

21 Key Bookkeeping Changes in Current Tax Laws

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1. New IRS answers on reimbursing remote employee internet costs.

Reimbursements can be tricky—and costly if there is no written policy for substantiating business use.

Warning:

- For the IRS, reimbursement errors are low-hanging fruit for its auditors. And it is not just the IRS who is looking at your policy.
- With many jobs now remote or hybrid, employees and applicants are aware of your policy.

Three years ago, the Tax Cuts and Jobs Act (TCJA) took internet use off [listed property](#)—luxury property—which, when used for business, has heightened substantiation requirements.

Ever since, the American Payroll Association has been asking the IRS which reimbursement rules apply to employer-paid internet access.

The new IRS answer: The IRS chief of employment tax examination in the Small Business/Self-Employed Division says you can reimburse employee home internet access as a business expense—if you use accountable plan rules, which are as follows:

- Employees must have a *business connection* for accessing the internet. **The good news:** The simple fact that the employee is working at home fits the “business connection” requirement.
- Employees must *substantiate business use* by providing you with substantiation of their internet use. **The good news:** All they need to do is show you their cable or phone bill and the percentage used for business.

Employees must *return excess reimbursement* within a reasonable period of time.

2. Telecommuting workers can change your state/local taxes and reporting.

When the pandemic resulted in employees working remotely, most states issued temporary rules exempting their employers from a change in tax status.

But many of these temporary rules expired at the end of 2021 or will expire soon.

The problem: There may be tax consequences for your remote employees.

Under most state tax codes, even one employee located in the state creates a nexus between the employer and the state. Having a nexus often requires the employer to file income tax returns with that state—and is likely to have income tax withholding, payment and reporting obligations for each state in which a remote employee resides.

Having an employee in a state also can increase the business’s sales tax collecting and reporting obligations for online and mail order sales in that state, even if that employee is not involved in sales.

The employer may also have to file income tax returns with that state and attribute part of its revenue to that state, depending on the employee’s activities.

Non-tax laws also can be a factor. The state in which an employee resides and works might impose different requirements for employee benefits and other working conditions.

Impact on the remote employees. Some states have, or are considering, laws making remote employees subject to SIT in the state where the employer’s headquarters are—even if the employee never enters that state—and the Supreme Court has twice refused to hear challenges to such laws.

What your company or client must do. Know where each remote worker is located and when an employee moves or splits time between locations during the year—then determine that employee’s wages, withholding and filing obligations in each state and your company’s or client’s business and sales taxes in each state. These rules are changing rapidly, so keep up on whether such changes relate to your remote employees. [*Tax Notes Today*]

Details differ among jurisdictions, but during the pandemic they are essentially waiving the rule that one or more employees telecommuting from home in the state establishes a nexus with the state.

Some of the waivers have deadlines and others do not; all emphasize that the waivers are temporary and related to the pandemic.

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Unfortunately, few states and localities have COVID-19 guidance on these issues, so check your state, county and/or city website.

Crucial question. Employees working from home is growing. So, will telecommuting employees continue to be an exception to the nexus rules or, instead, impose tax obligations due to even one telecommuting employee present? If more than one employee is required to establish a nexus, then how many?

SIT problems. Some adjacent states have reciprocal agreements on SITW and payments. These agreements can change employer withholding obligations and SIT if an employee works in an adjacent state. [*Tax Notes Today*]

Bottom line. Determine the short- and long-term consequences of telecommuting for your firm.

3. IRS FAQs can be used to avoid penalties—not taxes.

IRS guidance and interpretations of tax law are frequently in the form of FAQs on its website.

But FAQs do not go through formal approval and issuance procedures. In addition, the IRS has posted changed FAQs without announcing or highlighting the changes. To catch changes, you would have to read FAQs regularly or monitor tax publications.

The extent to which you can rely on FAQs, always questionable, became more questionable a few years ago when the IRS prevailed in Tax Court over a challenge to an IRS position contrary to its position as stated in its FAQs on IRAs. [IR-2021-208]

New IRS FAQs policy as of Oct. 15, 2021:

- “Significant” FAQs and changes to those FAQs will be announced in an IRS news release and posted to the IRS website.
- “Fact Sheet FAQs” will be dated so taxpayers can see when changes were made.
- Earlier versions of FAQ fact sheets will remain on the IRS website in a way that lets taxpayers locate and compare earlier versions to later ones to see exactly what was changed.

