

## October – TaxMama's® 2018 Tax Roundtable

### Carlos Asked:

I have tax resolution client that came into office and noticed her return was not prepared correctly. This person was a finance manager for a major car dealership.

The person is a W2 employee, however, she does get 1099M income for up-selling car accessories, alarms, insurance, etc. Most of the 1099-M are reported on line 3. However, there is over \$14K of income being reported on line 7 (non-employee compensation).

Normally line 7 of 1099M is reported on Schedule C. However, that is creating additional self-employment taxes.

She is not self employed. She works 12-14 hours a day with the dealership.

My thinking is report the income on Schedule C, deduct that income on other expense section of the Schedule C with explanation, and reporting that income on Line 21 of the 1040 to eliminate the self-employment taxes. Would that be a correct solution? Or is there a better solution?

I did tell this person they should have the company issuing the 1099's to make sure it is reported on line 3 of the 1099M.

Thank you,  
Carlos

P.S. This person's Schedule C had over \$45K of expenses shown on the Schedule C. When I asked her did she have any expense for her this "business". She said no, she didn't have a business.

I asked her why she had it a schedule C. She said she had no idea and trusted the tax preparer. I told her we need to file an immediate amended to that return.

She also had over \$18K of medical expense on Schedule A, \$16K of employee expenses on Schedule A, and \$13K of gifts to charity. When I asked did she have receipts for any of these items she was completely confused and said she never told the preparer she had any of that? It looks like preparer just made it numbers.

## TaxMama® Answers

I guess we need more information.

Did the 1099-MISC come from her employer or from another company?

If it came from her employer and you want to re-file her tax returns, here's what you can do.

a) Don't put things on Schedule C that don't belong there.

You don't have to play the 1099 matching game when you are filing a 1040X.

Just include an explanation – in the cover letter – though you will be using a Form 8919 – see (d).

b) You can move ALL her income to line 7 wages.

c) To turn the 1099s into wages, you can use Form 4852 – substitute W-2

<https://www.irs.gov/pub/irs-pdf/f4852.pdf>

d) Use Form 8919 to explain to the IRS why the 1099MISC were wages

Use reason code H – she got a W-2 and 1099 from the same employer

<https://www.irs.gov/pub/irs-pdf/f8919.pdf>

e) ALL the employee expenses (if any) will move to Form 2106. Remove them all from the Schedule C.

f) Report the tax preparer to the IRS office of professional responsibility , RPO or...

<https://www.irs.gov/tax-professionals/make-a-complaint-about-a-tax-return-preparer>

<https://www.irs.gov/newsroom/tax-return-preparer-fraud-2>

Look up the SPIFF – and send us the publication.

## Cindy Asked

Not sure I can attend the live session but was hoping to get your feedback to this question:

My elderly mother wishes to gift \$60,000 from an investment she just liquidated, to my 60-year old brother, but she does not want him to know about for a while. She wants to gift it now in case she has to go in a nursing home down the road.

She is trying to determine the appropriate investment vehicle to put it in where it could go in his name but not require tax reporting on his part, so it can remain invisible to him until she is ready for him to have it. Would a US Savings Bond fulfill this purpose?

## TaxMama® Answers

Hi Cindy,

That's an interesting solution. Sure, get a US Savings Bond in his name.

If SHE keeps track of it herself, she can get away with the reporting the annual interest on her tax return – and let him know about, in her records. That way, when she turns it over to him, he won't have to pay tax on the interest for the years she already reported. She can give him a schedule showing the increased basis.

The other option is to set up a revocable trust and put that money and other money and assets into the trust. The trust can include a specific bequest to your brother, along with whatever other instructions she wants for all her assets.

Better – irrevocable trust – and do it at least 3 years before going into the nursing home.

If she decides to give him the money when she's alive, she can just hand it over. If, heaven forbid, she dies first – the instructions will be there.

## Tom Asked

Greatly appreciate you bringing the Governor Brown signed AB 2503 corporations to light. Currently dealing with a situation that dates back to 2006 until current 2018 and it has several of the facets you mentioned. I called the state of California FTB, spoke with three different reps and they have heard of this new statute but have no clue of how to address it (left me puzzled). Hoping you can provide a template (form letter) that give details on requesting consideration for this abatement. Thanks for all you do...you are a blessing!

### TaxMama® Answers

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2503](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2503)

**23310.** (a) The Franchise Tax Board **may abate, upon written request** by a qualified entity, unpaid qualified taxes, interest, and penalties for the taxable years in which the qualified entity certifies, under penalty of perjury, that it was not doing business, within the meaning of subdivision (a) of Section 23101, has ceased doing business, and does not have any remaining assets in the business.

