Pilla Talks Taxes

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FIFTH CIRCUIT DECLARES "INDIVIDUAL MANDATE" UNCONSTITUTIONAL

What Is the Impact of the Decision?

On December 18, the Fifth Circuit Court of Appeals issued its decision in the case of *Texas v. United States,* Docket No. 1-10011 (5th Cir. Dec. 18, 2019). The decision strikes at a core element of the 2010 Patient Protection and Affordable Care Act (ACA). It held that the so-called "individual mandate" of Code §5000A is unconstitutional.

Necessary Historical Background

The ACA was intended to force all Americans to purchase government-approved health insurance, either through private insurance companies or through government-run insurance "Exchanges." The idea was that by forcing generally healthy individuals and young people (who otherwise might choose not to purchase health insurance) into the medical insurance pool, the cost of insurance would go down overall.

Of course, we know that didn't happen. In fact, the opposite occurred. The cost of health insurance actually sky-rocketed due to massive government intervention into the health insurance market. The government now regulates a huge swath of the economy and imposes its will on tens of millions of Americans in the most intimate of all personal of decisions—healthcare decisions.

Moreover, the cost to the government to provide "free health care" to those who cannot afford insurance is likewise sky-rocketing. For example, the Congressional Budget Office estimated that federal outlays for health insurance subsidies and related spending will rise by about 60% over the next ten years, from $58 billion in 2018 to $91 billion by 2028. CBO, *The Budget and Economic Outlook: 2018 to 2028* at 51 (April 2018) (https://tinyurl.com/CBOBudgetEconOutlook-2018-2028).

What is the "Individual Mandate"?

One of the key elements of the ACA is the so-called "individual mandate." The individual mandate—which was the subject of the Fifth Circuit's analysis—requires individuals to purchase and maintain government-approved health insurance, referred to as "minimum essential coverage." See: Code §5000A(a).

If an individual fails to do so, he must pay a penalty to the IRS called a "shared responsibility payment." Such payment is referred to in the statute specifically and expressly

In this issue

"Dan Pilla probably knows more about the IRS than the commissioner of the IRS." Associated Press.

as a "penalty." See: §5000A(b)(1).

Certain exceptions are provided under §5000A(e), which are not the subject of this article.

Attacks on the Constitutionality of the ACA

Legal attacks against the ACA and the individual mandate started even before the ink was dry on the law. The Supreme Court's decision in the case of *National Federation of Indep. Businesses (NFIB) v. Sebelius*, 567 U.S. 519, 538 (2012), constituted the initial culmination of those attacks. The plaintiff in that case challenged the constitutionality of the individual mandate, arguing that Congress had no authority to force people to buy a product or face a government-imposed penalty for failure to do so. The case ended up in the Supreme Court shortly after lower court review.

In a bizarre opinion written by Chief Justice Roberts, the Court simply changed the language of the statute to support the conclusion that the individual mandate was constitutional.

First, the Individual Mandate is Unconstitutional

The *NFIB* decision clearly states that reviewing the "penalty" language of §5000A in its "most straightforward reading" was in fact a command "to purchase insurance," and as such, it "would have rendered it unconstitutional." The Court stated that such a power could not have been justified under the Constitution's Commerce Clause because it would have done more than "regulate commerce... among the several states." U.S. Const. art. I, § 8, cl. 3. Rather, it would have *compelled* people to enter into commerce in the first place, something that was never intended by the Constitution. See: *NFIB*, 567 U.S. at 557–58.

Chief Justice Roberts opined that concluding otherwise would empower the government to compel Americans into all kinds of behavior that the government thinks is beneficial for them, including, for example, "compelling them to purchase broccoli." *See NFIB*, 567 U.S. at 558 (Roberts, C.J.).

For similar reasons, the Chief Justice concluded that this command to purchase insurance could not be sustained under the Constitution's Necessary and Proper clause. The individual mandate was not "proper" because it expanded federal power, "vest[ing] Congress with the extraordinary ability to create the necessary predicate to the exercise of" its interstate commerce clause powers. *Id.* at 560. The "joint dissent" issued by Justices Scalia, Kennedy, Thomas, and Alito reached the same conclusions on both the Interstate Commerce clause and Necessary and Proper clause questions. *NFIB* at 650–60 (joint dissent).

