year 2015*	Inflationary Adjusted Amounts for Tax Year 2016*	Inflationary Adjusted Amounts for Tax Year 2017*	Inflationary Adjusted Amounts for Tax Year 2018*
Not more than 30 days late	Per return	\$30	\$50	\$50	\$50	\$50	\$50
	Maximum	\$250,000	\$500,000	\$529,500	\$532,000	\$536,000	\$547,000
31 days late - August 1	Per return	\$60	\$100	\$100	\$100	\$100	\$100
	Maximum	\$500,000	\$1,500,000	\$1,589,000	\$1,596,500	\$1,609,500	\$1,641,000
After August 1	Per return	\$100	\$250	\$260	\$260	\$260	\$270
	Maximum	\$1,500,000	\$3,000,000	\$3,178,500	\$3,193,000	\$3,218,500	\$3,282,500
Intentional disregard	Per return**	\$250	\$500	\$520	\$530	\$530	\$540
	Maximum	No limitation	No limitation	No limitation	No limitation	No limitation	No limitation

* P.L. 114-27 (H.R. 1295, Section 806) increases the penalty amounts for returns required to be filed after December 31, 2015. P.L. 113-295 (H.R. 5771, Section 208) provides that penalty amounts be annually adjusted for inflation for returns required to be filed in a calendar year beginning after 2014. Inflationary adjusted amounts for tax years 2015, 2016, 2017, and 2018 were published in Revenue Procedures 2016-11, 2015-53, 2016-55, and 2017-58, respectively. See subsequent annual Revenue Procedure guidance for inflationary adjustments for tax year 2019 and after.

** Increased penalty amounts may apply in the case of certain failures in the case of intentional disregard. See IRC 6721(e)(2).

I. EARNINGS REPORTS DUE IN 2018 *(Continued)*

H. Penalties *(Continued)*

2. Failure to Furnish Correct Payee Statements: (Continued)

IRC 6721 and IRC 6722 Penalty for Small Businesses with Gross Receipts Less Than or Equal to \$5 Million

Time of Filing	Penalty Rate	Returns Due Between 01-01-2011 Through 12-31-2015	Returns Due on or After 01-01-2016 (Base Rates, indexed for annual inflation)*	Inflationary Adjusted Amounts for Tax Year 2015*	Inflationary Adjusted Amounts for Tax Year 2016*	Inflationary Adjusted Amounts for Tax Year 2017*	Inflationary Adjusted Amounts for Tax Year 2018*
Not more than 30 days late	Per return	\$30	\$50	\$50	\$50	\$50	\$50
	Maximum	\$75,000	\$175,000	\$185,000	\$186,000	\$187,500	\$191,000
31 days late - August 1	Per return	\$60	\$100	\$100	\$100	\$100	\$100
	Maximum	\$200,000	\$500,000	\$529,500	\$532,000	\$536,000	\$547,000
After August 1	Per return	\$100	\$250	\$260	\$260	\$260	\$270
	Maximum	\$500,000	\$1,000,000	\$1,059,500	\$1,064,000	\$1,072,500	\$1,094,000
Intentional Disregard	Per return**	\$250	\$500	\$520	\$530	\$530	\$540
	Maximum	No limitation	No limitation	No limitation	No limitation	No limitation	No limitation

* P.L. 114-27 (H.R. 1295, Section 806) increases the penalty amounts for returns required to be filed after December 31, 2015. P.L. 113-295 (H.R. 5771, Section 208) provides that penalty amounts be annually adjusted for inflation for returns required to be filed in a calendar year beginning after 2014. Inflationary adjusted amounts for tax years 2015, 2016, 2017, and 2018 were published in Revenue Procedures 2016-11, 2015-53, 2016-55, and 2017-58, respectively. See subsequent annual Revenue Procedure guidance for inflationary adjustments for tax year 2019 and after.

** Increased penalty amounts may apply in the case of certain failures in the case of intentional disregard. See IRC 6721(e)(2).

I. Electronic Federal Tax Payment System (EFTPS)

EFTPS is a free payment system provided by the U.S. Treasury Department. The following is from the irs.gov website:

Every user must have a secure Internet browser with 128-bit encryption in order to access the site. To log on to the system, an enrolled user must be authenticated with three pieces of unique information:

- Businesses and Individuals can schedule payments up to 365 days in advance. Scheduled payments can be changed or cancelled up to two business days in advance of the scheduled payment date.
- You can use EFTPS® to make all your federal tax payments, including income, employment, estimated and excise taxes.

I. EARNINGS REPORTS DUE IN 2018 (Continued)**I. Electronic Federal Tax Payment System (EFTPS) (Continued)**

- You can check up to 16 months of your EFTPS® payment history online or by calling EFTPS® Customer Service.

By 8 p.m. ET at least one calendar day in advance of the due date, submit your payment instructions to EFTPS® to move the funds from your account to the Treasury's account for payment of your federal taxes. Funds will not move from your account until the date you indicate. You will receive an immediate acknowledgement of your payment instructions, and your bank statement will confirm the payment was made.

To enroll, or for more information on enrollment, visit EFTPS® or call EFTPS® Customer Service to request an enrollment form:

- 1-800-555-4477
- 1-800-733-4829 (TDD Hearing-Impaired)
- 1-800-244-4829 (Español)

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION**A. Employer Reimbursement Plan Rules**

Reimbursements that do not meet IRS "accountable" standards must be reported as salary or wages on Form W-2. An employee is eligible to deduct the related expenses as miscellaneous itemized deductions subject to the 2% adjusted gross income and standard deduction limitations. If the reimbursements meet IRS rules, the plan is called "an accountable plan" and the reimbursements will generally not be reported on Form W-2. Under "an accountable plan" the employee may deduct otherwise allowable expenses which are in excess of the reimbursement as miscellaneous itemized deductions subject to various limitations previously stated.

B. Accountable Plan Defined

A reimbursement or other expense allowance arrangement constitutes an accountable plan if it has the following three elements:

1. The related expense has a business connection;
2. the employer requires the employee to substantiate the expenses; and
3. the employer requires the employee to return any amount paid in excess of the substantiated expenses.

We strongly recommend that the plan be in writing. If an arrangement meets the three main requirements of an accountable plan, but the employee fails to return the excess amount, only the amount that has been substantiated is treated as paid under an accountable plan. Special deemed substantiation rules apply to mileage allowances and meal and incidental per-diem expense allowances.

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION (Continued)**B. Accountable Plan Defined (Continued)**

The requirements stated above are applied on an employee-by-employee basis. Failure by one employee to fulfill one of the criteria does not cause amounts paid to other employees under the arrangement to be treated as paid under a non-accountable plan. A payer may have more than one arrangement with a particular employee without running afoul of the accountable plan requirements.

Expenses subject to these rules include business meals, travel expenses, auto expenses and other similar expenses of the employee which are ordinary and necessary to the business of the employer and reimbursed to employees. Further, so called "expense allowances" are also covered. Expenses should clearly indicate what they are, the amount of each expense, date incurred, persons for whom the expense was incurred, place where expense was incurred, and the business purpose of the expense. Certain expenses such as meals and entertainment require more information than automobile expenses.

Although advances remain a problem under the accountable plan rules, the IRS has provided a three-part test so that if all three parts are met, advances will not be treated as compensation. Part one of the test requires that an employer may not advance an employee monies earlier than 30 days before expenses are anticipated to be paid or incurred. Part two states that the employee must make adequate accounting for the expenses paid or incurred no later than 60 days after the expenses are paid or incurred. Finally, all monies in excess of those properly accounted for as employee expenses must be returned within 120 days of paying or incurring such costs. If the first two parts of this test are met, but the excess monies are not returned within the 120 day period, only the excess must be treated as taxable compensation. If either of the first two parts is not met, the entire amount advanced is taxable compensation.

One major exception relates to per-diem type allowances. Here only the amounts received in excess of government allowances are treated as compensation and are subject to employment taxes and withholding. Other than not being required to verify actual costs incurred, employees using the per-diem method must still meet the same substantiation tests as with other reimbursement plans in order to avoid inclusion of the entire allowance as compensation subject to employment taxes and withholding.

