21 Key Bookkeeping Changes in Current Tax Laws

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1. Post-pandemic hybrid work/work-at-home issues.

It doesn't matter when "post-pandemic" begins. When your company or client decides that employees can no longer work at home—they must come to the office every day—it affects the taxability of reimbursements to remote, or partially remote, employees.

Key factor. To qualify as an employee's home office, it must be the employee's principal place of business and be used for the convenience of the employer—i.e., once the employer wants everyone to come to the company's office every day, that home office is no longer for the employer's convenience.

The extent to which employees can be reimbursed for home-office expenses and travel to other business locations tax-free is determined primarily by:

1. the location of the employee's tax home; and
2. whether a portion of the employee's residence qualifies as a home office under §280A, *Disallowance of certain expenses,* in terms of business use of the home, rental of vacation homes, etc.

Generally, the employer's office is the employee's tax home, no matter where the employee lives. But when an employee works from home and has no other principal place of business, the residence might be the tax home. Whether the tax home or residence is the principal place of business is determined by 5 factors:

1. total time ordinarily spent at each business site;
2. importance of the activities engaged in at each business site;
3. relative financial return at each business site;
4. whether employment at a particular site is unlimited or known to be temporary (under 1 year); and
5. whether the employee might have multiple regular places of business during the year.

If an employee works in a single geographic area for more than 12 months, no deductions are allowed for travel expenses to that location. In other words, if the employee's home is in that single geographic area, the employee's home becomes the tax home.

But is a tax home a "home office" under tax law?

There are no longer deductions for employee home-office expenses—but a qualifying home office can be important in other ways.

It allows your firm to reimburse tax-free costs related to furnishing, using and maintaining the office. And the employee can be reimbursed tax free for the costs of traveling from the home office to other work locations (not to the company's office, which is "commuting") under §132d, *Certain fringe benefits*.

To qualify as a home office, it must be the employee's principal place of business, be used for the convenience of the employer (not the employee), and there must be no other fixed location of the business where the employee conducts substantial managerial or administrative activities for the employer.

Bottom line: When the pandemic ends, the key issue for your remote or hybrid employees will be whether the employee's home is the employee's most important or significant place of business. The key factors for determining this are total time spent working at the home v. at the office and the relative importance of the business activities performed at each place. [NYU Institute on Federal Taxation]

AIPB note: For senior executives, it is difficult, if not impossible, to establish a location other than company headquarters as the tax home. Courts and the IRS believe executives could demand office space outside the home if they wanted, and the motivation to work outside the office is strictly personal.

2. Telecommuters can change company state/local tax and reporting.

When the pandemic caused employees to work at home, most states created a temporary rule exempting their employers from a change in tax status.

The problem: Most of these temporary rules have expired, so there may be tax consequences for your remote employees.

Under most state tax codes, even one employee located in the state creates a nexus between the employer and the state, requiring the employer to file income tax returns with the state—*and* requiring SITW, SIT payment and reporting obligations in each state where a remote employee resides.

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

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

Laws unrelated to taxes can be a factor. The state in which an employee resides and works might impose different requirements for employee benefits and other working conditions.

Impact on employees. Some states have, or may soon have, laws requiring SITW in the employer's headquarters state—even if the employee works remotely and never enters the employer's state. The Supreme Court has rebuffed challenges to such laws.

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

Jurisdictions vary but, during the pandemic, rules holding that one or more employees telecommuting from home in the state establishes a nexus with the state were waived.

Some COVID waivers had deadlines, some not, but all waivers were temporary, related to the pandemic. Few states and localities offer COVID guidance, so check your state, county and city website.

Crucial question. Will telecommuting employees continue to escape the nexus rules—or will states impose tax obligations for the presence of even one telecommuting employee? If more than one employee is required to establish a nexus, then how many?

