



December 7, 2020

Re: 2021 Accountants' Memorandum

Greetings from Miller Kaplan Arase LLP!

Enclosed is our annual information brief, which is primarily intended to address payroll tax matters and information reporting requirements. We also mention items that we believe will be of particular interest to our clients. This year, as a result of the 2019 Novel Coronavirus (COVID-19) pandemic, the tax filing deadline for 2019 tax returns was pushed back from April 15 to July 15. Additionally, the resultant economic downturn brought major federal and state legislative changes. We understand that this past year has been particularly difficult, and our thoughts are with everyone affected by current events.

Below we highlighted some of the legislative and regulatory changes that occurred in 2020, some of which were passed in light of the COVID-19 pandemic.

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the "FFCRA"). The FFCRA provided for free Coronavirus testing, increased unemployment benefits, in addition to a requirement that employers with fewer than 500 employees provide paid sick leave and extended family medical leave. The FFCRA also provided that employers can receive refundable tax credits to offset the cost of the benefits through a reduction to the employer's portion of Social Security taxes. A self-employed individual may also take the credit against their self-employment tax. The FFCRA became effective on April 2, 2020 and the provisions apply through December 31, 2020.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act authorized \$2.2 trillion in economic stimulus including \$300 billion in cash payments to individual Americans and \$260 billion in increased unemployment benefits. The CARES Act also allowed the deferral of certain Federal Insurance Contributions Act ("FICA") taxes and established the Paycheck Protection Program ("PPP") to let small businesses, nonprofits and individuals apply for forgivable Small Business Administration ("SBA") loans.

On June 5, 2020, President Trump signed the Paycheck Protection Program Flexibility Act of 2020, which amended the PPP portion of CARES Act and gave borrowers more time to spend loan proceeds and still be eligible for forgiveness. The PPP Flexibility Act extended the time borrowers had to use loan proceeds, from 8 weeks to 24 weeks and also extended the time borrowers had to pay off the loan from two years to five years. The PPP Flexibility Act also established that taxpayers who received PPP loans could also qualify for payroll tax deferral. Further, there were new rules as to how borrowers could qualify for full loan forgiveness even without restoring their workforce.

On August 8, 2020, President Trump sent a directive to the Treasury Department to issue regulations and the IRS issued Notice 2020-65 to provide guidance to allow employers to defer withholding and payment of the employee's portion of Social Security taxes if the employee's wages are below a certain amount. The tax deferral generally applies to wages paid starting September 1, 2020 through December 31, 2020. The deferred taxes on eligible wages and compensation must then be withheld ratably from wages and compensation paid from January 1, 2021 through April 30, 2021. The deferred taxes will also begin to accrue interest, penalties, and additions to taxes beginning May 1, 2021, and employers are liable for deferred taxes not paid by that date.

There were also significant changes to California law as a result of the COVID-19 pandemic. On September 9, 2020, California Governor Newsom signed a bill for California to conform to the federal provision that excludes any cancellation of debt income arising from Paycheck Protection Program loan forgiveness. However, the bill prohibits taxpayers from claiming deductions or credits for expenses that are paid with forgiven PPP loan funds. At the federal level, the IRS bars such deductions, but Congress may, but currently has not, reversed that decision.

California Governor Newsom also authorized a \$100 million small business hiring tax credit program. This credit allows businesses with 100 or fewer employees whose gross receipts have declined at least 50% to receive a tax credit of \$1,000 per net new hire after July 1, 2020, compared to their workforce in the second quarter of 2020. Qualifying taxpayers must reserve the tax credits beginning December 1, 2020 and before January 15, 2021 with the California Department of Tax and Fee Administration.

As always, we 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, thus allowing certain asset acquisitions to be expensed.

Please note that the overall process for reporting non-employee compensation is changing for the 2020 tax year. The IRS has introduced the Form 1099-NEC, which is a new form that replaces Form 1099-MISC just for reporting non-employee compensation (in Box 7). The Form 1099-MISC will continue to still be used to report other types of miscellaneous income such as rent or payments to an attorney. The Form 1099-NEC needs to be filed with the recipient and the IRS by January 31, whether filed on paper or electronically, and there are **no** extensions, except for very limited circumstances such as a natural disaster or the information return is being filed for the first year the business was established.

Finally, as we note each year, please take steps to complete payroll and information filings on a timely basis, as the penalties for failing to do so can be severe.

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

We look forward to serving you in 2021.

Miller Kaplan Arase LLP

TABLE OF CONTENTS

	Page No.
I. EARNINGS REPORTS DUE IN 2021	1
A. Payroll Taxes	1
1. IRS Form 941 – 2 Employer’s Quarterly Federal Tax Return	1
2. IRS Form 940 – Employer’s Annual Federal Unemployment Tax Return.....	1-2
3. California Form DE 9	2-3
4. Idaho State Requirements	3
5. Washington State Requirements.....	3-4
B. Wage and Tax Statement - 2020 Form W-2	4-7
C. Transmittal Form Addresses.....	7-8
1. 2020 Form W-3 (Federal).....	7-8
2. 2020 Form DE 9 (California)	8
D. Information Forms.....	8
1. Taxpayer Identification Number Solicitation. Forms W-8 and W-9 series	8-9
2. Foreign Account Tax Compliance Act Requirements.....	9
3. Eyeball Test.....	9
4. IRS Form 1099 Series - U.S. Information Returns	9-10
5. When to File the IRS Copies.....	10-11
E. Rules on 2020 Withholding from Supplemental Wage Payments	11
1. General Requirements.....	11-12
2. IRS Form 945 – Annual Return of Withheld Federal Income Tax.....	12
3. California Form 592 – Return for Tax Withheld at Source	12-13
F. Affordable Care Act Reporting.....	13-14
G. Household Employee Taxes	14-15
H. Penalties	15
1. Trust Fund Recovery Penalty	15
2. Failure to File Correct Information Returns by Due Date.....	15
3. Information Return Penalties.....	15-16
4. Failure to Furnish Correct Payee Statements.....	16
I. Electronic Federal Tax Payment System (EFTPS)	16-17
II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION	17
A. Employer Reimbursement Plan Rules	17
B. Accountable Plan Defined.....	17-18
C. IRS Automobile Reimbursement Mileage Rates	18
D. Other Changes to Fringe Benefits Under TCJA	19



TABLE OF CONTENTS
(Continued)

	Page No.
III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT	20
A. Taxation of Value of Automobile	20
B. Employer Provided Vehicle.....	20
1. Safe Harbor for Commuting Use Only.....	20-21
2. Sample Notice to Employees When Using Commuting Use Only Safe Harbor	21-22
3. Other Than Commuting Use Only.....	22-24
C. Employee Uses Own Vehicle	24
D. Summary Statement	25
E. Policy Statement "Commuting Only Use" - Special Rule	26
F. Annual Lease Value Table for Employer Provided Autos	26-27
IV. NEW LAWS AND OTHER CHANGES.....	28
<i>Federal</i>	
A. Form 1099-NEC.....	28
B. Form W-2 Change.....	28
C. Families First Coronavirus Response Act.....	28
D. Cares ACT.....	29
E. Paycheck Protection Flexibility Act of 2020	30
F. IRS Notice 2020-32.....	30
G. Use of R&D Credits to Offset Federal Payroll Taxes.....	30
H. Virtual Currencies	31
I. Secure Act.....	31
J. Tax Help for Wildfire Victims	31
K. Nonprofit Tax Information	31
<i>California</i>	
L. Expanded List of Independent Contractors in California	32
M. Individual Shared Responsibility Penalty	32
N. Doing Business in California Threshold Amounts Updated for 2020.....	32-33
O. New California Small Business Hiring Credit	33
P. California Film and Television Tax Credit Program.....	34
Q. State Retirement Program for Private Workers.....	34
R. Market Based Sourcing.....	34
V. IDENTITY THEFT	35
VI. IRS TANGIBLE PROPERTY REGULATIONS.....	36
VII. CALIFORNIA COMPETES TAX CREDIT.....	36
VIII. CALIFORNIA INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS	37
IX. EARNED INCOME CREDIT	37

**TABLE OF CONTENTS
(Continued)**

	Page No.
X. PAYROLL TAX DEPOSIT SYSTEM.....	38
XI. EMPLOYEE OR INDEPENDENT CONTRACTOR.....	38-39
A. Worker Classification: The IRS' Approach.....	39
XII. DBA – FICTITIOUS BUSINESS NAMES.....	40
XIII. REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR).....	40-41
XIV. REPORTING OF CASH TRANSACTIONS IN EXCESS OF \$10,000.....	41
XV. WHEN HIRING NEW EMPLOYEES.....	41
A. Compliance with U.S. Immigration Laws.....	41-42
B. E-Verify.....	42
C. Income Tax Withholding.....	42
D. New Employee Registry.....	43
XVI. BASIS IN S CORPORATIONS AND PARTNERSHIPS.....	43-44
XVII. CAFETERIA PLANS.....	44-45
XVIII. USE TAX.....	46
XIX. RECORDS RETENTION.....	46-47
XX. CALIFORNIA STATE CONTROLLER'S OFFICE UNCLAIMED PROPERTY PROGRAM.....	48
XXI. INFORMATION AVAILABLE ON THE INTERNET.....	49
XXII. TYPES OF PAYMENTS.....	50-51

I. EARNINGS REPORTS DUE IN 2021**A. Payroll Taxes****1. IRS Form 941 – Employer's Quarterly Federal Tax Return**

FICA:	<u>2021</u>	<u>2020</u>
	Applicable During 2021	Applicable During 2020
Social Security Wage Limit	\$142,800	\$137,700
Withholding Tax Rate ("OASDI" Portion Only)	6.2%	6.2%
Maximum Withholding	\$8,853.60	\$8,537.40
Employer Tax Rate ("OASDI" Only)	6.2%	6.2%
Maximum Employer Portion	\$8,853.60	\$8,537.40
Medicare Wage Limit	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 certain high-income taxpayers (single individuals with income exceeding \$200,000 and married filing jointly taxpayers with income 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, 2020	January 31, 2021
March 31, 2021	April 30, 2021
June 30, 2021	July 31, 2021
September 30, 2021	October 31, 2021

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

	<u>2020</u>	<u>2019</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>5.4%</u>	<u>5.4%</u>
Net Federal Tax Rate	<u>0.6%</u>	<u>0.6%</u>

File the Form 940 for the year ended December 31, 2020 no later than January 31, 2021. Deposits for 2020 were required for any quarter when the cumulative liability for the quarter was \$500.00 or more. Note: Due to large borrowing from the federal government by California to pay unemployment benefits, the state may become a credit reduction state again in the future.

