

# Current Federal Tax Developments

Week of August 12, 2019

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ACCOUNTING  
CONTINUING EDUCATION

CURRENT FEDERAL TAX DEVELOPMENTS  
WEEK OF AUGUST 12, 2019  
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# Current Federal Tax Developments

Kaplan Financial Education

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## **SECTION: STATE TAX**

# **KANSAS ADOPTS REMOTE SELLER RULE WITHOUT ANY DE MINIMUS LEVEL OF SALES**

### **Citation: Kansas Notice 2019-04, 8/1/19**

*Wayfair* related state sales tax developments have continued since the ruling came down last summer, with virtually every state with a sales tax making changes over the past year in how they handle out of state sellers. But the state of Kansas has decided to go where no one else has dared to tread, issuing Notice 19-04, *Sales Tax Requirements for Retailers Doing Business in Kansas*.<sup>1</sup>

As you read the document you'll note one key item is missing—the minimum amount of sales (either in dollar volume or number of transactions) necessary to trigger the need to register and collect Kansas sales tax. That is because, in the view of the Kansas Department of Revenue, any amount of sales into Kansas is enough to trigger the requirement to collect and pay over the tax.

In an article published by Bloomberg Tax, Kathleen Smith, the director of research and analysis at the Kansas Department of Revenue is quoted as stating that the law in Kansas does not support a minimum sales threshold. The article states:

“If the legislature wants to, they can go ahead and put it in there, but based on the law we have, we believe we have the ability to collect taxes on all transactions,” Smith said. For example, if a retailer had a single transaction for \$10 to a buyer in the state, that retailer would have to get licensed and remit sales taxes on that singular sale, she said.<sup>2</sup>

The article notes that the Kansas legislature had passed a bill this past session that would have set a \$100,000 threshold, the same level as South Dakota, but the governor had vetoed that bill.<sup>3</sup>

The Notice requires remote sellers not already registered with the state of Kansas to do so by October 1, 2019 and begin collecting the tax no later than that date. The state

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<sup>1</sup> <https://www.ksrevenue.org/taxnotices/notice19-04.pdf>, August 1, 2019, retrieved August 2, 2019

<sup>2</sup> Tripp Baltz, “Kansas Only State Making Small Businesses Pay Remote Sales Tax,” *Bloomberg Tax Daily Tax Report* website, August 1, 2019, <https://news.bloombergtax.com/daily-tax-report/kansas-only-state-making-small-businesses-pay-remote-sales-tax>, retrieved August 2, 2019

<sup>3</sup> *Ibid*

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will not enforce the collection requirements for sales made into Kansas prior to October 1, 2019.<sup>4</sup>

Whether Kansas will be able to enforce this standard is not clear. The Supreme Court specifically noted that South Dakota's law had features to prevent discrimination against or undue burdens on interstate commerce, the first one noted being "a safe harbor to those who transact only limited business in South Dakota."<sup>5</sup>

Of course, very few states have in place the exact set of protections that the Court commented positively on in the *Wayfair* decision. For instance, a large number of states, and most of the largest ones, are not members of the Streamlined Sales and Use Tax Agreement (SSUTA), but those states are arguing that *Wayfair* clears the way for them to impose the collection obligation on the states.

Note that Kansas *is* a full SSUTA member state. The state may be reasoning that, based on the actions of non-SSUTA states seeking to impose collection obligations, that something less than the complete South Dakota list of protections will be enough to avoid having the rule barred as imposing too great a burden on interstate commerce. And, certainly, there has not been any case law interpreting in detail what options other than the South Dakota law would serve as adequate protection.

So, Dorothy, while you and Toto may not be in Kansas anymore, the state still wants you to register to collect sales tax.