Both Justice Roberts in the Opinion of the Court and the dissenters agreed that a reading of the Commerce Clause to include a power to *create* commerce would make a Leviathan of the federal government, "everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." *NFIB*, at 554 (Roberts, C.J.) The Chief Justice was quoting The Federalist No. 48, written by James Madison.

Justice Scalia, writing for the joint dissenters, likewise stated that such a broad, expansive reading of the Commerce Clause would render that provision a "fount of unlimited power." *NFIB* at 653. And, quoting Alexander Hamilton writing in The Federalist No. 33, Justice Scalia declared the government would become a "hideous monster whose devouring jaws... spare neither sex nor age, nor high nor low, nor sacred nor profane."

It's Unconstitutional. But Wait. It's Constitutional!

So how, in light of the harsh criticism from the various justices, was it possible to in fact find that the individual mandate is indeed constitutional? The answer: Chief Justice Roberts simply changed the language of the statute.

Rather than giving the law its "most straightforward reading," using its plain and simple terms, as imposing a "penalty" for *not* purchasing insurance, he altered it to hold that it was merely a "tax" on the "decision" to not purchase insurance—terms that are simply *not found* in the statute.

He then justified the statutory contortion by saying, "The question is not whether that is the most natural interpretation of the mandate, but only whether it is a 'fairly possible' one." *NFIB*, at 562; citations omitted.

So Much for the Integrity of the Supreme Court

In the *NFIB* arguments, the Federal government asserted that the mandate could be read not as a "command" to buy insurance, but rather as an *option* to purchase insurance. That is to say, one had the free choice to buy insurance or pay a "tax." And if it was indeed a voluntary choice on the part of the taxpayer to buy insurance or merely pay a tax, the provision would be found to be constitutional.

Chief Justice Roberts bought that argument. He then strained mightily to conclude that §5000A could be read as a legitimate exercise of Congress's taxing power, rather than a penalty, which the statute plainly says it is. He pointed to four reasons justifying his conclusion. It is worthy to note that this portion of Roberts' Opinion was joined by *no other Justice of the Court*. That is, Justice Roberts was standing alone on this ground.

First, Roberts reasoned that the shared-responsibility payment reflected "the essential feature of any tax: It produce[d] at least some revenue for the Government." *NFIB* at 564. Second, he pointed out that the shared-responsibility payment was "paid into the Treasury by

taxpayers when they file their tax returns." *Id.* at 563. Third, he observed that the amount owed under the ACA was "determined by such familiar factors as taxable income, number of dependents, and joint filing status." *Id.* Fourth and finally, he said "[t]he requirement to pay [was] found in the Internal Revenue Code and enforced by the IRS, which . . . collect[ed] it in the same manner as taxes." *Id. at 563–64.*

Given all this, and regardless of the fact that the statute uses the word "penalty" in the context of not purchasing insurance, the Court ruled that it is indeed a tax on the voluntary decision to not buy insurance in the first place. Roberts concluded that "[t]he Federal Government does have the power to impose a tax on those without health insurance." *Id.* at 575. As such, under the Constitution's taxing authority (Art I, sec. 8), the individual mandate is in fact constitutional.

First, It Was Unconstitutional. But Then It was Constitutional. Now, It's Unconstitutional Again!

So if the Supreme Court's *NFIB* decision held the individual mandate to be constitutional (even though a plain reading of the statute would render it unconstitutional), how can the Fifth Circuit (a lower court) now hold that it is indeed unconstitutional?

The answer: fundamental circumstances have changed.

As part of the Tax Cuts and Jobs Act (TCJA), signed into law by President Trump in December 2017, Congress amended §5000A as to the "shared responsibility payment" amount. Specifically, the amount a person must pay for failing to comply with the individual mandate is figured as the "lesser" of "zero percent" of one's household income or "$0." This amendment is effective January 2019. Pub. L. No. 115- 97, § 11081, *see also* Code §5000A(c).

However, it is important to note that the individual mandate is still on the books as an affirmative duty for all Americans. It still consists of the same three fundamental components it always featured, which are:

1. Subsection (a) prescribes that certain individuals "shall . . . ensure" that they and their dependents are "covered under minimum essential coverage." Code §5000A(a).

