# Tax News and Industry Updates

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## Standard Mileage Rate

### Cross References

- Rev. Proc. 2010-51
- Notice 2019-02
- Notice 2020-05
- Notice 2021-02

The IRS has released the 2021 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. The following chart reflects the new 2021 standard mileage rates compared to the 2019 and 2020 tax year standard mileage rates.

| | 2021 | 2020 | 2019 |
|---|---|---|---|
| Business rate per mile* | 56.0¢ | 57.5¢ | 58.0¢ |
| Medical and moving rate per mile** | 16.0¢ | 17.0¢ | 20.0¢ |
| Charitable rate per mile | 14.0¢ | 14.0¢ | 14.0¢ |
| Depreciation rate per mile | 26.0¢ | 27.0¢ | 26.0¢ |

* A deduction for unreimbursed employee business travel is suspended for tax years 2018 through 2025, unless the deduction is allowed in determining adjusted gross income, such as members of a reserve component of the Armed Forces, state or local government officials paid on a fee basis, or certain performing artists.

** A deduction for moving expenses is suspended for tax years 2018 through 2025, unless the taxpayer is a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station.

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## FinCEN Regulations on Virtual Currency

### Cross References

- FinCEN RIN 1506-AB47

The Financial Crimes Enforcement Network (FinCEN) is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat domestic and international money laundering, terrorist financing, and other financial crimes, such as tax evasion. The question on line 7a and 7b of the 2020 Schedule B (Form 1040) determines whether the taxpayer is required to file FinCEN Form 114. A willful failure to file FinCEN Form 114 carries a penalty of up to the greater of $100,000 or 50% of the account balance.

FinCEN has recently issued proposed regulations that would require banks and money service businesses to submit reports, keep records, and verify the identity of customers who have transactions involving convertible virtual currency (CVC), or digital assets with legal tender status held in un-hosted wallets, or in wallets hosted in a jurisdiction identified by FinCEN.

According to FinCEN, U.S. authorities have found that CVCs are being used to finance international terrorists, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals. CVCs are also used for ransomware attacks and associated demand for payment.

The proposed regulations seek to establish appropriate controls to protect against such threats. Taxpayers who use cryptocurrency should take note of the new question at the top of the 2020 Form 1040 which asks: "At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?" Answering this question incorrectly could subject the taxpayer to fraud penalties. The proposed FinCEN regulations are designed to make it more difficult for individuals to hide virtual currency transactions from the IRS.

## Identity Protection PIN Opt-In Program

### Cross References

- IR-2020-267, December 2, 2020
- www.irs.gov/ippin

The IRS has announced that starting in January, the Identity Protection PIN Opt-In Program will be expanded to all taxpayers who can properly verify their identities. Taxpayers who want the proactive protection against identity theft are encouraged to opt into the program once it is available in early 2021.

The IP PIN is a six-digit number assigned to eligible taxpayers to help prevent the misuse of their Social Security Number on fraudulent federal income tax returns. An IP PIN helps the IRS verify a taxpayer's identity and accept their electronic or paper tax return. The online Get An IP PIN tool at www.irs.gov/ippin immediately displays the taxpayer's IP PIN.

"When you have this special code, it prevents someone else from filing a tax return with your Social Security Number," said IRS Commissioner Chuck Rettig. "The fastest way to get an Identity Protection PIN is to use our online tool but remember you must pass a rigorous authentication process. We must know that the person asking for the IP PIN is the legitimate taxpayer."

The online tool uses Secure Access authentication which uses several different ways to verify a person's identity. Before using the "Get an IP PIN" tool, the IRS encourages taxpayers to review the requirements at IRS.gov/secureaccess.

For those who cannot pass Secure Access authentication, there are alternatives. Taxpayers with incomes of $72,000 or less and with access to a telephone should complete Form 15227 and mail or fax it to the IRS. An IRS assistor will call the taxpayer to verify their identity with a series of questions. For additional security reasons, taxpayers who pass authentication will receive an IP PIN the following tax year.

Taxpayers who cannot verify their identities remotely or who are ineligible to file a Form 15227 may make an appointment, visit a Taxpayer Assistance Center and bring two forms of picture identification. Because this is an in-person identity verification, an IP PIN will be mailed to the taxpayer within three weeks.