### **SECTION: 32 DISALLOWANCE OF EITC ON 1 OF 3 CHILDREN CLAIMED ON RETURN ENOUGH TO TRIGGER 2 YEAR BAN FOR CLAIMING ANY EITC**

#### **Citation: Emailed Chief Counsel Advice 201931008, 8/2/19**

The issue of the reach of the ban on claiming the earned income tax credit when a taxpayer knowingly claims a dependent he/she is not allowed to claim is discussed in an emailed chief counsel advice (CCA 201931008).<sup>6</sup>

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<sup>4</sup> Notice 2019-04, p. 1

<sup>5</sup> *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (US Supreme Court, 2018), [https://www.supremecourt.gov/opinions/17pdf/17-494\\_j4el.pdf](https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf), p. 23, retrieved August 2, 2019

<sup>6</sup> <https://www.irs.gov/pub/irs-wd/201931008.pdf>, August 2, 2019, retrieved August 4, 2019

IRC §32(k)(1) provides:

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general

No credit shall be allowed under this section for any taxable year in the disallowance period.

(B) Disallowance period

For purposes of paragraph (1), the disallowance period is—

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

In the situation being addressed in the email, a taxpayer had claimed 3 children on his/her return. It was determined that one of the children was improperly claimed as a dependent, resulting in a downward adjustment of the earned income tax credit. Even though the taxpayer knows he/she is not eligible to claim the child as a dependent, the taxpayer continues to claim the child on subsequent returns. The taxpayer is otherwise entitled to a lesser earned income tax credit each based on the other two children.<sup>7</sup>

The question posed was whether the taxpayer was subject to the two year ban on the entire credit even though they would be properly allowed a credit with regard to the other two children? The memorandum holds that they are faced with a two-year ban on claiming any earned income tax credit, including the amounts available on the two children they had properly claimed on the tax return.<sup>8</sup>

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<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

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The memorandum finds that claiming the child when the taxpayer was aware this was improper amounts to “reckless or intentional disregard of rules and regulations” with regard to the credit. The memorandum concludes the full ban is appropriate, noting:

Section 32(k)(1)(B)(ii), regarding the 2-year ban for reckless or intentional disregard of rules and regulations, does not prohibit imposition of the ban for partial disallowances. Accordingly, if any taxpayer's claim for the EIC is partially disallowed because of reckless or intentional disregard of rules and regulations, the IRS may asset the 2-year ban under § 32(k)(1)(B)(ii) on the taxpayer claiming any EIC during the 2 years.<sup>9</sup>

### **SECTION: 6651 EVEN UNDER E-FILING, TAXPAYER CANNOT REASONABLY RELY ON PREPARER TO ESCAPE LATE FILING PENALTIES**

#### **Citation: *Intress v. United States*, US DC Middle District Tennessee, Case No. 3:18-cv-00851, 8/2/19**

The Fifth Circuit in March 2019 raised, but did not answer, the question of whether it was still appropriate to hold that taxpayers could not reasonably rely on a return preparer for timely filing of a return in the age of electronic filing.<sup>10</sup> A U.S. District in Court in Tennessee decided that, since taxpayers could prepare their own paper return or obtain paper returns from the preparer, the prior rule should continue to apply.<sup>11</sup> The Court also held that the taxpayer could not seek first-time abatement (FTA) relief in Court—rather, that is fully under the IRS's control.

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<sup>9</sup> *Ibid*

<sup>10</sup> Ed Zollars, “Fifth Circuit Remands Case for Determination if CPA Was Negligent in Not Determining Efiled Tax Return Had Not Been Accepted,” *Current Federal Tax Developments* website, March 31, 2019, <https://www.currentfederaltaxdevelopments.com/blog/2019/3/31/fifth-circuit-remands-case-for-determination-if-cpa-was-negligent-in-not-determining-efiled-tax-return-had-not-been-accepted>, retrieved August 7, 2019

<sup>11</sup> *Intress v. United States*, US DC Middle District Tennessee, Case No. 3:18-cv-00851, August 2, 2019, <https://ecf.tnmd.uscourts.gov/doc1/16914318358>, retrieved August 7, 2019 from Pacer (registration required)



The US Supreme Court held in the *Boyle* case<sup>12</sup> that a taxpayer could not establish reasonable cause for failing to file a tax return by claiming he/she relied upon a tax preparer to timely file the return. The Court found that the duty required no special knowledge or skill to file a return (a trip to the Post Office or local IRS office) and, as such, could not be delegated to a third party—the taxpayer had a duty to insure the third party actually took the desired action.

