

# The Kiplinger Tax Letter

CIRCULATED BIWEEKLY TO BUSINESS CLIENTS SINCE 1925

1100 13th Street NW, Washington, DC 20005 • kiplinger.com • Vol. 93, No. 21

Dear Client:

Washington, Oct. 19, 2018

More online purchases are hit with sales tax...  
Thanks to a landmark Supreme Court case

that gives states greater power to impose sales tax on e-commerce. In June, the Court overturned a ruling that shielded sellers with no physical presence in the buyer's home state from collecting sales tax.

The Court blessed S.D.'s internet sales tax.

The law requires remote sellers with at least \$100,000 in sales or 200 or more transactions annually in S.D. to collect S.D. sales tax from buyers in the state.

The Court clearly signaled its support for the S.D. law, partly because it isn't applied retroactively and it provides a small-business exception.

Many states are taking S.D.'s lead and expanding their sales tax reach.

The Supreme Court ruling is a welcome relief to states that generally impose sales tax but haven't been able to fully reap revenues from web sales made to their residents.

About half now have laws taxing online purchases from remote sellers.

A few had enacted statutes that were put on hold pending the high court decision.

Most states are copying the S.D. law and its small-business exception.

Hawaii, Ill., Ind., Ky., Mich., Nev., N.J., N.C., R.I., Wis. and others have taken this route. The Court was comfortable with S.D.'s \$100,000 sales/200 transactions thresholds, so it makes sense for states to adopt these standards to avoid future legal challenges.

Some give more protection for small sellers in their internet sales tax laws.

In Conn. and Ga., for example, the in-state sales threshold for collecting sales tax is \$250,000. Ala. and Miss. have also set a \$250,000 in-state minimum threshold, but they don't have a minimum transaction component in their remote seller laws.

Pa. and Okla. are outliers. Pa. has a \$10,000 yearly in-state sales threshold

and no minimum transaction requirement. In Okla., remote sellers with \$10,000 or more in sales must collect tax or comply with "notice and reporting" requirements. Both of these laws widely diverge from the S.D. statute OK'd by the Supreme Court.

Look for even more states to jump on the bandwagon. Ark., Calif. and Texas

are just a few that are considering changes or already have proposals in the pipeline. But Alaska, Del., Mont., N.H. and Ore...the five states with no sales tax...won't act.

Don't expect Congress to help online sellers navigate state sales tax laws.

At least not in the near term. It will give states time to act on their own.

That won't keep lawmakers from trying, however. Here are two examples.

Rep. Jim Sensenbrenner (R-WI) has a [proposal](#) to outlaw sales tax collection duties on remote sellers with less than \$10 million in U.S. sales during the previous year.

It would also postpone sales tax collection obligations on remote sellers until 2019. Another [House bill](#) would require states to provide a statewide uniform tax rate, develop rules for what is taxable, and let remote sellers remit taxes to one location.

Neither of these bills is expected to pass. There's not enough support on Capitol Hill.

## HIGHLIGHTS

[Medicare](#) 2019 premiums

[Preparers](#) PTIN renewal season

[Business Taxes](#) Hobby-loss win

[Tax Disputes](#) Late refund claims

[Enforcement](#) Large cash deals

[Tax Burden](#) Who pays income taxes

**SOCIAL SECURITY** The Social Security wage base is going up to \$132,900 in 2019, a \$4,500 hike.  
 The Social Security tax rate on employers and employees stays at 6.2%. Both will continue to pay the 1.45% Medicare tax on all compensation, with no cap. Individuals also pay the 0.9% Medicare surtax on wages and self-employment income over \$200,000 for singles and \$250,000 for couples. This levy doesn't hit employers.  
The nanny tax threshold isn't changing. It will remain at \$2,100 next year.

Social Security recipients get a 2.8% increase in their benefits in 2019.  
The earnings test limits head up. Individuals who turn 66 next year will not lose any benefits if they earn \$46,920 or less before they reach that age. Individuals who are 62 through 65 by the end of 2019 can make up to \$17,640 before they lose any benefits. There is no earnings cap once a beneficiary turns 66.  
The amount needed to qualify for coverage increases to \$1,360 a quarter.

**MEDICARE** The basic Medicare Part B premium will rise a bit for 2019 to \$135.50, although some enrollees will pay less because of a provision in the law that limits premium hikes to the size of cost-of-living hikes in Social Security benefits.  
Upper-income seniors will pay more for Parts B and D coverage next year if their modified adjusted gross income for 2017 exceeded \$170,000 for joint filers or \$85,000 for single people. Here, modified AGI is AGI plus any tax-exempt interest. For Part B coverage, they pay the \$135.50 basic monthly premium plus a surcharge. They also owe a surcharge on their monthly Part D premiums for prescription drugs.  
Look at the table below, which summarizes the impact for upper-incomers.