In general, payments for services of a spouse or a child under age 21 are exempt from FUTA tax. Payments for the services of a child under age 18 who works for his or her parent are exempt from social security and Medicare taxes if the trade or business is a sole proprietorship or a partnership in which each partner is a parent of the child. Federal income taxes are, however, required to be withheld. These special rules generally do not apply to family owned partnerships or corporations

I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

A. Payroll Taxes (*Continued*)

2. IRS Form 940 – Employer's Annual Federal Unemployment Tax Return (*Continued*)

or to an estate, even if the estate is of a deceased parent. 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 California 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 subject to state payroll taxes and must register with the Employment Development Department ("EDD") within 15 days after paying wages in excess of \$100 in a calendar quarter.

3. California Form DE 9

All employers are required to electronically submit employment tax returns, wage reports, and payroll tax deposits to the California Employment Development Department. Employers may be charged penalties for non-compliance.

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)*

Employers can use e-Services for Business to comply with the e-file and e-pay mandate and avoid penalties. 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:

- Register, close, or re-open an employer payroll tax account number.
- File, adjust, and print returns and reports.
- Make payments.
- View and update account information.
- Protest Unemployment Insurance (UI) benefit charges or UI rates.
- Report new employees or independent contractors.
- View notices and letters regarding registration, payments, returns, and more.

Employers may request a waiver from the mandate due to lack of automation, severe economic hardship, current federal exemption from filing electronically, 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.

I. EARNINGS REPORTS DUE IN 2021 (Continued)

A. Payroll Taxes (Continued)

3. California Form DE 9 (Continued)

- Visit the nearest Employment Tax Office listed on the EDD website at www.edd.ca.gov/Office_Locator/.
- Contact the Taxpayer Assistance Center at (888) 745-3886.
- An approved waiver will be valid for one year. Upon expiration of the approval period, an employer must start to electronically file and pay, or submit a new waiver request to avoid a non-compliance penalty.

A summary table is as follows:

	2021	2020
	Applicable During 2021	Applicable During 2020
SUI Tax - Annual Wage Limit (Tax Rate Assigned to Employers Based on Experience)	\$7,000.00 *	\$7,000.00 *
ETT - Annual Wage Limit	\$7,000.00	\$7,000.00
Tax Rate	0.1%	0.1%
SDI Tax - Annual Wage Limit	\$128,298.00	\$122,909.00
Tax Rate	1.2%	1.0%
Maximum Amounts to be Withheld	\$1,539.58	\$1,229.09

* 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 Tax Rate information at (916) 653-7795 or do an online rate search at https://eddservices.edd.ca.gov/tap/open/rateinquiry/_/#1 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. Idaho State Requirements

The Idaho State Tax Commission (<https://tax.idaho.gov/>) is the primary taxing authority. If you have employees in Idaho, you will need to establish both state and federal withholding accounts and Unemployment Insurance Tax accounts. Other taxes, such as sales tax or taxes on certain products may also apply, depending on the nature of the business. To learn about the taxes you may need to pay go to <https://business.idaho.gov/business-wizard/>.

This year the state has posted the latest information regarding the Coronavirus at coronavirus.idaho.gov and rebound.idaho.gov.

5. Washington State Requirements

Washington State requires businesses to register with the state’s Department of Revenue (“DOR”) if the business meets any of the following conditions:



I. EARNINGS REPORTS DUE IN 2021 (Continued)

A. Payroll Taxes (Continued)

5. Washington State Requirements (Continued)

- The business is required to collect sales tax.
- The business requires city and state endorsements.
- Gross income is \$12,000 per year or more.
- The business is a buyer or processor of specialty wood products.
- The business is required to pay taxes or fees to the DOR.
- You have employees in Washington state.

Washington State does not have an income tax, but it does have a Business & Occupation ("B&O") tax based on gross receipts. This means there are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by which classification the business fits into. There are a few B&O credits available. Go to dor.wa.gov for more details.

B. Wage and Tax Statement – 2020 Form W-2 (File with SSA and furnish to employees by February 1, 2021)

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		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		12c	12d	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
		14 Other							
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

2020

Department of the Treasury – Internal Revenue Service

Notes Per Form Instructions:

- Military Differential Pay** – Payments made to employees while they are on active duty for more than 30 days in the Armed Forces or other uniformed services are treated as wages. Report differential wage payments in box 1 of Form W-2.



I. EARNINGS REPORTS DUE IN 2021 (Continued)**B. Wage and Tax Statement – 2020 Form W-2 (File with SSA and furnish to employees by February 1, 2021) (Continued)****Notes Per Form Instructions: (Continued)**

- 2. Nonqualified Deferred Compensation Plans** – Section 409A provides that all amounts deferred under a nonqualified deferred compensation (“NQDC”) plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are met.

Additional Note:

- 3. 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.
- 4. Qualified Transportation Fringe Benefits** – The TCJA changed the laws with regards to qualified transportation fringe (“QTF”) benefits. QTF benefits include transportation in commuter vehicles between the employee’s residence and place of work, transit passes, and qualified parking. Employers may still provide tax-free QTF benefits to employees for transit and parking up to a monthly maximum amount (\$270 for 2020). However, beginning with amounts paid or incurred on or after January 1, 2018, employers cannot deduct the expenses if the employees receive the tax-free QTF benefits.
- 5. Employer Provided Educational Assistance** – Employers can exclude from an employee’s wage up to \$5,250 of educational assistance provided to an employee only if it is provided under an educational assistance program under Section 127.
- 6. Deceased Employee’s Wages** – The IRS has special instructions for reporting wages if an employee dies during the year. Consult the instructions to the 2020 Form W-2.
- 7. Group-Term Life Insurance** – Employers must include in their 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 2020 Form W-2. Also report the amount 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 all insurance coverage over \$50,000 (figured to the nearest \$100) by the cost shown in the following table from Treas. Reg. section 1.79-3, Table I. For all coverage provided within the calendar year, use the employee’s age on the last day of the employee’s tax year. Employers must prorate the cost from the table if less than a full month of coverage is involved.

I. EARNINGS REPORTS DUE IN 2021 (Continued)

B. Wage and Tax Statement – 2020 Form W-2 (File with SSA and furnish to employees by February 1, 2021) (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

Employers 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:

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

8. 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 individual Forms W-2.

Box 3 – Social Security Wages: Cannot exceed \$137,700 for 2020.

Box 4 – Social Security Tax Withheld: Cannot exceed \$8,537.40 for 2020.

Box 5 – Medicare wages and tips: Unlimited for 2020.

Box 6 – Medicare tax withheld: Unlimited for 2020.

Box 11 – Report total distributions made to the employee from a nonqualified deferred compensation plan or a nongovernmental section 457(b) plan during 2020, here and in Box 1. Report deferred amounts that are no longer subject to a substantial risk of forfeiture in Boxes 3 and/or 5. Do not report in Box 11 deferrals included in Boxes 3 and/or 5 and deferrals for current year services (such as those with no risk of forfeiture). Payments to beneficiaries of deceased employees are reportable on Form 1099-R.



I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

B. Wage and Tax Statement – 2020 Form W-2 (File with SSA and furnish to employees by February 1, 2021) (*Continued*)

Notes Per Form Instructions: (*Continued*)

Box 12 – Enter a code (A through HH) for items such as taxable 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 (“ACA”) requires employers with 250 or more employees to disclose on Forms W-2 the value of the employee’s health insurance coverage. Report the value of the health care coverage in Box 12 with Code DD.

Box 13 – Checkboxes. 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. Statutory employees are workers who are independent contractors under common-law rules but are treated by statute as employees.

Box 14 – Other. The lease value of a vehicle provided to your employee and reported in box 1 must also be reported here or in a separate statement to your employee. See the New Laws and Other Changes section of this memorandum for additional information – new for 2020.

Boxes 15 through 20 – State and local income tax information. For California employers, enter in Box 19 the amount of State Disability Insurance (“SDI”) actually withheld, and in Box 20 the letters “CASDI”. The 2020 SDI maximum was \$1,229.09.

The IRS eliminated the automatic 30-day extension for Forms W-2 or 1099-NEC, reporting nonemployee compensation, that had been available with the filing of Form 8809. Thus, extensions will only be granted due to extraordinary circumstances.

The TCJA suspended the exclusion for qualified moving expenses. However, the exclusion will still apply to certain employees in the military.

