**FREQUENTLY ASKED IRS TAX QUESTIONS**

**12.1 Small Business/Self-Employed/Other Business : Entities: Sole Proprietor, Partnership, Limited Liability Company/Partnership (LLC/LLP), Corporation, Subchapter S Corporation**

**Can a husband and wife run a business as a sole proprietor or do they need to be a partnership?**

It is possible for either the husband or the wife to be the owner of the sole proprietor business. When only one spouse is the owner, the other spouse can work in the business as an employee. If a married couple who file a joint tax return elect to conduct their business activities as a qualified joint venture, (a trade or business entity in which the husband and wife materially participate in such venture), the spouses must divide the items of income, gain, loss, deduction, credit and expenses in accordance with their respective interests in such venture. For more information see [Election for Husband and Wife Unicorporated Businesses](http://www.irs.gov/businesses/small/article/0,,id=177376,00.html) This is effective for taxable years beginning after December 31, 2006. Also, see Rev. Proc. 2002-69 for Special Rules for Spouses in Community States.

***References:***

* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* [Publication 541](http://www.irs.gov/publications/p541/index.html), Partnerships
* Taxpayer Protection Act of 2007

**Are partners considered employees of a partnership or are they self-employed?**

Partners of a partnership are considered to be self-employed. The partnership must furnish copies of Schedule K-1 to the partners by the partnership information return due date or extended due date. If you are a member of a partnership that carries on a trade or business, your distributive share of the income or loss from that trade or business is net earnings from self-employment. Limited partners are subject to self-employment tax only on guaranteed payments, such as salary and professional fees for services rendered.

***References:***

* [Form 1065 Instructions](http://www.irs.gov/pub/irs-pdf/i1065.pdf), U.S. Partnership Return of Income
* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* Revenue Ruling 69-184
* [Publication 541](http://www.irs.gov/publications/p541/index.html), Partnerships

**I recently formed a limited liability company (LLC). The LLC has no employees. Do I need a separate Federal Tax ID number for the LLC?**

No, you will not need a separate Federal Tax ID number for the LLC if you are the sole owner of the LLC and the LLC has no employees. If you are the sole owner of the LLC and the LLC has employees, you will need to get a separate Federal Tax ID number, if you choose to have the LLC report and pay employment taxes with respect to employees of the LLC. If you are not the sole owner of the LLC, you will need a separate Federal Tax ID number for the LLC. See Notice 99-6, 1999-1 CB 321.

***References:***

* [Publication 1635](http://www.irs.gov/pub/irs-pdf/p1635.pdf) (PDF), Understanding your EIN - Employer identification Number - IRS
* [Form SS-4](http://www.irs.gov/pub/irs-pdf/fss4.pdf) (PDF), Application for Employer Identification Number
* [Form 8832](http://www.irs.gov/pub/irs-pdf/f8832.pdf) (PDF), Entity Classification Election

**For IRS purposes, how do I classify a limited liability company? Is it a sole proprietorship, partnership or a corporation?**

A limited liability company (LLC) is an entity formed under state law by filing articles of organization as an LLC. Unlike a partnership, none of the members of an LLC are personally liable for its debts. An LLC may be classified for Federal income tax purposes as if it were a sole proprietorship (referred to as an entity disregarded as separate from its owner), a partnership, or a corporation. If the LLC has only one owner, (see [Publication 555](http://www.irs.gov/publications/p555/index.html), on community property states), it will automatically be treated as if it were a sole proprietorship (a disregarded entity), unless an election is made for it to be treated as a corporation. If the LLC has two or more owners, it will automatically be treated as a partnership unless an election is made for it to be treated as a corporation. If the LLC does not make a classification election, a default classification of partnership (multi-member LLC) or disregarded entity (single-member LLC) will apply. The election referred to is made using the [Form 8832](http://www.irs.gov/pub/irs-pdf/f8832.pdf) (PDF), Entity Classification Election. If a taxpayer does not file [Form 8832](http://www.irs.gov/pub/irs-pdf/f8832.pdf) (PDF), a default classification will apply.

***References:***

* [Publication 3402](http://www.irs.gov/pub/irs-pdf/p3402.pdf) (PDF) Tax Issues For Limited Liability Companies
* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* [Tax Topic 103](http://taxtopics/tc103.html), Small Business Tax Education Program
* [Publication 542](http://www.irs.gov/publications/p542/index.html), Corporations
* [Publication 541](http://www.irs.gov/publications/p541/index.html), Partnerships

**Must a partnership or corporation file a tax form even though it had no income for the year?**

A domestic partnership must file an income tax form unless it neither receives gross income nor pays or incurs any amount treated as a deduction or credit for federal tax purposes.