2. Subsection (b) "impose[s] . . . a penalty" called a "[s]hared responsibility payment" on those who fail to ensure they have minimum essential coverage. Code §5000A(b).

3. Subsection (c) sets the amount of that payment.

All Congress did through the TCJA was change the *amount* of the penalty in subsection (c) to zero dollars. See: Code §5000A(c).

Along Comes the Fifth Circuit in *Texas v. United States*

The Fifth Circuit points out in its decision that the four essential elements of §5000A, which, in the opinion of Chief Justice Roberts, made it a "tax" rather than a penalty, were fundamentally changed by the TCJA amendment. Specifically, the Fifth Circuit pointed out:

> The four central attributes that once saved the statute because it could be read as a tax no longer exist. Most fundamentally, the provision no longer yields the "essential feature of any tax" because it does not produce "at least some revenue for the Government." *Id.* at 564. Because the provision no longer produces revenue, it necessarily lacks the three other characteristics that once rendered the provision a tax. The shared-responsibility payment is no longer "paid into the Treasury by taxpayer[s] when they file their tax returns" because the payment is no longer paid by anyone. *Id.* at 563 (alteration in original and internal quotation marks omitted). The payment amount is no longer "determined by such familiar factors as taxable income, number of dependents, and joint filing status." *Id.* The amount is zero for everyone, without regard to any of these factors. The IRS no longer collects the payment "in the same manner as taxes" because the IRS cannot collect it at all. *Id.* at 563–64 (internal quotation marks omitted). *Texas v. United States*, Slip Op. at 38.

Because the provision no longer yields any revenue, it cannot be saved by Chief Justice Roberts' legal gymnastics holding that it is a "tax." In light of that, the Fifth Circuit declared:

> The proper application of *NFIB* to the new version of the statute is to interpret it according to what Chief Justice Roberts—and four other Justices of the Court—said was the "most straightforward" reading of that provision: a command to purchase insurance. *NFIB* at 562 (Roberts, C.J.). As the district court properly observed, "the only reading available is the most natural one." Under that reading, the individual mandate is unconstitutional because, under *NFIB*, it finds no constitutional footing in either the Interstate Commerce Clause or the Necessary and Proper Clause. *Id.* at 546–61 (Roberts, C.J.); *id.* at 650–60 (joint dissent). Id. at 39.

The Fifth Circuit went on in its analysis to reject various other, equally strained, arguments offered by the various states that intervened in the case to save the statute. One such argument is that the mandate "does not even need constitutional justification because it is merely a suggestion, not binding legislative action." Id. at 40.

The Fifth Circuit recognized this for the fraud that it is. It pointed out that the Supreme Court in *NFIB* "already held that the 'most straightforward' reading of the individual

mandate—which emphatically demands that individuals 'shall' buy insurance, 26 U.S.C. § 5000A(a)—is a command to purchase health insurance." Id. at 41. Apart from the "tax" twist put on the law by Chief Justice Roberts, such a mandate was ruled unconstitutional under any other provision.

The Fifth Circuit concluded:

> Now that the shared responsibility payment has been zeroed out, the only logical conclusion under *NFIB* is to read the individual mandate as a command. . . . It is an individual *mandate*, not an individual suggestion. Id. at 41; emphasis in original.

As a stand-alone command to purchase a product in the market place, without the essential elements of a "tax" attached to it, is it unconstitutional. This reading is consistent with Chief Justice Roberts' reasoning in *NFIB* in the first place.

Is the ACA Now Dead?

The next question, and where there seems to be a great deal of confusion in the news, is what does the Fifth Circuit's decision do to the entirety of the ACA? Recall that the individual mandate is just one small part of a very large, highly invasive healthcare reform law. Is the entire law now considered unconstitutional because one component was declared so?

The short answer is no, because of the legal doctrine of "severability." If other elements of the ACA are "inseverable from the individual mandate," those elements would likewise be deemed unconstitutional. Id. at 44. If any separate element of the law can stand alone without the individual mandate, such element would be considered constitutional in its own right.

The Fifth Circuit remanded the case to the district court to undertake the process of answering that complicated question.