- This new policy applies only to “emerging issues,” so you might not be able to rely on earlier FAQs to avoid penalties.
- To avoid penalties, taxpayers must be able to prove they (or their tax advisors) actually relied on an FAQ—you can’t find and point to the FAQ after the IRS imposes a penalty. Tax preparers should include copies of FAQs or references to them in their files when preparing returns.

The IRS may decide an FAQ was wrong and take a contrary position in an audit. But if the taxpayer relied on an FAQ in good faith and the reliance is reasonable, this would be “reasonable cause” and avoid a negligence or accuracy-related penalty.

Fact sheets will state that the IRS will not use or rely on the FAQ to resolve a case.

Bottom line: Relying on an FAQ can help your company avoid penalties, but not tax liability, if the IRS later decides the FAQ was incorrect.

What to rely on: The only authoritative IRS positions are in the Internal Revenue Bulletin (IRB)—e.g., regulations, revenue rulings and revenue procedures—and FAQs that are published in the IRB.

Still unclear: Whether tax pros can rely on FAQs to avoid penalties on them. [IR-2021-202]

4. Does your state have “reciprocal agreements” with adjacent states?

Reciprocal agreements allow employees who live in one state but work in another to request exemption from tax withholding in the work (nonresident) state. This saves employers and employees from having to file multiple state returns because of SITW.

Reciprocity is intended to simplify reporting for employees and employers. Such agreements are most common between states that share a border and have a significant number of commuters.

Example. Joe lives in Ohio and works in Illinois, two states with a reciprocal agreement. Joe can ask his employer not to withhold Illinois taxes so he can file only an Ohio return. The reverse applies if Joe lives in Illinois and works in Ohio.

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If Joe has SIT withheld in his state of residence, his employer avoids registering as an employer and filing SIT returns and taxes in that state.

What to do: You can let employees who live in a reciprocal state know that if they would like to pay their SIT in that state, it will save them the time and expense of filing a SIT return in the work state.

Important: Have handy a W-4 from the employee's state of residence so that on each paycheck their SIT is withheld for that state.

Freelancers: If your client's employee works in a state that has a reciprocal agreement with their state, the client needs to register as an employer in that state. Or, the client can suggest that the employee submit a W-4 for the employee's state of residence.

How to find out about your state: On the state website search "state withholding reciprocal agreements."

5. Accountable plans restore tax breaks to owners and employees.

Small firms, especially small corporations, should have an accountable reimbursement plan. Under this plan, reimbursements to employees for business-related expenses are tax-free to the employee and deductible to the business. The rules for business expenses that are reimbursed remain the same as those for business expenses.

Three requirements. An accountable plan has the following three requirements:

1. Only expenses with a business connection can be reimbursed.
2. Employees must timely substantiate reimbursed expenses to their employer—this is automatic if substantiation is made within 60 days, but other substantiation schedules may be timely, based on the circumstances.
3. Substantiation must comply with tax regs for the type of expense. For example, substantiation of travel and business use of a vehicle needs to meet the higher substantiation requirements for deducting such expenses.

Excess advances must be repaid timely.

Safe harbor. Pay advances within 30 days of when the expense is paid or incurred; return any excess within 120 days of the expense being paid or incurred. Other repayment dates may be acceptable, depending on the facts and circumstances.

An accountable plan can reimburse any employee or employee-owner business-related expenses. Common reimbursements include travel, meals, office supplies, equipment, and even tools and equipment used on that employee's job.

Home office reimbursements. Owner-employees might be reimbursed for a home office and related expenses or for business use of personal cellphones and vehicles, home internet, etc.

Optional restrictions include, but are not limited to:

- reimbursement only to designated employees;
- reimbursement for as many or as few types of expenses as the business wants. The plan also can be selective; and
- reimbursement of travel expenses for all employees but other expenses only to certain employees.