In the case of *Haynes v. United States*,<sup>13</sup> the Fifth Circuit indicated that in the age of electronic filing it was possible that the *Boyle* standard no longer applied, and that it was possible a taxpayer could show reasonable care should a return failed to be filed electronically if the agent had acted reasonably. But the opinion stopped short of finding that was the case, sending the matter back to the District Court to look into the issue as was noted in the earlier discussion of that case when it came out on the Current Federal Tax Developments website.<sup>14</sup>

In this case before the U.S. District Court in Tennessee, a married couple had engaged a preparer to obtain an extension of time to file their 2014 income tax return, as they were out of the country when the filing deadline arrived. The preparer obtained the necessary information from the taxpayers and prepared an electronic Form 4868 to obtain the extension. She then got the document ready to be sent out for electronic filing, but failed to actually take the necessary step to transmit the extension request to the IRS, though she believed she had done so.<sup>15</sup>

Six months later, at the extended due date, the error was discovered. The IRS assessed the taxpayers over \$120,000 in late filing penalties. The taxpayers exhausted all appeals, insisting the failure to timely file was not their fault, but the IRS refused to budge on the penalty. The taxpayers paid the penalty, filed a claim for refund of the penalty (which was denied), and then filed suit in U.S. District Court.<sup>16</sup>

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<sup>12</sup> *United States v. Boyle*, 469 U.S. 241 (1985)

<sup>13</sup> *Haynes v. United States*, CA5, Case No. 17-50816, (2019)

<sup>14</sup> Ed Zollars, “Fifth Circuit Remands Case for Determination if CPA Was Negligent in Not Determining Efiled Tax Return Had Not Been Accepted,” *Current Federal Tax Developments* website, March 31, 2019, <https://www.currentfederaltaxdevelopments.com/blog/2019/3/31/fifth-circuit-remands-case-for-determination-if-cpa-was-negligent-in-not-determining-efiled-tax-return-had-not-been-accepted>, retrieved August 7, 2019

<sup>15</sup> *Intress v. United States*, US DC Middle District Tennessee, Case No. 3:18-cv-00851, August 2, 2019, <https://ecf.tnmd.uscourts.gov/doc1/16914318358>, retrieved August 7, 2019 from Pacer (registration required), p. 2

<sup>16</sup> *Ibid*

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The taxpayers argued that they had reasonable cause as defined in IRC §6651(a)(1) for their failure to file the return, arguing that the Supreme Court’s reasoning in *Boyle* no longer should apply in the age of electronic filing.<sup>17</sup>

The Court noted that the issue of whether *Boyle* continued to apply for electronic filing had not yet been decided in a case:

Plaintiffs’ contention that *Boyle* does not govern electronic tax returns presents a novel legal question — one not previously addressed squarely by the federal courts. See *Haynes v. United States*, 760 F. App’x 324, 326 (5th Cir. 2019) (identifying e-filing question as unresolved before declining to address it); Nat’l Taxpayer Advoc., Fiscal Year 2018 Ann. Rep. to Congress, Most Litigated Issues at 514 (2019) (noting *Haynes* leaves open possibility of e-filing exception to *Boyle*). While the Court ultimately agrees with Defendant’s position that *Boyle* applies here, and thus prohibits a finding of reasonable cause in this case, that conclusion is neither axiomatic nor self-evident, and is worthy of analysis.

