

December 2005

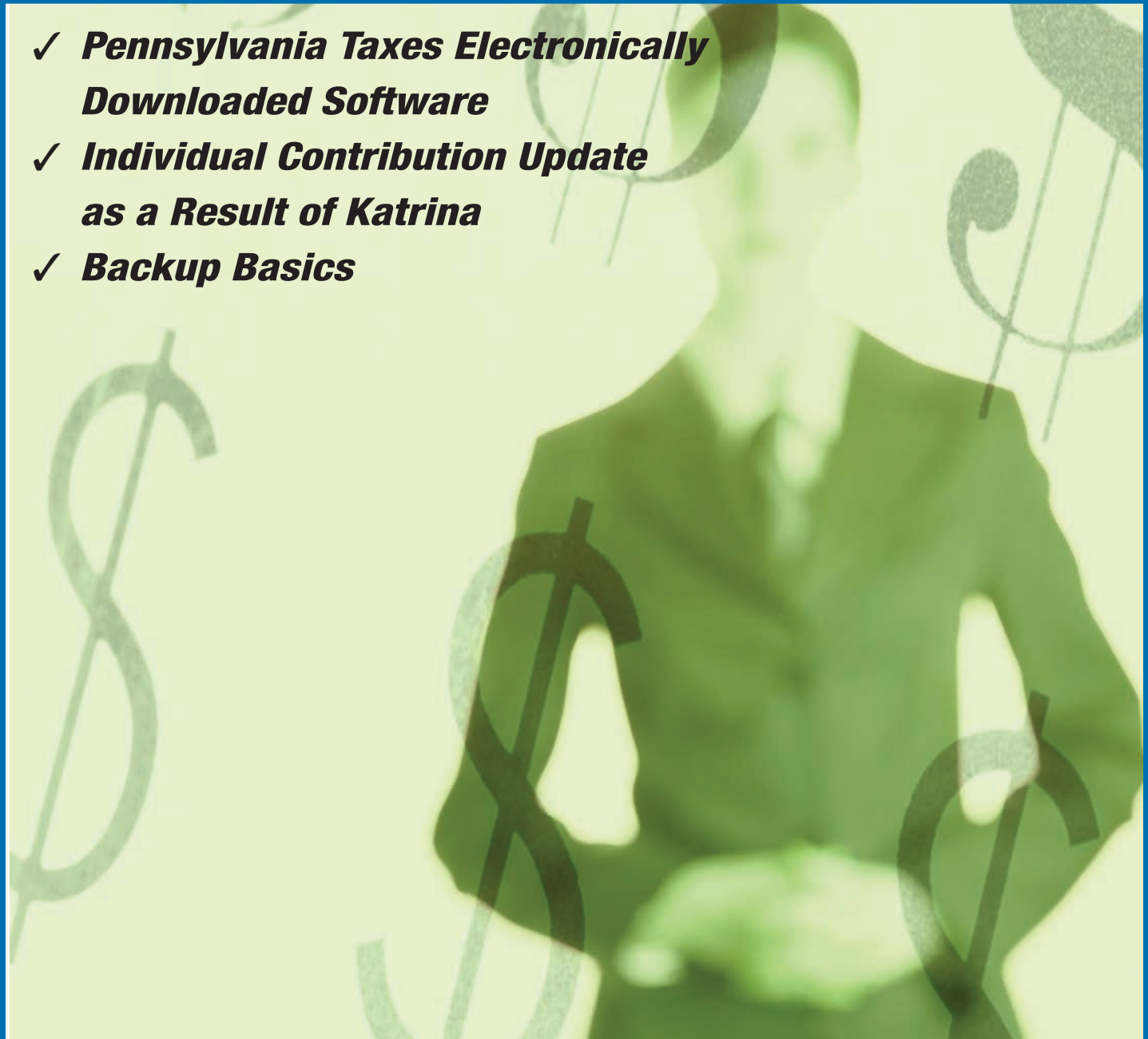
the **Pennsylvania**

Accountant



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The Magazine Of The Pennsylvania Society of Public Accountants

- 
- ✓ ***Pennsylvania Taxes Electronically
Downloaded Software***
 - ✓ ***Individual Contribution Update
as a Result of Katrina***
 - ✓ ***Backup Basics***

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A Message From The President



As we approach the end of 2005, I wish to take this opportunity to wish everyone a very pleasant holiday season and a happy, healthy and productive 2006.

Over the past several months,

- I had the rewarding experience of visiting many of the chapters and working with the multitude of volunteers, who are the life blood of the chapters. I thank them for the hospitality with which I was welcomed at their meetings. A recurring topic of discussion at those meetings was the PSPA 50% discount, available through December 31, 2005, for PSPA members seeking tax and/or business advisor accreditation through the Accreditation Council for Accountancy and Taxation. As a result of this promotion, twenty-five PSPA members have received ACAT credentials since September, 2005. My congratulations to those new credential holders.

