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Standard Mileage Rate

Cross References

- Rev. Proc. 2010-51
- Notice 2016-01
- Notice 2016-79
- Notice 2018-03

The IRS has released the 2018 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. The following chart reflects the new 2018 standard mileage rates compared to the 2017 and 2016 tax year standard mileage rates.

	2018	2017	2016
Business rate per mile	54.5¢	53.5¢	54.0¢
Medical and moving rate per mile	18.0¢	17.0¢	19.0¢
Charitable rate per mile	14.0¢	14.0¢	14.0¢
Depreciation rate per mile	25.0¢	25.0¢	24.0¢

Due Dates for Certain Health Information Returns Extended

Cross References

- Notice 2018-06

Under the Affordable Care Act (ACA), health insurance issuers, self-insuring employers, government agencies, and other providers of minimum essential coverage are required to file and furnish annual information returns and statements regarding the coverage provided. Applicable large employers (those with 50 or more full-time equivalent employees) are also required to file and furnish annual information returns and statements relating to the health insurance that the employer offers to its full-time employees.

The regulations require those who provide minimum essential coverage to an individual to file Form 1094-B, *Transmittal of Health Coverage Information Returns,* and Form 1095-B, *Health Coverage,* with the IRS on or before February 28 (March 31 if filed electronically) of the following calendar year to which the forms relate, and to furnish the individual with a Form 1095-B on or before January 31 of the following calendar year to which the form relates.

Applicable large employers are required to file Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns,* and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage,* with the IRS on or before February 28 (March 31 if filed electronically) of the following calendar year to which the forms relate, and to furnish full-time employees with

a Form 1095-C on or before January 31 of the following calendar year to which the form relates.

Prior IRS guidance extended the above due dates for the 2015 and 2016 calendar years.

Extension of due dates for the 2017 calendar year. Notice 2018-06 extends the due date for furnishing individuals with Form 1095-B and Form 1095-C for the 2017 calendar year from January 31, 2018, to March 2, 2018. The due dates for filing Forms 1094-B, 1095-B, 1094-C, and 1095-C with the IRS for the 2017 calendar year are not extended.

This notice does not affect the provisions regarding an automatic extension of time for filing information returns under the normal rules by submitting a Form 8809, *Application for Extension of Time to File Information Returns,* on or before the due date for filing any of the above forms.

Taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their individual tax returns. Taxpayers may rely on other information received for purposes of filing their returns, including determining eligibility for the Premium Tax Credit and confirming that they are not subject to the penalty for not having minimum essential coverage.

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Property Taxes for 2018 Prepaid in 2017

Cross References

• IR-2017-210, December 27, 2017

The Internal Revenue Service advised tax professionals and taxpayers that pre-paying 2018 state and local real property taxes in 2017 may be tax deductible under certain circumstances.

The IRS has received a number of questions from the tax community concerning the deductibility of prepaid real property taxes. In general, whether a taxpayer is allowed a deduction for the prepayment of state or local real property taxes in 2017 depends on whether the taxpayer makes the payment in 2017 and the real property taxes are assessed prior to 2018. A prepayment of anticipated real property taxes that have not been assessed prior to 2018 are not deductible in 2017. State or local law determines whether and when a property tax is assessed, which is generally when the taxpayer becomes liable for the property tax imposed.

The following examples illustrate these points.

Example #1: *Assume County A assesses property tax on July 1, 2017 for the period July 1, 2017 – June 30, 2018. On July 31, 2017, County A sends notices to residents notifying them of the assessment and billing the property tax in two installments with the first installment due September 30, 2017 and the second installment due January 31, 2018. Assuming taxpayer has paid the first installment in 2017, the taxpayer may choose to pay the second installment on December 31, 2017, and may claim a deduction for this prepayment on the taxpayer's 2017 return.*

Example #2: *County B also assesses and bills its residents for property taxes on July 1, 2017, for the period July 1, 2017 – June 30, 2018. County B intends to make the usual assessment in July 2018 for the period July 1, 2018 – June 30, 2019. However, because county residents wish to prepay their 2018-2019 property taxes in 2017, County B has revised its computer systems to accept prepayment of property taxes for the 2018-2019 property tax year. Taxpayers who prepay their 2018-2019 property taxes in 2017 will not be allowed to deduct the prepayment on their federal tax returns because the county will not assess the property tax for the 2018-2019 tax year until July 1, 2018.*

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Improper Filing Status is Not a Married Filing Separate Return

Cross References

• *Camara,* 149 T.C. No. 13, September 28, 2017

During the year at issue, the taxpayer was legally married. Nevertheless, he filed his tax return by checking the box for the single filing status. The IRS changed his filing status from single to married filing separately. The taxpayer's wife had not previously filed a return for that year. So the taxpayer and his wife filed a joint tax return in response to the IRS notice of deficiency. The IRS refused to accept the joint tax return.

