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Chapter 7

Real Estate





Homebuyer Credits (Federal)

- 2008 Credits:
 - Recapture 3rd year amount (1/15th) in 2012. Use Form 5405.
 - Total unrecaptured credit (limited to gain) if home disposed of or no longer main home.
 - Exception for destruction and condemnation.





Homebuyer Credits (California)

- 2010 New Home Credit report third installment on 2012 return.
- 2010 credit must be repaid if home not used as a principal residence for at least two years.
- Reported in year that property no longer qualifies.






Other Real Estate Matters

- Self-charged rental rule:
 - Rental income received by a taxpayer for use of property in a business in which the taxpayer materially participates is treated as non-passive rental income.
 - As such, it cannot be used to offset passive rental losses.





Other Real Estate Matters

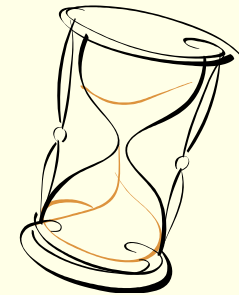
- Property flippers  were found to be in business, not as investors. Court applied specific factors. (Flood v. Comm.)
- Unloading timeshares
 - Selling, contributing and renting.





Sale of Residence

Nonqualified use



% of Nonqualified use =

Gain X

Nonqualified use days after 12/31/08

Total days property owned

- Any period (**after 1/1/09**) property not used as principal residence, **except:**



Exception to Nonqualified Use Rule

- Time after taxpayer moves out;
- Qualified extended duty; or
- Temporary absence because of employment, health, or unforeseen circumstances



Passive Losses - §469

- Real Estate Professionals
(California does not conform)



- Requirements:

- More than 1/2 of personal services must be in real estate trade or business; and
- More than 750 hours of services in real estate trade or business in which taxpayer materially participates.



Passive Losses - §469

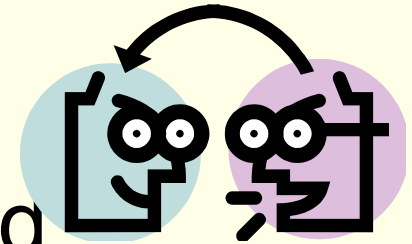


- Recent Cases:
 - Homes never rented deemed passive
 - Cattle ranch deemed passive (*Iverson v. Comm.*)
 - Certain rental deductions allowed without a renter (*Bonds v. Comm.*)

Like-Kind Exchange - §1031

■ The “Reesink” Case:

- Sold apartment building owned 1/2 with brother. Down leg of §1031.
- Bought residence as up leg of §1031.
- Tried to rent for eight months- No takers.
- Sold prior residence and moved in.
- T/P won.





Selling Business Real Estate

IRC §1231 property is:

- Real, depreciable, or amortizable property used in a trade or business and held for more than one year
 - Gains are capital; losses are ordinary
- Inventory is **NOT** §1231
- **Beware of unrecaptured §1231 losses**

Selling Business Real Estate

IRC §1245 is:



- Primarily personal property.
- Recognized gain ordinary income to the extent of depreciation taken.
- May include tangible real property.
- May also include real property subject to amortization for expenditures.



Selling Business Real Estate

IRC §1250 is:

- Generally real property subject to depreciation.
- Three types of gain:
 - Recaptured depreciation (Ordinary inc)
 - Unrecaptured depreciation (25% rate)
 - IRC §1231

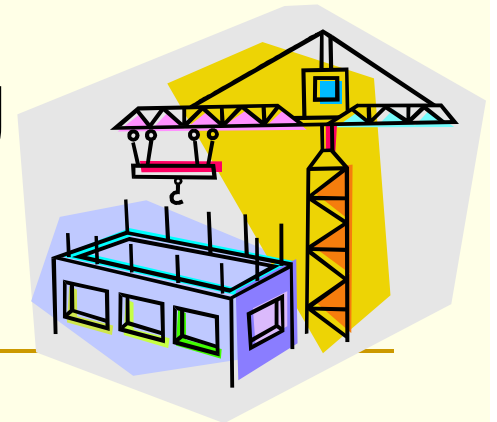


Allocation between IRC §1245 and §1250

- Non-structural components
- Structural components deemed personal
 - Removal would not affect the operation of the building
 - Item is commonly used in the industry

§1245 and §1250

- §1250
 - Buildings
 - Structural component examples:
 - Walls, partitions, floors, ceilings
 - Paneling and tiling
 - Windows and doors
 - Heating and air conditioning systems
 - Plumbing and Electrical