A domestic corporation must file an income tax form whether it has taxable income or not.

***References:***

* [Publication 541](http://www.irs.gov/publications/p541/index.html), Partnerships
* [Form 1065 Instructions](http://www.irs.gov/pub/irs-pdf/i1065.pdf), U.S. Partnership Return of Income
* [Publication 542](http://www.irs.gov/publications/p542/index.html), Corporations

**Can you give me plain English definitions for the following: (1) a closely held corporation, (2) a personal holding corporation, and (3) a personal service corporation?**

Generally, a closely held corporation is a corporation that, in the last half of the tax year, has more than 50% of the value of its outstanding stock owned (directly or indirectly) by 5 or fewer individuals. The definitions for the terms "directly or indirectly" and "individual" are in [Publication 542](http://www.irs.gov/publications/p542/index.html), Corporations. Generally, closely held corporations are subject to additional limitations in the tax treatment of items such as passive activity losses, at-risk rules, and compensation paid to a corporate officers.

A personal holding company is defined in Internal Revenue Code section 542. Basically, a corporation is a personal holding company if both of the following requirements are met:

* Personal Holding Company Income Test. At least 60% of the corporation's adjusted ordinary gross income for the tax year is from dividends, interest, rent, and royalties.
* Stock Ownership Requirement. At any time during the last half of the tax year, more than 50% in value of the corporation's outstanding stock is owned, directly or indirectly, by 5 or fewer individuals.

Refer to the [Form 1120, Schedule PH Instructions](http://www.irs.gov/pub/irs-pdf/i1120sph.pdf) for more information and a list of exceptions.

A personal service corporation is a corporation where the main work of the company is to perform services in the fields of health (including veterinary services), law, engineering, architecture, accounting, actuarial science, the performing arts, or consulting. Examples may be law firms and medical clinics. Also, substantially all of the stock is owned by employees, retired employees, or their estates.

***References:***

* [Publication 542](http://www.irs.gov/publications/p542/index.html), Corporations
* [Form 1120/1120A Instructions](http://www.irs.gov/pub/irs-pdf/i1120_a.pdf)

**12.2 Small Business/Self-Employed/Other Business : Form 1099–MISC & Independent Contractors**

**What is the difference between a Form W-2 and a Form 1099-MISC?**

Both of these forms are called information returns. The Form W-2 is used by employers to report wages, tips and other compensation paid to an employee. The form also reports the employee's income tax and Social Security taxes withheld and any advanced earned income credit payments. The Form W-2 is provided by the employer to the employee and the Social Security Administration. A Form 1099-MISC is used to report payments made in the course of a trade or business to another person or business who is not an employee. The form is required among other things, when payments of $10 or more in gross royalties or $600 or more in rents or compensation are paid. The form is provided by the payer to the IRS and the person or business that received the payment.

***References:***

* [Tax Topic 752](http://taxtopics/tc752.html), Form W-2 - Where, When, and How to File
* [Form W-2 and W-3 Instructions](http://www.irs.gov/pub/irs-pdf/iw2w3.pdf)
* [Form 1099-MISC Instructions](http://www.irs.gov/pub/irs-pdf/i1099msc.pdf)

**How do you determine if a person is an employee or an independent contractor?**

The determination is complex, but is essentially made by examining the right to control how, when, and where the person performs services. It is not based on how the person is paid, how often the person is paid, or whether the person works part-time or full-time. There are three basic areas which determine employment status:

* behavioral control
* financial control and
* relationship of the parties

For more information on employer-employee relationships, refer to Chapter 2 of [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide and Chapter 2 of [Publication 15-A](http://www.irs.gov/pub/irs-pdf/p15a.pdf) (PDF), Employer's Supplemental Tax Guide. If you would like the IRS to determine whether services are performed as an employee or independent contractor, you may submit [Form SS-8](http://www.irs.gov/pub/irs-pdf/fss8.pdf) (PDF), Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Unless you think you were an employee, you should report your nonemployee compensation on [Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF), Profit or Loss from Business (Sole Proprietorship), or [Form 1040, Schedule C-EZ](http://www.irs.gov/pub/irs-pdf/f1040sce.pdf) (PDF), Net Profit From Business. You also need to complete [Form 1040, Schedule SE](http://www.irs.gov/pub/irs-pdf/f1040sse.pdf) (PDF), Self-Employment Tax, and pay self-employment tax on your net earnings from self-employment, if you had net earnings from self-employment of $400 or more. This is the method by which self-employed persons pay into the social security and Medicare trust funds.

