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JULY 2020 NEWSLETTER

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Yes – We are available to help you!

While many of our Miller Monson team members are working remotely, we are all available, virtually, for you, your family and your business. While we are not holding in-person meetings unless critical, we are available by email and telephone, and we can host conference and Zoom calls. We can also send a notary to your home or office so you can sign your documents. We value you, and will continue to meet your changing needs.

FIRM NEWS



DeEtte L. Loeffler has joined the Executive Committee of the Taxation Section of the San Diego County Bar Association as an At Large member. The Committee addresses matters of interest in the area of tax law, and provides educational and networking programs for lawyers working in this area.

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**SIGNING DOCUMENTS IN
THE AGE OF COVID-19**
By Mary J. Peshel, J.D.

Most of the estate planning documents we prepare for our clients are notarized. This includes Trusts, Powers of Attorney, Advance Health Care Directives, Nominations of Conservator and deeds. An exception is Wills, which require at least two, and preferably three, witnesses, all of whom must be present at the

same time, to watch the “testator” sign his or her Will.

Due to COVID-19 restrictions, we are generally not seeing clients in our office at this time. Unlike some states, California has not approved online notarizations. While some firms are recommending their California clients use out-of-state notaries for their documents during this pandemic, we are not doing so because we think there is a risk such notarizations will not be upheld in the event of a challenge. Instead, we are sending clients detailed instructions for signing each estate planning document with the

assistance of mobile notaries. Notaries are considered essential employees in California.

On occasion, our office notaries have gone to clients' homes to notarize documents. Most such meetings have been conducted in the clients' backyard, where neighbors have acted as witnesses to the Will, either by coming into the yard and keeping a safe distance, or even by watching the signing, and completing the witness statement, from over the fence in the neighbor's own yard. Less often, clients have had the notary and witness enter their home and sign in a living room or at a large table that accommodates safe social distancing requirements.

In any event, all parties are masked and gloved. All writing tools and notary supplies are also disinfected prior to and after the meeting, and our notaries are using "one use" notary ink pads to avoid any cross-contamination.

However, some clients have expressed concern about coming into contact with any individuals who do not live with them. For those clients we have provided information about signing documents without witnesses or notaries for the time being, with those documents to be witnessed and/or notarized in the future, when that is possible for the client. Typically trust documents do not require notarization in California, though this is recommended and thus it is our practice to notarize these documents. However, deeds must always be notarized.

One of our paralegal notaries told us she finds it immensely rewarding to assist our clients during this crisis. Closer bonds have been developed. When recollecting a meeting in a client's home, she described that the meeting was held in a room full of books, with a large table. As an avid reader, she enjoyed looking at the contents of the bookshelves. This led to a brief, yet memorable conversation with the client about Jane Austen, the favorite author of both the client and the paralegal.

We all miss seeing our clients here in the office, but for the time being, we are pleased that we can assist them in the unique ways that are necessary at this time. If you have any questions or concerns about notarizations, please feel free to contact us.



**WORKING FROM HOME
DUE TO CORONAVIRUS?
CAN YOU CLAIM A HOME
OFFICE DEDUCTION?**

*By Katie Lepore, CPA, J.D.,
LL.M., Taxation*

COVID-19 forced millions of people to work from home, mostly unexpectedly. Employees who commuted to an office each day suddenly found themselves working from their home office, or maybe even the kitchen table or bedroom. Those with young children have had to manage the difficulty of being a parent while still managing a full workload, perhaps fielding a conference call in the seclusion of a closet. Business is being conducted in garages, and the home has taken on a whole new business purpose. Desks, office chairs, new routers, and other office equipment were purchased by those who ordinarily relied upon their employer for these items. All this begs the question... can you claim an income tax home office deduction for the time and expenses of working from home? Well, as any good lawyer knows, the answer depends on the situation.

Background on Home Office Deduction

Section 67(g) of the Internal Revenue Code used to allow employees to claim a home office deduction as a miscellaneous itemized deduction as unreimbursed employee business expenses on an individual's itemized deductions Schedule A to their Form 1040. With the major tax overhaul passed by the Trump Administration in 2017, the *Tax Cuts and Jobs Act ("TCJA")*, Section 67(g) was suspended to remove the ability of individuals to claim miscellaneous itemized deductions.