C. IRS Automobile Reimbursement Mileage Rates

- i. For 2017, you may elect to reimburse employees for substantiated business mileage at 53.5¢ for every business mile driven. This rate is used to calculate the tax deduction for business travel as an alternative to deducting actual costs of maintaining an automobile. The rate also is used by many companies to reimburse workers who use their own cars on company business.
- ii. Beginning January 1, 2018, the standard mileage rates for the use of a car (also vans, pickups, or panel trucks) will be:
 - 54.5 cents for every mile of business travel driven, up 1 cent from the rate for 2017.
 - 18 cents per mile driven for medical or moving purposes, up 1 cent from the rate for 2017.
 - 14 cents per mile driven in service of charitable organizations.

The business mileage rate and the medical and moving expense rates each increased 1 cent per mile from the rates for 2017. The charitable rate is set by statute and remains unchanged.

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION (Continued)**C. IRS Automobile Reimbursement Mileage Rates (Continued)**

- iii. Accountable plan. These reimbursements may only be made free of a wage characterization if the reimbursement is made under an accountable plan. The accountable plan rules are addressed in IRS Publication 463, Travel, Entertainment, Gift, and Car Expenses. Employer payment or reimbursement of an employee's business expenses (so-called working condition fringe benefits) will continue to be tax-free to the employee and tax deductible by the employer. But certain fringe benefits that still can be provided tax-free to an employee will no longer be tax deductible by the employer. On the other hand, if an employer chooses to provide the affected fringe benefits on a taxable basis to the employee (i.e., as W-2 wages), the employer will be able claim a tax deduction for the taxable benefits.

D. Other Changes to Fringe Benefits for 2018

1. Employees Can No Longer Deduct Unreimbursed Business Expenses. Prior to the TCJA, an employee who itemized tax deductions could deduct unreimbursed employee business expenses as a miscellaneous itemized deduction (to the extent that the aggregate miscellaneous itemized deductions exceeded 2% of the employee's adjusted gross income). However, beginning January 1, 2018 miscellaneous itemized deductions are no longer allowed. That means that if an employer reimburses an employee for a business expense, the reimbursement is tax-free to the employee. However, if the employer does not reimburse the employee's business expense, the employee will no longer be able to claim a tax deduction for the expense.
2. Moving Expenses. Under prior law, an individual could claim an above-the-line deduction (a non-itemized deduction) for moving expenses paid in connection with commencement of work at a new principal place of work. Alternatively, an employer could pay or reimburse an employee for moving expenses as a tax-free fringe benefit. Beginning in 2018, an employee can no longer deduct moving expenses nor can an employer pay or reimburse an employee's moving expenses on a tax-free basis. On the other hand, if an employer treats payment or reimbursement of an employee's moving expenses as W-2 wages, the employer can deduct the payment as a compensation expense.
3. Qualified Transportation Benefit. Prior to the TCJA, the value of a "qualified transportation fringe" benefit provided by an employer to an employee was treated as tax-free, subject to monthly limits. A "qualified transportation fringe" is defined as:
 - transportation in a commuter highway vehicle for travel between the employee's residence and place of employment;
 - transit passes;
 - qualified parking; and
 - qualified bicycle commuting reimbursement.

Employers can still provide tax-free qualified transportation fringe benefits to employees (although qualified bicycle commuting reimbursements cannot be provided tax-free). However, an employer cannot deduct the expenses for providing tax-free transportation fringe benefits.

4. Commuting Benefits. The TCJA provides that an employer cannot deduct any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer for travel between the employee's residence and place of employment, except as necessary for ensuring the employee's safety.

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT

A. Taxation of Value of Automobile

Fringe Benefit Received in 2017

For 2017, vehicle use must be supported by the general substantiation rules that require a taxpayer to prove eligibility for, and the amount of, any deduction claimed for business use. Also, the taxable personal portion of vehicle use must be included in the "Employee Wage and Tax Statement" (Form W-2) with all applicable income and payroll taxes withheld from 2017 wages. It is mandatory to withhold payroll taxes and income taxes. In order to compute the taxable portion of vehicle use, the following should be done:

1. The employee should complete a "Summary Statement" (see sample copy attached) and submit this to the employer at the end of each calendar year.
2. The personal portion of vehicle use must be valued and included in fourth quarter 2017 payroll tax returns.
3. The employee's 2017 Form W-2 must include the taxable portion of vehicle use and related withholdings.

B. Employer Provided Vehicle

1. Exception for Commuting Use Only

There are several exceptions to the general vehicle substantiation rules. The commuting only exception may be used if all of the following five criteria are met:

- a. The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is actually used in that trade or business.
- b. For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle.
- c. The employer has established a policy that the vehicle may not be used for personal purposes other than commuting. Such policy must be in writing (an example of such written policy is attached) and be given to applicable employees (or posted).
- d. The employer reasonably believes that the employee does not use the vehicle for any purpose other than commuting except for de minimis personal use; and
- e. The employee required to use the vehicle for commuting is not a highly compensated "control employee" of the employer.

A control employee is any employee who meets any of the following:

- Is an appointed or elected officer whose compensation is \$105,000 or more.
- Is a director of the employer.
- Owns 1% or more equity, capital or profits interest in the employer.

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT *(Continued)*

B. Employer Provided Vehicle *(Continued)*

1. Exception for Commuting Use Only *(Continued)*

Example A - Commuting Valuation Rule

Employee Y works for employer X. X provides a company vehicle to Y for the performance of Y's duties and requires Y to commute to and from work in the vehicle for noncompensatory but valid employer business purposes. X does not allow Y to use vehicle for any purpose other than that described and X reasonably believes that Y does not use the vehicle for other purposes. X has provided Y a written policy statement and Y acknowledged receipt of policy in writing. Y is not a "control" employee.

Based on the information presented above, the five criteria necessary for the commuting only use exception are met. The taxable fringe benefit received would be calculated by multiplying \$3 times the total commuting days used by the employee. (A one-way commute would be valued at \$1.50) and:

- a. The employer must deduct all applicable payroll taxes and withhold income taxes from wages paid in the year that the benefit is received. (The withholding of income taxes, but not payroll taxes, can be waived at the employee's discretion.)
- b. The computed amount must be added to compensation records for that employee and included on Form W-2.
- c. The employee can reimburse the employer in January 2017 for all Social Security (FICA) and State Disability Insurance (SDI) required to be withheld if the employer was unable to timely withhold as stated in a.

2. Sample Notice to Employees When Using Commuting Use Only Exception

TO: (Employee)
 FROM: (Employer)
 DATE: _____
 RE: Employer-Provided Vehicle

We have elected to use a special valuation rule for 2017 in computing the value of personal use of the vehicle which has been assigned to you. The special rule will value personal use by an automobile lease valuation rule, vehicle cents-per-mile rule, or a commuting valuation rule. We will attempt to use the method (which is available to you) that results in the least amount of additional taxable income.

In order to use the above special valuation rule, you must provide us with a written statement substantiating your personal use of the vehicle during 2017. This statement must include your total mileage for the year, broken down between business, commuting, and other personal miles. Attached is a statement which should be used in substantiating the information to us.

In general, if you do not submit a written statement to us, the value of other personal use will be computed as if no portion of your driving was for business purposes.

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT (Continued)**B. Employer Provided Vehicle (Continued)****2. Sample Notice to Employees When Using Commuting Use Only Exception (Continued)****Instructions to Employer**

The above sample notice should state which of the three methods applies to the specific employee to which the notice is written. Any one of the methods may apply to any employee; thus an employer could have all three methods being utilized during the same calendar year.

3. Other Than Commuting Use Only

If one or more of the five criteria listed previously are not met, the following valuation methods, as described in examples B and C, may be used.

Example B - Vehicle Cents Per Mile

The value of any personal use by an employee of your vehicle may be calculated by multiplying the standard mileage rate (53.5¢ in 2017 or 54.5¢ in 2018), by the number of miles driven by an employee for personal purposes, if you provide your employee with the use of a vehicle that either:

- you reasonably expect will be regularly used in your business throughout the calendar year (or a shorter period that the vehicle is owned or leased by you)
- is driven primarily by employees for at least 10,000 miles in a calendar year.