Generally, there are no tax withholding on this income. Thus, you may have been subject to the requirement to make quarterly estimated tax payments. If you did not make timely estimated tax payments, you may be assessed a penalty for an underpayment of estimated tax. Employees pay into the social security and Medicare trust funds, as well as income tax withholding, through payroll deductions.

If you are not sure whether you are an independent contractor or an employee, complete [Form SS-8](http://www.irs.gov/pub/irs-pdf/fss8.pdf) (PDF), Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding. For more information on employer-employee relationships, refer to Chapter 2 of [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide, and Chapter 2 of [Publication 15-A](http://www.irs.gov/pub/irs-pdf/p15a.pdf) (PDF), Employer's Supplemental Tax Guide, and [Publication 1779](http://www.irs.gov/pub/irs-pdf/p1779.pdf) (PDF), Employee Independent Contractor Brochure. For information on the tax responsibilities of self-employed persons, refer to Chapter 2 of [Publication 505](http://www.irs.gov/publications/p505/index.html), Tax Withholding and Estimated Tax.

***References:***

* [Publication 505](http://www.irs.gov/publications/p505/index.html), Tax Withholding and Estimated Tax
* [Tax Topic 762](http://taxtopics/tc762.html), Independent Contractor vs. Employee
* [Tax Topic 407](http://taxtopics/tc407.html), Business Income
* [Tax Topic 355](http://taxtopics/tc355.html), Estimated Tax

**I made some money repairing radios and television sets last year. How do I report this income?**

This is self-employment income. A person with income from Self-Employment files [Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF), Profit or Loss from Business, or in some cases, files [Form 1040, Schedule C-EZ](http://www.irs.gov/pub/irs-pdf/f1040sce.pdf) (PDF), Net Profit from Business, to report the profit or loss from the business, and files [Form 1040, Schedule SE](http://www.irs.gov/pub/irs-pdf/f1040sse.pdf) (PDF), Self-Employment Tax, to figure Social Security and Medicare Tax. Refer to [Tax Topic 407](http://taxtopics/tc407.html), Business Income, and [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business, for additional information. When there is no federal withholding taken out of your self-employment income, you may need to make quarterly estimated tax payments. This is done using a [Form 1040-ES](http://www.irs.gov/pub/irs-pdf/f1040es.pdf) (PDF), Estimated Tax for Individuals.

**12.3 Small Business/Self-Employed/Other Business : Form W–2, FICA, Medicare, Tips, Employee Benefits**

**As an employer, do I have any liability if my employees receive tips but don't report them to me?**

Employees who customarily receive tips are required to report their cash tips to their employers at least monthly, if they receive $20 or more in the month. Cash tips are tips received directly in cash or by check, and charged tips. You have a liability to withhold and pay Social Security and Medicare tax on your employees' reported tips, to the extent that wages or other employee funds are available. If the employee does not report tips to you, it places you at risk of possible assessment of the employers share of the Social Security and Medicare taxes on the unreported tips. If you are a large food or beverage establishment (more than 10 employees on a typical day and food or beverages consumed on the premises), you are required to allocate tips if the total tips reported to you are less than 8% of gross sales. Report the allocated amount on the employee's W-2 at the end of the year. Beginning January 01, 2007, IRS is offering a three-year-pilot program, "The Attributed Tip Income Program (ATIP), for food and beverage employers. This reduces industry recordkeeping burdens, has simple enrollment requirements and promotes reporting tips on Federal Income tax returns. This benefits both the employer and employee. This information may be found in Revenue Procedure 2006-30.

***References:***

* [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide
* [Publication 531](http://www.irs.gov/publications/p531/index.html), Reporting Tip Income
* [Publication 1872](http://www.irs.gov/pub/irs-pdf/p1872.pdf) (PDF), Tips on Tips - A Guide to Tip Income Reporting for Employees in the Food and Beverage Industry
* [Publication 1875](http://www.irs.gov/pub/irs-pdf/p1875.pdf) (PDF), Tips on Tips - A Guide to Tip Income Reporting for employers in the Food and Beverage Industry
* [Tax Topic 761](http://taxtopics/tc761.html), Tips - Withholding & Reporting

**If the reported tips from employees are more than 8% of sales, must an employer still allocate tips to the employees?**

No. Tip allocation is required when the amount of tips reported by employees of a large food or beverage establishment is less than 8% (or an approved lower rate) of the gross receipts, other than nonalloctable receipts, for the given period. If the employees are reporting more than the 8%, there would be no allocated tip amount. However, the employer must still file [Form 8027](http://www.irs.gov/pub/irs-pdf/f8027.pdf) (PDF), Employer's Annual Information Return of Tip Income and Allocated Tips.