The Court determines that while most return *preparers* may be required to electronically file a tax return prepared for a client if certain exceptions are not met, nothing requires the *taxpayer* to electronically file a return. The Court notes that a taxpayer is not required to use a professional preparer (they could prepare their own return) and, even if the taxpayer does so, Rev. Proc. 2011-25 allows the taxpayer to request that the preparer prepare a return in paper form for filing.<sup>18</sup>

The Court concludes:

Because the same filing options that existed in 1985 (mailing a personally or professionally prepared return) still exist, there is no reason to believe the standard of “ordinary business care and prudence” regarding tax filing has shifted as Plaintiffs suggest. See (Doc. No. 18 at 4). Just as in 1985, “reliance by a lay person on an [agent] is of course common; but that reliance cannot function as a substitute for compliance with an unambiguous statute,” *Boyle*, 469 U.S. at 251.<sup>19</sup>

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<sup>17</sup> *Ibid*, pp. 2-3

<sup>18</sup> *Ibid*, pp. 6-7

<sup>19</sup> *Ibid*, pp. 7-8

The Court notes that if things change, and the use of the methods available in 1985 is no longer a possible or reasonable option, it might be time to revisit *Boyle*—but that time is not now:

This is not to say the Court is blind to the trend towards e-filing and the difficulty that it could pose to Boyle’s application going forward. Plaintiffs’ theory will be much more plausible if and when the IRS requires all returns to be e-filed or paper filing process becomes so cumbersome as to transcend “ordinary business care and prudence.” At that point, the average taxpayer would be similarly situated to the taxpayer with disabilities in that reliance on an agent or intermediary for transmission of the electronic return would be required. But as of now, Count I fails to state a claim for relief.<sup>20</sup>

Some may wonder why first-time abatement didn’t work? The taxpayers argued they should have been eligible for that even if *Boyle* applied, but the Court did not look into that area, as it is simply something found in an administrative policy guide of the IRS, agreeing with the IRS that the taxpayers could not take that issue to Court:

Additionally, Defendant is correct that the Internal Revenue Manual, as a policy guide to a governmental agency, does not entitle a taxpayer to judicial relief. See, e.g., (Doc. No. 25 at 3-4); *Valen Mfg. Co. v. United States*, 90 F.3d 1190, 1194 (6<sup>th</sup> Cir. 1996). Indeed, the case Plaintiffs cite for support also stands for this proposition. See *Laidlaw v. Comm’r of Internal Revenue*, 114 T.C.M. (CCH) 243 (T.C. 2017). There, the Tax Court agreed with the respondent that “first-time abatement procedures are a form of administrative, not judicial, relief.” *Id.* at 6, 8. The Internal Revenue Manual itself, in the first line describing the First Time Abate program, states “the IRS provides administrative relief from the following penalties . . .” IRM (emphasis added) 20.1.1.3.3.2.1 (11-21-2017). The proper forum for alleging improper application of IRS policy is with the IRS — not a court of law.<sup>21</sup>

We don’t know why the IRS had denied FTA relief—or, frankly, if FTA had even been requested by the taxpayers. The Court decided whatever the facts were, it was not a matter for the Court to look into. First-time abatement (FTA) is governed by Internal Revenue Manual 20.1.1.3.3.2.1 (11-21-2017)<sup>22</sup> and is available for qualifying taxpayers for relief from the following penalties:

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<sup>20</sup> *Ibid*, p. 9

<sup>21</sup> *Ibid*, p. 11

<sup>22</sup> [https://www.irs.gov/irm/part20/irm\\_20-001-001r#idm140198826274112](https://www.irs.gov/irm/part20/irm_20-001-001r#idm140198826274112), retrieved August 7, 2019

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- Failure to file penalties under IRC §§6651(a)(1), 6698(a)(1) or 6699(a)(1);
- Failure to pay penalties under IRC §§6651(a)(2) and/or 6651(a)(3); and
- Failure to deposit penalties under IRC §6656.<sup>23</sup>