Caution. An accountable plan must meet the IRS requirements. Reimbursements that don't will be treated as wages or other compensation subject to both income and payroll taxes. [kitces.com]

AIPB tip: Technically, an accountable plan does not have to be in writing, *but*—it is easier to prove that payments are reimbursements (not compensation) when there is a written plan that specifies who and what can be reimbursed and the rules for employee substantiation and repayment of excess advances.

6. Maximizing employees' work-at-home tax deductions.

Employees working from home are likely to incur costs. Many do not have dedicated home offices but may need additional furniture, technology or business supplies, and utilities and other expenses may be higher.

Do or die. Unless your firm can arrange ways to get tax breaks for such expenses, employees will not get them.

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Most employees working remotely cannot qualify for a home office deduction because they do not have an office area used exclusively for business.

But even those remote employees who meet the home office test have business expenses that no longer are deductible on the 1040. “Miscellaneous” itemized deductions, including home office expenses, were eliminated in the Tax Cuts and Jobs Act of 2017.

What to do. Provide reimbursements for the added costs of working at home. The employer can deduct the reimbursements as a business expense but avoid payroll taxes because the reimbursements are not compensation. For the same reason, the employee avoids income taxes on the amounts.

7. IRS telephone advice no excuse.

Although this case involves an individual, it would apply the same way to your company or clients.

The case: P did not fully report several retirement plan distributions as gross income on his income tax return. The IRS assessed taxes and penalties.

Held: For the IRS. The taxpayer said he reported the distributions the way he did because he called the IRS help line and asked how to report the items on his tax return. He said he reported the transactions exactly as the IRS representative advised.

The court: It was unfortunate an IRS employee gave incorrect legal advice, but an IRS agent’s advice does not have the force of law and cannot override the tax code. Indeed, even written IRS advice is not binding. The authoritative sources of tax law are statutes, regulations and court decisions, not informal advice and publications. [*Peak v. Comm.*, T.C. Memo 2021-128]

8. Are employer-provided meals for business purposes still tax free?

Probably not. Occasional employer-provided meals, such as for holiday parties, are deemed tax-free as a *de minimis* fringe benefit. But for employer meals that are provided for business purposes to be tax free, they must be provided in an “eating facility.”

The IRS believes snack areas and employee desks are not eating facilities.

For example, say that your staff meeting runs late. You send out for sandwiches for everyone and pay for them. The cost of the sandwiches should be included in the attendees’ compensation and deducted by your company as salary expense.

What about the cost of snacks?

The IRS now says that unlimited employer-provided snacks are tax free as a *de minimis* fringe benefit under §132. Under §132, employers do not have to prove the snacks were provided as a condition of employment and for the convenience of the employer. Instead, the cost only has to be small enough that accounting for it is unreasonable and impractical.

The IRS left this open. You can probably offer more than just coffee, soft drinks, popcorn and chips. But if snacks are in large portions, of high value or offered too often, the IRS might conclude they are more like meals and therefore not *de minimis*. [*Tax Notes Today*]

9. A C corp can deduct a home office—but . . .

XyCo, a C corp, had a sole shareholder: a doctor who worked in the local hospital as an IC under contract. He worked at the hospital and used the second story of his home, which had a separate entrance, as a home office.

He and his assistant used his home office exclusively for business—administrative tasks, streaming patient records and continuing education.

When XyCo made the physician’s mortgage payments on the residence and deducted them as office rent on its income tax return, the IRS disallowed them.

Home office deductions under [§280A](#), *Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.*, are for use of a residence for business—but not for C corps.

For a C corp to take deductions, it must demonstrate that payments for the home office are ordinary and necessary business expenses under [§162](#), *Trade or business expenses*. But payments for *leasing* home office space from an employee or owner are deductible.

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In this case, the corporation failed to show that the home office was an ordinary and necessary business expense. For example, there was no *bona fide* rental arrangement, lease or other document to indicate the payments were rent. Nor was there any indication of how the rent was determined. The corporation simply paid the physician's mortgage each month.

Further, the physician treated the transactions as a lease, and his tax returns did not include a Sched. E to report the rent payments as income or treat part of the residence as being rented to the corporation.

While the corporation was paying the shareholder's mortgage and paying rent to the shareholder, it did not file information returns reflecting these payments. [Ng MD Inc. APC v. Comm., T.C. Memo. 2018-14]

10. IRS cautions on payroll services.

Note: Most payroll services are honest and ethical. The following is a warning about those that are not.