For Joint Filers				For Single Filers			
If your 2017 modified AGI is		Your 2019 monthly Part B premium will be	Your 2019 monthly Part D surcharge will be	If your 2017 modified AGI is		Your 2019 monthly Part B premium will be	Your 2019 monthly Part D surcharge will be
More than	But not over			More than	But not over		
\$170,000	\$214,000	\$189.60	\$12.40	\$85,000	\$107,000	\$189.60	\$12.40
\$214,000	\$267,000	\$270.90	\$31.90	\$107,000	\$133,500	\$270.90	\$31.90
\$267,000	\$320,000	\$352.20	\$51.40	\$133,500	\$160,000	\$352.20	\$51.40
\$320,000	\$749,999	\$433.40	\$70.90	\$160,000	\$499,999	\$433.40	\$70.90
\$749,999	—	\$460.50	\$77.40	\$499,999	—	\$460.50	\$77.40

Upper-income married individuals who file separate returns are hit hard if they lived with their spouse in 2017 and their 2017 modified AGI exceeded \$85,000. They'll pay \$433.40 or \$460.50 for Part B and \$70.90 or \$77.40 in Part D surcharges.

**TAX FORMS** IRS has released a draft of the instructions for the 2018 Schedule A.  
It summarizes the changes to itemized deductions under the new tax law. Note that the combination of higher standard deductions and the paring back of itemized write-offs will lead to far fewer filers itemizing in 2018 than in prior years. The standard deductions are \$24,000 for married couples filing a joint return, \$12,000 for single filers and \$18,000 for heads of household. People age 65 or older and filers who are blind get an additional \$1,300 per person...\$1,600 if unmarried. Taxpayers will file Schedule A only if total itemizations exceed the standard deduction. Go to [www.kiplinger.com/letterlinks/schainstr](http://www.kiplinger.com/letterlinks/schainstr) to see a copy of the draft instructions.

**PREPARERS** Renewals and applications for a preparer tax ID number for 2019 have begun.  
You must have a PTIN to prepare returns...but there's no fee to get one. Preparers can renew or apply online at [www.irs.gov/ptin](http://www.irs.gov/ptin) or they can fill out Form W-12 and send it by mail. Note that current PTINs expire on Dec. 31 unless renewed.



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**BUSINESS TAXES**

An individual doesn't get a tax break on a termination payment he received. It's ordinary income and subject to self-employment tax, the Tax Court says. The case involved a business owner who sold goods on behalf of the firm's only client, and he was compensated under a written agreement. Years later, a third party acquired the assets of the client as well as the assets of the man's company. That sale triggered a termination of the compensation agreement, resulting in a payment to him equal to 1½ times the sales commissions that he earned in the preceding year. The payment isn't capital gains for the sale of goodwill ([Potter, TC Memo. 2018-153](#)).

Running a hobby through a C corporation can sometimes pay off taxwise. The businessman in the above case spent his spare time doing a cowboy roping activity and entering contests. His C corporation paid the events' entry fees and other costs and deducted the amounts on Form 1120. IRS axed the write-offs, saying the activity was a hobby. However, IRS conceded at trial that the deductions belong to the firm and not the salesman. After saying the hobby loss rules don't apply to C corporations, the Tax Court blessed the company's deductions ([Potter, TC Memo. 2018-153](#)).

A reminder for business drivers who use IRS's standard mileage rates: You can't also depreciate or expense the vehicle. Nor can you claim write-offs for actual expenses incurred, such as for car repairs, insurance, gasoline and the like. IRS has seen such shenanigans before and is on the lookout for more. Take this case in which a couple deducted vehicle expenses on Schedule C using the optional standard mileage allowance and claimed depreciation deductions and Section 179 expensing on the same automobile. IRS selected their return for audit and allowed only expenses based on mileage rates ([Eldred, TC Summ. Op. 2018-49](#)).

**BANKRUPTCY**

Bankruptcy creditors can grab tax refunds attributable to the child credit, a court says. A debtor claimed that the nonrefundable child tax credit was exempt from his bankruptcy estate under state law as a public assistance benefit. The court disagreed, noting that the nonrefundable portion of this popular credit benefits middle- and upper-income families as well as the needy ([Manuel, D.C., Ill.](#)).