Principal Residence Exclusion

- \$2 million of COD income excludable
- HR 8 extends for one more year
- California conformity:
 - Same as Federal except:
 - Residence debt limited to \$800,000
 - Maximum exclusion \$500,000





Insolvency Exclusion

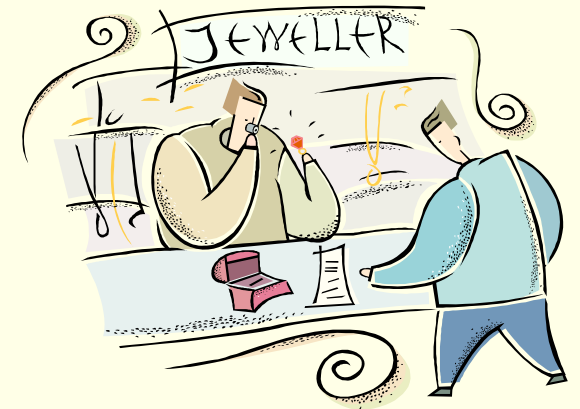
- May exclude COD income to the extent taxpayer is insolvent
- Tax attributes must be reduced (Form 982)
- Can use both insolvency and residence exclusion





Insolvency Exclusion

- Assets include “everything.”
 - Including exempt assets (pensions)
- Documentation is important (*Shepherd v. Comm.*)
 - Value of homes
 - Value of the pension





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Insolvency Worksheet

Following Page 7-20



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Principal Residence Recourse Debt

Facts of Example on Page 7-22



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Principal Residence All Insolvency

Facts of Example on Page 7-29



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Principal Residence Part Residence, Part Insolvency

Facts of Example on Page 7-38



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Chapter 8

Retirement





2013 Update

- 401(k); 403(b); SARSEP; 457; SIMPLEs
 - Deferral limits increased by \$500
 - Catch-Up contributions unchanged
- IRA Contributions
 - Maximum increased by \$500 (\$5,500)
 - Catch-Up contributions unchanged
 - AGI phaseouts increased





IRAs to Charity

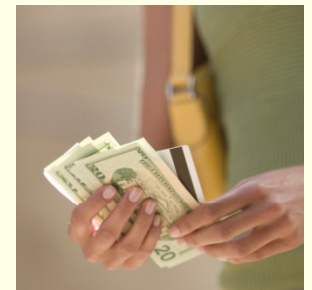
- Extended through 2013 by HR 8
 - For a limited time 2013 distributions treated as if made in 2012
- Treated as RMD without taxability
 - Lower taxable Social Security
 - Ben example (Page 8-3)
- CA conforms!





Early IRA Distributions

- Early Withdrawal Penalty (10%)
 - Under 59½ not meeting an exception
 - Not rolled over within 60 days
- IRS focus on rollovers
 - Trustee to trustee shows “G” on 1099-R
 - T/P rollover shows “7” or “1” on 1099-R
 - Be careful to meet all rules.





Age 55 Exception

- Separation from service must be after attaining age 55. (*Watson v. Comm.*)
- Distributions must come from employer plan. IRA rollover and later distribution will void use of exception. (*Kim v. Comm.*)
- Partial California conformity



Roth IRA 2013 Update

- Contribution increased to \$5,500.
- Catch-up contribution unchanged.
- AGI limits increased
- California conforms automatically
- 2012 case held that Roth IRA cannot be an S Corporation shareholder.



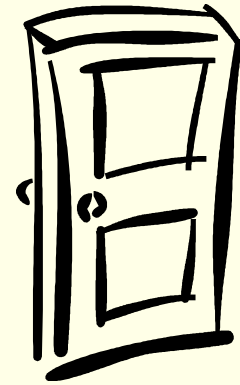


Roth Conversions

- AGI Cap permanently eliminated
- Tax deferral was only available for 2010.
- 2012 reports 2nd half of 2010 conversion for those that elected deferral. (New clients??)
- California conformed but separate elections could have been made in 2010.
 - Special rules for conversions and residence changes (Page 8-11 for guidance)



Roth IRA cont.