Full-Time Employees

As a result of this change in the TCJA, employees who rely on their employer for their salary (i.e., W-2 employees) are no longer able to claim the home office deduction. Period. The answer does not change even if the employee works from home full-time and never reported to an office. As a result, many of those who are now working from home due to COVID-19, and expending additional funds for new desks and office equipment, may simply be out these funds. As an exception, if the employer required the employee to work from home, as opposed to allowing it as an accommodation, the employee might be able to look to their employer for reimbursement of these items under state employment laws, but not as a tax deduction.

Self-Employed Individuals

The result may be different for self-employed individuals.¹ Generally, the deduction may be allowable on Schedule C for self-employed individuals and small businesses. Partners may be able to deduct home office expenses on Schedule E as an unreimbursed partner expense.² Though, to do so, it should be readily apparent that the partner is expected to pay these expenses without reimbursement from the partnership, perhaps even explicitly stated in the partnership agreement.

Requirements for the Deduction

In order to claim the home office deduction, a portion of the home must be used “exclusively and regularly” as a *principal place* of business.³ If you have a business that interfaces with the public, you should meet with “patients, clients, or customers in the normal course” of business at your home.⁴ The area claimed for the deduction should be separately identifiable, which can be a whole room that is used for business or perhaps just a desk or table regularly used for business.

¹ <https://www.forbes.com/sites/davidrae/2020/05/06/home-office-deduction-2020/#386214fb7f75>

² <https://www.journalofaccountancy.com/issues/2020/may/deduct-home-office-expenses-coronavirus-remote-work.html>

However, if that same desk or table is also used to conduct your child's new Zoom classes, or houses the personal family computer, or other dual purpose, it may not be separately identifiable for a business purpose.

Items Eligible for Deduction

Expenses related to the business part of the home may be eligible for the deduction. Those so-called “direct” expenses, which would not otherwise be incurred, are deductible in full. “Indirect” expenses that partially relate to business use and partially relate to personal use, such as mortgage costs or homeowner's insurance, are deductible based on the percentage of the home used for business, generally based on square footage. Of course, solely personal expenses such as gardening costs, are not deductible if you never receive clients at your house.⁵

Words of Caution

However, be careful with depreciation expenses if you own your home, as depreciation claimed may need to be recaptured upon sale of the home. Depreciation is likely not excludable under Section 121 of the Internal Revenue Code which grants a \$250,000 exclusion from capital gains upon the sale of an individual's primary residence (\$500,000 for married couples filing jointly). Usually this is for depreciation actually taken, or that which is allowable to be taken (even if not claimed).

Also, generally a loss is not allowable by claiming a home office deduction, and most unclaimed expenses are carried forward to future tax years.

As usual, good records are essential to claiming the deduction.

³ See IRS Publication 587: <https://www.irs.gov/pub/irs-pdf/p587.pdf>

⁴ See id.

⁵ See id.

Conclusion

Unfortunately for most people who were forced to work from home due to COVID-19, a home office deduction will not be allowable. For those self-employed individuals, a tax break may be available, and those taxpayers should consult with their tax preparer for further information.



IN CASE OF EMERGENCY (ICE) – NOW AND LATER

*By Colleen S. Ergastolo,
Paralegal*

Have you considered what to do in an emergency beyond calling 911? What about planning for an unlikely circumstance? It's a fact, emergencies and crises happen unexpectedly. Here at Miller, Monson, Peshel, Polacek & Hoshaw we want you to be ready for the unknown happenstance. As a recipient of this newsletter, you are most likely aware of how important it is to establish a legal, customized estate plan that reflects your wishes. This article communicates beyond those legal documents you may already have or plan to prepare.

We are in uncharted water during these COVID-19 times, yet you can be prepared for an emergency now and for later by filling out these "[In Case of Emergency](#)" instructions. In Case of Emergency, otherwise known as "ICE" instructions, provide information to the appropriate persons and institutions who need emergency information to care for you when you are unable to do so for yourself. Such persons who attend to your emergency care could include EMTs, firefighters, medical professionals (doctors, nurses, technicians), lawyers, family members, friends, and neighbors.

The security of documenting how you will be cared for, by having you fill out an ICE document, can mitigate a care facilitator's uncertainties. Your emergency care information includes as much or as little as you would like to provide on the document. Information relayed in the ICE instructions can include contact information for

your doctor, faith representative, mortuary, lawyer, bank, financial advisor, accountant, family member(s), and health insurance.

