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501 WEST BROADWAY, SUITE 700
SAN DIEGO, CALIFORNIA 92101-3563
TELEPHONE: (619) 239-7777
FAX NUMBER: (619) 238-8808

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## Will Californians Soon Have a "Right to Die With Dignity"?

By DeEtte L. Loeffler, J.D., L.LM

Senate Bill 128, the End of Life Option Act introduced in January, would allow terminally ill patients the right to choose to end their own lives. The bill was introduced in the California legislature by Sen. Lois Wolk, D-Davis, and Sen. Bill Monning, D-Carmel after the highly publicized case of Brittany Maynard, a former San Francisco resident who moved to Oregon in 2014 in order to be allowed to end her own life. California law currently treats assisted suicide as felony manslaughter. Ms. Maynard argued online that she should not have had to move in order to have this right. At this time, assisted suicide is legal in 5 states.

Californians currently have the right to make their wishes known regarding end-of-life care through the use of an Advance Health Care Directive (which is generally prepared with the assistance of an estate planning attorney). In addition, seriously ill Californians may provide guidance directly to treating physicians (and other para-medical professionals) through the completion of a POLST ("Physicians Order for Life Sustaining Treatment") form. The POLST, which must be completed in consultation with a treating physician who must also sign the form, allows the patient to state preferences relating to such extraordinary measures as the use a ventilator, feeding tube or CPR. A POLST form could, for example, be used by a surviving spouse to prevent paramedics from performing CPR on an elderly person who died at home.

The proposed End of Life Option Act would permit doctors to prescribe lethal medication to terminally ill patients, but would require the patient to administer the medication him or herself. Unlike Oregon's law, pharmacists as well as doctors would be given immunity from prosecution if they provide such medications. Under the proposed bill, individuals would only be able to obtain lethal prescriptions if two physicians determine the patient has only six months to live, is mentally competent, and the patient makes both a written request and two oral requests to a physician at least 15 days apart. The legislation also includes a required form be used for the written request. Other safeguards in the bill include requiring physicians to discuss alternatives with the patient, including palliative or hospice care.

SB 128 is opposed by organizations for the disabled and by the Catholic Church, which organizations are concerned the legislation would result in abuses of the poor, disabled and elderly. The bill was approved by the Senate Health Committee on March 25, 2015, and will now proceed to the Senate Judiciary Committee for review.

**IRS Releases Top 12 Tax Scams for 2015**

By DeEtte L. Loeffler, J.D., LL.M. Taxation

The IRS released its annual "Dirty Dozen" tax scams. This year's list includes a few perennial favorites (like #12, tax protestors), along with a few new ones to watch out for. Remember, if something sounds too good to be true or feels "off," get a second opinion before you do it.

1. Tax Return Preparer Fraud. Each spring, temporary tax preparation businesses prepare individual and small business income tax returns. Some of these preparers lack the necessary training and experience to provide these services, while others are simply dishonest. With the new tax rules such as those for Obamacare, it is very important verify your preparer is qualified. Ask to see his or her qualifications and 2015 PTIN number showing current registration with the IRS. CPAs, enrolled agents, and attorneys are qualified. For a list or registered tax return preparers, go to the IRS website at:
http://www.irs.gov/Tax-Professionals/Choosing-a-Tax-Professional

2. Inflated Refund Claims. Dishonest tax return preparers may use your identity to file inflated claims for tax refunds. Such return preparers often ask taxpayers to sign blank tax forms ("for their convenience"), or promise large refunds before even looking at a taxpayer's data. Never sign a blank document. Always review your tax documents carefully and ask questions about the income and deductions listed on them if you do not recognize something listed. Also, always use a reputable tax return preparer.

3. Identity Theft. This continues to be a major concern to the IRS and to taxpayers. The IRS recommends checking your social security report annually to verify no additional income has been reported against your account. Also, safeguard your identity by not sending your social security or other tax information through e-mail or giving it over a non-secure phone (such as a cell phone) and by hiring a reputable tax return preparer.

4. Phishing. Another repeat concern is "Phishing." Scammers send e-mail, mail, or other inquiries to a taxpayer in an attempt to trick the taxpayer into revealing key personal information, such as bank account numbers, passwords, social security numbers, or birthdates. These e-mails may claim to be from the IRS and concern an unexpected tax bill or refund. Never click on a link in an e-mail from someone you do not know and trust completely. The IRS never communicates with taxpayers first by e-mail.

5. Telephone Scams. These scams operate similar to an e-mail but more often include a threat of some kind, such as threats of police action/jail time for alleged unpaid taxes, loss of licenses, or even deportation of individuals (or their families) who lack legal status. The scammer often demands the taxpayer make payment with a prepaid credit card within hours of the call. The IRS never demands payment be made over the telephone.

6. Fake Charities. Giving is an area of special concern. Scammers often blanket areas with mailings, e-mails and/or make telephone calls seeking "soft targets" (people who are willing to give away personal information easily). Unfortunately, many people become more trusting as they age. Scammers use familiar soundings names like "Save All Children" (instead of "Save the Children," which is a real charity). In addition, each year thousands of new charities are formed and as many fail to retain their charitable status for any number of reasons, including being scams. Never give to an organization you have not taken the time to research thoroughly and which you contacted directly. If in doubt, check the IRS website to confirm the organization is exempt:
http://www.irs.gov/Charities-&-Non-profits/Automatic-Revocation-of-Exemption-List

7. Hiding Money in Offshore Accounts. If you have bank or other accounts such as investment accounts outside the United States, you must report their existence to the IRS.