- Backdoor Roth IRA strategy
 - Works best with no prior IRA accounts
 - Non-deductible contribution
 - Immediate conversion to Roth
 - IRS invalidated without explanation
- Roth Conversion Checklist
(pages 8-14 and 8-15)



Special Topics

Survivor Benefits Cases



- Multiple wives leads to conflict.
(*IBEW Pacific Coast Pen. Fd. v. Lee*)
- Beneficiary designation trumps divorce decree (*Est. of Kensinger v. URL Pharma Inc.*)



Special Topics

Bankrupt Airline Payments

- FAA Modernization Act of 2012
 - Payments can be rolled over into an IRA or Roth IRA or recharacterized by 8/14/2012.
 - Amended returns must be filed by 4/15/2013





Special Topics

Sham Divorces



- Under fear of pension plan failure, airline pilots divorced 😊, then under QDRO, pension benefits were paid to ex-spouses in lump-sum.
- Airline sued for restitution.
- Court found for the pilots as QDRO's were valid.



Special Topics

Deferring Canadian RRSP

- Taxpayer was granted extension to defer RRSP income even though election was not filed timely.
- RRSP's are Canada's version of IRA
 - US taxpayers file Form 8891 to elect to defer income for each account.
- California does not conform.



Required Minimum Distributions

- Penalty for failure to take RMD is 50%
 - Can be waived for reasonable cause
 - Put “RC” on line 52 and,
 - Attach statement to the return explaining reasons for waiver and steps taken to remedy the shortfall.





Reference Charts

- **Uniform Lifetime Table – Page 8-23**
- **Partial Inherited IRA Table – Page 8-24**
- **Comparison Chart of Allowable Rollovers – Page 8-25**
- **2012 and 2013 Plan Limits – Page 8-26**

Social Security and Medicare



- 2013 FICA wage base - \$113,700
- FICA and S/E tax Update – page 8-27
- 2013 Medicare premium
 - Surcharge for high-income persons
 - Plan D (Rx) surcharge for high income



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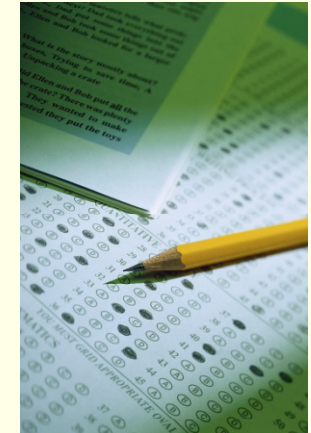
Chapter 9

Practitioner Issues



PTIN Renewal

- Online through the IRS.gov website
- \$63 user fee
- Registered or prospective Tax Return Preparer (RTRP)
 - Must self-certify that you have completed or plan to complete education requirements by 12/31





PTIN Renewal cont.

- Only RTRPs and Provisional PTIN holders are required to report education with their PTIN renewal.
- EAs will self-certify their hours at license renewal time.
- CPAs and attorneys will report to their licensing state(s).



PTIN Renewal cont.

- For 2012 preparers required to report CPE for PTIN renewal will self-report.
- CPE providers report for cross-check.
- Although reported by providers, IRS will not verify until 2013 renewals.




No PTIN, No Credit



- Preparer is responsible for providing the correct PTIN to CPE providers.
 - Provider obligated for one follow-up if PTIN does not match IRS records.
 - Name must match IRS's records
 - PTINs do not change from year to year.



Other PTIN Issues

- PTIN Security by providers:
 - No PTIN listings for public viewing.
- PTIN Fraud 
- FOIA requires IRS to release certain information about PTIN holders.
- PTIN compromised? File Form 14157



PTIN Questions

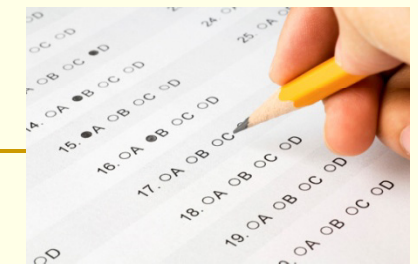
- IRS has published FAQs on its website covering PTIN requirements.
 - Page 9-5 and 9-6 includes a sample along with Spidell's comments





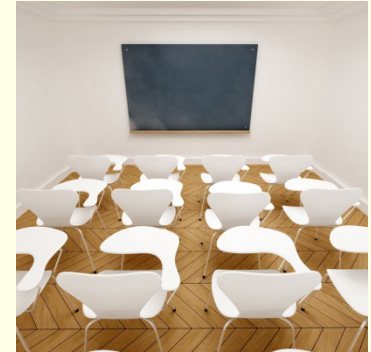
Registered Tax Return Preparers

- RTRPs are a new class of tax practitioner
 - Not licensed as EAs, CPAs, or attorneys.
 - CTEC preparers must also be RTRPs.
 - You must obtain a PTIN now and pass the RTRP competency test by 12/31/13
 - Competency test info at irs.gov.