Taxpayers who obtain an IP PIN should never share their code with anyone but their trusted tax provider. The IRS will never call to request the taxpayer's IP PIN, and taxpayers must be alert to potential IP PIN scams.

Here's what taxpayers need to know about the IP PIN before applying.

- The Get an IP PIN tool will be available in mid-January. This is the preferred method of obtaining an IP PIN and the only one that immediately reveals the PIN to the taxpayer.
- Taxpayers who want to voluntarily opt into the IP PIN program do not need to file a Form 14039, Identity Theft Affidavit.
- The IP PIN is valid for one year. Each January, the taxpayer must obtain a newly generated IP PIN.
- The IP PIN must be properly entered on electronic and paper tax returns to avoid rejections and delays.
- Taxpayers with either a Social Security Number or Individual Tax Identification Number who can verify their identities are eligible for the opt-in program.
- Any primary taxpayer (listed first on the return), secondary taxpayer (listed second on the return) or dependent may obtain an IP PIN if they can pass the identity proofing requirements.
- The IRS plans to offer an opt out feature to the IP PIN program in 2022 if taxpayers find it is not right for them.

There is no change in the IP PIN program for confirmed victims of tax-related identity theft. Those taxpayers should still file a Form 14039 if their e-filed tax return rejects because of a duplicate SSN filing. The IRS will investigate their case and once the fraudulent tax return is removed from their account, confirmed victims automatically will receive an IP PIN via postal mail at the start of the next calendar year.

IP PINs will be mailed annually to confirmed victims only and participants enrolled prior to 2019. Because of security risks, confirmed identity theft victims cannot opt out of the IP PIN program. Confirmed victims also can use the Get an IP PIN tool to retrieve lost IP PINs assigned to them.

# Multi-State Taxation and COVID-19

While this scenario may not be common, it is an issue that has been discussed in the tax preparation community in recent weeks. It has to do with COVID-19 telecommuting where the taxpayer lives and works in two different states. The scenario is as follows.

***Example:*** *Brad is domiciled in Wisconsin and lives just across the border from Minnesota. He normally commutes daily into St. Paul, Minnesota to work. Minnesota and Wisconsin do not have reciprocal agreements. Therefore, Brad must pay income tax to Minnesota on his W-2 wages. He then claims a tax credit on his Wisconsin income tax return for income taxes paid to Minnesota. Brad also owns a second home on a lake near Bemidji, Minnesota, where he and his family vacation for several weeks and weekends each year. In March 2020, Brad is informed that he must telecommute for his work rather than drive into his office in St. Paul because of the stay at home orders due to COVID-19. Since Brad can do all of his work via computer from his home office, he and his family decide to travel to his lake home in Bemidji to live and work during the pandemic. Brad spends most of the rest of the year living and telecommuting from Bemidji.*

In general, states will tax a resident's worldwide income. A resident is generally someone who is domiciled in that state. A taxpayer can only be domiciled in one state at a time. If a nonresident earns income in that state, the nonresident is taxed only on his or her income earned in that state. The taxpayer can then claim a tax credit on his or her home state's tax return for taxes paid to the nonresident state.

Many states, such as Minnesota, also have a second residency rule. If the taxpayer owns a home in that state and is physically present in the state for 183 days or more, the taxpayer is considered a resident, even if he or she is domiciled in another state.

Thus, in the example above, if Brad is physically present in his secondary home in Bemidji Minnesota for at least 183 days during 2020, Minnesota will consider Brad to be a resident and tax him on his worldwide income. Wisconsin will also tax Brad on his worldwide income because he is considered domiciled in Wisconsin.

In this scenario, depending upon the states involved and their respective state tax laws on taxing multi-state income, it is possible that a taxpayer could be subject to state income tax in multiple states on the same income.

