



California Society of Tax Consultants
HIGH DESERT CHAPTER
15 CHAPTERS STATEWIDE
Volume 51 January 2010

President's Message

HAPPY NEW YEAR

WELCOME - A new decade is upon us. -
What is ahead?

We are again in a new location - Lit' Bit of Country
on Hesperia Road in Victorville.

On Wednesday night meeting we will have the
Quickfinder update as well as Karen Snyder will also
be giving us the updates. Please remember we will
start early.

Thank you
Michele' Maiwald, EA
President

Speaker and Topic for December

Topic Leader: Karen Snyder/Michele' Maiwald
TOPICS: Updates for 2009 Tax Season/
Quickfinders

This presentation has been designed to meet the requirements going back to of the Director of Practice of the Internal Revenue Service, the California State Board of Accountancy, and the California Tax Education Council, Business & Professions Code #22250-222859, including Code 31 of Federal Regulations 10.6(g), continuing education rule 88(c) covering maintenance of attendance records, retention of program outlines, qualifications of instructors and length of class hours. This does not constitute an endorsement by these groups.

REGISTRATION: 4:00 PM
DINNER: 4:30 PM

MEMBERS: \$ 30.00
MEMBERS/GUESTS: \$ 40.00

**Price when paying at registration*

LOCATION:
Lil' Bit of Country
14335 Hesperia Road
Victorville, CA

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CSTC SOCIETY www.cstcsociety.org

The latest Reporter is available online now!

Do not forget to log into the society web page for the latest news, you can also view and print the reporter, and be sure to check out the members' only page and bulletin boards. The log in is:

User ID: **CSTC1000** Password:

TAXSPECIALIST

Past editions of the newsletter for our Chapter are on line at www.cstcsociety.org/HIGHDESERT click on the Calendar/News link to view the education schedules and issues of the newsletter.

Anyone planning to attend a board meeting should contact any board members to confirm their attendance.

To assure timely delivery of your monthly newsletter please notify Lori La Plante of any change of address, phone number or email address.

Come and Join Us at a Dinner meeting!!

We always look forward to seeing all our members. Take advantage of the opportunity to learn something new or just refresh your knowledge on some interesting topics.

REMINDER Wear your badge to be eligible for the drawing. If you do not have a badge, please tell Judie LaDow, so she can order one for you. If you have lost your badge, replacements are available at a cost of \$15.00, due at the time of ordering.

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FYI

IRS Announces 2010 Standard Mileage Rates - IR-2009-111 – December 3, 2009

WASHINGTON — The Internal Revenue Service today issued the 2010 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2010, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The new rates for business, medical and moving purposes are slightly lower than last year's. The mileage rates for 2010 reflect generally lower transportation costs compared to a year ago.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs as determined by the same study. Independent contractor Runzheimer International conducted the study.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for any vehicle used for hire or for more than four vehicles used simultaneously.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

IRS Issues Proposed Regulations on New Basis Reporting Requirement - IR-2009-118 – December 16, 2009

WASHINGTON — The Internal Revenue Service today issued proposed regulations under a new law that will require reporting of basis and other information by stock brokers and mutual fund companies for most stock purchased in 2011 and all stock purchased in 2012 and later years. The reporting will be to investors and the IRS.

This additional reporting will be optional for stock purchased prior to these dates.

“This important reporting change will improve tax compliance while reducing the recordkeeping and paperwork burden for millions of investors,” said IRS Commissioner Doug Shulman. “These taxpayers will now receive the information they need to more easily report their gains and losses correctly.”

These proposed regulations, posted today on the Federal Register, implement a provision in the Energy Improvement and Extension Act of 2008. Among other things, the proposed regulations describe who is subject to this reporting requirement, which transactions are reportable and what information needs to be reported. They also provide numerous examples.

The IRS also released for comment a [draft version of the 2011 Form 1099-B](#), Proceeds from Broker and Barter Exchange Transactions, that stock brokers and mutual fund companies will use to make these expanded year-end reports. Form 1099-B, long used to report sales prices, will be expanded in 2011 to include the cost or other basis of stock and mutual fund shares sold or exchanged during the year. The expanded form will also be used to report whether gain or loss realized on these transactions is long-term (held more than one year) or short-term (held one year or less), a key factor affecting the tax treatment of gain or loss. The expanded Form 1099-B, to be first used for calendar-year 2011 sales, must be filed with the IRS and furnished to investors in early 2012.

The IRS welcomes comments on these proposed regulations and the draft 2011 Form 1099-B. Comments must be received by Feb. 8, 2010, and may be submitted electronically, by mail or hand delivered to the IRS. A public hearing is scheduled for Feb. 17, 2010, at the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. The proposed regulations provide details on submitting comments or participating in the public hearing.