CPE Requirements



- RTRPs
 - 3 hours of federal tax updates;
 - 10 hours of other federal tax law; and
 - 2 hours of ethics.
- Excess update hours can be used as tax law hours.
- CTECs same as IRS with 5 additional hours of California CPE



CPE Requirements



■ Enrolled Agents

- 72 hours including six hours of ethics during a three-year renewal cycle.
- Not subject to the update or tax law hour requirements.
- CSEA and NAEA have added hours



CPE Requirements



■ CPAs

- Total of 80 hours per renewal cycle.
- Minimum of 20 hours in each year of the two year period.
 - 12 hours of the 20 hour requirement must be in technical subject matter.
- Four hours of ethics each renewal
- Two hours of regulatory review every six years.



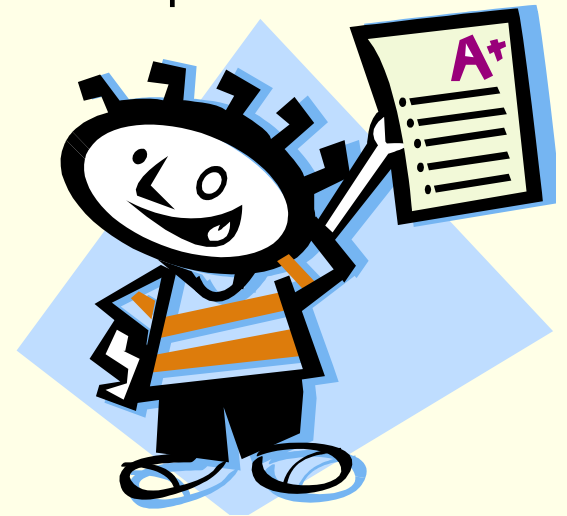
Peer Review

- Three-year reporting cycle.
 - CBA monitors reporting
 - Warning letters and fines issued to 872 CPAs and firms for 2011 non-reporting
 - Warning letters going out to 4,200 CPAs and firms for 2012 non-reporting
 - Failed peer reports are closely reviewed.



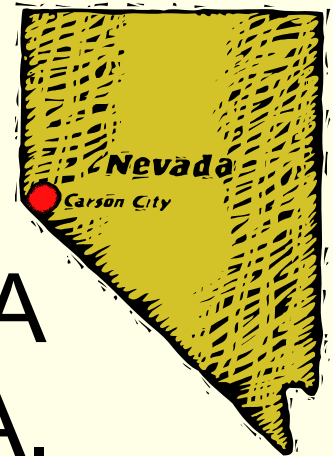
Miscellaneous

- CTEC late registration
 - Late fee increase from \$15 to \$55.
 - Renewal by 1/15 or:
 - Retake 60 hour course
 - Pass a competency exam
 - Register as new CRTP
- Online renewal registration required.





Out-Of-State CPAs



- As of 7/1/2013, CPAs from other states may obtain privileges in CA without a fee or notifying the CBA.
 - Principal business outside of CA.
 - Hold valid, current license to practice.
 - Providing certain accounting services have additional requirements.

Tax Professional Designation



- RTRP- “Registered Tax Return Preparer by the Internal Revenue Service.”
- CTEC- none until they receive RTRP certificate.
- EAs, CPAs, and Attorneys – No change



2012 Renewal Requirements

Chart of License/Registration
Requirements on
Pages 9-15 and 9-16



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Chapter 10

Practitioner Aids





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1040 Engagement Letter (10-1 to 10-2)

Lender Letter (10-3)

Client/Organizer Letter (10-4)

Refund Grabber Checklist (10-5 to 10-7)



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Checklist for Trouble-Free Return (10-8 to 10-9)

Items to Bring to a Tax Interview (10-10 and 10-11)



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Propositions 30 and 39





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Tax Rates Go Up Retroactively to 1/1/12



- Potential 2012 underpayment
- There will be no underpayment of estimated tax to the extent of increase
 - Software should compute exception