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

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

3. IRS change of heart—IRS FAQs may support you after all.

The IRS had always insisted that its FAQs had no authority—that only the tax code and IRS regs do. In fact, the IRS always said it could change its mind about an FAQ and hit the taxpayer with additional taxes if the IRS changed its interpretation—even if the IRS made the changes after a return is filed.

New policy. The IRS announced in mid-2022 that it will waive penalties for a taxpayer who relied on a previous FAQ, even when additional taxes are due under the latest version of the FAQ.

Tax pros say rely on an FAQ to support a tax position, but be aware that the FAQ may change and your version might disappear or be hard to find. They recommend printing FAQs you rely on and keeping copies of them if you are hit with a penalty.

Bottom line. Keep paper copies of IRS FAQs you rely on. [*Tax Notes Today*]

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

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

Reciprocity agreements—most common between states that share a border and have a lot of commuters—simplify reporting for employees and employers.

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

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

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

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

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

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

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

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

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

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

Excess advances must be repaid timely.

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

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

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

Optional restrictions include, but are not limited to:

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

Caution. An accountable plan must meet the IRS requirements or reimbursements will be treated as wages or other compensation subject to both income and payroll taxes. [*kitces.com*]

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

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

Many employees working from home do not have dedicated home offices but often incur costs for additional furniture, technology or business supplies—and may have higher utility and other expenses.

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

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

But even home-offices incur business expenses that no longer are deductible. Miscellaneous" itemized deductions, including home-office expenses, were eliminated in the Tax Cuts and Jobs Act of 2017.

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

7. If you file 1099s as you go . . .

. . . rather than at year end, use the free IRS portal known as IRIS (information returns intake system)—a long-promised IRS service that is now available.

The service is free, easy to use, and reduces errors because it automatically detects missing information and certain types of errors.

You can e-file 21 different types of 1099s. Complete them online or upload .csv files. Also, when IRIS is used, you don't have to file a 1096. IRIS also is part of the Combined Federal/State Filing Program, CFSF.

For details, see IRS Pub. 5717.

AIPB tip: Start filing 1099s on IRIS now. Although the IRS has not exercised its authority to require electronic filing by any taxpayer that files 10 or more information returns, it is likely to do so after it sees if IRIS works as planned.

8. Which is better: Deducting the std. mileage rate or actual expenses?

Some firms are leaving a lot of money on the table by not taking the best deduction for business vehicle use.

When a vehicle is used mostly for business, actual expenses can generate much higher deductions than the standard mileage rate. The standard mileage rate assumes only regular depreciation is taken—but first-year depreciation plus §183 expensing can boost write-offs significantly with actual expenses.
The downside: if the vehicle is sold or traded in in fewer than 5 years, the firm or owner may have to *recapture*—i.e., treat as regular income—the extra depreciation that was taken.

Also, the standard mileage rate is based on average gas mileage and insurance costs, taxes and repairs.

The following vehicles may generate much higher deductions using actual costs:

- Vehicles that get less-than-average gas mileage and/or have higher-than-average insurance costs, taxes and other expenses;
- expensive vehicles, because they have higher insurance costs, taxes and other expenses.
- older cars, because they tend to incur above-average repair and maintenance costs,

Best approach: Analyze actual vehicle expenses v. mileage so far this year for your firm's vehicles and track both through the end of the year to choose the best method for each vehicle.

AIPB reminder: Deducting vehicle expenses requires enhanced recordkeeping—i.e., keep a contemporaneous record of the details of each use of the vehicle, including date, mileage driven and specific business purpose. It also requires the percentage of total use of the vehicle that is for business use, and receipts of all vehicle-related expenses.

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

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

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

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

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

A C corp must demonstrate that payments for the home office are ordinary and necessary business expenses under §162, *Trade or business expenses*. However, payments for *leasing* home-office space from an employee or owner are deductible.

In this case, there was no evidence that the home office was an ordinary and necessary business expense—e.g., no *bona fide* rental arrangement, lease or documented payment of rent, or explanation of how the rent was determined. The corporation simply paid the physician's mortgage each month.

