# Tax News and Industry Updates

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## Auto Depreciation Limits

### Cross References

- Rev. Proc. 2016-23
- IRC §280F

When the actual expense method is used for deducting the business use of a vehicle, the cost of the vehicle is depreciated under MACRS using a 5-year recovery period. The Section 179 deduction is also allowed for business vehicles. The annual deduction for depreciation, including any Section 179 deduction or special depreciation allowance, is limited to statutory amounts. The limits are adjusted each year for inflation.

The annual deduction is the lesser of:

- The vehicle's basis multiplied by the business use percentage multiplied by the applicable depreciation percentage, or
- The section 280F limit multiplied by the business percentage.

The chart below reflects the new section 280F limits for 2016 in comparison to previous years.

| Vehicle Depreciation Limitations (Section 280F) | | | | |
|---|---|---|---|---|
| **Tax year first placed in service:** | **2016** | **2015** | **2014** | **2013** |
| *Auto depreciation limitations based on 100% business or investment use:* | | | | |
| 1st year if special depreciation is claimed | $11,160 | $11,160 | $11,160 | $11,160 |
| 1st year depreciation | $3,160 | $3,160 | $3,160 | $3,160 |
| 2nd year depreciation | $5,100 | $5,100 | $5,100 | $5,100 |
| 3rd year depreciation | $3,050 | $3,050 | $3,050 | $3,050 |
| Each succeeding year | $1,875 | $1,875 | $1,875 | $1,875 |
| *Trucks and vans depreciation limitations based on 100% business or investment use* | | | | |
| 1st year if special depreciation is claimed | $11,560 | $11,460 | $11,460 | $11,360 |
| 1st year depreciation | $3,560 | $3,460 | $3,460 | $3,360 |
| 2nd year depreciation | $5,700 | $5,600 | $5,500 | $5,400 |
| 3rd year depreciation | $3,350 | $3,350 | $3,350 | $3,250 |
| Each succeeding year | $2,075 | $1,975 | $1,975 | $1,975 |

***Note:*** If business or investment use is less than 100%, the depreciation limit equals the amount listed above multiplied by the business or investment percentage.

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# Social Security Benefit Loophole Ended

## Cross References

• Public Law 114-74, Subtitle C, Section 831

The Bipartisan Budget Act of 2015, signed into law on November 2, 2015, contains a provision that closes a loophole in the rules for collecting Social Security benefits. The provision has to do with the so called "file and suspend" strategy. Section 831 of the law states: "In the case of an individual who requests that such benefits be suspended under this subsection, for any month during the period in which the suspension is in effect…(B) no monthly benefit shall be payable to any other individual on the basis of such individual's wages and self-employment income…."

**The file and suspend strategy.** Under prior law, upon reaching full retirement age, a person could file for Social Security retirement benefits, and then immediately suspend them. The strategy for doing this was to allow a spouse to become eligible for spousal benefits based upon the primary workers benefits, while the primary worker suspends his or her benefits in order to receive an increased benefit in some future year.

***Example:*** *John and Mary both reach their full retirement age of 66. John has been the primary wage earner for the family over the years. John is eligible for a retirement benefit of $2,000 per month at full retirement age. Mary at full retirement age is eligible for a spousal benefit of $1,000 per month, which is equal to 50% of John's full benefit. John delay's his benefit until age 70, increasing his benefit by 8% per year for four years. His new benefit (not counting COLA adjustments) is $2,640 per month.*

*Under prior law, John could file for, and then immediately suspend his benefits until age 70, allowing Mary to immediately start collecting her $1,000 per month in benefits at age 66. Under the new rules, Mary cannot get spousal benefits until John actually starts collecting his own benefits. The new rule causes Mary to have to wait four years to collect her benefits if John decides to wait until age 70 to receive his increased benefit. The new law effectively causes Mary to lose four years of benefits.*

**Effective date.** This new law is effective 180 days after the date the legislation was signed into law. Thus, with the law being signed on November 2, 2015, the effective date for closing this loophole is April 29, 2016. In other words, the file and suspend strategy was allowed for those who implemented it on or before April 29, 2016.

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# IRS Offers New Cash Payment Option

## Cross References

• IR-2016-56, April 6, 2016

The Internal Revenue Service has announced a new payment option for individual taxpayers who need to pay their taxes with cash. In partnership with ACI Worldwide's OfficialPayments.com and the PayNearMe Company, individuals can now make a payment without the need of a bank account or credit card at over 7,000 7-Eleven stores nationwide.

Individuals wishing to take advantage of this payment option should visit www.irs.gov payments page, select the cash option in the other ways you can pay section and follow the instructions:

- Taxpayers will receive an email from OfficialPayments.com confirming their information.
- Once the IRS has verified the information, PayNearMe sends the taxpayer an email with a link to the payment code and instructions.
- Individuals may print the payment code provided or send it to their smart phone, along with a list of the closest 7-Eleven stores.
- The retail store provides a receipt after accepting the cash and the payment usually posts to the taxpayer's account within two business days.
- There is a $1,000 payment limit per day and a $3.99 fee per payment.

Because PayNearMe involves a three-step process, the IRS urges taxpayers choosing this option to start the process well ahead of the tax deadline to avoid interest and penalty charges.

