

LATE BREAKING NEWS

DE 542 Problem

SSNs may not be available

A major flaw in the independent contractor reporting law could cause big problems for businesses. CUIC Sec. 1088.8 requires businesses to report, among other things, the Social Security numbers of certain independent contractors. However, there is nothing in the law that requires the independent contractor to provide his or her Social Security number to the business.

The EDD has stated that it will not accept the FEIN on the DE 542, **Report of Independent Contractor**, because the law requires the business to report the independent contractor's SSN, not the FEIN. The EDD is not able to cross-match FEINs with SSNs. The only way the EDD can match the SSN to an FEIN is from IRS records (federal law requires the independent contractor to provide either a federal identification number (FEIN) or a Social Security number (SSN) to the business for Form 1099 purposes). It is our understanding that, as yet, the IRS has not agreed to provide this information.

The EDD acknowledges this is a difficult situation for businesses and will continue to explore and evaluate possible alternatives to resolve this issue. We believe that the only fix for this problem is legislative. However, privacy concerns could thwart this option.

In the meantime, we understand that a number of independent contractors are refusing to provide their Social Security numbers. The result is that the business does not have adequate information to meet their IC reporting requirement and, under the law, could be subject to a penalty of \$24 for each failure to report. According to the EDD, "Businesses need to use due diligence in attempting to obtain the independent contractor's SSN. The SSN is integral for the state to locate delinquent child support obligators."

Penalties?

At the present time, the EDD has not set a date for implementation of penalties. However, the EDD has said it will "revisit the penalty issue" at a later date. In other words, the EDD probably will not assess penalties for failure to report now. However, at any time, it could start assessing penalties, which hardly seems fair, given the fact that the business owner is put in the middle and has no legal means to comply. However, if the penalty provision is implemented at a later date, the EDD has the ability to waive penalties for "good cause" on a case-by-case basis.

Until the issue is resolved, we suggest you report all independent contractors with available information and keep documentation on unsuccessful attempts to obtain the SSN. Write "unable to obtain SSN" or "IC would not provide SSN" in the SSN box if it is not available. Stay tuned for more information about what will happen with this program. We will provide information as we receive it in future issues of the **California Taxletter**.