***References:***

* [Form 8027 Instructions](http://www.irs.gov/pub/irs-pdf/i8027.pdf), Employer's Annual Information Return of Tip Income and Allocated Tips
* [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide
* [Publication 1872](http://www.irs.gov/pub/irs-pdf/p1872.pdf) (PDF), Tips on Tips - A Guide to Tip Income Reporting for Employees in the Food and Beverage Industry
* [Publication 531](http://www.irs.gov/publications/p531/index.html),Reporting Tip Income
* [Publication 1244](http://www.irs.gov/pub/irs-pdf/p1244.pdf) (PDF), Employee's Daily Record of Tips and Report to Employer
* [Tax Topic 402](http://taxtopics/tc402.html), Tips

**When an employer provides day care assistance, should the employer's contribution be reported in box 10 of Form W-2?**

Yes. An employer reports dependent care assistance payments in box 10 on Form W-2.

***References:***

* [Publication 15-A](http://www.irs.gov/pub/irs-pdf/p15a.pdf) (PDF), Employer's Supplemental Tax Guide
* [Publication 15-B](http://www.irs.gov/pub/irs-pdf/p15b.pdf) (PDF), Employer's Tax Guide to Fringe Benefits
* [Publication 535](http://www.irs.gov/publications/p535/index.html), Business Expenses
* [Form W-2](http://www.irs.gov/pub/irs-pdf/fw2.pdf) (PDF), Wage and Tax Statement

**12.4 Small Business/Self-Employed/Other Business : Form W–4 & Wage Withholding**

**Can an employer take out taxes if a Form W-4 was never filed?**

Yes, the employer is required to withhold income taxes. Chapter 9 of [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide, states that if an employee does not give you a completed [Form W-4](http://www.irs.gov/pub/irs-pdf/fw4.pdf) (PDF), Employee's Withholding Allowance Certificate, withhold tax as if he or she is single, with no withholding allowances.

The employer is also required to withhold social security and Medicare taxes.

***References:***

* [Tax Topic 753](http://taxtopics/tc753.html), Form W-4 - Employee's Withholding Allowance Certificate

**If an employee claims more than 10 exemptions on their Form W-4, does the employer have to report this to the IRS?**

No, this requirement has been eliminated. In the past, employers had to routinely send the IRS any [Form W-4](http://www.irs.gov/pub/irs-pdf/fw4.pdf) (PDF), Employee's Withholding Allowance Certificate, claiming more than 10 allowances or claiming complete exemption from withholding if $200 or more in weekly wages was expected. However, Forms W-4 are still subject to review. Employers may be directed (in a written notice or in future published guidance) to send certain Forms W-4 to the IRS. The IRS also will be reviewing employee withholding compliance and you may be required to withhold income tax at a higher rate if notified to do so by the IRS.

***References:***

* [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide
* [Form W-4](http://www.irs.gov/pub/irs-pdf/fw4.pdf) (PDF), Employee's Withholding Allowance Certificate
* [Tax Topic 753](http://taxtopics/tc753.html), Form W-4 - employee's withholding allowance certificate

**12.5 Small Business/Self-Employed/Other Business : Form SS–4 & Employer Identification Number (EIN)**

**Is an employer ID number the same as a tax ID number?**

Yes, an employer identification number, or EIN, is also known as a taxpayer identification number, or TIN. A sole proprietorship that has no employees and files no excise or pension tax returns and a LLC with a single owner (where the owner will not be filing employment tax returns) are the only businesses that do not need an employer identification number. In these instances, the sole proprietor uses his or her social security number as the taxpayer identification number.

***References:***

* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* [Publication 1635](http://www.irs.gov/pub/irs-pdf/p1635.pdf) (PDF), Understanding Your EIN

**Does a small company need a tax ID number?**

A sole proprietor who does not have any employees and who does not file any excise or pension plan tax returns is the only business person who does not need an employer identification number. In this instance, the sole proprietor uses his or her social security number as the taxpayer identification number.