In this new option, PayNearMe is currently available at participating 7-Eleven stores in 34 states. Most stores are open 24 hours a day, seven days a week. For details about PayNearMe, the IRS offers a list of frequently asked questions on www.irs.gov.

The IRS reminds individuals without the need to pay in cash that IRS Direct Pay offers the fastest and easiest way to pay the taxes they owe. Available at www.irs.gov/Payments/Direct-Pay, this free, secure online tool allows taxpayers to pay their income tax directly from a checking or savings account without any fees or pre-registration.

Check www.irs.gov/Payments for the most current information about making a tax payment.

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# HSA Inflation Adjusted Amounts

### Cross References

- IRC §223
- Rev. Proc. 2016-28
- Rev. Proc. 2015-30
- Rev. Proc. 2014-30

The IRS announced inflation adjusted amounts for Health Savings Accounts (HSAs) for 2017. These amounts are reflected in the chart below.

### HSA Limitations

| Annual contribution is limited to: | *2017* | *2016* | *2015* |
|---|---|---|---|
| Self-only coverage, under age 55 | $3,400 | $3,350 | $3,350 |
| Self-only coverage, age 55 or older | $4,400 | $4,350 | $4,350 |
| Family coverage, under age 55 | $6,750 | $6,750 | $6,650 |
| *Family coverage, age 55 or older | $7,750 | $7,750 | $7,650 |
| Minimum annual deductibles: | | | |
| Self-only coverage | $1,300 | $1,300 | $1,300 |
| Family coverage | $2,600 | $2,600 | $2,600 |
| Maximum annual deductible and out-of-pocket expense limits: | | | |
| Self-only coverage | $6,550 | $6,550 | $6,450 |
| Family coverage | $13,100 | $13,100 | $12,900 |

* Assumes only one spouse has an HSA. See IRS Pub. 969 if both spouses have separate HSAs.

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# Horse Racing Activity Not a Hobby

### Cross References

- *Roberts,* 7th Circuit Court of Appeals, April 15, 2016
- T.C. Memo. 2014-74
- IRC §183

The Tax Court ruled a taxpayer was not engaged in a race horse activity for profit and therefore disallowed losses used to offset other income. The 7th Circuit Court of Appeals recently reversed that ruling.

The taxpayer had deducted the expenses of his horse-racing enterprise on his federal income tax returns for 2005 and 2006. The Tax Court ruled that losses for 2005 and 2006 were not allowed under the hobby loss rules. But it also ruled that his business had ceased to be a hobby, and had become a bona fide business starting in 2007.

The taxpayer was successful in the restaurant business. In 1999, he bought his first two horses for $1,000 each, and in the first year netted $18,000 in earnings from racing them. He also built a horse track on land that he owned. Two years later he had 10 racing horses and acquired a breeding stallion. The following year he passed the state's licensed-trainer test and obtained his horse-training license.

Several years later he bought 180 acres of land to expand his training facilities for about $1 million, and invested another $500,000 to $600,000 in improvements. He trained the horses himself. He testified that he spent 12 hours a day working with the horses on race days and about eight hours a day on other days. He was also involved in lobbying the state legislature on behalf of the horse racing industry. He successfully influenced legislation that permitted slot machines at racetracks, where part of the revenue would be added to the purse money, ultimately benefiting the owners of horses that won races. In the same period he served on the boards of two professional horse-racing associations.

The taxpayer's horse-racing activities, which included boarding, breeding, training, and racing, were not profitable in 2005 and 2006, the two years in question. He deducted the losses on his tax returns from his other income which consisted mainly of income from consulting in the restaurant business and from renting and selling real estate.

The Appeals Court disagreed with the Tax Court's ruling that the taxpayer's horse-racing activity was a hobby in 2005 and 2006, but became a bone-a-fide business in 2007 and thereafter. The Appeals Court said: "…it amounts to saying that…every business starts as a hobby and becomes a business only when it achieves a certain level of profitability."

The Appeals Court also disagreed with the Tax Court's reasoning that improvements were irrelevant to the issue of profit motive until the new facilities were available for use in the activity. The Appeals Court said that would be like saying a rental activity is a hobby until land and building improvements are completed and ready for renters.

In considering the ninth factor under the regulations that are used to determine whether an activity is a business or a hobby, the Tax Court noted that elements of personal pleasure or recreation indicate that the activity is a hobby. The court implied that there is likely no profit objective where the taxpayer combines horse racing with social and recreational activities. The Court of Appeals disagreed with the Tax Court's implication that involvement with a professional horse racing association

demonstrated the taxpayer was engaged in some social aspect of the industry. The Court of Appeals said: "… that's like saying that serving on a corporate board of directors is a social activity." The Court of Appeals went on to say: "It may have been a fun business, but fun doesn't convert a business to a hobby. If it did, Facebook would be a hobby, Microsoft and Apple would be hobbies, Amazon would be a hobby, etc."

After considering all nine factors listed in the regulations concerning whether an activity is a business or a hobby, the Court of Appeals reversed the Tax Court and ruled the taxpayer's activity was a business and losses generated during the years in question where deductible.

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