Despite efforts to clean up the industry, the IRS says there still are self-proclaimed "payroll service providers" (PSPs) that fail to deposit employment taxes—i.e., they take the money and simply shut down.

In most instances, an employer cannot delegate its obligations and responsibilities to a third party such as a PSP. Thus, if a PSP absconds with the money, the employer still is responsible for the taxes, interest and penalties. Forwarding taxes to the PSP does not automatically fulfill the employer's responsibility.

There are 3 options for outsourcing payroll:

1. A PSP is the traditional third-party provider but, as mentioned, the PSP is not ultimately responsible to the IRS for paying the taxes—the employer is.
2. A reporting agent (RA) is a PSP that reported its client relationship on IRS [Form 8655, Reporting Agent Authorization](#), signed by the client. RAs must deposit taxes using EFTPS and are authorized to exchange client information with the IRS. Giving tax payments to an RA is not giving responsibility for tax returns or payments to the RA.
3. A certified professional employer organization (CPEO) has met certain IRS requirements and registered with the IRS. In most instances, a CPEO is lia-

ble for paying its customers' employment taxes, filing returns, and making tax deposits and payments. As long as the employer deposits the money with a CPEO, the CPEO is responsible and the employer is relieved of responsibility.

IRS advice: If your firm uses any kind of payroll service, it should enroll in the EFTPS under its own name and EIN, insist that the third party make all tax payments through its EFTPS account—not the service's account—then regularly check its account to ensure that deposits are being made. **Also**, be sure that the address of record with the IRS is your firm's—not the service's—so your firm receives IRS bills, notices and other correspondence. [IR-2020-186]

11. Employee tax-free parking.

Deductions for employer-provided transportation and commuting benefits incurred after 2017 are disallowed by The Tax Cuts and Jobs Act—but the benefits still are tax free to employees.

Under the final regs, payments to a third party for the qualified transportation fringe are nondeductible, regardless of whether employees use the benefit.

If your firm owns or leases a parking facility, the final regs allow your firm to use a general rule or any of the three simplified methods explained in the regs to determine the disallowed deduction for each tax year. In other words, consult your firm's tax advisor. [T.D. 9939; 85 F.R. 81391-810409]

Bottom line: Qualified transportation fringe benefits offered by a for-profit business are not deductible for the employer—but are tax-free to employees.

12. Mingled business and personal accounts may cause higher taxes.

The case: R's two businesses each had their own bank account; R and his wife had a joint account. R was not careful about depositing receipts in and paying expenses from a particular account and did not keep records identifying each business's income and expenses v. his personal financial transactions.

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An IRS bank deposit analysis found one business's gross income to be substantially higher than reported on its income tax returns. R challenged the analysis.

Held: For the IRS. For a bank deposits analysis, the IRS totals all deposits for the year from all accounts associated with the business and taxpayer, subtracts deposits clearly identified as nontaxable income or tax-free transfers among related accounts and amounts already listed as income on the business tax returns—and adds the remaining amount to a firm's gross income. In this case, the result was a major increase in business gross income.

When a taxpayer's records are not adequate, the IRS can use bank deposit analysis to assess taxes. The burden is on the taxpayer to prove that the analysis overstates gross income and taxes. Because this taxpayer could not prove the deposits were *not* business gross receipts, the IRS bank deposit analysis prevailed. The business owed taxes based on its revised gross income. [*Rivera v. Comm.*, T.C. Memo. 2020-7]

AIPB tip: Remind owners to maintain separate bank accounts and credit cards for business v. personal use. If they don't, the IRS may assume that all deposits are gross business income and expenses are personal—and the owner must prove otherwise.

13. New small business reporting requirements.

The U.S. Treasury has issued proposed regs on the reporting requirements for businesses and other entities under the Corporate Transparency Act (CTA), which is part of the National Defense Authorization Act enacted in January 2021.

Businesses covered: Generally, C and S corps; LLCs; and similar entities with fewer than 20 employees, up to \$5 million in gross revenues, and a physical presence in the U.S.

Purpose: To limit the use of shell companies for money laundering, tax evasion, funding terrorism and other criminal activities.