- I had the pleasure of attending all of the Legislator Appreciation Events held this fall. These functions are a wonderful opportunity to network with legislative committee chairs and other legislative leaders in an informal social setting. Please consider joining your peers for PSPA's "Day at the Capitol," which will be held in May, 2006.
- I attended two networking meetings of the Affiliated State Organizations of District II of the National Society of Accountants, which includes Delaware, New York, New Jersey, Pennsylvania, Puerto Rico, and the US Virgin Islands. From the ideas exchanged in the first meeting, a second meeting was held to focus on legislative issues of mutual concern to members of District II. Under the direction of District II Governor, Robert H. Sommer, the group, including Robert L. Cross, Administrative Chair of the NSA Right to Practice Committee and John G. Ams, NSA Executive Vice President, focused on practice rights of the small practitioner. In aggressively pursuing the goals established by the Long-Range Planning Committee,
- The Membership Committee has developed several new member initiatives. Existing members who successfully recruit a new member have the opportunity to win \$1,000, \$500 or \$250 at the annual meeting being held June 22 - 25, 2006 at the historic Hotel Bethlehem.
- The Technology Committee has continued to enhance the organization's web site and will soon be offering members the opportunity to list your practice questions for discussion and response by other PSPA members. Thanks to the efforts of the Technology Committee and the Executive Director, your firm can inexpensively have its own web page. Simply visit the "members only" section at www.pspa-state.org for details.
- The Education Committee continues to offer the popular ACPEN series of satellite and webcast seminars and is concurrently developing new areas of the state for live educational seminars. Look for the highly popular Financial Statement Boot Camp to be held again in 2006.
- The Practice Continuation Committee is developing practice succession education programs and is working diligently on a members' emergency assistance program.
- The By-Laws Committee is concluding a technical review of the organization's By-Laws. Additionally, new provisions will be added to address the organization's nomination and election process.
- The Executive Office is continually reviewing and enhancing member benefits and corporate sponsorship programs. Many thanks to PSPA Executive Director, Sherry DeAgostino, for the attention to detail which she gives to every aspect of the organization.

In closing, I would like to thank the PSPA members and staff who have contributed to the many accomplishments achieved over the last few months.

Respectfully Submitted,
Linda M. Roth, CPA
PSPA President

Mark Your Calendar for 3rd Annual Day at the Capitol

Plan to attend PSPA's 3rd Annual Day at the Capitol on May 9, 2006. A legislative workshop will be held at the Harrisburg Hilton and Towers beginning at 9:30 A.M. followed by legislator visitations at the Capitol in the afternoon. Continental breakfast, lunch, 2 hours of CPE, and bus transportation (from Plymouth Meeting) is provided to all PSPA members at no charge.



PSPA Meets with PA Department of Revenue

The PSPA Committee on Cooperation with the PA Department of Revenue held its annual meeting with Department representatives on November 15, 2005 at Department of Revenue headquarters, Strawberry Square Building, Harrisburg. Those PSPA members in attendance were: H. Richard Neidermyer, CPA, Chairman; Donald L. Allen, CPA (Central Chapter); Randy L. Brandt, CPA (Central Chapter); Irving Braunstein, EA (Buxmont Chapter); W. Raymond Bucks, CPA (South Central Chapter); Sherry L. DeAgostino, PSPA Executive Director; Norma J. Ridder, CPA (Central Chapter); Kevin P. Summerson, CPA (South Central Chapter); Raymond A. Wolownik (Central Chapter). A transcript of the questions and answers will be provided on the PSPA website at www.pspa-state.org by December 15th.

PSPA Scholarships Awarded

The PSPA Scholarship Committee awarded three scholarships in the amount of \$1,000 each for the 2005-2006 academic year. To be eligible for the scholarship, applicants must be junior/senior accounting majors with at least a 3.0 GPA. Additionally, students must be Pennsylvania residents who are currently enrolled as a full-time student at a Pennsylvania college or university.



The recipients are:
Michael David Welsh, Robert Morris University
Bryanna Lynn DiGerland, Elizabethtown College
Schlyer S. Sims, Drexel University.

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PENNSYLVANIA TAX UPDATE

Pennsylvania Taxes Electronically Downloaded Software

By Sharon R. Paxton

The Pennsylvania Department of Revenue has announced in *Sales Tax Bulletin* 2005-04 that the sale or use of all “canned” computer software, including updates, enhancements and upgrades, is subject to sales and use tax as of November 1, 2005, regardless of delivery mode. This is a significant departure from the Department’s longstanding policy that only canned software delivered to taxable Pennsylvania purchasers via disks or other tangible media was subject to tax, while software transferred electronically (i.e., via Internet download) was not subject to tax.