Additional facts state your vital statistics, including your name, your spouse (if married) and contact information. In the unfortunate case of your failure to survive, the vital statistics relating to your birth, Social Security number, occupation and other various related information can be used for preparing and obtaining a death certificate.

Other important information included in the vital statistics are where your estate planning documents are located, and the names and contact numbers of your agents. If you are incapacitated, your power of attorney and advance health care directive are important documents identifying the persons with the legal authority to act on your behalf during a time you are unable, such as during a health crisis. Information about current prescriptions, over-the-counter medications and dosages, are all helpful.

Because this information is private and can be sensitive, we recommend that you place your ICE instructions in a sealed envelope, labeled "ICE" or "In Case of Emergency" and keep in an easily accessible place at home for an appropriate party to obtain the necessary information for your care as needed (perhaps taped to the refrigerator). Over time, the information may change; therefore, you will want to remember to update it periodically.

We appreciate serving your needs as they arise and believe these "In Case of Emergency" instructions will help ensure that you receive personal health care during this unpredictable COVID-19 crisis (and for your future care thereafter) according to the instructions and information you communicate. It matters.



FEDERAL TAX UPDATE

By Katie Lepore, CPA, J.D.,
LL.M., Taxation

New PPP Bill Passed. The *Paycheck Protection Program (PPP) Flexibility Act of 2020 (H.R. 7010)* revises the PPP program to allow businesses to use borrowed funds within 24 weeks instead of 8 weeks, and reduces the required percentage use on payroll costs to 60% rather than 75%, in order to be eligible for forgiveness. See our [May 2020](#) newsletter for more detailed information on the PPP loans.

IRS Now Allows All RMDs Taken in 2020 to be Rolled Over. On June 23, the IRS announced in Notice 2020-51 that taxpayers who took a required minimum distribution (“RMD”) from a retirement plan at any time in 2020 may roll that distribution back into a retirement plan if they do so by August 31, 2020. The *CARES Act*, which was adopted in March of 2020, waived the requirement to take RMDs in 2020, but some taxpayers took distributions more than 60 days before that change occurred so were outside the 60-day window for rollovers. The Notice extends the 60-day window to pay it back into a retirement account until August 31, 2020.

Electronic Filing for 1040-X. On May 28, the IRS announced that taxpayers will be able to file amended personal returns, Form 1040-X, electronically.

IRS Interest Rates Decrease. The IRS will decrease interest rates beginning July 1, 2020 to 3.0% for overpayments (2.0% for corporations), 3.0% for underpayments, and 5.0% for large corporate underpayments.

IRS Closes P.O. Boxes. The IRS will be closing select P.O. Boxes in Cincinnati and Hartford areas beginning July 1. The payments sent to these addresses will not be forwarded and will be

returned to sender; please ensure you have the correct address before mailing payments.

IRS Nationwide Tax Forums Are Virtual. The 2020 IRS Nationwide Tax Forums will be held virtually. Webinars will be live-streamed Tuesday, Wednesday, and Thursday from July 21 to August 20. Continuing education credit is available for viewers.

IRS Warns of Scams. Once again, the IRS issued a warning to taxpayers to be alert for potential fraud or schemes to scam taxpayers out of money. There have been several scams related to the Economic Impact Payments, as well as schemes related to selling COVID-19 testing kits, medical supplies, and fake cures or pills. Additionally, new websites are claiming to be charities to help those who have fought or died from COVID-19, many of which are fake. Please be wary of any mail or email asking for personal information.

Qualified Opportunity Zone Deadline Extended. In Notice 2020-39, the IRS announced that the 180-day period to reinvest capital gains into a qualified opportunity zone would be extended to December 31, 2020, if the period would have ended between April 1 – December 31, 2020.

Eviction and Foreclosure Moratoriums Extended. Fannie Mae and Freddie Mac will extend the moratorium on evictions and foreclosures federally through August 31 for single family homes. Additionally, HUD is extending Federal Housing Administration loan forgiveness through August.

Tax Court Holds Remote Proceedings. On May 29, the U.S. Tax Court announced that it would hold all court proceedings remotely via Zoomgov, which will be open to the public for viewing.