Generally, the taxpayer must also meet the following criteria:

- Have filed or filed for an extension of time to file all outstanding returns<sup>24</sup> (and cannot have a request to file a return outstanding from the IRS that has not been withdrawn);
- Have paid or made arrangements to pay (including via an installment agreement) all tax due;<sup>25</sup> and
- Has no penalties (aside from an estimated tax penalty) for the prior 3 years.<sup>26</sup>

Additional criteria and details with regard to the penalty can be found in the IRM 20.1.1.3.3.2.1. The AICPA also has a website article on the topic that was written August of 2018 that may be of use to practitioners not familiar with the program.<sup>27</sup> AICPA Tax Section members are able to access a sample penalty abatement letter from that page as well.<sup>28</sup>

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<sup>23</sup> IRM 20.1.1.3.3.2.1, Section 1

<sup>24</sup> IRM 20.1.1.3.3.2.1, Section 2.a

<sup>25</sup> IRM 20.1.1.3.3.2.1, Section 2.b

<sup>26</sup> IRM 20.1.1.3.3.2.1, Section 4

<sup>27</sup> “IRS First-Time Penalty Abatement,” AICPA website, August 2, 2018, <https://www.aicpa.org/interestareas/tax/resources/irsprocedureadministration/irspenaltyabatement.html>, retrieved August 7, 2019

<sup>28</sup>

<https://www.aicpa.org/content/dam/aicpa/interestareas/tax/resources/irsprocedureadministration/downloadabledocuments/irs-letter-to-request-first-time-penalty-abatement.docx?contentType=secured>, retrieved August 7, 2019 (AICPA Tax Section membership required)

## SECTION: 6654

# NEW ONLINE TAX WITHHOLDING ESTIMATOR RELEASED BY IRS

### Citation: IR-2019-139, 8/6/19

The IRS in a news release announced the release of a new online tax withholding estimator, replacing the previous withholding calculator.<sup>29</sup> The new calculator, found at <https://apps.irs.gov/app/tax-withholding-estimator>, is designed to be both simpler to use and mobile friendly (that is, easier to use on smart phones).

7:31 WSJ 94%

apps.irs.gov/app/tax-withholding-est

An official website of the United States government

IRS MENU

### Tax Withholding Estimator

Use your best estimates for the year ahead to determine how to complete Form W-4 so you don't have too much or too little federal income tax withheld.

1 2 3 4 5 6

#### About You

Select the information that best describes how you anticipate filing your 2019 tax return.

#### 1 of 5: Filing Status

What filing status will you use for your tax return?  
(\*Required)

Single

Married filing jointly

Married filing separately

Feedback

The news release describes the improvements to the calculator as follows:

The IRS took the feedback and concerns of taxpayers and tax professionals to develop the Tax Withholding Estimator, which offers a variety of new user-friendly features including:

- Plain language throughout the tool to improve comprehension.

<sup>29</sup> IR-2019-139, August 6, 2019, retrieved August 8, 2019

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- The ability to more effectively target at the time of filing either a tax due amount close to zero or a refund amount.
- A new progress tracker to help users see how much more information they need to input.
- The ability to move back and forth through the steps, correct previous entries and skip questions that don't apply.
- Enhanced tips and links to help the user quickly determine if they qualify for various tax credits and deductions.
- Self-employment tax for a user who has self-employment income in addition to wages or pensions.
- Automatic calculation of the taxable portion of any Social Security benefits.
- A mobile-friendly design.