The court said there was no dispute between the taxpayer and the IRS that the taxpayer should have filed his original return either as married filing separately or married filing joint. And the IRS agreed that the taxpayer and his wife meet the substantive requirements for joint filing status. The IRS argued that IRC section 6013(b)(2) bars the taxpayer from filing a joint return.

IRC section 6013(b) is the statute that permits married taxpayers to elect in certain circumstances to switch from a "separate return" to a joint return. IRC section 6013(b)(2) lists four limitations on this election to switch to a joint return. The court said that because the IRC section 6013(b) election applies only where an individual has filed a "separate return," the limitations under IRC section 6013(b)(2) likewise apply only if the individual has filed a "separate return."

The IRS argued that the taxpayer's original return which he erroneously claimed single filing status constitutes a "separate return," and consequently the IRC section 6013(b)(2) limitations apply to prevent him from making the election to switch to a joint return.

One of the limitations bars the election after three years from the filing deadline (without extensions) for filing the return for that year. The second limitation bars the election after there has been mailed to either spouse a notice of deficiency and the spouse files a petition with the Tax Court within 90 days of the notice. The IRS argued that these two limitations are satisfied.

The court said a "separate return" means a return on which a married taxpayer has claimed the permissible status of married filing separately. The court did not believe that a return on which a married taxpayer has claimed a filing status not properly available to him or her is a "separate return." The court reached this conclusion for two related reasons:

1) IRC section 6013(b)(1) describes filing a separate return as an "election," and filing a return with an erroneous claim to an impermissible filing status does not constitute an "election" for this purpose.
2) The legislative history shows that IRC section 6013(b)(1) was intended only to provide taxpayers flexibility in switching from a proper initial election to file a "separate return" to an election to file a joint return. The legislative history does not suggest that the statute was intended to foreclose correction of an erroneous initial filing status.

The court noted that no Court of Appeals case has ever held that a single return or a head of household return is a separate return for the purpose of IRC section 6013(b). Two Court of Appeals cases that have considered this issue have held the opposite view. A separate return can only refer to a married filing separate return, and the term "election" refers to a choice.

The court noted other cases involving elections in other contexts, such as a net operating loss, depreciation method, and the installment method of accounting. In those contexts, the court has reasoned that an attempted erroneous position on a return is not an election at all.

The court ruled that the erroneous original return claiming "single" status was not a "separate return" for purposes of the IRC section 6013(b) election. Consequently, IRC section 6013(b)(2) does not apply and the taxpayer is entitled to elect to file a married filing joint tax return.

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Cosigner for Truck Loan Did Not Receive Cancellation of Debt Income

Cross References

- *Bullock,* T.C. Memo. 2017-219

The taxpayer had an adult son who ran a business hauling cars across the country. After the taxpayer's son and daughter-in-law had a business emergency, they applied for a loan to purchase a used dually pickup truck so that they could continue their business. The taxpayer, along with her son and daughter-in-law discussed loan options with a credit union. Although the taxpayer intended to serve as a cosigner for her son, she unwittingly signed paperwork indicating that she was the primary obligor on the loan. However, after the paperwork was signed, the credit union dealt only with the son and daughter-in-law, who made the payments on the loan.

A year later the truck was stolen. Insurance covered only a portion of the outstanding balance on the loan. When the insurance company paid the credit union, the taxpayer's son and daughter-in-law stopped making loan payments. The outstanding balance on the loan was $8,164 after the insurance payout. The credit union discharged that amount.

The taxpayer did not receive phone calls or correspondence from the credit union attempting to collect the outstanding balance. She also did not receive any information regarding the discharge of the loan.

The IRS received a Form 1099-C, *Cancellation of Debt,* from the credit union indicating that the taxpayer had received cancellation of debt (COD) income of $8,164. The taxpayer did not report the purported COD income on her tax return.

The tax court noted that COD income occurs when the discharge of a debt below the face value of the debt accords the debtor an economic benefit equivalent to income. For COD income to exist, a bona fide debt must exist. The ultimate question regarding the existence of a bona fide debt centers on whether or not there is a genuine intention to create a debt with a reasonable expectation of repayment, and did that intention comport with the economic reality of creating a debtor-creditor relationship?