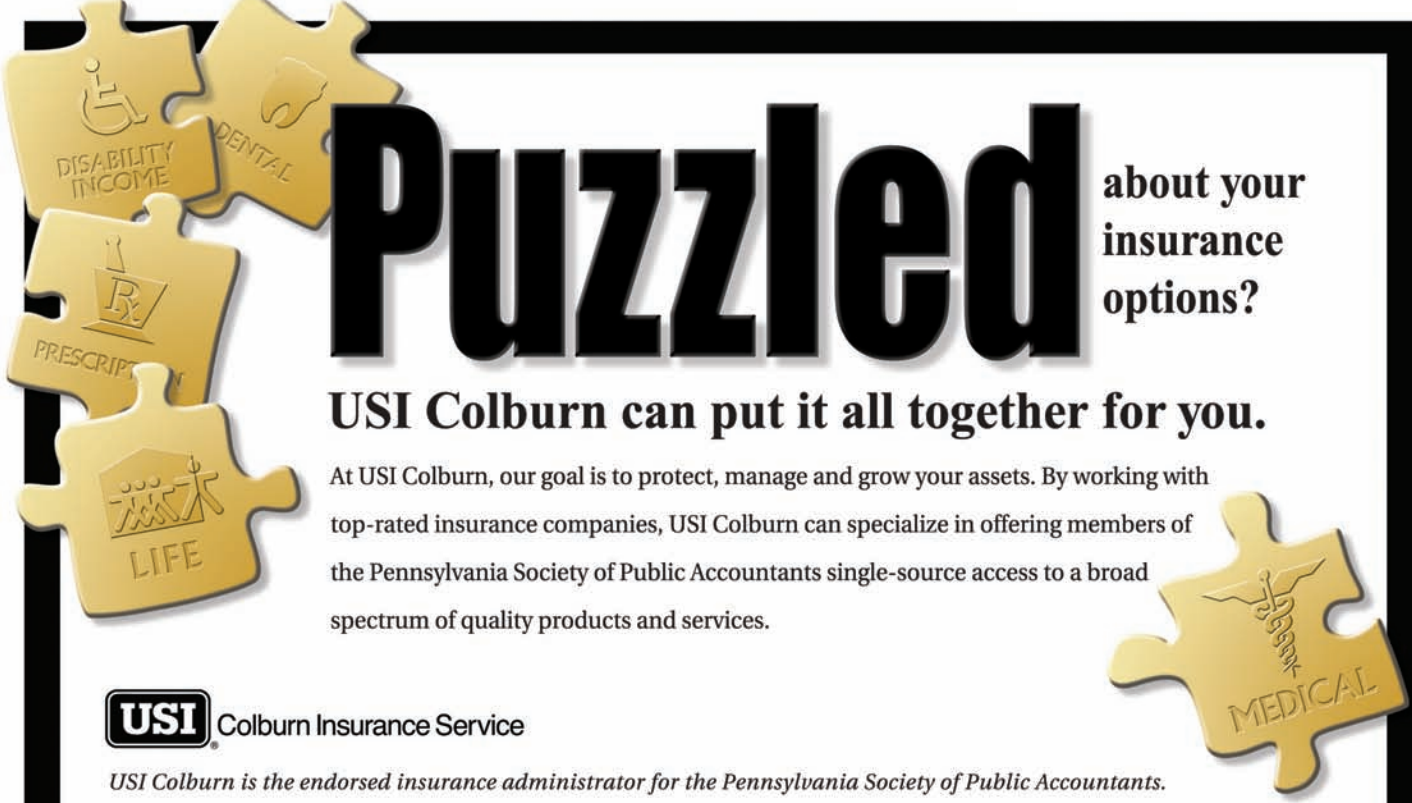
The change in the Department’s policy results from the decision issued by the Commonwealth Court on September 15 in *Graham Packaging Company, LP v. Commonwealth*. The specific issue addressed in *Graham*

Packaging was whether the renewal of licenses to use canned software was subject to tax. Graham Packaging Company’s primary assertion was that its purchases of license renewals were not subject to tax because the original software was obsolete and no additional tangible personal property had been transferred in connection with the renewals. Alternatively, it was argued in an amicus brief filed by Electronic Data Systems Corporation that all software should be excluded from the definition of “tangible personal property” because the transfer of any tangible material was incidental to the sale of intangible computer code. In contrast, the Commonwealth viewed the form of the initial software delivery as determinative of whether the transaction involved a sale of tangible

or intangible property.

In reaching its decision, a three-judge panel of the Commonwealth Court rejected the statutory interpretations proposed by both parties. Instead, the Court adopted an “essence of the transaction” test used by courts in some other states and determined that “the nature of the software,” as opposed to its packaging, determines whether software and renewal licenses should be classified as tangible or intangible property. The majority of the panel then concluded that canned software, even if delivered electronically, is “tangible” property because it is “stored on a computer’s hard drive. . . and can be physically perceived by checking the computer’s files.” One judge dissented.

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Individual Contribution Update as a Result of Katrina

As we are all too aware, Hurricane Katrina disrupted the lives of countless thousands of people and destroyed their homes, businesses and their personal lives. Although the true financial impact may not be known for decades, it is clear that the devastation has impacted all of America.

As a direct result of the hurricane, final legislation was passed on September 23, 2005, with President George W. Bush signing the *Katrina Emergency Tax Relief Act of 2005*. However, a couple of key contribution provisions require our immediate attention under the new law.

The new law increases the limitation on individual tax deductions for new cash contributions to charitable organizations made between August 28, 2005 and December 31, 2005 to 100% of Adjusted Gross Income.

As a general rule, individuals are limited to 50% of their Adjusted Gross Income for charitable deductions. Although the 50% limitation has still been retained for pre-August 28 contributions, the Act expands the contribution limitation to 100% of Adjusted Gross Income for

new cash contributions made to qualified charities (both Katrina and non-Katrina related) from August 28 to December 31.

In addition, the new law permits a standard mileage deduction of 34 cents a mile for the charitable use of an automobile for Hurricane Katrina related charitable services rendered between September 1, 2005 and December 31, 2006. (A rate of 29 cents per mile applies to the period August 25 - August 31, 2005 for Hurricane Katrina related services). Unfortunately, the mileage rate (14 cents) continues to apply for non-Katrina related charitable services.

Individuals contemplating increased giving by year-end (especially for Katrina related activities) need to contact their tax professional as soon as possible.