What must be reported: Names, addresses, dates of birth, driver's license numbers, and other identification numbers of the individuals who control and own the entities—both beneficial owners* and the official owners of record. The reports will be filed with Treasury's Financial Crimes Enforcement Network.

* A "beneficial owner" is someone who owns at least 25% of the entity. The proposed regs have rules and examples of what it means to own or control 25% of an entity through joint ownership or related individuals or entities.

When reporting will start: One year after the effective date of the final regs, which should be later this year; new entities within 14 days of formation. The entity files the report, but owners must provide the information so the report can be filed on time.

By the time final regs are issued, a form and probably online reporting mechanism, should be available.

If your company or client might be covered.

Because this detailed information will take many companies, especially those with multiple owners, longer to compile than they may realize, such firms are urged to begin compiling the information now. [31 CFR Part 1010]

14. Sending 1099-NECs vs. 1099-MISCs.

Determining which form to use can be tricky. Here are the basics.

The 1099-NEC. Used to report payments of \$600 or more to non-employees (e.g., ICs and freelancers; formerly reported on a 1099-MISC, Box 7).

Important. Copies A and B of the 1099-NEC are due to the IRS and to recipients by Feb. 1, whether on paper or electronically.

Carefully identify the IC's business form. Just because an IC's business card says "company" does not mean the IC is a corporation. For example, say that a limo driver who has a full-time job at ABC Inc. makes runs for your firm in his free time as a sole proprietor. His business card may say ABC Inc., but if he works for your company as a sole proprietor, send a 1099-NEC—not a 1099-MISC.

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Safety first. Request a W-9 if you are ever unsure of an IC's business form. If in doubt about whether to send any kind of 1099, send it—better safe than sorry.

The 1099-MISC. Used to report a variety of miscellaneous distributions to individuals, including payments for rent, prizes and awards.

You must file a 1099-MISC for any nonemployee to whom your firm paid at least \$600 during the year in:

- rent
- prizes and awards (e.g., to a customer who won your company's raffle or won a prize at your firm's grand opening) or trips (e.g., to honor a retiree)
- other income payments
- medical and health care payments
- payments to an attorney your firm paid at least \$600 to for legal services during the same calendar year (reported in Box 14)
- dividends of \$10 or more for the year

Paper Copy A of the 1099-MISC is due to the IRS by Mar. 1; electronic copy by Mar. 31.

Copy B, electronic or paper, is due to recipients by Feb. 1—if \$600 or more, by Feb. 15.

1099s must be timely—and correct. To avoid penalties for filing the wrong form or the right form with errors, start soon.

Penalties may be incurred for:

- failing to file timely
- failing to include all required information
- including incorrect information
- filing on paper when electronic filing is required (based on number of forms filed)
- failing to include a TIN
- including an incorrect TIN
- filing paper forms that are not machine-readable.

If you see a mistake. Act fast to avoid lateness penalties.

15. “Our CPA did it” does not excuse late filing.

The case: X used a CPA to prepare and file his 1040. Every year the CPA filed for an automatic extension, then filed that summer.

One year the CPA prepared the extension and sent a draft to X but, unbeknownst to X, never filed it. In August, the CPA filed the return and the IRS assessed X a penalty for late filing. X appealed.

Held: For the IRS. The taxpayer argued that he had a reasonable cause for failing to file on time because he believed the CPA had filed the extension and relied on the CPA to do so.

But taxpayers are personally responsible for returns and other documents being filed on time—a duty that cannot be delegated. Had the taxpayer acted on the CPA's incorrect advice on tax law, he might have gotten off. The taxpayer was liable for the missed deadline. [*Baer v. U.S.*, No. 19-1439, Claims Court]

16. SECURE Act offers \$16,500 tax credit to start a retirement plan.

Provisions of the Setting Every Community Up for Retirement Enhancement (SECURE) Act give employers—**especially small employers**—incentives to establish or expand retirement plans.