C. Transmittal Form Addresses

The Following Form is Due by February 1, 2021:

1. 2020 Forms W-2 and W-3 (Federal)

The IRS no longer mails paper tax packages. If you file 250 or more Forms W-2 or W-2c, then you must file them electronically. If you are required to e-file but fail to do so, you may incur a penalty. The Social Security Administration (“SSA”) encourages you to file electronically even if you are filing fewer than 250 Forms W-2. For more information about e-filing Forms W-2 or W-2c, visit the SSA’s Business Services Online (“BSO”) website at www.ssa.gov/bso/bsowelcome.htm.

On July 1, 2019, President Trump signed a bill that greatly reduces the maximum number of Forms W-2 employers can file on paper. The Taxpayer First Act reduces the threshold that triggers the electronic filing requirement for the combined filing of most information returns to the IRS, including Forms W-2, *Wage and Tax Statement*, and the Form 1099 series. The threshold, now 250 forms, would fall to 100 for 2021 forms filed in 2022 and to 10 forms for 2022 forms filed in 2023 and subsequent years.

I. EARNINGS REPORTS DUE IN 2021 (Continued)**C. Transmittal Form Addresses (Continued)****The Following Form is Due by February 1, 2021: (Continued)****1. 2020 Forms W-2 and W-3 (Federal) (Continued)**

File Copy A of Form(s) W-2 with the Form W-3 at the following address:

If Using United States Postal Service:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-3333

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. 2020 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 nonresident aliens ("NRAs") one of the W-8 series Forms. Solicitation is the only safe harbor method of collection authorized by the IRS Regulations.
- b. Tax Identification Number ("TIN") Matching. The IRS has established a free 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. The 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. The 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. The IRS will waive the penalty if the payor documents the match as set forth in IRS Publication 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 October 2018. As of December 2020, this is still the latest version.

I. EARNINGS REPORTS DUE IN 2021 *(Continued)*

D. Information Forms *(Continued)*

1. Taxpayer Identification Number Solicitation. Forms W-8 and W-9 series. *(Continued)*

c. New Forms W-9 and W-8 series. *(Continued)*

Purpose of Form:

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain a payee's correct taxpayer identification number ("TIN") which may be the payee's social security number ("SSN"), individual taxpayer identification number ("ITIN"), adoption taxpayer identification number ("ATIN"), or employer identification number ("EIN"), to report on an information return the amount paid to the payee, or other amount reportable on an information return.

- ii. Forms W-8 are used to certify foreign status. The IRS issued revised W-8 series forms in 2017, splitting the single Form W-8 into Form W-8BEN for individuals, Form W-8BEN-E for entities, Form W-8IMY foreign intermediaries, flow-through entities, or certain U.S. branches, and Form W-8EXP for foreign governments or other foreign organizations. The revised W-8BEN is dated July 2017. <https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>. The Instructions for the W-8 series forms were last revised in July 2017.

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.

The W-8 series forms that were last revised in July 2017 conform to the FATCA rules, and all solicitations should be made using these forms.

3. Eyeball Test

The "eyeball test" is no longer available. The fact that an entity name includes "Incorporated," "Inc.," "Corporation," or "Corp." 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, you need to 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

I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

D. Information Forms (*Continued*)

4. IRS Form 1099 Series – U.S. Information Returns (*Continued*)

boxes and the correct type of Form 1099 to use. There are certain filing thresholds depending on the type of payment. For example, you need to file Form 1099-MISC for each person to whom you have paid during the year at least \$600 in rents, prizes and awards, payments to an attorney, and other income payments. Non-employee compensation is now reported on Form 1099-NEC.

Note: Generally, you have to issue a Form 1099 for payments made to limited liability companies. However, there is an exception if the LLC has filed Form 8832 with the IRS to elect to be taxed as a corporation. (Many LLCs choose to be taxed as partnerships or sole proprietorships.) The only safe harbor method for determining this election is by soliciting 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, Copy B for the recipient, and Copy C for the payer's files. Give the recipient their copy no later than January 31, 2021. Forms 1099 should be typed, or machine printed, although 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. If you have questions concerning filing requirements and procedures for information returns (any Form 1099) or Form W-2, contact the Martinsburg Computing Center toll-free at (866) 455-7438.

The Taxpayer First Act reduces the threshold for mandatory electronic filing for the combined filing of information returns to the IRS, including Forms W-2 and the Form 1099 series. The threshold is now 250 forms but will fall to 100 forms for 2021 forms filed in 2022 and to 10 forms for 2022 forms filed in 2023 and subsequent years. The IRS has not issued regulations in this regard, but employers should prepare for the change.

Important Notice regarding Form 1099-NEC, *Nonemployee Compensation*:

The Protecting Americans from Tax Hikes ("PATH") Act of 2015 accelerated the due date for filing Form 1099 that includes nonemployee compensation from February 28 to January 31 and eliminated the automatic 30-day extension for forms that include nonemployee compensation. Beginning with tax year 2020, you will need to use Form 1099-NEC to report nonemployee compensation.

Due to the creation of Form 1099-NEC, the IRS has revised Form 1099-MISC and rearranged box numbers for reporting certain income.

5. When and Where to File the IRS Copies

The complete list of filing due dates for the Forms 1098 and 1099 series forms can be found on the IRS website ([irs.gov](https://www.irs.gov)). The new Form 1099-NEC used to report nonemployee compensation is due to the recipient and the IRS by January 31. The other 1099 series forms are generally due to the recipients by January 31 and to the IRS by February 28. If you file electronically the due date to the IRS is automatically extended until March 31. Form 1096 must accompany all paper submissions.

I. EARNINGS REPORTS DUE IN 2021 *(Continued)*

D. Information Forms *(Continued)*

5. When and Where to File the IRS Copies *(Continued)*

The mailing address for California paper filers is:

Department of the Treasury
Internal Revenue Center
Ogden, UT 84201

Note: Payments made with a credit card or through third party network transactions such as PayPal, should be reported on Form 1099-K by the payment settlement entity. They are not subject to reporting on Form 1099-MISC, even if the total exceeds \$600.

Also note that for most reportable payments there will not be any extension beyond the January 31 due date for mailing forms to recipients. (Previously an automatic extension was available providing an additional 30 days for both mailing to recipients and filing with the IRS for all Forms 1099). There are strict qualification requirements for those extensions that are available. See IRS Form 8809 and related instructions for details.

E. Rules on 2020 Withholding from Supplemental Wage Payments

1. General Requirements *(Note: Rate Changes from 2017, as a result of the TCJA)*

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, but are not limited to, 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 a flat 22%. However, supplemental wage payments exceeding \$1M are subject to withholding at the highest federal tax rate for the year, currently 37%. See 2020 IRS Publication 15 (Circular E) for more details.

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:

I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

E. Rules on 2020 Withholding from Supplemental Wage Payments (*Continued*)

1. General Requirements (*Continued*)

- a. Regular Pay – If the supplemental wages are paid at the same time as the employee's regular wages, you are required to withhold taxes based on the employee's DE-4 in effect at the time the payment is made.
- b. 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 taxes are withheld based on the employee's DE4; otherwise, the taxes are withheld at the supplemental flat tax rate in effect at the time the payment is made, currently 6.6%.
- c. Bonuses and Stock Options – The bonus and stock options 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 taxes are withheld based on the employee's DE4; otherwise, the taxes are withheld at the bonus flat tax 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.

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 during the year 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 on California source payments to the Franchise Tax Board ("FTB") using Form 592, *Resident and Nonresident Withholding Statement*, by the required due dates in order to avoid interest and penalties. Withholding must begin as soon as the total payments of California source income for the calendar year exceed \$1,500. The withholding agent must provide Form 592-B to each payee which shows the total amount withheld

I. EARNINGS REPORTS DUE IN 2021 (Continued)

E. Rules on 2020 Withholding from Supplemental Wage Payments (Continued)

3. California Form 592 – Return for Tax Withheld at Source (Continued)

and reported for the tax year. Additionally, if the FTB issued Form 594, *Notice to Withhold Tax at Source*, complete the form as indicated in the instructions and send the voucher with payment of tax withheld to the FTB.

F. Affordable Care Act Reporting

Congress has rescinded the penalty for the Affordable Care Act beginning on January 1, 2019. Therefore, starting with the 2019 federal tax returns (filed in 2020), you will no longer be subject to a fee called the Individual Shared Responsibility Payment if you can afford health insurance but choose not to buy it. However, some states, such as California, have enacted their own requirements and exchanges and employers will still need to file Forms 1094-B and 1095-B or 1095-A and 1095-C so that premium subsidies can be reconciled on tax returns.

Employers with 50 or more full-time employees (including full-time equivalent employees) must use Form 1095-C, *Employer Provided Health Insurance Offer and Coverage*, to report 2020 health insurance information for each full-time employee to both the IRS and the employee. Those employers must also file Form 1094-C to report additional information to the IRS. Employers with less than 50 employees will use Form 1094-B and 1095-B to report 2020 health coverage information to employees and the IRS. Those small employers will use Form 1094-B to transmit Forms 1095-B to the IRS.

560118

Form **1095-B** **Health Coverage** VOID CORRECTED OMB No. 1545-2262
 Department of the Treasury Internal Revenue Service **2020**
 ▶ Do not attach to your tax return. Keep for your records.
 ▶ Go to www.irs.gov/Form1095B for instructions and the latest information.

Part I Responsible Individual

1 Name of responsible individual—First name, middle name, last name 2 Social security number (SSN) or other TIN 3 Date of birth (if SSN or other TIN is not available)

4 Street address (including apartment no.) 5 City or town 6 State or province 7 Country and ZIP or foreign postal code

8 Enter letter identifying Origin of the Health Coverage (see instructions for codes): . . . ▶ 9 Reserved

Part II Information About Certain Employer-Sponsored Coverage (see instructions)

10 Employer name 11 Employer identification number (EIN)

12 Street address (including room or suite no.) 13 City or town 14 State or province 15 Country and ZIP or foreign postal code

Part III Issuer or Other Coverage Provider (see instructions)

16 Name 17 Employer identification number (EIN) 18 Contact telephone number

19 Street address (including room or suite no.) 20 City or town 21 State or province 22 Country and ZIP or foreign postal code

Part IV Covered Individuals (Enter the information for each covered individual.)

