

CSEA Palomar Chapter
Tax Update Lecture
January 20, 2016

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Where: Escondido, CA

What: Federal (1 hr) & Calif (1 hr)

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Lecture Outline/Table of Contents:

- 1. New Tax Acts/Legislation highlights**
- 2. New Forms & Publications**
- 3. New Cases, Regs, Rulings, Procedures, Notices/Info releases and CCA's**
- 4. Tidbits**

"The 2015 filing season was akin to "A Tale of Two Cities." For the majority of taxpayers who filed their returns and did not require IRS assistance, the filing season was generally successful. For the segment of taxpayers who required help from the IRS, the filing season was by far the worst in memory"

-Nina Olson, National Taxpayer Advocate

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2015 New Tax Acts: Federal highlights

(1A)

1. Trade Preferences Extension Act (P.L. 114-27) and Defending Public Safety Employees' Retirement Act (P.L. 114-26) aka "Trade Acts" of 2015 (enacted 6-29-15)
2. Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (enacted 7-31-15)
3. Protecting Americans from Tax Hikes Act of 2015 (aka "Path Act" enacted 12-18-15)

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2015 New (36 enacted; 9 vetoed) CA Legislation highlights

(1B)

1. AB 154 IRC Conformity Act of 2015 effective 1-1-15
2. SB 80 EITC Helping CA working families
3. SB 540 makes permanent the FTB T/P Advocate's power to abate penalties, interest and fees in specified situations.
4. AB 279 expands FTB info sharing with cities and counties
5. SB 560 requires state licensing boards to share personal info re licensees with EDD
6. SB 81 College Access Tax Credit extends and expands
7. AB 243, 266 & SB 643 on Medical Marijuana industry (COGS & corp exceptions)
8. Vetoed AB 99 which would have partially conformed to the principal residence COD exclusions.

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TRADE ACTS OF 2015 highlights (1A-1)

- **Education Credits**: Effective 2016 and later, taxpayers must obtain a Form 1098-T to claim education credits or AGI tuition & fee deduction
- **Info Return Penalties**: Applicable to info returns required to be filed on or after 1-1-16, new higher penalties including failure to furnish correct payee statement penalty amounts (\$250).
- **Public Safety IRC 72(t) exception**: New lower age 50 exception to 10% early distribution penalty expanded to broader qualified categories including federal employees including Customs, INS and air traffic control.

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Surface Transportation & Veterans Health Care Choice Improvement Act of 2015 highlights (1A-2)

- **Tax Return Due Dates**: Returns for tax years beginning after 2015 the new due dates will be:
 - C (not S) Corp: 15th day of fourth month (later)
 - Partnership (& S corp): 15th day of third month (earlier) with extension to September 15
 - FinCen 114: April 15 with extension to October 15
 - Automatic extensions for 990 to Nov 15 and 1041 to Sept 30.

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Surface Transportation & Veterans Health Care Choice Improvement Act of 2015 highlights (continued)

- **Inherited Property Basis Consistency and Reporting:** If a 706 is required to be filed because of estate tax then the executor must provide the IRS and the estate beneficiaries acquiring any interest in property with a statement showing the reported value no later than 30 days after the Form 706 is filed.
 - Effective date: IRS Notice 2015-57 has delayed effective date until the later of 2-29-16 or the date the IRS issues forms and rules for 706 returns filed after 7-31-15.
- **SOL re Basis Overstatement:** Effective 7-31-15 an overstatement of unrecovered cost or other basis is treated as an omission of gross income for purposes of the 6 year SOL for assessing income tax that applies when a t/p omits from gross income more than 25% of the amount of gross income stated in the return.
- **Mortgage Interest Reporting:** Forms 1098 filed after 2016 must also include mortgage origination date, address of property securing loan and amount of outstanding principal as of beginning of the year.

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THE PATH ACT highlights (1A-3)

Use the following link for a detailed explanation by the Joint Committee on Taxation:

