Tax News and Industry Updates

2019
Volume 7, Issue 1

KS Tax Preparation
Kevin Silva, Enrolled Agent

www.KSTaxPrep.com
KevinSilvaEA@gmail.com
(508) 496-7168 Phone

Inside This Issue

Standard Mileage Rate

Cross References

- Rev. Proc. 2010-51
- Notice 2016-79
- Notice 2018-03
- Notice 2019-02

The IRS has released the 2019 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 2019 standard mileage rates compared to the 2017 and 2018 tax year standard mileage rates.

	2019	2018	2017
Business rate per mile*	58.0¢	54.5¢	53.5¢
Medical and moving rate per mile**	20.0¢	18.0¢	17.0¢
Charitable rate per mile	14.0¢	14.0¢	14.0¢
Depreciation rate per mile	26.0¢	25.0¢	25.0¢

* A deduction for unreimbursed employee business travel is suspended for tax years 2018 through 2025, unless the deduction is allowed in determining adjusted gross income, such as members of a reserve component of the Armed Forces, state or local government officials paid on a fee basis, or certain performing artists.

** A deduction for moving expenses is suspended for tax years 2018 through 2025, unless the taxpayer is a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station.

◆ ◆ ◆

Form W-4

Cross References

- www.irs.gov

Following feedback from the payroll and tax communities, the IRS will incorporate important changes into a new version of the Form W-4, *Employee's Withholding Allowance Certificate,* for 2020. The 2019 version of the Form W-4 will be similar to the current 2018 version.

The IRS will continue working closely with the payroll and the tax community as it makes additional changes to the Form W-4 for use in 2020. The new version will help employees improve withholding accuracy, and fully reflect changes included in the Tax Cuts and Jobs Act.

For the current 2018 tax year, the IRS continues to strongly urge taxpayers to review their tax withholding situation as soon as possible to avoid having too little or

too much withheld from their paychecks. The IRS has a "paycheck checkup" withholding calculator posted on their website (www.irs.gov) that tax professionals are encouraged to use to make sure their clients have sufficient withholding for the 2018 tax year.

◆ ◆ ◆

Tax Transcript Scam

Cross References

- IR-2018-226

The IRS is warning the public of a surge of fraudulent emails impersonating the IRS and using tax transcripts as bait to entice users to open documents containing malware.

The scam is especially problematic for businesses whose employees might open the malware because this malware can spread throughout the network and potentially take months to successfully remove.

This well-known malware, known as Emotet, generally poses as specific banks and financial institutions in its effort to trick people into opening infected documents.

In the past few weeks, the scam masqueraded as the IRS pretending to be from "IRS Online." The scam email carries an attachment labeled "Tax Account Transcript" or something similar, and the subject line uses some variation of the phrase "tax transcript." These clues can change with each version of the malware. Scores of these malicious Emotet emails were forwarded to phishing@irs.gov recently.

The IRS reminds taxpayers it does not send unsolicited emails to the public, nor would it email a sensitive document such as a tax transcript, which is a summary of a tax return. The IRS urges taxpayers not to open the email or the attachment. If using a personal computer, delete or forward the scam email to phishing@irs.gov.

◆ ◆ ◆

IRS Lapsed Appropriations Contingency Plan

Cross References

- https://home.treasury.gov/

On January 15, 2019, the U.S. Treasury updated its Lapsed Appropriations Contingency Plan, as the U.S. government partial shutdown continues. The plan states that the IRS needs to continue return processing activities to the extent necessary to protect government property, which includes tax revenue, and maintain the integrity of the federal tax collection process, along with certain other activities authorized under the Anti-Deficiency Act. The IRS must except additional positions beyond those identified in the Non-Filing Season Plan. In the event the lapse extends beyond five business days, the Deputy Commissioner for Operations Support will direct the IRS Human Capital Officer to reassess ongoing activities and identify necessary adjustments of excepted positions and personnel.