(a) Name of covered individual(s) First name, middle initial, last name	(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	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
23			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>
24			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>
25			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>
26			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>
27			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>
28			<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"/>	<input type="checkbox"/>	<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 80704B Form **1095-B** (2020)



I. EARNINGS REPORTS DUE IN 2021 (Continued)

F. Affordable Care Act Reporting (Continued)

600120

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.						<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED	OMB No. 1545-2251 2020						
Part I Employee				Applicable Large Employer Member (Employer)											
1 Name of employee (first name, middle initial, last name)		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			Employee's Age on January 1					Plan Start Month (enter 2-digit number):							
14 Offer of Coverage (enter required code)			All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
15 Employee Required Contribution (see instructions)			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H-1 Safe Harbor and Other Relief (enter code, if applicable)															
17 ZIP Code															

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60709M Form 1095-C (2020)

G. Household Employee Taxes

If you paid a household employee cash wages of \$2,200 or more in 2020 (this threshold increases to \$2,300 in 2021), you must withhold 6.2% of social security and 1.45% of 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 7.65% (6.2% for social security tax and 1.45% for Medicare tax) from each payment of cash wages. Instead of paying this withheld amount to your employee, pay it to the IRS with a matching amount for your share of the taxes. The specified dollar amount and percentages can be found under the topic "Do You Need To Pay Employment Taxes?" in IRS Publication 926, *Household Employer's Tax Guide*. 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.

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 a completed Form W-4, *Employee's Withholding Allowance Certificate* from your employee. See IRS Publication 15, (*Circular E*), *Employer's Tax Guide*, which has tax withholding tables that are updated each year.

If you withhold or pay social security and Medicare taxes, or if you withhold federal income tax, you will need to file Form W-2, *Wage and Tax Statement*, for each employee. 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 ("EIN") and your employee's social security number. Your EIN is a nine-digit number issued by the IRS and is not the same as a social security number. If you do not already have an EIN, you can request one by submitting a Form SS-4 *Application for Employer Identification Number*.



I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

G. Household Employee Taxes (*Continued*)

If you paid cash wages to all your household employees totaling \$1,000 or more in any calendar quarter of the current or prior year, you generally must pay federal unemployment tax under the Federal Unemployment Tax Act ("FUTA") on the first \$7,000 of cash wages you pay to each household employee. For updated dollar amounts and wages not counted, look under the heading "Do You Need To Pay Employment Taxes?" in IRS Publication 926.

If you must file Form W-2 or pay FUTA 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 to report household employment taxes.

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, visit the California FTB's website (<https://www.ftb.ca.gov>) or call the California FTB's Withholding Services and Compliance Unit at (888) 792-4900.

H. Penalties

1. Trust Fund Recovery Penalty

Federal income taxes, social security, and Medicare taxes along with certain excise taxes withheld by an employer and held in trust until paid to the U.S. Treasury 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 unpaid balance of the trust fund taxes and may apply to a person or persons the IRS determines is responsible.

2. Failure to File Correct Information Returns by Due Date

This penalty applies to the failure to file timely returns and the failure to include all required or correct information (including missing or incorrect taxpayer identification numbers). The penalty also applies for filing on paper when required to file on electronic media or for failing to file forms that allows them to be processed.

3. Information Return Penalties

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

Information Return penalties are discussed in the IRS Publication, *General Instructions for Certain Information Returns*. The penalties and maximums in for not filing correct information returns under IRC Section 6721 and/or for not furnishing correct payee statements under IRC Section 6722, 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 \$565,000 per year (\$197,500 for small businesses).

I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

H. Penalties (*Continued*)

3. Information Return Penalties (*Continued*)

- \$110 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$1,696,000 per year (\$565,000 for small businesses).
- \$280 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$3,392,000 per year (\$1,130,500 for small businesses).

You are considered a small business and subject to the lower maximum penalties if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter), was less than or equal to \$5 million.

Also, the penalty is increased to \$280 per information return if you do not file corrections and you do not meet any of the exceptions to the penalty.

If you fail to file a correct information return and/or fail to furnish correct payee statements due to intentional disregard of the requirements, the penalty is at least \$560 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 amounts.

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 Form W-2 or Form 1099.

4. Failure to Furnish Correct Payee Statements

The penalty for failing to provide correct payee statements apply if you fail to provide the statement by the due date. The payee statement must include all the information furnished to the IRS and, in some cases, additional information. Different rules apply to furnishing statements to recipients depending on the type of payment (or other information) you are reporting and the form you are filing.

I. Electronic Federal Tax Payment System (EFTPS)

EFTPS is a free, secure payment system provided by the U.S. Treasury Department. The following information on EFTPS is from the [irs.gov](https://www.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: Taxpayer Identification Number (EIN or SSN), EFTPS Personal Identification Number (PIN), and an internet password.

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.

I. EARNINGS REPORTS DUE IN 2021 (*Continued*)

I. Electronic Federal Tax Payment System (EFTPS) (*Continued*)

You can use EFTPS® to make all your federal tax payments, including income, employment, estimated and excise taxes.

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 <https://www.eftps.gov/eftps/> or call EFTPS® Customer Service to request an enrollment form: 1-800-555-4477

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION

A. Employer Reimbursement Plan Rules

Unreimbursed expenses, or expenses paid under a “nonaccountable” expense reimbursement arrangement 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. Reimbursements paid under an “accountable” plan 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 the limitations previously stated.

For tax years beginning after December 31, 2017 and before January 1, 2026, the TCJA suspended the ability for taxpayers to take miscellaneous itemized deductions subject to the 2% adjusted gross income limit. Thus, during those years, employees cannot deduct unreimbursed employee expenses or expenses paid under “nonaccountable” expense reimbursement arrangements.

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 within a reasonable period of time; and
3. the employer requires the employee to return any amount paid in excess of the substantiated expenses within a reasonable period of time.

A nonaccountable plan is a reimbursement or expense allowance arrangement that does not meet one or more of the three rules listed above.

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION (*Continued*)

B. Accountable Plan Defined (*Continued*)

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.

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 nonaccountable 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 Treasury Regulations provide a safe harbor method. The requirements are treated as met within a reasonable time if an advance is made within 30 days of when an expense is paid or incurred, an expense is substantiated within 60 days after it is paid or incurred, and any excess amount is returned within 120 days after the expense is paid or incurred. If the first two parts of the safe harbor 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

1. For 2020, you may elect to reimburse employees for substantiated business mileage at 57.5 cents 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 is also used by many companies to reimburse workers who use their own cars on company business.
2. Beginning January 1, 2021, the standard mileage rates for the use of a car (also vans, pickups, or panel trucks) will be:
 - 56 cents for every mile of business travel driven.
 - 16 cents per mile driven for medical or moving purposes.
 - 14 cents per mile driven in service of charitable organizations.
3. 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 above and also in IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses*.

II. AUTO MILEAGE AND EXPENSE REIMBURSEMENT INFORMATION (*Continued*)

D. Other Changes to Fringe Benefits Under TCJA

1. 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, such as qualified transportation fringe benefits as discussed below, that still can be provided tax-free to an employee will no longer be tax deductible by the employer. If an employer chooses to provide the affected fringe benefits on a taxable basis to the employee (i.e., as W-2 wages subject to income tax), the employer may still be able claim a tax deduction for the taxable benefits.
2. 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. Therefore, 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.
3. Moving Expenses. Prior to TCJA, 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. For tax years beginning after December 31, 2017 and before January 1, 2026, an employee cannot deduct moving expenses nor can an employer pay or reimburse an employee's moving expenses on a tax-free basis. If an employer treats the payment or reimbursement of an employee's moving expenses as taxable W-2 wages, the employer may be able to deduct the payment as a compensation expense.
4. Qualified Transportation Fringe Benefit. Prior to the TCJA, the value of a qualified transportation fringe ("QTF") benefit provided by an employer to an employee was treated as tax-free, subject to monthly limits (\$270 for 2020). 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; and
 - qualified parking.

Employers can still provide tax-free qualified transportation fringe benefits to employees. Employees, however, cannot exclude qualified bicycle commuting reimbursements from employees' income as the exclusion of qualified bicycle commuting reimbursements from an employee's income is suspended beginning after 2017 and before 2026. An employer cannot deduct the expenses for providing tax-free QTF benefits.

5. 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 2020

For 2020, 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 2020 wages. 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 enclosed) 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 2019 payroll tax returns.
3. The employee's 2020 Form W-2 must include the taxable portion of vehicle use and related withholdings.

B. Employer Provided Vehicle

1. Safe Harbor for Commuting Use Only

There is a limited safe harbor for the benefit of an employee who is required by the employer to use a company vehicle for commuting purposes. Under the safe harbor, the employee can exclude the availability of the vehicle (other than for commuting) as a working condition fringe benefit, provided the employee is entitled to value the commuting benefit in the amount of \$1.50 per one-way commute. The commuting safe harbor 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 non-compensatory 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 or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). 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.

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

B. Employer Provided Vehicle (*Continued*)

1. Safe Harbor for Commuting Use Only (*Continued*)

- e. The employee required to use the vehicle for commuting is not a highly compensated “control employee” of the employer.