Thus, there is substantially more litigation in the offing to reach a final conclusion. In the meantime, there is no "penalty" for not having individual health insurance.

SMALL BUSINESS OWNERS BEWARE
According to the IRS, You are a Tax Cheat!

A just-released internal IRS research report reveals stunning facts about how the IRS views small business owners. The report is titled, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2011-2013*, IRS Publication 1415, Rev. Sept 2019.

The report's conclusion might shock you, unless you have been reading what I've been writing for more than twenty years. If not, what you are about to learn might be the most important information you ever receive on how to protect your business from the IRS.

Because if you don't know what the IRS is up to, it is about *guaranteed* that you will OVERPAY your TAXES—by a LOT! You might even risk the very demise of your business due to confiscatory illegal tax assessments.

Small businesses are the backbone of the U.S. economy. We all know that. Small businesses account for over 65% of all new jobs created in the past 30 years. Most employees in America owe their jobs to the vision of small business owners.

When I look at a small business owner, I see creativity, ingenuity, and determination. I see a problem-solver—someone with the courage to bet on himself and the tenacity to chase his dreams.

Here's How the IRS Looks at You

The IRS doesn't look at small businesses the same way. When the IRS looks at a small business owner, they see a tax cheat and an easy prey in audits.

That's right. Publication 1415, the 28-page IRS research document on compliance behavior, reveals that the IRS believes small business owners cheat on their taxes—virtually across the board. You see, the IRS's opinion is that small businesses are the number one factor contributing to the so-called "tax gap," the difference between the tax legally *owed*, compared to what is actually *paid*.

The report claims that the annual "tax gap" is now $381 billion annually. The IRS claims that almost half is attributable to self-employed people and small corporations, even though they account for only about 15% of all tax returns filed.

Because of this, the IRS intends to wage an all out war

against business owners. In a September 26, 2019 statement about the report, the IRS made it perfectly clear that it will "*vigorously pursue those who are not compliant*." IRS Commissioner Chuck Rettig personally piled on, saying the IRS intends to "*focus on those who skirt their responsibilities*." See: IRS News Release IR-2019-159.

According to Publication 1415, the "cheating" comes in a number of ways. The IRS alleges that business owners,

- Deliberately overstate deductions,
- Intentionally fail to report all business income,
- Willfully fail to file the laundry list of forms and reports the tax code requires, and
- Knowingly skirt the Byzantine employment tax rules heaped on business owners.

The result is that small businesses are under IRS attack!

Now for Some Good News!

The good news is, I know exactly how the IRS intends to attack you. I know this because of the more than four decades of experience I have in defending thousands of businesses just like yours, and because of the exorbitant amount of time I spend reading IRS reports and internal documents. I get the IRS's battle plans directly from the IRS itself.

We know that countless thousands of businesses will be targeted for audits in the areas of:

- The home office deduction,
- The business use of your automobile,
- Travel, meals and entertainment expenses,
- The reclassification of independent contractors to employees,
- The payment of "reasonable compensation" to corporate officers,
- Ordinary and necessary business expenses, and
- Whether your activity is a legitimate business or merely a "hobby," not carried on for profit.

And as if all that is not enough, the IRS will drill into your business's compliance with the litany of employment tax regulations. Do you know the five things you are supposed to do when you first hire a new employee? Most employers don't, and that's just one way they get sideways with the IRS. Worse, your CPA or bookkeeper probably only told you about two of them! Most will find out about the others the hard way.

This is why you can expect the IRS to assess a mountain of penalties against small businesses for not complying with cryptic rules they never even knew existed.

Here's another fact about how the IRS will gut tens of thousands of small business owners in the coming years. Two-thirds of all problems businesses have with the IRS involve substantiating business expenses. You see, the IRS falsely—yet routinely—claims business owners don't have the records they need to prove there was a legitimate "business purpose" for the expenses. The result: expenses are arbitrarily disallowed and business owners end up paying thousands in additional taxes, penalties and interest— that they simply do not owe.

EVEN MORE GOOD NEWS—
The IRS is Almost ALWAYS Wrong!

The IRS's own internal documents reveal that the decisions of tax auditors are simply dead wrong 60-90% of the time. I document this in full detail in my book, ***How to Win Your Tax Audit***. And, in testimony to the United States Congress, I proved that the IRS operates on bluff and intimidation, misinformation and disinformation, and in many cases just out-right lies to people about their rights.