A vehicle is considered "regularly used" in an employer's business if either at least 50 percent of its total mileage for the year is for the employer's business or it is generally used each workday in an employer-sponsored car pool to transport at least three employees to and from work. You may not use the cents-per-mile rate if its value when you first make it available to any employee for personal use is more than an amount determined by the IRS as the maximum automobile value for the year. For example, you cannot use the cents-per-mile rule for an automobile that you first made available to an employee in 2017 if its value at that time exceeded \$15,900 for a passenger automobile or \$17,800 for a truck or van. Once the cents-per-mile rate has been adopted for a vehicle, you must continue to use that valuation method until the vehicle no longer qualifies.

Maintenance and insurance are included in the standard mileage rate. However, no reduction in the rate is allowed if you do not provide these services. The rate also includes the fair market value of employer-provided fuel for miles driven in the United States, Canada, and Mexico. If fuel is not provided by you as the employer, the rate may be reduced by no more than 5.5 cents.

Example C - Automobile "Lease" Valuation Rule

Generally, you figure the annual lease value of an automobile as follows:

1. Determine the fair market value (FMV) of the automobile as of the first date the automobile is available for personal use.

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT *(Continued)*

B. Employer Provided Vehicle *(Continued)*

3. Other Than Commuting Use Only *(Continued)*

Example C - Automobile "Lease" Valuation Rule *(Continued)*

2. Using the IRS Annual Lease Value Table, read down column 1 until you come to the dollar range within which the FMV of the automobile falls. Then read across to column 2 to find the corresponding annual lease value.

To obtain the ALV, the FMV of the vehicle must be determined as of the first day it was made available to the employee. In the fifth year that the auto is used, the FMV is redetermined and a new annual lease value is calculated from the table. That redetermined value is then used for the second four-year period.

Also, if the employer provides gas and oil, an additional taxable amount of 5-1/2¢ per mile of personal use must be added. The value of insurance, maintenance, and repairs is included in the annual lease value table amount. Given an annual lease value of \$6,600 for a vehicle available all 365 days of the year and driven 5,000 personal and commuting miles out of 20,000 total miles, the taxable fringe benefit to be included as employee compensation would be calculated as follows:

(1)	Vehicle usage						
	\$6,600 X	<u>365</u>	X	<u>5,000</u>	=	20,000	= \$1,650
(2)	Gas and oil						
	5,000 miles		X	5-1/2¢	=	<u>275</u>	
	<u>Total</u>				=	<u>\$1,925</u>	

C. Employee Uses Own Vehicle

In this circumstance, the submission of the "Summary Statement" is crucial as will be explained in the following example.

If an employer elects to use the special valuation rules shown in Examples A through C, the employer must notify the employee of the election by the later of January 31 of the calendar year for which the election is to apply or 30 days after the employer first provides the benefit to the employee.

Example D

Employee D works for employer X. D drives a personal vehicle for the performance of D's duties on behalf of X. X provides 100% of the upkeep and maintenance (\$4,000) and D's Summary Statement indicates 25% personal use.

The taxable fringe benefit received would be calculated as follows:

1. The amount X has paid (\$4,000) times D's personal usage (25%).

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT (Continued)**C. Employee Uses Own Vehicle (Continued)**Example D (Continued)

- (a) In this example, $\$4,000 \times 25\% = \$1,000$.
- (b) Only the personal portion is included as additional income.

2. Follow procedures a through e as outlined in Example A.

The above examples present the application of the special vehicle valuation regulations in a few generalized situations. It is not possible to cover all situations as the regulations covering valuation of employee fringe benefits are long and detailed. If you feel the above examples do not cover your specific situation, please contact the partner at Miller Kaplan Arase LLP in charge of your account for further guidance.

D. Summary Statement

Employee Name: _____

Social Security Number: _____

Employer: _____

Vehicle: _____
 Make Model Year ID Number

Period of Usage: From _____ to _____ (include month, date and year)

- Total miles driven for the period: _____
 - Total business miles driven for the period: _____
 - Total commuting miles driven for the period: _____
 - Total other personal miles (but not commuting miles) driven during the period: _____
 - Have you maintained sufficient evidence to support the business use?* Yes _____ No _____
 - Is the evidence written? Yes _____ No _____
 - Do you have another car available for personal use? Yes _____ No _____
- If yes, year, make and model _____

I hereby attest that the information listed above is true and correct to the best of my knowledge.

Employee

Date

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT (Continued)**D. Summary Statement (Continued)**

*Note: Your records are not to be submitted with this statement to us; however, you are required to retain the supporting documents for a minimum of six years. The requirements for recordkeeping are solely your responsibility and not ours, as your employer. Please refer to IRS recordkeeping requirements if you have any questions.

E. Policy Statement "Commuting Only Use" - Special Rule

If an employer and employee elect to adopt the special rule ("Commuting Only Use"), a written policy must be established.

The policy could be worded as follows:

Employees who are provided with company owned automobiles must take those automobiles home at night to provide safe parking. Employees may not, however, use such automobile for personal purposes, other than for commuting or de minimis personal use.

III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT *(Continued)*

F. Annual Lease Value Table for Employer Provided Autos

The purpose of this table is to establish the annual value of personal use of employer provided autos. Take the table value times the personal use percentage. The product is the personal use value includable as additional wages subject to withholdings (including FICA and SDI).

Automobile fair market value when first provided to employee	Annual lease value*
\$ 0 to \$ 999	\$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

* Add 5.5 cents per mile for gas if reimbursed by employer.

IV. NEW LAWS AND OTHER CHANGES

PLEASE NOTE THAT THIS MEMORANDUM DOES NOT INCLUDE INFORMATION REGARDING THE NEW TAX LAW THAT WAS ENACTED IN DECEMBER 2017 AND BECAME EFFECTIVE AS OF JANUARY 1, 2018.

FEDERAL

A. Use of R&D Credits to offset Federal Payroll Taxes

Certain small start-up businesses can potentially utilize up to \$250,000 of qualified research expenses to offset payroll taxes instead of income taxes. This is a change that began for 2016 tax filings. Since most start-up businesses are not immediately profitable, this is a real benefit that start-ups should be taking if they have R&D costs. The definition of qualified small businesses includes corporations that are not publicly traded (including S-Corporations), Partnerships, or Sole Proprietorships. Tax-exempt organizations under Section 501 do not qualify. Gross receipts must be less than \$5 million for the tax year and there are other restrictions. Research credits are generated for work undertaken for discovering information that is technological in nature and intended to develop a new or improved business component. See IRS Form 6765 for more details.

B. New IRS Partnership Audit Rules

As part of the Bipartisan Budget Act of 2015 (BBA), new rules went into effect on January 1, 2018 that are intended to create a more efficient audit process. Historically, IRS adjustments to partnership income have flowed through to the partners/LLC members. These new rules effectively create an entity-level tax on partnerships by imposing a tax on the partnership at the highest individual or corporate tax rate should the audit result in additional reportable income. Furthermore, the new rules require the IRS to assess the partnership for the current year rather than the audited year. This may impact current partners who were not partners of the partnership in the year under review.

Partnerships with fewer than 100 partners which do not have any Trusts or other Partnerships/LLCs as partners may make an annual election to opt out of the new audit regime. One more significant change in the law is that previously the IRS had to notify all partners of a partnership audit. However, under the new BBA, the IRS only needs to notify the partnership representative.

Also, please note if there is a sale or exchange of 50% or more of the total partnership interests in both capital, and profits in a 12 month period, please let your accountant know as soon as possible, as there may be a technical termination of the partnership which would require a tax filing earlier than the standard due date for a calendar year taxpayer.

C. Roll back of Obama Overtime Rule

Neither recent litigation, administrative initiatives, or congressional action have changed the Fair Labor Standards Act (FLSA) rules. Employers should continue to update their job descriptions and ensure that their jobs meet one or more of the FLSA's "white collar" duties tests (Executive, Administrative, Professional, Computer and Outside Sales). The DOL is focusing its efforts on further rulemaking and had issued a "request for information" (RFI) asking the public for input to help guide them in potentially creating new rules.