STATE TAX NEWS

By Katie Lepore, CPA, J.D.,
LL.M., Taxation

California Budget Affects Taxes. AB 85, the California budget which will be effective July 1, addresses several tax matters, including suspending the use of net operating losses (NOLs) for 2020 until 2023 for medium and large businesses, and capping certain business incentive tax credits to a \$5M limit per year. Excess NOLs and credits will be carried over to future years.

Budget Waives Minimum \$800 Franchise Fee for Businesses for First Year. AB 85 waives the \$800 minimum franchise tax for LPs, LLPs, and LLCs that form or register with the Secretary of State between January 1, 2021 and January 1, 2024 for their first year of formation (See CA Rev & Tax Sections 17935(f)(1), 17941(g)(1), and 17948(e)(1) in bill text).

Eviction Moratorium Extended. Governor Newsom extended the ability of local governments to extend eviction moratoriums through July 28 if desired. On May 19, 2020, the San Diego City Council extended its eviction moratorium for commercial and residential properties through June 30, as did the City of Chula Vista. On June 2, 2020, the County extended its moratorium to July 28. Under the San Diego City moratorium, a tenant who gave required notice has until September 25, 2020 to pay the unpaid rent. The County order gives tenants until September 1, 2020 to pay.

Court Expands Rent Control to Certain SFH. The First District of the California Court of Appeal decided on May 29, 2020 in *Owens v. City of Oakland Housing, Residential Rent and Relocation Board* that rent control can extend to single-family homes in certain instances. In the case, a homeowner-resident rented certain rooms to separate tenants, and the court held

that doing so converted the single-family home to a multi-family home, thereby subjecting it to rent control, and related eviction rules. Homeowners now need to be more careful when “house hacking,” renting a room to a roommate or family member, especially one who may be down on their luck, where below-market rent is charged. That rent may not be able to be raised above a certain threshold if subject to rent control, or the tenant may not be able to be evicted unless local rules are followed.

Restrictive Eviction Bill Stopped. As reported in our [May 2020](#) newsletter, California SB 939 proposed expanded eviction moratoriums for commercial properties, and would have allowed commercial tenants to defer rent payments for 12 months after the Governor lifts the state of emergency. It also would have possibly allowed for modification of rent terms and termination of the rental contract if a mutual agreement could not be reached. The Senate Judiciary Committee approved the bill on May 22, 2020, but the Appropriations Committee did not pass the bill out of committee on June 18.

Bill to Make Large Corporate Taxes Public. California SB 972 proposes revealing to the public corporate taxpayer information for corporations that have gross receipts in excess of \$5 billion. The public disclosure would show the gross receipts, tax liability, and credits claimed. Ten other states require varying disclosures, as does the federal government for all publicly traded corporations. Promoters of the bill say the information will allow the public and policy makers to evaluate tax policy, including tax credits, deductions and exclusions, and ensure appropriate oversight.

Property Tax Reductions Due to COVID-19. The California State Board of Equalization voted 3-2 against issuing formal guidance about the ability of taxpayers to reduce the assessed value of their property due to COVID-19. As detailed in our [May 2020](#) newsletter, taxpayers may be eligible to receive property tax relief in the event of “major misfortune or calamity,” including a decline in value due to restricted access, as

detailed in *Revenue and Taxation Code* Section 170. The declination to issue formation guidance leaves the judgment to the local Assessor, a result which is unknown until cases are accepted or declined. Anyone wishing to apply for relief should first consult an attorney.

Disclaimer: This newsletter is provided to share knowledge and expertise with our colleagues with the goal that all may benefit. The content of this newsletter is for general information purposes only.

The information contained within this newsletter is not intended to serve as legal advice or as a guarantee, warranty or prediction regarding the outcome of any particular legal or tax matter. Nothing contained within this newsletter should be used as a substitute for legal advice and does not create an attorney-client relationship between the reader and Miller, Monson, Peshel, Polacek and Hoshaw. Legal advice depends on the specific facts and circumstances of each individual's situation. You should not rely on this newsletter without first consulting with a qualified, licensed attorney.

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CHARITABLE GIFT PLANNING
PROBATE & TRUST ADMINISTRATION
ESTATE & GIFT TAX RETURNS
PRE-MARITAL AGREEMENTS

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BUSINESS APPRAISAL SERVICES/DISCOUNT OPINIONS
VALUATIONS FOR ESTATE AND GIFT TAX PURPOSES

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TAX REPRESENTATION

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