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

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

10. IRS cautions on payroll services.

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

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

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

There are 3 options for outsourcing payroll:

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

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

11. Employment taxes late? Pay on the installment plan.

When a small business falls behind on payroll taxes, or simply faces reduced cash flow, the IRS offers an installment plan. And unlike other IRS installment agreements, this one can be entered into without providing financial information.

The "In-Business Trust Fund Express Installment Agreement" is available to businesses that owe up to $25,000 in payroll taxes and want to make payments over a period of up to 24 months. If more than $25,000 is owed, the business pays enough to bring the deficiency down to $25,000 or less, then applies for the installment plan.

If owed taxes are from $10,000 to $25,000, the business must allow the IRS to debit its bank accounts to pay the installments. To keep the agreement in place, the business must comply with all current payroll tax requirements until the installment payments are complete. Details at IRS installment agreement.

To apply for the plan, call 800-829-4933 or the phone number on an IRS bill.

12. Health, financial problems do not excuse late filings or payments.

The case: Over a 10-year period, K regularly did not pay all taxes due on his 1040 and filed some returns late. When K failed to pay assessed taxes, interest and penalties, the IRS asked a court to direct that the payments be made.

Held: For the IRS. The amount of taxes due were not disputed. But the taxpayer did claim the penalties should be abated because significant health and financial problems prevented payment of the taxes and caused late filings.

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The financial problems were partly caused and exacerbated by the health problems.

But the court ruled that these problems were not *reasonable cause* for the late payments or the filings. Health and financial issues must present unavoidable obstacles to compliance under the code to justify waiver of penalties. The court notes that the taxpayer was able to work during this period, even if for reduced hours. He also was able to pay his business expenses and family living expenses, including tuition and wedding expenses for several children—and he made charitable contributions.

The court found the taxpayer's problems little different from common complaints and obstacles that amounted to inconvenience rather than undue hardship. [*U.S.* v. *Koncurat*, No. 1:21-cv-00676 (D. Md. 2022)]

13. Sending 1099-NECs vs. 1099-MISCs.

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

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

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

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

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

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

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

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

Paper Copy A of the1099-MISC is due to the IRS by Mar. 1; electronic copy by Mar. 31.

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

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

Penalties may be incurred for:

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

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

14. The IRS and the courts scrutinize receipts.

The case. E operated what he said was a home improvement business as a sole proprietor. On his Schedule C, he deducted significant expenses for construction materials and supplies. The IRS denied all the deductions.

Held: For the IRS. The court noted the following problems:

- Because the materials and supplies costs greatly exceeded revenue, the court concluded that he did not have the financial resources for the purchases—and even if he did, he would not continue to buy supplies when they cost way more than what he was paid for the work.

- Instead of buying materials and supplies at one or two sources, he used several home improvement retailers—many receipts were from different locations of the same retailer, including at least seven Home Depots.
- The stores were near the taxpayer's home—not near the out-of-state projects the taxpayer said he worked on.
- All receipts were for cash purchases totaling over $5,000, which the taxpayer argued he had withdrawn from his bank or ATM. But he did not submit bank statements showing the withdrawals.
- The volume of materials on the receipts vastly exceeded what would be used for his claimed home improvements.

IRS and court conclusion: The taxpayer was not the purchaser of the items on the receipts; he obtained receipts of these purchases from other people. [*Eze* v. *Comm.*, T.C. Memo. 2022-83]

15. New retirement plan rules may affect firms with no retirement plan.

The late 2022 Consolidated Appropriations Act includes another new law: SECURE Act 2.0, which has over 100 retirement plan provisions.

Many provisions "encourage" small businesses to create or expand retirement plans.

Here are the highlights of changes in effect for 2023. (Watch for changes effective for 2024 in your *General Ledger* e-letter later this year.)

Start-up credit. Firms with up to 50 employees can now receive an annual tax credit of 100% (was 50%) of the costs of starting and administering retirement plans. The credit can be taken annually for up to 3 years and there is now no dollar cap on the credit.