IV. NEW AND OTHER CHANGES (Continued)**C. Roll back of Obama Overtime Rule (Continued)**

The RFI was seeking comment and information on 11 particular questions, including whether the standard salary level set in that rule effectively identifies employees who may be exempt, whether a different salary level would more appropriately identify such employees, and whether changes to the duties test would be necessary to sync up the exemption to the salary level.

D. Gift Tax Exclusion Increase

For 2018, the annual exclusion amount is scheduled to increase to \$15,000, up from the present \$14,000. This will be the first increase since the 2013 tax year. Therefore, in 2018 you can make gifts of \$15,000 to as many individuals as you wish, without having to file a gift tax return.

E. Organizations Exempt from Income Tax

As noted last year, in 2016 the Financial Accounting Standards Board (FASB), the accounting profession's rule setting body, issued a pronouncement to change the way not-for-profit organizations classify net assets and require all nonprofits to disclose their disbursements, among other changes. The new reporting standard is effective for financial statements issued for fiscal years beginning after December 15, 2017. The AICPA sent a letter to the IRS in May 2017 asking for a number of changes to future Forms 990 Return of Organization Exempt from Income Tax. So look for future changes to the Form 990.

F. Trading Virtual Currencies

The sale of virtual currencies that are convertible to dollars creates a taxable event. Per the IRS, taxpayers can also recognize gain or loss when one virtual currency is exchanged for another such currency. If you trade in Bitcoin or another virtual currency, you will need to report the sale transactions.

CALIFORNIA**G. State Payroll Tax Payments**

As noted earlier in this memo, as of January 1, 2018, all California employers will be required to electronically submit employment tax returns, wage reports and payroll tax deposits to the Employment Development Department.

H. Replacement of Board of Equalization Functions

In June 2017, the California State legislature voted to take away much of the authority from the State Board of Equalization and create two replacement agencies, effective as of July 1, 2017. This action resulted from legislators being dissatisfied with the Board for a number of reasons. The new Department of Tax and Fee Administration (CDTFA) has taken over the responsibility to manage tax and fee programs for sales, use, and excise taxes, and most fee collection. The Office of Tax Appeals (OTA) will take over dispute settlements related to franchise and personal income tax appeals, sales and use tax, and other special taxes and fees. The Board of Equalization (BOE) still has constitutional power to review property tax assessments and certain excise and fuel taxes.

IV. NEW AND OTHER CHANGES (Continued)**CALIFORNIA (Continued)****I. California Bans Salary History and Conviction History Inquiries**

In October 2017, Governor Brown signed legislation which bans salary history inquiries from job applicants. The new law went into effect on January 1, 2018. The new law prohibits an employer from relying on salary history information of a job applicant as a factor in determining whether to offer employment to an applicant or what salary to offer. The law does not apply to existing employees. New York City and several states have similar ordinances.

The Governor also signed legislation which prohibits most public and private employers with five or more employees from asking about criminal conviction histories until after a conditional offer of employment has been made.

J. California Parental Leave Expands

Under a new law also recently signed by Governor Brown, California parents who work for employers with between 20 and 49 workers will have the right to 12 weeks of job protected leave to bond with their newborns. Employees of large businesses already have a similar right under Federal law. The effective date of the law is January 2018.

K. College Access Tax Credit

This is a relatively new credit that began in 2014 and was set to expire at the end of 2017. However, in October 2017, the Governor signed legislation which extended the credit to taxable years beginning before January 1, 2023. This credit can be used by individuals and businesses that contribute to the California Educational Facilities Authority. The credit is a percentage of the amount you contribute each fiscal year, 50% for 2017. You do not also get a state tax deduction. Unfortunately the application period for the 2017 credits expired on November 30, 2017. But information about obtaining the credit for future years can be found at www.ftb.ca.gov.

FEDERAL AND CALIFORNIA**L. Tax Relief for California Wildfire Victims**

In October 2017, Santa Rosa and other parts of Northern California wine country, along with Anaheim Hills and other cities in Orange County were impacted by wildfires. There was significant loss of life in the Northern California fires. Both the IRS and FTB have given victims an extension of time until January 31, 2018 to make various payments and file various returns. This includes firefighters and relief workers providing help in those areas. Employers directly affected by the multiple fires may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. Affected taxpayers in a federally declared disaster area have the option of claiming disaster related casualty losses on their federal income tax return for either the year in which the event occurred, or the prior year. The recent December series of wildfires in Southern California should also result in similar relief.

Under the TCJA only losses resulting from events in federally designated disasters are eligible for favorable tax treatment at the federal level.

V. IDENTITY THEFT

In September 2017, Equifax, one of the three major credit reporting agencies announced that its database had been breached earlier in the year. The hackers accessed people's names, Social Security numbers, birth dates, addresses and in some cases driver's license numbers. Over 145 million American consumers apparently had personal information exposed. The hackers accessed personal information of UK and Canadian citizens as well. This follows a long line of heavily publicized breaches in prior years at many places such as Home Depot, the Sony Play Station Network, Target stores, and even the U.S. Office of Personnel Management.

The Federal Trade Commission makes consumer information available on www.consumer.ftc.gov. They have various recommendations regarding steps to take to find out if your information was exposed in the Equifax breach, and if so, how to get a year of free credit monitoring (you have until January 31, 2018 to enroll) as well as how to protect your information from being misused.

The following are certain tips that we published last year as well. We also suggest that you should file your taxes early – as soon as you have all of the tax information required. Also, you should respond promptly to any letters or notices from the IRS and state taxing agencies.

The following are tips to protect yourself from identity theft:

- Avoid sending sensitive personal information like your credit card or Social Security number through chat lines, e-mail, or other online posts. Assume your communications are not private unless encrypted.
- Shred all unwanted pre-approved credit card offers.
- Order your credit report annually from the three credit bureaus to check for inaccuracies and fraudulent use of your accounts.
- Do not carry your Social Security card or number, passport or birth certificate.

If you are victim:

- Close your credit card accounts and request they be processed as "account closed at the customer's request" instead of "lost or stolen". This will not reflect negatively on your credit report. Follow up with a written request.
- Notify your bank of the theft and change all account numbers. Also, request that the bank assign you a secret password to be used in all future transactions.
- Keep a log of all contacts you make in the resolution of your theft.

VI. IRS TANGIBLE PROPERTY REGULATIONS

The Internal Revenue Code allows a deduction for ordinary and necessary expenses incurred in carrying on a trade or business. The code also requires you to capitalize costs incurred for acquiring, producing and improving tangible property. In order to reconcile or establish a framework to determine how such costs are to be treated, taxpayer friendly regulations took effect in 2014 which contains simplifying provisions.

VI. IRS TANGIBLE PROPERTY REGULATIONS (Continued)

Under these regulations you may elect to apply a de minimis safe harbor to amounts paid to acquire or produce tangible property to the extent such amounts are deducted by you for financial accounting purposes. If you have what is known as an applicable financial statement (AFS) you may use the safe harbor to deduct amounts paid for tangible property up to \$5,000 per invoice or item. If you do not have such a statement, you may use the safe harbor to deduct up to \$2,500 per item or invoice.

An AFS includes a financial statement required to be filed with the SEC as well as other types of certified audited financial statements accompanied by a CPA report. If you don't have an AFS you must expense amounts on your books and records in accordance with a consistent accounting or policy which exists at the beginning of the taxable year. The annual election is not a change in accounting method and does not require a filing of Form 3115. Contact us should you have further questions.

VII. CALIFORNIA COMPETES TAX CREDIT

The California Competes Tax Credit is an income or franchise tax credit available to businesses that come to California or stay and grow in California. Tax credit agreements will be negotiated by Governor's Office of Business and Economic Development (GO-Biz) and approved by a statutorily created "California Competes Tax Credit Committee." The committee consists of Director of GO-Biz (Chair), State Treasurer, Director of the Department of Finance and one appointee each by the Speaker of the Assembly and Senate Committee on Rules.

Of the aggregate amount of tax credit available each fiscal year, 25% of the total credit amount is reserved for small businesses. A small business is defined as one that had less than \$2 million in gross income in the prior year. Any credit amount not awarded during the application period will carry over to the next application period.