The IRS will work closely with stakeholder groups to ensure a smooth implementation of this new program.

IRS Reminds Car Shoppers about 2009 Tax Break IR-2009-119 – December 17, 2009

WASHINGTON — The Internal Revenue Service today reminds individual taxpayers who are considering buying a new car that they have until Dec. 31 to take advantage of a tax break that may not be around in 2010.

Taxpayers who buy a qualifying new motor vehicle this year after Feb. 16 can deduct the state or local sales or excise taxes they paid on the first \$49,500 of the purchase price. Qualifying motor vehicles include new passenger automobiles, light trucks, motorcycles, and motor homes.

Individuals who itemize and those who take the standard deduction can benefit from this tax break. In states without a sales tax, other taxes or fees can qualify if they are assessed on the purchase of the vehicle and are based on the vehicle's sales price or as a per unit fee.

The deduction is reduced for joint filers with modified adjusted gross incomes (MAGI) between \$250,000 and \$260,000 and other taxpayers with MAGI between \$125,000 and \$135,000. Taxpayers with higher incomes do not qualify.

Taxpayers who take the standard deduction need to complete Schedule L and attach it to Form 1040 or Form 1040A to increase the standard deduction by the allowable amount of state or local sales or excise taxes paid on the purchase of the new vehicle. Also, check the box on line 40b on Form 1040 or line 24b on Form 1040A.

Individuals who itemize should include the allowable amount of state or local sales or excise taxes from the purchase of the vehicle on Form 1040, Schedule A.

IRS Issues Proposed Regulations Adjusting Use of Some Taxpayer Information - [IR-2009-121](#) – December 30, 2009

WASHINGTON — The Internal Revenue Service today announced the issuance of proposed and temporary regulations and related revenue rulings addressing the use or disclosure of tax return information by tax return preparers.

The regulations and related revenue rulings under section 7216 enable tax return preparers to more effectively provide a range of services that taxpayers would ordinarily expect from tax return preparers. Generally, these services benefit taxpayers, increase voluntary compliance and improve tax administration.

The proposed and temporary regulations enable tax return preparers to use or disclose tax return information without explicit taxpayer consent in certain limited circumstances. Tax preparers can contact their clients regarding tax law developments that may affect the clients. They can also disclose information in connection with the potential sale or purchase of a tax return preparer's business and during the process of conducting client conflict-of-interest checks.

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand and the administrability of the rules in the proposed regulations. All comments will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments.

It is Now Possible to e-file a Return with an ITIN/SSN Mismatch

Tax returns filed with an Individual Taxpayer Identification Number reporting wages paid are required to show the Social Security Number under which the wages were earned. This creates an identification number (ITIN/SSN) mismatch. In the past, returns with this mismatch could only be filed on paper. Due to programming changes the IRS' e-file system can now accept these returns.

The taxpayer's correct ITIN should be used as the identifying number at the top of Form 1040. When inputting W-2 information, the SSN should be entered exactly as shown on the Form W-2 issued by the employer. It is now possible to e-file a return with an ITIN/SSN mismatch.

This programming change will help ensure that the correct tax information is being captured in the most efficient manner possible. It will reduce the burden on taxpayers filing this type of return.

American Opportunity Credit

Under the American Recovery and Reinvestment Act (ARRA), more parents and students will qualify over the next two years for a tax credit, the American Opportunity Credit, to pay for college expenses.

The American Opportunity Credit is not available on the 2008 returns taxpayers are filing during 2009. The new credit modifies the existing Hope Credit for tax years 2009 and 2010, making the Hope Credit available to a broader range of taxpayers, including many with higher incomes and those who owe no tax. It also adds required course materials to the list of qualifying expenses and allows the credit to be claimed for four post-secondary education years instead of two. Many of those eligible will qualify for the maximum annual credit of \$2,500

per student.

The full credit is available to individuals whose modified adjusted gross income is \$80,000 or less, or \$160,000 or less for married couples filing a joint return. The credit is phased out for taxpayers with incomes above these levels. These income limits are higher than under the existing Hope and Lifetime Learning Credits.

ARRA and the Earned Income Tax Credit

The American Recovery and Reinvestment Act (ARRA) provides a temporary increase in the earned income tax credit (EITC) for taxpayers with three or more qualifying children. The maximum EITC for this new category is \$5,657. ARRA also increases the beginning point of the phaseout range for the credit for all married couples filing a joint return, regardless of the number of children. These changes apply to 2009 and 2010 tax returns.