***References:***

* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* [Publication 1635](http://www.irs.gov/pub/irs-pdf/p1635.pdf) (PDF), Understanding Your EIN
* [Form SS-4](http://www.irs.gov/pub/irs-pdf/fss4.pdf) (PDF), Application for Employer Identification Number

**Under what circumstances am I required to change my employer identification number (EIN)?**

If you already have an EIN, and the organization or ownership of your business changes, you may need to apply for a new number. Some of the circumstances under which a new number is required are as follows:

* An existing business is purchased or inherited by an individual who will operate it as a sole proprietorship,
* A sole proprietorship changes to a corporation or a partnership,
* A partnership changes to a corporation or a sole proprietorship,
* A corporation changes to a partnership or a sole proprietorship, or
* An individual owner dies, and the estate takes over the business.

This list is not all inclusive. Please refer to the website under Business, then Employer ID Numbers.

***References:***

* [Publication 1635](http://www.irs.gov/pub/irs-pdf/p1635.pdf) (PDF), Understanding Your EIN
* Tax Information for Business

**Do businesses have to obtain the taxpayer identification number (TIN) from vendors and keep it somewhere on file?**

In general, businesses are required to obtain the TIN from vendors if they are required to file any return, document or other statement that calls for the taxpayer identification numbers (TINs) of other taxpayers. [Form W-9](http://www.irs.gov/pub/irs-pdf/fw9.pdf) (PDF), Request for Taxpayer Identification Number and Certification, can be used to make the request. The business should also maintain the verification of these numbers in their records.

***References:***

* [Form W-9](http://www.irs.gov/pub/irs-pdf/fw9.pdf) (PDF), Request for Taxpayer Identification Number and Certification
* [Form 1099 General Instructions](http://www.irs.gov/pub/irs-pdf/i1099gi.pdf)

**12.6 Small Business/Self-Employed/Other Business : Forms 941, 940, Employment Taxes**

**We are about to hire employees and need to know how much tax to take out and where to send this money?**

You will need to secure a completed [Form W-4](http://www.irs.gov/pub/irs-pdf/fw4.pdf) (PDF), Employee's Withholding Allowance Certificate, from each employee. You will need [Publication 15](http://www.irs.gov/publications/p15/index.html), Circular E, Employer's Tax Guide, and [Publication 15-A](http://www.irs.gov/pub/irs-pdf/p15a.pdf) (PDF), Employer's Supplemental Tax Guide, to determine the amount of withholding and for directions on depositing the withholding amounts and other employment taxes.

Generally, employers will quarterly file [Form 941](http://www.irs.gov/pub/irs-pdf/f941.pdf) (PDF), Employer's Quarterly Federal Tax Return, and annually file [Form 940](http://www.irs.gov/pub/irs-pdf/f940.pdf) (PDF), Employer's Annual Federal Unemployment Tax Return (FUTA), and [Form W-2](http://www.irs.gov/pub/irs-pdf/fw2.pdf) (PDF), Wage and Tax Statement, with [Form W-3](http://www.irs.gov/pub/irs-pdf/fw3.pdf) (PDF), Transmittal of Income and Tax Statements.

**We hired a nanny to look after our baby while we work. How do we pay her social security taxes and properly report her income?**

A nanny is considered a household employee. A household employer only has to pay social security and Medicare tax only for the employee(s) that receive cash wages that exceed the threshold amount for the year. If the amount paid is less than the threshold, no social security or Medicare tax is owed. If social security and Medicare tax must be paid, you will need to file [Form 1040, Schedule H](http://www.irs.gov/pub/irs-pdf/f1040sh.pdf) (PDF), Household Employment Taxes. You must withhold the employee's portion of the social security and Medicare unless the employer chooses to pay both the employee's share and the employers share.

The taxes are 15.3% of cash wages. Your share is 7.65% and the employee's share is 7.65%. You may also be responsible for paying federal unemployment taxes. For directions on household employees, refer to [Publication 926](http://www.irs.gov/publications/p926/index.html), Household Employer's Tax Guide.