The credit is also available to small employers that join a multi-employer pension plan and is retroactive to 2019, re-gardless of how long the multi-employer plan has been in existence.

Employer contribution credit. Firms with up to 50 employees can now get an additional credit of up to $1,000 per employee for employer contributions to a new retirement plan. The credit: 100% of the employer contribution in the plan's 1st and 2nd years, 75% in the 3rd year, 50% in the 4th year, and 25% in the 5th year. There is no credit after that. Firms with 51-100 employees get a lower credit.

SIMPLE and SEP plans. These plans can now accept Roth-type contributions.

Matching contributions. The new law gives employers the option of allowing employees to elect to have matching contributions be either Roth-type or pre-tax—even if previous matching contributions were to traditional, pre-tax accounts. However, employers do not have to offer employees this option.

Sole proprietor deferral deadlines. Sole proprietors and single-member LLCs can now set up a solo 401(k) after the close of the taxable year but before that year's tax return deadline and treat the new plan as being set up the previous year. Contributions to the plan received by the tax return filing deadline can be treated as made the previous year.

Hardship withdrawals. Employees can now get financial hardship distributions from retirement plans without the 10% early distribution penalty without anyone's approval by self-certifying the requirements for financial hardship. Previously these distributions required applying to the plan's administrators, who would determine whether the request qualified for financial hardship under the tax code.

Employee incentives. Previously, employers could not offer financial incentives to induce employees to participate in retirement plans. Under the new law, employers can offer de minimis financial incentives to join their retirement plan. Incentives must be low-cost, such as a low-dollar gift card, and cannot be paid for with retirement plan assets.

Employees who are military spouses. Small employers can now receive an extra tax credit if their defined contribution retirement plan makes it easier for their military spouse employees to participate and benefit from matching contributions.

16. Did your firm issue refunds to customers? Better have proof.

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

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

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

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

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

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

17. IRS eyeing your ICs—what to do.

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

- **Names—*and* titles:** The agreement should clearly state that the worker is an IC, not an employee, and avoid words indicating an employment relationship.
- **Training instructions:** ICs largely get their own training and decide when, where and how work is done. You can set work standards, but avoid ongoing instructions.
- **Delegation:** An IC who is permitted to delegate at least some work to his/her own workers and train them and who is then responsible for their results is likelier to hold up as an IC in an IRS or other worker classification audit.
- **Work periods:** Ideally, the contract should be for 1 year or less, with renewals, and not include employer-set work hours. Longer terms and employer-set hours indicate employment.
- **Exclusivity:** ICs who work exclusively and full time for one firm are likely to be deemed employees, regardless of other factors. True ICs are available to work for other companies.

  AIPB tip. The IRS scans IC contracts for noncompete clauses. An IC is, by definition, *independent*, and should be allowed to service others.
- **Periodic reports:** Requiring progress reports from ICs indicates control and thus employment. Be concerned only with the IC's final product.
- **Compensation:** When possible, base compensation on output. Time-based payment, hourly, etc., often indicates employment—but not always.
- **Expenses:** ICs usually pay their own overhead and expenses (except perhaps travel), so they should pay for their supplies and equipment. State this in the contract. If needed, increase the contract price rather than pay an IC's expenses.
- **Risk**: It should be possible for an IC to lose money —at least theoretically.
- **Termination:** Both parties should be able to terminate on 30 days' notice for any reason. [*Tax Notes Today*]

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

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

The California law AB-5 makes it harder to treat workers as ICs instead of employees under state law. It presumes workers to be employees—the employer has the burden of proving that they are ICs.

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

A. The ICs must *clearly* be free from the hiring entity's direction for the work in both the terms of the contract and in the conduct of the relationship.

B. The ICs' work must be outside the entity's usual business —i.e., they should not be truck drivers who work for a trucking company because truck driving is not outside the hirer's business, making them employees. A plumber fixing a pipe at a store is work outside the hiring entity's usual business.