The [earned income tax credit](#) is a refundable credit intended to help people who work but earn modest incomes. The credit begins to phase out at \$21,420 for married taxpayers filing a joint return with children and completely phases out at \$40,463 for one child, \$45,295 for two children and \$48,279 for three or more children. For married taxpayers filing a joint return with no children, the credit begins to phase out at \$12,470 and completely phases out at \$18,440.

ARRA and the Additional Child Tax Credit

Under the American Recovery and Reinvestment Act (ARRA), more families will be eligible for the additional child tax credit because of a change to the way the credit is figured.

Taxpayers who cannot take full advantage of the child tax credit because the credit is more than the taxes they owe may receive a payment for some or all of the credit not used to offset their taxes. It is a refundable credit, which means taxpayers may receive refunds even when they do not owe any tax.

ARRA reduces the minimum earned income amount used to calculate the additional child tax credit to \$3,000. Before ARRA, the minimum earned income amount was set to rise to \$12,550. Reducing the amount to \$3,000 permits more taxpayers to use the additional child tax credit and increases the amount of the payments they may receive.

This change applies to tax years beginning in 2009 and 2010.

IRS Proposes New Registration, Testing and Continuing Education Requirements for Tax Return Preparers Not Already Subject to Oversight - [IR-2010-1](#) – January 4, 2010

WASHINGTON — The Internal Revenue Service kicked off the 2010 tax filing season today by issuing the results of a landmark six-month study that proposes new registration, testing and continuing education of tax return preparers. With more than 80 percent of American households using a tax preparer or tax software to help them prepare and file their taxes, higher standards for the tax preparer community will significantly enhance protections and service for taxpayers, increase confidence in the tax system and result in greater compliance with tax laws over the long term.

To bring immediate help to taxpayers this filing season, the IRS also announced a sweeping new effort to reach tax return preparers with enforcement and education. As part of the outreach effort, the IRS is providing tips to taxpayers to ensure they are working with a reputable tax return preparer.

"As tax season begins, most Americans will turn to tax return preparers to help with one of their biggest financial transactions of the year. The decisions announced today represent a monumental shift in the way the IRS will oversee tax preparers," said IRS Commissioner Doug Shulman. "Our proposals will help ensure taxpayers receive competent, ethical service from qualified professionals and strengthen the integrity of the nation's tax system. In addition, we are taking immediate action to step up oversight of tax preparers this filing season."

Based on the results of the Return Preparer Review released today, the IRS recommends a number of steps that it plans to implement for future filing seasons, including:

- Requiring all paid tax return preparers who must sign a federal tax return to register with the IRS and obtain a preparer tax identification number (PTIN). These preparers will be subject to a limited tax compliance check to ensure they have filed federal personal, employment and business tax returns and that the tax due on those returns has been paid.
- Requiring competency tests for all paid tax return preparers except attorneys, certified public accountants (CPAs) and enrolled agents who are active and in good standing with their respective licensing agencies.

- Requiring ongoing continuing professional education for all paid tax return preparers except attorneys, CPAs, enrolled agents and others who are already subject to continuing education requirements.
- Extending the ethical rules found in Treasury Department Circular 230 -- which currently only apply to attorneys, CPAs and enrolled agents who practice before the IRS -- to all paid preparers. This expansion would allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct.

Other measures the IRS anticipates taking are highlighted in the 55-page report released today.

Currently, anyone may prepare a federal tax return for anyone else and charge a fee. While some preparers are currently licensed by their states or are enrolled to practice before the IRS, many do not have to meet any government or professionally mandated competency requirements before preparing a federal tax return for a fee.

First Step: Letters to 10,000 Preparers

The initiatives announced today will take several years to fully implement and will not be in effect for the current 2010 tax season. In the meantime, the IRS is taking immediate action to step up oversight of preparers for the 2010 filing season.

Beginning this week, the IRS is sending letters to approximately 10,000 paid tax return preparers nationwide. These preparers are among those with large volumes of specific tax returns where the IRS typically sees frequent errors. The letters are intended to remind preparers to be vigilant in areas where the errors are frequently found, including Schedule C income and expenses, Schedule A deductions, the Earned Income Tax Credit and the First Time Homebuyer Credit.

Thousands of the preparers who receive these letters will also be visited by IRS Revenue Agents in the coming weeks to discuss their obligations and responsibilities to prepare accurate tax returns. This is part of a broader initiative by the IRS to step up its efforts to ensure paid tax return preparers are assisting clients appropriately. Separately, the IRS will be conducting other compliance and education visits with return preparers on a variety of issues.