For 2020, a “control employee” of a nongovernment employer is generally an employee who meets any of the following:

- A board or shareholder-appointed, confirmed, or elected officer whose annual compensation equals or exceeds \$115,000.
- A director.
- An employee whose pay is \$230,000 or more.
- An employee who owns 1% or more equity, capital or profits interest in the business.

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 non-compensatory 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 provided Y a written policy statement and Y acknowledged receipt of the 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) Additionally:

- 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 2021 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 Safe Harbor

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

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 Safe Harbor (*Continued*)

We have elected to use a special valuation rule for 2020 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. 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.

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 utilize all three methods 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 (57.5¢ in 2020 and **to be determined** in 2021), 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); or
- 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: (i) at least 50 percent of the vehicle’s total mileage for the year is for the employer’s business; or (ii) 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 the vehicle’s 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 for personal use in 2020 is more than \$50,400.

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

B. Employer Provided Vehicle (Continued)

3. Other Than Commuting Use Only (Continued)

Example B – Vehicle Cents Per Mile (Continued)

The IRS and the Treasury Department did not publish a separate maximum value for trucks and vans for use with the vehicle cents-per-mile valuation rule. 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.

The value of 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 includes the fair market value of employer-provided fuel for miles driven in the United States, its territories and possessions, 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 per mile.

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.
2. Using the IRS Annual Lease Value Table provided in IRS Publication 15-B, 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.
3. Multiply the annual lease value by the percentage of personal miles out of the total miles driven by the employee.

To obtain the Annual Lease Value (“ALV”), the FMV of the vehicle must be determined as of the first day it was made available to the employee. The value remains applicable for a four-year period. In the fifth year that the automobile 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 fuel, the value of the fuel must be separately included in the employee’s wages. The fuel can be valued at FMV or at 5.5¢ per mile for all personal miles driven by the employee. The value of insurance, maintenance, and repairs is included in the annual lease value table amount. If, however, the employer does not supply maintenance or insurance, the ALV table figure cannot be reduced by reason of such omission. Further, if the employer provides any service other than maintenance and insurance, the FMV of that service must be added to the ALV of the automobile to figure the value of the benefit.

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

$$\$6,600 \times \frac{365}{365} \times \frac{5,000}{20,000} = \$1,650$$



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) Fuel

5,000 miles	X	5.5¢	=	<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%).
 - (a) In this example, \$4,000 X 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.

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

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

*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.



III. AUTO RULES OTHER THAN MILEAGE AND EXPENSE REIMBURSEMENT (Continued)**E. Policy Statement “Commuting Only Use” – Special Rule**

If an employer and employee elect to adopt the special rule (“Commuting Use Only”), 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.

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).

For automobiles with an FMV of more than \$59,999, the annual lease value equals $(0.25 \times \text{the FMV of the automobile}) + \500 .

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

F. Annual Lease Value Table for Employer Provided Autos (Continued)

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

FEDERAL

A. Form 1099-NEC

Beginning with reporting tax year 2020, use Form 1099-NEC to report nonemployee compensation. The IRS created this form because the Protecting Americans from Tax Hikes (“PATH”) Act accelerated the due date for reporting nonemployee compensation from February 28 to January 31 and eliminated the automatic 30-day extension for forms that include nonemployee compensation. As a result, the IRS has redesigned Form 1099-MISC and rearranged box numbers for reporting certain income.

You need to report nonemployee compensation on Form 1099-NEC when the nonemployee compensation payments are made in the course of your trade or business. Payments to a corporation, except payments for legal services, do not need to be reported if the corporation was substantiated by a facially valid Form W-9. Further, payments made with a credit card are not subject to reporting on Form 1099-NEC or Form 1099-MISC. The credit card company should instead be reporting these amounts on Form 1099-K.

According to the latest IRS Publication 1220, the new Form 1099-NEC will not be included in the IRS Combined Federal/State filing program (CF/SF). As a result, businesses may be required to file copies with the state.

B. Form W-2 Change

Additional Form W-2 reporting requirements apply to qualified sick and family leave wages under the Families First Coronavirus Response Act. In addition to including qualified sick leave and family leave wages in boxes 1, 3 and 5, employers must report the following amounts in box 14 or in a separate statement to employees:

- (1) The total qualified sick leave wages paid because employees took leave to care for themselves. The entry must be listed as sick leave wages subject to the \$511 per day limit.
- (2) The total qualified sick leave wages paid because employees took leave to care for another. This entry must be listed as sick leave wages subject to the \$200 per day limit.
- (3) The total qualified family leave wages paid to employees. This must be listed under emergency family leave wages.

C. The Families First Coronavirus Response Act

The Families First Coronavirus Response Act (the “FFCRA”), signed by President Trump on March 18, 2020, provides businesses with fewer than 500 employees (referred to as “Eligible Employers”) to provide employees with paid sick and family and medical leave for reasons related to COVID-19. Eligible employers can claim a refundable tax credit for qualified sick leave wages and qualified family leave wages plus allocable health plan expenses and the Eligible Employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020 and ending December 31, 2020. The Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. The IRS has information on their website on how to claim the payroll credits.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business.

IV. NEW LAWS AND OTHER CHANGES (Continued)

FEDERAL (Continued)

D. The Coronavirus Aid, Relief, and Economic Security Act

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law by President Trump on March 27, 2020. The CARES Act authorized over \$2 trillion to battle COVID-19 and its economic impact. As part of the CARES Act the Paycheck Protection Program was established to provide increased loan amounts for eligible small businesses for payroll obligations, emergency grants to cover immediate operating costs, and a mechanism for loan forgiveness where the small business can demonstrate that the loan proceeds were used for payroll and related costs. The Paycheck Protection Program is administered by the Small Business Administration ("SBA").

The CARES Act contains various forms of tax relief, including postponing until 2021 rules that limit the deductibility of certain business losses and permitting corporations to accelerate utilization of Alternative Minimum Tax ("AMT") tax credits. Further, the CARES Act allows employers to defer payment of certain payroll taxes, including the deposit of the employer's 6.2% share of Social Security taxes incurred from March 27, 2020 through December 31, 2020. There was no requirement that the employer had to be negatively impacted by the COVID-19 pandemic in order to take advantage of the deferral of the employer's share of Social Security taxes. The employer must deposit 50% of the deferred amount of the employer's share of Social Security tax by December 31, 2021. The remaining 50% of the deferred amount is due on December 31, 2022.

The CARES Act provides a refundable payroll tax credit for 50% of the qualified wages paid to employees from March 13, 2020 through December 31, 2020. The credit is generally limited to up to \$10,000 of eligible wages per employee. The credit is available to employers whose (i) operations were fully or partially suspended due to a COVID-19 related shutdown order, or (ii) gross receipts declined by more than 50% when compared to the same quarter in the prior year. The credit is taken against the employer's share of Social Security tax and the excess may be refundable.

E. Paycheck Protection Program Flexibility Act of 2020

This Paycheck Protection Program ("PPP") Flexibility Act, enacted on June 5, 2020, amended certain provisions related to the forgiveness of loans made to small businesses under the Paycheck Protection Program.

Specifically, the PPP Flexibility Act establishes a minimum maturity of five years for a paycheck protection loan with a remaining balance after forgiveness. The PPP Flexibility Act also extends the covered period during which a loan recipient may use such funds for certain expenses while remaining eligible for forgiveness from an eight-week period to the earlier of; (1) 24 weeks from the loan origination date, or (2) December 31, 2020. The PPP Flexibility Act raises the non-payroll portion of a forgivable covered loan amount from 25% up to 40% of loan proceeds.

The PPP Flexibility Act extends from June 30, 2020 to December 31, 2020, the safe harbor period to hire/re-hire employees and/or restore reductions in employee salary/wages in order to avoid a reduction in the loan forgiveness amount.

IV. NEW LAWS AND OTHER CHANGES (*Continued*)

FEDERAL (*Continued*)

E. Paycheck Protection Program Flexibility Act of 2020 (*Continued*)

Additionally, the PPP Flexibility Act extends the deferral period for loan payments from six months to the date on which the loan forgiveness amount is remitted to the lender, provided that borrowers apply for loan forgiveness within 10 months after the covered period ends.

The PPP Flexibility Act also eliminated a provision that would have prevented an employer from deferring the deposit and payment of the employer's share of Social Security tax after the employer receives a decision that its PPP loan was forgiven by the lender. Therefore, an employer that receives a PPP loan is entitled to defer the payment and deposit of the employer's share of Social Security tax, even if the loan is forgiven.

F. IRS Notice 2020-32

On August 3, the IRS issued guidance for Federal income tax purposes regarding certain generally deductible expenses incurred in a taxpayer's trade or business when the taxpayer receives a loan pursuant to the Paycheck Protection Program. Notice 2020-32 clarifies no deduction is allowed for an expense that is otherwise deductible if the expense results in forgiveness of a covered loan under the CARES Act. The IRS' position is that because the forgiven loan amount is excluded from gross income the expenses paid from the loan proceeds should not be deductible.

G. 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. The Section 41 research and development ("R&D") credit provides incentives for businesses to increase their investment in research activities by providing a credit for a percentage of qualified research expenses incurred in connection with a trade or business in excess of a base amount. The R&D credit was permanently extended as part of the Protecting Americans from Tax Hikes ("PATH") Act of 2015 and effective for tax years beginning in 2016, a qualified small business may elect to use its R&D credit, not to exceed \$250,000, against the employer portion of social security taxes. Since most start-up businesses are not immediately profitable, this is a real benefit that start-ups could be taking if they have R&D costs. A qualified small business is a corporation that are not publicly traded (including an S corporation), partnership, or sole proprietorship with gross receipts of less than \$5 million for the tax year and no gross receipts for any tax year before the 5-year tax period ending with the tax year. There are also some other restrictions; tax-exempt organizations under Section 501 do not qualify. 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. For more details, see the instructions for IRS Form 6765, *Credit for Increasing Research Activities*.

