

**2015**

**ANNUAL CHILD SUPPORT  
TRAINING CONFERENCE & EXPO**

**The Self-Employed Parent  
Part 2: Analyzing Income  
Information (Digging Deeper)**

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CHILD SUPPORT DIRECTORS ASSOCIATION OF CALIFORNIA

## **Table of State Authorities**

### **Statutes**

CRC Rule 5.260

CCP § 1987(b) – (Notice to Appear and Produce)

CCP § 2031 (Inspection Demand)

CCP § 202.510 (Deposition Subpoena)

Evidence Code §§ 410-413

Family Code § 3552

Family Code § 4058

Family Code § 4059

## Cases

*IRMO Loh* (2001) 93 Cal.App.4th 325, 112 Cal.Rptr. 2d 893.

*IRMO Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28.

*In re Marriage of Destein* (2001) 91 Cal. App. 4th 1385.

*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070

*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626

*In re Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361

*IRMO Norvall* (1987) 192 Cal. App. 3d 1047, 237 Cal. Rptr. 770

*IRMO Haggard* (1995) 38 Cal.App.4th 1566

*IRMO Kepley* (1987) 193 Cal. App. 3d 946, 238 Cal. Rptr. 691.

*Marriage of McQuoid* (1991) 9 Cal.App.4th 1353, 1357-1358, 12 Cal.Rptr.2d 737, 738.

*Asfaw v. Woldbehan* (2007) 147 Cal.App.4th 1407, 55 Cal.Rptr.3d 323

*Stewart v. Gomez* (1996) 47 Cal.App.4th 1748, 55 Cal.Rptr.2d 531,

*County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847, 851, 57 Cal.Rptr.2d 902, 904

## Useful CSE Formsets

FS-SUBP-002	Subpoena Civil Subpoena (Duces Tecum) For Personal Appearance And Production Of Documents And Things At Trial
FS-SUBP-010	Subpoena Subpoena - Deposition Business Records
FS-SUBP-015	Subpoena Deposition Subpoena (For Personal Appearance)
FS-SUBP-020	Subpoena Deposition Subpoena (Personal Appearance/Production Of Documents And Things)
FS-OMB-0970-0152	Administrative Subpoena

# Glossary of IRS Terms

**Actual Tax Exemptions** – the taxpayer, spouse and dependents. Often confusion arises needlessly where participants believe their W-4 filing controls. An exemption is not the same as a deduction.

**Adjusted Gross Income (AGI)** - generally line 37 of your personal income tax return. Above-the-line adjustments are subtracted from your income to arrive at AGI: IRA deduction, alimony, self-employed health insurance, etc.

**Alternative Minimum Tax (AMT)** – sometimes one simply makes too much and loses their tax preferences and are further rewarded with an additional tax obligation.

**Carryover & Carryback Losses** – net operating losses which your other income may be carried back 2 – 3 years or carried forward up to 20 years.

**CODI** – cancellation of indebtedness income.

**Credits** – tax credits for items such as child care and residential energy

**Earned Income** – your paid income or income from your farm or business

**“Floor”** – a term typically used regarding itemized deductions includes the 10% medical floor and the 2% floor for job expenses. Essentially, these deductions do not even start until you have reached a certain percentage of AGI.

**Gains** – typically means a sale and may be long or short term. The basic formula: sale price less basis (purchase price plus capital improvements) equals gain

**Itemized or Standard.** – Schedule A or a standard deduction is allowed by the IRS

**Passive Activities** – typically rentals where your participation is less than active resulting in passive income or passive losses (which are subject to certain limitations)

**Passive Losses** – losses from passive activities such as rentals which are limited

**Passive Loss Carryover** – passive activity losses which exceed the passive activity loss amount may be carried forward; but, only offset against passive activity gains.

**Qualified** – the IRS loves the term “qualified,” and will ring a bell as to items such as a qualified child to a qualified pension plan.