Thomas M. Brinker, Jr., LL.M., CPA
Professor and Accounting Program Coordinator
Arcadia University Glenside, PA 19342



The Lehigh Valley Chapter of the Pennsylvania Society of Public Accountants celebrates its 25th Anniversary. At its September 20th chapter meeting the chapter recognized the founding members of the Lehigh Valley Chapter. In attendance were (left to right): Fred Finken, Judy Stanz, Joseph Horoschak, Nicholas Kalogeras, John Schimmel, Nicholas Pippis, Fred Kleinhenz, Paul Matus, Donald Beach. Also in attendance was Dolly LiPuma, wife of Eugene LiPuma who was unable to attend.



PSPA President Linda M. Roth presents Buxmont Chapter President, Michael H. Agin with LHV Chapter 25th Anniversary commemorative wine bottle at Buxmont Chapter's Spetmber 27th meeting.

NSA State Director's Message



The Year Ahead

For NSA, 2005-2006 marks the beginning of sixty-one years of service. During that period, NSA has remained "Committed to Your Success", and new President Wanda Samek has adopted that theme for her term of office. As the new administrative year gets underway, NSA has established a National Regulation and Oversight Committee to continue NSA's efforts to protect the independent practitioner's right to practice, by monitoring issues that could impact NSA members at the national level. While NSA's State Regulation and Oversight Committee has provided legislative monitoring and support at the state level, many events in recent years have created the need to protect member's rights nationally also. With the introduction of Senate Bill S.832 to regulate individuals who prepare federal tax returns for a fee, NSA continues to propose the creation of an administrative entity to develop and manage a national tax preparer registration system. Under NSA's proposal, the governing board would have a majority of public members, and practitioner representatives would be a minority. The entity would be a publicly recognized and Congressionally chartered corporation, but it would not be part of the federal bureaucracy. NSA also recommends the use of an initial exam, with the requirement for registration renewal every three years. In addition, NSA recommends a waiver of the initial exam for any individual holding credentials offered by a nationally recognized credentialing body or anyone licensed to practice accountancy from a State Board of Accountancy.

NASBA Center for the Public Trust

The National Society of Accountants announced in September 2005 that it had become a founding member of the National Association of State Boards of Accountancy (NASBA) Center for the Public Trust. The NASBA Center for the Public Trust was established to advance ethical practices in business, education, public policy and society, while promoting a positive image for the accounting community. It will recognize individuals and organizations that follow high standards of social responsibility for performance and leadership. Most importantly, the Center will showcase the positive happenings in the business, professional and regulatory communities.

Practitioner Survey

In October, NSA members were asked to participate in the nationwide 2005-2006 Income and Fees Survey. The report, which will be published in December 2005, will break down responses by firm demographics, including location, gross and net revenue and size of firm. The report will also summarize what practitioners charge for different accounting, tax, and financial planning services, operating expenses, employee compensation, benefits and plans for succession planning. This is another way that NSA is providing their members with valuable information to help practitioners make informed decisions.

Accreditation Council for Accountancy and Taxation

In September 2005, Cassandra Newby, Director of the Accreditation Council for Accountancy and Taxation (ACAT), met with the PA Society of Public Accountants Board of Directors to discuss credentials offered through

that organization. Affiliated with NSA, ACAT is an independent accrediting and monitoring organization that was established in 1973. You may recall from my message in the September/October Pennsylvania Accountant that Senate Bill S.832 to regulate individuals (except those regulated under Circular 230) who prepare federal tax returns for a fee, was introduced in April 2005. ACAT offers three nationally recognized credentials that could possibly satisfy the competency and ethical standards that the Senate bill seeks to achieve. In addition, ACAT has been invited to bid on the Enrolled Agents exam, which IRS plans to outsource. The three credentials offered are as follows:

- **Accredited Business Accountant/Accredited Business Advisor**
- **Accredited Tax Preparer**
- **Accredited Tax Advisor**

There are **two ways to earn the credential**. The first is by taking the **ACAT Examination**. The ACAT examination will be offered at various locations throughout the United States on Friday, December 9, 2005. A list of exam locations can be obtained by emailing ACAT at info@acatcredentials.com. The second way to obtain the credential is through a **waiver program** offered to individuals who have existing eligible credentials, that is, Certified Public Accountants, Enrolled Agents, Attorneys, or state licensed accountants. In addition, the ATP credential is being offered to individuals who can demonstrate successful completion of at least 60 hours of qualifying education in tax preparation and at least three years of work experience in tax preparation.

The ACAT Board has approved a

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5+ years:	_____	_____
4 years:	_____	_____
3 years:	_____	_____
2 years:	_____	_____
1 year:	_____	_____
<1 year:	_____	_____
Total:	_____	_____

*Average of 25 hours per week or less

In the past three years, how many firm members attended a loss control seminar _____

On what date was the firm established _____

Within the past 5 years:

Has the firm provided services to a client that is engaged in the issuance, offering, registration or sale of securities or bonds; or provided clients with forecasts or projections for inclusion in sales literature, etc., of any securities or bonds?
 YES NO

Has any member of the firm provided services or acted as a director/officer/committee member for any financial institution? YES NO

Has any member of the firm had an accounting license or authority to practice accounting revoked, or been subject to disciplinary action, fine reprimand, or criminal penalty related to performance of professional services? YES NO

Renewal: ___/___/___ Insurer: _____ Limit: \$ _____ Deductible: \$ _____ Premium: \$ _____
 What is the retroactive date on your current policy ___/___/___ None N/A

Approximately percentage of income received from the following activities for the last annual period:

Activity	%
Audit: Public Companies**	
Audit: Other	
Review	
Compilation	
Bookkeeping	
Tax	
Business Valuation	
Computer Consulting	
Litigation Support	

Activity	%
Litigation Support	
Management Advisory Services	
Assurance Services	
Financial Planning	
Asset Management	
Sale of Mutual Funds	
SEC/Sarbanes Oxley Related Services**	
Other*	
Total	100%

**Calls for a supplement

CLAIMS HISTORY (within the past five years):

Date claim(s) Reported	One: ___/___/19 _____	Two: ___/___/19 _____	Three: ___/___/19 _____
Amount Paid, including	\$ _____	\$ _____	\$ _____
Defense Expenses (if	\$ _____	\$ _____	\$ _____
closed)			
Reserve amount	\$ _____	\$ _____	\$ _____
(if open)			



With Steve Ramsey
of Focal Tech, Inc.