Key provisions include the following:

- Firms with up to 100 employees who create a new retirement plan can get a tax credit of up to \$5,000 a year for 3 years (was \$500)—plus another \$500 a year for 3 years if they have automatic enrollment.
- The credit is the greater of \$500 or the number of non-highly compensated employees covered x \$250. Thus, the maximum credit is available if at least 20 non-highly compensated employees are eligible for the new retirement plan.
- Multi-employer pension plans are easier, even for firms not in the same industry. It cuts costs to jointly form and operate a retirement plan (previously, employers usually had to be in the same industry). Expect financial services firms to offer multiple-employer plans, probably in concert with industry associations and business groups.
- A firm can increase automatic retirement plan employee contribution rates from 10% to 15% of compensation. Employees can reduce or opt out of automatic enrollment and contributions.

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Other key provisions in the SECURE Act:

- Long-term part-timers now must be allowed to participate in a retirement plan. Those who work more than 500 hours but less than 1,000 hours a year and have been with your firm for a minimum of 3 years must be allowed to participate.
- It is now easier to offer annuities as a distribution option, but they must be transferable to the person or other plan without cost to the employee.
- The age for required minimum distributions from plans, including IRAs, is increased to 72 from 70½ for those turning age 70½ after 2019.
- Loans from retirement plans no longer can be made through credit cards or similar devices.

17. Did your firm issue refunds? Better have proof.

The case: Z ran a driving school as a sole proprietor, reporting income and expenses on Schedule C. The IRS said he understated gross income and assessed additional taxes and penalties.

Held: For the IRS. The taxpayer said the IRS had ignored cash refunds issued to dissatisfied customers that reduced the business's net income.

To substantiate this, he produced an income tracking sheet and some negative Yelp reviews.

But the income tracking sheet was not sufficient to establish the amounts refunded, there were no dates, and the figures on it did not match the tax return. Nor were there receipts, bank statements or other documentation to establish the refunded amounts or provide a reasonable way to estimate them. [*Lakew v. Commissioner*, T.C. Summ. Op. 2020-27]

AIPB tip. Like many small firms, the taxpayer used a third party's online system to make sales, collect payments and set up appointments. As required, the third party issued a 1099-K to the taxpayer and the IRS. The 1099-K's listed gross receipts processed for the year differed significantly from the taxpayer's Schedule C that was flagged for audit.

Always reconcile Schedule C gross receipts with 1099-Ks received from credit card processors or other third parties. Be prepared to explain and prove any differences between them.

18. IRS eyeing your ICs—what to do.

To protect against expanded IRS reclassification of ICs as employees, tax lawyer Robert Woods, who specializes in employment tax issues, urges you to have a written agreement with all ICs that should include the following key items:

- **Names—and titles:** The agreement should clearly state that the worker is an IC, not an employee, and avoid words indicating an employment relationship.
- **Training instructions:** ICs largely get their own training and decide when, where and how work is done. You can set work standards, but avoid ongoing instructions.
- **Delegation:** An IC who is permitted to delegate at least some work to his/her own workers and train them and who is then responsible for their results is likelier to hold up as an IC in an IRS or other worker classification audit.
- **Work periods:** Ideally, the contract should be for 1 year or less, with renewals, and not include employer-set work hours. Longer terms and employer-set hours indicate employment.
- **Exclusivity:** ICs who work exclusively and full time for one firm are likely to be deemed employees, regardless of other factors. True ICs are available to work for other companies.
AIPB tip. The IRS scans IC contracts for non-compete clauses. An IC is, by definition, *independent*, and should be allowed to service others.
- **Periodic reports:** Requiring progress reports from ICs indicates control and thus employment. Be concerned only with the IC's final product.
- **Compensation:** When possible, base compensation on output. Time-based payment, hourly or other, usually indicates employment—but not always.
- **Expenses:** ICs usually pay their own overhead and expenses (except perhaps travel), so they should pay for their supplies and equipment. State this in the contract. If needed, increase the contract price rather than pay an IC's expenses.
- **Risk:** It should be possible for an IC to lose money—at least theoretically.
- **Termination:** Both parties should be able to terminate on 30 days' notice for any reason. [*Tax Notes Today*]

19. Employee or IC? State v. federal regs.

If your state does not currently apply the “ABC” rule to worker classification, it may do so soon.

The 2020 California law [AB-5](#) made it harder to treat workers as ICs instead of employees under state law. It presumed workers to be employees—the employer has the burden of proving that they are ICs.