(b) For purposes of this section:

- (1) “Qualified entity” means a **domestic corporation** subject to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code or a **domestic limited liability company** subject to Title 2.6 (commencing with Section 17701.01) of the Corporations Code that satisfies either of the following conditions:
  - (A) Was never doing business, within the meaning of subdivision (a) of Section 23101, in this state at any time after the time of its incorporation in this state.
  - (B) Was previously doing business, within the meaning of subdivision (a) of Section 23101, and has filed all returns required under Section 18601, 18633, or 18633.5 for the **tax years prior to cessation** of doing business.
- (2) “Qualified taxes, interest, and penalties” means tax imposed under Section 17941 or 23153, and associated interest and penalties, and any penalties imposed under Section 19141. “Qualified taxes, interest, and penalties” *does not include tax imposed under Section 17942, 23501, or 23731, or associated interest or penalties, and does not include additional tax, penalties, or interest resulting from a final or pending state or federal audit.*

So Tom, here is what I would do:

- 1) Make SURE the company has ceased doing business
- 2) Make SURE the company's bank accounts are closed.
- 3) Make sure all tax returns are filed, to date. If not, file them – even if it's with zeroes.
- 4) Pull transcripts to see what taxes, penalties and interest have already been assessed.

Now...

5) Write a letter to the Franchise Tax Board requesting abatement of these taxes, penalties and interest. Include a copy of the law I posted above AND a link to the law.

Say

Per California Code **23310** we respectfully request abatement of all taxes, penalties and interest for this entity \_\_\_\_\_ CALIFORNIA TAX ID #.

Taxpayer has complied with all provisions for Code Section 23310.

They ceased doing business on \_\_\_\_\_. They filed the final -0- tax return for tax year 2018 on \_\_\_\_\_ date.

Taxpayers did not take any money from the entity for personal use (aside from reasonable compensation when the business was in operation). [Note – include the info in parentheses if necessary]

6) File dissolution documents with the Secretary of State

<https://www.sos.ca.gov/business-programs/business-entities/forms/>

Contact Incorp Inc to help you do it all correctly - <http://iTaxMama.com/InCorpTM>

They will give you a discount and I will get a commission ;~)

(I just sent a note to Doug Ansell, the CEO to make sure they can help you.)

We may need to wait to get the confirmation from FTB about the taxes being abated.

Irene asked

Client is an LLC and was sole owner, but has added his wife to the business at 49% ownership. He states that she is just a managing owner as I was trying to explain to him that now his return would require that a K1 be prepared for each of them. He was like, no, we don't need one. Am I incorrect in my understanding? That his business will now have to be considered a partnership even though he is an LLC and will need K1s prepared?

Also he asked me on Sunday, that he wants to get paid by the company by getting dividends paid to him instead of salary and or by a 1099 ! I told him NO, he could not get paid dividend in lieu of a salary or 1099.

He is trying to avoid paying taxes to the IRS and he said his Financial Advisor told him he pays too much taxes to the IRS and getting dividend pay will help him.

Please advise and or correct me.

Thank you,

Irene Valdez

### **TaxMama® Answers**

Hi Irene,

As an LLC, if he didn't make any elections, he was a disregarded entity before, filing on Schedule C.

1) You are absolutely correct. Having added his wife as an owner, they are now a partnership – unless they elect to be a corporation. YES, they must file a partnership tax return.

Note: There is a special election for husband/wife joint ventures to opt out of partnership status. But it does not apply to LLCs. Except in community property states – and Texas is one. <https://www.irs.gov/businesses/small-businesses-self-employed/election-for-married-couples-unincorporated-businesses>

BUT, if you do this they two Schedules C – one for each of them, which can get more complicated if there are employees. Form 1065 is much simpler.

2) Since he is not a corporation, he does not get dividends at all.

NOR does he get wages. Nor does he get a 1099 MISC.

What he gets, as a partnership, is ALL the profits passed through to him, and ALL of it subject to self-employment taxes and income taxes.

If they use two Schedules C, all the profits are SE profits.

So in this regard, you are not correct.

You can find links to the PDF and HTML Publication 541 – Partnerships, here

<https://www.irs.gov/forms-pubs/about-publication-541>

You may have issues with this client – especially if he feels free to call you on weekends.

Be FIRM about your business hours

PS Note to IRS:

I just realized that this publication doesn't really explain how partners are supposed to be compensated.

<https://www.irs.gov/publications/p541>

There really needs to be a chapter, or topic AND an Index entry about this.

Too often, people set up payroll for the partners, but they are not eligible.

And the publication, designed for the lay person, really should explain

in what ways partners are paid, that does a better job (in plain English)

of explaining that Guaranteed Payments are the partnership form of wages

[https://www.irs.gov/publications/p541#en\\_US\\_201601\\_publink1000104261](https://www.irs.gov/publications/p541#en_US_201601_publink1000104261) ,

and that all profits are taxed in full, whether distributed or not, to all partners.

Patrick

LLC disregarded – Sched C, has partnership income \$44,000 with significant expenses.

- 1) Partnership modification to the agreement to put reimb in writing.
- 2) Do the accounting to split expenses
- 3) report on Sched E page 2.

Carlos

Not filed S Corp since 2003 – closed in 2008.

Sched C starting in 2009.

Started another S corp in 2017 (unfiled) – are they using the same phone number.