Wage Bracket	Rate	Wage Bracket	Rate	Wage Bracket	Rate
0.00 - 1.00	0.00	10.00 - 11.00	0.00	20.00 - 21.00	0.00
1.00 - 2.00	0.00	11.00 - 12.00	0.00	21.00 - 22.00	0.00
2.00 - 3.00	0.00	12.00 - 13.00	0.00	22.00 - 23.00	0.00
3.00 - 4.00	0.00	13.00 - 14.00	0.00	23.00 - 24.00	0.00
4.00 - 5.00	0.00	14.00 - 15.00	0.00	24.00 - 25.00	0.00
5.00 - 6.00	0.00	15.00 - 16.00	0.00	25.00 - 26.00	0.00
6.00 - 7.00	0.00	16.00 - 17.00	0.00	26.00 - 27.00	0.00
7.00 - 8.00	0.00	17.00 - 18.00	0.00	27.00 - 28.00	0.00
8.00 - 9.00	0.00	18.00 - 19.00	0.00	28.00 - 29.00	0.00
9.00 - 10.00	0.00	19.00 - 20.00	0.00	29.00 - 30.00	0.00
10.00 - 11.00	0.00	20.00 - 21.00	0.00	30.00 - 31.00	0.00
11.00 - 12.00	0.00	21.00 - 22.00	0.00	31.00 - 32.00	0.00
12.00 - 13.00	0.00	22.00 - 23.00	0.00	32.00 - 33.00	0.00
13.00 - 14.00	0.00	23.00 - 24.00	0.00	33.00 - 34.00	0.00
14.00 - 15.00	0.00	24.00 - 25.00	0.00	34.00 - 35.00	0.00
15.00 - 16.00	0.00	25.00 - 26.00	0.00	35.00 - 36.00	0.00
16.00 - 17.00	0.00	26.00 - 27.00	0.00	36.00 - 37.00	0.00
17.00 - 18.00	0.00	27.00 - 28.00	0.00	37.00 - 38.00	0.00
18.00 - 19.00	0.00	28.00 - 29.00	0.00	38.00 - 39.00	0.00
19.00 - 20.00	0.00	29.00 - 30.00	0.00	39.00 - 40.00	0.00
20.00 - 21.00	0.00	30.00 - 31.00	0.00	40.00 - 41.00	0.00
21.00 - 22.00	0.00	31.00 - 32.00	0.00	41.00 - 42.00	0.00
22.00 - 23.00	0.00	32.00 - 33.00	0.00	42.00 - 43.00	0.00
23.00 - 24.00	0.00	33.00 - 34.00	0.00	43.00 - 44.00	0.00
24.00 - 25.00	0.00	34.00 - 35.00	0.00	44.00 - 45.00	0.00
25.00 - 26.00	0.00	35.00 - 36.00	0.00	45.00 - 46.00	0.00
26.00 - 27.00	0.00	36.00 - 37.00	0.00	46.00 - 47.00	0.00
27.00 - 28.00	0.00	37.00 - 38.00	0.00	47.00 - 48.00	0.00
28.00 - 29.00	0.00	38.00 - 39.00	0.00	48.00 - 49.00	0.00
29.00 - 30.00	0.00	39.00 - 40.00	0.00	49.00 - 50.00	0.00
30.00 - 31.00	0.00	40.00 - 41.00	0.00	50.00 - 51.00	0.00
31.00 - 32.00	0.00	41.00 - 42.00	0.00	51.00 - 52.00	0.00
32.00 - 33.00	0.00	42.00 - 43.00	0.00	52.00 - 53.00	0.00
33.00 - 34.00	0.00	43.00 - 44.00	0.00	53.00 - 54.00	0.00
34.00 - 35.00	0.00	44.00 - 45.00	0.00	54.00 - 55.00	0.00
35.00 - 36.00	0.00	45.00 - 46.00	0.00	55.00 - 56.00	0.00
36.00 - 37.00	0.00	46.00 - 47.00	0.00	56.00 - 57.00	0.00
37.00 - 38.00	0.00	47.00 - 48.00	0.00	57.00 - 58.00	0.00
38.00 - 39.00	0.00	48.00 - 49.00	0.00	58.00 - 59.00	0.00
39.00 - 40.00	0.00	49.00 - 50.00	0.00	59.00 - 60.00	0.00
40.00 - 41.00	0.00	50.00 - 51.00	0.00	60.00 - 61.00	0.00
41.00 - 42.00	0.00	51.00 - 52.00	0.00	61.00 - 62.00	0.00
42.00 - 43.00	0.00	52.00 - 53.00	0.00	62.00 - 63.00	0.00
43.00 - 44.00	0.00	53.00 - 54.00	0.00	63.00 - 64.00	0.00