**Regular Losses** – apparent loss from your business or farm

**Statutory Employee** – self-employed workers subject to mandatory social security and medicare withholding by statute.

**Tax “Preferences”** - deductions such as mortgage interest fall into the category of preferences and may be phased out at certain income levels.

**Unearned Income** – income from UIB, retirement, SSA, rentals, interest investments...

## Internal Revenue Case Law

### Case Law for Using Statistical Data

1. In Miller v. Commissioner, T.C.M. 1993-121, the taxpayer filed tax returns for 1982-1985, but they contained virtually no information other than his name, address, occupation, filing status, and the number of exemptions claimed. The various line items on the returns either stated "none" or were footed to statements containing specific objections based upon amendments to the United States constitution. The taxpayer signed the returns, but added a disclaimer. The taxpayer was totally uncooperative during the audit and did not provide books or records. Bank records were used to reconstruct the taxpayer's business receipts and expenses. Because the bank records reflected virtually no personal expenditures, BLS cost-of-living data was used to determine income attributable to some other untraced source from which personal expenses were paid in addition to the reconstructed gross business receipts. The Court sustained the use of BLS data under these circumstances, except where the BLS figures appeared to be duplications of expenses paid from the bank accounts.
2. In Portillo v. Commissioner, 932 F.2d 1128 (5th Cir. 1991), the examiner relied upon a filed Form 1099 to determine that a taxpayer had additional unreported income. The taxpayer agreed he had additional income, but not the amount reported on the Form 1099. Ultimately, the filer of the Form 1099 was only able to document the portion of additional income with which the taxpayer agreed. The statutory notice of deficiency reflected the entire amount shown on the Form 1099. The Court found that the notice of deficiency was arbitrary because it merely matched the taxpayer's return with the Form 1099, assuming the taxpayer's return was false and the Form 1099 was correct. In such circumstances, the Service is obligated to investigate.

3. In Senter v. Commissioner, T.C.M. 1995-311, the taxpayer failed to provide requested information or appear for scheduled meetings. The taxpayer's correspondence with the examiner raised "protestor" type arguments. The taxpayer did not comply with, and objected to, administrative summonses, but the examiner did not seek enforcement. The notice of deficiency reflected unreported income determined using prior year reported earnings adjusted by the Consumer Price Index (CPI). The Court held this determination of unreported income to be arbitrary and erroneous. Some predicate (preexisting) evidence establishing income was necessary to support a determination of unreported income.

## **Cited Internal Revenue Procedural Rules**

### Rev. Proc. 2015-13 – General Description

This revenue procedure updates and revises the general procedures under § 446(e) of the Internal Revenue Code and § 1.446-1(e) of the Income Tax Regulations to obtain the consent of the Commissioner of Internal Revenue (Commissioner) to change a method of accounting for federal income tax purposes. Specifically, this revenue procedure provides the general procedures to obtain the advance (non-automatic) consent of the Commissioner to change a method of accounting and provides the procedures to obtain the automatic consent of the Commissioner to change a method of accounting described in Rev. Proc. 2015-14, 2015-5 I.R.B. 450, (or successor) (List of Automatic Changes).

### Rev. Proc. 2015-14 – General Description

This revenue procedure provides the List of Automatic Changes to which the automatic change procedures in Rev. Proc. 2015-13, 2015-5 I.R.B. 419, (or successor) apply. The definitions in section 3 of Rev. Proc. 2015-13 apply to this revenue procedure.

# Federal Statutory Authority

42 USC § 666

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(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

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## Websites

<http://bizstats.com/industry-financials.php>

[http://californiasbdc.org/checklist for starting a business](http://californiasbdc.org/checklist_for_starting_a_business)

<http://www.labormarketinfo.edd.ca.gov/>

[http://www.irs.gov/irm/part4/irm\\_04-010-004-cont01.html](http://www.irs.gov/irm/part4/irm_04-010-004-cont01.html)