***References:***

* [Publication 926](http://www.irs.gov/publications/p926/index.html), Household Employer's Tax Guide
* [Form 1040, Schedule H](http://www.irs.gov/pub/irs-pdf/f1040sh.pdf) (PDF), Household Employment Taxes
* [Tax Topic 756](http://taxtopics/tc756.html), Employment Taxes for Household Employees

**12.7 Small Business/Self-Employed/Other Business : Income & Expenses**

**How do you distinguish between a business and a hobby?**

Since hobby expenses are deductible only to the extent of hobby income, it is important to distinguish hobby expenses from expenses incurred in an activity engaged in for profit. In making this distinction, all facts and circumstances with respect to the activity are taken into account and no one factor alone is decisive. Among the factors which should normally be taken into account are the following:

1. Whether you carry on the activity in a businesslike manner
2. Whether the time and effort you put into the activity indicate you intend to make it profitable
3. Whether you depend on income from the activity for your livelihood
4. Whether your losses are due to circumstances beyond your control (or are normal in the startup phase of your type of business)
5. Whether you change your methods of operation in an attempt to improve profitability
6. Whether you, or your advisors, have the knowledge needed to carry on the activity as a successful business
7. Whether you were successful in making a profit in similar activities in the past
8. Whether the activity makes a profit in some years, and how much profit it makes
9. Whether you can expect to make a future profit from the appreciation of the assets used in the activity

Additional information on this topic is available in section 1.183-2 (b) of the federal tax regulations.

***References:***

* [Treas. Req. 1.183-2 (b)](http://www.irs.gov/taxpros/article/0,,id=98137,00.html)
* [Publication 535](http://www.irs.gov/publications/p535/index.html), Business Expenses

**If I pay personal expenses out of my business bank account, should I count the money used as part of my income, or can I write these expenses off?**

You would include the money in income and you would not write the amounts off as expenses. Only business related expenses can be deducted from your business income. It is recommended that you not mix business and personal accounts. This makes it easier to keep records.

***References:***

* [Publication 535](http://www.irs.gov/publications/p535/index.html), Business Expenses

**For business travel, are there limits on the amounts deductible for meals?**

Meal expenses are deductible only if your trip is overnight or long enough that you need to stop for sleep or rest to properly perform your duties. The amount of the meal expenses must be substantiated, but instead of keeping records of the actual cost of your meal expenses you can generally use a standard meal allowance. The amount allowed varies, depending on where and when you travel. Refer to [Publication 1542](http://www.irs.gov/publications/p1542/index.html), Per Diem Rates (For Travel Within the Continental United States), for per diem rates.

Generally, the deduction for unreimbursed business meals is limited to 50% of the cost that would otherwise be deductible.

For more information on business travel expenses and restrictions, refer to [Tax Topic 511](http://taxtopics/tc511.html), or Chapter 1 of [Publication 463](http://www.irs.gov/publications/p463/index.html), Travel, Entertainment, Gift, and Car Expenses, and [Publication 1542](http://www.irs.gov/publications/p1542/index.html), Per Diem Rates.

**Where can I find the per diem rates for foreign countries?**

Per diem rates on the Internet. You will find links to per diem rate at. Click on "Per Diem Rates" for links to:

* CONUS per diem rates
* Per diem rates for areas outside the continental United States (OCONUS), such as Alaska, Hawaii, Puerto Rico, and U.S. possessions and
* Foreign per diem rates

**I use my home for business. Can I deduct the expenses?**

To deduct expenses related to the business use of part of your home, you must meet specific requirements. Even then, your deduction may be limited.

Your use of the business part of your home must be:

* Exclusive (see \*exceptions below),
* Regular,
* For your trade or business, AND

The business part of your home must be **one** of the following:

* Your principal place of business,
* A place where you meet or deal with patients, clients, or customers in the normal course of your trade or business, or
* A separate structure (not attached to your home) you use in connection with your trade or business.

**Additional tests for employee use**. If you are an employee and you use a part of your home for business, you may qualify for a deduction. You must meet the tests discussed above plus:

* Your business use must be for the convenience of your employer, and
* You **do not** rent any part of your home to your employer and use the rented portion to perform services as an employee.

Whether the business use of your home is for your employers convenience depends on all the facts and circumstances. However, business use is not considered to be for your employers convenience merely because it is appropriate and helpful.

\*exceptions

You do not have to meet the exclusive use test if you satisfy the rules that apply in either of the following circumstances.

* You use part of your home for the storage of inventory or product samples.
* You use part of your home as a day-care facility.

[Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF) filers calculate the business use of home expenses and limits on [Form 8829](http://www.irs.gov/pub/irs-pdf/f8829.pdf) (PDF). The deduction is claimed on line 30 of Schedule C. Employees claim deduction for business use of home as an itemized deduction on [Form 1040, Schedule A](http://www.irs.gov/pub/irs-pdf/f1040sab.pdf) (PDF).