During a lapse, the IRS may continue certain activities that fall under established exceptions in the Anti-Deficiency Act. Employees may be designated as excepted only to perform work directly associated with those activities, and only for time necessary to complete that work. For example, if an employee is needed for three hours per week to safeguard revenue arriving by mail, the employee should be instructed to report to work only for those three hours.

Activities otherwise authorized by law. During a government shutdown, agencies may continue performing activities to the extent such activities are:

1) Supported by funding that does not expire at the end of the fiscal year (such as multi-year and indefinite appropriations), which do not require enactment of annual appropriations legislations,
2) Authorized by statues that expressly permit obligations in advance of appropriations, and
3) Authorized by necessary implication from the specific terms of duties that have been imposed on, or of authorities that have been invested in the agency.

Accordingly, certain agency functions funded through annual appropriations may continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions must continue as well. For example, the government funds Social Security payments out of an indefinite appropriations, and therefore may continue making these payments during a shutdown. Consequently, IRS employees who support this function may continue doing so during a shutdown, even though their salaries come out of annual appropriations.

Activities necessary to safeguard human life or protect government property. The second category represents exceptions for emergencies involving the protection of life or property. The Attorney General has described the following rules for interpreting the scope of these exceptions:

1) There must be some reasonable and articulable connection between the function to be performed and the safety of human life or protection of property.
2) There must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

Tax revenues constitute government property which the IRS must safeguard during a lapse in appropriations. Accordingly, during a lapse in appropriations, the IRS may continue processing tax returns to ensure the protection of those returns that contain remittances. Activities necessary to protect other types of government property, including computer data and federal lands and buildings, may continue during a shutdown as well.

Activities necessary for orderly agency shutdown. The IRS is authorized to perform functions necessary to close-down agency functions that may not continue during a lapse in appropriations.

Disaster or emergency response/recovery. In the event a response to a disaster or emergency is required during a lapse in appropriations, the IRS will amend this plan to activate disaster response and recovery efforts to support activities.

Disaster relief. The IRs is authorized to assist the Federal Emergency Management Agency (FEMA) by responding to disaster assistance calls from victims following a Presidential declaration of a major disaster or emergency.

Tax Cuts and Jobs Act (TCJA). TCJA provisions provide funding for two fiscal years, FY 2018 and FY 2019. Implementing TCJA requires creating or revising hundreds of tax products including worksheets and tax forms, form instructions and publications, as well as changes to current IRS policies and procedures. The IRS inventory of tax products continues to be worked and revisions will be produced during the current government shutdown. The Chief Information Officer is also on track to complete the necessary information technology programming to enable all revised and new forms to be accurately processed in the 2019 filing season.

In enacting the TCJA, Congress provided the IRS with funds that will remain available until September 30, 2019. Thus, some implementation activities are not affected by a lapse in appropriations for Fiscal Year 2019. Additional activities would continue to protect incoming tax revenues during the filing season.

IRS service wide summary of shutdown impact. The updated IRS Lapsed Appropriations Contingency Plan identifies 46,052 employees (57.4% of the total employee population of 80,265 as of 12/28/2018) who are designated as "excepted/exempt" and thus retained during the government shutdown.

Note: The contingency plan goes into detail describing the categories of IRS employees who are authorized to work during the government shutdown. Funding other than through annual appropriations by Congress is available to continue supporting these functions. This means that such "excepted/exempt" IRS employees identified in the plan are authorized to work (and be paid) during the government shutdown.

◆ ◆ ◆

Entertainment Expense Deduction

Cross References

- Notice 2018-76
- IRC §274

The Tax Cuts and Jobs Act (TCJA) imposed new restrictions on a business expense deduction for entertainment expenses. Effective for 2018, the new law provides that no deduction is allowed with respect to:

1) An activity generally considered to be entertainment, amusement or recreation,
2) Membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, or
3) A facility or portion thereof used in connection with any of the above items.

The law did not repeal the 50% deduction for business meals while the taxpayer is traveling on business.