In addition, the IRS will more widely use investigative tools during this filing season aimed at determining tax return preparer non-compliance. One of those tools will include visits to return preparers by IRS agents posing as a taxpayer.

During this effort, the IRS will continue to work closely with the Department of Justice to pursue civil or criminal action as appropriate.

CALIFORNIA

Corporation Tax Law Changes in California

Recently enacted California legislation adopted new statutes and amended existing statutes that result in major changes to how corporations are taxed in California. These changes to the R&TC are applicable for taxable years beginning January 1, 2011. The changes are as follows:

- R&TC Section 23101 – Modifies the definition of "doing business" in California.
- R&TC Section 25120 - Provides a definition of "gross receipts."
- R&TC Section 25128.5 - Allows specific entities to elect to utilize a sales only formula to apportion income subject to the franchise or income tax.
- R&TC Section 25135 - Adopts the "Finnigan" rule in assigning sales from tangible personal property.
- R&TC Section 25136 - Modifies the rules for assigning sales from other than tangible personal property.

We established a team to ensure a successful and smooth implementation of these law changes. Arrangements are being made for informal interested parties meetings to be held at our Sacramento office beginning with R&TC Sections 25128.5 and 25136. We anticipate that the interested parties meetings will occur early in 2010. If you have any questions, comments, or suggestions pertaining to the above five statutes, please send your email to 2011corplawchanges@ftb.ca.gov.

Provisional Payment Plan Pilot Begins December 2009

Our collection response and resolution section will begin to offer a provisional payment plan for taxpayers who do not qualify for an installment agreement. Currently, taxpayers are required to have the last five years of tax returns filed to be eligible for an installment agreement.

A provisional payment plan will allow taxpayers to make payments towards their tax liability without involuntary collection action taking place, while they prepare their missing valid personal income tax returns for us.

Taxpayers must:

- Owe a balance of \$25,000 or less.
- Respond to billing notices prior to their account going into an involuntary collection state.

- File all their missing valid personal income tax returns within 30 days.
- Agree to be compliant for all future tax years.
- Not have any legal actions in process or pending.

If a taxpayer fails to file the missing valid personal income tax returns, we will default the provisional payment plan and collection actions will continue.

If there is a balance due once the missing valid personal income tax returns are filed, the taxpayer will be placed in an installment agreement. The installment agreement will continue as long as the taxpayer continues to make their payments timely and no additional liabilities are applied.

Military Spouses Residency Relief Act

The Military Spouses Residency Relief Act (MSRRA) (Public Law 111-97) was signed into law on November 11, 2009 and may affect the California income tax filing requirements for spouses of military personnel. This new law is effective for taxable year 2009. The MSRRA allows the same residency benefits permitted to military personnel under the Service members Civil Relief Act (SCRA) to also apply to a military spouse's non-military service income, under certain circumstances.

We are currently updating Publication 1032 (Tax Information for Military Personnel) with guidelines on the impacts of the MSRRA. The revised Publication 1032 is expected before the end of 2009.

Gross receipts fees discussed at CalCPA

On October 28, we attended the CalCPA Committee on Taxation, our annual liaison meeting. We shared legislative updates affecting us, changes to our auditing and collections, and new communication products available to our taxpayers and tax professionals. Also, we participated in a question and answer session on emerging issues. The following is a question asked by the CalCPA members and our response from the meeting:

Question:

Under the calculation of "gross receipts" for the LLC, one can exclude allocations, distributions, or gains from another LLC that was already subject to the gross receipts fee. If one LLC pays a consulting or management fee to another related LLC, can the second LLC exclude this income from its gross receipts since the first LLC paid a gross receipts fee?

Answer:

R&TC Section 17942(b)(1)(A) provides, in relevant part:

For purposes of this section, "total income from all sources derived from or attributable to this state" means gross income, as defined in Section 24271, plus the cost of

goods sold that are paid or incurred in connection with the trade or business of the taxpayer.

However, "total income from all sources derived from or attributable to this state" shall **not** include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

The consulting or management fee paid to the second limited liability company by the first limited liability company, as posed in the question, is clearly not within the meaning of "allocation or attribution of income or gain." However, the facts of the question are not clear as to the capacity in which the second limited liability company has provided services to the first limited liability company. Therefore, at least a potential issue exists as to whether the consulting or management fee payment may be a "distribution" described in Section 17942(b)(1)(A), and may be excludable to the extent it is attributable to income subject to the payment of the fee by another limited liability company, i.e., the first limited liability company.