➤ <https://www.jct.gov/publications.html?func=startdown&id=4861>

- A. **Extenders:**
 - 1. [Permanent Extensions \(22\)](#)
 - 2. [Extensions thru 2019 \(4\)](#)
 - 3. [Extensions thru 2016 \(30\)](#)
- B. **Program Integrity:**
 - 1. Improved compliance thru 1099/W-2 non-extended e-filing dates (effective now) plus no credit or refund of an overpayment for a taxable year shall be made to a t/p before Feb 15, 2017 (next year).
 - 2. Safe harbor for de minimis errors on info returns, payee stmts and withholdings if reasonable cause filed after 2016.
 - 3. Paid preparer due diligence procedures to reduce improper claims re EITC, AOTC and Child Tax Credit.
 - 4. Increased penalty applicable to paid tax preparers who engage in willful or reckless conduct.
- C. **Miscellaneous Provisions:**
 - 1. 529 Programs, effective after 2014, may include computers/software, etc as qualified higher educational expenses.
- D. **Tax Administration:**
 - 1. Clarification of Enrolled Agent credentials to allow us to use the designation "EA," or "enrolled agent."
 - 2. Extend the IRS authority to require a truncated SSN or issue other identifying number.
 - 3. TBOR: Duty to ensure IRS employees are familiar with and act in accordance with certain t/p rights e.g. right to be informed; right to quality service; right to pay no more than the correct amount of tax; right to challenge IRS and be heard; right to appeal in an independent forum; right to finality; right to privacy, confidentiality, retain representation and fair and just tax system.
(www.taxpayeradvocate.irs.gov/about-tax/taxpayer-rights)

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THE PATH ACT highlights

(Extenders continued)

Permanent Extenders:

1. Additional Child Tax Credit: Reduced \$3k earnings threshold for refundable 15%;
2. American Opportunity Tax Credit: Hope now AOTC;
3. EITC: Higher phase-out thresholds for MFJ; 45% rate extended for 3+ kids;
4. Educator (K-12) Deduction (\$250) including pro development indexed expenses;
5. State and Local (general) Sales Tax: Either actual or per IRS table plus spc items;
6. IRA to Public Charity: Qualified (not donor advised fund or supporting orgs) distributions after 70.5 age; direct trustee to charity. (CA AUTO CONFORMS);
7. 15-Year Depreciation for qualified leasehold TI's (commercial, restaurant, retail);
8. Section 179: Increased \$500k limit; applies to qualified software and qualified real estate (see 7 above); starting in 2016 also applies to HVAC;
9. Qualified Small Business Stock 100% under IRC 1202
10. S-Corp BIG Tax: Five year holding period following conversion from C-corp;

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THE PATH ACT highlights

(Extenders continued)

Extenders thru 2019:

1. Work Opportunity Tax Credit: Available to employers hiring individuals from up to nine targeted qualified groups (Families receiving TANF; Veterans/ex-felons; designated community resident; vocational rehab referral; summer youth employee; Food Stamp recipient; SSI; L-T family assistance) including qualified L-T unemployed;
2. BONUS Depreciation: New original use property qualifies if recovery period is 20 yrs or less including qualified leasehold TI's discussed earlier. Allowance is 50% thru 2017 then drops to 40% in 2018 and 30% in 2019;
3. Residential Energy Efficient Property (Solar) Credit (25D): Extended at 30% thru 2019 then 26% for 2020 and 22% for 2021.

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THE PATH ACT highlights

(Extenders continued)

Extenders thru 2016:

1. **Principal Residence COD Exclusion**: Section 108 exclusion up to \$2MM of acq indebtedness;
2. **Mortgage Insurance Premiums**: Applies to contracts entered into after 2006;
3. **Qualified Tuition and related expenses**: Maximum above the line \$4k/\$2k;
4. **Energy Conservation Credit re Home (25C)**: Subject to energy efficient rules.

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NEW FORMS & PUBS (2)

A. Federal:

1. Form 8812 (Child Tax Credit): New due diligence requirement similar to EITC Form 8867;
2. Form 8863 (Am Op Tx Cr): New due diligence requirement similar to EITC Form 8867;
3. Pub 4557 [also Pub 5199 & FS-2015-24 (pros) & Pub 5027 & 4524(clients)]: Safeguarding T/P data (preparer due diligence checklist);

B. California:

1. Forms 3514 & 3596 (EITC): New CA EITC and preparer due diligence checklist similar to Feds;
2. Form 3840: Annually required if after 2013 IRC section 1031 relinquished CA property exchanged for non-CA replacement prop;
3. Schedule EO: Required to disclose any partnerships or LLC's owned plus EIN, SOS #, CA source income and profit %;
4. Form 3532: HOH Filing Status Schedule;
5. Form 3592: College Access Tax Credit;
6. FATCA form 8938 (starting next year);
7. Form 743: MyFTB Online Account View Access Authorization or use signed engagement letter;
8. Form 3520: Power of Attorney revised 12-2015 (new MyFTB filing requirements);
9. Form 914: T/P Advocate Assistance Request
10. Pub 1001: Supplemental Guidelines to CA Adjustments

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New Cases, Regs, Rulings, Procedures, Notices/Info releases and CCA's ⁽³⁾