The IRS recently issued new guidance on the deductibility of expenses for certain business meals associated with entertainment. The guidance announces that the IRS intends to publish proposed regulations under IRC section 274, which will include the guidance issued in Notice 2018-76.

Notice 2018-76 guidance. TCJA did not change the definition of entertainment under IRC section 274. Therefore, the regulations under IRC section 274(a)(1) that define entertainment continue to apply. TCJA did not address the circumstances in which food and beverages might constitute entertainment. Therefore, taxpayers may rely on Notice 2018-76 to determine whether a business meal is a deductible business meal subject to the 50% limit, or a nondeductible entertainment expense.

Under Notice 2018-76, taxpayers may deduct 50% of an otherwise allowable business meal expense if:

1) The expense is an ordinary and necessary expense under IRC section 162(a) paid or incurred during the tax year in carrying on a trade or business,
2) The expense is not lavish or extravagant under the circumstances,
3) The taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages,
4) The food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact, and
5) In the case of food and beverages provided during or at an entertainment activity, the food and beverages are purchased separately from the entertainment, or

the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. The entertainment disallowance rule may not be circumvented through inflating the amount charged for food and beverages.

In the following examples, assume that the food and beverage expenses are ordinary and necessary expenses under IRC section 162(a) paid or incurred during the tax year in carrying on a trade or business and are not lavish or extravagant under the circumstances. Also assume that the taxpayer and the business contact are not engaged in a trade or business that has any relation to the entertainment activity.

Example #1: *Aaron invites Brad, a business contact, to a baseball game. Aaron purchases tickets for himself and Brad to attend the game. While at the game, Aaron buys hot dogs and drinks for himself and Brad. The baseball game is entertainment. Thus, the cost of the game tickets is a nondeductible entertainment expense. The cost of the hot dogs and drinks, which are purchased separately from the game tickets, is not an entertainment expense and is not subject to the IRC section 274(a)(1) disallowance rule. Therefore, Aaron may deduct 50% of the expenses associated with the hot dogs and drinks purchased at the game.*

Example #2: *Chris invites Dan, a business contact, to a basketball game. Chris purchases tickets for himself and Dan to attend the game in a suite, where they have access to food and beverages. The cost of the basketball game tickets, as stated on the invoice, includes the food and beverages. The basketball game is entertainment. Thus, the cost of the game tickets is a nondeductible entertainment expense. The cost of the food and beverages, which are not purchased separately from the game tickets, is not stated separately on the invoice. Thus, the cost of the food and beverages also is an entertainment expense that is subject to the IRC section 274(a)(1) disallowance rule. Therefore, Chris may not deduct any of the expenses associated with the basketball game.*

Example #3: *Assume the same facts as in Example #2, except that the invoice for the basketball game tickets separately states the cost of the food and beverages. As in Example #2, the basketball game is entertainment and, thus, the cost of the game tickets, other than the cost of the food and beverages, is a nondeductible entertainment expense. However, the cost of the food and beverages, which is stated separately on the invoice for the game tickets, is not an entertainment expense and is not subject to the IRC section 274(a)(1) disallowance rule. Therefore, Chris may deduct 50% of the expenses associated with the food and beverages provided at the game.*

◆ ◆ ◆

Charitable Contribution in Exchange for State Tax Credit Safe Harbors

Cross References

- Rev. Proc. 2019-12

Under the Tax Cuts and Jobs Act (TCJA), an individual's itemized deduction for state and local taxes is limited to $10,000 per year ($5,000 MFS). State and local governments are generally considered qualified charitable organizations under IRC section 170. In an attempt at getting around these limitations, some states have begun offering a credit against a taxpayer's state tax liability if the taxpayer makes a charitable contribution to the state. Charitable contributions are not subject to the state and local tax deduction limitation. In August 2018, the IRS issued proposed regulations that stated that if a taxpayer makes a charitable contribution in exchange for a state or local tax credit, the tax credit constitutes a quid pro quo to the taxpayer and reduces the taxpayer's charitable contribution deduction under IRC section 170. The IRS also announced that the application of the proposed regulations do not affect the availability of an ordinary and necessary business expense deduction under IRC section 162 if such payment is made with a business purpose. Since the release of the proposed regulations, the IRS continues to receive questions as to when such payments are considered deductible ordinary and necessary business expenses under IRC section 162.