H. Taxation of Virtual Currencies

The IRS is increasingly scrutinizing virtual currency transactions and have clarified that virtual currency transactions are taxable just like transactions in any other property. Virtual currency is a digital representation of value that functions as an exchange medium. The IRS issued Notice 2014-21 as guidance for the tax treatment of transactions involving virtual currencies. The 2014 guidance provided

IV. NEW LAWS AND OTHER CHANGES (Continued)

FEDERAL (Continued)

H. Taxation of Virtual Currencies (Continued)

that for federal tax purposes, virtual currency is treated as property, and it should be treated like any other capital asset, such as stocks or real estate. The sale or other exchange of virtual currencies or the use of virtual currencies to pay for goods or services or holding virtual currencies as an investment generally could result in tax liability. Further, the basis of virtual currency that a taxpayer receives as payment for goods or services is the fair market value of the virtual currency in U.S. dollars as of the date of receipt. The 2014 guidance was supplemented by Revenue Ruling 2019-24 and frequently asked questions related to virtual currency published on the IRS website. Please let us know if you need more information related to virtual currency transactions.

I. Secure Act

On December 20, 2019, President Trump signed the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act") which, among other provisions, raised the minimum age for required minimum distributions ("RMDs") from 70 ½ to 72 years of age, allowed workers to contribute to regular Individual Retirement Arrangements ("IRAs") after turning 70 ½ years of age and requiring most non-spouse beneficiaries of inherited IRAs to withdraw and pay taxes on all distributions from inherited accounts within 10 years. The CARES Act, however, enabled any taxpayer with an RMD due in 2020 (except for those with defined-benefit plans) to skip the RMD this year. New RMD Life Expectancy Tables from the IRS are set to take effect in 2021, the first time the tables have been updated in about twenty years.

J. Tax Help for Wildfire Victims

On August 26, 2020 the IRS announced that individuals and households who reside in Butte, Lake, Monterey, Napa, San Mateo, Santa Clara, Solano, Sonoma and Yolo counties may qualify for tax relief, and other counties may be added later. The declaration permits the IRS to postpone to December 15, 2020 certain tax filing and tax payment deadlines falling on or after August 14, 2020 and before December 15, 2020.

The December 15, 2020 deadline applies to the third quarter estimated tax payments due on September 15 and the quarterly payroll and excise tax returns due on November 2. 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. For more details see IRS Publication 547 for details.

K. Nonprofit Tax Information

On December 20, 2019, President Trump signed the Taxpayer Certainty and Disaster Tax Relief Act of 2019 as part of a tax extender appropriations bill. Included therein was a retroactive repeal of the tax on parking fringe benefits provided by nonprofit employers. As a result, nonprofit organizations may wish to amend their returns filed for 2018 and 2019 to claim refunds in this regard.

In April 2020, the IRS issued regulations with respect to the calculation of unrelated business taxable income. Additionally, the CARES Act now allows nonprofit companies to carry back losses arising in tax years 2018 through 2020 for up to five years before the year of the loss. Contact us for details of these items.

IV. NEW LAWS AND OTHER CHANGES (Continued)

CALIFORNIA

L. Worker Status as Independent Contractor vs. Employee in California

Assembly Bill 5 (“A.B. 5”), which Governor Newsom signed into law in September 2019 and took effect on January 1, 2020, codified and clarified the 2018 California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. In that case, the Court applied a three-part test, commonly known as the “ABC” test, that must be satisfied for a worker to be classified as an independent contractor rather than an employee. Currently, A.B. 5 exempts over 50 professions or occupations from application of the standard ABC test in determining if a worker is an employee or independent contractor. The occupations exempted included doctors, dentists, insurance agents, licensed professionals, financial service professionals, real estate agents, freelance writers and photographers, certain direct salespeople and a limited number of others. On September 4, 2020, Governor Newsom signed Assembly Bill 2257, which added a number of new exemptions under A.B. 5 including individual performance artists, musicians and musical groups for the purpose of a single-engagement live performance event, home inspectors, licensed landscape architects and others.

Additionally, voters passed Proposition 22 in the most recent election, which means that drivers at app-based transportation (rideshare) companies such as Uber and Lyft and delivery companies such as DoorDash will be exempt from A.B. 5 and will continue to be classified as independent contractors, not employees. Proposition 22 does provide drivers some new corporate perks, but they will not be eligible for full employment benefits and protections. If you have questions about the classification of workers, please contact your employment law counsel.

M. California Individual Health Care Mandate

Although there is no longer a penalty at the federal level for not having qualifying health coverage, beginning January 1, 2020, all California residents must either have qualifying health insurance coverage, obtain an exemption from the requirement to have coverage, or pay a tax penalty when they file their state tax return. Some of the exemptions available are a hardship exemption, an exemption for incarcerated individuals, and a religious-conscience exemption. California residents will begin reporting their health care coverage on their 2020 tax returns. The Covered California Health Exchange is the governmental agency that offers subsidized plans. For more information go to www.healthforcalifornia.com.

N. Doing Business in California Threshold Amounts Updated for 2020

Annually, the California Franchise Tax Board updates the amounts used to determine whether a taxpayer is doing business in California based upon the California Consumer Price Index (“CCPI”). The inflation rate, as measured by the CCPI for all urban consumers from June 2019 to June 2020, was 1.4%. For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following have been satisfied:

- The taxpayer is organized or commercially domiciled in California.
- Sales in California exceed the lesser of \$500,000 or 25% of the taxpayer's total sales.
- Real and tangible personal property holdings in California exceed the lesser of \$50,000 or 25% of the taxpayer's total real and tangible personal property combined.

IV. NEW LAWS AND OTHER CHANGES *(Continued)*

CALIFORNIA *(Continued)*

N. Doing Business in California Threshold Amounts Updated for 2020 *(Continued)*

- Compensation paid in California exceeds the lesser of \$50,000 or 25% of the total compensation the taxpayer paid.
- As reported by the Franchise Tax Board, the indexed threshold values for the 2020 year are as follows:

Sales	\$ 610,395
Property	\$ 61,040
Payroll	\$ 61,040

Also note that on September 11, 2020, the California Franchise Tax Board indicated that as long as the Governor's COVID-19 stay-at-home order is in place, having an employee working from their home in the state will not cause a corporation to be considered as actively engaged in a trade or business in the state if that is the out-of-state corporation's only connection to California.

O. New California Small Business Hiring Credit

On September 9, 2020, Governor Newsom signed Senate Bill ("SB") 1447 authorizing a \$100 million hiring tax credit program for businesses with 100 or fewer employees who experienced a 50% decrease in gross receipts when comparing 2020 second calendar quarter gross receipts with 2019 second calendar quarter gross receipts. The credit may be claimed against personal income tax, corporate income and franchise taxes (including the \$800 minimum tax), or, at the taxpayer's election, against state and local sales and use taxes. The credit is only available during the 2020 taxable year. The credit against personal income taxes or corporation income and franchise taxes must be claimed on a timely filed original return. Unused credit may be carried forward for up to five succeeding taxable years. The employer must reduce any wage deductions claimed by the amount of credit claimed.

Taxpayers must reserve the credit with the California Department of Tax and Fee Administration, even if the taxpayer is claiming the credit against its income or franchise tax liability. The application process to reserve the credit is still being worked out, but taxpayers must file the request during the period beginning December 1, 2020 and ending the earlier of January 10, 2021 or the date the maximum total allocation is spoken for.

The amount of the credit is \$1,000 for each net increase in qualified employees up to a maximum of \$100,000 per taxpayer. The net increase will be measured by comparing the taxpayer's average number of monthly full-time equivalent employees for the second quarter of 2020 with the average number of monthly full-time equivalent employees for the five-month period beginning July 1, 2020 and ending November 30, 2020.

The option to use the credit to offset sales and use taxes instead of income taxes may be most beneficial to retail and restaurant businesses whose income tax liability for the 2020 tax year may have been greatly reduced or nonexistent due to COVID-19. Please contact us for further details.

IV. NEW LAWS AND OTHER CHANGES (Continued)

CALIFORNIA (Continued)

P. California Film and Television Tax Credit Program

The California Film Commission administers the Film & Television Tax Credit Program, which provides tax credits against income and/or sales and use taxes based upon qualified expenditures for films and television shows that are produced in California. On June 27, 2018, then California Governor Jerry Brown signed legislation extending California's film and television incentive program to 2025. For application dates and more information visit the California Film Commission's website at <http://film.ca.gov/>. Additional information and assistance may be available through FilmLA, a non-profit organization and the official film office of the City and County of Los Angeles. Their website is www.filmla.com.

Q. California State Retirement Program for Private Workers

California has enacted a state-sponsored retirement program for private sector employees. The CalSavers Retirement Savings Program requires private employers with five (5) or more California-based employees that do not already offer a workplace retirement plan to either provide a retirement plan for their employees or enroll their employees in a CalSavers account unless the employee opts out. The requirements are the same for non-profit and for-profit employers.

CalSavers is an automatic enrollment payroll deduction Roth IRA. The default savings rate is 5% of gross pay, and employees can change their rate at any time. Beginning in July 2019, all eligible employers could register for the program. The deadline for businesses to comply with the rules depend on business size. California employers with more than 100 employees were required to comply by June 30, 2020 (but the deadline was extended to September 30, 2020), employers with more than 50 employees will be required to comply by June 30, 2021, and employers with 5 or more employees will be required to comply by June 30, 2022. More details about this program is available at www.calsavers.com.