In addition, the new Tax Withholding Estimator makes it easier to enter wages and withholding for each job held by the taxpayer and their spouse, as well as separately entering pensions and other sources of income. At the end of the process, the tool makes specific withholding recommendations for each job and each spouse and clearly explains what the taxpayer should do next.<sup>30</sup>

The IRS also offers an infographic outlining the steps a taxpayer is take to use the online tool.<sup>31</sup>

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<sup>30</sup> *Ibid*

<sup>31</sup> <https://www.irs.gov/pub/irs-utl/tax-withholding-estimator-infographic.pdf>, August 6, 2019, retrieved August 8, 2019

**SECTION: 7602**  
**INTERIM REVISED NOTICE OF INTENT TO CONTACT**  
**THIRD-PARTIES PROCEDURES ISSUED BY IRS**

**Citation: SBSE-04-0719-0034, 8/5/19**

The Self-Employed/Small Business (SBSE) Division of the IRS has a memorandum outlining revised procedures for third party contact in SBSE-04-0719-0034.<sup>32</sup> The revised procedures reflect changes made to IRC §7602(c)(1) by the Taxpayer First Act of 2019.

IRC §7602(c)(1), both before and after amendment, required the IRS to provide notice to the taxpayer prior to contacting third parties. The IRS had taken the position, noted in the Internal Revenue Manual at IRM 25.27, *Third Party Contacts*, that providing the taxpayer with Publication 1, *Your Rights as a Taxpayer*, was sufficient notice under the prior law.

The IRS's position had come into question before the passage of the revisions found in the Taxpayer First Act. In the case of *J.B.; P.B. v. United States of America*, No. 16-15999, CA9, the provision of Publication 1 at the beginning of the examination was found to be inadequate under the prior law §7602(c)(1) for contact well after the beginning of the dispute with the IRS.<sup>33</sup>

Congress decided to provide more detailed and specific requirements for IRS notice of intent to contact third parties, and these new rules were found in the Act signed into law July 1, 2019. The new law takes effect on August 15, 2019.

In preparation for this effective date, the SBSE memorandum reminds IRS employees that, effective August 15, 2019, Publication 1 will no longer satisfy the notice

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<sup>32</sup> SBSE-04-0719-0034, <https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0719-0034.pdf>, August 5, 2019 (public release date), retrieved August 6, 2019

<sup>33</sup> Ed Zollars, "IRS Failed to Give Adequate Notice for Contacting a Third Party in Exam When Only Publication 1 Was Provided," *Current Federal Tax Developments* website, February 28, 2019, <https://www.currentfederaltaxdevelopments.com/blog/2019/2/28/irs-failed-to-give-adequate-notice-for-contacting-a-third-party-in-exam-when-only-publication-1-was-provided>, retrieved August 6, 2019

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requirements in the law.<sup>34</sup> The memo summarizes the new provisions in the law as follows:

*The Code now requires that IRS:*

- *issue advance notice of third-party contacts,*
- *intend, at the time such notice is issued, to contact third parties (the notice must state this intent),*
- *specify in the notice the time period, not to exceed one year, within which IRS intends to make the third-party contact(s), and*
- *send the notice at least 45 days before contact with a third party.*<sup>35</sup>

A notice meeting the revised requirements must be issued in any case involving third-party contact after August 15, 2019 and IRS employees may not contact any third-party until the 46<sup>th</sup> day following the issuance of the notice.<sup>36</sup>

The memorandum provides the following details on the revised notices:

The notice must also include the tax period(s) at issue. Employees may reissue notices yearly, if necessary. The current notices (e.g., Letter 3164 series and Letter 3404C) will be updated to add reference to the applicable tax period(s) and effective contact period. Until the appropriate use letter is updated, a manual edit must be made to include the tax period (heading of letter) and contact period (paragraph 3 of the body) in the letter (L3164 examples attached).<sup>37</sup>

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<sup>34</sup> SBSE-04-0719-0034, <https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0719-0034.pdf>, August 5, 2019 (public release date), retrieved August 6, 2019, p. 2


<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*



The example letters from the Letter 3164 series show the edits highlighted on the page.