For fiscal year 2017-18, GO-Biz will accept applications for the California Competes Tax Credit during the following periods:

- January 2, 2018 through January 22, 2018
- March 5, 2018 through March 26, 2018

Go to business.ca.gov for more information on the California Competes Tax Credit.

VIII. CALIFORNIA INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS

The purpose of these reporting requirements is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. This law requires businesses and government entities to report specified information to the Employment Development Department (EDD) on independent contractors.

VIII. CALIFORNIA INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS *(Continued)*

Any business or government entity (defined as a "service-recipient") that is required to file a federal Form 1099-MISC for services performed by an independent contractor (defined as a "service-provider") must comply with these reporting requirements. A service-recipient means any individual, person, corporation, association, or partnership, or agent thereof, doing business in this State, deriving trade or business income from sources within this State, or in any manner in the course of trade or business subject to the laws of this State. An independent contractor is defined as an individual who is not an employee of the business or government entity for California purposes and who receives compensation or executes a contract for services performed for that business or government entity either in or outside of California.

You must report to EDD within twenty (20) days of EITHER making payments totaling \$600 or more OR entering into a contract for \$600 or more with an independent contractor in any calendar year, whichever is earlier.

You are required to provide the name of your business, the federal employer identification number, California employer account number, Social Security number, address, and telephone number.

You are also required to provide independent contractor's (service-provider's) first name, middle initial, last name, Social Security number, address, and start date of contract, along with the amount of contract, contract expiration date, and an indication if an ongoing contract (check box if applicable).

Report independent contractor information on the *Report of Independent Contractors* form (DE 542). To obtain forms and/or information, call (916) 657-0529. You may also contact your local Employment Tax Customer Service Office listed in your local telephone directory in the State Government section under "Employment Development Department" or access the Internet site at www.edd.ca.gov. For magnetic media filing, please call (916) 651-6945.

IX. EARNED INCOME CREDIT

The law continues to require employers to notify employees of their eligibility for the advance payment of the Earned Income Credit (EIC) through payroll. The EIC is a tax credit available to certain low income workers *even though no income tax withholding is required on their wages*. Eligible employees may elect to receive EIC through reduced federal income tax withholding (or negative federal income tax withholding) throughout the year rather than waiting to claim it on an income tax return. An employee makes the election by submitting a completed Form W-5, Earned Income Credit Advance Payment Certificate, with the employer.

The Form W-5 eligibility certificate verifies to the employer that (1) the employee is eligible for the EIC, (2) the employee has one or more qualifying children, (3) the employee has no other certificate in effect with another employer, and (4) states whether the employee's spouse has an eligibility certificate in effect. Even though persons without children are eligible for the EIC, they are not eligible for the advance payments of EIC. The election can be revoked or modified any time the individual's circumstances change. A new Form W-5 is required for each year the election is in effect.

The California State legislature added a state EIC beginning with the 2015 tax year.

X. PAYROLL TAX DEPOSIT SYSTEM

All employers are either federal "monthly depositors" or "semi-weekly depositors". The IRS notifies taxpayers of their status prior to the beginning of each calendar year. Status is determined by reference to the employer's deposit history during a "lookback period." The lookback period for a given calendar year is the 12-month period ending the preceding June 30.

An employer is a monthly depositor for a calendar year if the aggregate amount of employment taxes reported on its quarterly returns, Forms 941, for the four consecutive quarters ended the preceding June 30 is \$50,000 or less. An employer is a semi-weekly depositor if the aggregate is more than \$50,000. Initially, new employers are treated as monthly depositors. A monthly depositor must deposit employment taxes accumulated within the calendar month by the 15th day of the following month. For a semi-weekly depositor, if the depositor's payday is on a Wednesday, Thursday, or Friday, taxes must be deposited on or before the following Wednesday. For all other paydays, the deposit is due on the Friday following payday. A special one-day rule applies to any employer which has more than \$100,000 undeposited employment taxes.

The deposit timetable is extended to the immediate next banking day when the deposit obligation falls on a non-banking day. Semi-weekly depositors have additional relief; they have a minimum of three banking days after the end of the semi-weekly period to deposit their taxes. Thus, a semi-weekly depositor with a Friday payroll will have until the following Thursday to deposit employment taxes if the Monday, Tuesday, or Wednesday following the payday is a banking holiday.

An employer is treated as having made the required deposit if any shortfall does not exceed the greater of \$100 or two percent of the amount required to be deposited and the shortfall is deposited on or before prescribed make-up dates. For a monthly depositor, the shortfall make-up date is the return due date for the return period in which the shortfall occurs. For a semi-weekly depositor, the shortfall make-up date is the first Wednesday or Friday (whichever is earlier) falling on or after the 15th day of the month in which the deposit must be made.

XI. EMPLOYEE OR INDEPENDENT CONTRACTOR

Some companies have attempted to avoid the burden of the employers share of employment taxes by classifying their workers independent contractors when in fact they were actually employees. The state and federal taxing authorities have been auditing companies to find such abuses. The definitive IRS Publication 1779 is the best resource for determining whether a worker is properly classified as an independent contractor or an employee.

The Voluntary Classification Settlement Program (VCSP) is a new optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. To participate in this new voluntary program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.

Certain factors carry more weight than others depending upon specific industry practices. After 1996, the IRS has the burden of proof on classification of workers if the taxpayer can cite judicial precedent or long-standing industry practice for not treating a worker as an employee. Filing Forms 1099-MISC consistent with the taxpayer's treatment of a worker as a non-employee is imperative but is not definitive. This is an area of increasing IRS enforcement and the target of litigation. Therefore, given the penalties associated with the Statutory Employer statutes and regulations for failing to withhold and pay taxes associated with wages, employers should be aware of the risks associated with misclassifying employees.

XI. EMPLOYEE OR INDEPENDENT CONTRACTOR (Continued)

In July 2017, Senator John Thune (R-S.D.) introduced legislation in Congress that is titled the New Economy Works to Guarantee Independence and Growth Act (the NEW GIG act) to address the classification of workers. This legislation would create a safe harbor "so these freelance-style workers can work as independent contractors with the peace of mind that their tax status will be respected by the IRS." We are uncertain whether this bill will pass, but the issue of independent contractor vs. employee status is a top concern of the IRS.

A. Worker Classification: The IRS' Approach**1. Do behavioral controls over the worker exist?**

Behavioral control focuses on whether the business has the right to direct or control how the work is done, e.g., how the worker performs the specific task for which he was hired. Factors include:

- a. To what extent are instructions given and taken?
- b. What training does the business give the worker?

2. Do financial controls over the worker exist?

These factors illustrate whether there is a right to control how the business aspects of the worker's activities are conducted:

- c. Can the worker realize a profit or incur a loss?
- d. Is the worker's investment significant?
- e. To what extent does the worker make services available to the general public?
- f. How does the business pay the worker?

3. What type of relationship between the parties exists?

These factors illustrate how the worker and the business perceive their relationship.

- g. Does a written contract exist that describes the relationship the parties intend to create?
- h. Does the business provide the worker with employee-type benefits?
- i. How permanent and ongoing is this relationship?
- j. To what extent are the services performed by the worker a key aspect of the regular business of the company?

XII. DBA – FICTITIOUS BUSINESS NAMES

1. A fictitious name registration must be filed within 40 days of starting a company in the county where you have your principal place of business. In Los Angeles County, visit rrcc.lacounty.gov/Clerk. In Orange County, start at egov.ocgov.com/ocgov/ and search for "fictitious business."
2. You do *not* have to file if you use your surname in the name of the business. So "Tim Parker Plumbing" or "Parker's Plumbing" are both exempt from registering, but "Tim's Plumbing" is not. Also, if you use something like "Parker and Sons Plumbing" you *do* not have to file, because the name suggests additional owners.