In the end, business owners lose their deductions, not because they're cheaters, but because they don't know how to prove their deductions were legitimate in the first place.

The Key To Staying Out of Trouble

My newest book, **Dan Pilla's Small Business Tax Guide**, is your key to staying out of trouble with the IRS. This book has been forty years in the making. That is to say, I bring all of my experience in handling thousands of business audits, appeals and Tax Court cases to bear on showing you precisely how to stay out of trouble in the first place.

The **Small Business Tax Guide** covers essential topics critical to all businesses, including:

- ✓The 15 most common mistakes small business make, and how to avoid them,
- ✓Whether an LLC, Subchapter S corporation, a regular C corporation, or a partnership is best for you,
- ✓Everything you need to know about correctly hiring employees,
- ✓How to use independent contractors without running afoul of IRS rules,
- ✓How to properly set up and use an office in your home,
- ✓How to avoid the IRS's costly "hobby loss" rules,
- ✓What every business owner needs to know about the hidden booby trap known as the Trust Fund Recovery Penalty—and how to avoid it,
- ✓How to establish "reasonable compensation" to keep the IRS from assessing crushing back-tax assessments,
- ✓How to get the biggest deduction possible for the

mileage and business travel expenses—without risk,

- ✓How to avoid the morass of tax penalties that can kill your business,
- ✓If you have an Internet sales business, what you need to know about the new and quickly expanding state sales tax laws,
- ✓Understanding the complex new rules for business meals and entertainment expenses, and
- ✓My fool-proof recordkeeping system to keep you out of trouble with the IRS—plus much more!

"But I'm NOT a Tax Cheater!"

People have told me a thousand times, "*I don't have to worry about the IRS, Dan. I'm honest. I don't cheat.*"

That's good. You should be honest. You file your tax return signed under penalties of perjury so it *must* be correct.

The problem is the IRS doesn't have to prove you're dishonest in order to disallow your deductions, or even to assess confiscatory penalties against you. In the context of an audit, the IRS NEVER has to prove you made a mistake. *You* have to prove you did it *right*.

You're guilty until YOU prove yourself innocent!

The single biggest problem with business audits is not that the owner is a tax cheater. The single biggest problem is the owner didn't know how to prove he didn't cheat. But that problem is solved with the **Small Business Tax Guide**.

I absolutely guarantee you that what you learn in the **Small Business Tax Guide** is not taught in even the best business schools in the country. And frankly, even in law schools, the subject of taxation is an elective that most attorneys just didn't study.

This is one area where you simply must get reliable guidance from an experienced source. The **Small Business Tax Guide** is that source.

IRS MUST PROVE PROPER MAILING
Update on Recent Tax Court Decisions
By Scott MacPherson

In the May 2019 issue of *Pilla Talks Taxes*, in the article titled, "IRS With the Burden to Prove Mailing," I reported on the potential of arguing before the Tax Court the defense that a tax assessment is invalid if the IRS did not mail a statutory Notice of Deficiency (NOD) to the taxpayer's last known address. Also in May 2019 the Tax Court held in favor of a taxpayer on precisely that defense.

The case is *Jevon Kearse v. Commissioner,* T.C. Memo. 2019-53 (Ashford, J.) (yes, the NFL player). Kearse claimed a $1.4 million bad business debt deduction for one tax year. The IRS denied it and allegedly issued an NOD asserting an increased tax as a result. Kearse never received the NOD. After entering a default assessment against Kearse, the IRS mailed him a Notice of Federal Tax Lien, along with IRS Letter 3172, informing him that he had Collection Due Process Hearing rights with respect to the lien.

Kearse did receive the lien notice and timely requested a hearing. At the hearing he argued that the NOD was not mailed to his last known address. He also submitted an Offer in Compromise based on Doubt as to Liability. The hearing officer rejected the Offer and sustained the lien.

But Kearse appealed, and the Tax Court ruled in his favor.