Backup Basics

One of the most important challenges for smaller accounting firms is figuring out how to implement an efficient and effective backup solution. For those of you who work at larger firms, your data is probably stored on a network server and backed up with an automated server backup solution using a tape drive and third party software like Veritas Backup-Exec. I want to address those of you who have one or two computers where the data is stored on the physical machine you work on. Additionally, if you own a home computer, the backup techniques I'm about to explain will apply to you as well.

How often should my data be backed up?

Well, to answer that, ask yourself how much work you are willing to risk having to recreate should you lose your data. If you only backup your data once per week, at any time you could lose up to 6 days worth of data. I'd recommend at least a nightly backup depending on how much the data on your machine is changing.

What should I backup? I recommend only backing up your data. Backing up the applications on your machine is

not as important as backing up the data used by those applications. If you are using the Intuit ProSeries tax software package, the only files you'd need to backup are the client data files. If your machine completely crashes and you have to start from scratch, you'll have to reinstall the software anyway. So, having the actual software programs backed up won't do you much good. At the end of each year, I'd recommend making a yearly backup to a CD (or series of CD's/DVD's depending on the amount of data). This way, as you move from one year to the next, you are only backing up files that you are using.

How do I know what to backup? The best way to know you are backing up the correct information for your applications is to contact the software vendor directly. Based on my experience with ProSeries, there is a client file backup utility provided in the software that can be run on demand to backup all of the current year's data. I'm sure other tax and accounting packages have similar functionality.

What can I use to perform the backup?

You have some options. The backup product that comes pre-installed with Windows XP is actually not too bad. And, best of all, it's free and already installed. Other options include buying third party software or just backing up entire directories of files. The bad part about backing up file directories through the file system is that none of the data is compressed, meaning it takes up more space.

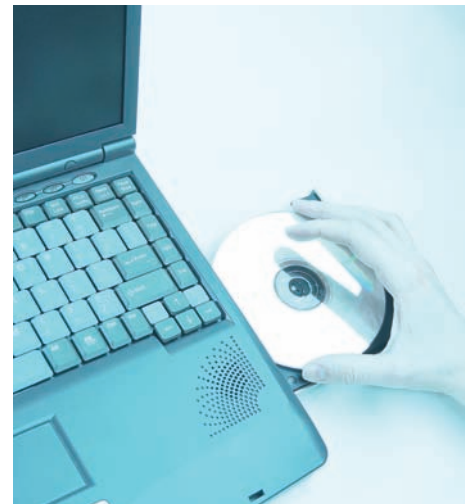
What should I backup my files to? As with the backup software, you have options. Things like zip drives, rewritable CD's/DVD's, external hard drives and even USB drives are all viable solutions. It all comes down to how much data you are backing up as to which device and solution works best for your situation.

What can I try if I don't have a backup and my hard drive crashes? Short of spending thousands of dollars to send

the drive to a data recovery specialist, I have personally found one thing that miraculously worked for me. About two years ago, I had a laptop that was partially backed up. Some data was saved on one of our servers, but there was also some data that was saved on the local laptop hard drive. I had just completed writing a software application for a client one night at home. When I arrived at work the next morning and turned on my laptop, I got the dreaded blue screen of death with a hard drive failure message. The drive was attempting to read, but all I heard was a clicking sound. After several failed attempts to revive the drive using every technique I could think of, I disconnected the hard drive and put it in the freezer. I literally froze the drive. After about a half hour in the freezer, I connected the drive and was able to boot up the laptop to a point that it was recognized on the network and I connected to the drive from another machine on the network to copy to files I needed.

Most hard drive failure stories don't have a happy ending like mine did. So, the best solution is to make sure you have a good and recent backup of your data.

Steve Ramsey is a Partner with Focal Tech, Inc. of State College, PA. To comment on this article or request a topic for a future article, contact Steve at sramsey@focaltech-inc.com or 814-272-0391 x103.



Chapter Meeting Dates

Buxmont Chapter

All meetings are held on the fourth Tuesday of the month at Williamson's Restaurant in Willow Grove unless otherwise noted.

DECEMBER 20, 2005

TOPIC: PA Corporate Tax Update

SPEAKER: Jeff Creveling, PA Department of Revenue, Bureau of Corporate Taxes

JANUARY 24, 2006

TOPIC: NJ Tax Update

SPEAKER: Nicholas Cocco, NJ Department of Revenue

Central Chapter

McCall's Meeting & Conference Center, Upper Darby

JANUARY 17, 2005

TOPIC: Forms Update

LOCATION: Eden Resort Lancaster (morning)

LOCATION: Inn at Reading (evening)

FEBRUARY 21, 2006

TOPIC: Tax Roundtable

LOCATION: Inn at Reading

CPE: 2 Hours Tax

Lehigh Valley Chapter

Meetings are held the third Tuesday of the month at the Holiday Inn Bethlehem, Route 22 & 512 unless otherwise noted. Meetings begin at 6:00 P.M. (Dinner), 7:00-9:00 P.M.