A guaranty creates a contingent liability where a party's obligation to make a payment under the guaranty is contingent upon the primary obligor's failure to pay the debt. The guarantor of a contingent liability generally does not recognize income upon discharge of a debt. Such a discharge creates no previously untaxed accretion in assets that would result in an increase in

net worth. The court said the guarantor no more realizes income from the transaction than he would if a tornado, bearing down on his home and threatening a loss, changes course and leaves the house intact.

The court said with these principles in mind, the transaction in this case did not create a bona fide debt for the taxpayer. When she went to the car dealership, she did not intend to be the primary obligor on the loan. She did not intend to personally repay the loan, and she made no payments on the loan. The credit union also understood that the taxpayer intended only to be a cosigner. The credit union was aware that the taxpayer's son and daughter-in-law were responsible for the loan payments, and never looked to the taxpayer for repayment.

Without an intention for the taxpayer to repay the debt, there was no bona fide primary obligation between the taxpayer and the credit union. The taxpayer was the guarantor for her son's loan, merely promising to be responsible for her son and daughter-in-law in the event they failed to make the loan payments.

Because the taxpayer was merely a cosigner on the loan, her net worth was not increased over what it would have been if the original transaction had never occurred. When the loan was forgiven, the taxpayer did not realize an untaxed increase in wealth. As a result, the court ruled that the taxpayer did not receive $8,164 in COD income.

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Partnership Audit Regulations

Cross References

- T.D. 9829, December 29, 2017
- Reg. §301.6221(b)-1

Beginning in 2018, any adjustment made during a partnership audit to items of income, gain, loss, deduction, or credit of a partnership and any partner's distributive share of those adjusted items is assessed and collected at the partnership level. Any penalty, addition to tax, or additional amount that relates to an adjustment made during a partnership audit is also determined at the partnership level. A partnership with 100 or fewer partners may elect out of these rules. By electing out of this centralized partnership audit regime, the IRS must assess and collect additional taxes and penalties at the partner level rather than the partnership level.

The IRS recently issued final regulations concerning the rules for electing out of the centralized partnership audit regime. These rules are included in Regulation section 301.6221(b)-1, *Election out for certain partnerships with 100 or fewer partners.*

In general, the centralized partnership audit regime does not apply for any partnership tax year for which an eligible partnership makes a valid election.

Eligible partnership. In general, only an eligible partnership may make such an election. A partnership is an eligible partnership if:

i) The partnership has 100 or fewer eligible partners, and
ii) Statements that are required to be furnished to partners (Schedule K-1, Form 1065) are furnished to each eligible partner.

A partnership has 100 or fewer partners if the partnership is required to furnish 100 or fewer K-1s for the tax year. If an S corporation is a partner in the partnership, the number of K-1s (Schedule K-1, Form 1120S) issued to S corporation shareholders is included in determining the number of K-1s that are furnished for the year.

Example #1: *During its 2020 partnership tax year, a partnership has four partners each owning an interest in the partnership. Two of the partners are George and Alice who are married to each other during all of 2020. George and Alice each own a separate interest in the partnership. The two other partners are unmarried individuals. The partnership is required to furnish a separate K-1 to each individual partner, including separate K-1s to George and Alice. Therefore, the partnership has four partners during its 2020 tax year.*

Example #2: *The facts are the same as in Example #1, except Alice does not separately own an interest in the partnership during 2020 and George and Alice live in a community property state. George acquired his partnership interest in such a manner that by operation of state law, Alice has a community property interest in George's partnership interest. Because Alice's community property interest in George's partnership interest is not taken into account for purposes of determining the number of K-1s the partnership is required to furnish, the partnership is required to furnish a statement to George, but not to Alice. Therefore, the partnership has three partners during its 2020 tax year.*

Example #3: *At the beginning of 2020, a partnership, which has a tax year ending December 31, 2020, has three partners, Amber, Brenda, and Charles. Each individual owns an interest in the partnership. On June 30, 2020, Amber dies, and Amber's interest in the partnership becomes an asset of Amber's estate. Amber's estate owns the interest for the remainder of 2020. On September 1, 2020, Brenda sells her interest in the partnership to Don, who holds the interest for the remainder of the year. The partnership is required to furnish five K-1s for its 2020 tax year, one each to Amber, the estate of Amber, Brenda, Charles, and Don. Therefore, the partnership has five partners during its 2020 tax year.*