As its starting point, the court stated that as a matter of law a hearing officer *must* verify that the notice of deficiency was duly mailed to the taxpayer before the assessment of tax—emphasis on "must." *Id*. at *4. The court compared the facts before it to the case of *Hoyle v. Commissioner*, 131 T.C. 198 (2008), where it held as a threshold matter "that because verification is mandatory, we will review the propriety of that verification regardless of whether the taxpayer challenging the collection action raises this issue at the CDP hearing." *Id*. (Kearse did challenge verification at his hearing, but it was nice of the court to remind us that it wouldn't have mattered if he did not.)

In *Hoyle*, the IRS administrative record lacked USPS Form 3877, which is the certified mail log the IRS uses to record the mailing of statutorily-required documents, such as an NOD. If the log were present in the record, it would have created the "presumption of official regularity" in the IRS's favor. And when present in the record, the log "is sufficient, absent evidence to the contrary, to establish that a

notice of deficiency has been properly mailed." *Id*. at *4.

Given the lack of that form, the Tax Court in *Hoyle* "concluded that it was unclear what the Appeals officer relied on to verify that the assessment of the taxpayer's liability was preceded by a duly mailed notice of deficiency." *Id*.

The facts in *Kearse* were similar. There was no Form 3877 or equivalent IRS mailing list, and the hearing officer's Notice of Determination did not indicate what documents she relied on to verify that an NOD was properly mailed—emphasis on *properly mailed*. *Id*. Rather, Kearse's settlement officer averred in a declaration that she was unable to secure the USPS Form 3877 to show proof of mailing of the notice of deficiency, so instead

> she examined the IRS' Integrated Data Retrieval System (IDRS) "in order to verify the validity of the assessment against Mr. Kearse from the May 11 notice," and more specifically, that the May 11, 2012, notice of deficiency was issued to him. In her case activity record she states that she "did not request the statutory notice of deficiency." *Id*. at *5.

In the view of IRS trial counsel, the IRM permits appeals officers to rely on IDRS. The Tax Court agreed that such is the general rule, but pointed out that this was not a general situation. When a taxpayer alleges that the notice of deficiency was not properly mailed to him, he has "alleged an irregularity" per part IRM 8.22.5.4.2.1.1(5), and when that happens IRM part 8.22.5.4.2.1.1(6) directs the officer to review both the NOD and the USPS Form 3877 or equivalent IRS certified mail list. But the appeals officer admitted that she did not review either of those documents. (Actually, the IRS stipulated at trial that there was no Form 3877.) That constituted a failure to perform the verification required by §6330(c). "This failure constitutes an abuse of discretion," the court said. Consequently, the Office of Appeals abused its discretion in sustaining the lien. *Id*. at *6.

The Tax Court's statement of law and application of law to the facts in *Kearse* is precisely what I put forth in my prior article. The fact that *Kearse* was decided that same month just goes to show that this is a rock-solid defense we should keep in the top drawer of our metaphorical toolboxes.

What is One's "Last Known Address?"

Parenthetically, it is important to spend some time on the idea of "last known address." This concept is mentioned in *Kearse* and the two cases I outlined in my May article. The question is, what constitutes one's "last known address"? The settled definition is that it is the address shown on the most recently filed tax return. See: Code §§6214(e) and 6213(a). That address remains the address of record unless the IRS is given "clear and concise notification of a different address." See: Treas. Reg. §301.6212-2(a).

In *Gregory v. Commissioner*, 152 T.C. No. 7 (March 13, 2019), the fight was over whether the taxpayer gave the IRS "clear and concise" notice that his address changed. The Court said "no," and thus, Gregory's Tax Court petition was filed late. Gregory lost his right to challenge the NOD in Tax Court. The same result would be reached if a citizen late-filed a request for a CDP Hearing or a Tax Court petition challenging a CDP determination, such as was the case in *Kearse*.

Gregory's address changed after filing the return for the period in question. The IRS sent the NOD to the address on the return, not to the new address. Gregory submitted a *Power of Attorney*, Form 2848, and a filing extension request, Form 4868, subsequent to filing the return on which the NOD was based. Both of those forms showed his new address. However, neither of those is a "tax return" as defined by law. Therefore, neither constituted "clear and concise" notice to the IRS that Gregory's address changed. Indeed, the instructions for *both* forms say that *neither* will change one's address of record per the most recently filed tax return.