XII. DBA – FICTITIOUS BUSINESS NAMES (Continued)

3. In Los Angeles, it costs \$26 to register a business, plus \$5 more for each additional business name or owner. The base fee is \$23 in Orange County, \$55 in San Bernardino County, \$35 in Riverside County, and \$53 in Ventura County. Filings are good for five years, then can be renewed.
4. Within 30 days of filing your fictitious name statement, you must publish it in an ad in a newspaper of general circulation in your area once a week for four consecutive weeks. The county clerk can tell you which newspapers you must use.
5. You don't want to create confusion by choosing a business name that's already being used, so most county clerks offer an online search form so you can check. In Los Angeles County, visit rccc.lacounty.gov/clerk/fbn_search.cfm.

XIII. REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR)

If you have a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, the Bank Secrecy Act may require you to report the accounts annually to the Internal Revenue Service by filing a Form 114 *Report of Foreign Bank and Financial Accounts (FBAR)*. The FBAR must be filed electronically through FinCEN's [BSA E-Filing System](#). The FBAR is not filed with a federal tax return. Filings are required when the aggregate value of all foreign financial accounts exceed \$10,000 at any time during the calendar year reported.

Reporting and Filing Information

A person who holds a foreign financial account may have a reporting obligation even though the account produces no taxable income. The reporting obligation is met by answering questions on a tax return about foreign accounts (for example, the questions about foreign accounts on Form 1040 Schedule B) and by filing an FBAR.

The FBAR is a calendar year report, which historically has had to be filed with the Department of Treasury on or before June 30 of the year following the calendar year reported with no extension.

E-Filers will receive an acknowledgement of each submission. Help with electronic filing technical questions is available at BSAEfilinghelp@fincen.gov or through the BSA E-Filing Help Desk at 866-346-9478.

The *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* changed the standard FBAR due date to April 15 beginning with the 2016 calendar year reports, which are due in 2017. For filers living in the U.S., this change in the law will coordinate the timing of their FBAR submission with the timing of their income tax return. The FBAR will be due April 15, along with their Form 1040. If you apply for an extension to file your tax return for six months until October 15, the FBAR will also be due on October 15.

Those required to file an FBAR who fail to properly file a complete and correct FBAR may be subject to a civil penalty not to exceed \$10,000 per violation for nonwillful violations that are not due to reasonable cause. For willful violations, the penalty may be the greater of \$100,000 or 50 percent of the balance in the account at the time of violation, for each violation.

XIII. REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR) (Continued)

Taxpayers with specified foreign financial assets that exceed certain thresholds must also report those assets to the IRS on Form 8938, *Statement of Specified Foreign Financial Assets*, which is filed with an income tax return. The new Form 8938 filing requirement is in addition to the FBAR filing requirement. A chart providing a comparison of Form 8938 and FBAR requirements may be accessed on the IRS Foreign Account Tax Compliance Act Web page.

XIV. REPORTING OF CASH TRANSACTIONS IN EXCESS OF \$10,000

If your business receives \$10,000 in cash in one transaction or two or more related transactions in a 24-hour period, you must file federal Form 8300. In addition, this form may voluntarily be filed for any suspicious transaction, even if it does not exceed \$10,000. The term cash includes a cashier's check, bank draft, travelers check, and money order. The civil penalties for failure to comply with the filing and payer reporting requirements are the same as those for failure to file or correctly file Forms 1099. Criminal penalties, including up to five years imprisonment, are provided for failure (or causing the failure) to file a report, for filing (or causing the filing) of a false or fraudulent report, and for structuring a transaction.

Recipients of reportable cash payments must also provide each payer with an annual written statement by January 31 of the following year containing the name and address of the recipient, the aggregate amount of reportable cash received from that payer during the year, and a notice that the information in the statement is being furnished to the IRS. The statement must be mailed to the payer's last known address.

File Form 8300 by the 15th day after the date of the transaction with the Internal Revenue Service, Detroit Computing Center, P.O. Box 32621, Detroit, Michigan 48232, or with your local IRS office. California also requires that a copy of Form 8300 be sent to: Franchise Tax Board, P.O. Box 1468, Sacramento, California 95812-1468.

XV. WHEN HIRING NEW EMPLOYEES**A. Compliance with Immigration and Nationality Act**

Every time any person is hired to perform labor or services in return for wages or other remuneration, Form I-9 must be completed. Employees can be requested to present to you an original document or documents that establish identity and employment eligibility no later than the first day of employment. As to the form and timing of the request, we strongly suggest you contact your legal advisor, since incorrect steps could result in being found liable for discrimination practices.

There is no associated filing fee for completing Form I-9. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials. Use the version revised July 17, 2017 until August 31, 2019. After this date, employers should use the new revised I-9 version. The changes to the form are not substantial.

Employers hiring foreign nationals should always check for the individual's I-94 card, which controls the terms of an individual's stay in the country. The I-94 serves as the "work permit". Once it expires, the period of lawful stay in the U.S. is over. (The visa, which establishes a specific length of stay, is permission to present oneself at the border). See details regarding the U.S. Department of Homeland Security's E-Verify Department program on the uscis.gov website.

XV. WHEN HIRING NEW EMPLOYEES (Continued)**A. Compliance with Immigration and Nationality Act (Continued)**

Nonimmigrant visa categories are arranged according to proposed activities in the U.S. Some typical work visas are E (persons with essential skills), H1-B (temporary professional worker), L-1 (permits international companies to transfer key employees), O (for outstanding individuals), and TN or NAFTA (for Mexicans or Canadians entering to work in the U.S. for one year as architects, scientists or other professionals).

B. E-Verify

U.S. law requires employers to employ only individuals who have legal authority to work in the United States – either U.S. citizens or foreigners who have the proper authorization. E-Verify is an online system maintained by the Department of Homeland Security that checks information provided by potential new hires against government records. The program was created by the Illegal Immigration Reform Act of 1996. Businesses in many states as well as federal contractors are required to use E-Verify.

California law states that no state agency, city or county can require private employers to use the federal E-Verify system to confirm the legal immigration status of workers they hire, except when required by federal law or as a condition of receiving federal funds. However, private employers may still choose to use the system. Congress has been debating the Legal Workforce Act which, if passed, would mandate the use of E-Verify.

To enroll go to www.uscis.gov.

C. Income Tax Withholding

Each year employees should complete Form W-4, "Employee's Withholding Allowance Certificate". The amount of income tax that an employer must withhold from wages is based on the filing status and number of withholding allowances claimed by the employee. The form should be retained by the employer and not be transmitted to the IRS.

The amount of money withheld as federal income tax is reduced for each allowance claimed. If an employee fails to complete a W-4, the employer must withhold federal income tax as if the employee was single with no withholding allowances. According to the IRS, the form should be retained for at least four years after an employee's departure.

D. New Employee Registry

California requires all employers to report all new employees to the EDD within 20 calendar days of an employee's first day of work. This information will be cross-matched against child support records to locate parents who are delinquent in their support payments and also will be used to detect unemployment insurance fraud; Form DE 34 is to be used to report this information.

You may also report the new employee by submitting a copy of the employee's Form W-4, as long as you include the date the employee began working and your California employer account number on the Form W-4.

To order forms, call the California New Employee Registry at (916) 322-2835. Or if you have questions concerning reporting requirements, call your local EDD office or the Registry at (916) 657-0529.

XVI. BASIS IN S CORPORATIONS AND PARTNERSHIPS

We want to make you aware of the importance of keeping track of basis in your S corporation and partnership investments, as the IRS may disallow losses unless there is proof of sufficient basis.

S Corporation Stock and Debt Basis

Many corporations elect S corporation status. The impact of electing S corporation status is that the items of income and loss, etc. flow through to the shareholders. There are three shareholder loss limitations, relating to the following issues:

1. Stock and debt basis,
2. the amount "At Risk", and
3. the Passive Activity rules.

The following information relates to stock and debt basis. The fact that a shareholder receives a K-1 reflecting a loss does not necessarily mean that the shareholder is entitled to claim the loss. The shareholder must have basis to claim the loss. Basis should be computed each year.

To compute stock basis, the shareholder begins with their initial capital contribution to the S corporation or the initial cost of the stock they purchased (the same as a C corporation). That amount is then increased and/or decreased based on the flow-through amounts from the S corporation. An income item will increase stock basis while a loss, deduction, or distribution will decrease stock basis.