The law adopts the ABC test, which requires employers to prevail on tests A, B and C if they want to treat a worker as an IC, as follows:

- A. The ICs must *clearly* be free from the hiring entity’s direction for the work in both the terms of the contract and in the conduct of the relationship.
- B. The ICs’ work is outside the entity’s usual business —i.e., they should not be truck drivers who work for a trucking company because truck driving is not outside the hirer’s business, making them employees. A plumber fixing a pipe at a store is work outside the hiring entity’s usual business.
- C. The ICs must customarily be in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

The ABC Test is used by both the U.S. Department of Labor and the following states:

✓ AK	✓ IN	✓ NH	✓ TN
✓ CA	✓ KS	✓ NJ	✓ UT
✓ CT	✓ LA	✓ NM	✓ VT
✓ DE	✓ MA	✓ NV	✓ WA
✓ GA	✓ MD	✓ OH	✓ WV
✓ HI	✓ ME	✓ OR	
✓ IL	✓ NE	✓ RI	

The following states use A and C of the ABC test:

✓ CO	✓ MT	✓ PA	✓ WY
✓ ID	✓ OK	✓ WI	

OK and VA use A and B or A and C of the ABC test.

The test may vary slightly from state to state. In some states, working on company premises may make employee status more likely. Check your state regs.

Now the states are also limiting IC classification.

New Jersey set the standard with a series of laws designed to crack down on what the legislature believes is misclassification of employees as ICs.

Instead of changing the definitions of employees or ICs, the laws make it easier for the state to identify and punish businesses misclassifying workers.

The new laws authorize state agencies to enforce misclassification laws, streamline the process for identifying misclassified workers, and establish a new state office to enforce compliance with state classification regs.

Is your state about to tighten IC classification regs? [[Leimberg Information Services](#)]

20. Multi-state sales tax compliance.

Of the roughly 45 states with sales taxes, 42 plus the District of Columbia now have statutes requiring out-of-state businesses to collect and pay sales tax under some conditions. Most go into effect after a minimum number of transactions or sales dollars.

At least 30 states have “market facilitator” laws that require such entities (Amazon, eBay, etc.) to withhold and pay the sales taxes for the small firms whose products they sell, instead of putting the onus on the small firms. In most states, thresholds for sales tax obligation are the same for businesses and facilitators.

The [market facilitator rules](#) for each state tell you whether that state requires the facilitator or your firm to report the sales tax and, if your firm must, then when, how and at what thresholds to report them.

In addition, over 23 states have joined what is known as the [streamlined sales tax](#) organization, which allows a business to register on its website and easily file sales tax returns and pay the taxes.

The website also has a complete list of remote seller sales tax obligations, including states that do not belong to the group. [[Tax Notes Today](#)]

21. Bookkeeper personally liable for not responding to an IRS letter.

The case: K, a part-time bookkeeper, was neither a manager nor an owner in the company that employed him. When the company was delinquent on payroll taxes, the IRS sent [Letter 1153](#) (scroll way down), which states:

“IRS efforts to collect the federal employment or excise taxes due from the business named on the letter have not resulted in full payment of the liability. Therefore, the IRS proposes to assess a penalty against you.”

“If you agree with the penalty for each tax period shown . . . sign Part 1 of enclosed Form 2751 and return it to the person/office that sent you the letter. If you do not agree, you can submit a request for appeal to the office/individual that sent you the letter.

When K did not make a written response to the letter, the IRS followed through and assessed him personally for the taxes and penalties.

Held: For the IRS. The bookkeeper argued that he had no ownership interest, financial authority, or deci-

sion-making role in the employer’s business, so he could not be a responsible person for employment tax liability.

But the court said that he was properly served with Letter 1153 by the IRS and signed an acknowledgement of having received it. Once this letter is served, it is the taxpayer’s *only opportunity* to make a written objection to the proposed assessment to challenge it.

This taxpayer planned to challenge the assessment at the collection due-process hearing. But the IRS said, and the Tax Court agreed, that by failing to challenge the assessment upon receipt of the letter, the taxpayer lost the opportunity to challenge the IRS determination and was liable for the tax liability. A collection due-process hearing is too late to challenge the assessment itself. [*Kazmi v. Commissioner*, T.C. Memo 2022-13]

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