R. Market Based Sourcing

Over the past decade many states, such as California, have changed their sales factor sourcing rules for services and intangible receipts from a cost of performance scheme to a market-based sourcing regime. This is aimed at attributing revenue to the state that contributes to the taxpayer's income. With respect to services under this formula, income would result from where the service is delivered. With regard to intangible property, income would be apportioned where the property is used if that is a good or service purchased by a consumer who is in that state. This is a complex area, and we would recommend that should you have any income apportionment questions that you contact us.

Also, regarding state taxation issues, more than half the states have a personal income tax requirement for employers to withhold tax from a nonresident employee's wages starting with the first day the nonresident employee enters the state for business purposes. Other states, such as California, have a threshold for requiring withholding for nonresident employees.

V. IDENTITY THEFT

The IRS has some suggestions to reduce identity theft as follows:

- Always use security software with firewall and anti-virus protections. Make sure the security software is always turned on and can automatically update. Encrypt sensitive files such as tax records you store on your computer. Use strong, unique passwords for each account.
- Learn to recognize and avoid phishing emails, threatening calls and texts from thieves posing as legitimate organizations such as your bank, credit card companies and even the IRS.
- Do not click on links or download attachments from unknown or suspicious emails.
- Protect your personal information and that of any dependents. Don't routinely carry Social Security cards, and make sure your tax records are secure.
- Shop at reputable online retailers. Treat your personal information like you do your cash; don't leave it lying around.

The IRS does not initiate contact with taxpayers by email to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.

The Federal Trade Commission makes consumer information available on www.consumer.ftc.gov. They have various recommendations regarding steps to take to prevent identity theft as well.

The following are certain tips to protect yourself from identity theft that we published in prior years as well.

- Avoid sending sensitive personal information like your credit card or Social Security number through chat lines, email, 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.

We also suggest that you file your tax returns 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.

If you are a victim of identity theft:

- 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 and allows taxpayers to elect to currently deduct expenses for the purchase of tangible property that would otherwise have to be capitalized.

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 Securities and Exchange Commission ("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 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 the 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 the Director of GO-Biz (Chair), the State Treasurer, the 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 \$2M 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 2019-20, GO-Biz will accept applications online at www.calcompetes.ca.gov for the California Competes Tax Credit during the following periods:

- July 27, 2020 through August 17, 2020
- January 4, 2021 through January 25, 2021
- March 8, 2021 through March 29, 2021

Go to business.ca.gov/Programs/CaliforniaCompetesTaxCredit 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.

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 California, deriving trade or business income from sources within California, or in any manner in the course of trade or business subject to the laws of California. 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 independent contractor information to the 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 (FEIN), the California employer payroll tax account number (if applicable), Social Security number, and the service-recipient’s name/business name, address, and telephone number.

You are also required to provide the 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 (if applicable), contract expiration date (if applicable), and an indication if it is an ongoing contract (check box if applicable).

Use e-Services for Business to submit the *Report of Independent Contractor(s)* form (DE 542) online or submit a paper report by mail or fax. To obtain forms and/or information, call the Taxpayer Assistance Center at (888) 745-3886. You may also visit your local Employment Tax Office or access the Internet site at www.edd.ca.gov/.

IX. EARNED INCOME CREDIT

The Earned Income Credit (“EIC”) is a refundable tax credit available to certain low-income workers. Although the Education Jobs and Medicare Assistance Act repealed the Advanced Earned Income Credit, effective with tax year 2011, which eliminated the Form W-5, employers are still required to notify employees who have no federal income tax withheld that they may be able to claim a tax refund because of the EIC. Employers, however, are not required to notify employees who claimed exemption from withholding on Form W-4, *Employee’s Withholding Allowance Certificate*, about the EIC. If employers give an employee a timely Form W-2, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee’s copy. Eligible employees who qualify for the EIC can still claim the EIC when filing their federal personal income tax return, Form 1040.

California also has an Earned Income Tax Credit, which employees can claim by preparing and filing a California tax return.

X. PAYROLL TAX DEPOSIT SYSTEM

All employers are either federal “monthly depositors” or “semiweekly depositors.” Prior to the beginning of each calendar year, employers must determine which of the two deposit schedules they are required to use. An employer’s status is determined by reference to the employer’s deposit history during a “lookback period.” The lookback period for a Quarterly Form 941 filer begins July 1 and ends June 30 of the preceding year.

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 ending June 30 of the preceding year is \$50,000 or less. An employer is a semiweekly 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 semiweekly depositor, if the depositor’s payday is on a Wednesday, Thursday, and/or Friday, taxes must be deposited on or before the following Wednesday. For all other paydays, the deposit is due on the Friday following the payday. A special one-day rule applies to any employer that has \$100,000 or more in undeposited employment taxes on any day during a monthly or semiweekly deposit period.

If a deposit is required to be made on a day that is not a business day, the deposit is considered timely if it is made by the close of the next business day. Semiweekly depositors have a minimum of three (3) business days following the close of the semiweekly period to make a deposit. Thus, a semiweekly 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 legal holiday.

An employer is treated as having made the required deposit if any deposit shortfall does not exceed the greater of \$100 or two (2) percent of the amount required to be deposited and the shortfall is deposited on or before prescribed shortfall makeup dates. For a monthly depositor, the shortfall makeup date is the return due date for the return period in which the shortfall occurs. For a semiweekly depositor, the shortfall makeup date is the earlier of the first Wednesday or Friday (whichever is earlier) that falls on or after the 15th day of the month following the month in which the shortfall occurred, or the due date of the return for the period of the tax liability.

The IRS has designed Form 944 so that the smallest employers (those whose annual liability for social security, Medicare, and withheld federal income taxes is \$1,000 or less) will file and pay these taxes only once a year instead of every quarter.

XI. EMPLOYEE OR INDEPENDENT CONTRACTOR

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

The Voluntary Classification Settlement Program (“VCSP”) is an optional program that provides taxpayers an opportunity to reclassify their workers as employees for employment tax purposes for future tax periods with partial relief from federal employment taxes. To participate in this 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.

XI. EMPLOYEE OR INDEPENDENT CONTRACTOR (*Continued*)

When determining worker classification, certain factors carry more weight than others depending upon specific industry practices. Generally, the business has the initial burden of proof on worker classification. However, the burden of proof shifts to the IRS has if the taxpayer can cite judicial precedent or long-standing industry practice for not treating a worker as an employee. Filing Forms 1099 or the new Form 1099-NEC consistent with the taxpayer's treatment of a worker as a non-employee is imperative but not definitive. Worker classification 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 contact their attorneys if they have any questions in this regard.

On April 30, 2018, the California Supreme Court issued a decision in the matter of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* that has broad implications in this regard. The Court held that a worker is an independent contractor only if the hiring party can establish the following: (a) the worker is free from control and direction of the hiring entity; (b) the worker performs work outside the usual course of the hiring entity's business; and (c) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. In September 2019 California Governor Newsom signed Assembly Bill ("A.B. 5"), which codifies and clarifies the 2018 California Supreme Court decision discussed above. The implications of A.B. 5 are that many workers who were previously classified as independent contractors will now be classified as employees and will receive labor protections and benefits that all employees receive. A.B. 5 exempts over 50 professions or types of businesses, including certain licensed professionals such as doctors, dentists, insurance agents, lawyers, accountants, real estate agents, licensed hairstylists and barbers who can meet certain conditions such as setting their own rates, and a variety of creative professionals , such as freelance writers and photographers.

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:

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

3. What type of relationship between the parties exists?

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

- a. Does a written contract exist that describes the relationship the parties intend to create?
- b. Does the business provide the worker with employee-type benefits?
- c. How permanent and ongoing is this relationship?
- d. 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

You must file a fictitious name registration within 40 days of starting a company in the county where you have your principal place of business. In Los Angeles County, visit <https://lacounty.gov/starting-a-business-in-the-county/filing-a-fictitious-business-name/>. In Orange County, visit <https://www.ocrecorder.com/services/fictitious-business-name>. In San Francisco County, go to <https://sfgov.org/countyclerk/fictitious-business-name-fbn>.

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.

In Los Angeles County, the first-time filing fee for one business name and one registrant is \$26, plus an additional \$5 more for each additional business name and/or each additional registrant. The base fee is \$23 in Orange County, \$55 in San Bernardino County, \$66 in Riverside County, \$53 in Ventura County, and \$57 in San Francisco County. Filings are good for five years, then it can be renewed.

Within 30 calendar days from the date of filing your fictitious business name statement, you must publish it in a legally adjudicated newspaper in your area once a week for four (4) consecutive weeks. The county clerk can provide you a list of which newspapers you must use.

The business name selected should be one that is not already in use and most county clerks offer an online search so you can check if a name is already taken. In Los Angeles County, visit <https://lavote.net/home/county-clerk/fictitious-business-names/filing/fictitious-business-name-search>.

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 by electronically filing a Financial Crimes Enforcement Network (“FinCEN”) 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. You are required to file an FBAR if the aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.

Reporting and Filing Information

If you who hold a foreign financial account, you 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 found on Form 1040, Schedule B) and by filing an FBAR.

The FBAR is a calendar year report, which has to be filed with the Department of Treasury on or before April 15 of the year following the calendar year reported. FinCEN will grant filers failing to meet the FBAR annual due date of April 15 an automatic extension to October 15 each year. Accordingly, specific requests for this extension is not required.