Regardless of whether the second limited liability company is directly a member of, or holder of an economic interest in, the first limited liability company, if:

(1) The payment of a consulting or management fee by one limited liability company to a second limited liability company is a payment to the second limited liability company in the second limited liability company's capacity as other than a member of, or holder of an economic interest in, the first limited liability company, (such as in the second limited liability company's capacity as operating a separate trade or business), or

(2) The payment is treated under a provision of the R&TC, (such as Section 17851, incorporating by reference Internal Revenue Code Section 707(c)), as a payment to the second limited liability company other than in its capacity as a member of, or holder of an economic interest in, the first limited liability company for purposes of determining the gross income of the second limited liability company, then the fee payment is not a "distribution" described in Section 17942(b)(1)(A), and is not excluded from the total income of the second limited liability company under Section 17942(b)(1)(A) for purposes of computing its annual fee. The determination of whether a member is acting in a nonmember capacity, e.g., conducting a separate trade or business when providing services to another limited liability company depends on the particular facts and circumstances. Similarly, whether a payment for services made to a member acting in its member capacity must be treated as

made to a member acting in a nonmember capacity also depends on the particular facts and circumstances.

New CPA ethics requirement (1-3-10)

The California Board of Accountancy has finalized its regulations requiring that all CPAs renewing after January 1, 2010 must have 4 hours of ethics each renewal cycle. PLUS, every 6 years all CPAs need 2 hours of what is called "regulatory ethics". The new 2 hour requirement must be satisfied in the same 6 year cycle as the prior 8 hour ethics requirement.

Chino Hills tax preparers found guilty of state income tax fraud

A Chino Hills couple was found guilty of four felony counts of state income tax fraud, we announced on November 16, 2009.

Aloysius (Al) Vivo, 55, and Rachel Vivo, 47, operate a tax preparation business, Vivo-Cota & Associates aka Vivo & Associates. According to court documents, the pair fraudulently filed their tax year 2000 personal tax return by falsely claiming the Child and Dependent Care (CDC) credit and understating their gross receipts. The Vivos claimed the CDC credit for expenses that were never paid on a child whose age made him ineligible for the credit. They also filed fraudulent tax year 2000 returns for three of the cappers they hired to locate new clients. The Vivos again claimed fraudulent CDC credits for each capper and failed to report the income they paid to each capper. The couple faces a maximum state prison term of five years in state prison.

The Vivos are also currently under prosecution in San Bernardino County Superior Court on criminal charges of allegedly filing fraudulent 2001 - 2002 personal income tax returns. Their next scheduled court appearance is December 21. Charges were filed in both counties due to the Vivo's move from Riverside County to San Bernardino County.

FTB 982:Clients never met the Vivos. The three contractors handled the delivery of all forms.

- The Vivos did not sign the returns as required by law.
- The Vivos directed the IRS and us to mail clients' tax refund checks to their personal address or those of the cappers. The Vivos illegally cashed these refund checks.
- Clients were not provided a copy of their returns until after payment was received limiting the time clients had to review the returns for accuracy.

Sunland interior designer sentenced for state income tax fraud and insurance fraud

On November 19, 2009, a Sunland interior designer was sentenced after pleading guilty to one felony count of state income tax fraud and one felony count of insurance fraud.

According to court documents, Ronald E. Hunt, 56, continued working as an interior designer from 2003 to 2006, including an appearance on an HGTV home improvement show during the time he claimed to be disabled. An employee with the private insurance company paying Hunt's disability saw the show and alerted the California Department of Insurance (CDI). An investigation confirmed Hunt intentionally and knowingly concealed his secondary employment from his disability insurance company by falsifying written statements and deceiving a company field representative. During the time Hunt claimed to be disabled, he collected more than \$400,500 in income as an interior designer while also collecting \$147,600 in disability benefits. Hunt also failed to report this income on his state income tax returns for these same years.

Hunt was ordered to pay \$151,700 restitution to the private insurance company and \$31,000 to us, representing the unpaid tax, penalties, interest, and the cost of the investigation. He was sentenced to 200 hours of community service and 60 months of probation.



DINNER RESERVATION

Please reserve _____ place(s) for the dinner meeting of the High Desert Chapter of the California Society of Tax Consultants on Wednesday, January 13, 2010.

All reservations must be received by Noon Monday January 11, 2010.

Enclosed is my check payable to CSTC for \$ _____.

Advance Registration is \$25.00 for members and \$35.00 for non-members.

There will be an additional charge of \$5.00 for those who do not make advance reservations.

Name: _____

Address: _____

City, St, Zip: _____

Mail to: Lynda Cook
18930 Highway 18 #107
Apple Valley, CA 92307

Meeting Place: Lil Bit of Country
14335 Hesperia Road
Victorville, CA 92395