

Legal Division Guidance 2012-02-01

(Self-Employment – Social Security Tax Deduction)

Q: For the 2011 and 2012 taxable years, does California conform to the temporary federal amounts of self-employment tax (relating to the Old Age, Survivors and Disability Insurance tax – (OASDI /Social Security)) that may be deducted in computing adjusted gross income?

A: No. Revenue and Taxation Code section 17024.5(a)(2)(A) provides that California only incorporates those uncodified federal tax law provisions that were enacted on or before January 1, 2009. As the increased self-employment OASDI tax deduction was enacted after January 1, 2009, California does not incorporate that change, and the deductible amount remains at 50%.

In uncodified language, section 601(b)(2) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act) (P.L. 111-312) provided that the Internal Revenue Code section 164(f) income tax deduction allowed for tax years beginning in 2011 is computed at the rate of 59.6% of the OASDI tax. In February 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (the 2012 Act) (P.L. 112-96), which continued the federal deduction amount of 59.6% for tax years beginning in 2012, was enacted.

Because California law does not incorporate the changes to the federal deduction percentage that were made in section 601 of the 2010 Tax Relief Act, or the 2012 Act, any difference between the allowable amount under California law and the new temporary federal deduction percentage is a Schedule CA adjustment for California tax purposes.

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