A shareholder's stock is **increased** by:

1. Ordinary income
2. Separately stated income items
3. Tax exempt income
4. Excess depletion

A shareholder's stock is **decreased**, but not below zero by:

1. Ordinary loss
2. Separately stated loss items
3. Nondeductible expenses
4. Non-dividend distributions
5. Depletion for oil and gas

Most distributions from an S corporation are non-dividend distributions. Dividend distributions can occur in a company that was previously a C corporation or acquired C corporation attributes in a non-taxable transaction (i.e., merger, reorganization, QSub election, etc.).

For loss and deduction items, which exceed a shareholder's stock basis, the shareholder may include its debt basis to determine the deductibility of these items. Debt basis is generally the loans that the shareholder personally made to the S corporation. Debt basis is computed similarly to stock basis, but there are some differences.

XVI. BASIS IN S CORPORATIONS AND PARTNERSHIPS (Continued)**S Corporation Stock and Debt Basis (Continued)**

The bottom line is that it is not the corporation's responsibility to track each shareholder's stock and debt basis, but rather, it is the shareholder's responsibility.

Partnership Basis

Basis has two separate meanings in partnership taxation. Outside basis is the basis of the partner in their partnership investment. Inside basis is the basis of the partnership in its assets. Outside basis determines how much a partner can withdraw or deduct from a partnership for tax purposes without recognizing additional gain or without being limited with respect to the deductibility of their share partnership losses.

In determining outside basis, each partner's acquisition costs for their partnership interest, contributions, and distributions along with their share of profits and losses must be accounted for. Basis is increased by additional contributions of money, property, services, and the partner's share of liabilities and partnership income.

Here again, as with S-corporation investments, it is the partner's responsibility, and not that of the partnership, to keep track of basis.

XVII. CAFETERIA PLANS

A Cafeteria Plan is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of Section 125 of the Internal Revenue Code. It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit. A qualified benefit is a benefit that does not defer compensation and is excludable from an employee's gross income under a specific provision of the Code, without being subject to the principles of constructive receipt. Qualified benefits include:

- Accident and health benefits (but not Archer medical savings accounts or long-term care insurance);
- Adoption assistance;
- Dependent care assistance;
- Group-term life insurance coverage;
- Health savings accounts, including distributions to pay long-term care services.

The written plan must specifically describe all benefits and establish rules for eligibility and elections.

A Section 125 Plan is the only means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice causing the benefits to become taxable. A plan offering only a choice between taxable benefits is not a Section 125 Plan.

The plan may make benefits available to employees, their spouses and dependents. It may also include coverage of former employees, but cannot exist primarily for them.

XVII. CAFETERIA PLANS (Continued)

Employer contributions to the Cafeteria Plan are usually made pursuant to salary reduction agreements between the employer and the employee in which the employee agrees to contribute a portion of his or her salary on a pre-tax basis to pay for the qualified benefits. Salary reduction contributions are not actually or constructively received by the participant. Therefore, those contributions are not considered wages for federal income tax purposes. In addition, those sums generally are not subject to FICA and FUTA. See Sections 3121(a)(5)(G) and 3306(b)(5)(G) of the Internal Revenue Code.

A flexible spending arrangement (FSA) is a form of cafeteria plan benefit, funded by salary reduction, that reimburses employees for expenses incurred for certain qualified benefits. An FSA may be offered for dependent care assistance, adoption, and medical care reimbursements. The benefits are subject to an annual maximum and are subject to an annual "use-or-lose" rule. An FSA cannot provide a cumulative benefit to the employees beyond the plan year. The above discussion from the irs.gov website provides only the most basic rules governing a cafeteria plan. For a complete understanding of the rules, see Regulations under Code Section 125.

The Affordable Health Care Act, which became law in March 2010, included a provision that limits the annual amount of salary reductions that an employee may contribute to a health flexible spending arrangement (FSA). The limit is effective for taxable years beginning after December 31, 2012. For taxable year 2017 the limit is \$2,600. Prior to this provision, there was no statutory limit for employee contributions to a health FSA; that amount was dictated by the employer either as a maximum dollar amount or maximum percentage of compensation. The 2018 limit will be \$2,650.

XVIII. USE TAX

If you purchase an item out-of-state that will be used, consumed, or stored in California, then you may owe use tax. If the out-of-state merchant charges you the correct amount of sales or use tax on your purchase, then your use tax requirement has been fulfilled. Out-of-state companies that are "engaged in business" in California must register with the Board of Equalization and collect sales or use tax on their retail sales of personal property to California customers. However, if no sales or use tax was collected on your purchase, then you are required to compute and pay the amount of use tax due.

How do you compute the use tax? First, multiply the cost of the property purchased from an out-of-state merchant times the applicable use tax rate. The use tax rate and the sales tax rate are the same. The use tax rate is determined by where the property will be used, consumed, or stored in California. Then, look to determine if any sales or use tax was collected from the out-of-state merchant and subtract this amount from the use tax due.

XIX. RECORDS RETENTION

WARNING: Your circumstances may require that you retain records for a longer period of time than shown below. This schedule provides general guidelines. Statute of limitations vary from state to state. Companies should have record retention policies for computer files, word processing, and e-mail in addition to the traditional ledger and paper documents. Prior to formalizing a policy, we recommend consulting your attorneys and accountants for further information. See the chart on page 45 for recommended holding periods for specific types of documents.

XIX. RECORDS RETENTION (Continued)

<u>Retention Period</u>	<u>Retention Period</u>
Accident reports and claims (settled cases) 7 yrs.	Internal audit reports (in some situations, longer retention periods may be desirable) 7 yrs.
Accounts payable ledgers and schedules 10 yrs.	Inventories of products, materials and supplies 7 yrs.
Accounts receivable ledgers and schedules 10 yrs.	First year Permanently
Audit reports of accountants Permanently	Invoices to customers 7 yrs.
Bank reconciliations 1 yr.	Invoices from vendors 7 yrs.
Canceled checks for important payments, i.e. taxes and purchases of property Permanently	Journals Permanently
Canceled checks, bank statements and deposit slips 10 yrs.	Minute books of directors and stockholders, including by-laws and charter Permanently
Capital stock and bond records; ledgers, transfer registers, stubs showing issues, record of interest coupons, options, etc. Permanently	Notes receivable ledgers and schedules 7 yrs. (after expiration)
Cash receipts and disbursements journals Permanently	Payroll records and summaries, including payments to pensioners 7 yrs.
Charts of accounts Permanently	Personnel data 7 yrs.
Contracts and leases 10 yrs. (after expiration)	Petty cash vouchers 3 yrs.
Correspondence (routine) with customers or vendors 1 yr.	Physical inventory tags 3 yrs.
Correspondence (general) 3 yrs.	Plant cost ledgers 7 yrs.
Correspondence (legal and important matters only) Permanently	First year Permanently
Deeds, mortgages and bills of sale Permanently	Property appraisals by outside appraisers Permanently
Depreciation schedules Permanently	Property records - including blueprints, appraisals, and penalties Permanently
Duplicate deposit slips 1 yr.	Purchase orders or requisitions (copy) 5 yrs.
Employment applications and employee contracts 7 yrs. (after termination)	Receiving sheets 1 yr.
Expense reports 7 yrs.	Requisitions 1 yr.
Financial statements (end-of-year, other months optional) Permanently	Sales records 7 yrs.
General and private ledgers (and end-of-year trial balances) Permanently	Scrap and salvage records (inventories, sales, etc.) 7 yrs.
INS I-9 Forms Greater of 3 yrs. From date of hire or 1 year after termination	Stenographer's notebooks 1 yr.
Insurance documents (1 - 10 yrs. after expiration or settlement)	Subsidiary ledgers 7 yrs.
	Tax returns and worksheets, revenue agents' reports and other documents relating to determination of income tax liability Permanently
	Time reports 7 yrs.
	Trademark registrations Permanently
	Voucher register, schedules and backup 7 yrs.
	Warranties and service agreements 3 yrs. (after expiration)

XX. CALIFORNIA STATE CONTROLLER'S OFFICE UNCLAIMED PROPERTY PROGRAM**From the Controller's website:**

California's Unclaimed Property Law requires corporations, businesses, associations, financial institutions, and insurance companies (referred to as "Holders") to annually report and deliver property to the State Controller's Office after there has been no activity on the account or contact with the owner for a period of time specified in the law—generally three (3) years. Often, contact is lost when the owner forgets that the account exists, or moves and does not leave a forwarding address, or the forwarding order expires. In some cases, the owner dies and the heirs have no knowledge of the property.