1. **IRS Notice 2015-17** (on 2-18-15): **ACA limited small business penalty relief** for employer health insurance reimbursement arrangements:
 - June 30, 2015 transitional relief for non-ALE's for 2015 re insurance not HRA's
 - Non-Group Insurance plans with HRA's are not integrated and therefore not compliant
 - Insurance now subject to ERISA type non-discrimination rules regardless if individual or group
 - S-Corp 2+% SH EE plans transitional relief through 12-31-15 or until further guidance
2. **IRS Rev. Proc. 2015-20** (on 2-13-15): **New TPR repair reg small taxpayer relief** from filing form 3115 prospective 1-1-14:
 - Small taxpayer defined as less than \$10M assets or prior 3 yr sales:
 - **Notice 2015-82** (11-24-15) **de minimis annual written election** up from \$500 to \$2500 effective 1-1-16;
 - **Routine Maintenance Safe Harbor annual election** for small t/p with buildings (unadjusted basis \$1M or less) up to \$10k or 2% of unadjusted basis, whichever is less;
 - **CA CONFORMITY** (announced by FTB 12-23-15 on prospective basis)!
3. **IRS Notice 2015-21** (proposed **Gambling Rev Proc**): **Optional safe harbor for determining** wagering gains or losses from certain slot machine play on a per-session basis (per-yr rejected).
 - *Shollenberger v Comm* (TCM 2009-306) allows netting on line 21 for casual slot gambler;

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New Cases, Regs, Rulings, Procedures, Notices/Info releases and CCA's (continued)

4. **Form 1099-B's** (rev TR 1.6045-1): No longer includes **exercise price** in basis on compensatory option or other equity-based compensation arrangements therefore must use Form 8949 adjust code "B";
5. **Sophy v Comm** (9th Cir Ct of Appeals 8-7-15): Appeals Court rules that home **mortgage interest** limit (IRC 163) determined on per-taxpayer, not per-residence, basis, reversing 138 TC 8 tax court decision;
6. **Stine v US** (US Dist Ct 1-27-15): **Depreciation** can begin when asset placed in service which starts when substantially completed and in a state of readiness to perform function even if retail store not yet open to public for business;
7. **Form 3840 Annual Filing Requirement** (started 1-1-14): Penalty for failing is acceleration of gain into the year the form is not filed therefore notify clients;
8. **Leyh v Comm** (TCS 2015-27): Travel time counts for **real estate pro** 750-hr time test PAL requirement;
 - CCA 201504010: Real estate agent can be RE Pro but not mortgage broker;
9. **Bobrow v Comm/ IRS announcement 2014-32**: With regard to **indirect IRA rollovers** you can only do one-rollover-per-year, not per account;
10. **TIGTA 2015-10-042**: TIGTA says the IRS should be more proactive regarding **RMD's** for IRA's;
11. **IRS ILN 2013-36 & 2014-18 re CA Anti-Deficiency and short sales**: If either of these issues apply to you the author refers you to the article written in the California Tax Lawyer by Douglas L. Youmans and N. Aaron Johnson titled "Information Letter Notice 2013-0036 and Why CA Anti-Deficiency Statutes Convert Recourse Debt to Nonrecourse Debt"

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New Cases, Regs, Rulings, Procedures, Notices/Info releases and CCA's (continued)

12. In re Marriage of Sheryl & Keith Davis (CA Sup Ct 7-20-15): The **date of separation** is when the community ends with no intention of reuniting based on the facts and circumstances test e.g. not living under same roof.
13. Obergefell US Supreme Ct (6-26-15): **Same-sex marriage** is a right guaranteed. IRS issued Rev Rul 2013-17 following Windsor;
14. Appeal of Lau (SBE 5-7-15): Intent was key factor in **domicile** determination which is real issue for state residency or domicile;
15. Doing business in CA: Effective 2011, **economic nexus** exists if entity (a) organized or domiciled in CA; (b) CA sales (i.e. by agent or IC) exceed \$536k for 2015 or 25% of total sales; © CA comp or real/ tangible personal property in CA exceeds \$53k for 2015 or 25% of total;
 - Swart v FTB (11-14-14) decision in favor of t/p which rebuked FTB position that LLC taxed as partnership should be treated as GP and therefore any member is doing business in CA and has a filing requirement;
 - Penalty: Failure to file penalty \$2k if LLC should have been registered in CA but wasn't;
 - Ralite (4-30-90 SBE): Applies to LLCs as well as corporations;
16. FTB's new Ask a Legal Expert: [www.ftb.ca.gov/contact_us/Ask a Legal Expert.asp](http://www.ftb.ca.gov/contact_us/Ask_a_Legal_Expert.asp) allows taxpayers to ask basic legal questions directly to a specific Legal Division Bureau at FTB.