**Department of the Treasury**  
**Internal Revenue Service**  
**[Operating Division / Program Name]**  
 [Address line 1]  
 [Address line 2]  
 [Address line 3]

Attachment 2 Interim Guidance: SBSE-04-0719-0034

Date:  
07/15/2019

Taxpayer ID number (last 4 digits):

**Tax forms:**

**Tax periods:**

**Person to contact:**  
 Name:  
 ID number:  
 Telephone:  
 Fax:  
 Hours:

[Recipient name]  
 [Address line 1]  
 [Address line 2]  
 [Address line 3]

Dear [Name]:

We received information indicating you may be responsible for the unpaid trust fund tax for the business named below. We encourage you to contact us if you have information that would help us determine your personal liability.

**Business name:** [Business name]

The business hasn't paid its employment taxes. A portion of the owed amount relates to trust fund taxes. We're initiating an investigation to determine who may be personally responsible for the unpaid trust fund portion of the total unpaid employment tax.

We'll continue to correspond with you or your authorized representative on this issue. However, we sometimes talk with other persons if we need information that you can't provide or verify information we've received.

We're writing to tell you we intend to contact other persons such as a neighbor, a bank, an employer, or employees. When we contact other persons, we generally need to tell them limited information, such as your name.

The law prohibits us from disclosing more information than is necessary to obtain or verify the information we're seeking. We will make contact beginning 45 days from the date of this letter, on [fill in beginning date], and ending one year later, on [fill in ending date]. You have a right to request a list of those contacted. You can make your request by telephone, in writing, or during a personal interview.

We've included Publication 1, Your Rights as a Taxpayer. The publication describes the Taxpayer Bill of Rights and the processes for examination, appeal, collection, and refunds.

If you have questions about this letter or want to request a list of the other people we've contacted, you can contact the person at the top of this letter. If you write, include the person to contact name and the employee ID number shown above.

Sincerely,

[Name]  
[Title]

Enclosure: Publication 1

**Letter 3164-A (Rev. XX-2019)**  
Catalog Number 73226K



Department of the Treasury  
Internal Revenue Service  
[Operating Division / Program Name]

[Address line 1]  
[Address line 2]  
[Address line 3]

[Recipient name]  
[Address line 1]  
[Address line 2]  
[Address line 3]

Attachment 3 Interim Guidance: SBSE-04-0719-0034

Date:  
07/15/2019  
Taxpayer ID number (last 4 digits):

Tax forms:

Tax periods:

Person to contact:  
Name:  
ID number:  
Telephone:  
Fax:  
Hours:

Dear [Name]:

We're attempting to get **unfiled returns from you**. You should know about this from our previous contacts with you.

Generally, the IRS will deal directly with you or your duly authorized representative. However, we sometimes talk with other persons if we need information that you've been unable to provide, or to verify information we've received.

We're writing to tell you **we intend** to contact other persons such as a neighbor, a bank, an employer, or employees. When we contact other persons, we generally need to tell them limited information, such as your name.

The law prohibits us from disclosing more information than is necessary to obtain or verify the information we're seeking. **We will make contact beginning 45 days from the date of this letter, on [fill in beginning date], and ending one year later, on [fill in ending date].** You have a right to request a list of those contacted. You can make your request by telephone, in writing, or during a personal interview.

The Taxpayer Bill of Rights describes ten basic rights that all taxpayers have when dealing with the IRS. To help you understand what these rights mean to you and how they apply, visit our website at [www.irs.gov/tbor](http://www.irs.gov/tbor).

If you have questions about this letter or want to request a list of the other people we've contacted, you can contact the person at the top of this letter. If you write, include the person to contact name and the employee ID number shown above.

Sincerely,

[Name]  
[Title]

Enclosure: Publication 1

Letter 3164-X (Rev. XX-2019)  
Catalog Number 72744B

Within a year the IRS plans to update the Internal Revenue Manual to incorporate the new procedures.<sup>38</sup> The memorandum will govern IRS employees on this issue until the IRM is updated.<sup>39</sup>

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<sup>38</sup> *Ibid*, p. 2

<sup>39</sup> *Ibid*, p. 1