CPE Program unless otherwise noted. Fees are \$30 (members)/\$40 (nonmembers) unless otherwise noted.

JANUARY 17, 2005

TOPIC: Fair Labor Standards Act

SPEAKER: Charlene Rachor, US Dept. of Labor

CPE: 2 Hours Other

FEBRUARY 21, 2006

TOPIC: Tax Roundtable Discussion

CPE: 2 Hours Tax

MARCH 21, 2006

TOPIC: Tax Roundtable Discussion II

CPE: 2 Hours Tax

Philadelphia Chapter

McCall's Meeting & Conference Center, Upper Darby

JANUARY 9, 2005

TOPIC: City of Philadelphia/Local Tax Issues

SPEAKER: Thomas Kramer and Matt Mellinson, City of Philadelphia Department of Revenue

CPE: 2 Hours Tax

FEBRUARY 1, 2005

TOPIC: Tax Potpourri

SPEAKER: David Zalles

CPE: 6 Hours Tax

Southeast Chapter

Third Wednesday of the month at the Townhouse Restaurant, Media

DECEMBER 21, 2005

TOPIC: LLCs vs. S-Corp vs. Sole Proprietor

SPEAKER: Gregory Spadea, Esq.

CPE: 2 Tax

Western Pennsylvania Chapter

Meetings are held at the Edgewood Country Club

JANUARY 18, 2006

TOPIC: PA State Tax Update/PA LLC Issues

CPE: 2 Hours Tax

FEBRUARY 15, 2005

TOPIC: Open Forum Round Table Discussion

CPE: 2 Hours Tax

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Purchase cards are payment partner for cost-conscious businesses

Supply chain management technology and processes have come of age, with sourcing strategies, e-procurement and spend data analysis tools generating significant returns on investments. While senior financial executives are charged with squeezing even the smallest inefficiencies out of routine business processes, few have explored perhaps the final frontier in supply chain management - the payment.

There is no single answer to the question, "How should I pay?" An important place to start is learning about the fundamental economics and benefits of each type of payment. A business' mission must be to achieve an optimum mix of electronic and paper payments. The first rule of their payment strategy should be, "Think cards first."

The hard cost facts

Each payment option - paper checks, ACH, credit card or wire - has benefits as well as restrictions. Paper checks remain the reigning champion of payments when it comes to business-to-business transactions.

Annual business-to-business spending totals more than \$7.8 trillion, as reported by Tower Group Commercial Payment Cards in the U.S. Product Overview December 2001, with 86 percent of those transactions paid by check, according to a survey by the Electronic Payments Network.

Yet, the days of paper checks as the dominant payment type may be numbered. Check 21, which became effective last year, promotes the future electronic exchange of check images as part of the check-clearing process in order to reduce the distance that paper checks must be physically transported. With movement towards speedier check processing, the reduction in this float benefit is expected to reduce the reliance of businesses on checks.

Those still clinging to this payment type may find increasing costs charged by their financial institutions to process the paper checks.

When Automated Clearing House (ACH) payments are combined with information or data within an electronic data interchange, there is significant value, especially when used to process invoice and payment information with strategic business partners. Of course, ACH is relatively inexpensive when used on its own, but the typical two-day settlement period significantly diminishes the benefit of float.

Wire transfer is more costly but is the best payment tool to guarantee and expedite payments.

Purchasing cards are the fastest-growing payment tools in the marketplace. Card acceptance has become more widespread, and cards are used to purchase almost everything a business needs, from office supplies and hardware to customer entertainment.

- Purchase cards allow you to make just one payment to the bank each month to cover all of your card transactions made with individual vendors.
- Cards can reduce soft costs of about \$5 to \$15 per invoice in accounts payable personnel and monthly check-writing activity.
- Most important, purchasing cards are one of the few cash management tools that can generate income for the business through a revenue-share program. Your revenue potential is based on the total volume spent on your purchasing cards.

Based on the costs and benefits of each of these payment types, a complete overhaul of a business' payables may be in order. Remember to think card first, ACH second. Many businesses that are finally on board with purchasing cards are wondering why they didn't do it sooner.

This was prepared for general information purposes only and is not intended as specific advice or recommendations. Any reliance upon this information is solely and exclusively at your own risk.



NSA State Director Message

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50% discount off their normal fees through December 31, 2005 as an introductory offer to PSPA members.

Education

In November, NSA members were offered a **FREE** webcast on **Top 10 Things You Need to Know When Working with Client Quickbook Files (Common client errors and how to fix them)**. Included with the program was a download of an 80 page handbook for future reference. NSA will jointly sponsor a National Tax Update with the Accounting, Financial and Tax Professionals of New Jersey (AFTP NJ) at the Atlantic City Hilton on December 5-6, 2005. The program will offer 16 hours of CPE (14 hours in taxation; 2 hours in Ethics).

Membership

During the month of September, fifteen individuals from Pennsylvania joined the National Society of Accountants (NSA), and an additional three members joined in October. NSA continues to offer their 60th Anniversary membership special offer to PSPA members. PSPA members can join NSA for \$119, and save \$60 off the regular \$179 membership fee. Offer ends December 31st.