**THE CLERGY**

Funds a minister gets from congregation members are taxable income, the Tax Court says. Church members who wish to make monetary payments to the minister put money in an enveloped titled "pastoral gifts" after each service. During the two-year period under audit, the minister received \$500,000 from his flock, which he treated as nontaxable gifts. But he wasn't paid a salary by the church during those two years, although he did receive a substantial parsonage allowance. The payments were intended to compensate the minister for past and future services and weren't made with donative intent, so they're taxable ([Felton, TC Memo. 2018-168](#)).

**TAX DISPUTES**

Financial disability can be grounds for allowing a late-filed refund claim. The general three-year statute-of-limitations period for seeking a tax refund is extended in cases in which taxpayers are unable to manage their financial affairs because of medically diagnosed, serious long-term physical or mental impairments. The relief doesn't apply if someone else is authorized to act for the taxpayer on financial matters. Here, an elderly man gave his son a written power of attorney over his affairs, allowing the son to act on his dad's behalf in financial transactions. This precluded tolling of the three-year refund claim period ([Stauffer, D.C., Mass.](#)).

**IRS**

The budget sequester continues to nip some tax breaks, believe it or not. It will take a 6.2% bite out of certain payments through Sept. 30, 2019: Refunds to small [tax-exempt employers](#) who claim a refundable income tax credit for providing health insurance to workers. Payments made to issuers of [tax-free bonds](#) that provide tax credits to bondholders. Plus awards paid to tax [whistle-blowers](#).

**VIRTUAL CURRENCY**

Congress wants the Service to provide robust tax rules on virtual currency. Preliminary guidance from 2014 treats bitcoin and other cryptocurrencies as property for tax purposes. Tax professional organizations have been urging IRS to update its guidance to give more clarity to users or investors of digital currency. For example, how to tax transactions in which the currency is split into two as a result of a software change. [House lawmakers](#), hoping to light a fire under IRS, are demanding that the agency prioritize the issuance of updated guidance.

**ENFORCEMENT**

Things are slowly looking up for IRS's Criminal Investigation division. After many years of staffing crunches...about 1,150 fewer special agents are working on criminal cases than 20 years ago...the department is finally hiring again. It plans to bring on board close to 250 special agents over the next year and a half.

People who engage in large cash deals can draw unwanted IRS attention. The agency gets many reports of cash transactions in excess of \$10,000 from banks, casinos, car dealers, pawn shops and other businesses that tend to take in cash.

Currency transaction reports on Form 8300 are a source of audit leads in sniffing out unreported income. For the period Oct. 2014 through Jan. 2018, field auditors assessed approximately \$189 million in taxes, penalties and interest on nearly 3,000 Form 8300 referrals. [Treasury inspectors](#) say IRS can do even more.

For businesses that are unsure of what triggers the filing of Form 8300... IRS has a reference guide which instructs them on their filing obligations. Reporting is required not only when a customer pays over \$10,000 cash at one time, but also for multiple cash payments within 24 hours that total more than \$10,000. Go to [www.kiplinger.com/letterlinks/8300](http://www.kiplinger.com/letterlinks/8300) to view a copy of this handy guide.

The Service is doing a poor job of expanding field audits to more years, according to a [report by Treasury inspectors](#). It points out that in many instances in which an audit leads to more taxes, IRS doesn't always properly expand the exam to pick up prior- and subsequent-year returns that have potentially similar issues. The agency vows to do better, including guiding examiners on when to start an audit on returns with 12 months or less remaining on the statute-of-limitations period.

**TAX BURDEN**

The tax burden on high-incomers has fallen a bit, new IRS statistics show. The top 1% of individual filers paid 37.32% of all federal income taxes in 2016, the most recent year IRS has analyzed. That's down from 39.04% the previous year. They reported 19.72% of total adjusted gross income, also lower than the year before. Filers needed AGIs of at least \$480,804 to earn their way into the top 1% category.

The highest 5% paid 58.23% of total income tax and accounted for 35.20% of all adjusted gross income. Each filer in this group had AGI of \$197,651 or more.

The top 10%, those with AGIs of at least \$139,713, bore 69.47% of the burden while bringing in 46.56% of individuals' total adjusted gross income for the year.

The bottom 50% of filers paid 3.04% of the total federal income tax take. Their share is so low because the figures don't include Social Security tax payments and because many of them get substantial tax relief through refundable tax credits.

Yours very truly,

*The Kiplinger Editors*  
THE KIPLINGER WASHINGTON EDITORS

Oct. 19, 2018

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