Failure to report foreign income and assets can lead to criminal prosecution and large civil penalties when the assets are finally discovered - penalties that can even exceed the value of the asset itself. If you inherit a foreign account or assets, no federal inheritance tax will be owed, but you must report these assets to the IRS. Taxpayers with unreported offshore accounts should ask their tax preparer about possible amnesty for late reporting through the Offshore Voluntary Disclosure Program (OVDP).

8. Filing Fake Documents to Hide Income. Filing false information reporting documents like 1099s or W-2s to hide or reduce taxable income is a crime that can earn the taxpayer an automatic penalty of $5,000 and could land the taxpayer in prison. Any tax return preparer who suggests filing false "corrected" documents to dispute accurate ones prepared by a third party (like a bank, mortgage company or employer) should be reported to the IRS.

9. Abusive Tax Shelters. Those promoting these tax shelters may suggest you hide the true ownership of assets to reduce taxes. Shelters often involve transfers to entities (limited liability companies, limited partnerships) or trusts overseas and may also include the use of financial instruments. Structures often include several layers of entities or trusts and entities. Trusts alone can also be abused in transfers between generations. They may include captive insurance for ordinary risks with premiums that vary for non-actuarial reasons. Be wary of anyone claiming they can reduce or eliminate taxable income or employment taxes, suggesting you deduct inflated personal expenses through a business entity, or offering specialized private insurance for ordinary risks.

10. Falsifying Income to Claim Tax Credits. This scam involves reporting wages or as self-employment income on a tax return that the taxpayer did not earn in order to maximize refundable tax credits. Examples of such credits include the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit. Never agree to report any information on a tax return that is not accurate.

11. Improper Claims for Fuel Tax Credits. Fuel tax credits are available to those who use fuel for other than highway use, such as farms using it to run farm equipment or businesses who use fuel for other than transportation needs. The majority of taxpayers and businesses do not qualify for this credit. Taxpayers should not claim the credit for ordinary fuel expenses and should report anyone recommending they claim this credit inappropriately.

12. Making Frivolous Tax Arguments. Each year, a small group of taxpayers will attempt to avoid paying federal income taxes by arguing the tax laws are illegal or do not apply to them (aka "Tax Protestors"). Those who make such arguments usually end up in court, and often in jail. Penalties for making frivolous arguments can be significant and include an automatic $5,000 penalty for filing a frivolous return, and also the accuracy-related penalty, a civil fraud penalty, an erroneous refund claim penalty, a failure to file penalty (if returns are not filed) and penalties for making frivolous arguments in court. Criminal prosecution for tax evasion is also possible.

## FEDERAL TAX NEWS

By DeEtte L. Loeffler, J.D., LL.M. Taxation

Tax reform in Congress has essentially stalled as attention shifts to the power of the Federal Reserve and to the President's immigration policy. Federal Reserve Chairman Janet Yellen, in testimony before Congress in late February, indicated that due to the sluggish economy, the Central Bank is expected to continue to "be patient" and therefore might not begin raising interest rates in June as previously anticipated. Wall Street responded positively to this news. The Federal Reserve stopped purchasing debt under its "Qualitative Easing" program in late 2014, but Congress remains extremely concerned about the size of the Federal Reserve's debt, currently $4.5 trillion, compared to its assets of $57 billion, which debt quadrupled under the Qualitative Easing Program from $1.8 trillion in 2008.

Budget proposals introduced in the House and the Senate in mid-March do not include provisions to overhaul the tax code or to fix the Federal Highway Fund. Some features of these budget proposals have tax implications if adopted. First, they would essentially cap federal spending on Medicare, Medicaid and food stamps. The House proposal would give seniors vouchers to purchase private insurance. Both plans would transfer to states control of the Medicaid and food stamps programs and instead provide the states with block grants for their programs.

Meanwhile, the Supreme Court of the United States is considering a case that could gut the Affordable Care Act ("Obama Care") by denying tax credits to people who bought insurance through one of the 37 federally established exchanges. The case hinges of whether the IRS correctly interpreted the new law to permit tax credits to all purchasers, or only to those who purchased insurance through a state established exchange. A decision is expected by the end of June.

## STATE TAX NEWS

By DeEtte L. Loeffler, J.D., LL.M. Taxation

Tax reform is also not currently making progress in California. Changes to the gas tax and/or the carbon tax remain elusive. The state has continued its efforts to collect overdue taxes, however. California has begun contacting over 1 million people who earned money in 2013 and failed to file income tax returns. In 2014, the state collected over $715 million through this program. The FTB identified non-filers through information reporting by third parties such as banks, mortgage companies, employers, the IRS and state governments, and by reviewing occupational licenses. Taxpayers who receive a notice of non-filing have 30 days to file a state return or explain why no return is required. For non-responders, the FTB estimates taxes payable based on records it has received, then adds penalties and interest.

One recent tax-related move by the Board of Equalization is expected to complicate the state's problem of failing infrastructure. The BOE voted to reduce the excise tax on gasoline from 0.36 cents per gallon to 0.30 cents per gallon beginning in July. The BOE is required to review and adjust the excise based on certain factors in the budget unrelated to the state's current need to fund $59 billion in roads and other failing infrastructure. In response, Assembly Speaker Toni Akins proposed a new fee on drivers that, if approved, would raise an estimated $1.8 billion annually (or about $52 per driver). This fee would go directly toward repairing infrastructure (unlike the excise tax which goes to the general fund).

Three interesting tax bills were also introduced in the legislature. One would exempt terminally ill patients from paying tax on their purchase and use of medical marijuana. Another bill would exempt diapers from state sales tax, apparently on the grounds that diapers are medically needed by babies. A third bill, which failed in 2013, would reduce tax on the sale of new "green" vehicles from 7.5% to 3.06%. Green vehicles are defined in the bill as electric, hydrogen fuel cell, plug-in hybrids, and compressed natural gas vehicles.

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