For more information refer to [Tax Topic 509](http://taxtopics/tc509.html), Business Use of Home, or [Publication 587](http://www.irs.gov/publications/p587/index.html), Business Use of Your Home (Including Use by Day-Care Providers).

**If you lease a vehicle, can you deduct the cost of the lease payments plus the standard mileage rate?**

No, if you lease a car you use in business, you may use either the standard mileage rate or claim actual expenses, which would include lease payments. You cannot use both the standard mileage rate and the lease payments.

***References:***

* [Publication 463](http://www.irs.gov/publications/p463/index.html), Travel, Entertainment, Gift, and Car Expenses
* [Tax Topic 510](http://taxtopics/tc510.html), Business Use of Car

**Are excise taxes for a vehicle deductible?**

You can deduct as a business expenses all excise taxes that are ordinary and necessary expenses of carrying on your trade or business. Refer to [Publication 535](http://www.irs.gov/publications/p535/index.html) for more information.

**If you lease office equipment and machinery with the option to buy, when do you depreciate the purchase price?**

If you lease equipment with the option to later buy the equipment, you must first determine whether your agreement is a lease agreement or a conditional sales contract. If, under the agreement, you acquired or will acquire title to or equity in the property, you should treat the agreement as a conditional sales contract. Payments made under a conditional sales contract are not deductible as rent expense. You would start depreciating the equipment on the date you acquired the equipment.

Whether the agreement is a conditional sales contract depends on the intent of the parties. Determine intent based on the facts and circumstances that exist when you make the agreement.

In general, an agreement may be considered a conditional sales contract rather than a lease if any of the following is true.

* The agreement applies part of each payment toward an equity interest that you will receive.
* You get title to the property upon the payment of a stated amount required under the contract.
* The amount you pay to use the property for a short time is a large part of the amount you would pay to get title to the property.
* You pay much more than the current fair rental value for the property.
* You have an option to buy the property at a nominal price compared to the value of the property when you may exercise the option. Determine this value when you make the agreement.
* You have an option to buy the property at a nominal price compared to the total amount you have to pay under the lease.
* The lease designates some part of the payments as interest, or part of the payments are easy to recognize as interest.

***References:***

* [Publication 535](http://www.irs.gov/publications/p535/index.html), Business Expenses

**Are business gifts deductible?**

If you give business gifts in the course of your trade or business, you can deduct the cost subject to special limits and rules. In general, you can deduct no more than $25 for business gifts you give directly or indirectly to any one person during your tax year. Exceptions may apply. For additional information, refer to [Tax Topic 512](http://taxtopics/tc512.html) and [Publication 463](http://www.irs.gov/publications/p463/index.html), Travel, Entertainment, Gift, and Car Expense.

For additional information on this subject see [Gifts](http://www.irs.gov/businesses/small/article/0,,id=108139,00.html).

**12.8 Small Business/Self-Employed/Other Business : Schedule C & Schedule SE**

**I am self-employed. How do I report my income and how do I pay Medicare and social security taxes?**

Your self-employment income is reported on [Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF), Profit or Loss from Business, or on [Form 1040, Schedule C-EZ](http://www.irs.gov/pub/irs-pdf/f1040sce.pdf) (PDF), Net Profit from Business.

Your Medicare and social security taxes are reported on [Form 1040, Schedule SE](http://www.irs.gov/pub/irs-pdf/f1040sse.pdf) (PDF), Self-Employment Tax.

As a self-employed person, you pay your Medicare and social security taxes the same way you pay your income taxes. If you expect to owe less than $1,000 in total taxes, you can pay them when you file your income tax return. If you expect to owe $1,000 or more in total taxes, you will need to make estimated tax payments. These payments are made quarterly using [Form 1040-ES](http://www.irs.gov/pub/irs-pdf/f1040es.pdf) (PDF), Estimated Tax for Individuals. You will need to figure these taxes at the beginning of the year. To learn about figuring and making estimated tax payments, please refer to [Publication 505](http://www.irs.gov/publications/p505/index.html), Tax Withholding and Estimated Tax.

**If you have run a small business in the past, but this year there is no income or expenses, is it necessary to file a Schedule C?**

If your sole proprietorship business is inactive during the full year, it is not necessary to file a [Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF), Profit or Loss from Business, for that year.