Safe harbor for C corporations (Rev. Proc. 2019-12). If a C corporation makes a payment to or for the use of an organization described in IRC section 170(c) and receives or expects to receive a tax credit that reduces a state or local tax imposed on the C corporation in return for such payment, the C corporation may treat such payment as an ordinary and necessary business expense under IRC section 162(a) to the extent of the credit received or expected to be received.

Example #1: *A C corporation engaged in a trade or business makes a payment of $1,000 to an organization described in IRC section 170(c). In return for the payment, the C corporation receives a dollar-for-dollar state tax credit to be applied to its state corporate tax liability. Under the safe harbor provisions of this revenue procedure, the C corporation may treat the $1,000 payment as meeting the requirements of an ordinary and necessary business expense under IRC section 162.*

Example #2: *A C corporation engaged in a trade or business makes a payment of $1,000 to an organization described in IRC section 170(c). In return for the payment, the C corporation receives a tax credit equal to 80% of the payment ($800)*

to be applied to its state corporate tax liability. The $800 may be treated as meeting the requirements of an ordinary and necessary business expense under IRC section 162. The treatment of the remaining $200 will depend upon the facts and circumstances and is not affected by this revenue procedure.

Note: In other words, the safe harbor under this revenue procedure automatically makes the quid pro quo payment an ordinary and necessary business expense. Contributions that do not receive a dollar-for-dollar quid pro quo benefit must meet the ordinary and necessary business expense test based upon some other facts and circumstances, or else be treated as a charitable contribution.

Safe harbor for specified pass-through entities (Rev. Proc. 2019-12). If a specified pass-through entity makes a payment to or for the use of an organization described in IRC section 170(c) and receives (or expects to receive) a tax credit that the entity applies to offset a state or local tax described in (3) below, other than a state or local income tax, the specified pass-through entity may treat such payment as meeting the requirements of an ordinary and necessary business expense to the extent of the credit received. For purposes of this safe harbor, a specified pass-through entity must meet all of the following:

1) The entity is a business entity other than a C corporation that is regarded for all federal income tax purposes as separate from its owners,
2) The business entity operates a trade or business,
3) The entity is subject to a state or local tax incurred in carrying on its trade or business that is imposed directly on the entity, and
4) In return for a payment to an organization described in IRC section 170(c), the entity receives a state or local tax credit that the entity applies to offset a state or local tax described in (3) above, other than a state or local income tax.

Example #1: *A limited liability company (LLC) taxed as a partnership is owned by two individuals. The LLC is engaged in a trade or business and makes a payment of $1,000 to an organization described in IRC section 170(c). In return for the payment, the LLC receives a dollar-for-dollar state tax credit to be applied to its state excise tax liability incurred while carrying on its trade or business. Under state law, the state's excise tax is imposed at the entity level and not at the individual partner level. The LLC may treat the $1,000 payment as an ordinary and necessary business expense under IRC section 162.*

Example #2: *An S corporation engaged in a trade or business is owned by two individuals. The S corporation makes a payment of $1,000 to an organization described in IRC section 170(c). In return for the payment, the S corporation receives a state tax credit equal to 80% of the payment ($800) to be applied to the corporation's local real property tax liability. Under applicable state and local law, the real property tax is imposed at the entity level and not at the individual shareholder level. The S corporation may treat the $800 payment as an ordinary and necessary business expense under IRC section 162. The treatment of the remaining $200 will depend upon the facts and circumstances and is not affected by this revenue procedure.*

◆ ◆ ◆