Example #4: *During its 2020 tax year, a partnership has 51 partners, 50 partners who are individuals and one partner that is an S corporation. The S corporation and the partnership are both calendar year taxpayers. The S corporation has 50 shareholders during the 2020 tax year. The partnership is required to furnish 51 K-1s for the 2020 tax year, one to the S corporation, and one to each of the partnership's 50 partners who are individuals. The S corporation is required to furnish 50 K-1s to each of its 50 shareholders. The number of K-1s required to be furnished by the S corporation is taken into account to determine whether the partnership has 100 or fewer partners. Accordingly, the partnership has a total of 101 partners (51 K-1s furnished by the partnership to its partners plus 50 K-1s furnished by the S corporation to its shareholders) and is therefore not an eligible partnership. Because the partnership is not an eligible partnership, it cannot make the election out of the centralized partnership audit regime.*

Example #5: *During its 2020 tax year, a partnership has two partners, Andy, an individual, and the estate of deceased partner Erin. Erin's estate has 10 beneficiaries. The partnership is required to furnish two K-1s, one to Andy and one to Erin's estate. Any K-1s (Schedule K-1, Form 1041) that Erin's estate may be required to furnish to its beneficiaries are not taken into account for purposes of these election out regulations. Therefore, the partnership has two partners.*

Eligible partners. In general, the term eligible partner means a partner that is an individual, a C corporation, an eligible foreign entity, an S corporation, or an estate of a deceased partner. An S corporation is an eligible partner regardless of whether one or more shareholders of the S corporation are not an eligible partner.

A partner is not an eligible partner if the partner is:

A) A partnership,
B) A trust,
C) A foreign entity that is not an eligible foreign entity described below,
D) A disregarded entity described in Regulation section 301.7701-2(c)(2)(i),
E) An estate of an individual other than a deceased partner, or
F) Any person that holds an interest in the partnership on behalf of another person.

Eligible foreign entity. For purposes of the election out provisions, a foreign entity is an eligible partner if the foreign entity would be treated as a C corporation if it were a domestic entity. A foreign entity would be treated as a C corporation if it were a domestic entity if the entity is classified as a per se corporation under Regulation section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), is classified by default as an association taxable as a corporation under Regulation section 301.7701-3(b)(2)(i)(B), or is classified as an association taxable as a corporation in accordance with an election under Regulation section 301.7701-3(c).

Example #1: *During the 2020 tax year, a partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner is a partnership. A partnership is not an eligible partner under the election out provisions. Accordingly, the partnership cannot make the election out of the centralized partnership audit regime for its 2020 tax year.*

Example #2: *During its 2020 tax year, a partnership has four equal partners. Two partners are individuals. One partner is a C corporation. The fourth partner is an S corporation. The S corporation has ten shareholders. One shareholder is a disregarded entity, and one is a qualified small business trust. An S corporation is an eligible partner under the election out provisions even though its shareholders would not be considered eligible partners if those shareholders held direct interests in the partnership. Accordingly, the partnership meets the requirements to elect out of the centralized partnership audit regime for its 2020 tax year.*

Example #3: *During its 2020 tax year, a partnership has two equal partners, Aaron, an individual, and Squeaky Clean, LLC, a disregarded entity, wholly owned by Barbara, an individual. Squeaky Clean, LLC is not an eligible partner. Accordingly, the partnership is not an eligible partnership and, therefore, is ineligible to make the election out of the centralized partnership audit regime for its 2020 taxable year.*

Valid election. An election out of the centralized partnership audit regime must be made on the eligible partnership's timely filed return, including extensions, for the tax year to which the election applies and include all information required by the IRS in forms, instructions, or other guidance. An election is not valid unless the partnership discloses to the IRS all of the information required (see below) and, in the case of a partner that is an S corporation, the shareholders of such S corporation. An election once made may not be revoked without the consent of the IRS.

Disclosure of partner information to the IRS. A partnership making such an election must disclose to the IRS information about each person that was a partner at any time during the tax year of the partnership to which the election applies, including each partner's name and correct U.S. Taxpayer Identification Number (TIN) (or alternative form of identification required by forms, instructions, or other guidance), each partner's federal tax classification, an affirmative statement that the partner is an eligible partner, and any other information required by the IRS in forms, instructions, or other guidance. If a partner is an S corporation, the partnership must also disclose to the IRS information about each shareholder of the S corporation that was a shareholder

at any time during the tax year of the S corporation ending with or within the partnership's tax year, including each shareholder's name and correct TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance), each shareholder's federal tax classification, and any other information required by the IRS in forms, instructions, or other guidance.

Partner notification. A partnership that makes an election out of the centralized partnership audit regime must notify each of its partners of the election within 30 days of making the election in the form and manner determined by the partnership.

Applicability date. These regulations are applicable to partnership tax years beginning after December 31, 2017.

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