Please feel free to contact me with any questions regarding NSA via email at: rbraschcpa@comcast.net

Respectfully submitted,
Richard Brasch Jr., CPA
NSA State Director





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Western Pennsylvania Chapter Awards Scholarships

The Western Pennsylvania Chapter awarded two \$1,000 scholarships for the 2005-2006 academic year. The scholarships were presented at the chapter's September 21st meeting at the Edgewood Country Club.

The Chapter's annual \$1,000 award was supplemented this year with a second scholarship in memory of PSPA Past President Anthony P. Theofilis, CPA.

The recipients of the awards were Celeste Marie Dreskler of Greensburg, PA, attending Duquesne University and Michael David Welsh of Bridgeville, attending Robert Morris University.



Seated - Judith Rach, CPA, Vice Secretary; Kevin J. Matschner, Chapter President. Left to Right - Malcolm K. Levy, PA, Scholarship Committee Chairman; Michael David Welsh, Scholarship Recipient; Marie Dreskler, Scholarship Recipient; Penny Erbe, EA, First Vice President and Robert Skarlis, PA, Treasurer.

Pennsylvania Tax Update continued from page 4

Surprisingly, counsel for Graham Packaging filed a post-decision motion with the Court seeking to amend the facts of record to reflect that the software upgrades at issue in the case were not in fact delivered electronically, but instead were provided on tangible computer disks. The Court allowed disclosure of this fact - which was central to the dispute before the Court - to be added to the record, but stated that the method of delivery was irrelevant to its conclusion that the underlying software was tangible personal property. Although an appeal was initially expected, Graham Packaging filed no further appeal and the Court's decision became final on October 15.

There are significant arguments that both the *Graham Packaging* decision and the position taken in Sales Tax Bulletin 2005-04 are flawed. For example, the Court failed to explain how the "essence of the transaction" with respect to the sale or use of

canned software differs from the sale or use of custom software. Both are stored on and take up space on a computer hard drive and can be perceived in computer files. Arguably both - or neither - should be treated as tangible personal property. Nevertheless, the Court acknowledged that custom software is not tangible property and is not subject to tax.

In light of this and other issues, and the fact that one member of the three-judge panel dissented from the majority's opinion, there would have been a significant chance that either an en banc panel of the Commonwealth Court or the Pennsylvania Supreme Court would have reversed *Graham Packaging*, or (at least) narrowed its application to the facts at hand, had the taxpayer actually received its upgrades via electronic download and filed an appeal. If another taxpayer takes up a case on the same issues, *Graham Packaging* may well be overruled. In the meantime, a number of parties are pursuing legislative initiatives to reverse the *Graham Packaging* decision, as it applies to

electronic downloads.

Businesses that paid tax on electronically downloaded software or upgrades, or license renewals for such software, should request refunds for tax paid on invoices dated prior to November 1, 2005. (Some vendors began charging tax immediately after issuance of the *Graham Packaging* decision.) Businesses should also maintain records of all payments of tax on electronic downloads and be aware of the applicable statute of limitations for purposes of filing refund claims in the event that *Graham Packaging* is overturned retroactively via legislation or litigation. Consideration should also be given to filing protective refund claims (or raising refund counterclaims in audit appeals) to preserve the issue for all sales and use tax paid on canned software, regardless of the method of delivery, in the event that a subsequent appeal successfully raises the issues presented in the *Graham Packaging* amicus brief.

Sharon R. Paxton is a member of McNees Wallace & Nurick LLC's State and Local Tax Group.



GAO Issues Report on Sponsorship of Immigrant Workers

GAO report uncovered that as of December 2003, IRS databases showed 18,942 businesses (5 percent) applying to sponsor immigrant workers had \$5.6 billion in unpaid assessments. Of this amount, businesses were not in installment agreements with IRS or otherwise making payments on \$3.7 billion. In addition, the study uncovered a number of businesses seeking to sponsor immigrants who were nonfilers. The GAO is recommending a data sharing arrangement between IRS and the United States Citizenship and Immigration Services (USCIS) which has the potential to improve tax compliance as well as immigration eligibility decisions.

IRS Announces 2006 Standard Mileage Rates

The Internal Revenue Service issued the 2006 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning Jan. 1, 2006, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) will be:

- 44.5 cents per mile for business miles driven;

- 18 cents per mile driven for medical or moving purposes; and
- 14 cents per mile driven in service of charitable organizations, other than activities related to Hurricane Katrina relief.

The new rate for business miles compares to a rate of 40.5 cents per mile for the first eight months of 2005. In September, the IRS made a special one-time adjustment for the last four months of 2005, raising the rate for business miles to 48.5 cents per mile in response to a sharp increase in gas prices, which topped \$3 a gallon.

The standard mileage rates for business, medical and moving purposes are based on an annual study of the fixed and variable costs of operating an automobile. Runzheimer International, an independent contractor, conducted the study for the IRS.

The mileage rate for charitable miles is set by statute. For the first eight months of 2005, the standard rate for miles driven for medical or moving purposes was 15 cents per mile, and, except for special Hurricane Katrina rates, the standard rate for miles driven in service of a charitable organization was 14 cents per mile.

For the last four months of 2005, the agency raised the standard rate

for miles driven for medical or moving purposes to 22 cents per mile. The standard rate for charitable miles remained at 14 cents per mile—except for charitable miles relating to Hurricane Katrina.