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TIDBITS (4):

1. HERO and PACE loan payment not deductible as property taxes;
2. Airbnb/VRBO: Watch for vacation home rules; 14 day or less income exception; and, Transient Occupancy type taxes; (IRS Pub 527 may be helpful with some of this);
3. UBTI issues with retirement plans in partnerships;
4. Chronically ill (IRC 7702B©(2)(A) certification required every year for medical deductions if need help with ADL's or due to cognitive impairment;
5. April 18, 2016 Filing Deadline conformed by CA;
6. New MyFTB Online Client Account Access: All old accounts were closed and we must re-register but then with a POA the system potentially allows for far more access to resolve issues and get information including Online Secure Chat, Sending Secure Message and updating contact preferences;
 - Web Pay Issue: Taxpayers who in 2015 scheduled Web Pay payments (while logged into their MyFTB account) to occur after 1-2-16 will no longer be able to view those payments in Web Pay after they re-register. However, the payments will remain scheduled therefore warn the clients not to reschedule any duplicate payments.
7. FTB Audits: Top five issues are 1031 exchanges, HOH, EBE, and passthrough entity audits of basis, at-risk, etc.
8. 2016 Standard Mileage Rates: Business 54 cpm; Med or Moving 19 cpm; and, Charity 14 cpm.

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TAXES. SECURITY. TOGETHER.

The IRS, the states and the tax industry are committed to protecting you from identity theft. We've strengthened our partnership to fight a common enemy – the criminals – and to devote ourselves to a common goal – serving you. Working together, we've made many changes to combat identity theft, and we are making progress. However, cybercriminals are constantly evolving, and so must we. The IRS is working hand-in-hand with your state revenue officials, your tax software provider and your tax preparer. But, we need your help. We need you to join with us. By taking a few simple steps, you can better protect your personal and financial data online and at home.

Please consider these steps to protect yourselves from identity thieves:

Keep Your Computer Secure

- Use security software and make sure it updates automatically; essential tools include:
 - Firewall
 - Virus/malware protection
 - File encryption for sensitive data
- Treat your personal information like cash, don't leave it lying around
- Check out companies to find out who you're really dealing with
- Give personal information only over encrypted websites – look for “https” addresses.
- Use strong passwords and protect them
- Back up your files

Avoid Phishing and Malware

- Avoid phishing emails, texts or calls that appear to be from the IRS and companies you know and trust, go directly to their websites instead
- Don't open attachments in emails unless you know who sent it and what it is
- Download and install software only from websites you know and trust
- Use a pop-up blocker
- Talk to your family about safe computing

Protect Personal Information

Don't routinely carry your social security card or documents with your SSN. Do not overshare personal information on social media. Information about past addresses, a new car, a new home and your children help identity thieves pose as you. Keep old tax returns and tax records under lock and key or encrypted if electronic. Shred tax documents before trashing.

Avoid IRS Impersonators. The IRS will not call you with threats of jail or lawsuits. The IRS will not send you an unsolicited email suggesting you have a refund or that you need to update your account. The IRS will not request any sensitive information online. These are all scams, and they are persistent. Don't fall for them. Forward IRS-related scam emails to phishing@irs.gov. Report IRS-impersonation telephone calls at www.tigta.gov.

Additional steps:

- Check your credit report annually; check your bank and credit card statements often;
- Review your Social Security Administration records annually: Sign up for My Social Security at www.ssa.gov.
- If you are an identity theft victim whose tax account is affected, review www.irs.gov/identitytheft for details.

— DRAFT —

Written accounting policy/procedure effective January 1, 2016

Taxpayer Name: _____ SSN/EIN: _____

Address: _____

Re: ***De Minimis Rule for expensing non-incidental materials, supplies, repairs and maintenance expenditures costing less than \$2,500 during the year***

Memorandum: In accordance with IRS Regs 1.263(a)-1(f) (and IRS Notice 2015-82), the above referenced taxpayer does hereby elect, effective on and after 1-1-16, to memorialize the adoption of the \$2,500 De Minimis Safe Harbor Election and expense all non-incidental expenditures (applied at the invoice level or at the item level if multiple items are on a single invoice) on their financial statements and tax returns for those items which might be considered a Unit of Property (UOP) for depreciation purposes falling into the categories of materials, supplies, repairs and maintenance or other associated fixed assets. All property whose economic useful life is less than 12 months will also be expensed.

Re: ***Routine Maintenance expensing***

Memorandum: In accordance with IRS Regs 1.263(a)-3(i), the above referenced taxpayer does hereby elect to memorialize the adoption of the Routine Maintenance Safe Harbor and expense all maintenance that meets both of the following:

- (1) The maintenance is performed to keep a UOP in its ordinarily operating condition and not to improve or better the property; and,
- (2) At the time the UOP is placed in service by the taxpayer, the taxpayer reasonably expects to perform the routine maintenance more than once during the property's class life (more than once every 10 years in the case of a building).

The undersigned authorized representative of the above referenced taxpayer adopts this written accounting policy/procedure effective 1-1-16.

Print Name: _____ Signature: _____

Title: _____