The Unclaimed Property Law was passed to protect consumers. It prevents businesses with unclaimed property from keeping your money and using it as business income. The law provides California citizens a single source, the State Controller's Office, to check for unclaimed property that may be reported by businesses from around the nation and enables the State to return property, or the net proceeds from any legally required sale of the property, to its rightful owner or their heirs.

The State Controller's Office processes unclaimed property claims free of charge. Owners or heirs can claim their property directly from this office without any service charges or fees.

Go to www.sco.ca.gov for more details.

XXI. INFORMATION AVAILABLE ON THE INTERNET

<i>Federal:</i>	
Center for Disease Control	www.cdc.gov/flu
Department of Health and Human Services	www.hhs.gov
Department of Homeland Security	www.dhs.gov
Department of Labor	www.dol.gov
Health Insurance Information	healthcare.gov
Immigration and Naturalization Service	www.us-immigration.com
Internal Revenue Service (Primary Address)	www.irs.gov
Internal Revenue Service (Small Business Help)	www.irs.gov/business/index.html
Social Security Administration	www.ssa.gov
United States Postal Service	www.usps.com
<i>California:</i>	
Film Commission	www.film.ca.gov
Franchise Tax Board	www.ftb.ca.gov
Employment Development Department	www.edd.ca.gov
Health Insurance Information	coveredca.com
State Controller (Unclaimed Property)	www.sco.ca.gov
Board of Equalization*	www.boe.ca.gov
Secretary of State	www.sos.ca.gov
<i>Local:</i>	
Los Angeles County Clerk	www.lacounty.info

Energy Research and Credit Information:

Federal	www.energystar.gov
California	Gosolarcalifornia.ca.gov

Foreign exchange rates at www.federalreserve.gov/releases/h10/hist (1990 to present).

Consumer information at www.pueblo.gsa.gov.

Stock Market Quotes at www.dailystocks.com or www.moneycentral.msn.com.

General Government Information at www.usa.gov

*See page 32.

XXII. TYPES OF PAYMENTS

Types of Payments

Below is an alphabetic list of some payments and the forms to file and report them. However, it is not a complete list of all payments, and the absence of a payment from the list does not indicate that the payment is not reportable. For instructions on a specific type of payment, see the separate instructions in the form(s) listed.

Type of Payment Report on Form

ABLE accounts:	
Contributions	5498-QA
Distributions	1099-QA
Abandonment	1099-A
Accelerated death benefits	1099-LTC
Acquisition of control	1099-CAP
Agriculture payments	1099-G
Allocated tips	W-2
Alternate TAA payments	1099-G
Annuities	1099-R
Archer MSAs:	
Contributions	5498-SA
Distributions	1099-SA
Attorney, fees and gross proceeds	
	1099-MISC
Auto reimbursements, employee	W-2
Auto reimbursements, nonemployee	1099-MISC
Awards, employee	W-2
Awards, nonemployee	1099-MISC
Barter exchange income	1099-B
Bond tax credit	1097-BTC
Bonuses, employee	W-2
Bonuses, nonemployee	1099-MISC
Broker transactions	1099-B
Cancellation of debt	1099-C
Capital gain distributions	1099-DIV
Car expense, employee	W-2
Car expense, nonemployee	1099-MISC
Changes in capital structure	1099-CAP
Charitable gift annuities	1099-R
Commissions, employee	W-2
Commissions, nonemployee	1099-MISC
Commodities transactions	1099-B
Compensation, employee	W-2
Compensation, nonemployee	1099-MISC
Contributions of motor vehicles, boats, and airplanes	1098-C
Cost of current life insurance protection	1099-R
Coverdell ESA contributions	5498-ESA
Coverdell ESA distributions	1099-Q
Crop insurance proceeds	1099-MISC
Damages	1099-MISC
Death benefits	1099-R

Type of Payment Report on Form

Accelerated	1099-LTC
Debt cancellation	1099-C
Dependent care payments	W-2
Direct rollovers	1099-Q, 1099-R, 5498
Direct sales of consumer products for resale	
	1099-MISC
Directors' fees	1099-MISC
Discharge of indebtedness	1099-C
Dividends	1099-DIV
Donation of motor vehicle	1098-C
Education loan interest	1098-E
Employee business expense reimbursement	
	W-2
Employee compensation	
	W-2
Excess deferrals, excess contributions, distributions of	
	1099-R
Exercise of incentive stock option under section 422(b)	
	3921
Fees, employee	W-2
Fees, nonemployee	1099-MISC
Fishing boat crew members proceeds	1099-MISC
Fish purchases for cash	1099-MISC
Foreclosures	1099-A
Foreign persons' income	1042-S
401(k) contributions	W-2
404(k) dividend	1099-DIV
Gambling winnings	W-2G
Golden parachute, employee	W-2
Golden parachute, nonemployee	1099-MISC
Grants, taxable	1099-G
Health care services	1099-MISC
Health savings accounts:	
Contributions	5498-SA
Distributions	1099-SA
Income attributable to domestic production activities, deduction for	
	1099-PATR
Income tax refunds, state and local	
	1099-G
Indian gaming profits paid to tribal members	
	1099-MISC
Interest income	1099-INT
Tax-exempt	1099-INT
Interest, mortgage	1098
IRA contributions	5498
IRA distributions	1099-R
Life insurance contract	1099-R,
distributions	1099-LTC
Liquidation, distributions in	1099-DIV
Loans, distribution from pension plan	1099-R
Long-term care benefits	1099-LTC
Medicare Advantage MSAs:	
Contributions	5498-SA
Distributions	1099-SA
Medical services	1099-MISC
Mileage, employee	W-2
Mileage, nonemployee	1099-MISC
Military retirement	1099-R
Mortgage assistance payments	1098-MA

Type of Payment Report on Form

Mortgage interest	1098
Moving expense	W-2
Nonemployee compensation	1099-MISC
Nonqualified deferred compensation:	
Beneficiary	1099-R
Employee	W-2
Nonemployee	1099-MISC
Original issue discount (OID)	1099-OID
Tax-exempt OID	1099-OID
Patronage dividends	1099-PATR
Payment card transactions	1099-K
Pensions	1099-R
Points	1098
Prizes, employee	W-2
Prizes, nonemployee	1099-MISC
Profit-sharing plan	1099-R
Punitive damages	1099-MISC
Qualified longevity annuity contract	
	1098-Q
Qualified plan distributions	1099-R
Qualified tuition program payments	
	1099-Q
Real estate transactions	1099-S
Recharacterized IRA contributions	1099-R, 5498
Refund, state and local tax	1099-G
Rents	1099-MISC
Retirement	1099-R
Roth conversion IRA contributions	
	5498
Roth conversion IRA distributions	
	1099-R
Roth IRA contributions	
	5498
Roth IRA distributions	
	1099-R
Royalties	1099-MISC, 1099-S
Timber, pay-as-cut contract	1099-S
Sales:	
Real estate	1099-S
Securities	1099-B
Section 1035 exchange	1099-R
SEP contributions	W-2, 5498
SEP distributions	1099-R
Severance pay	W-2
Sick pay	W-2
SIMPLE contributions	W-2, 5498
SIMPLE distributions	1099-R
Student loan interest	1098-E
Substitute payments in lieu of dividends or tax-exempt interest	
	1099-MISC
Supplemental unemployment	
	W-2
Tax refunds, state and local	1099-G
Third party network transactions	1099-K
Tips	W-2
Traditional IRA contributions	5498
Traditional IRA distributions	1099-R
Transfer of stock acquired through an employee stock purchase plan under section 423(c)	
	3922
Tuition	1098-T
Unemployment benefits	1099-G
Vacation allowance, employee	W-2
Vacation allowance, nonemployee	1099-MISC
Wages	W-2