IRS Issues E-File Guidance for Corporations and Tax-Exempt Organizations

The Internal Revenue Service issued guidance on steps large corporations and tax-exempt organizations can take to seek waivers from electronic filing requirements.

Notice 2005-88 establishes the bases under which taxpayers can request waivers from the electronic filing requirement:

- Where the taxpayer cannot meet electronic filing requirements due to technology constraints; or
- Where compliance with the requirements would result in undue financial burden on the taxpayer.

The notice also outlines the specific steps taxpayers should follow when requesting waivers from the IRS.

Electronic filing of tax returns by large corporations and information returns by large tax-exempt organizations is required by regulations issued in January 2005. The requirement applies to returns for taxable years ending on or after Dec. 31, 2005. For tax year 2005 returns that are due in 2006, affected corporations are those with assets of \$50 million or more that file 250 or more returns a year, including income tax, excise tax, information and employment tax returns. For tax year 2005 returns that are due in 2006, affected tax-exempt organizations are those with \$100 million or more in assets that file 250 or more returns a year.

Electronic filing has been available to corporations and tax-



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Tax Corner

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exempt organizations since 2004. So far this year, about 205,000 corporations have voluntarily filed their corporate income tax returns electronically, including about 1,100 corporations with assets exceeding \$10 million. In addition, the IRS has received about 3,600 electronically-filed information returns from tax-exempt organizations.

IRS has worked closely with stakeholders representing corporations and tax-exempt organizations, and software developers, in developing e-file procedures. Extensive information is available on irs.gov. Earlier this year, in response to concerns raised by corporations, IRS issued a set of "Tax Year 2005 Directions for Corporations Required to e-File." These directions identify alternative steps corporations may take to satisfy mandatory e-file requirements without the need of a waiver.

Almost all businesses and exempt organizations already prepare their returns electronically. Increasingly, individuals, as well as businesses, are conducting most or all of their transactions with the IRS electronically, which benefits taxpayers by improving the accuracy of filed returns and speeds the processing of those returns.

For tax years ending on or after Dec. 31, 2006, the electronic filing requirement will be expanded to include the tax year 2006 tax returns of corporations and tax-exempt organizations with \$10 million or more in total assets. In addition, private foundations and charitable trusts will be required to electronically file their Form 990-PF, regardless of their asset size. Corporations and tax-exempt organizations outside of announced parameters may voluntarily electronically file.

Notice 2005-88 is posted on irs.gov and will appear in Internal Revenue Bulletin 2005-48, dated Nov. 28, 2005.

IRS Warns of e-Mail Scam about Tax Refunds

The Internal Revenue Service issued a consumer alert about an Internet scam in which consumers receive an e-mail informing them of a tax refund. The e-mail, which claims to be from the IRS, directs the consumer to a link that requests personal information, such as Social Security number and credit card information.

This scheme is an attempt to trick the e-mail recipients into disclosing their personal and financial data. The practice is called "phishing" for information.

The information fraudulently obtained is then used to steal the taxpayer's identity and financial assets. Generally, identity thieves use someone's personal data to steal his or her financial accounts, run up charges on the victim's existing credit cards, apply for new loans, credit cards, services or benefits in the victim's name and even file fraudulent tax returns.

The bogus e-mail, which claims to come from "tax.refunds@irs.gov," tells the recipient that he or she is eligible to receive a tax refund for a given amount. It then says that, to access a form for the tax refund, the recipient must use a link contained in the e-mail. The link then asks for the personal and financial information.

The IRS does not ask for personal identifying or financial information via unsolicited e-mail. Additionally, taxpayers do not have to complete a special form to obtain a refund.

If you receive an unsolicited e-mail purporting to be from the IRS, take the following steps:

- Do not open any attachments to the e-mail, in case they contain malicious code that will infect your computer.
- Contact the IRS at 1-800-829-1040 to determine whether the IRS is trying to contact you about a tax refund.

The IRS has seen numerous attempts over the years to defraud the public and the federal government

through a variety of schemes, including abusive tax avoidance transactions, identity theft, claims for slavery reparations, frivolous arguments and more. More information on these schemes may be found on the criminal enforcement page at irs.gov.

Rising Energy Prices Replace Interest Rate Hikes As Top-Ranked Concern of Small Business Owners

Concerns about higher energy prices and other increasing costs are growing among small-and mid-sized business owners across the United States. Nearly half intend to raise customer prices, with 19 percent planning to boost prices 5 percent or more, thus signaling an increase in inflationary pressures, according to the PNC Economic Outlook survey.

The survey was conducted for The PNC Financial Services Group, Inc. in August through early September with responses from approximately 1,093 business owners and executives both locally and nationwide. Those responses compiled after Hurricane Katrina were little changed from the pre-storm answers. Their outlook for sales, profits and hiring for the next six months has moderated amid a decline in their optimism about the U.S. economy compared to this past spring's record high levels. Conducted every six months since Spring 2003, the survey gauges their mood and sentiment about business expectations, economic factors and other issues.

All respondents in the PNC Economic Outlook survey were owners or senior decision makers in their respective businesses. Harris Interactive conducted 1,093 telephone surveys with 515 businesses nationally and 578 businesses within PNC Bank's primary region.

For more results of the survey and detailed press release, visit our website www.pspa-state.org then click on PNC Advantages/Economic News.

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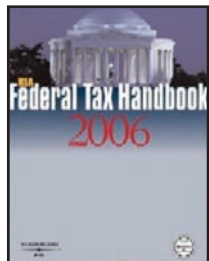
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