Those required to file an FBAR who fail to properly file a complete and correct FBAR may be subject to civil monetary penalties. Under the latest inflation adjustments, and for penalties assessed after February 19, 2020, the IRS may assess an inflation-adjusted civil penalty not to exceed \$13,481 per violation for non-willful violations that are not due to reasonable cause. For willful violations, the inflation-adjusted penalty may be the greater of \$134,806 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)

Help with electronic filing technical questions is available at <https://bsaeifiling.fincen.treas.gov/Help.html> or through the BSA E-Filing Help Desk at (866) 346-9478. For questions regarding BSA regulations contact FinCEN's Regulatory Helpline at (800) 949-2732.

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 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: <https://www.irs.gov/businesses/corporations/summary-of-fatca-reporting-for-us-taxpayers>

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

Generally, if your business receives more than \$10,000 in cash in a single transaction or two or more related transactions, you must file a Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*. In addition, you may file this form voluntarily for any suspicious transaction, even if the transaction does not exceed \$10,000. Cash includes the coins and currency of the United States and a foreign country, cashier's checks, bank drafts, traveler's checks, and money orders. 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. You may be subject to criminal penalties, including up to five years imprisonment, for willfully failing to file a Form 8300, willfully filing a false or fraudulent Form 8300, stopping, or trying to stop, a Form 8300 from being filed, or setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300.

When a business is required to file a Form 8300, the business must also provide a written statement to each person(s) named on the Form 8300 on or before January 31 of the year following the reportable transaction. The statement must include the name and address of the cash recipient's business, the name and telephone number of a contact person for the business, the total amount of reportable cash received in a 12-month period, and a statement that the cash recipient is reporting the information to the IRS. The statement must be mailed to the payer's last known address.

A business must file Form 8300 by the 15th day after the date of the cash transaction. Businesses can file Form 8300 electronically using the Bank Secrecy Act ("BSA") E-filing System. E-filing is free and secure. Businesses can also mail the Form 8300 to the IRS at: IRS Detroit Federal Building, P.O. Box 32621, Detroit, Michigan 48232. California also requires you to send a copy of Form 8300 to: Franchise Tax Board, P.O. Box 1468, Sacramento, California 95812-1468.

XV. WHEN HIRING NEW EMPLOYEES

A. Compliance with U.S. Immigration Laws

Federal law requires that every employer who recruits, refers for a fee, or hires an individual for employment in the U.S. must complete Form I-9, *Employment Eligibility Verification*. Within three days of starting work for pay, the employee must present the employer an original document or documents that establishes their identity and employment authorization. We strongly suggest you contact your legal advisor with regards to the form and the timing of requesting documentation, since incorrect steps could result in being found liable for discrimination practices.

XV. WHEN HIRING NEW EMPLOYEES (Continued)

A. Compliance with U.S. Immigration Laws (Continued)

There is no associated filing fee for completing Form I-9. This form is not filed with the United States Citizenship and Immigration Services ("USCIS") or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials.

Employers hiring foreign nationals should always check for the individual's Form I-94, which controls the terms of an individual's stay in the country. The Form 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 at <https://www.e-verify.gov/>.

Nonimmigrant visa categories are arranged according to proposed activities in the U.S. Some typical work visas are E (persons with essential skills), H-1B (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.

To enroll go to www.e-verify.gov/.

C. Income Tax Withholding

When you hire an employee, you must have the employee 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. Employers should retain the Form W-4 and should not transmit it to the IRS.

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

XV. WHEN HIRING NEW EMPLOYEES (*Continued*)

D. New Employee Registry

California requires all employers to report all of their new or rehired employees who work in California to the EDD's New Employee Registry within 20 calendar days of an employee's start-of-work day, which is the 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 it will also be used to detect unemployment insurance fraud. Use e-Services for Business to submit Form DE 34, *Report of New Employee(s)*, online to report this information.

You may also report the new employee by submitting a copy of the employee's Form W-4, but you must include the employee's start-of-work date, your California employer payroll tax account number, and federal employer identification number ("FEIN") on the Form W-4.

You can order the forms on the EDD's website through the Online Forms and Publications page. You can also order forms or obtain additional information by contacting the Taxpayer Assistance Center at (888) 745-3886.

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

XVI. BASIS IN S CORPORATIONS AND PARTNERSHIPS (Continued)

S Corporation Stock and Debt Basis (Continued)

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.

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 of 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 the following:

XVII. CAFETERIA PLANS (Continued)

- 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 Affordable Care Act included a provision that limits the annual amount of salary reductions that an employee may contribute to a health flexible spending account ("FSA"). 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. For taxable year 2020, the limit is \$2,750. For taxable years beginning in 2021, the limit will stay at \$2,750.

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.

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](https://www.irs.gov) website provides only the most basic rules governing a cafeteria plan. For a complete understanding of the rules, see the Regulations under section 125.

Because of the 2019 Novel Coronavirus (COVID-19) pandemic, the IRS released Notice 2020-29 and Notice 2020-33 which provide additional flexibility for employers with respect to Cafeteria Plans, Health Flexible Spending Accounts (Health FSAs) and Dependent Care Assistance Programs (commonly referred to as Dependent Care FSAs).

Notice 2020-29 provides increased flexibility for taxpayers to apply unused amounts remaining in a health FSA or dependent care assistance program for expenses incurred for those same qualified benefits through December 31, 2020. It also expands the ability of taxpayers to make mid-year elections for health coverage, health FSAs, and dependent care assistance programs, allowing them to respond to changes in needs as a result of the COVID-19 pandemic. The guidance in Notice 2020-29 is specific to the COVID-19 pandemic.

Notice 2020-33 increases the limit for unused health FSA carryover amounts from \$500, to a maximum of \$550, as adjusted annually for inflation. The guidance in Notice 2020-33 is not specific to the COVID-19 pandemic.

XVIII. USE TAX

If you purchase an item out-of-state or from an internet seller that will be used, consumed, or stored in California, then you may owe use tax. If the out-of-state merchant or internet seller 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 California Department of Tax and Fee Administration ("CDTFA") 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, add the amount of all purchases made from out-of-state or internet sellers made without payment of California sales or use tax. Next, multiply that amount by the applicable use tax rate. The use tax rate and the sales tax rate are the same. The use tax rate is determined by whether the property will be used, consumed, or stored in California. Subtract any sales or use tax you paid to another state for the items you purchased 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 in the table below. The schedule provides general guidelines. Statute of limitations vary from state to state and companies should have record retention policies for computer files, word processing, and email in addition to traditional ledger and paper documents. Prior to formalizing a policy, we recommend consulting your attorneys and accountants for further information. See the chart on the next page 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

California's Unclaimed Property Law requires corporations, businesses, associations, financial institutions, and insurance companies (collectively 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. Common types of unclaimed property are bank accounts, stocks, bonds, uncashed checks, insurance benefits, wages, and safe deposit box contents. 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 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.

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

XXI. INFORMATION AVAILABLE ON THE INTERNET

Federal:	
Department of Health and Human Services	www.hhs.gov
Department of Homeland Security	www.dhs.gov
Department of Labor	www.dol.gov
Federal Emergency Mgt. Agency	www.fema.gov
Health Insurance Information	healthcare.gov
U.S. Citizenship and Immigration Services	www.uscis.gov
U.S. Small Business Administration	www.sba.gov
Internal Revenue Service	www.irs.gov
Social Security Administration	www.ssa.gov
United States Postal Service	www.usps.com
California:	
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
Department of Tax and Fee Administration	www.cdfta.ca.gov
Office of Tax Appeals	www.ota.ca.gov
Secretary of State	www.sos.ca.gov
Local:	
Los Angeles County Clerk	www.lacounty.info
Other States:	
Colorado Department of Revenue	www.colorado.gov/revenue
Idaho State Tax Commission	www.tax.idaho.gov
Washington State Department of Revenue	www.dor.wa.gov

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.

www.millerkaplan.com.

XXII. TYPES OF PAYMENTS

Types of Payments

Below is an alphabetic list of some payments and the forms to file and report them on. 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-NEC
Awards—employee	W-2
Awards—nonemployee	1099-NEC
Barter exchange income	1099-B
Bond tax credit	1097-BTC
Bonuses—employee	W-2
Bonuses—nonemployee	1099-NEC
Broker transactions	1099-B
Cancellation of debt	1099-C
Capital gain distributions	1099-DIV
Car expense—employee	W-2
Car expense—nonemployee	1099-NEC
Changes in capital structure	1099-CAP
Charitable gift annuities	1099-R
Commissions—employee	W-2
Commissions—nonemployee	1099-NEC
Commodities transactions	1099-B
Compensation—employee	W-2
Compensation—nonemployee	1099-NEC
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
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	1099-R
Exercise of incentive stock option under section 422(b)	3921
Fees—employee	W-2
Fees—nonemployee	1099-NEC
Fishing boat crew members proceeds	1099-MISC
Fish purchases for cash	1099-MISC
Foreclosures	1099-A

Type of Payment	Report on Form
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-NEC
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 distributions	1099-R, 1099-LTC
Liquidation—distributions	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-NEC
Military retirement	1099-R
Mortgage assistance payments	1098-MA
Mortgage interest	1098
Moving expense	W-2
Nonemployee compensation	1099-NEC
Nonqualified deferred compensation:	
—Beneficiary	1099-R
—Employee	W-2
Nonemployee	1099-NEC
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-NEC
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
Reportable policy sale	1099-LS
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
Seller's investment in life insurance contract	1099-SB
SEP contributions	W-2, 5498
SEP distributions	1099-R
Severance pay	W-2
Sick pay	W-2



XXII. TYPES OF PAYMENTS (Continued)

Type of Payment	Report on Form
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-NEC
Wages	W-2