***References:***

* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business

**12.9 Small Business/Self-Employed/Other Business : Starting or Ending a Business**

**I am starting a small business. What assistance can IRS give me?**

If you are starting or already have a small business and need information on taxes, recordkeeping, accounting practices, completing Federal business and employment tax returns, and meeting other Federal tax obligations, there is help available. Much of the assistance is free. The service is called Small Business Tax Education Program, or STEP. Go to [Around the Nation](http://www.irs.gov/newsroom/index.html) for seminars in your area or check out [Tax Info For Business](http://www.irs.gov/businesses/index.html) on the IRS web site. You can find out more about this program for small business by referring to [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business, or [Tax Topic 103](http://taxtopics/tc103.html), Small Business Tax Education Program (STEP).

**How do I find out about whether or not my business needs to collect sales tax?**

Your question is a state tax question. Your state revenue department should provide information regarding sales tax to you. To access the state you need to direct your question to, please go to our State LInks on .

**I just started a small business and want to know if I have to file my income taxes quarterly or at the end of the year?**

The Federal Income Tax return is filed annually. As a self-employed individual, if after deducting withholding and credits you expect to owe more than the amount allowed by law at the end of the year, you should make estimated tax payments on a quarterly basis. [Form 1040-ES](http://www.irs.gov/pub/irs-pdf/f1040es.pdf) (PDF), Estimated Tax for Individuals, will assist you in determining if estimated tax payments are due and how they are paid.

When you file the income tax return at the end of the year, you include the income from the business on the return. The forms to be filed are [Form 1040](http://www.irs.gov/pub/irs-pdf/f1040.pdf) (PDF), U.S. Individual Income Tax Return, [Form 1040, Schedule C](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf) (PDF), Profit or Loss from Business, and [Form 1040, Schedule SE](http://www.irs.gov/pub/irs-pdf/f1040sse.pdf) (PDF), Self-Employment Tax. If estimated tax payments were made during the year, they will be claimed on the individual income tax return as payments. See [Form 1040](http://www.irs.gov/pub/irs-pdf/f1040.pdf) (PDF), Line 65.

***References:***

* [Publication 583](http://www.irs.gov/publications/p583/index.html), Starting a Business and Keeping Records
* [Publication 505](http://www.irs.gov/publications/p505/index.html), Tax Withholding and Estimated Tax
* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business

**What is the due date for business returns?**

Some forms and entities have due dates other than the well-known April 15th due date. The instructions for the each type of form used will have the appropriate due date(s) noted. In general, sole proprietor's schedule of income and expenses is attached to the [Form 1040](http://www.irs.gov/pub/irs-pdf/f1040.pdf) (PDF). Therefore, the due date is the same as the [Form 1040](http://www.irs.gov/pub/irs-pdf/f1040.pdf) (PDF).

A Corporation may use either the calendar year, or a different tax year. An S corporation generally must use the calendar year, unless the entity can establish a business purpose for having a different tax year. The due date is March 15th for corporations on a calendar year and the 15th day of the third month following the end of the tax year for other corporations.

A partnership generally must conform its tax year of the partners unless the partnership can establish a business purpose for having a different tax year.

***References:***

* [Publication 541](http://www.irs.gov/publications/p541/index.html), Partnerships
* [Publication 542](http://www.irs.gov/publications/p542/index.html), Corporation
* [Publication 334](http://www.irs.gov/publications/p334/index.html), Tax Guide for Small Business
* Entities: Sole Proprietor, Partnership, Limited Liability Company/Partnership (LLC/LLP), Corporation, Subchapter S Corporatio

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* [Charities & Non-Profits](http://www.irs.gov/charities/index.html)
* [Government Entities](http://www.irs.gov/govt/index.html)
* [Tax Professionals](http://www.irs.gov/taxpros/index.html)
* [Retirement Plans Community](http://www.irs.gov/retirement/index.html)
* [Tax Exempt Bond Community](http://www.irs.gov/taxexemptbond/index.html)

IRS Resources

* [**Compliance & Enforcement**](http://www.irs.gov/compliance/index.html)
* [**Contact My Local Office**](http://www.irs.gov/localcontacts/index.html)
* [**e-file**](http://www.irs.gov/efile/index.html)
* [**Forms and Publications**](http://www.irs.gov/formspubs/index.html)
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* [**News**](http://www.irs.gov/newsroom/index.html)
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* [**Where To File**](http://www.irs.gov/file/index.html)

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