For clarity, the Tax Court pointed to IRS Form 8822, *Change of Address*. The Court confirmed that this is the only form the IRS will accept to formally change a person's address, other than the most recently filed tax return. Indeed, both Forms 2848 and 4868 direct citizens to use Form 8822 to change their address with the IRS. Moreover, simply submitting a "forwarding order" through the USPS does not officially change one's address with the IRS.

It is good practice to advise clients on the move that they must officially change their address with the IRS, either through a filed tax return, or Form 8822. If the move is happening well before the due date of one's return, the best practice is to submit Form 8822 as of the effective date of the move. This will ensure that clients do not miss IRS notices that carry important filing deadlines and appeal opportunities.

And no, it is not a good idea to get off the IRS's "mailing list."

Form **8822**
(Rev. October 2015)
Department of the Treasury
Internal Revenue Service

Change of Address

(For Individual, Gift, Estate, or Generation-Skipping Transfer Tax Returns)

► Please type or print. ► See instructions on back. ► Do not attach this form to your return.
► Information about Form 8822 is available at *www.irs.gov/form8822.*

OMB No. 1545-1163

Part I Complete This Part To Change Your Home Mailing Address

Check **all** boxes this change affects:

1 ☐ Individual income tax returns (Forms 1040, 1040A, 1040EZ, 1040NR, etc.)
► If your last return was a joint return and you are now establishing a residence separate from the spouse with whom you filed that return, check here . . . . . ► ☐

2 ☐ Gift, estate, or generation-skipping transfer tax returns (Forms 706, 709, etc.)
► For Forms 706 and 706-NA, enter the decedent's name and social security number below.

► Decedent's name ► Social security number

3a **Your name** (first name, initial, and last name)	**3b** **Your social security number**
4a **Spouse's name** (first name, initial, and last name)	**4b** **Spouse's social security number**

5a **Your prior name(s).** See instructions.

5b **Spouse's prior name(s).** See instructions.

6a **Your old address** (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

6b **Spouse's old address,** if different from line 6a (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

7 **New address** (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

Part II Signature

Daytime telephone number of person to contact (optional) ►

Sign Here

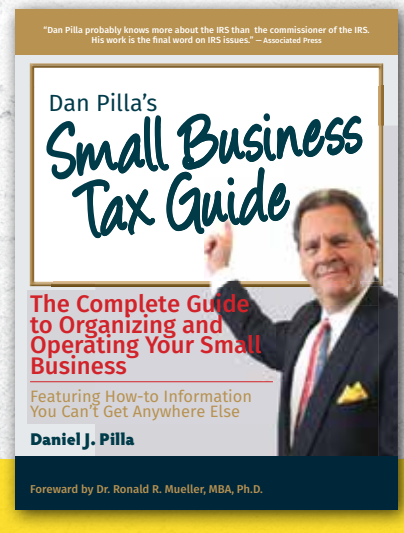
► Your signature Date

► If joint return, spouse's signature Date

► Signature of representative, executor, administrator/if applicable Date

► Title

For Privacy Act and Paperwork Reduction Act Notice, see back of form. Form **8822** (Rev. 10-2015)



Introducing, Dan Pilla's Small Business Tax Guide

NOW AVAILABLE FOR IMMEDIATE DELIVERY

More than half a million new businesses are started every year by creative, energetic people looking to capitalize on their ideas and ingenuity. Unfortunately, only about 3 out of 10 last more than two years, and only about 50% those make it five years.

A key reason small businesses fail is because of IRS problems. The tax code heaps a mountain of reporting, payment and compliance obligations on small businesses that most business owners don't know anything about. In fact, the Government Accountability Office once counted **more than 200 distinct obligations** placed on the shoulders of businesses. **Can you name all 200? Can you name even 20?**

If not, YOU NEED THIS BOOK. And since the tax code was changed more than 5,900 times just since 2001, you need this book now more than ever.

It's not enough to be the creative genius behind your company. You also have to keep your company out of trouble with the IRS. Don't get clobbered for violating tax rules you never knew existed. If you currently operate or intend to operate your own small business, you need this important new book right now.

Available for Immediate Delivery

$39.95 plus P&H

"I guarantee you that what you learn in this book is not taught in even the best business schools in the country." – Dan Pilla

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