44.00 - 45.00	0.00	54.00 - 55.00	0.00	64.00 - 65.00	0.00
45.00 - 46.00	0.00	55.00 - 56.00	0.00	65.00 - 66.00	0.00
46.00 - 47.00	0.00	56.00 - 57.00	0.00	66.00 - 67.00	0.00
47.00 - 48.00	0.00	57.00 - 58.00	0.00	67.00 - 68.00	0.00
48.00 - 49.00	0.00	58.00 - 59.00	0.00	68.00 - 69.00	0.00
49.00 - 50.00	0.00	59.00 - 60.00	0.00	69.00 - 70.00	0.00
50.00 - 51.00	0.00	60.00 - 61.00	0.00	70.00 - 71.00	0.00
51.00 - 52.00	0.00	61.00 - 62.00	0.00	71.00 - 72.00	0.00
52.00 - 53.00	0.00	62.00 - 63.00	0.00	72.00 - 73.00	0.00
53.00 - 54.00	0.00	63.00 - 64.00	0.00	73.00 - 74.00	0.00
54.00 - 55.00	0.00	64.00 - 65.00	0.00	74.00 - 75.00	0.00
55.00 - 56.00	0.00	65.00 - 66.00	0.00	75.00 - 76.00	0.00
56.00 - 57.00	0.00	66.00 - 67.00	0.00	76.00 - 77.00	0.00
57.00 - 58.00	0.00	67.00 - 68.00	0.00	77.00 - 78.00	0.00
58.00 - 59.00	0.00	68.00 - 69.00	0.00	78.00 - 79.00	0.00
59.00 - 60.00	0.00	69.00 - 70.00	0.00	79.00 - 80.00	0.00
60.00 - 61.00	0.00	70.00 - 71.00	0.00	80.00 - 81.00	0.00
61.00 - 62.00	0.00	71.00 - 72.00	0.00	81.00 - 82.00	0.00
62.00 - 63.00	0.00	72.00 - 73.00	0.00	82.00 - 83.00	0.00
63.00 - 64.00	0.00	73.00 - 74.00	0.00	83.00 - 84.00	0.00
64.00 - 65.00	0.00	74.00 - 75.00	0.00	84.00 - 85.00	0.00
65.00 - 66.00	0.00	75.00 - 76.00	0.00	85.00 - 86.00	0.00
66.00 - 67.00	0.00	76.00 - 77.00	0.00	86.00 - 87.00	0.00
67.00 - 68.00	0.00	77.00 - 78.00	0.00	87.00 - 88.00	0.00
68.00 - 69.00	0.00	78.00 - 79.00	0.00	88.00 - 89.00	0.00
69.00 - 70.00	0.00	79.00 - 80.00	0.00	89.00 - 90.00	0.00
70.00 - 71.00	0.00	80.00 - 81.00	0.00	90.00 - 91.00	0.00
71.00 - 72.00	0.00	81.00 - 82.00	0.00	91.00 - 92.00	0.00
72.00 - 73.00	0.00	82.00 - 83.00	0.00	92.00 - 93.00	0.00
73.00 - 74.00	0.00	83.00 - 84.00	0.00	93.00 - 94.00	0.00
74.00 - 75.00	0.00	84.00 - 85.00	0.00	94.00 - 95.00	0.00
75.00 - 76.00	0.00	85.00 - 86.00	0.00	95.00 - 96.00	0.00
76.00 - 77.00	0.00	86.00 - 87.00	0.00	96.00 - 97.00	0.00
77.00 - 78.00	0.00	87.00 - 88.00	0.00	97.00 - 98.00	0.00
78.00 - 79.00	0.00	88.00 - 89.00	0.00	98.00 - 99.00	0.00
79.00 - 80.00	0.00	89.00 - 90.00	0.00	99.00 - 100.00	0.00

- EDD posted revised 2012 and 2013 withholding tables in the next week (@ 11/15)
- Additional Prop 30 tax can be paid with the return
- The 1% Mental Health surcharge is in addition to the rates



Extended Returns

- Pay the additional tax with extension
- Or face late payment penalty
 - 5% for first month + 0.5% for each month
 - Higher than federal penalty



Prop 39

- Single sales factor mandated in 2013
- 2012 corporations
 - Elect single sales
 - Use four-factor formula