# Phase 4 COVID-19 Relief Bill

## Cross References

- H.R. 133, Consolidated Appropriations Act, 2021

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which contains $1.4 trillion to fund the federal government through September of 2021, and $900 billion in coronavirus relief. The legislation contains a number of tax provisions related to COVID-19, and a number of other provisions that amend the Internal Revenue Code (IRC). Highlights of the COVID-19 provisions include:

**Additional 2020 recovery rebates for individuals.** The provision provides a refundable tax credit in the amount of $600 per eligible family member. The credit is $600 per taxpayer ($1,200 for Married Filing Jointly), in addition to $600 per qualifying child. The credit phases out starting at $75,000 of modified adjusted gross income ($112,500 for Head of Household and $150,000 for Married Filing Jointly) at a rate of $5 per $100 of additional income.

The provision also provides for Treasury to issue advance payments based on the information on 2019 tax returns. Eligible taxpayers treated as providing returns through the nonfiler portal in the first round of economic impact payments, provided under the CARES Act, will also receive payments. Treasury may issue advance payments for Social Security Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, Railroad Retirement Board beneficiaries, and Veterans Administration beneficiaries who did not file 2019 returns based on information provided by the Social Security Administration, the Railroad Retirement Board, and the Veterans Administration.

In general, taxpayers without an eligible Social Security Number are not eligible for the payment. However, married taxpayers filing jointly where one spouse has a Social Security Number and one spouse does not are eligible for a payment of $600, in addition to $600 per child with a Social Security Number.

The provision aligns the eligibility criteria for the new round of economic impact payments and the credit for the economic impact payments provided by the CARES Act. Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors.

Additionally, the provision instructs Treasury to make payments to the territories that relate to each territory's cost of providing the credits.

**Extension of federal pandemic unemployment compensation.** Restores the federal pandemic unemployment compensation (FPUC) supplement to all state and federal unemployment benefits at $300 per week, starting after December 26 and ending March 14, 2021.

**Extension of certain deferred payroll taxes.** On August 8, 2020, the President of the United States issued a memorandum to allow employers to defer withholding employees' share of Social Security taxes or the railroad retirement tax equivalent from September 1, 2020 through December 31, 2020, and required employers to increase withholding and pay the deferred amounts ratably from wages and compensation paid between January 1, 2021 and April 31, 2021. Beginning on May 1, 2021, penalties and interest on deferred unpaid tax liability will begin to accrue.

The provision extends the repayment period through December 31, 2021. Penalties and interest on deferred unpaid tax liability will not begin to accrue until January 1, 2022.

**Regulations or guidance clarifying application of educator expense tax deduction.** The provision requires the Secretary of the Treasury to issue guidance or regulations providing that personal protective equipment and other supplies used for the prevention of the spread of COVID-19 are treated as eligible expenses for purposes of the educator expense deduction. Such regulations or guidance shall be retroactive to March 12, 2020.

**Clarification of tax treatment of Paycheck Protection Program loans.** The provision clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a Paycheck Protection Program (PPP) loan. This provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. The provision is effective as of the date of enactment of the CARES Act. The provision provides similar treatment for Second Draw PPP loans, effective for tax years ending after the date of enactment of the provision.

**Clarification of tax treatment of certain loan forgiveness and other business financial assistance under the coronavirus relief legislation.** The provision clarifies that gross income does not include forgiveness of certain loans, emergency EIDL grants, and certain loan repayment assistance, each as provided by the CARES Act. The provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the amounts not included in income by this section, and that tax basis and other attributes will not be reduced as a result of those amounts being excluded from gross income. The provision is effective for tax years ending after date of enactment of the CARES Act. The provision provides similar treatment for Targeted EIDL advances and Grants for Shuttered Venue Operators, effective for tax years ending after the date of enactment of the provision.

**Election to waive application of certain modifications to farming losses.** This section allows farmers who elected a two-year net operating loss carryback prior to the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. This section also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver. These clarifications eliminate unnecessary compliance burdens for farmers. The provision applies retroactively as if included in the CARES Act.

**Extension of credits for paid sick and family leave.** The provision extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, through the end of March 2021. It also modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021. This provision is effective as if included in FFCRA.

**Paycheck Protection Program Second Draw Loans.** Creates a second loan from the Paycheck Protection Program, called a "PPP second draw" loan for smaller and harder-hit businesses, with a maximum amount of $2 million.