C. The ICs must customarily be in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

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

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

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

✓ CO	✓ MT	✓ PA	✓ WY
✓ ID	✓ OK	✓ WI	

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

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

Now the states are also limiting IC classification. New Jersey set the standard with a series of laws designed to crack down on what the legislature believes is misclassification of employees as ICs.

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

The new laws authorize state agencies to enforce misclassification laws, streamline how misclassified workers are identified, and establish a new state office to enforce compliance with state classification regs.

Is your state about to tighten IC classification regs? [*Leimberg Information Services*]

19. Bookkeeping nightmare: online sales tax collection goes national

A state can require out-of-state sellers *with no physical connection* to the state to collect and remit sales taxes if the seller has even a *minimum threshold* of economic contact with the state as the result of a Supreme Court decision.

The 45 states with statewide sales taxes and the District of Columbia now require sellers to collect and remit sales taxes when the seller has sufficient economic contacts with the state. Missouri came on board starting in 2023.

If a small business uses a "facilitator"—an online marketplace, such as Amazon—all states, with the exception of Oklahoma, shift the requirements to the facilitator.

The rules for small firms are complex. In 22 states, sales tax collection starts at $100,000 in sales or 200 transactions into the state during the calendar year—for California, New York and Texas, $500,000 in sales.

But it can be tricky. Some states have different monetary and transaction thresholds; several have changed thresholds at least once since 2018. And some locales within a state may impose separate sales tax requirements.

Until there is some kind of federal law that covers all states, such as the GAO proposed law, small businesses have only a few options for complying in easier, less costly ways.

One option: Sell only through one or more facilitators so your firm is not forced to collect sales taxes.

A second option: Enroll in the Streamlined Sales Tax Registration System (SSTRS). The SSTRS website has details on each state's sales taxes and remote seller requirements. It's a simple, free way to register for sales tax permits in states that participate in the system. Your firm will still be responsible for collecting and paying the taxes to each state.

A third option: Use a sales tax reporting/payment service. The SSTRS website lists several providers that SSTRS has certified to perform these functions.

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

The case: K, a part-time bookkeeper, was neither a manager owner of the company that employed him. When it was delinquent on payroll taxes, the IRS sent Letter 1153 (scroll way down), which stated:

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

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

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

Held: For the IRS. The bookkeeper argued that he could not be a *responsible person* for employment tax liability because he had no ownership interest, financial authority or decision-making role in the business.

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

This taxpayer planned to challenge the assessment at a due-process hearing. But the IRS and Tax Court said the challenging had to be made upon receipt of the letter—it was too late and he was liable for the taxes. [*Kazmi* v. *Commissioner*, T.C. Memo 2022-13]

21. "Wages": what's covered—and not covered—by federal law

Which of the following are covered by federal law: Minimum wage? Prevailing wage? Living wage? These terms do not refer to the same thing.

Minimum wage. The lowest rate of pay an hourly employee may be paid under federal or state law—and sometimes county or city law. Many locales have lower minimums for tipped workers. The minimum wage was created to stop sweatshop abuse.

Prevailing wage. The prevailing wage began with the Davis-Bacon Act of 1931. It is loosely defined as the average wage earned by workers doing similar work in similar occupations in the same general geographical area. It usually refers to the pay rate that government agency contractors and vendors must offer to employees—federal, state or local government. For example, Los Angeles requires contractors for public works, such as roads, to pay at least the prevailing wage set by the California Department of Industrial Relations (see prevailing wage FAQs).

Living wage. A living wage is the pay rate below which subsistence needs cannot be met. But because employees' differing marital status, number of children, debt, health-care needs, geographical area and other factors vary widely, this phrase is more a political hot-button than a legal or regulatory term.

Legal and policy issues surrounding the minimum are often expressed in terms of "a living wage."

Bottom line: The minimum wage covers all employees, the prevailing wage employees of government agency contractors and vendors, and the living wage is a socio- political term.

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